

ANNUAL REPORT
IMPLEMENTATION OF THE
SECTION 106 PROGRAMMATIC AGREEMENT
JULY 1, 2008 - JUNE 30, 2009

CULTURAL 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* from July 1, 2008 through June 30, 2009, in accordance with stipulation XVII.D.1 and XVII.D.2 of the PA.

The results reveal that the California Department of Transportation handled 1,562 Federal-Aid Highway projects. Of these, 69 required external review by the State Historic Preservation Officer. A total of 12 projects resulted in a finding of adverse effect, and subsequently required a Memorandum of Agreement. The summary results of PA actions can be found on page 2.

During this reporting period, there were two discrepancies involving inadvertent effects to historic properties. In both cases, Caltrans cultural resources staff took the correct actions to ensure the resources against further harm, and followed up with the appropriate parties. The events are described on page 8.

Quality assurance measures for this reporting period included delivery of PA training for statewide cultural resources staff, held in Sacramento in October 2008. In addition, the Caltrans Division of Environmental Analysis, Cultural Studies Office conducted audits of Districts files between March and April 2009 to review PA documents that did not require external review by the State Historic preservation Officers. These and other quality assurance measures are discussed on page 9.

In 2007, pursuant to sections 6004 and 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Caltrans assumed Federal Highway Administration's responsibilities for environmental consultation and coordination with resources agencies under the National Environmental Policy Act and other federal environmental laws, including Section 106 of the National Historic Preservation Act for most federally-funded highway projects in California. The Cultural Studies Office assumed FHWA's responsibilities for compliance with the steps of the Section 106 process that were not previously delegated to Caltrans under the PA. Resource agencies have indicated that Caltrans is handling its assumption of FHWA's responsibilities capably, and in some cases, communication between agencies has effectively improved.

This reporting period also reflects an increased workload for cultural resources staff in handling undertakings funded under the American Recovery and Reinvestment Act. These projects had to be processed very quickly in keeping with the terms of the Act. Eight Districts provided information regarding the number of Recovery and Reinvestment Act projects completed; the totals can be seen on page 3. All Districts noted that they would not have been able to meet the Recovery and Reinvestment Act funding deadlines without the PA.

It is Caltrans' judgment that the PA has been a success in streamlining the Section 106 process while maintaining standards and ensuring that effects to cultural resources are taken into account during project planning.

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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. It streamlined Section 106 of the National Historic Preservation Act (Section 106) by delegating much of the Federal Highway Administration's (FHWA) responsibility for carrying out some of the more routine aspects of the Section 106 process to the California Department of Transportation (Caltrans). All cultural resources studies completed under the auspices of the PA must be carried out 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). The Chief of the Cultural Studies Office (CSO) in the Division of Environmental Analysis is responsible for certifying the qualifications of all PQS. PQS are charged with ensuring that effects to cultural resources are taken into account and that there is no loss in quality of work or consideration for resources.

As well as streamlining the Section 106 process for Caltrans, the PA has also accomplished a reduced workload for the State Historic Preservation Officer (SHPO) in that routine projects, or those that do not involve any cultural resources, are reviewed internally by PQS. Less than five percent of projects required SHPO review this reporting period. Transparency is assured in that all documentation prepared under the PA is kept on file at Caltrans and made available to consulting parties and the public in accordance with the PA, consistent with applicable confidentiality requirements. Delegating PQS the authority to perform many of the functions of the SHPO has enabled SHPO staff to concentrate efforts on the small number of projects that actually involve historic properties or have potential for adverse effects.

This report documents the effectiveness of, and summarizes activities carried out under, the PA. It covers actions for which Section 106 consultation was concluded between July 1, 2008 and June 30, 2009, 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 pending as of June 30, 2009 are not reflected in this report; the results of those consultations will be reported in subsequent annual reports, once Section 106 has been completed.

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 State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and the Caltrans Director and District Directors.

SUMMARY OF PA ACTIONS

According to data provided by the Districts, Caltrans processed 1,562 Federal-Aid Highway projects during this reporting period. The majority of these, 1,367 (or 88 percent), were exempted from Section 106 review after appropriate review, or “screening,” by qualified cultural resources staff.¹ An additional 126 projects (8 percent) that did not qualify as exempt were kept on file at Caltrans, as no consultation with the SHPO was required under the terms of the PA.² Overall, just 69 projects (4 percent) of the 1,562 that were processed between June 30, 2008 and July 1, 2009 required consultation with the SHPO (see tables 1 and 2).

Table 1: Activities Under the PA

Projects Completed – Total	1,562
Caltrans Projects	586
Local Assistance Projects	976
Number of Projects Exempted – Total	1,367
Caltrans Projects	490
Local Projects	877
Projects to SHPO – Total	69
Caltrans Projects	41
Local Projects	28

Table 2: Historic Property Survey Reports (HPSRs) to File

HPSRs to File – Total	126
HPSRs to File – Caltrans Projects	55
HPSRs to File – Local Projects	71

This year, District workload included a surge of American Recovery and Reinvestment Act (Recovery Act) projects, which had to be processed within a brief time frame in order to meet the federal funding deadlines. With few exceptions, the projects qualified as exempt from Section 106 review. Where feasible, District cultural resources staff worked with local agencies to identify projects in advance that had potential to affect historic properties, and therefore would

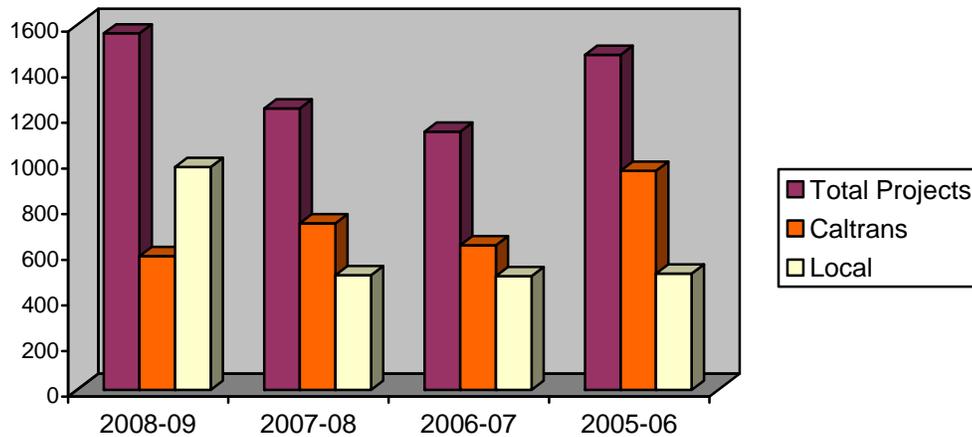
¹ Stipulation VII of the PA specifies that the classes of undertakings identified in Attachment 2 of the PA as “screened undertakings” will require no further review under the PA when the steps set forth in Attachment 2 have been satisfactorily completed. Caltrans PQS are responsible for “screening” individual actions that are included within the classes of screened undertakings to determine if the undertakings require further consideration or may be exempt from further review. Undertakings cannot be exempted if conditions must be imposed to ensure that potential historic properties would not be affected.

² These are projects for which the activities proposed do not fall under any of the classes of screened undertakings listed in Attachment 2 of the PA, but for which no cultural resources were identified within the project limits.

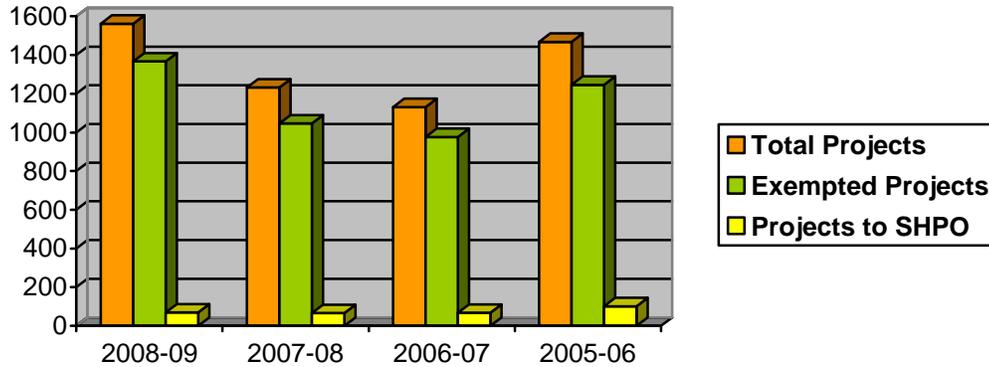
require further Section 106 review. Eight Districts provided data regarding the total of 267 Recovery Act projects they handled in this reporting period, of which all but a few were local government projects. It would not have been possible to meet the funding deadlines for these projects without the PA.

District workload for processing Federal-Aid Highway projects continues to rise. At 1,562, the total number of projects for the current reporting period was the highest it has been since the first full fiscal year of the PA's implementation, 2005-2006 (see Figure 1 below), when the total projects reached 1,468. This is also the first year in which the number of Local Assistance projects by far surpassed that of Caltrans projects. This is likely due to the volume of Recovery Act projects. The number of projects that qualify as exempt from Section 106 review has remained fairly constant, however, as has the total number of projects that required the SHPO's review, as shown in Figure 2.

**Figure 1: Federal-Aid Highway Projects
2005-06 to 2008-09**



**Figure 2: Exempted Projects and Projects Sent to SHPO
2005-06 to 2008-09**



Effect Findings

Of the 195 projects that were not exempted, 155 resulted in a “No Historic Properties Affected” finding. Under the PA, this finding requires notification to the SHPO when Caltrans has been in consultation regarding eligibility, or is kept in Caltrans’ files if the HPSR concluded that no cultural resources requiring evaluation were present. Another 18 projects met the criteria for “No Adverse Effect with Standard Conditions.”³ This finding requires only that Caltrans provide adequate documentation for the SHPO’s notification; the SHPO does not concur in such findings and there is no review, or “waiting” period involved.

The remaining 22 projects resulted in “No Adverse Effect *without* Standard Conditions” or “Adverse Effect” findings, and therefore required that the Districts consult with CSO and, subsequently, that CSO consult with the SHPO: 10 were “No Adverse Effect” while 12 had a finding of “Adverse Effect” (see Table 3). In all, projects that resulted in effect findings requiring consultation with CSO and the SHPO represent less than 1.5 percent of the 1,562 Federal-Aid Highway projects processed during this annual reporting period.

Table 3: Effect Findings

Total Effect Findings	195
No Historic Properties Affected	155
No Adverse Effect with Standard Conditions	18
No Adverse Effect	10
Adverse Effect	12

³ The Standard Conditions, described in stipulation X.B.2 of the PA, are as follows: (i) Historic properties will be rehabilitated in accordance with the Secretary of the Interior’s Standards for Treatment of Historic Properties (36 CFR Part 68); or (ii) Properties will be protected by designation of ESAs, as described in Attachment 5 to this Agreement. Note an ESA designation is not considered “standard” when applied to a non-archaeological site.

EFFECTIVENESS OF THE PA

Estimated Time Savings

1. Projects exempt from SHPO review

The PA delegated most of the steps involved in the Section 106 process to Caltrans. Certified cultural resources staff archaeologists and historians, referred to in the PA as Professionally Qualified Staff (PQS), determine whether undertakings have potential to affect historic properties through a process the PA calls “screening.” Projects that PQS determine do not have such potential may be exempted from further Section 106 review. The findings are typically documented in a memo along with any supporting documentation, such as project plans. Prior to the PA, all Federal-Aid Highway projects were subject to Section 106 consultation between FHWA and the SHPO. PQS measure the time savings of this 106 PA provision by estimating the amount of time that would otherwise have been spent conducting Section 106 studies.

Districts track the estimated hours saved by exempting projects and provide the information to CSO for this annual report. The estimated savings is based on an average of approximately 25.7 hours saved per project.

Despite the estimated time savings, as seen above in Figure 1, 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. As previously noted, Caltrans could not have processed the volume of Recovery Act projects within the short timeframe of that program without this streamlining benefit of the PA.

For the 2008-2009 reporting period, 1,367 projects (88%) qualified as exempt. The time saved is estimated at 35,144 hours, or roughly 20 person-years.⁴

Table 4: Hours Saved By Exempting Projects from Review

Total Projects Exempted	1,367
o Caltrans Projects	490
o Local Projects	877
Total Estimated Hours Saved by Exempting	35,144
o Caltrans Projects	11,791
o Local Projects	23,353
Average Number of Hours Saved Per Project	25.7

⁴ 1 person year = 1,760 hours.

2. Projects that require SHPO review

Table 5 below compares the agency review timeframes under the PA to those of 36 CFR Part 800, the regulations implementing Section 106. Since January 1, 2004, Caltrans uses the PA instead of 36 CFR Part 800 for most Federal-Aid Highway projects⁵ For a typical undertaking, consultation with the SHPO for the area of potential effect, identification effort and evaluation of cultural resources required a minimum of 90 days. Under the PA, the review time has been reduced to 30 days, resulting in a time savings of at least 60 days per project.

For the 2008-2009 reporting period, only 69 Federal-Aid Highway projects out of 1,562 went to the SHPO for a 30-day review.

Table 5: Section 106 Review Timeframes

Action	PA Process	36 CFR Part 800 Process
Setting Area of Potential Effects (APE)	0	30 day review by SHPO
Adequacy of Identification/Survey effort	0	30 day review by SHPO
Evaluation of cultural resources (if any present)	30 day review by SHPO	30 day review by SHPO

3. Time Savings for effect findings

Section 106 requires that a federal agency take into account the effect of its undertakings on historic properties (archaeological sites, buildings, structures, or objects that are listed on or determined eligible for the National Register of Historic Places). Table 6 below compares the Section 106 timeframes for review of effect findings under the PA to those of 36 CFR Part 800. Under the PA, projects that Caltrans PQS determine result in a finding of “No Historic Properties Affected” are documented to Caltrans files (if no historic properties requiring evaluation are present) or are sent to the SHPO for notification purposes only, resulting in a time savings of 30 days per project. Similarly, “No Adverse Effect with Standard Conditions” findings are provided for the SHPO’s notification only; the SHPO does not concur in the finding, thus there is no “review” period. These provisions of the PA result in an additional time savings of 30 days per project.

In the 2008-2009 reporting period, 173 projects either did not have to be sent to SHPO for review or were sent to the SHPO for notification only, a savings of 30 days per project.

⁵ The PA does not apply to projects that are located on or affecting tribal land; for projects on or affecting tribal land, Caltrans uses 36 CFR Part 800. Caltrans also has a programmatic agreement for seismic retrofit projects.

Table 6: Review Timeframes for Effect Findings

Action	PA Process	36 CFR Part 800 Process
Finding of No Historic Properties Affected	0	30 day review by SHPO
Finding of No Adverse Effect with Standard Conditions	0	30 day review by SHPO
Finding of No Adverse Effect without Standard Conditions	30 day review by SHPO	30 day review by SHPO
Adverse Effect	30 day review by SHPO	30 day review by SHPO

4. Properties that do not require evaluation

A. Properties exempt under Stipulation VIII.C.1 and Attachment 4 of the PA. Section 106 requires a reasonable level of effort to identify and evaluate historic properties. However, the PA recognizes that not all properties possess potential for historical significance. PQS and qualified consultants are trusted with the responsibility of determining whether cultural resources property types meet the terms of Attachment 4 of the PA and may therefore be exempted from evaluation under Section 106. PQS measure the time savings of this PA provision by roughly estimating the amount of time they or qualified consultants would have had to spend evaluating the properties.

- For the 2008-2009 reporting period, the estimated time savings was 1,008 hours. Note that the figure is quite low as few Districts track this information.

B. Special Consideration for Certain Archaeological Properties. Stipulation VIII.C.3 of the PA allows archaeological sites to be considered eligible for the National Register without conducting subsurface test excavations to determine their historic significance when qualified PQS determine that the site can be protected from all project effects by designating it an environmentally sensitive area (ESA). Prior to the 106 PA, *all* sites within an APE had to be evaluated for historic significance through testing.

- The time saved is approximately 3-12 months per site by not having to conduct test excavations. Again, while not feasible to track the number of *sites* that were not subject to testing as a result of this PA provision, stipulation VIII.C of the PA was applied in 23 *projects* handled during this reporting period.

In addition to the time savings benefit, this provision of the PA advances Caltrans' environmental stewardship of archaeological sites by providing incentives to preserve rather than excavate them whenever possible; reducing excavations and protecting sites from construction preserves the full range of their values as scientific data and as cultural heritage. Foregoing archaeological excavations where sites are considered eligible in

accordance with the terms of the PA and protected by an ESA designation, has saved time, public monies, and heritage resources.

5. FHWA reviews and approvals

Prior to Caltrans' NEPA assignment, all Section 106 documents were subject to review by FHWA in addition to review by the SHPO. The 106 PA saved 30 to 60 days per project by delegating approval of APE maps from FHWA engineers to Caltrans PQS, and a minimum of 30 to 90 days in eliminating FHWA review of certain Section 106 reports. Caltrans continues to realize these time savings on FHWA projects that are exempt from the NEPA assignment, as the 106 PA remains applicable.

POST REVIEW DISCOVERIES AND INADVERTENT EFFECTS

District 5 had one instance of inadvertent effects in conjunction with the San Luis Obispo Operational Improvements Project (1B) on U.S. 101 in San Luis Obispo County (EA 05-485621). On March 16, 2009, the project's contractor cut through a 10-foot cyclone State right-of-way fence and conducted grading activities on the adjacent private property in order to use it for disposal and staging, and as an area for equipment turn around. Three archaeological sites (CA-SLO-80/H, -1345, and 1346) that Caltrans considered to be National Register-eligible for the purposes of the project were affected. Although located on private property, the sites are immediately adjacent to an ESA and Archaeological Monitoring Area depicted on the construction plans. District 5 requested that all construction activity on the property cease, and access through the right of way fence was blocked. In accordance with the PA, District notified CSO, the SHPO and representatives of the Native American community of the inadvertent effects, and followed up by developing a plan for the treatment of the properties, which was provided to all interested parties. Orange fencing was established to prevent any further impacts to the archaeological sites. No additional disturbance has occurred since.

District 8 had a similar incident occur on the Interstate 10 at Jefferson Street Project in the City of Indio in Riverside County (EA 08-475200). On October 28, 2008, it was brought to Caltrans' attention that the City of Indio had commenced grading activity on a portion of the project that involves realignment of a local road, although environmental compliance for the project was not yet complete. Caltrans had already determined, in consultation with the SHPO, that two historic properties would be adversely affected by the projects: prehistoric archaeological sites CA-RIV-6896 and CA-RIV-6897. District 8 promptly notified CSO, the SHPO and Native American Tribes of the incident in accordance with the PA. Further, District 8 PQS visited the site on November 14, 2008 and determined that one of the properties, CA-RIV-6897 sustained superficial damage and CA-RIV-6896 was not disturbed; these findings were documented in an Archaeological Letter Report provided to all the interested parties on December 16, 2008. Caltrans and the SHPO subsequently executed an MOA to resolve the project's adverse effects.

Caltrans responded to these events appropriately, and continues to develop improved processes for establishing and enforcing ESAs. There were no other reported ESA failures associated with PA actions during the reporting period, nor were there any foreclosures or written objections to

the manner in which the terms of the PA are being carried out. In summary, Caltrans PQS continue to implement the PA responsibly while 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, the following quality assurance measures occurred:

- In October 2008, CSO delivered a 12-hour PA training class for PQS in Sacramento.
- March and April 2009: CSO staff visited 10 of the 12 Districts to review documents prepared under the PA between July 1, 2008 and the date of the visit and which, in accordance with the terms of the PA are kept in the District files only. These documents primarily consist of memos regarding exempted projects and Historic Property Survey Reports to file. The percentage of files look at in each District depended on the District's overall output, and ranged from 30-40 percent to 100 percent. This review revealed that with few, minor exceptions, Districts are treating such projects appropriately.

Quality assurance measures also included:

- Quarterly meetings with the Districts, CSO and SHPO to discuss workload and cultural resource issues of statewide concern.
- Periodic "Section 106 Bulletins" sharing SHPO and CSO comments statewide.
- Bulletins, and other guidance posted on the CSO website.
- CSO review and approval of all "No Adverse Effect without Standard Conditions" and "Adverse Effect" reports, MOAs and MOA attachments.
- Peer reviews by CSO staff, as requested by Districts.

CONCLUSION

It is Caltrans' finding that 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, and achieved considerable project cost and time savings for Caltrans. It has also succeeded in reducing the workload of SHPO staff in that fewer Caltrans projects require external review.

Caltrans finds 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.

During this reporting period, the PA was a critical component in the delivery of Recovery Act projects, with eight Districts reporting that they handled a total of 267 such projects.