

## Notes from the Caltrans Statewide PA Teleconference 7-22-04

### Opening Remarks

Participants from Headquarters (HQ) included: Greg King, Glenn Gmoser, Dorene Clement, Anmarie Medin, Germaine Belanger, Jill Hupp, Margaret Buss and (by phone) Bob Pavlik

Following introductions, Greg gave kudos to all for the past six months of good work during the HQ CCSO review and comment of work carried out under the auspices of the PA. He noted that Dorene gave a presentation on the PA at the last FHWA "Brown Bag" meeting (an opportunity for management from both agencies to discuss important issues) and she was pleased to be able to report that it is working really well, and management agrees. Gary Winters said that in terms of best practices, it is the best thing Caltrans Environmental has done in the past year. Dorene added that while there are still some challenges, everyone recognizes the effort staff has made and that they are doing extremely well. Greg said that as staff workload is a major issue, HQ Local Assistance (LA) has submitted a BCP proposal requesting positions for staff to oversee cultural issues on LA projects. It would be up to the district to decide whether the person is located within the Cultural or LA offices; regardless, the position is exclusively for working on local projects. Some district representatives expressed concern that the person should be *experienced* in cultural resources.

### Action Item follow up from last meeting:

Jill reported that several example MOAs have been posted on Cultural's Intranet page: <http://pd.dot.ca.gov/env/cultural/index.htm> under the new "Examples Pages." There are also some samples of finding of effect documents, including one for a minor rehabilitation project using Standard Conditions. HQ plans to continue posting new examples.

### Staffing Changes

- Greg announced that Brian Ramos has been appointed Chief of the Cultural Resources Studies Office in D4, taking over for Mara Melandry, who retired at the end of June.
- Dorene announced that Dana Supernowicz will begin another rotation at SHPO beginning August 1, and Anmarie Medin will replace him as the 106 Coordinator for Cultural A districts (5, 6, 8, 9, 10, and 11). If you have been working with Dana on a project with on-going issues he will be happy to continue lending his assistance. He will be at HQ on Mondays and Fridays. When contacting Dana, it would be a good idea to copy Anmarie, so that she is in the loop. New inquiries should be directed to Anmarie.

### Case Study

Margaret gave a heads up about a situation that came up in D5. The project was to replace a Category 5 (ineligible) bridge. The (pre-PA) documentation was a negative HPSR. Due to a technical glitch and local politics, the NHPSR became an issue. Our 1984 agreement with SHPO that NHPSRs could be signed off by an FHWA TE was based on Caltrans sending SHPO batched copies of the reports, and we have lapsed doing this around 1994. The current situation was resolved by preparing a supplemental report for SHPO to review. There is no need to panic, but Margaret suggested that we mentally review whether we have any pre-PA projects going forward where this issue might come up. If you think there is potential for controversy, it might be a good idea to revisit that documentation. She recommended sending the information to HQ in that case.

Dorene mentioned another lesson to come out of this experience. The project was located on a bypassed segment of old Coast Highway. In the professional judgment of D5 staff at the time, the road segment was not something that warranted evaluation because of loss of integrity. An advocate for the Coast Highway later alleged that the bridge and the segment of old highway that it is on should be preserved. Staff then did a formal evaluation, determining the segment ineligible; the SHPO agreed with the determination.

The PA allows us to decide if segments of bypassed or abandoned roads may be exempted from further review. It is recommended however that if a road *may* have value to a group or community, or has some sort of designation – even if honorific only – we might want to go ahead and evaluate it. In any case, it is important to clearly document the decision-making process.

## Questions and Answers

- Q.** In Attachment 3 where level of effort is discussed under the rubric of APE delineation, it states that, "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." Could we get an example of a "compelling reason"?
- A. Glenn:** The compelling reasons are those that come up in your research design. This is case/site-specific; there are no generic "compelling reasons." The cultural resource professional has to ask: "What do we need to know to make decisions out here?" Do you have enough information to come to a decision? The point is that we have to rationalize our decision making in the research design. We have had research designs go to SHPO that did call for testing outside the ADI. Maybe the person who asked the question could provide clarification – what problems are you having coming up with the reasons?
- Q.** I'm having a problem getting clear, *complete* project descriptions from the design engineers. For example, the new PA allows us to screen in some instances when beacons and such are connected to existing facilities. I made numerous attempts to get details about the project. The general attitude was that it was "screenable" and I should let it go. Turns out they will be doing some lengthy trenching. I don't think it was intentional, but the problem still remains. Since each design engineer is so different, I think the project description is a stumbling block we will always have to be extra careful with.
- A. Margaret:** This is a good topic for discussion. Getting accurate information tends to involve asking a series of specific questions. Kim Tanksley of Central Region noted that one problem with getting accurate information is that Design and Cultural may have different meanings for some terms (e.g., "rumble strips"), and each engineer is so different that sometimes even talking to them isn't enough. This is a good reminder that when we document screened projects, we shouldn't accept a standard project description (e.g., rehab) but need to find out what is actually involved. How are other Districts handling this?
- NR has developed an Environmental short course for Design, acting on the premise that they know nothing about how a project might have the potential to affect cultural resources.
  - D1 notes *key* things that - if they do change - could be a problem (e.g., "no vegetation removal. . .").
  - D2 developed a list of specific questions that seems to work; the engineer must check yes or no for every question. If one is left blank, PQS follow up on this.

- D3 finds it helpful to talk to Construction, as they seem to know more about what actually happens out there than Design, and are usually happy to help.
- D8 coordinates with Environmental overall, and goes over submittals for consistency and accuracy of information.
- D9 has the engineer sign the cultural compliance memo, which states that if any of this information changes, Cultural needs to be consulted again.
- CR also has the project engineer sign off on the project description (as part of QA/QC), and while this is helpful, the responsibility for getting a good project description lies with Cultural. We have to write the screening memo carefully and include the details we need.

**Q.** I have a project that was submitted to SHPO before the PA and SHPO concurred that there would be No Historic Properties Affected. Now the project has changed and some additional properties have been added to the APE, so I'm doing a supplemental HPSR. Most are 1970s buildings. I know there isn't supposed to be any "grandfathering" of projects under the PA, but is there any way I can exempt properties? Would we use the Post-1957 Interim Policy, since it was in effect at the time of the original submittal? Or do we have to evaluate all these buildings?

**A. Jill:** We discussed this issue with SHPO recently. Basically, if 106 consultation for a project was *concluded* – that is, we have concurrence on the finding of effect or executed an MOA – then it is not "grandfathering" but rather a new undertaking, and would be handled under the PA. To us, it seems like on-going consultation because it has the same EA, postmile, etc., but for 106 purposes it is a new consultation. For instance, if you have a project with multiple alternatives and a new alternative is added after consultation is concluded, as far as SHPO is concerned it is a new undertaking, but of course you would present all the information about all of the alternatives on the table as part of the consultation for that undertaking. If you are working under an existing MOA, check the MOA to see what it says about amendments. If you aren't sure whether something is a new project or an ongoing one, contact your 106 Coordinator and we can set up a meeting with SHPO staff to help figure it out. Ultimately, FHWA determines whether an action is or is not an undertaking, but if the action requires consultation with the SHPO, this is how the SHPO interprets new versus ongoing consultation. The documentation for the new undertaking would not be a "supplemental," and is concerned with cultural resources in the APE for the new undertaking only. Prior documentation, if applicable, can be used to support the conclusions. The new action may also be screened, in accordance with Attachment 2.

**Q.** Should districts perform full-blown Native American consultation (NAHC letter, contacts with local tribes) for all screened undertakings that include ground disturbance, such as adding paved shoulders, adding median barrier, utility installation/relocation, vegetation removal?

**A. Glenn:** It depends on the location and other factors besides the type of undertaking. Tina couldn't be here, but she wrote before the meeting, "Contacting the NAHC and writing letters to the tribes in and of itself is not consultation, but "full blown" consultation would be necessary if concerns were identified. So given the expectation that screened undertakings have minimal impact, full blown consultation will not be necessary, and if it were then we would be most likely kicked out of the screened undertaking scenario. But if the question is,

should we contact the NAHC and the Native Americans as part of the screening process? It depends on what the screener knows of the area and the folks involved, and the potential for the area to have resources that the Native Americans would identify but we would not. The NAHC should be contacted about the Sacred Lands Inventory (more often than not there is no response from the NAHC or they respond that none had been identified in the area). Similarly, an explanation of the project and the screening process could be included in the letter to the Native Americans.”

- Q.** The PA says that the agreement does not change Native American consultation. We need to be informing the Tribes about projects, otherwise, how would they be able to comment?
- A. Glenn:** If we have a batch of screenable projects, it might be a good idea to inform the Tribes that these are the kinds of projects we are screening, and do they *want* to be informed about them?
- Q.** About the new project tracking system, “it,” do we have to go back and enter projects that we screened before “it” was on-line?
- A. Margaret:** Yes, because this information will be used in the annual report.
- Q.** What happens when you’ve had a violation of a permanent easement by a utility company?
- A. Jack Hunter (D5) et al:** The repercussions can vary. They risk losing free access on our r/w, or our permits office might write them a letter. Check with Margaret Lawrence, in D10, as she dealt with this situation a few years ago.

## **Wrap-up**

**Greg** noted that at a previous meeting Lynn had suggested having thematic discussions in future meetings, and asked if anyone had any ideas for topics they might like to discuss. Topics are not strictly limited to the PA, but can be about cultural resource issues in general. Topics suggested included: APE; PQS and the way we write ASRs; separate meetings for architecture and archaeology; the “it” database; and options for complying with 106 when we do not have a landowner’s permission to enter. Overall, the group would like to continue submitting questions to HQ, but we may decide to combine Q& A with a topical discussion too.

## **Headquarters Action Items**

None