

ANNUAL REPORT
IMPLEMENTATION OF THE
SECTION 106 PROGRAMMATIC AGREEMENT
JULY 1, 2007 - JUNE 30, 2008

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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, 2007 through June 30, 2008, 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 concluded during that time period.

The results reveal that the California Department of Transportation (Caltrans) handled 1,232 Federal-Aid Highway projects. Of these, 66 required external review by the State Historic Preservation Officer (SHPO). Six of the projects resulted in a finding of adverse effect. 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 fifth 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 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, 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 concluded between July 1, 2007 and June 30, 2008, 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, 2008 are not reflected in this report; the results of those consultations will be reported in subsequent reports, once Section 106 has been completed.

This reporting period reflects 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 addenda were approved by the PA signatories effective September 28, 2007. In accordance with the addenda, the Cultural and Community Studies Office (CCSO) assumed the role of FHWA for NEPA-delegated projects under the PA. FHWA can continue to apply the PA for Federal-Aid highway projects that are not subject to NEPA delegation.

In applying for CE and Pilot Program delegation, Caltrans benefited from the previous experience of 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. SAFETEA-LU requires that FHWA audit Caltrans’ performance twice annually for the first two years of the Pilot Program and once a year thereafter to ensure that Caltrans is meeting federal requirements. The results of the two such audits conducted so far have indicated that the transition has been a smooth one with regard to the Section 106 process, which continues to operate much as it did prior to the NEPA assignment.

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 1,232 Federal-Aid Highway projects during this reporting period. The majority of these, 85 percent (1,047), were exempted from further review after appropriate review, or “screening,” by Professionally Qualified Staff (PQS)¹ (see Table 1). Another 10 percent (117) were documented to Caltrans files only, while just 5 percent (66) required consultation with the SHPO (see Table 2).

Table 1: Activities Under the PA

Projects Completed – Total	1,232
Caltrans Projects	730
Local Assistance Projects	502
Number of Projects Screened – Total	1,047
Caltrans Projects	642
Local Projects	405
Projects Not Screened – Total	183
Caltrans Projects	85
Local Projects	98

¹ 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)

HPSRs to File – Total	117
HPSRs to File – Caltrans Projects	49
HPSRs to File – Local Projects	68
HPSRs to SHPO – Total	66
HPSRs to SHPO - Caltrans	36
HPSRs to SHPO - Local Projects	30

Of the projects that were not exempted, 77 percent (142) resulted in a No Historic Properties Affected finding. Under the PA, this finding requires notification the SHPO when Caltrans has been in consultation regarding eligibility, or is documented to Caltrans’ files if the HPSR concluded that no cultural resources requiring evaluation were present. Another 15 percent (27) met the criteria for No Adverse Effect with Standard Conditions, requiring only documented notification to the SHPO of the finding.

The remaining 8 percent of projects resulted in No Adverse Effect or Adverse Effect findings, and therefore required consultation with CCSO and the SHPO: 5 percent (9) were No Adverse Effect findings, while 2 percent (6) went forward with a finding of Adverse Effect (see Table 3). In all, projects that resulted in effect findings requiring consultation with CCSO and the SHPO represent less than 2 percent of the 1, 232 Federal-Aid Highway projects processed during this annual reporting period.

Table 3: Effect Findings

Total Effect Findings	183
No Historic Properties Affected	142
No Adverse Effect with Standard Conditions	27
No Adverse Effect	09
Adverse Effect	06

EFFECTIVENESS OF THE PA

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

- Majority of projects (94 percent, or 1,164 projects) 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 37,300 estimated hours were saved by exempting projects from review in accordance with Attachment 2 of the PA.
- Over 9,300 estimated hours were saved by exempting properties from evaluation in accordance with Attachment 4 of the PA (6 out of 12 Districts reporting).
- 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.
- SHPO review workload was reduced due to major steps of the Section 106 processed being delegated to Caltrans.

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 1,047 projects (85 percent of all Federal-Aid highway projects for the reporting period) were handled in this manner, with an estimated combined time savings of 37,311 hours statewide for both Caltrans and Local Programs projects (see Table 4).

Table 4: Hours Saved By Screening

Total Projects Screened	1,047
Caltrans Projects	642
Local Projects	405
Total Estimated Hours Saved by Screening (Attachment 2)	37,311
Hours Saved on Caltrans Projects	22,221
Hours Saved on Local Projects	15,090
Average Number of Hours Saved Per Project	35.5

Districts track the estimated hours saved by screening projects and provide the information to Headquarters for this annual report. The estimated savings ranged from 8 hours per project to 120 hours per project, with an average of approximately 35.5 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)	9,302
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A time savings was also achieved for the 183 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 9,302 hours (see Table 5). Not all Districts track this information, so the time savings is actually much larger than this. Districts that are able to track this data estimate the 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). One District estimated that they saved more than 500 hours (3-6 months of time) by using the No Adverse Effect with Standard Conditions provision, establishing ESAs for archaeological sites and thereby avoiding unnecessary excavations.

Finally, Caltrans has realized additional time savings in reduced or eliminated review times by FHWA and SHPO. Of the 183 projects (out of a total of 1,232 projects for the reporting period) that could not be screened, well more than half (117) 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” are intended to demonstrate how well the PA works in streamlining the Section 106 compliance/project delivery process while taking effects to cultural resources into account:

District 2: Fountain Slide Emergency repair project. A multi-component archaeological site (CA-SHA-4410/H) was discovered during geotechnical drilling and slide repair efforts for this emergency project, as described on page 7. Although the project did not meet the definition of an

“emergency” as set forth in 36 CFR 800.12, life and property were at risk. With valuable input from SHPO staff, Caltrans was able to accomplish most of the critical follow up work in a timely manner and avoid adverse effects to the site by applying Standard Conditions- ESA. In further consultation with the SHPO, Caltrans concluded that the third phase of the project would have an unavoidable adverse affect to CA-SHA-4410. With SHPO’s cooperation and quick review, Caltrans was able to conclude Section 106 compliance in time for the remaining project work to commence before the next winter storm season.

District 7: Main and Los Angeles Street bridges over US 101 Aesthetic Enhancements. The City of Los Angeles (City) proposed a project to Caltrans in January 2008 that sought to strengthen the relationship between the Civic Core and El Pueblo Historical Monument/Union Station, which are physically separated by US 101. The project proposed pedestrian improvements on both bridges, including treatments to existing chain link fences and the addition of pedestrian-activated kinetic sculptures. The funding was due to expire at the end of the 2007-08 fiscal year with no extensions. By late February, the project artists had developed a preliminary design, but it did not meet with Caltrans engineering staff approval. Working closely with Caltrans engineering and PQS staff the artists developed an acceptable design and provided sufficient detail regarding potential for effects to enable Section 106 to move forward. Because the PA delegated much of the decision-making process to Caltrans PQS, the project was able to complete Section 106 in a timely manner and the project did not lose its funding. Without the PA, it is questionable that this would have been possible.

District 7: the Arroyo Seco Parkway barrier project. This project moved through the Section 106 process very quickly. As a No Adverse Effect with Standard Conditions-Rehabilitation finding under the PA, concurrence from the SHPO was not required.

In addition, Districts also highlighted the following benefits of the PA:

- The PA has allowed us to negotiate with other agencies in a more direct fashion. In the past, a lot of consultation and correspondence was delayed, or lost something in the translation. Now we are able to talk to other agencies without a “middleman.”
- The biggest benefit that we have realized this year was again in the application of the “screening” process. However, we have also experienced the benefit of not having to bring FHWA “on board” for projects that required Section 106 studies. It is also beneficial that we have been able to develop a closer working relationship with SHPO staff. All of these things have resulted in a much more “user friendly” process.
- The PA has given us the ability to respond more quickly to last-minute issues that arise after Section 106 compliance has been completed. Some of these have been just before right of way certification or when plans are 95 percent completed, when additional parcels must be acquired or new utility easements addressed.
- Consultants (both engineering and environmental) continue to express their gratitude in the ability to have Area of Potential Effects (APE) maps signed by Caltrans PQS and Project Management staff. This has resulted in shorter turnaround times for approving and finalizing the APE.

- There are some projects where we can predict that the construction area will not physically affect archaeological sites, but the right of way acquisition might include portions of them. With the option of using an ESA under the Standard Conditions provision (rather than potential Phase II excavations), we can estimate the time needed to complete cultural studies with greater confidence.

Post Review Discoveries and Inadvertent Effects

There were five instances of post review discoveries or inadvertent effects to historic properties for PA projects during the current reporting period.

- **Cypress Bridge Replacement Project**, Shasta County (Local project). One prehistoric site was discovered within a staging area (extension of CA-SHA-214) during excavation of a utility trench. In consultation with the SHPO, Caltrans assumed the site to be eligible for the National Register and implemented a post-review discovery plan for data recovery excavations. One human burial was found during data recovery excavations; the burial was capped for preservation-in-place upon recommendation of the involved Native Americans, in accordance with state law.
- **Skyline East Road Extension Project**, Lassen County (Local project). One historic-era site (Old Susanville Dump) was discovered within the area of a road widening. Caltrans notified the SHPO, then proceeded to record and evaluate the portion of the site within the Area of Direct Effect. In consultation with the SHPO, Caltrans determined that this portion of the site would not contribute to the overall significance of the site, should it ever be determined eligible for the National Register.
- **Fountain Slide Emergency Geotechnical Drilling**, Shasta County (Caltrans project). Caltrans identified one multi-component archaeological site (CA-SHA-4410/H) during geotechnical drilling and emergency slide repair efforts. Given the concern for motorist safety and risks to both state and private property, the emergency activities within the boundaries of CA-SHA-4410 could not be carried out under the normal Section 106 timeframes. Upon being notified of the emergency, SHPO staff agreed with the appropriateness of proceeding under the post-review discovery provision of the PA (stipulations XV.B.1 and XV.B.2).
- **Dersch Road Safety Project**, Shasta County (Caltrans project). An ESA violation resulted in impacts to a section of CA-SHA-2578H (Nobles Emigrant Trail) within the Caltrans Right of Way. The ESA was marked by ESA stake and tape, but the contractor extended the cut slope beyond what Caltrans PQS had originally approved. This resulted in the removal of the portion of the trail within the right of way. Caltrans consulted with the SHPO to develop a mitigation plan that involves evaluating other sections of the trail in the vicinity of the project. This work is still in progress.

Caltrans responded to these events with improved processes for establishing and enforcing ESAs. Caltrans CCSO held a teleconference with PQS statewide to discuss best practices, and received valuable insight from design-engineering staff regarding information they need from PQS to help avoid such situations in the future. There were no other reported ESA failures associated with PA actions during the reporting period, 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 appropriately, taking advantage of the PA's streamlining opportunities, but Caltrans also responds and fixes training and processes to maintain compliance

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:

- November 2007: CCSO delivered a 12-hour PA training class for PQS and General Environmental Planners in Sacramento.
- June 2008: Many Caltrans PQS attended a 3-day training course offered by the National Highway Institute, "Beyond Compliance: Historic Preservation in Transportation Project Development," in San Diego.
- June 2008: CCSO delivered a one-day training session for General Environmental Planners in District 4, Oakland.

Quality assurance measures also included:

- Statewide teleconferences addressing PA/106 issues held in July and October 2007.
- Regular "NEPA Delegation" teleconferences held by the Caltrans Headquarters NEPA Delegation Coordination Office beginning July 2007.
- Periodic "Section 106 Bulletins" sharing SHPO and CCSO comments statewide.
- Teleconference notes, bulletins, and other guidance posted on the CCSO website.
- CCSO specialists review and approval (as FHWA) of all no adverse effect and adverse effect reports, MOAs and MOA attachments.
- Peer reviews by CCSO staff, as requested by Districts.

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, and achieved considerable project cost and time savings for Caltrans. It has also succeeded in reducing the workload of both 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.