

Exhibit 2.2: **Concordances**

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Exhibit 2.2: Concordances

Table 1: Existing Section 106 Regulations and the Section 106 Programmatic Agreement

The table below depicts the streamlined procedures afforded by the Section 106 Programmatic Agreement (Section 106 PA) between the Federal Highway Administration (FHWA), Caltrans and the California State Historic Preservation Officer (SHPO), effective January 1, 2014, and incorporating NEPA Assignment pursuant to 23 USC 326 and 327. FHWA takes the role of Caltrans Headquarters Cultural Studies Office (CSO) on non-Assigned undertakings. The Section 106 PA is [Exhibit 1.1](#) of the Caltrans Standard Environmental Reference Volume 2-Cultural Resources ([SERv2](#)).

36 CFR 800	Existing Regulation	Section 106 PA under NEPA Assignment
* PQS = Professionally Qualified Staff are Caltrans employees who meet specific education and experience requirements as described in Section 106 PA Attachment 1. ** For Non-Assigned projects, CSO will concurrently notify FHWA and FHWA shall be involved in resolution of adverse effects.		
800.1	Requires FHWA to take into account effect of its undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment.	Caltrans is federal Agency Official.
800.2(a)	FHWA is legally responsible for Section 106 compliance.	Caltrans is legally responsible, except for non-assigned projects specified in the NEPA Assignment MOU.
800.2(a)(1)	All actions taken by employees or contractors who meet the Secretary of the Interior's Professional Qualifications Standards.	No change; see Stipulation III and Attachment 1.
800.2(a)(3)	FHWA responsible for ensuring documents prepared by non-federal agencies meet applicable standards and guidelines.	Caltrans District PQS* assigned responsibility for quality assurance; see Stipulation III and XVIII.
800.2(c)(2)(i)	FHWA consults with THPO when on tribal lands.	Section 106 PA does not apply on tribal lands; CSO acts in role of FHWA under NEPA Assignment.
800.2(c)(5)	Individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties.	No change.

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800.2(d)(1-2)	FHWA solicits public comment and involvement.	Caltrans Districts assigned responsibility; see Stipulation V and VI.
800.3(a) 800.3(a)(1)	FHWA determines whether proposed action is an undertaking, and if so, whether it has the potential to affect historic properties. If not, FHWA has no further obligations under Section 106.	Caltrans District PQS determine whether Screened undertakings are exempted from further review under Section 106; see Stipulation VII and Attachment 2.
800.3(e)	FHWA solicits public comment and involvement.	Caltrans Districts solicit public comment and involvement; see Stipulation V and VI.
800.3(f)	Individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties.	No change.
800.4(a)(1-4) 800.4(b)	FHWA determines and documents the APE and identifies historic properties within that APE.	Caltrans District PQS determine the APE with Project Manager. See Stipulation VIII.A and B and Attachment 3.
800.4(b)(2)	FHWA may use phased approach to identification and evaluation when alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted.	Caltrans CSO approves phasing; see Stipulation XII.
800.4(c)(1-2)	FHWA evaluates historic significance of properties within the APE using National Register criteria.	Caltrans District PQS make or approve determinations. Caltrans may exempt certain property types from evaluation; see Stipulation VIII.C(1) and Attachment 4. Caltrans District may consider archaeological properties as eligible for the National Register without evaluation when the properties for purposes of the project only are protected through the establishment of ESAs and SHPO is not consulted; see Stipulation VIII.C(3). Upon CSO approval, Caltrans District may consider properties other than archaeological sites as eligible for the National Register without evaluation for purposes of the project only and SHPO is not consulted; see Stipulation VIII.C(4).

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<p>* PQS = Professionally Qualified Staff are Caltrans employees who meet specific education and experience requirements as described in Section 106 PA Attachment 1. ** For Non-Assigned projects, CSO will concurrently notify FHWA and FHWA shall be involved in resolution of adverse effects.</p>		
800.4(d)	FHWA determines whether historic properties may be affected.	<p>Caltrans District PQS make or approve findings; see Stipulation IX.</p> <p>A Finding of No Historic Properties Affected is filed in the Caltrans District and SHPO is not consulted; see Stipulation IX.</p>
800.5(a)(1)	FHWA applies the Criteria of Adverse Effect.	Caltrans District PQS applies criteria; see Stipulation X.A.
800.5(a)(2)(iii)	<p>Removal of archaeological data is an adverse effect, even if conducted in accordance with the Secretary's of the Interior's standards. Noted in preamble to ACHP's revised 36 CFR part 800 regulations in Section IV, "Description of Meaning and Intent of Specific Sections," published in the <i>Federal Register</i>, volume 65, No. 239, Tuesday, December 12, 2000, Rules and Regulations, page 77720.</p>	<p>Data recovery remains an adverse effect. When project effects are limited to archaeological properties listed in or eligible for the NRHP under Criterion D only, Caltrans District submits data recovery plan to CSO, SHPO and consulting parties. See Stipulation X.C and Attachment 6.</p>
800.5(a)(3)	FHWA may use a phased approach in applying criteria of adverse effect when alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted.	Caltrans CSO approves phasing; see Stipulation XII.
800.5(b)	<p>FHWA proposes a finding of No Adverse Effect; consults with SHPO and other consulting parties. If SHPO and other parties agree with finding, project may proceed Under 800.5(a)(2)(ii), if a property is restored, rehabilitated or otherwise changed pursuant to the Secretary of the Interior's Standards, the project is not considered to have an adverse effect.</p> <p>See preamble to ACHP's 36 CFR 800 regulations, Section IV, "Description of Meaning and Intent of Specific Sections," published in the <i>Federal Register</i>, volume 65, No. 239, Tuesday, December 12, 2000, Rules and Regulations, page 77720.</p>	<p>Caltrans Districts may impose Standard Conditions to avoid adverse effects (FNAE-SCs) for certain maintenance, repair and rehabilitation projects through use of the <i>Secretary of the Interior's Standards for the Treatment of Historic Properties</i> (FNAE-SC-SOIS), or when properties can be protected by an ESA (FNAE-SC-ESA).</p> <p>Caltrans Districts submit documentation of finding to CSO and other consulting parties; SHPO is not consulted; if CSO does not object within 15-days of receipt the project is not subject to further review; see Stipulation X.B.1 and Attachment 5.</p>

36 CFR 800	Existing Regulation	Section 106 PA under NEPA Assignment
<p>* PQS = Professionally Qualified Staff are Caltrans employees who meet specific education and experience requirements as described in Section 106 PA Attachment 1. ** For Non-Assigned projects, CSO will concurrently notify FHWA and FHWA shall be involved in resolution of adverse effects.</p>		
		<p>For FNAE findings <i>without</i> Standard Conditions, Caltrans districts submit the findings to CSO; CSO consults with SHPO. See Stipulation X.B.2 and Attachment 5.**</p>
<p>800.5(c)(2)(i) 800.5(d)(2)</p>	<p>SHPO or other consulting party disagrees with FHWA's No Adverse Effect finding, or an Adverse Effect cannot be avoided.</p>	<p>CSO assigned this responsibility. See Stipulation X.D.**</p>
<p>800.6(a) 800.6(b)(1)</p>	<p>FHWA consults with SHPO to resolve adverse effects.</p>	<p>Caltrans CSO, with assistance from Caltrans Districts, consults with SHPO to resolve adverse effects. . See Stipulation XI.**</p>
<p>800.6(b)(2) 800.6(c)</p>	<p>When ACHP participates in resolution of adverse effects, FHWA consults with SHPO, ACHP, and consulting parties; if all parties agree on resolution, an MOA is executed.</p>	<p>Essentially no change. If CSO, SHPO, and Caltrans districts cannot resolve adverse effects, ACHP is invited to participate. See Stipulation XI.E. **</p>
<p>800.7 800.7(a)</p>	<p>Failure to resolve adverse effects; termination of consultation.</p>	<p>No change; see Stipulation XI.E.**</p>
<p>800.7(c)(4)</p>	<p>ACHP comments on disagreements between FHWA and consulting parties regarding assessment of effects.</p>	<p>Essentially no change. Alternate process developed for ACHP participation due to 9/18/01 court decision invalidating section 36 CFR 800.5(c)(3). See Stipulation X.D.</p>
<p>800.11</p>	<p>Documentation standards</p>	<p>Caltrans District PQS shall approve all documentation that supports findings and determinations made under the Section 106 PA and will be consistent with 36 CFR 800.11; see Stipulation XVIII.</p>
<p>800.11(c)(1 and 3)</p>	<p>FHWA solicits public comment and involvement</p>	<p>Caltrans District PQS solicits public involvement; see Stipulation V and VI.</p>
<p>800.13(b) 800.13(b)(3) 800.13(c)</p>	<p>Planning for post-review discoveries; FHWA takes action to avoid adverse effects to property(ies), notifies SHPO, consulting parties and ACHP within 48 hours of discovery, can assume property(ies) to be eligible for the National Register</p>	<p>Caltrans District complies with 36 CFR 800.13(b)(3) and 800.13(c); notifies CSO, SHPO, and other consulting parties within 48 hours; requests response from notified parties within 72 hours; takes any comments into account, and may carry out appropriate action; see Stipulation XV.</p>

Table 2: Section 106 Programmatic Agreement and PRC 5024 Memorandum of Understanding

The table below depicts the concordance between the Section 106 PA procedures and, for state-owned historical resources, the PRC 5024 Memorandum of Understanding (5024 MOU) between Caltrans and the State Historic Preservation Officer pursuant to PRC 5024 and the Governor’s Executive Order W-26-92. Caltrans CSO was delegated some of SHPO’s responsibilities under the 5024 MOU. The 5024 MOU is [Exhibit 1.2](#) of the [SERv2](#). Streamlining measures in the 5024 MOU are highlighted in **green text**.

STIPULATION	SECTION 106 PA	PRC 5024 MOU
Applicability	Applies to Federal-aid Highway program funded projects.	Applies only when State-owned cultural resources may be affected.
Definitions	36 CFR 800.16	<p>Master List of Historical Resources (Master List) clarified. Does not include:</p> <ul style="list-style-type: none"> • non-structural and archaeological resources determined NRCHP/CHL eligible • Any resource assumed eligible for purposes of undertaking project or activity. <p>Master List includes:</p> <ul style="list-style-type: none"> • All NRHP/CHL listed resources, including archaeological, structural, and non-structural resources. • All NRHP/CHL determined eligible buildings and structures.
PQS	Attachment 1	Same.
Consultation with Tribes	Explains Caltrans role	Not required under PRC 5024; Caltrans committing to consultation
Participation of other parties	Explains Caltrans role	Not required under PRC 5024; Caltrans committing to consultation
Delegation of actions	Distinguishes District from CSO roles	Same. CSO has additional corporate responsibilities.
Screened Undertakings	Attachment 2	Same (Screened Projects/Activities instead of Undertakings)
Identification & Evaluation	<p>APE = Attachment 3 Identification = PQS determines reasonable level of effort. Evaluation = Districts consult with SHPO; SHPO has 30 days to comment.</p>	<p>PAL = Attachment 3: Same (Project Area Limits instead of APE) Identification: Same Evaluation: Same</p>
	Assumption of eligibility approved by CSO	Same
Findings of Effect	No Historic Properties Affected: notify SHPO when in consultation on eligibility or stays in District files	Same (called No State-owned Historical Resources Affected)

STIPULATION	SECTION 106 PA	PRC 5024 MOU
Assessment of Effects	Apply 36 CFR 800.5 criteria	Apply List of Adverse Effects at 5024.5(a)
FNAE w/ SC	District to CSO; CSO has 15 days to object	Same Added transfers/relinquishments as a Standard for CLG designated resources
FNAE	District to CSO; CSO to SHPO; 30 days at SHPO	NOT on the Master List = District to CSO, CSO has 15 days to object. No SHPO consultation. On Master List = District to CSO, CSO to SHPO. SHPO has 30 days to object.
FAE – Standard Mitigation Measures (SMM)	Not Applicable	For archaeological sites only. Follow Attachment 6: NOT on the Master List = District to CSO, CSO has 30 days to object. No SHPO consultation.
FAE	District to CSO; CSO to SHPO; SHPO has 30 days to object. Follow Attachment 6 for archaeological sites.	NOT on the Master List = District to CSO, CSO has 30 days to object. No SHPO consultation. On Master List = District to CSO, CSO to SHPO. SHPO has 30 days to object.
Resolution of Effects	MOA with SHPO	Mitigation of Effects (instead of Resolution) No MOA, can be combined with Assessment of Effects package in HRCR. Review times concurrent with FAE.
Phasing	Subject to CSO Approval	Same
Native American Remains and Curation	Caltrans policy is to curate.	Same
Post Review Discoveries	District notifies parties, consults on measures	Same
Emergencies	Adds District Director	Same
Transfers / Relinquishments	Not applicable	See table below
Training	CSO certifies. New staff take PA PQS training.	Same. CSO will add a module on the MOU to the PA PQS training.
Resolving Disagreements	Eligibility: Keeper of NRHP Effects: ACHP mediates Overall Program: ACHP involved	Eligibility: SHPO has final say Effects: OPR mediates Overall Program: SHPO may terminate MOU.
Admin	Exclusion Provision, Annual Reporting, Termination, etc.	Same

Table 3: PRC 5024 Memorandum of Understanding Transfers and Relinquishments

The table below depicts the concordance between the Section 106 PA procedures and, for state-owned historical resources, the PRC 5024 Memorandum of Understanding (5024 MOU) between Caltrans and the State Historic Preservation Officer pursuant to PRC 5024 and the Governor’s Executive Order W-26-92. Caltrans CSO was delegated some of SHPO’s responsibilities under the 5024 MOU. The 5024 MOU is [Exhibit 1.2](#) of the [SERv2](#). Streamlining measures in the 5024 MOU are highlighted in **green text**.

TRANSFERS / RELINQUISHMENTS OF STATE-OWNED CULTURAL RESOURCES*		
Effect Finding	Appropriate When	Documentation
No State-owned Historical Resources Affected	<ul style="list-style-type: none"> No cultural resources present, or only exempt resources Previously determined ineligible Not previously evaluated ineligible resources: Concurrent District HRCR to SHPO for 30-day eligibility consultation. Transfer to federal or state agency. 	HRCR to District File; Copy CSO No SHPO Consultation (unless on eligibility)
FNAE – Standard Condition: CLG Designation	CLG designated historical resource:	District HRCR to CSO; CSO has 15 days to object
FNAE	Historical resources designated by non-CLG local agency:	District HRCR to CSO, CSO to SHPO. SHPO has 30 days to object.
FNAE or FAE 5024 MOU Stipulation X	All other relinquishments involving state-owned historical resources.	NOT on the Master List = District HRCR to CSO, CSO has 30 days to object. No SHPO consultation. On Master List = District HRCR to CSO, CSO to SHPO. SHPO has 30 days to object.
* For all transfers or relinquishments, District PQS notify SHPO of ownership change when transfer is complete.		