Exhibit 1.4: Historic Preservation Laws and Regulations Summary

Table of Contents

Federal Laws and Regulations 1
- Federal Law 1
- Federal Executive Order 3
- Federal Regulations 4

State Laws and Regulations 4
- State Law 4
- State Executive Order 7

State Regulations 7

State and Federal Guidance 8
- Advisory Council on Historic Preservation 8

Fact Sheets: Section 106 series 9
- U.S. Department of Interior, National Park Service 9
- U.S. Department of Transportation, Federal Highway Administration 10
- State Office of Historic Preservation 11

Copyright ©2014 California Department of Transportation. All rights reserved.

Exhibit 1.4: Historic Preservation Laws and Regulations Summary

Federal Laws and Regulations

Federal Law

Compliance with the following federal statutory laws and regulations is required on all transportation projects with federal involvement, which includes funding, licensing, and issuing of permits.

Historic Sites Act of 1935 (16 USC 461 et seq)

Under this act, Congress established a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States. This act authorized the Historic American Building Survey (HABS), the Historic American Engineering Record (HAER), the National Survey of Historic Sites, the establishment of National Historic Sites, and the designation of National Historic Landmarks. The act also authorized interagency, intergovernmental, and interdisciplinary efforts for the preservation of cultural resources. Implementing regulations of the act are found in 36 CFR Part 60 series.

National Environmental Policy Act of 1969 (42 USC 4321-4347)

The National Environmental Policy Act (NEPA) mandates the protection of cultural resources within its general policy for environmental protection. It requires the preservation of important historic, cultural, and natural aspects of our national heritage, and the maintenance, wherever possible, of an environment that supports diversity and a variety of individual choice. Regulations promulgated by the Advisory Council on Historic Preservation provide for the coordination of NEPA and NHPA compliance, under 36 CFR Part 800.14(a). Regulations for implementing the procedural provisions of NEPA are available at 40 CFR Part 1500-1508.

National Historic Preservation Act of 1966 (16 USC 470 et seq)

The National Historic Preservation Act (NHPA) created the National Register of Historic Places, which includes cultural resources of national, state, and local significance. The act established a system for state historic preservation programs under State Historic Preservation Officers. This act also established the Advisory

Copyright ©2014 California Department of Transportation. All rights reserved.

Council on Historic Preservation, an independent agency which is responsible for implementing **Section 106** of NHPA through the development of procedures to protect cultural properties included in, or eligible for inclusion in, the National Register. Regulations are published in 36 CFR Part 60 and 63, and 36 CFR Part 800.

U.S. Department of Transportation Act of 1966 (49 USC 303); Federal-Aid Highway Act of 1968 (23 USC 138)

Under these acts, the national policy to preserve historic properties was expanded to include cultural resources affected by federal-aid transportation projects. The acts declare that special efforts should be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and historic sites. **Section 4(f)** of the Department of Transportation Act stipulates that the Secretary of Transportation shall not approve any federally assisted project which would take land from a historic site of national, state, or local significance unless there is no feasible and prudent alternative, and unless the proposed use includes all possible planning to minimize harm to historic sites resulting from that use. Regulations developed by the Advisory Council on Historic Preservation provide for the coordination of USDOT's Section 4(f) and NHPA compliance, under 36 CFR Part 800.14(b). Regulations are at 23 CFR Part 774.

Urban Mass Transportation Assistance Act of 1970 (49 USC 1610)

Congress, under the Urban Mass Transportation Assistance Act (UMTA) identified historic site protection provisions similar to those of the D.O.T. Act of 1966. The act requires that a "special effort be made to preserve...important historical and cultural assets," and that federally funded mass transit projects shall not be approved unless there is "no feasible and prudent alternative" to doing any harm to those assets, and unless "all reasonable steps have been taken to minimize such effect." regulations for this act and the D.O.T. Act of 1966 are in 23 CFR Part 77l.

Archaeological and Historic Preservation Act of 1974 (16 USC 469 et seq)

This act, also called the Moss-Bennett Act, applies to most federal construction projects. It requires the federal agency to notify the Secretary of the Interior if a project threatens the loss or destruction of significant historic or archaeological data. FHWA's Section 106 compliance process provides substantially the same protection; consequently Moss-Bennett is not invoked on FHWA projects.

Copyright ©2014 California Department of Transportation. All rights reserved.

American Indian Religious Freedom Act of 1978 (42 USC 1996)

This law guarantees the rights of American Indians to express and practice traditional religions, and directs federal agencies to protect and preserve these rights.

Archaeological Resources Protection Act of 1979 (16 USC 470aa et seq)

In order to protect archaeological resources on public lands and Indian lands, this act requires permits in order to excavate or remove any archaeological resources. Unauthorized activities are punishable by fine, imprisonment, or both. (Rules and regulations concerning this act are printed under 43 CFR Part 7.)

Native American Graves Protection and Repatriation Act (25 USC 3001 et seq)

The 1990 law known as NAGPRA requires federal agencies and museums receiving federal funds to inventory and repatriate human remains and associated funerary objects, including items of cultural patrimony. The agencies and museums must offer to return these remains and objects to the Native American groups who are judged to be the most likely descendants or most closely culturally affiliated. The law also protects Native American graves and other cultural items located within archeological sites on federal and tribal land.

Federal Executive Order

Executive Order 11593, "Protection and Enhancement of the Cultural Environment," May 13, 1971 (reprinted in 16 USC 470)

This executive order outlines federal procedures for protecting cultural resources under federal ownership and provides direction on the process by which eligible properties are nominated to the National Register of Historic Places. Inventory and nomination requirements of this order do not directly apply to FHWA, as FHWA does not own property. Under Section 1(3), FHWA is required to contribute to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural, or archaeological significance. This order strengthened Section 106 by extending the requirements of the law to protect eligible and potentially eligible National Register properties. (Rules and regulations concerning this order are found in 36 CFR Part 60 and 63, and 36 CFR Part 800.)

Copyright ©2014 California Department of Transportation. All rights reserved.

Federal Regulations

Implementing Regulations for Section 106, National Historic Preservation Act (36 CFR 800)

As directed by the National Historic Preservation Act, particularly Section 106, these regulations direct all federal agencies to take into account the effects of the agency's undertakings (projects) on National Register listed or eligible properties, and to coordinate compliance efforts. Federal agencies must follow the process described in this set of regulations. Compliance with the regulations that implement Section 106 is commonly referred to as the "106 Process." Section 106 requires Caltrans, through its involvement with FHWA, to "take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register," and afford the Advisory Council on Historic Preservation (ACHP) "a reasonable opportunity to comment with regard to such undertaking." Included in the regulations are methods federal agencies can use to coordinate the compliance requirements of NEPA, NHPA, and other federal historic preservation laws.

Implementing Regulations National Register of Historic Places Determinations of Eligibility, National Historic Preservation Act (36 CFR 63 and 36 CFR 60)

Federal agencies use the procedures established by these regulations to identify and evaluate cultural resources, and to determine their eligibility for inclusion in the National Register of Historic Places, in accordance with 36 CFR 800.

Secretary of Interior's Standards for Professional Qualifications (36 CFR Part 61)

Defines the minimum qualifications accepted by National Park Service for individuals who perform identification, evaluation, registration and treatment of cultural resources.

State Laws and Regulations

State Law

Statutory laws and regulations enacted by the State of California are listed below. Similar to federal law, state legislation also mandates measures to encourage and regulate historic preservation activities in California. State preservation legislation is found under various divisions of the California Annotated Code.

Copyright ©2014 California Department of Transportation. All rights reserved.

California Environmental Quality Act of 1970 (CEQA) (PRC 21000 et seq.)

CEQA declares that it is state policy to "take all action necessary to provide the people of this state with...historic environmental qualities." It further states that public or private projects financed or approved by the state are subject to environmental review by the state. All such projects, unless entitled to an exemption, may proceed only after this requirement has been satisfied.

CEQA requires detailed studies that analyze the environmental effects of a proposed project. In the event that a project is determined to have a potential significant environmental effect, the act requires that alternative plans and mitigation measures be considered. CEQA includes historic and archaeological resources as integral features of the environment.

California Register of Historical Resources (PRC 5024.1)

Public Resources Code 5024.1 establishes the California Register of Historical Resources. The register is listing of all properties considered to be significant historical resources in the state. The California Register includes all properties listed or determined eligible for listing on the National Register, including properties evaluated under Section 106, and State Historical Landmarks from No. 770 on. The criteria for listing are the same as those of the National Register. The California Register statute specifically provides that historical resources listed, determined eligible for listing on the California Register by the State Historical Resources Commission, or resources that meet the California Register criteria are resources, which must be given consideration under CEQA (see above). Other resources, such as resources listed on local registers of historic registers or in local surveys, **may** be listed if they are determined by the State Historic Resources Commission to be significant in accordance with criteria and procedures to be adopted by the Commission and are nominated; their listing in the California Register, is not automatic.

State-owned Historical Resources (PRC 5024-5024.5 and PRC 5027)

Section 5024 requires each state agency to "formulate policies to preserve and maintain, when prudent and feasible, all state-owned historical resources under its jurisdiction." It directs agencies to prepare inventories of all state-owned historical resources and to evaluate them using the National Register and California Historical Landmark criteria. "State- owned structures in freeway rights-of-way shall be inventoried before approval of any undertaking which would alter their original or significant features or fabric, or transfer, relocate, or demolish those structures." Until

Copyright ©2014 California Department of Transportation. All rights reserved.

the inventory is complete, state agencies shall ensure that any structure that might qualify is not inadvertently transferred or altered.

In 1992, PRC 5024.1 was added, establishing the California Register of Historical Resources to identify the state's historical resources, and "to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change."

PRC 5024.5 stipulates that before any state agency alters, transfers, relocates, or demolishes historical resources on the Master List of Historical Resources, the agency will give the State Historic Preservation Officer the opportunity to review and comment on the proposed action. This section further requires state agencies and the State Historic Preservation Officer to adopt prudent and feasible measures to eliminate or mitigate adverse effects to historic structures.

Section 5027, prohibits the demolition, destruction or significant alteration (except for restoration to preserve or enhance its historical values) of any state-owned building or structure that is listed in the National Register of Historic Places that is transferred to another public agency, without prior approval of the Legislature by statute.

Disturbance of an Archeological Site (PRC 5097.5)

Section 5097.5 makes it a misdemeanor for anyone to knowingly disturb any archaeological, paleontological, or historical feature situated on public lands.

Native American Religious Freedom (PRC 5097.9 et seq)

This code section prohibits public agencies from interfering with the free expression or exercise of Native American religion, or causing severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property. The only exception occurs when it can be clearly and convincingly demonstrated that the public interest and necessity require such action.

Native American Grave Artifacts (PRC 5097.991)

This section states that "it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated."

Native American Heritage Commission (PRC 5097.9)

Establishes the Native American Heritage Commission (NAHC). The code stipulates that no public agency may alter, modify, disturb, remove, destroy, or damage any Na-

Copyright ©2014 California Department of Transportation. All rights reserved.

tive American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine except with the consent of the NAHC. In addition, the NAHC can mediate disputes relating to treatment of human remains and designate "most likely descendants" of encountered human remains. Additional information on management of Native American resources and state laws regarding human remains can be found in Chapter 3, Native American Coordination.

California Historical Building Code (Health & Safety Code 18950 to 18961

State agencies are mandated to use this alternate code on their qualified historical resources that include those that are National Register listed or eligible, California Register listed or eligible, and that are historical resources under CEQA.

State Executive Order

Executive Order W-26-92

The Governor's Executive Order W-26-92 directs all state agencies to administer the cultural and historic properties under their control, regardless of who owns the resources, and to initiate measures to preserve, restore, and maintain significant state-owned properties. It specifically requires agencies to appoint an agency preservation officer, to develop management plans for their significant heritage resources, to complete the inventories of their state-owned historical resources as directed in PRC 5024, and to report annually to the State Historic Preservation Officer on these activities.

State Regulations

CEQA Guidelines (14CCR 15000 et seq)

The CEQA Guidelines govern the implementation the California Environmental quality Act. Of particular importance for cultural resources are: Section 15064.5, determining the significance of impacts to archaeological and historical resources, Section 15126 on mitigation measures to minimize significant effects to historical resources, and Section 15331 categorical exemption of a project involving historical resource when the work involves repairs, maintenance, alterations, rehabilitation, etc. of historical resources when the *Secretary of the Interior's Standards for the Treatment of Historic Properties* are used.

Copyright ©2014 California Department of Transportation. All rights reserved.

California Register of Historical Resources (14 CCR 4850

These regulations govern the nomination of resources to the California Register. The regulations set forth the criteria for eligibility, as well as guidelines for integrity and resources that have special considerations.

State and Federal Guidance

Both federal and state agencies provide guidance and technical assistance for the implementation of cultural resource laws and regulations. Some of the most useful publications are cited below with a brief summary of content.

Advisory Council on Historic Preservation

Section 106 Regulation Changes

This series of documents explain the changes that were made to 36 CFR Part 800 effective January 2001. Changes to the regulations are summarized; there is a section-by-section discussion of changes, guidance regarding transition from old to new regulations, and discussion of consultation with Indian tribes.

Preparing Agreement Documents: How to Write Determinations of No Adverse Effect, Memoranda of Agreement, and Programmatic Agreements Under 36 CFR Part 800

Informally known as PAD, this document is a comprehensive technical handbook for the various agreement documents, and it standardizes Section 106 agreement language. Caltrans cultural resources staff should use PAD in developing effect packages and agreement documents. Not all stipulations are readily applicable to highway projects, however. Caltrans staff responsible for preparing environmental compliance documents should be selective about which stipulations are used and should consult with FHWA in developing Memoranda of Agreement.

Treatment of Archaeological Properties: A Handbook

The handbook provides guidance on ACHP principles, procedures, and methods for the treatment of archaeological properties in accordance with 36 CFR Part 800 regulations. These guidelines assist consulting parties (e.g., FHWA, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation) in determining how to conduct archaeological programs and projects.

Copyright ©2014 California Department of Transportation. All rights reserved.

Section 106, Step-by-Step

Step-by-Step is a detailed document that explains the Section 106 review process and walks the reader through the procedures established in 36 CFR Part 800.

Identification of Historic Properties: A Decision-making Guide for Managers

This document discusses the fundamental step of identification of historic properties in determining what properties may be affected by an undertaking. It sets out basic principles and approaches that should be considered in designing an effort to identify historic properties. It also explains the application of these principles under various circumstances.

Public Participation in Section 106 Review: A Guide for Agency Officials

This guidance document offers suggestions for improving the effectiveness of an agency's procedures for public participation in the Section 106 process.

Fact Sheets: Section 106 series

The following fact sheets on various Section 106-related topics may be useful to Caltrans personnel responsible for coordination and consultation activities:

- Fact Sheet: Section 106 Participation by Indian Tribes and Other Native Americans
- Fact Sheet: Section 106 Participation by Applicants for and Recipients of Federal Assistance, Permits, and Licenses
- Fact Sheet: Section 106 Participation by Local Governments
- Fact Sheet: Section 106 Participation by State Historic Preservation Officers
- Fact Sheet: Compliance with Section 111
- Fact Sheet: Consulting About Archaeology Under Section 106

U.S. Department of Interior, National Park Service

Archaeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines

Federal and state agencies use the methods and standards for research and resource evaluation established in these instructions to identify, evaluate, register, and treat historic properties. Caltrans personnel should use this guidance whenever a project is subject to the Section 106 process and National Register listed, eligible, or potentially

Copyright ©2014 California Department of Transportation. All rights reserved.

eligible properties are involved. The guidance also establishes professional qualifications standards for cultural resources personnel.

National Register Bulletins

The National Park Service publishes a series of guidance bulletins to help in identifying and evaluating properties. Basic direction and step-by-step guidance are provided in Bulletins 15 and 16.

Preservation Briefs

The National Park Service publishes a series of guidance brief to help in the repair, rehabilitation, restoration and reconstruction of a variety of historic materials and building components and conservation issues, such as repairing roofs, historic wood windows, and exterior paint problems, energy conservation, mothballing and accessibility in historic buildings. Information contained in these briefs are consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*.

Heritage Documentation

The National Park Service publishes a series standards and guidelines for its programs: HABS (Historic American Buildings Survey), HAER (Historic American Engineering Record), HALS (Historic American Landscapes Survey), and CRGIS (Cultural Resources Geographic Information Systems) in conformance with the *Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation*. These standards and guidelines are used when mitigation or protective measures call for recordation are a part of a federal undertaking or state-only project that affects historic buildings, structures, sites and landscapes

U.S. Department of Transportation, Federal Highway Administration

Guidance for Preparing Environmental and Section 4(f) Documents, FHWA Technical Advisory T 6640.8A

Guidance provided in this document covers the conduct and preparation of various environmental studies and reports required by NEPA and Section 4(f) of the DOT Act of 1966. Specific instructions are included that detail what is needed in reports to document that cultural resources are considered and discussed, and to demonstrate that the requirements of 36 CFR Part 800.4 have been satisfied.

Copyright ©2014 California Department of Transportation. All rights reserved.

Guidance on the Consideration of Historic and Archeological Resources in the Highway Development Process, December 1988

FHWA intended this guidance to provide the connection between Advisory Council and National Park Service documents, interpreting compliance in terms of highway projects.

State Office of Historic Preservation

Technical Assistance Series #01: California Environmental Quality Act and Historical Resources

Provides step-by-step guidance on the treatment of historical resources under CEQA. It addresses changes to the CEQA Guidelines made in 1998. It is more up to date than the *CEQA and Archeology* and *CEQA and Historical Resources* publications of the Office of Planning and Research that have not been updated since 1998.

Technical Assistance Series #10: California State Law and Historic Preservation

This contains a compilation of all laws and regulations affecting historical resources in California.

Copyright ©2014 California Department of Transportation. All rights reserved.