

Exhibit 2.9: Finding of Adverse Effect Format and Content Guide

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Exhibit 2.9: Finding of Adverse Effect Format and Content Guide

Introduction

In accordance with Section 106 PA (106 PA¹) Stipulation XVIII, the Finding of Adverse Effect report must be consistent with the documentation standards set forth in 36 CFR 800.11 and the 106 PA attachments. For state-only project that involve Caltrans-owned historical resources, in accordance with PRC 5024 MOU (5024 MOU²) Stipulation XVII, the Finding of Adverse Effect report must be consistent with SERv2 and the 5024 MOU attachments. Pursuant to Stipulation III of the 5024 MOU, Section 106 projects that involve Caltrans-owned historical resources may use the Section 106 documentation to satisfy Caltrans' PRC 5024 compliance.

Finding of Adverse Effect

When Caltrans finds that adverse effects cannot be avoided, the District prepares a Finding of Adverse Effect (FAE) report and supporting documentation.

In accordance with 106 PA Stipulation X.C.2, when the adverse effect is to archaeological properties listed or determined eligible for inclusion in the National Register of Historic Places (NRHP) exclusively under Criterion D, the District sends the documentation to SHPO and requests concurrence, with concurrent submittal to CSO and any other consulting parties.

In accordance with 5024 MOU Stipulation X.C.1.a or Stipulation X.C.2.a, as applicable, when a state-only project involves Caltrans-owned historical resources not on the Master List of Historical Resources (Master List³), the District sends the documentation to CSO for review and approval.

For all other historic properties that will be adversely affected by a federal undertaking or state-only projects that involve adverse effects to Caltrans-owned historical resources on

¹ First Amended 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, effective January 1, 2014.

² 2015 Memorandum of Understanding between the California Department of Transportation and the California State Historic Preservation Officer Regarding Compliance with Public Resources Code Section 5024 and Governor's Executive Order W-26-92, addended 2019.

³ The Master List is a list of state-owned buildings or structures that are listed on or determined eligible for the NRHP or that are registered as or eligible for registration as California Historical Landmarks.

the Master List, the District sends the FAE documentation to CSO for review. CSO forwards the documentation to SHPO and requests concurrence. The District sends notification of the finding to any consulting parties or interested members of the public, as appropriate.

Finding of Adverse Effect (FAE) Format and Content

PQS or qualified consultants prepare the FAE document according to the following outline:

Title Page

The title page identifies the project by:

- Brief descriptive title with type of study, name and general location of project (e.g., “Finding of Adverse Effect for 4-Lane Widening on Route 989 between Forestview Drive and Limekiln Road”).
- County, route, and postmile or local street or road name.
- EA/E-FIS⁴ project number and phase (For Local Assistance projects, use the Federal-Aid project number).
- Project contract number (if prepared by consultants).
- Name, title, and signature of the Caltrans Professionally Qualified Staff (PQS) or consultant PQS-equivalent who prepares the report. Also state the preparer’s PQS or PQS-equivalent level and address or location.
- Name, title and signature of the PQS who reviewed the report for approval, along with the reviewer’s location/address and PQS level (if different than preparer).
- Name, title, location and signature of the Caltrans District Environmental Branch Chief (DEBC) for whom the document was prepared. The DEBC’s signature on the title page indicates approval and acceptance of the document.
- Date (month/year) FNAE was prepared (appears at bottom of page).

Introduction

- Summarize the project 106 PA/5024 MOU compliance activities to date. Include the date(s) of any previous SHPO consultation and briefly describe the historic properties and their NRHP status. If properties are Caltrans-owned, note their Master List status.
- For state-only projects, note the California Historical Landmark (CHL) status of Caltrans-owned historical resources in addition to their NRHP status.

⁴ Enterprise Resource Planning Financial Infrastructure, a 10-digit number, followed by a phase number of one or more digits.

- Name the properties that will be adversely affected as a result of the project as well as any that will not be adversely affected or will not be affected at all.
- For federal projects, state that Caltrans, in applying the Criteria of Adverse Effects in accordance with 36 CFR 800.5(a)(1), finds that the undertaking will have an Adverse Effect on historic properties and is seeking the SHPO's concurrence with the finding, pursuant to 106 PA Stipulation X.C.1 or X.C.2, as applicable.
- For state-only projects that involve Caltrans-owned historical resources on the Master List, state that Caltrans, in applying the List of Adverse Effects in accordance with PRC 5024(b) and PRC 5024.5, finds that the project will have an Adverse Effect and is seeking the SHPO's concurrence in the finding, pursuant to 5024 MOU Stipulation X.C.2.b.
- For state-only projects that involve Caltrans-owned historical resources not on the Master List, state that Caltrans, in applying the List of Adverse Effects in accordance with PRC 5024(b) and PRC 5024.5, finds that the project will have an Adverse Effect and is seeking CSO's approval, pursuant to PRC 5024(f) and 5024 MOU Stipulation X.C.1.a or X.C.2.a, as applicable.

Description of the Undertaking

- Identify the project by district, county, route, and postmile limits, and indicate distance to the nearest town or other landmark.
- Identify the APE/PAL, and refer to attached maps, photographs, and drawings, as necessary.
- Describe the project concisely but with sufficient detail to ensure that a reviewer unfamiliar with the project or project area has a clear understanding of the extent of potential effects.
- Discuss all pertinent project-related activities and alternatives.

Public Participation

- For federal undertakings, summarize efforts to involve the public in the Section 106 process as well as any comments received to date. For state-only project that involve Caltrans-owned historical resources, describe consultation with interested parties.
- Identify any additional consulting parties, such as other federal and state agencies, Native Americans, or local governments. Summarize consultation efforts and results to date.
- Describe the ongoing environmental process, including environmental compliance events such as public hearings.
- Emphasize cultural resources issues discussed at public meetings, and if concerns have been raised, discuss steps taken to ensure public concerns are incorporated into the Section 106/PRC 5024 process.

Description of Historic Properties

Provide a very brief description of the steps taken to identify historic properties. Discuss any comments received from the public or consulting/interested parties that aided in the identification process.

For each historic property, provide:

- Date of NRHP listing; date of Keeper of the National Register (Keeper) determination of NRHP eligibility, stating that it was a Keeper determination; date of SHPO concurrence with a determination of eligibility, stating that it was a consensus determination; or state that an eligibility consensus determination with SHPO is pending, as applicable
- NRHP criteria for which each property is listed or eligible
- For state-only projects involving Caltrans-owned properties, California Historical Landmark (CHL) criteria for which each resource was registered or eligible for CHL registration
- Level and period of significance
- Historic property boundaries
- Contributing and non-contributing elements
- Concise description of each historic property with emphasis on the characteristics that qualify it for the NRHP. See Exhibit 7.1 for more information on character-defining features.

The summary statements of significance and property descriptions in the HPSR/HRCR may be used. See Exhibit 2.15 for textual information to include in the summary statements.

Application of the Criteria of Adverse Effect

- Discuss the applicable Criteria of Adverse Effect/List of Adverse Effects and explain in detail why the effect is adverse.
- Describe the physical effects of the undertaking on each historic property, including any indirect effects such as increased noise or introduction of visual elements out of character with the property.
- For every alternative, describe the direct and/or indirect effect the alternative will have on each historic property. See Exhibit 2.15 for additional guidance.

Alternatives Considered but Rejected

Describe alternatives that were considered but rejected, and the rationale for the rejection, particularly any “avoidance” alternatives (i.e., an alternative that would not adversely affect historic properties).

For state-only projects involving Caltrans-owned historical resources on the Master List, a detailed discussion of all efforts to avoid adverse effects should be included.

Description and graphics may be derived from the “Alternatives” discussion in the environmental document. Discussion should focus on the effects of the various alternatives upon identified historic properties, however.

Mitigation Measures

For federal undertakings: this section is included in the FAE only when it is accompanied by a draft Memorandum of Agreement (MOA). Discuss and evaluate any proposed mitigation measures to avoid, minimize, or mitigate the adverse effects to each historic property (e.g., implementation of a Data Recovery Plan). If a draft MOA is not attached, this information is discussed in a consultation document that accompanies the MOA and is forwarded by CSO to SHPO under a separate cover.

For state-only projects that involves Caltrans-owned historical resources, the FAE always includes a discussion of proposed mitigation measures.⁵ When the adverse effect is to Caltrans-owned archaeological sites not on the Master List⁶ and Standard Mitigation Measures pursuant to 5024 MOU Stipulation X.C.1 are applicable, a data recovery plan prepared in accordance with 5024 MOU Attachment 6 is included with the FAE documentation.

Conclusions

- Briefly summarize the contents of the document that resulted in the finding of Adverse Effect.
- State that Caltrans finds that the project or undertaking will have an Adverse Effect on historic properties and is seeking the SHPO’s concurrence with the finding pursuant to the applicable stipulation of the 106 PA/5024 MOU (List historic properties).
- For state-only projects involving Caltrans-owned resources on the Master List, state that Caltrans finds that the project or undertaking will have an Adverse Effect on Caltrans-owned historical resources pursuant to 5024 MOU Stipulation IV.D, PRC 5024(b) and PRC 5024.5 and is seeking SHPO’s concurrence with the finding pursuant to applicable stipulation of the 5024 MOU (List historical resources).

⁵ Note MOAs are not prepared under PRC 5024 as adverse effects are not “resolved” by implementation of an MOA as they are under Section 106.

⁶ Archaeological sites are not included on the Master List unless they are listed on the NRHP or registered as CHLs.

- For state-only projects involving Caltrans-owned resources not on the Master List, state that Caltrans finds that the project or undertaking will have an Adverse Effect on Caltrans-owned historical resources pursuant to 5024 MOU Stipulation IV.D, PRC 5024(b) and PRC 5024.5 and is seeking CSO’s approval with the finding pursuant to applicable stipulation of the 5024 MOU (List historical resources).
- For federal undertakings, whether or not a draft MOA is attached, state that Caltrans will continue consultation regarding resolution of adverse effects pursuant to 106 PA Stipulation XI and 36 CFR 800.6 through preparation of an MOA.
- For federal undertakings, refer to an attached draft MOA or, if the draft MOA does not accompany the FAE document, state that this document serves only to obtain SHPO concurrence that the undertaking will have an Adverse Effect on historic properties and that mitigation measures will be discussed in a separate consultation document along with a draft MOA.

If warranted, include a table that summarizes effects and mitigation measures at each property for each alternative (see Table 1 below).

Table 1. Example Table For Finding of Adverse Effect Document

Property	Effect Finding (Alt. 1)	Proposed Mitigation
CA-ABC-1234	Not Adverse	ESA – see ESA Action Plan
Jones House	None – avoidance	N/A

Property	Effect Finding (Alt. 2)	Avoidance / Minimal Impact
CA-ABC-1234	Adverse – destruction	Data Recovery Plan
CA-ABC-1235	Adverse – destruction	Data Recovery Plan
Jones House	Not Adverse – ROW take of non-contributing element	N/A

Attachments

- Project Vicinity Map
- Project Location Map
- Project APE/PAL Map (detail location of the historic property, including the historic property boundaries, in relation to the project and depict project effects on the property)
- Correspondence with the SHPO, Native Americans, and any other consulting parties or the public (e.g., local governments)
- Exhibits pertaining to the historic properties discussed (e.g., photographs, construction drawings, photo simulations)
- ESA Action Plan, if applicable (for archaeological properties)
- Data Recovery Plan (for archaeological properties)

Caltrans Peer Review and Approval

PQS certified at the Principal Investigator Prehistoric Archaeology or Historical Archaeology, or Principal Architectural Historian levels are authorized to conduct peer reviews of FAE documentation and review FAEs for approval. The peer reviewer should be someone other than the author. Once the document has been approved by an appropriately qualified PQS, the DEBC signs and dates the FAE to signify final approval. Chapter 2 Section 2.12 contains more information about the peer review and approval process. See Exhibit 1.6 for PQS level and expertise required for peer review in the various cultural resource specialty areas and Exhibit 2.11 Table C for PQS levels needed for other document reviews and approval. Caltrans peer review standards are found in Exhibit 2.13.