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June 28, 2012

Ms. Roberta Deering, Senior Planner/Historic Preservation
City of Sacramento
Planning and Building Department
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811

Dear Ms. Deering,

We are seeking your comments on the current process that the Federal Highway Administration (FHWA), California Division and the California Department of Transportation (Caltrans) follow to address cultural resources on federal highway projects in California. The process is documented in a Programmatic Agreement with the federal Advisory Council on Historic Properties and the California State Historic Preservation Officer, and takes the place of the regulations implementing Section 106 of the National Historic Preservation Act. The Programmatic Agreement expires in December 2013 and we are beginning discussions to renew it. We would appreciate your comments on our current process or on ways it may be improved.

The Programmatic Agreement is online at http://www.dot.ca.gov/ser/vol2/PA_04-EH.pdf. Please notify us if you would like a hard copy mailed to you. A fact sheet is enclosed to assist you with your review and comment.

We have found that this agreement has resulted in efficiencies in the process of developing transportation projects without sacrificing FHWA's and Caltrans' commitment to historic preservation.

We would appreciate your review and written submittal of comments by August 30, 2012. We will share any comments with FHWA, the ACHP and the SHPO who will take those views into account in reaching a final Agreement. All comments will be responded to in writing.

Please submit comments to me at the address above or by FAX (916) 653-6126, attention Todd Jaffke. If you have any questions, please contact Todd Jaffke at (916) 654-3567 or todd.jaffke@dot.ca.gov or Gloria Scott at (916) 653-1029 or gloria.scott@dot.ca.gov.

Sincerely,

JAY NORVELL, Chief
Division of Environmental Analysis

Enclosure: Fact Sheet for FHWA California Division and SHPO Programmatic Agreement (PA)

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

TABLE OF CONTENTS

PROGRAMMATIC AGREEMENT 1
STIPULATIONS 1
I. APPLICABILITY 1
II. DEFINITIONS 2
III. PROFESSIONAL QUALIFICATIONS STANDARDS 2
IV. CONSULTATION WITH INDIAN TRIBES 2
V. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC 3
VI. ALLOCATION OF FHWA AND CALTRANS ACTIONS UNDER THIS AGREEMENT 3
VII. UNDERTAKINGS EXEMPT FROM REVIEW 4
VIII. IDENTIFICATION AND EVALUATION OF POTENTIAL HISTORIC PROPERTIES 4
IX. FINDINGS OF EFFECT 5
X. ASSESSMENT OF EFFECTS 6
XI. RESOLUTION OF ADVERSE EFFECTS 8
XII. PHASED APPROACH TO IDENTIFICATION, EVALUATION, AND FINDINGS OF EFFECT 9
XIII. NATIVE AMERICAN HUMAN REMAINS AND RELATED CULTURAL ITEMS 9
XIV. CURATION 9
XV. POST-REVIEW DISCOVERIES 9
XVI. DOCUMENTATION 10
XVII. ADMINISTRATIVE STIPULATIONS 10

ATTACHMENTS:

1. CALTRANS PROFESSIONALLY QUALIFIED STAFF STANDARDS
2. SCREENED UNDERTAKINGS
3. AREA OF POTENTIAL EFFECTS DELINEATION
4. PROPERTIES EXEMPT FROM EVALUATION
5. ENVIRONMENTALLY SENSITIVE AREAS
6. STANDARD TREATMENT OF ARCHAEOLOGICAL SITES: DATA RECOVERY PLAN

PROGRAMMATIC AGREEMENT

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 USC 101, implements the Federal-aid Highway Program (Program) in the state of California by funding and approving state and locally sponsored transportation projects that are administered by the California Department of Transportation (Caltrans); and

WHEREAS, the California Division Administrator, FHWA, is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of California complies with Section 106 of the National Historic Preservation Act, as amended (NHPA), and codified at its implementing regulations, 36 CFR Part 800, and effective January 11, 2001; and

WHEREAS, FHWA has determined that implementation of the Program in California may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b); and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in California and for affording ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, FHWA has notified the public and federally recognized Indian tribes with ancestral lands in California (Indian tribes) about this Agreement, has requested their comments, and has taken any comments received into account; and

WHEREAS, Caltrans has participated in the consultation and has been invited to be a signatory to this Agreement;

NOW, THEREFORE, FHWA, the SHPO, ACHP, and Caltrans agree that the Program in California shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in California and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

FHWA, in consultation and cooperation with Caltrans, shall ensure that the following measures are carried out:

I. APPLICABILITY

A. This Agreement shall apply to all FHWA undertakings administered under its Program in California for which FHWA is the lead agency, including transportation enhancement projects and Federal-aid emergency relief projects, which are defined in 23 CFR 688, as well as all actions that require a federal approval or permit, whether or not federal funds have been committed to the action. FHWA may choose to use 36 CFR 800.12 in lieu of 23 CFR 688 for emergency undertakings implemented within 30 days or for rare instances of emergency undertakings not included in 23 CFR 688.

B. This Agreement shall not apply to undertakings that occur on or affect tribal lands as defined in Section 301(14) of the NHPA. For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800.

C. Other federal agencies may issue permits and otherwise provide assistance for undertakings covered by this Agreement, and in such circumstances, FHWA as lead federal agency may request that such agencies fulfill their Section 106 responsibilities in coordination with FHWA by using applicable provisions of this Agreement.

D. This Agreement does not negate or supersede any agreements between Caltrans and Indian tribes in effect at the time the Agreement is executed, nor does it negate or supersede any agreement documents executed between or among FHWA, the SHPO, ACHP, or Caltrans pursuant to 36 CFR Part 800.

II. DEFINITIONS

For purposes of this Agreement, the definitions provided in 36 CFR 800.16(a) through (y) inclusive shall apply.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet the Secretary of the Interior's Professional Qualifications Standards as set forth in Attachment 1 to this Agreement. Hereinafter, such persons shall be referred to as Professionally Qualified Staff (PQS). However, nothing in this stipulation may be interpreted to preclude FHWA or Caltrans or any agent or contractor thereof from using the services of persons who are not PQS, as long as their activities are overseen by PQS.

IV. CONSULTATION WITH INDIAN TRIBES

A. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to direct government-to-government consultation with Indian tribes. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Indian tribe for direct government-to-government consultation regarding an undertaking covered by this Agreement.

1. To provide for an effective and efficient consultation process, however, Caltrans is authorized by FHWA to carry out consultation with Indian tribes for undertakings covered by this Agreement. Each Caltrans District Director, and where Caltrans deems it appropriate, the Caltrans Director, shall ultimately be responsible for ensuring that any Caltrans consultation with Indian tribes authorized hereunder complies with this stipulation.

a. Caltrans shall conduct this consultation in a manner that is respectful of tribal sovereignty and that recognizes and respects the government-to-government relationship between Indian tribes and FHWA.

b. Caltrans shall ensure that consultation with Indian tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration of such concerns.

c. Caltrans shall ensure that consultation continues with Indian tribes throughout the Section 106 compliance process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.

V. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Consulting Parties

Consulting parties shall be identified pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, 36 CFR 800.2(c)(5) and 800.3(f).

B. Public Involvement

Public involvement in planning and implementation of undertakings covered by this Agreement shall be governed by FHWA's and Caltrans' environmental compliance procedures, as set forth in the Caltrans Environmental Handbook, Caltrans Project Development Procedures Manual, FHWA's technical advisories, and similar and subsequent guidance documents. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d)(1-2), 800.3(e), and 800.11(c)(1 and 3) and Section 6254.10 of the California Government Code.

VI. ALLOCATION OF FHWA AND CALTRANS ACTIONS UNDER THIS AGREEMENT

A. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(c)(4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by Caltrans under the authority of FHWA.

B. Actions under 36 CFR 800.3 through 800.5

Under the authority of FHWA, Caltrans may carry out the following steps with respect to undertakings covered by this Agreement. Each Caltrans District Director, or where Caltrans may deem it appropriate, the Caltrans Director, shall be responsible for the following actions:

1. Determine whether the proposed federal action is an undertaking as defined in 36 CFR 800.16(y).

2. Determine under 36 CFR 800.3(a) whether the undertaking is a type of activity that has the potential to affect historic properties.

3. Determine under 36 CFR 800.3(c) and (d) whether the undertaking may occur on or has the potential to affect historic properties on tribal lands as defined in Section 301(14) of the NHPA.

4. Solicit public comment and involvement, as described in 36 CFR 800.3(e).

5. Identify additional consulting parties, including Indian tribes, as described in 36 CFR 800.3(f), and invite them to participate in the undertakings covered by this Agreement.

6. Request expedited consultation as described in 36 CFR 800.3(g).

7. Determine under 36 CFR 800.4 the undertaking's Area of Potential Effects (APE), identify and evaluate properties within the APE in order to determine their eligibility for the NRHP, and determine whether historic properties may be affected by the undertaking.

8. Apply the criteria of adverse effect as described in 36 CFR 800.5 and propose No Adverse Effect findings where imposing the Standard Conditions set forth in Stipulation X.B.2 will avoid adverse effects.

C. Actions under 36 CFR 800.5(b) through 800.6

1. When Caltrans proposes a finding of No Adverse Effect without conditions or a finding of No Adverse Effect with conditions other than the Standard Conditions set forth in Stipulation X.B.2, Caltrans shall proceed in accordance with Stipulation X.B.1.

2. When Caltrans proposes a finding of Adverse Effect, Caltrans shall proceed in accordance with Stipulation X.C. When the terms of Stipulation X.C apply, FHWA, in consultation with Caltrans, shall comply with 36 CFR 800.6(a)(2) and 800.6(c)(2-3).

VII. UNDERTAKINGS EXEMPT FROM REVIEW

In consultation with the other signatories in this Agreement, FHWA has identified classes of undertakings that will be addressed in accordance with Attachment 2 to this Agreement. The undertakings classified in Attachment 2 as Screened Undertakings will require no further review under this Agreement 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 this Agreement.

VIII. IDENTIFICATION AND EVALUATION OF POTENTIAL HISTORIC PROPERTIES

A. Area of Potential Effects

Caltrans PQS shall determine and document the APE for undertakings covered by this Agreement in accordance with Attachment 3 to this Agreement. Nothing in this paragraph or in Attachment 3 shall preclude Caltrans from consulting with FHWA and/or SHPO on determining and documenting an APE.

B. Identification

Caltrans shall identify historic properties that may be located within an undertaking's APE in accordance with 36 CFR 800.4(a)(2-4) and 36 CFR 800.4(b). Identification of historic properties may follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716), and should be consistent with SHPO guidance, FHWA guidance, and any other guidance, methodologies, agreements, or protocols that FHWA, Caltrans, and the SHPO agree should be used to identify historic properties.

C. Evaluation

1. Properties Exempt from Evaluation: Attachment 4 to this Agreement lists the properties that the signatories agree shall be exempt from evaluation so long as all terms and conditions set forth in Attachment 4 are satisfactorily met. All other identified properties shall be evaluated in accordance with Stipulation VIII.C.2.

2. Evaluating Identified Properties: Caltrans shall evaluate the historic significance of identified properties in accordance with 36 CFR 800.4(c)(1). Such evaluation may use SHPO guidance, FHWA guidance, or any other guidance, methodologies, agreements, or protocols that FHWA, Caltrans, and the SHPO agree should be used to determine whether identified properties are historic properties.

3. Special Consideration for Certain Archaeological Properties: If archaeological properties within an undertaking's APE are protected from any potential effects by establishment and effective enforcement of an Environmentally Sensitive Area (ESA), as described in Attachment 5 to this Agreement, the signatories agree that Caltrans may consider such properties to be NRHP eligible for the purposes of that undertaking without conducting subsurface testing or surface collection. Caltrans shall consult with

Indian tribes or other interested parties that may attach religious or cultural significance to the historic property to determine if the site has values that may qualify it as NRHP eligible under Criteria A, B, or C in addition to, or instead of, Criterion D. The assumption of NRHP eligibility permitted hereunder shall not extend to other undertakings whose APE includes the archaeological property, unless the signatories through consultation agree otherwise.

4. Previously Evaluated Properties: When previously evaluated properties are identified within an undertaking's APE, Caltrans shall review those previous evaluations. The passage of time, changing perceptions of significance, new information, incomplete or erroneous prior evaluation, and errors of fact warrant such review and may cause Caltrans to re-evaluate the properties. Indian tribes shall be consulted in the review and re-evaluation process when properties to which those tribes may attach religious or cultural significance are involved.

5. Consulting the SHPO: Caltrans shall submit determinations of NRHP eligibility made hereunder and supporting documentation to the SHPO for comment in accordance with 36 CFR 800.4(c)(2), with concurrent submittal to FHWA.

a. If the SHPO has not responded to Caltrans within 30 days after receipt, Caltrans may either extend the review period in consultation with the SHPO or proceed to the next step prescribed by this Agreement, based upon Caltrans' determination of NRHP eligibility. Confirmation of date of receipt as the basis for determining the 30-day review period may be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO.

b. Agreements regarding the NRHP eligibility of properties evaluated hereunder, and any disagreements pertaining thereto, shall be governed by 36 CFR 800.4(c)(2), except that in the event of a disagreement, Caltrans shall promptly notify FHWA, whereupon Caltrans, FHWA, the SHPO, and any Indian tribe that is a consulting party shall consult to resolve the disagreement in accordance with a mutually acceptable time frame. If the disagreement is resolved, Caltrans shall proceed in accordance with those requirements of this Agreement that apply to the resolution. If the disagreement is not resolved or if a mutually acceptable time frame to resolve the disagreement is not reached, it shall be referred by FHWA to the Keeper of the National Register.

6. Notifying Indian tribes: When Caltrans has been in consultation with an Indian tribe on the NRHP eligibility of a property, Caltrans shall notify the tribe of the eligibility determination concurrent with submittal to SHPO and provide documentation to the tribe, unless the tribe has indicated it does not wish to receive such documentation.

IX. FINDINGS OF EFFECT

A. Finding of No Historic Properties Affected, Pursuant to 36 CFR 800.4(d)(1)

1. Where Caltrans has consulted with Indian tribes or other consulting parties concerning historic properties, Caltrans shall consult with those Indian tribes or other consulting parties on the potential effects of the undertaking. Caltrans shall take their views into account in making its findings.

2. If Caltrans finds either that no historic properties are present, or that historic properties are present but the undertaking will have no effect on them, Caltrans shall document and retain records of that finding in accordance with Stipulation XVI. Caltrans shall notify any consulting parties cited in Stipulation IX.A.1 of the finding and make documentation available to them unless they have indicated that they do not wish to receive such documentation. Following satisfactory completion of the steps prescribed herein, no further review pursuant to this Agreement is required.

B. Finding of Historic Properties Affected

If Caltrans finds there are historic properties that may be affected by the undertaking, Caltrans shall apply the Criteria of Adverse Effect in accordance with Stipulation X.

X. ASSESSMENT OF EFFECTS

A. Application of Criteria

Caltrans shall apply the Criteria of Adverse Effect set forth in 36 CFR 800.5(a)(1) to findings made pursuant to Stipulation IX.B, taking into account views provided by consulting parties or the public. When Indian tribes attach religious or cultural significance to identified historic properties, Caltrans shall apply the criteria in consultation with those tribes, unless the tribes request direct government-to-government consultation with FHWA pursuant to Stipulation IV.A.

B. Finding of No Adverse Effect

Caltrans may propose a finding of No Adverse Effect if none of the undertaking's anticipated effects meet the Criteria of Adverse Effect under 36 CFR 800.5(a)(1), or if Caltrans imposes conditions that will avoid all adverse effects to historic properties.

1. Finding of No Adverse Effect Without Standard Conditions:

a. When Caltrans proposes a No Adverse Effect finding other than a finding of No Adverse Effect with the Standard Conditions specified in Stipulation X.B.2, Caltrans shall submit its proposed finding and supporting documentation to FHWA for review. If FHWA agrees with the proposed finding, FHWA shall consult the SHPO pursuant to 36 CFR 800.5(c), and Caltrans shall concurrently provide documented notification of the finding to any consulting parties that have expressed views regarding potential effects to historic properties, including a request that any comments be directed to FHWA within 30 days of receipt of notification.

b. If the SHPO agrees with the No Adverse Effect finding made hereunder, the undertaking shall not be subject to further review under this Agreement. Unless FHWA and the SHPO have agreed to extend the 30-day time frame for SHPO review specified in 36 CFR 800.5(c), failure of the SHPO to comment within this time frame may be deemed by FHWA to constitute SHPO concurrence in the No Adverse Effect finding. Documentation of date of receipt as the basis for determining the 30-day review period may be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO.

2. Finding of No Adverse Effect with Standard Conditions:

a. When an undertaking or an undertaking's effects are limited to rehabilitation of buildings, structures, objects, districts, or landscapes that are historic properties, or when historic properties or properties considered to be eligible pursuant to Stipulation VIII.C.3 will be protected by designation and enforcement of ESAs, Caltrans may impose the following Standard Conditions as appropriate to avoid adverse effects to historic properties:

(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.

(iii) If the property is considered eligible for values that qualify it as eligible under Criteria A, B, or C in addition to, or instead of, Criterion D as a result of consultation described in Stipulation VIII.C.3, Caltrans will consult with those Indian tribes or other interested parties that attach religious or cultural significance to the property to determine whether an ESA will adequately protect those other values without other conditions or mitigations. The results of that consultation will determine whether a finding of No Adverse Effect with Standard Conditions applies. If conditions other than or in addition to an ESA are developed to avoid adverse effects, Caltrans and FHWA will propose a finding of No Adverse Effect pursuant to Stipulation X.B.1. If adverse effects cannot be avoided, Caltrans and FHWA will propose a finding of Adverse Effect pursuant to Stipulation X.C.1 and consult to resolve those effects pursuant to Stipulation XI.

b. When the foregoing Standard Conditions are imposed by Caltrans, Caltrans shall concurrently provide FHWA, the SHPO, and any consulting parties, as appropriate, with documented notification of the finding of No Adverse Effect in accordance with Stipulation XVI. Thereupon, the undertaking shall not be subject further review under this Agreement.

C. Finding of Adverse Effect

Where adverse effects cannot be avoided pursuant to Stipulation X.B, or for any other reason, Caltrans shall propose to FHWA a finding of Adverse Effect and shall submit to FHWA documentation supporting the proposed finding.

1. If FHWA agrees with the proposed finding, FHWA shall consult the SHPO pursuant to Stipulation XI. Caltrans, on behalf of FHWA, shall notify consulting parties and interested members of the public, as appropriate, of the finding and shall assist FHWA with the resolution of those adverse effects pursuant to Stipulation XI.

2. When an undertaking affects archaeological properties listed in or eligible for listing in the NRHP exclusively under Criterion D of the NRHP criteria, Caltrans shall concurrently notify FHWA, the SHPO, and consulting parties, as appropriate, of the proposed finding of Adverse Effect with documentation supporting that finding in accordance with Stipulation XVI. These parties shall have 30 days following receipt of notification to comment to FHWA on the proposed finding. Unless FHWA and the SHPO have agreed to extend the applicable time frame, failure of the SHPO to comment within this time frame may be deemed by FHWA to constitute SHPO concurrence in the Adverse Effect finding. Documentation of date of receipt as the basis for determining the 30-day review period may be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. Caltrans shall assist FHWA with the resolution of adverse effects pursuant to Stipulation XI.

D. Resolving Disagreements Regarding Assessment of Effects

1. Disagreements that may arise under the terms of Stipulation X shall be addressed in accordance with the process set forth as follows for purposes of and under the authority of this Agreement:

a. FHWA shall consult with the SHPO or any consulting party for no more than 30 days to resolve the disagreement. If at any time during this consultation period, FHWA determines that the disagreement cannot be resolved through such consultation, FHWA shall request ACHP to review the disagreement and FHWA's proposed resolution. In addition, an Indian tribe that attaches religious or cultural significance to an identified historic property may specify the reason for its disagreement within the 30-day consultation period and directly request ACHP to review the disagreement. Within 15 days following receipt of FHWA's or an Indian tribe's request, ACHP will exercise one of the following options:

(i) Advise FHWA that ACHP concurs in FHWA's proposed response to the disagreement whereupon FHWA will respond to the disagreement accordingly; or

(ii) Provide FHWA with recommendations, which FHWA will take into account in reaching a final decision regarding its response to the disagreement; or

(iii) Notify FHWA that the disagreement will be referred for comment pursuant to 36 CFR 800.7(c)(4) and proceed to refer the disagreement and comment. In this event, the agency head shall take the resulting comment into account in accordance with 36 CFR800.7(c)(4) and Section 110(1) of the NHPA. FHWA's responsibilities under this Agreement that are not the subject of the disagreement shall remain unchanged.

b. Should ACHP not exercise one of the foregoing options within 15 days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the disagreement.

c. FHWA shall take into account any ACHP recommendation or comment and any comments from the SHPO or any consulting party in reaching a final decision regarding the disagreement.

d. FHWA shall provide the SHPO and any consulting parties with a written copy of its final decision regarding resolution of any disagreement addressed hereunder. Thereafter, FHWA may proceed in accordance with the terms of its resolution.

e. FHWA's resolution of any disagreement addressed hereunder shall be conclusive.

XI. RESOLUTION OF ADVERSE EFFECTS

A. FHWA, with the cooperation and assistance of Caltrans, shall consult pursuant to 36 CFR 800.6(a) and 800.6(b)(1) to resolve adverse effects that may result from undertakings covered by this Agreement. In complying with 36 CFR 800.6, FHWA may consult with Caltrans, and as a result of such consultation, FHWA may direct Caltrans to implement under FHWA authority certain actions prescribed in 36 CFR 800.6. When such actions include proposals to conduct data recovery on historic properties significant exclusively under Criterion D of the NRHP criteria pursuant to Stipulation X.C.2, the data recovery proposal may be developed in accordance with Attachment 6 to this Agreement.

B. Nothing in this stipulation shall preclude FHWA from reversing at any time for reasonable cause any decision allowing Caltrans to implement under FHWA authority certain actions prescribed in 36 CFR 800.6.

C. Nothing in this stipulation shall override or supersede the requirement of Stipulation IV.A that a tribe may request direct government-to-government consultation with FHWA.

D. Notwithstanding any other provision of this stipulation, FHWA must agree to any resolution of adverse effects proposed pursuant to this stipulation. Such agreement shall be evidenced by FHWA's execution of a Memorandum of Agreement pursuant to 36 CFR 800.6(c).

E. If FHWA, the SHPO, and Caltrans are unable to agree on measures to resolve the adverse effects of an undertaking pursuant to this stipulation, they shall invite ACHP to participate in the resolution process pursuant to 36 CFR 800.6(b)(2). If the parties agree to a resolution, they shall execute a Memorandum of Agreement. If the parties fail to agree to measures to resolve the adverse effects, FHWA, the SHPO, or ACHP may terminate consultation pursuant to 36 CFR 800.7(a). Upon termination, the signatories shall comply with the remaining requirements of 36 CFR 800.7.

XII. PHASED APPROACH TO IDENTIFICATION, EVALUATION, AND FINDINGS OF EFFECT

Consistent with 36 CFR 800.4(b)(2) and 800.5(a)(3), FHWA, in consultation with Caltrans, may approve the phasing of identification, evaluation, and application of the criteria of adverse effect for undertakings covered by the Agreement. Upon FHWA approval, and as specific aspects or locations of an alternative are refined or access gained, Caltrans shall proceed with the identification and evaluation of historic properties and with application of the criteria of adverse effect in accordance with applicable provisions of this Agreement.

XIII. NATIVE AMERICAN HUMAN REMAINS AND RELATED CULTURAL ITEMS

A. Treatment on Non-Federal Lands

If human remains or associated grave artifacts are encountered during archaeological surveys or excavations or during construction activities, Caltrans shall follow California Health and Safety Code 7050.5 and Public Resources Code Section 5097.98. Caltrans shall consult with the most likely descendants, as identified by the California Native American Heritage Commission, to reach agreement on the sensitive and dignified treatment and disposition of Native American human remains and associated grave artifacts.

B. Treatment on Federal Lands

For anticipated excavations on federal land, Caltrans shall apply for a permit under the Archaeological Resource Protection Act of 1979 (ARPA) (16 U.S.C. 470cc) and under Section 3(C) of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3002).

XIV. CURATION

A. Collections from Federal Lands

Caltrans shall make every reasonable effort to ensure that cultural materials and records resulting from excavation or surface collection pursuant to this Agreement conducted on federal lands are curated in accordance with 36 CFR 79, Curation of Federally-owned and Administered Archaeological Collections (September 12, 1990) 55 FR 37616 (36 CFR Part 79), and California Guidelines for the Curation of Archeological Collections (May 7, 1993) (CAC), or as may be stipulated in any agreement document pertaining to an undertaking covered by this Agreement.

B. Collections from Non-Federal Lands

Caltrans shall make every reasonable effort to ensure that to the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code, cultural materials and records resulting from excavations or surface collections on non-federal land are curated in accordance with 36 CFR 79 and the CAC or as outlined in an agreement document pertaining to the undertaking covered by this Agreement.

XV. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When Caltrans' identification efforts in accordance with Stipulation VIII.B indicate that historic properties are likely to be discovered during implementation of an undertaking, Caltrans shall include in any finding of No Adverse Effect or Memorandum of Agreement a plan for treatment of such properties,

should they be discovered. Caltrans shall consult with Indian tribes or Native American groups that may attach religious or cultural significance to potentially affected properties and take their concerns into account in developing the plan. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will resolve any adverse effects of the undertaking on such properties.

B. Discoveries Without Prior Planning

1. If a plan for subsequent discoveries is not in place, and an undertaking affects a previously unidentified property or affects a known historic property in an unanticipated manner, Caltrans shall promptly stop construction activity in the vicinity of the property and implement all reasonable measures needed to avoid, minimize, or mitigate further harm to the property.

2. Caltrans shall notify FHWA, the SHPO, and if appropriate, Indian tribes or Native American groups that may attach religious or cultural significance to the affected property, or the federal agency if federal lands are involved, within 48 hours of the discovery. The notification shall at a minimum include the information specified in 36 CFR 800.13(b)(3), and if applicable, (c). Should any of the notified parties respond within 72 hours of the notification, Caltrans shall take into account their recommendations and may carry out appropriate actions or consult further with any commenting parties. Caltrans shall determine the time frame for such further consultation. Following the conclusion of further consultation, Caltrans shall take all comments received into account and may carry out appropriate actions. Failure of any notified party to respond within 72 hours of their receipt of the notification shall not preclude Caltrans from proceeding with appropriate actions.

3. If a National Historic Landmark is affected pursuant to Stipulation XV, Caltrans shall include the Secretary of the Interior and the ACHP in the notification process.

XVI. DOCUMENTATION

A. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR 800.11 and shall be in accordance with the Caltrans Environmental Handbook, Volume 2, and its subsequent revisions or editions and with attachments to this Agreement. Documentation prepared by local agencies or their consultants in support of such findings shall be submitted to Caltrans for review and approval by Caltrans PQS. Caltrans shall transmit all documentation cited herein to FHWA and the SHPO as stipulated by this Agreement. Caltrans shall not transmit to FHWA or the SHPO any documentation that has not been reviewed and approved by Caltrans PQS. Following such review and approval, Caltrans may transmit the documentation to FHWA or the SHPO.

B. All documentation prepared under this Agreement shall be kept on file at Caltrans and made available to consulting parties and the public as stipulated by this Agreement, consistent with applicable confidentiality requirements.

XVII. ADMINISTRATIVE STIPULATIONS

A. Resolving Objections

1. Should any signatory party object in writing to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any other signatory party to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable time frame for such consultation.

2. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.

3. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA, with the cooperation of Caltrans, shall forward all documentation relevant to the objection to the ACHP, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:

a. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or

b. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or

c. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).

4. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.

5. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

6. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to Stipulation XVII.

7. FHWA may authorize any action subject to objection under items 1-6 of Stipulation XVII.A to proceed, provided the objection has been resolved in accordance with the terms of items 1-6 of Stipulation XVII.A.

8. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

B. Amendment

1. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment pursuant to 36 CFR 800.6(c)(7) and 800.6 (c)(8). This Agreement may be amended only upon written concurrence of all signatory parties.

2. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

C. Termination

1. Only signatory parties may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XVII.B, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.

2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.

3. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.

4. Should this Agreement be terminated, then FHWA shall either consult in accordance with 36 CFR 800.14(b) to develop a new Agreement or request the comments of ACHP pursuant to 36 CFR 800.

5. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

D. Review and Reporting

1. FHWA, the SHPO, and ACHP may review activities carried out pursuant to this Agreement. Caltrans shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available to FHWA, the SHPO, and ACHP in the form of a written report. Categories of information shall include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures. The range and type of information included by Caltrans in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.

2. Caltrans shall prepare the written report of these findings annually for the first five (5) years following execution of the Agreement. The initial report shall be prepared following completion of the first full State fiscal year under this Agreement. Caltrans shall submit the annual reports to FHWA, the SHPO, and ACHP no later than three (3) months following the end of the State fiscal year for the first five years. Thereafter, biennial reports shall be prepared in alternate years, and submitted no later than three (3) months following the end of the second fiscal year, unless the signatory parties agree to amend the reporting schedule.

3. Caltrans shall provide notice to the public that the report herein prescribed is available for public inspection and ensure that potentially interested members of the public are made aware of its availability and that the public may comment to signatory parties on the report. FHWA and Caltrans, in consultation with the SHPO and ACHP, shall identify the specific recipients of the public notice herein described.

4. At the request of any other signatory party to this Agreement, FHWA shall ensure that one or more meetings are held to facilitate review of, and comment on, the report to address questions and issues, or to resolve adverse comments.

5. In conjunction with the review of the reports prepared by Caltrans pursuant to Stipulation XVII.D, the signatory parties shall consult to review the overall effectiveness and benefits of the Agreement, determine if its requirements are being met, decide if amendments to the Agreement are warranted, review the reporting format and categories for adequacy, and identify any other actions that may be needed in order to take into account the effects of the Program on historic properties in California.

E. Confidentiality

All parties to this Agreement acknowledge that information about historic properties, prospective historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA and Section 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of sensitive information, and having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA and Section 6254.10 of the California Government Code.

F. Duration of this Agreement

This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this ten-year period unless it is terminated prior to that time. No later than six months prior to the expiration date of the Agreement, FHWA shall initiate consultation to determine if the Agreement should be allowed to expire automatically or whether it should be extended for an additional term, with or without amendments, as the signatory parties may determine. Unless the signatory parties unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.

G. Effective Date of this Agreement and of Additional Attachments and Amendments

This Agreement shall take effect January 1, 2004, following execution by FHWA, the SHPO, ACHP, and Caltrans. Additional attachments or amendments to this Agreement shall take effect on the dates they are fully executed by FHWA, the SHPO, ACHP, and Caltrans.

Execution and implementation of this Agreement evidence that FHWA has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in California, that FHWA has taken into account the effects of the Program and its individual undertakings on historic properties, and that FHWA has complied with Section 106 of the NHPA and 36 CFR 800 for the Program and its individual undertakings.

SIGNATORY PARTIES

Federal Highway Administration

By: _____ Date: 10/6/03
Gary Hamby, California Division Administrator

California State Historic Preservation Officer

By: _____ Date: 10/6/03
Dr. Knox Mellon, State Historic Preservation Officer

Advisory Council on Historic Preservation

(for) By: _____ Date: 12/30/03
John M. Fowler, Executive Director

California Department of Transportation

By: _____ Date: 10-1-03
Jeff Morales, Director

CONCURRING PARTIES:

California Department of Transportation, District 1

By: _____ Date: 9/17/03
District Director

California Department of Transportation, District 2

By: _____ Date: 9/17/03
District Director

California Department of Transportation, District 3

By: Jody E. Tonnigan Date: 9/17/03
District Director

California Department of Transportation, District 4

By: _____ Date: 9-17-03.
District Director

California Department of Transportation, District 5

By: _____ Date: 9/17/03

District Director

California Department of Transportation, District 6

By: Joseph M. Fernandez Date: 9/17/03
District Director

California Department of Transportation, District 7

By: [illegible] Date: 9/17/03
District Director

California Department of Transportation, District 8

By: Arne E. Mayer Date: 9/17/03
District Director

California Department of Transportation, District 9

By: [illegible] Date: 17 SEP 03
District Director

California Department of Transportation, District 10

By: Mark Leja Date: 9/17/03
District Director

California Department of Transportation, District 11

By: [illegible] Date: 9/17/03
District Director

California Department of Transportation, District 12

By: Cindy Zuon Date: 9-17-03
District Director
CH

ATTACHMENT 1

CALTRANS PROFESSIONALLY QUALIFIED STAFF STANDARDS

All cultural resources studies carried out by Caltrans or its consultants must be conducted 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). In order to take full advantage of the provisions of this Agreement, Caltrans PQS must meet the standards in the appropriate field. Those not fully qualified as archaeological Principal Investigators (PI) or Principal Architectural Historians (PAH) may accomplish many important tasks with oversight, generally in the form of peer review or under direct supervision by qualified staff. The Chief of the Cultural and Community Studies Office in the Headquarters Division of Environmental Analysis is responsible for certifying the qualifications of all Caltrans PQS. Minimum qualifications are listed below for cultural resources staff conducting various tasks.

ARCHAEOLOGICAL QUALIFICATIONS STANDARDS

Archaeological Crew Member

Qualified to participate in archaeological surveys and excavations under the direction of a qualified Lead Archaeological Surveyor or higher. Minimum qualifications:

- A minimum of six weeks of supervised field training (including at least three weeks each of excavation and field survey) in time blocks of at least one week duration (field school or equivalent)

and

- A minimum of two upper division college courses in archaeology.

Lead Archaeological Surveyor

Qualified to conduct and report archaeological surveys, and to prepare other compliance documents, with peer review provided by a qualified Prehistoric or Historical Archaeology PI to ensure document quality. Minimum qualifications:

- A bachelor's degree in anthropology with emphasis in archaeology or closely related discipline (such as history or earth sciences) and subsequent coursework in archaeology (a minimum of four upper division or graduate courses in archaeology required)

and

- At least six months of professional archaeological experience in California or Great Basin, including at least 12 weeks of California field survey experience

and

- Demonstrated ability to organize and conduct archaeological surveys, complete site record forms, and report on survey findings dealing with both prehistoric and historical archaeological resources.

Co-Principal Investigator—Prehistoric Archaeology

Qualified as a Construction Monitor, PI for Extended Phase I studies, and Co-PI for Phase II and III excavations for work involving prehistoric archaeological resources, under the direction of a Prehistoric Archaeology PI. May author proposals, reports for Extended Phase I studies, and other compliance documents, with peer review from a Prehistoric Archaeology PI to ensure document quality. Minimum qualifications:

- Qualification as a Lead Archaeological Surveyor for Caltrans

and

- At least 12 months of professional experience or specialized training in prehistoric archaeology, including: 1) at least 10 weeks of California or Great Basin excavation experience under the supervision of a Prehistoric Archaeology PI; 2) at least four weeks of supervised laboratory experience on collections from prehistoric California or Great Basin sites; and 3) at least four weeks of excavation experience in a supervisory capacity on prehistoric California or Great Basin sites

and

- Demonstrated ability to carry archaeological research to completion, as evidenced by the timely completion of an excavation report or comparable study involving a prehistoric site or sites

and

- Understanding of the Section 106 process and familiarity with cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance.

Co-Principal Investigator—Historical Archaeology

Qualified as a Construction Monitor and as Co-PI for Extended Phase I, Phase II, and Phase III excavations involving historical archaeological resources under the direction of a Historical Archaeology PI. May author reports that evaluate historical archaeological resources where no excavation is required to reach a conclusion about their eligibility and other compliance documents. That work must be peer reviewed by a Historical Archaeology PI to ensure document quality. Minimum qualifications:

- Qualification as a Lead Archaeological Surveyor for Caltrans

and

- At least 12 months of professional archaeological experience or specialized training dealing with historic-period resources including: 1) at least 10 weeks of excavation experience under the supervision of a Historical Archaeology PI; 2) at least four weeks of supervised laboratory experience on collections from historic sites; and 3) at least four weeks of excavation experience in a supervisory capacity on historic sites

and

- Demonstrated familiarity with California or Western U.S. history, documentary research, and oral history, as evidenced by upper division course work or a major research report or publication based on original research

and

- Demonstrated ability to carry archaeological research to completion, as evidenced by the timely completion of an evaluation or excavation report addressing a historic-period site or sites

and

- Understanding of the Section 106 process and familiarity with cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance.

Principal Investigator—Prehistoric Archaeology

Fully qualified under the Secretary of the Interior's standard for prehistoric archaeology to conduct all types of studies, including Extended Phase I, Phase II, and Phase III excavations, involving prehistoric

archaeological resources and traditional cultural properties or cultural landscapes of a prehistoric or ethnographic nature. May author proposals, reports for Extended Phase I, II, and III studies, and other compliance documents, with peer review to ensure document quality. May conduct consultant oversight and contract management. Minimum qualifications:

- Graduate degree in anthropology, archaeology, or cultural resources management with an emphasis in prehistoric archaeology, as evidenced by appropriate coursework

  and
- At least 16 months of professional archaeological experience involving prehistoric sites, including a minimum of one year of field experience, as follows: 1) at least 24 weeks of fieldwork under the supervision of a Prehistoric Archaeology PI, of which at least 12 weeks must be excavation work; 2) at least eight weeks of laboratory experience on collections from California or Great Basin sites supervised by a Prehistoric Archaeology PI; and 3) at least 20 weeks of field work in a supervisory capacity, of which at least eight weeks must be on California or Great Basin sites

  and
- Demonstrated ability to carry out archaeological research to completion, as evidenced by the completion of a thesis, dissertation, or other comparable major study focusing on a prehistoric site or sites

  and
- Ability to carry out the more complex and difficult aspects of the Section 106 process

  and
- Understanding of Caltrans cultural resources policies, procedures and goals, as demonstrated in reports and/or past performance

  and
- Familiarity with Caltrans cultural resources contracting policies and procedures.

Principal Investigator—Historical Archaeology

Fully qualified under the Secretary of the Interior's standard for historical archaeology to conduct all types of studies, including Extended Phase I, Phase II, and Phase III excavations, involving historical archaeological resources and historic-period traditional cultural properties or cultural landscapes. May author proposals, reports for Extended Phase I, II, and III studies, and other compliance documents, with peer review to ensure document quality. May conduct consultant oversight and contract management. Minimum qualifications:

- Graduate degree in anthropology, archaeology, cultural resources management, or a closely related field with an emphasis in historical archaeology, as evidenced by a minimum of 12 upper division semester units (or equivalent) in history and the theory and methods of historical archaeology, or equivalent knowledge as shown in a thesis or dissertation or major report evaluating historical archaeological properties

  and
- At least 16 months of professional archaeological experience involving historical sites, including a minimum of one year of field experience, as follows: 1) at least 12 weeks of fieldwork under the supervision of a Historical Archaeology PI, of which at least 6 weeks must be excavation work; 2) at least 4 weeks of laboratory experience on collections from California sites, supervised by a Historical Archaeology PI; and 3) at least 20 weeks of field work in a supervisory capacity, of which at least eight weeks must be on California sites

  and
- Demonstrated familiarity with California or Western U.S. history, documentary research, and oral history techniques, as evidenced by upper division course work or a major research report or publication based on original research

and

- Demonstrated ability to carry out archaeological research to completion, as evidenced by the completion of a thesis, dissertation, or other comparable major study focusing on a historic-period site or sites

and

- Ability to carry out the more complex and difficult aspects of the Section 106 process

and

- Understanding of Caltrans cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance

and

- Familiarity with Caltrans cultural resources contracting policies and procedures.

ARCHITECTURAL HISTORIAN QUALIFICATIONS STANDARDS

Architectural Historian

Qualified to evaluate historic properties, other than archaeological resources. May prepare evaluation reports for all types of non-archaeological resources and other compliance documents, with peer review by a Principal Architectural Historian to ensure document quality. Minimum qualifications:

- A graduate degree in architectural history, art history, architecture, or a closely related field, with a concentration in American architecture; or a graduate degree in American history, public history, historic preservation, American studies, or a closely related field; or a bachelor's degree in one of the above disciplines, plus 12 months of full-time related professional experience in research, writing, teaching, interpretation, or other related professional activity

and

- Demonstrated ability to apply the practices of architectural history in the identification, evaluation, and documentation of historic properties in California or the United States; or demonstrated familiarity with U.S. history, documentary research, and oral history techniques, as evidenced by upper division course work or a major research report or publication based on original research

and

- Demonstrated ability to carry historical research to completion, as evidenced by the timely completion of a major research report or publication based on original research

and

- Understanding of the Section 106 process and familiarity with cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance.

Principal Architectural Historian

Fully qualified under the Secretary of the Interior's standard for architectural historians. Able to conduct all types of studies involving historic-period resources, including traditional cultural properties and cultural landscapes, other than archaeological properties. May author evaluation reports and other compliance documents, with peer review to ensure document quality. May conduct consultant oversight and contract management. May determine applicability of Environmentally Sensitive Areas as described in Attachment 5. Minimum qualifications:

- A graduate degree in architectural history, art history, architecture, or a closely related field, with a concentration in American architecture; or a graduate degree in American history, public history, historic preservation, American studies, or a closely related field, and at least 24 months of full-time related professional experience in research, writing, teaching, interpretation, or other

related professional activity; or a bachelor's degree in one of the above disciplines, plus 24 months of full-time related professional experience in research, writing, teaching, interpretation, or other related professional activity

and

- Demonstrated ability to apply the practices of history or architectural history in the identification, evaluation, and documentation of historic properties in California or the United States; or demonstrated familiarity with U.S. history, documentary research, and oral history techniques, as evidenced by upper division course work or a major research report or publication based on original research

and

- Demonstrated ability to carry historical research to completion, as evidenced by the timely completion of a thesis, dissertation, or other comparable major study consisting of the design and execution of a historical study concerning a historic-period property or properties

and

- Ability to carry out the more complex and difficult aspects of the Section 106 process

and

- Understanding of Caltrans cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance

and

- Familiarity with Caltrans cultural resources contracting policies and procedures.

ATTACHMENT 2

SCREENED UNDERTAKINGS

Screened undertakings are those undertakings that have the potential to affect historic properties, but following appropriate screening, may be determined exempt from further review or consultation under this Agreement.

The Caltrans PQS is responsible for screening those individual undertakings that are included within the classes of screened undertakings listed below 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 this Agreement, 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.

All features of the undertaking, including the identification of mandatory storage, disposal, or borrow areas and construction easements, must be identified prior to the screening process. If additional features are added to a screened undertaking, the undertaking must be rescreened.

This Attachment applies only when the federal undertaking is limited exclusively to one or more of the activities listed below. Additional Section 106 review will be required, following the steps outlined in Stipulation VIII of the Agreement, if the Caltrans PQS determines that the undertaking has potential to affect historic properties.

Classes of Screened Undertakings:

1. Pavement reconstruction, resurfacing, shoulder backing, or placement of seal coats.
2. Minor widening of less than one-half-lane width, adding lanes in the median, or adding paved shoulders.
3. Channelization of intersections or addition of auxiliary lanes.
4. Establishment of chain control areas, park-and-ride lots, or maintenance pullouts.
5. Minor modification of interchanges and realignments of on/off ramps.
6. Minor utility installation or relocation.
7. Installation of noise barriers.
8. Addition of bicycle lanes or pedestrian walkways.
9. Storm damage repairs, such as culvert clearing or repair, disposal or stockpile locations, shoulder reconstruction, or slide or debris removal.
10. Repair of the highway and its facilities.
11. Modification of existing features, such as slopes, ditches, curbs, sidewalks, driveways, dikes, or headwalls, within or adjacent to the right of way.
12. Minor operational improvements, such as culvert replacements and median or side-ditch paving.
13. Addition or replacement of devices, such as glare screens, median barriers, fencing, guardrails, safety barriers, energy attenuators, guide posts, markers, safety cables, ladders, lighting, hoists, or signs.
14. Removal or replacement of roadway markings, such as painted stripes, raised pavement markers, thermoplastic tape, or raised bars, or installation of sensors in existing pavements.

15. Abandonment, removal, reconstruction, or alteration of railroad grade crossings or separations or grade crossing protection.
16. Minor alteration or widening of existing grade separations where the primary function and utility remain unaltered.
17. Additions or alterations to existing buildings, such as work on or in office or equipment buildings, maintenance stations, warehouses, roadside rests, minor transit facilities, weigh and inspection stations, toll facilities, or state-owned rentals.
18. Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.
19. Any work on Category 5 bridges that are less than 50 years of age, including rehabilitation or reconstruction.
20. Modification of traffic control systems or devices utilizing existing infrastructure, including installation, removal, or modification of regulatory, warning, or informational signs or signals.
21. Installation of freeway surveillance or ramp metering equipment.
22. Replacement of existing highway signs.
23. Removal or control of outdoor advertising.
24. Projects that eliminate non-fixed hazards, such as removal of objects on roadway, traffic accident cleanup, hazardous waste removal, or fire control.
25. Establishment, replacement, or removal of landscaping, vegetation, or irrigation systems on state or local public property, including highway and local roads rights of way and building sites.
26. Construction or repair of fish screens or ladders, springs, waterholes, or stream channels (e.g., clearing of debris from streams, ditches, or culverts).
27. Right-of-way activities such as hardship acquisition or acquisition of scenic or conservation easements.
28. Joint or multiple use permits with other agencies or encroachment permits.
29. Preliminary engineering tests, such as seismic, geologic, or hazardous materials testing, that involve buildings or structures or require trenching or ground boring.

The Screening Process:

The screening process may include one or more of the following procedures. The process is not limited to the procedures below, nor are all these procedures required for all undertakings. Screening should be appropriate to the specific complexity, scale, and location of the undertaking:

- Literature/records review to determine potential for involvement of historic properties.
- Consultation with Indian tribes who may attach religious or cultural significance to properties within the project area, as appropriate for the scope of the undertaking.
- Field review of project area.
- Review of detailed project plans.
- Consultation with local Native American groups, local historical societies, or knowledgeable informants, as appropriate for the scope of the undertaking.
- Review of aerial photographs, Caltrans photologs, historic maps, or as-built records.
- Review of right-of-way, assessment parcel, or ownership data.

Based on the outcome of the screening process, the Caltrans PQS may determine that individual undertakings are exempt from further review when there is no potential to affect historic properties.

The CE-Section 106 Checklist and/or a memo to the project planner for inclusion in the project file constitute the documentation necessary to complete the Section 106 process for screened undertakings determined exempt from further review, and no further review or consultation will be necessary.

ATTACHMENT 3

AREA OF POTENTIAL EFFECTS DELINEATION

In accordance with stipulations VI.B.7 and VIII.A, Caltrans, under the authority of FHWA, will establish the Area of Potential Effects (APE) for undertakings covered by this Agreement. The Caltrans PQS and project manager are jointly responsible for describing and establishing an APE and will sign any maps or plans that define or redefine an APE.

When the guidelines below are followed, specific consultation with the SHPO regarding APE and level of effort will typically not be necessary. Consultation with the SHPO may be needed for large and complex undertakings, when there are issues of access for inventory and evaluation, when there are concerns over delineating whole properties, or when there is public controversy such as potential for litigation, concerns expressed by outside parties, or issues related to Native American consultation.

As defined in 36 CFR 800.16(d), an APE is "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking." An APE therefore depends on an undertaking's potential for effects. Effects to be considered may include, but are not limited to, physical damage or destruction of all or part of a property; physical alterations; moving or realigning a historic property; isolating a property from its setting; visual, audible, or atmospheric intrusions; shadow effects; vibrations; and change in access or use.

An APE delineates the boundaries within which it can be reasonably expected that a proposed undertaking has the potential to affect historic properties, should any be present. It may be the right of way itself, or an area either more or less than the right of way, depending on the scope and design of the undertaking.

An APE may extend well beyond the right of way. It must include all construction easements, such as slope and drainage easements, stormwater detention basins, off-site biological mitigation sites requiring ground disturbance, and mandatory borrow and disposal sites. It may include project-related activity areas such as utility relocations, access roads, equipment storage areas, or conservation or scenic easements.

An APE addresses indirect effects when warranted. Indirect effects may extend beyond the right of way to encompass visual, audible, or atmospheric intrusions; shadow effects; vibrations from construction activities; or change in access or use. Delineation of an indirect APE must be considered carefully, particularly for potential audible and visual effects, taking into account proximity and use of adjoining properties, the surrounding topography, and other aspects of a property's setting.

1. Noise: When considering potential noise effects, there must be a reasonable basis for predicting an effect based on an increase over existing noise level. Noise effects should be considered when a project would result in a new through lane or a substantial change in vertical or horizontal alignment.
2. Visual: Highways on new alignments, multi-level structures, or elevated roadways are considered to have potential for visual effects if they could be out of character with or intrude upon a historic property or isolate it from its setting. Projects for improvement or expansion of existing transportation facilities that will not substantially deviate from existing alignment or profile are not expected to involve visual impacts. If circumstances indicate potential for visual effects, consultation with the SHPO may be warranted.

Different APEs may be established for archaeological and built properties:

1. For archaeological properties, an APE is typically established based on an undertaking's potential for direct effects from ground-disturbing activities. On occasion, archaeological sites may also have qualities that could be affected indirectly.

2. Buildings, structures, objects, districts, traditional cultural properties, and cultural landscapes are more likely to be subject to indirect, as well as direct, effects, thus an APE for the built and cultural environment is usually broader than an archaeological APE in order to include the potential for such effects. For instance, the first row of potential properties beyond the right of way may be subject to such effects and thus included in an indirect APE when warranted.

In delineating the APE, consideration must always be given to the undertaking's potential effects on a historic property as a whole. If any part of a property may be affected, the APE will generally encompass the entire property, including the reasonably anticipated or known boundaries of archaeological sites. However, it is rarely necessary to extend an APE to include entire large districts or landscapes, large rural parcels, extensive functional systems, or long linear features if potential effects on the whole would clearly be negligible.

The guiding principle on delineating an APE is that it should be commensurate with, and provide for, an appropriate level of effort to take into account an undertaking's potential for effects on historic properties.

While an APE will generally encompass an entire property, physical intrusion such as testing of archaeological sites must be focused on areas subject to reasonably foreseeable effects of the undertaking and should be guided by a project- or site-specific research design. Areas of an archaeological site that are unlikely to be affected by an undertaking should not be tested unless compelling reasons to conduct such testing are provided in the research design.

Whenever an undertaking is revised (e.g., design changes, utility relocation, or additional off-site mitigation areas), Caltrans PQS will determine if the changes require modifying the APE. If an APE proves to be inadequate, Caltrans is responsible for informing consulting parties in a timely manner of needed changes. The APE shall be revised commensurate with the nature and scope of the changed potential effects.

In order to encourage consideration of historic properties early in the planning and design of an undertaking, Caltrans PQS may designate a study area for use in conducting historical studies until an APE can be delineated. A study area should encompass all land that could potentially be included in the final APE. Establishing a study area is especially pertinent to those undertakings subject to a phased identification and evaluation process.

ATTACHMENT 4

PROPERTIES EXEMPT FROM EVALUATION

Section 106 regulations require a "reasonable and good faith effort" to identify historic properties (36 CFR 800.4[b][1]). The procedures in this attachment concentrate Caltrans efforts on properties that have the potential to be historic properties.

A property should be evaluated only if Caltrans PQS reasonably determine that the property has a demonstrable potential for historic significance. Evidence of such potential consists of associations with significant historic events or individuals (criteria A or B); engineering, artistic, design, or aesthetic values (Criterion C); information value (Criterion D); the presence of community concerns; or inclusion as a potential contributing element within a larger property requiring evaluation, such as a historic or cultural landscape, traditional cultural property, or historic district.

This attachment defines categories of properties that do not warrant evaluation pursuant to Stipulation VIII. C.1. Exempted properties may be documented, if documentation is warranted, at a level commensurate with the nature of the property (e.g., Primary Record form, Location Map, Memo to File, or GIS cultural database).

ARCHAEOLOGICAL PROPERTIES (PREHISTORIC AND HISTORICAL)

Only Caltrans PQS or consultants who meet the Caltrans Archaeological Qualification Standards (Attachment 1) for Lead Archaeological Surveyor and above are authorized to determine that the archaeological property types or features listed below may be exempted from evaluation, and in some cases, may not warrant recordation. Professional judgment should be used as to the level of identification effort. This exemption process does not include archaeological sites, traditional cultural properties, or other cultural remains or features that may qualify as contributing elements of districts or landscapes.

Archaeological Property Types and Features Exempt from Evaluation:

- Isolated prehistoric finds consisting of fewer than three items per 100 square meters
- Isolated historic finds consisting of fewer than three artifacts per 100 square meters (e.g., several fragments from a single glass bottle are one artifact)
- Refuse scatters less than 50 years old (scatters containing no material that can be dated with certainty as older than 50 years old)
- Features less than 50 years old (those known to be less than 50 years old through map research, inscribed dates, etc.)
- Isolated refuse dumps and scatters over 50 years old that lack specific associations
- Isolated mining prospect pits
- Placer mining features with no associated structural remains or archaeological deposits

ARCHITECTURAL AND HISTORICAL PROPERTIES

Certain architectural and historical property types are exempt from evaluation; additional types may be exempt from evaluation after review by a qualified Architectural Historian.

Architectural and Historical Property Types Exempt from Evaluation:

Historical Property Types 1, 2, and 3 will not require evaluation, except as noted. Only Caltrans PQS or consultants who meet the Caltrans Professional Qualifications Standards (Attachment 1) for Architectural Historian and above or Lead Archaeological Surveyor and above are authorized to determine which

architectural and historical properties fall under Property Types 1, 2, or 3 and are therefore exempt from evaluation.

Property Type 1: Minor, ubiquitous, or fragmentary infrastructure elements

Note: The following list does *not* apply to properties 50 years old or older that could be potentially important, nor does it apply to properties that may contribute to the significance of larger historic properties such as districts or cultural landscapes.

Water Conveyance and Control Features:

- natural bodies of water providing a water source, conveyance, or drainage
- modified natural waterways
- concrete-lined canals less than 50 years old and fragments of abandoned canals.
- roadside drainage ditches and secondary agricultural ditches
- small drainage tunnels
- flood storage basins
- reservoirs and artificial ponds
- levees and weirs
- gates, valves, pumps, and other flow control devices
- pipelines and associated control devices
- water supply and waste disposal systems

Recent Transportation or Pedestrian Facilities:

- railroad grades converted to other uses, such as roads, levees, or bike paths
- light rail systems, including shelters, benches, and platforms
- bus shelters and benches
- airstrips and helicopter landing pads
- vista points and rest stops
- toll booths
- truck scales and inspection stations
- city streets, alleys, and park strips
- sidewalks, curbs, berms, and gutters
- bike paths, off-road vehicle trails, equestrian trails, and hiking trails
- parking lots and driveways

Highway and Roadside Features:

- isolated segments of bypassed or abandoned roads
- retaining walls
- curbs, gutters, and walkways
- highway fencing, soundwalls, guard rails, and barriers
- drains and culverts, excluding culverts assigned a Caltrans bridge number
- cattle crossing guards
- roadside, median, and interchange landscaping and associated irrigation systems
- street furniture and decorations
- signs and reflectors
- parking meters
- street lighting and controls
- traffic lights and controls

- highway operation control, maintenance, and monitoring equipment
- telecommunications services, including towers, poles, dishes, antennas, boxes, lines, cables, transformers, and transmission facilities
- utility services, including towers, poles, boxes, pipes, lines, cables, and transformers
- oil and gas pipelines and associated control devices

Adjacent Features:

- fences, walls, gates, and gateposts
- isolated rock walls and stone fences
- telephone booths, call boxes, mailboxes, and newspaper receptacles
- fire hydrants and alarms
- markers, monuments, signs, and billboards
- fragments of bypassed or demolished bridges
- temporary roadside structures, such as seasonal vendors' stands
- pastures, fields, crops, and orchards
- corrals, animal pens, and dog runs
- open space, including parks and recreational facilities
- foundations and mapped locations of buildings or structures more than 50 years old with few or no associated artifacts or ecofacts, and with no potential for subsurface archaeological deposits
- building and structure ruins and foundations less than 50 years old.

Movable or Minor Objects:

- movable vehicles
- stationary vehicles less than 50 years old or moved within the last 50 years
- agricultural, industrial and commercial equipment and machinery
- sculpture, statuary, and decorative elements less than 50 years old or moved within the last 50 years.

Property Type 2: Buildings, structures, objects, districts, and sites less than 30 years old

Properties less than 30 years old may be exempted from evaluation. If the age of a property is not readily discernible the date of construction may be confirmed by checking assessor's records or other sources, such as USGS quadrangle maps or building permits, or by consulting a qualified Architectural Historian.

Property Type 3: Buildings, structures, objects, districts, and sites so altered as to appear less than 30 years old

Substantially altered properties that appear to be contemporary structures may be exempted from evaluation. A qualified Architectural Historian should review altered properties if they are listed in a local survey of historical properties, or if the extent of alterations or the age of a property is not readily discernible.

Architectural and Historical Property Types Exempt from Evaluation After Review by Qualified Architectural Historians:

Historical Property Types 4, 5, and 6, described below, may be exempted from evaluation after review by one of the following qualified professionals: Caltrans Architectural Historians or Principal Architectural Historians, or Caltrans consultants who have been certified as meeting Caltrans architectural historian professional standards.

Property Type 4: Buildings, structures, objects, districts, and sites 30 to 50 years old

Properties between 30 and 50 years old may be exempted from further evaluation. Consideration will be given to properties that may have achieved exceptional significance within the last 50 years, in accordance with National Register Bulletin 22.

Property Type 5: Buildings, structures, and objects moved within the past 50 years

Properties which have been moved are not usually eligible for the National Register, with the exceptions noted in "Criteria Consideration B: Moved Properties" of National Register Bulletin 15. Therefore properties that were moved within the past 50 years may be exempted from evaluation. Properties moved more than 50 years ago shall be formally evaluated, unless they also qualify as property types exempted from evaluation (e.g., a building moved before its period of significance but which has since lost integrity through alterations). Caltrans qualified Architectural Historians have discretion to identify and evaluate properties moved less than 50 years ago when there is demonstrable evidence to indicate that such identification and evaluation are warranted.

Property Type 6: Altered buildings, structures, objects, districts, and sites that appear to be more than 30 years old

Properties more than 30 years old that have been substantially altered may be exempted from evaluation. Such properties may include roads and highways with associated features other than bridges, and railroads with associated features other than buildings or bridges. However, altered properties should be documented if they are listed in a local survey of historical properties or if eligibility conclusions might be controversial.

ATTACHMENT 5

ENVIRONMENTALLY SENSITIVE AREAS

Environmentally Sensitive Areas (ESAs) are locations of identified archaeological sites or other properties within the APE that are to be protected by avoidance or by restrictions on Caltrans activities. ESAs typically use fencing, flagging, signing, or monitoring to protect properties from direct physical damage by project activities.

Because ESAs protect properties from direct rather than indirect effects, they are rarely applied to non-archaeological properties. ESAs may be applied to built environment properties only when deemed appropriate by a Principal Architectural Historian.

Archaeological and cultural sites may have values other than information potential under Criterion D. ESAs may be applied to sites with cultural values that qualify them as eligible under Criteria A, B, or C in addition to, or instead of, Criterion D only where the ESA protects those values from all adverse effects. That determination must be made by a Principal Investigator in the applicable discipline (Prehistoric or Historical Archaeology), and as appropriate, after consultation with Indian tribes or interested parties that may attach religious or cultural values to the property.

Stipulation VIII.C.3 provides that archaeological sites protected by ESAs established and enforced in accordance with this Attachment may, for the purposes of a specific undertaking, be considered eligible without subsurface excavation and/or surface collection.

Stipulation VIII.C.3 does not apply to non-archaeological properties, which must be evaluated for National Register eligibility regardless of ESA protection, unless specifically provided for in a consultation pursuant to Stipulation X.B.1, Finding of No Adverse Effect without Standard Conditions, or in an MOA developed pursuant to Stipulation XI, Resolution of Adverse Effects.

The delineation of an ESA pursuant to Stipulation VIII.C.3 of the Agreement may be used to reach a finding of No Adverse Effect in accordance with Stipulation X.B.2 (a)(ii) and (iii) of the Agreement, provided that all of the following conditions are met:

1. Adequate information is available to accurately delineate the property boundary in relation to the APE and to identify essential features of the property. This information may be obtained from literature review, surface survey, subsurface testing, historical research, or consultation with Indian tribes.
2. The scope and design of the undertaking are sufficiently developed and detailed to ensure that the property will be protected from all adverse effects.
3. All appropriate protection measures are defined (e.g., signing, staking, fencing, monitoring provisions) and the information included in the Final Construction Plans, Contract Special Provisions, and Pending File of the Resident Engineer (RE) assigned to the construction project.
4. An ESA action plan is developed to ensure that provisions for protection are carried out and will be documented in accordance with Stipulation XVI of the Agreement.

Delineation of an ESA may be used as an element of protection for non-archaeological properties when specifically provided for by a condition in a finding of No Adverse Effect without Standard Conditions pursuant to Stipulation X.B.1 or for resolution of adverse effects when specifically provided for in an MOA developed pursuant to Stipulation XI, Resolution of Adverse Effects.

Caltrans PQS will develop and provide appropriate ESA information to Project Development, Construction, and Maintenance personnel to protect properties during project activities through implementation of an ESA action plan. Project Development shall include ESA information in Construction Plans, Contract Special Provisions, and the Pending File of the project's RE. During

construction, the RE shall ensure that contractors comply with ESA guidelines in the Contract Special Provisions. The District Environmental Branch shall monitor construction and maintain contact with the RE on ESA compliance.

ATTACHMENT 6

STANDARD TREATMENT OF ARCHAEOLOGICAL SITES: DATA RECOVERY PLAN

In accordance with Stipulation XI.A, when an archaeological property is eligible for the National Register under Criterion D only, potential adverse effects to the property may be resolved through data recovery to recover important information that would have been otherwise lost as a result of an undertaking. A Caltrans Principal Investigator (Archaeology) shall determine applicability of data recovery, and if applicable, the appropriate level of documentation for a data recovery plan.

A data recovery plan shall, at a minimum, include the following:

- Discussion of the National Register significance of a property.
- Research questions that are directly pertinent to those data sets that qualify the property for inclusion in the National Register under Criterion D.
- A discussion that explains why it is in the public interest to pursue answers to these research questions. The discussion should indicate whether, why, and how the public may benefit from the scope and nature of the information developed through data recovery, and demonstrate that the costs of proceeding with the data recovery are prudent and reasonable.
- Results of previous research relevant to the property type.
- Proposed investigations (data needed to address research questions and the proposed methods and techniques to acquire that data, including any special studies).
- Field methods and techniques that will clearly and cost-effectively address the property's structure and content in the context of the defined research questions and the property's stratigraphic and geomorphic context.
- Laboratory processing and analyses, with justification of their cost-effectiveness and of their relevance to the property and its research values.
- Methods and techniques used in artifact, data, and other record management.
- Provisions for ongoing Native American consultation and coordination, if Native American values or concerns are present or are likely to be present.
- Qualifications of key personnel.
- Disposition, including curation, of recovered materials and records resulting from implementation of the data recovery plan.
- Cost proposal.
- All required permits
- Report preparation schedule, including the names of parties to whom reports will be distributed upon completion.
- Monitoring provisions and procedures for evaluating and treating discoveries of unexpected finds during the course of the project, which may include consultation with other parties.
- Explicit provisions for disseminating research findings to professional peers in a timely manner.
- Plan for public involvement and educational or interpretive programs, focusing particularly on the community or communities that may have interest in the results.

FIRST ADDENDUM TO 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

WHEREAS, the Federal Highway Administration (FHWA), the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and the California Department of Transportation (Caltrans) executed a Programmatic Agreement (Agreement), executed on December 30, 2003, regarding the Federal Aid Highway Program in California; and

WHEREAS, the Agreement established that the California Division Administrator, FHWA is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of California complies with Section 106 of the National Historic Preservation Act, as amended (NHPA), and codified at its implementing regulations, 36 CFR Part 800, and effective January 11, 2001; and

WHEREAS, pursuant to the June 7, 2007 "Memorandum of Understanding between the FHWA, California Division and Caltrans, Assumption of Responsibility for Categorical Exclusions" (MOU) prepared in accordance with Section 6004(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-059), codified as Section 326 as amended Chapter 3 of title 23 United States Code, the Secretary of the United States Department of Transportation, acting by and through the FHWA, assigned to Caltrans the responsibility for compliance with Section 106 of the NHPA for projects covered by the MOU; and

WHEREAS, FHWA, SHPO, the ACHP and Caltrans have consulted to enter into this First Addendum to the Agreement to recognize that the Chief of the Division of Environmental Analysis at Caltrans is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of California complies with Section 106 of the NHPA for projects covered by the MOU; and

NOW, THEREFORE, FHWA, SHPO , the ACHP and Caltrans agree that the Agreement shall be addended as follows:

STIPULATIONS

I. Where the Agreement specifies FHWA responsibilities for compliance with Section 106 of the NHPA, the Caltrans Division of Environmental Analysis, Cultural and Community Studies Office shall assume those responsibilities, except as provided in stipulations II and II below.

II. In accordance with Stipulation IV.A of the Agreement, FHWA shall retain responsibility for conducting direct government to government consultation with Indian tribes.

III. FHWA shall assume responsibility for compliance with Section 106 of the NHPA and the Agreement for any project it determines should be excluded from the MOU pursuant to Section X.B of the MOU.

IV. This First Addendum shall take effect following execution by FHWA, SHPO, the ACHP, and Caltrans and shall remain in effect until the MOU expires or is terminated, or the Agreement expires or is terminated, whichever occurs first.

SIGNATORY PARTIES

Federal Highway Administration

By: _____ Date: 8/6/07
Gene K. Fong, California Division Administrator

California State Historic Preservation Officer

By: _____ Date: 8/6/07
M. Wayne Donaldson, State Historic Preservation Officer

Advisory Council on Historic Preservation

By: _____ Date: 9/28/07
John M. Fowler, Executive Director

California Department of Transportation

By: _____ Date: 8/21/07
Will Kempton, Director

SECOND ADDENDUM TO 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

WHEREAS, the Federal Highway Administration (FHWA), the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and the California Department of Transportation (Caltrans) executed a Programmatic Agreement (Agreement), executed on December 30, 2003, regarding the Federal Aid Highway Program in California; and

WHEREAS, the Agreement established that the California Division Administrator, FHWA is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of California complies with Section 106 of the National Historic Preservation Act, as amended (NHPA), and codified at its implementing regulations, 36 CFR Part 800, and effective January 11, 2001; and

WHEREAS, the July 1, 2007 "Memorandum of Understanding between the Federal Highway Administration and the California Department of Transportation Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program" (MOU) prepared in accordance with Section 6005(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-059), codified as Section 327 as amended Chapter 3 of Title 23 United States Code (23 U.S.C. 327) officially approves Caltrans' application to participate in the Pilot Program, and is the written agreement required by 23 U.S.C. 327(a)(2)(A) and (c) under which the Secretary of the United States Department of Transportation (USDOT Secretary) may assign, and Caltrans may assume, the USDOT Secretary's responsibilities for federal environmental laws with respect to one or more highway projects within California, including Section 106 of the NHPA; and

WHEREAS, FHWA, SHPO, the ACHP and Caltrans have consulted to enter into this Second Addendum to the Agreement to recognize that the Chief of the Division of Environmental Analysis at Caltrans is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of California complies with Section 106 of the NHPA; and

NOW, THEREFORE, FHWA, SHPO , the ACHP and Caltrans agree that the Agreement shall be addended as follows:

STIPULATIONS

I. Where the Agreement specifies FHWA responsibilities for compliance with Section 106 of the NHPA, the Caltrans Division of Environmental Analysis, Cultural and Community Studies Office shall assume those responsibilities, except as provided in stipulations II and II below.

II. In accordance with Stipulation IV.A of the Agreement, FHWA shall retain responsibility for conducting direct government to government consultation with Indian tribes.

III. FHWA shall retain responsibility for projects specifically excluded from delegation to the state in Part 3, Section 3.1 of the MOU; and FHWA will assume responsibility for compliance with Section 106 of the NHPA and the Agreement for any project for which FHWA resumes responsibility pursuant to Part 9 of the MOU.

IV. This Second Addendum shall take effect following execution by FHWA, SHPO, the ACHP, and Caltrans and shall remain in effect until the MOU expires or is terminated, or the Agreement expires or is terminated, whichever occurs first.

SIGNATORY PARTIES

Gene K. Fong, California Division Administrator

California State Historic Preservation Officer

By: _____ Date: 8/6/07
M. Wayne Donaldson, State Historic Preservation Officer

Advisory Council on Historic Preservation

By: _____ Date: 9/28/07
John M. Fowler, Executive Director

California Department of Transportation

By: _____ Date: 8/21/07
Will Kempton, Director

FACT SHEET for FHWA California Division and SHPO Programmatic Agreement (PA)

PA Overview:

- Alternative to 36 CFR 800 for complying with Section 106 of the National Historic Preservation Act, in effect January 2004 through December 2013.
- Outlines the process to be followed by the California Department of Transportation (Caltrans) and local agencies on state and locally sponsored transportation project that have Federal Highway Administration (FHWA) funding or other involvement.
- FHWA negotiated this Agreement with the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Officer (SHPO), with Caltrans' participation.
- Shortens the entire process without compromising it or the historic properties it is intended to address.
- Establishes Professionally Qualified Staff (PQS) who oversee all undertakings for compliance with the PA.
- In 2003, PA was distributed to tribes with ancestral lands in California (total 112), Tribal Historic Preservation Officers, non-federally recognized tribes as identified by the Native American Heritage Commission (NAHC), and others who requested or who we identified as interested for a 45 day review for comments. FHWA and ACHP took into account comments received.

Process for Consulting with Tribes:

- FHWA will honor the request of any Indian tribe for direct government-to-government consultation.
- To provide for an effective and efficient process, however, FHWA authorizes Caltrans to carry out Section 106 consultation with Indian tribes, and that consultation may involve Caltrans or local agency staff or their consultants, with Caltrans oversight.

The Agreement <u>does not</u>

- Change the role of Indian tribes in the Section 106 process.
- Negate or supersede any agreements between Caltrans and Indian tribes in effect at the time the Agreement is executed.
- Apply to undertakings that are on tribal lands or that may affect tribal lands, defined as all lands within the exterior boundaries of a reservation and all dependent Indian communities. On tribal lands, the standard process for complying with Section 106 as codified in 36 CFR Part 800 will be followed.
- Change the role of Native American individuals, organizations, or non federally recognized tribes as participants in the Section 106 process.

The Agreement <u>does</u>

- Provide for consultation with Indian tribes for identifying and evaluating historic properties of religious and cultural significance, and for assessing effects to those properties.
- Provide for notification to Indian tribes, along with FHWA and the SHPO for findings of effect, and for consultation regarding resolution of adverse effects.
- Authorize Caltrans to initiate consultation.
- Allow FHWA and Caltrans to omit formal testing of those archaeological sites that can be protected from project impacts, thus reducing excavation of sites.

What Next:

- Caltrans is seeking to renew the PA which currently expires December 2013, and wants to hear thoughts on the effectiveness of the current PA and ways it might be improved.
- To let us know what you think, please contact: Todd Jaffke, Section 106 Coordinator at (916) 653-3567 or Todd.Jaffke@dot.ca.gov.