

**ANNUAL REPORT**  
**IMPLEMENTATION OF THE**  
**SECTION 106 PROGRAMMATIC AGREEMENT**  
**JULY 1, 2006 - JUNE 30, 2007**

**CULTURAL & COMMUNITY STUDIES OFFICE**  
**DIVISION OF ENVIRONMENTAL ANALYSIS**  
**CALIFORNIA DEPARTMENT OF TRANSPORTATION**  
**SACRAMENTO, CALIFORNIA**

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## **EXECUTIVE SUMMARY**

This report documents the effectiveness of, and summarizes actions carried out under the *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 (PA)* from July 1, 2006 through June 30, 2007, in accordance with stipulation XVII.D.1 and XVII.D.2 of the PA. It includes only PA projects for which Section 106 consultation was initiated and concluded during that time period.

The results reveal that the California Department of Transportation (Caltrans) handled 1,131 Federal-Aid Highway projects. Of these, fewer than 70 required external review by the State Historic Preservation Officer (SHPO) and only 20 required review by the Federal Highway Administration (FHWA). The summary results of the PA actions can be found on page 2. A summary of the effectiveness of the PA will be found on page 3.

Now in its fourth year of implementation, the findings of this report demonstrate that the PA continues to be an effective environmental streamlining tool by improving project delivery while ensuring that effects to cultural resources as a result of Federal-Aid Highway undertakings are appropriately taken into account.

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## INTRODUCTION

The *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* (PA) went into effect on January 1, 2004, streamlining California Department of Transportation (Caltrans) procedures under Section 106 of the National Historic Preservation Act (NHPA). This report documents the effectiveness of, and summarizes activities carried out under, the PA. It covers actions for which Section 106 consultation was initiated and concluded between July 1, 2006 and June 30, 2007, in accordance with stipulations XVII.D.1 and XVII.D.2 of the PA. PA actions or projects that were “in progress” with determinations or findings still pending as of June 30, 2007 are not reflected in this report; the results of those consultations will be reported in future reports, after Section 106 has been completed.

A new development, coming at the very end of the reporting period, was Caltrans’ assumption of the Federal Highway Administration’s (FHWA’s) responsibilities for environmental consultation and coordination with resources agencies under the National Environmental Policy Act (NEPA) and other federal environmental laws such as Section 106 of the NHPA for most federally-funded highway projects in California. This assignment of responsibilities is pursuant to sections 6004 and 6005 of the 2005 federal transportation reauthorization bill, called the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Effective June 7, 2007, Caltrans assumed FHWA’s responsibilities for determining whether a transportation project qualifies for a Categorical Exclusion (CE). Effective July 1, 2007, Caltrans assumed all of FHWA’s responsibilities under NEPA for projects under FHWA’s Surface Transportation Project Delivery Pilot Program (Pilot Program). Caltrans also assumed all of FHWA’s responsibilities for environmental coordination and consultation under other federal environmental laws pertaining to the review or approval of projects under the Pilot Program.

In anticipation of the assumption of FHWA’s responsibilities, Caltrans met with FHWA and State Historic Preservation Officer (SHPO) representatives in December 2006, and with FHWA, SHPO, and Advisory Council on Historic Preservation (ACHP) representatives in January 2007 to discuss what affect, if any, the legal change might have on the PA. As a result of these meetings, in June 2007, FHWA and Caltrans proposed two addendums to the PA establishing that, for projects subject to delegation under SAFETEA-LU, Caltrans is the “Agency Official” responsible for ensuring that the Federal-aid Highway Program in California complies with Section 106. The addendums were undergoing review at the close of this reporting period, but have subsequently been approved by the PA signatories.

In applying for CE and Pilot Program delegation, Caltrans benefited from the previous experience of the Cultural and Community Studies Office (CCSO) in negotiating and developing the PA. Many of the quality assurance measures implemented for the PA were adopted, such as mandatory training requirements, regularly scheduled teleconferences with the Districts, and periodic distribution of informational bulletins. The PA itself served as a model for the delegation applications. Caltrans’ demonstrated ability to handle delegation of much of the

Section 106 process under the PA helped foster FHWA’s confidence in Caltrans’ ability to take on even greater environmental compliance responsibility.

In accordance with stipulation XVII.D.3, Caltrans is providing notice to the public that this report is available for inspection and will ensure that potentially interested members of the public are made aware of its availability, and that the public may provide comment to the PA signatory parties on the report. This report is now being submitted to the FHWA, the SHPO, the ACHP, and the Caltrans Director and District Directors.

## SUMMARY RESULTS

According to data provided by the 12 Districts, Caltrans processed 1,131 Federal-Aid Highway projects during this reporting period. The majority of these, 86 percent, were exempted from further review after appropriate review, or “screening,” by Professionally Qualified Staff (PQS)<sup>1</sup> (see Table 1). Another 8 percent were documented to Caltrans files only, while just 6 percent required consultation with the SHPO (see Table 2).

**Table 1: Activities Under the PA**

Projects Completed – Total	<b>1,131</b>
Caltrans Projects	633
Local Assistance Projects	498
Number of Projects Screened – Total	<b>977</b>
Caltrans Projects	538
Local Projects	439
Projects Not Screened – Total	<b>154</b>
Caltrans Projects	48
Local Projects	39

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<sup>1</sup> Stipulation IV of the PA specifies that the classes of undertakings identified in Attachment 2 of the PA as “screened undertakings” will require no further review under the PA when the steps set forth in Attachment 2 have been satisfactorily completed, and when it is thereupon determined that no condition of the undertaking necessitates further review pursuant to the PA. Caltrans PQS are responsible for screening those individual undertakings that are included within the classes of screened undertakings to determine if those individual undertakings require further consideration, or if they may be determined exempt from further review or consultation under the terms of the PA, as prescribed by stipulation VII. The undertaking will not qualify as exempt from further review if conditions must be imposed on the undertaking to ensure that potential historic properties would not be affected.

**Table 2: Historic Property Survey Reports (HPSRs)**

<b>HPSRs to File – Total</b>	<b>87</b>
HPSRs to File – Caltrans Projects	48
HPSRs to File – Local Projects	39
<b>HPSRs to SHPO – Total</b>	<b>67</b>
HPSRs to SHPO - Caltrans	43
HPSRs to SHPO - Local Projects	24

Of the projects that were not screened, 87 percent resulted in effect findings of No Historic Properties Affected or No Adverse Effect with Standard Conditions. Under the PA, these findings require documented notification to the SHPO when Caltrans has been in consultation with the SHPO regarding eligibility, or are documented to Caltrans’ files only if the HPSR concluded that no cultural resources requiring evaluation were present. The notification to SHPO may be sent concurrently with the HPSR and does not require a separate submittal to the SHPO.

The remaining 13 percent of projects resulted in No Adverse Effect or Adverse Effect findings, and therefore required consultation with the FHWA and the SHPO: 10 percent were No Adverse Effect findings, while 3 percent went forward with a finding of Adverse Effect (see Table 3). In all, projects with effect findings that required consultation with the SHPO represent less than 2 percent of the total number of Federal-Aid Highway projects for this annual reporting period.

**Table 3: Effect Findings**

Total Effect Findings	154
No Historic Properties Affected	111
No Adverse Effect with Standard Conditions	23
No Adverse Effect	15
Adverse Effect	05

The summary result of all Caltrans’ activities under the PA is that, overall, the PA remains a valuable streamlining tool, as discussed in the next section of this report.

## EFFECTIVENESS OF THE PA

The PA achieved the following efficiencies for the current reporting period:

- A majority of projects (94 percent) were screened or documented to Caltrans files only.
- Project schedules benefited from time saved by far fewer submittals to the SHPO for review and by less time spent waiting for those reviews.
- Approximately 34,200 estimated hours were saved by exempting projects from review in accordance with Attachment 2 of the PA.
- Approximately 8,400 estimated hours were saved by exempting properties from evaluation in accordance with Attachment 4 of the PA.
- The ability to eliminate or reduce archaeological excavations when sites can be protected by an Environmentally Sensitive Area designation not only resulted in substantial time and cost savings but also enhanced stewardship by preserving sites.
- FHWA and SHPO review times were eliminated or reduced.

### Time and Cost Savings

The most notable time savings under the PA is the ability to exempt routine projects from further review after appropriate screening by Caltrans PQS pursuant to Attachment 2. A total of 977 projects (86 percent of all Federal-Aid highway projects for the reporting period) were handled in this manner, with an estimated combined time savings of 34,179 hours statewide for both Caltrans and Local Programs projects (see Table 4).

**Table 4: Hours Saved By Screening**

Total Projects Screened	977
Caltrans Projects	538
Local Projects	439
Total Estimated Hours Saved by Screening (Attachment 2)	34,179
Hours Saved on Caltrans Projects	17,788
Hours Saved on Local Projects	16,391
Average Number of Hours Saved Per Project	40

Districts track the estimated hours saved by screening projects and provide the information to Headquarters for this annual report. The estimated savings ranged from 12 hours per project to 83 hours per project, with an average of approximately 40 hours saved per project.

Despite the estimated time savings, Districts report that project workload remains high. Hence, the time savings might best be viewed as a measure of more efficient project delivery, in that the screening process has allowed Caltrans to move projects to completion more quickly than could be accomplished without the PA. The projects that were screened moved through the Section 106

compliance process promptly (in some cases with a 1-day turnaround), whereas without the PA there would have been a backlog of projects for the same time period with the existing number of cultural resources staff.

**Table 5: Hours Saved By Exempting Properties**

Estimated Hours Saved by Exempting Properties from Evaluation (Attachment 4)	8,376
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A time savings was also achieved for the 154 projects that could not be screened. The ability of qualified Caltrans staff and consultants under the PA to exempt properties from evaluation, for example, saved an estimated 8,376 hours (see Table 5). Districts provided estimates of time saved based on the approximate number of properties exempted, versus the estimated time that would have been expended in evaluating these properties.

Districts also reported that a major time and cost saving aspect of the PA remains the ability to consider sites to be eligible without conducting subsurface testing, and protecting the sites with an Environmentally Sensitive Area (ESA) to reach a No Adverse Effect with Standard Conditions finding, per PA stipulations VIII.C.3 and X.B.2(ii). As one District noted, “we continue to see significant time savings by not having to evaluate all of the identified properties if they can be effectively protected with ESAs.” While this provision of the PA is clearly advantageous from a project delivery standpoint, a secondary benefit is enhanced environmental stewardship. By providing an incentive to preserve rather than excavate archaeological sites whenever possible, the PA institutionalizes the intent of the ACHP regulations and guidance to minimize archaeological excavation in order to preserve the full range of their values as scientific data and as cultural heritage.

Finally, Caltrans has realized additional time savings in reduced or eliminated review times by FHWA and SHPO. Of the 154 projects (out of a total of 1,131 projects for the reporting period) that could not be screened, more than half (87) were documented to Caltrans’ files only. Prior to the PA, these documents, the purpose of which is to report that no cultural resources requiring evaluation are present, required FHWA approval and signature, and/or review by the SHPO.

### **Accomplishments**

The following “success stories” demonstrate how well the PA works in streamlining the Section 106 compliance/project delivery process while taking effects to cultural resources into account:

District 1 had an extensive culvert replacement and rehabilitation project at various locations on State Route 101 in Humboldt County. Due to the nature and specific location(s) of the project, PQS used the screening process to exempt the project from further Section 106 review. Prior to the PA, this project would have required Area of Potential Effect mapping, and an Archaeological Survey Report/Historic Property Survey Report, even though the project

ultimately did not have the potential to affect historic properties. Given the location(s) of this project, District 1 staff estimated that the project would have required 100-130 hours of work if there were no PA.

Districts also reported that the PA was especially useful in saving both time and money during winter storm damage repairs. In District 1, storms damaged state and local roads at hundreds of locations throughout the District. The screening process enabled Caltrans and local agencies to rapidly respond to both the initial emergency and subsequent permanent fix of these locations and still be in compliance with Section 106.

One District also reported that the PA has been helpful in delegating much decision-making authority to the Caltrans PQS, thereby “validating” their role in the eyes of other Caltrans professionals outside of Environmental and that, when necessary, PQS can exert this authority to ensure that cultural resources are duly considered in the project planning process.

### **More results of PA Activities**

There was one instance of an ESA violation associated with a project processed under the PA during this reporting period. It occurred in February 2007 during construction of the State Route 20 Safety Improvement Project in Nevada County (postmiles 0.0-4.10). A previously unidentified prehistoric archaeological site was uncovered during tree removal activities for the project. District 3 PQS notified the FHWA, the SHPO, and Native American representatives of the discovery on February 20, 2007. Additional information regarding Caltrans’ field investigations and eligibility assessment was communicated to the parties on March 20, 2007. Caltrans concluded that the property is not eligible for the National Register. Native American representatives provided comments to Caltrans and monitored during the field investigations. No other comments were received.

Subsequent to this Annual Reporting period, another ESA violation occurred during construction of the State Route 20 project. Caltrans Headquarters and District 3 and the SHPO have scheduled a meeting to discuss the circumstances of the incident and future avoidance solutions. District 3 also prepared a Late Discovery Report for the February 2007 ESA breach. It was transmitted to the SHPO and other appropriate parties in August 2007. Headquarters Division of Environmental Analysis Chief Jay Norvell has taken steps aimed at preventing future such incidents by distributing a statewide “lessons learned” memo to all Environmental Managers and Project Development Division Chiefs. The memo stresses the importance of following through on environmental requirements and notes that Caltrans must ensure close adherence to the Section 106 PA, which specifies the requirements for establishing ESAs.

There were no other reported ESA failures associated with PA actions during this reporting period (July 1, 2006 to June 30, 2007), nor were there any foreclosures or formal objections to the manner in which the terms of the PA are being carried out. In summary, Caltrans PQS continue to implement the PA conscientiously and make appropriate decisions while still taking advantage of the PA’s streamlining opportunities.

## **QUALITY ASSURANCE MEASURES**

Under the PA, Caltrans PQS have taken on much of the responsibility for ensuring that effects to cultural resources are taken into account and that there is no loss in quality of work. As the results of this report indicate, this responsibility is being handled competently. To ensure that this level of quality continues, Caltrans District staff and CCSO implemented the following:

- September 2006: CCSO, with assistance from District 2 staff, taught a 12-hour PA training class for PQS and General Environmental Planners (Generalists) in Sacramento. CCSO also delivered a presentation on the PA for Caltrans statewide legal staff.
- November 2006: CCSO gave a one-day training session for Generalists in District 8, San Bernardino.
- December 2006: CCSO delivered a 12-hour PA training class for PQS and Generalists in District 6, Fresno.

In March 2007, CCSO, with assistance from Headquarters Division of Local Assistance staff, met with members of the SHPO's Project Review Unit, including some who had come on board after the PA was executed, to present and discuss the PA training that CCSO delivers to PQS. This was an opportunity for SHPO staff to have a dialogue with CCSO about their interpretations of the PA and how they feel it is working.

In addition, between May and June 2007, CCSO Senior Environmental Planners traveled to each of the 12 Districts to meet one-on-one with cultural resources staff, discuss with them how things were generally working out informally, and review Section 106 documents retained in Caltrans files pursuant to the PA. The results of these visits revealed that the Districts are doing an excellent job overall of handling screened undertakings and preparing HPSRs-to-file. Where there were anomalies, the CCSO Seniors discussed them with staff. The few problems observed were minor, and generally related to Caltrans' internal procedures rather than the PA itself. CCSO followed up the visits by distributing a "best practices" memo to the Districts.

Quality assurance measures also included:

- Several statewide teleconferences addressing PA/106-related questions.
- Periodic "Section 106 Bulletins" sharing SHPO and FHWA comments statewide.
- Teleconference notes, bulletins, and other guidance posted on the CCSO website.
- Peer reviews by CCSO staff, as requested by Districts.

## **REMAINING CHALLENGES**

Challenges in applying the PA as observed by Headquarters and reported by Districts for this report are related to issues internal to Caltrans: workload, consultant oversight, and Caltrans' organizational structure. On the whole, however, Districts noted that there has been some improvement in these areas since the last reporting period.

**Workload-** Districts continue to face the challenge of finding time to balance the necessary review and oversight of Local Agency projects (which can be considerable) with their own Caltrans project delivery workload.

On November 7, 2006, Californians, by wide margins, approved Governor Arnold Schwarzenegger and the Legislature's "Strategic Growth Plan" propositions, which includes \$19.9 billion for improving the state's transportation-related infrastructure. As a result, the number of transportation projects expected to be delivered in coming years will greatly expand. Among its activities, Caltrans and its regional transportation partners will be accelerating projects to bring safety improvements to roads and highways, expanding the state's network of carpool lanes, and improving public transit. The additional public works activity, much of it to play "catch-up" with the state's aging infrastructure, is expected to bring new challenges to those professionals working under the aegis of the 106 PA.

**Consultant Oversight** - Some Districts still find their decision-making authority for PA actions being called into question by consultants and local government representatives. Consultants are often reluctant to make changes to their documents in accordance with recommendation made by PQS.

**Caltrans' Organizational Structure** – Seven of Caltrans' 12 Districts are also organized as Regions. Districts 1, 2, and 3 are part of the "North Region" while Districts 5, 6, 9, and 10 make up the "Central Region." Cultural resources staff within a Region may be assigned to work on projects that are physically located outside of their "home" District. Although not specifically a PA-related issue, communication among PQS who work in regionalized Districts continues to be a challenge for some regionalized Districts.

### **Addressing the Challenges**

To help address these challenges, Headquarters will continue to assist Districts in conducting peer reviews, providing guidance to consultants and oversight for Local Agency projects, upon request of a District.

All chapters of the Environmental Handbook Volume II have now been completed and are posted on the Internet as part of the Caltrans Standard Environmental Reference. This guidance includes Caltrans' internal policy on resolving differences of opinion when a disagreement among PQS and consultants regarding a recommended finding or determination cannot be resolved. This should assist Districts in providing consistent guidance to consultants and local government representatives. Headquarters will provide training for local government agencies and their consultants at the request of a District.

Lastly, Headquarters has communicated with the regionalized Districts emphasizing the importance of cross-communication among PQS when handling intra-District projects.

## **CONCLUSION**

The PA continues to accomplish the goals of the signatory agencies, as evidenced by the results of this annual report. It has improved project delivery by delegating to Caltrans a substantial role in the process for compliance with Section 106 of the National Historic Preservation Act, and achieved considerable project cost and time savings for Caltrans. It has also succeeded in reducing the workload of both FHWA and SHPO staff in that fewer Caltrans projects require external review by these agencies.

Caltrans hopes that the other signatories will agree that the PA remains an efficient and effective program alternative for taking into account effects of the Federal-Aid Highway Program on historic properties in California and for affording the ACHP a reasonable opportunity to comment on undertakings covered by the PA.