BIENNIAL REPORT

IMPLEMENTATION OF THE SECTION 106 PROGRAMMATIC AGREEMENT

JULY 1, 2009 - JUNE 30, 2011

CULTURAL STUDIES OFFICE
DIVISION OF ENVIRONMENTAL ANALYSIS
CALIFORNIA DEPARTMENT OF TRANSPORTATION
SACRAMENTO, CALIFORNIA

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EXECUTIVE SUMMARY

This report documents the effectiveness of, and summarizes actions carried out under the *Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation* during the two-year period from July 1, 2009 through June 30, 2011, in accordance with stipulation XVII.D.1 and XVII.D.2 of the PA. Caltrans, having satisfactorily completed annual reporting for the last 5 years, is now reporting biennially per the PA.

The results reveal that the California Department of Transportation handled 2,354 Federal-Aid Highway projects. Of these, 131 required external review by the State Historic Preservation Officer. A total of 18 projects resulted in a finding of adverse effect, and subsequently required a Memorandum of Agreement. Page 2 contains the summary results of PA actions.

During this reporting period, there were two discrepancies involving inadvertent effects to historic properties. Caltrans cultural resources staff took the correct actions to consult with interested parties to protect the resource and mitigate the adverse effects, including negotiating with the Forest Service and tribal groups. In addition, there was one objection to how the PA is implemented that Caltrans cultural resources staff also appropriately handled. The events are described on pages 7 - 9.

Quality assurance measures for this reporting period included delivery of PA training for statewide cultural resources staff, held in Sacramento in September 2009, and a Statewide Functional Workshop in February 2011. These and other quality assurance measures are discussed on page 9.

In 2007, pursuant to sections 6004 and 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Caltrans assumed Federal Highway Administration's responsibilities for environmental consultation and coordination with resources agencies under the National Environmental Policy Act and other federal environmental laws, including Section 106 of the National Historic Preservation Act for most federally-funded highway projects in California. The Cultural Studies Office assumed FHWA's responsibilities for compliance with the steps of the Section 106 process that were not previously delegated to Caltrans under the PA. Resource agencies have indicated that Caltrans is handling its assumption of FHWA's responsibilities capably, and in some cases, communication between agencies has effectively improved.

During this reporting period, the increased workload for cultural resources staff in handling undertakings funded under the American Recovery and Reinvestment Act continued. These projects had to be processed very quickly in keeping with the terms of the Act. All Districts noted that they would not have been able to meet the Recovery and Reinvestment Act funding deadlines without the PA.

It is Caltrans' judgment that the PA has been a success in streamlining the Section 106 process while maintaining standards and ensuring that effects to cultural resources are taken into account during project planning.

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INTRODUCTION

The *Programmatic Agreement among the Federal Highway Administration, the Advisory Council On Historic Preservation, the California State Historic Preservation Officer, and the California Department Of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as It Pertains to the Administration of the Federal-Aid Highway Program in California* (PA) went into effect on January 1, 2004. It streamlined Section 106 of the National Historic Preservation Act (Section 106) by delegating much of the Federal Highway Administration's (FHWA) responsibility for carrying out some of the more routine aspects of the Section 106 process to the California Department of Transportation (Caltrans). All cultural resources studies completed under the auspices of the PA must be carried out 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). The Chief of the Cultural Studies Office (CSO) in the Division of Environmental Analysis is responsible for certifying the qualifications of all PQS. PQS are charged with ensuring that effects to cultural resources are taken into account and that there is no loss in quality of work or consideration for resources.

As well as streamlining the Section 106 process for Caltrans, the PA also reduced the workload for the State Historic Preservation Officer (SHPO) in that Caltrans PQS internally review routine projects, or those that do not involve any cultural resources. Less than six percent of projects required SHPO review this reporting period. Caltrans assures transparency in that all documentation prepared under the PA is kept on file at Caltrans and made available to consulting parties and the public in accordance with the PA, consistent with applicable confidentiality requirements. Delegating PQS the authority to perform many of the functions of the SHPO has enabled SHPO staff to concentrate efforts on the small number of projects that actually involve historic properties or have potential for adverse effects.

This report documents the effectiveness of, and summarizes activities carried out under, the PA. It covers actions for which Section 106 consultation was concluded between July 1, 2009 and June 30, 2011, in accordance with PA stipulations XVII.D.1 and XVII.D.2. Caltrans, having satisfactorily completed annual reporting for the last 5 years, is now reporting biennially per the PA. PA actions or projects that were "in progress" with determinations or findings pending as of June 30, 2011 are not reflected in this report; the results of those consultations will be reported in subsequent biennial reports, once Section 106 has been completed.

In accordance with PA stipulation XVII.D.3, Caltrans is providing notice to the public that this report is available for inspection and will ensure that potentially interested members of the public are made aware of its availability, and that the public may provide comment to the PA signatory parties on the report. This report is now being submitted to the FHWA, the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and the Caltrans Director and District Directors.

SUMMARY OF PA ACTIONS

According to data provided by the Districts, Caltrans processed 2,354 Federal-Aid Highway projects during this reporting period. The majority of these, 1,971 (or 84 percent), were exempted from Section 106 review after appropriate review, or "screening," by PQS.[1] An additional 252 projects (11 percent) that did not qualify as exempt were kept on file at Caltrans, as no consultation with the SHPO was required under the PA terms.[2] Overall, just 131 projects (5 percent) of the 2,354 that were processed between June 30, 2009 and July 1, 2011 required consultation with the SHPO (see tables 1 and 2). Note that the reporting period of this Biennial Report is for two fiscal years (July 1, 2009 – June 30, 2011) so numbers reflect cumulative totals. For demonstrating trends, however, yearly totals are depicted in figures.

Table 1: Activities Under the PA

Projects Completed – Total	**2,354**
Caltrans Projects	1159
Local Assistance Projects	1195
Number of Projects Exempted – Total	**1,971**
Caltrans Projects	952
Local Projects	1,019
Projects to SHPO – Total	**131**
Caltrans Projects	67
Local Projects	63

Table 2: Historic Property Survey Reports (HPSRs) to File

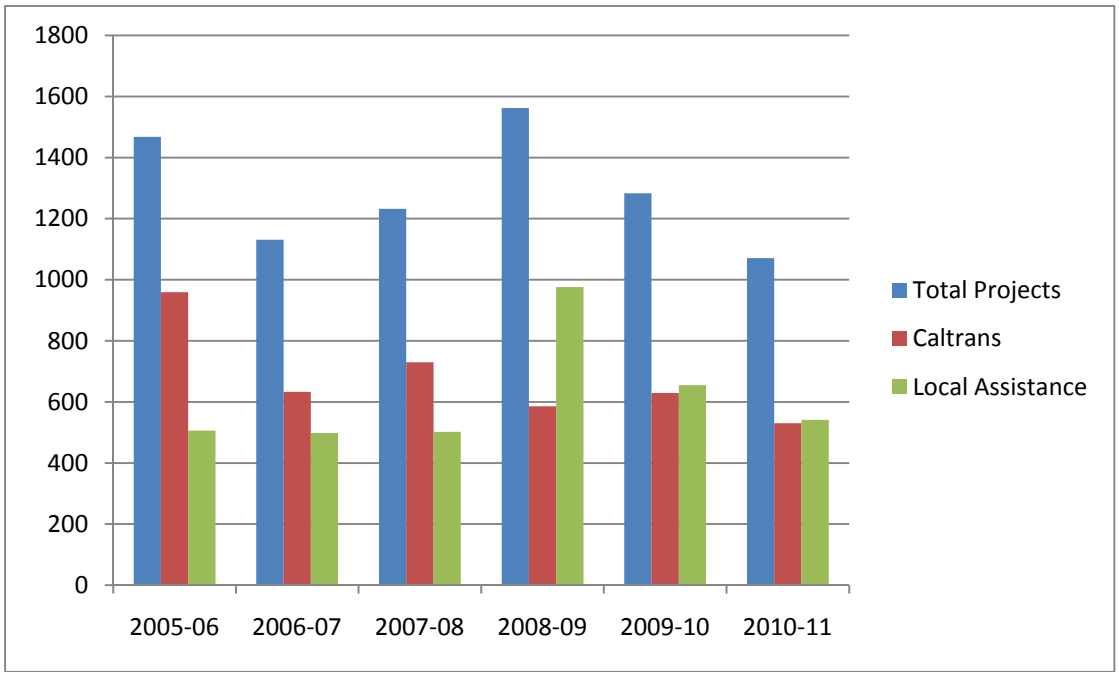
HPSRs to File – Total	**252**
HPSRs to File – Caltrans Projects	120
HPSRs to File – Local Projects	136

[1] PA Stipulation VII specifies that the classes of undertakings identified in PA Attachment 2 as "screened undertakings" will require no further review under the PA when the steps set forth in Attachment 2 have been satisfactorily completed. Caltrans PQS are responsible for "screening" individual actions that are included within the classes of screened undertakings to determine whether the undertakings require further consideration or may be exempt from further review. Undertakings cannot be exempted if conditions must be imposed to ensure that potential historic properties would not be affected.

[2] These are projects for which the proposed activities do not fall under any of the classes of screened undertakings listed in PA Attachment 2, but for which no cultural resources were identified within the project limits.

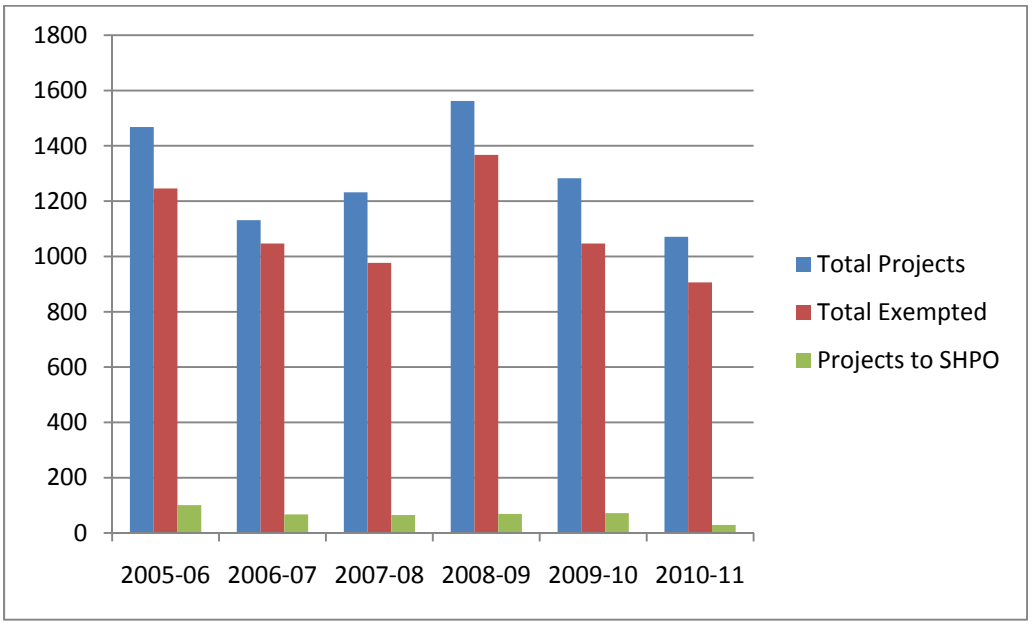
During this reporting period, the surge of American Recovery and Reinvestment Act (Recovery Act) projects continued into 2010. This affected District workload because Recovery Act projects had to be processed within a brief time frame in order to meet the federal funding deadlines. With few exceptions, the projects qualified as exempt from Section 106 review. Where feasible, District cultural resources staff worked with local agencies to identify projects in advance that had potential to affect historic properties, and therefore would require further Section 106 review. It would not have been possible to meet the funding deadlines for these projects without the PA.

Figure 1: Federal-Aid Highway Projects
2005-06 to 2010-11



District workload for processing Federal-Aid Highway projects remains steady. As discussed in the last PA Annual Report, Local Assistance projects continue to outnumber Caltrans projects due to the continued volume of Recovery Act projects processed during the two-year reporting period of this Biennial Report. The percentage of projects that qualify as exempt from Section 106 review has remained fairly consistent, averaging 85% over the life of the PA. The total number of projects that required the SHPO's review (Figure 2) also has remained fairly consistent at between 4% and 6% over the life of the PA.

Figure 2: Exempted Projects and Projects Sent to SHPO 2005-06 to 2010-11



Effect Findings

Of the 434 projects that were not exempted, 336 resulted in a "No Historic Properties Affected" finding. Under the PA, this finding requires notification to the SHPO when Caltrans has been in consultation regarding eligibility, or is kept in Caltrans' files when the HPSR concluded that no cultural resources requiring evaluation were present. Another 67 projects met the criteria for "No Adverse Effect with Standard Conditions."[3] This finding requires only that Caltrans provide adequate documentation for the SHPO's notification; the SHPO does not concur in such findings and there is no review, or "waiting" period involved.

The remaining 31 projects resulted in "No Adverse Effect *without* Standard Conditions" or "Adverse Effect" findings, and therefore required that the Districts consult with CSO and, subsequently, that CSO consult with the SHPO: 13 were "No Adverse Effect" while 18 had a finding of "Adverse Effect" (see Table 3). In all, projects that resulted in effect findings requiring consultation with CSO and the SHPO represent less than 1.5 percent of the 2,354 Federal-Aid Highway projects processed during this biennial reporting period.

[3] The Standard Conditions, described in PA stipulation X.B.2, are as follows: (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. Note an ESA designation is not considered "standard" when applied to a non-archaeological site.

Table 3: Effect Findings

Total Effect Findings	434
No Historic Properties Affected	336
No Adverse Effect with Standard Conditions	67
No Adverse Effect	13
Adverse Effect	18

EFFECTIVENESS OF THE PA

Estimated Time Savings

1. Projects exempt from SHPO review

The PA delegated most of the steps involved in the Section 106 process to Caltrans. PQS staff archaeologists and historians determine whether undertakings have potential to affect historic properties through a process the PA calls "screening." Projects that PQS determine do not have such potential may be exempted from further Section 106 review. The findings typically are documented in a memo along with any supporting documentation, such as project plans. Prior to the PA, all Federal-Aid Highway projects were subject to Section 106 consultation between FHWA and the SHPO. PQS measure the time savings of this PA provision by estimating the amount of time that would otherwise have been spent conducting Section 106 studies.

Some Districts track the estimated hours saved by exempting projects and provided the information to CSO for this biennial report. The estimated savings is based on an average of approximately 43 hours saved per project.

Despite the estimated time savings, project workload remains high. For the 2009-2011 biennial reporting period 1,971 projects (84%) qualified as exempt. Hence, the time savings might best be viewed as a measure of more efficient project delivery, in that the screening process has allowed Caltrans to move projects to completion more quickly than could be accomplished without the PA. The projects that were screened moved through the Section 106 compliance process promptly (in some cases with a 1-day turnaround), whereas without the PA there would have been a backlog of projects for the same time period. As previously noted, Caltrans could not have processed the volume of Recovery Act projects within the short timeframe of that program without this streamlining benefit of the PA.

2. Projects that require SHPO review

Table 5 below compares the agency review timeframes under the PA to those of 36 CFR Part 800, the regulations implementing Section 106. Since January 1, 2004, Caltrans has used the PA instead of 36 CFR Part 800 for most Federal-Aid Highway projects.[4] For a typical undertaking, consultation with the SHPO for the area of potential effect, identification effort and evaluation of cultural resources required a minimum of 90 days. Under the PA, the review time has been reduced to 30 days, resulting in a time savings of at least 60 days per project. For the 2009-2011

[4] The PA does not apply to projects that are located on or affecting tribal land; for projects on or affecting tribal land, Caltrans uses 36 CFR Part 800. Caltrans also has a programmatic agreement for seismic retrofit projects.

biennial reporting period only 131 Federal-Aid Highway projects out of 2,354 went to the SHPO for a 30-day review.

Table 4: Section 106 Review Timeframes

Action	PA Process	36 CFR Part 800 Process
Setting Area of Potential Effects (APE)	0	30 day review by SHPO
Adequacy of Identification/Survey effort	0	30 day review by SHPO
Evaluation of cultural resources (if any present)	30 day review by SHPO	30 day review by SHPO

3. Time Savings for effect findings

Section 106 requires that a federal agency take into account the effect of its undertakings on historic properties (archaeological sites, buildings, structures, or objects that are listed in or determined eligible for the National Register of Historic Places). Table 6 below compares the Section 106 timeframes for review of effect findings under the PA to those of 36 CFR Part 800. Under the PA, projects that Caltrans PQS determine result in a finding of "No Historic Properties Affected" are documented to Caltrans files (if no historic properties requiring evaluation are present) or are sent to the SHPO for notification purposes only, resulting in a time savings of 30 days per project. Similarly, "No Adverse Effect with Standard Conditions" findings are provided for the SHPO's notification only; the SHPO does not concur in the finding, thus there is no "review" period. These provisions of the PA result in an additional time savings of 30 days per project. In the 2009-2011 biennial reporting period 258 projects either did not have to be sent to SHPO for review or were sent to the SHPO for notification only, a savings of 30 days per project.

Table 5: Review Timeframes for Effect Findings

Action	PA Process	36 CFR Part 800 Process
Finding of No Historic Properties Affected	0	30 day review by SHPO
Finding of No Adverse Effect with Standard Conditions	0	30 day review by SHPO
Finding of No Adverse Effect without Standard Conditions	30 day review by SHPO	30 day review by SHPO
Adverse Effect	30 day review by SHPO	30 day review by SHPO

4. Properties that do not require evaluation

A. Properties exempt under Stipulation VIII.C.1 and Attachment 4 of the PA. Section 106 requires a reasonable level of effort to identify and evaluate historic properties. However, the PA recognizes that not all properties possess potential for historical significance. PQS and qualified consultants are entrusted with the responsibility of

determining whether cultural resources property types meet the terms of PA Attachment 4 and may therefore be exempted from Section 106 evaluation. PQS measure the time savings of this PA provision by roughly estimating the amount of time they or qualified consultants would have had to spend evaluating the properties.

- For the 2009-2011 biennial reporting period the reported time savings was 54,504 hours, however this figure is quite low as few districts track this information.

B. Special Consideration for Certain Archaeological Properties. PA Stipulation VIII.C.3 allows archaeological sites to be considered eligible for the National Register without conducting subsurface test excavations to determine their historic significance when qualified PQS determine that the site can be protected from all project effects by designating it an environmentally sensitive area (ESA). Prior to the 106 PA, *all* sites within an APE had to be evaluated for historic significance through testing. The time saved is approximately 3-12 months per site by not having to conduct test excavations.

In addition to the time savings benefit, this provision of the PA advances Caltrans' environmental stewardship of archaeological sites by providing incentives to preserve rather than excavate them whenever possible; reducing excavations and protecting sites from construction preserves the full range of their values as scientific data and as cultural heritage. Foregoing archaeological excavations where sites are considered eligible in accordance with the terms of the PA and protected by an ESA designation, has saved time, public monies, and heritage resources.

5. FHWA reviews and approvals

Prior to Caltrans' NEPA assignment, all Section 106 documents were subject to FHWA review in addition to SHPO review. The PA saved 30 to 60 days per project by delegating approval of APE maps from FHWA engineers to Caltrans PQS, and a minimum of 30 to 90 days in eliminating FHWA review of certain Section 106 reports. Caltrans continues to realize these time savings on FHWA projects that are exempt from the NEPA assignment, as the PA remains applicable.

POST REVIEW DISCOVERIES AND INADVERTENT EFFECTS

Antlers Bridge Discovery, District 2

District 2 had one post-review discovery on the Antlers Bridge Replacement Project in Shasta County during the reporting period. The inadvertent discovery of a buried cultural deposit resulted in a complex nine-month consultation process with the SHPO, the Shasta-Trinity National Forest, five Native American tribes and the ACHP dealing with issues involving ARPA, NAGPRA and 36 CFR 800.13.

The find took place on January 11, 2010, when Caltrans staff discovered the presence of a buried cultural deposit in one of the four test holes that were being installed for the bridge piers. Immediately upon its discovery the Caltrans archaeologist halted work in the area and notified the SHPO and CSO office and the USFS of the find as per 36 CFR 800.13 and PA Stipulation XV.B.

District 2 personnel informed all Native American tribes and personnel who had originally expressed an interest in the project of the find. These efforts led to several meetings at the

District 2 office with members of local Native American groups, the USFS, SHPO and CSO staff, as well as key Caltrans members of the Environmental, Construction and Project Management team. The end result of these discussions resulted in a plan to resolve the inadvertent effects that was acceptable to all parties of concern without affecting the construction schedule. Caltrans CSO informed the ACHP of the adverse effects and supplied them with copies of all relevant documents.

Through a nine-month-long consultation period with the USFS, Caltrans assisted in the NAGPRA consultation process prior to completing a Memorandum of Agreement (MOA) and eventually obtained an ARPA permit from the USFS. The inadvertent effects were resolved with completion of the MOA with SHPO, Caltrans, the USFS-Shasta-Trinity National Forest, and five Wintu tribes. The MOA outlined a Data Recovery Plan for future work (yet to be completed) in the area of the buried deposit, a treatment plan for the recovery of archaeological materials found within the test pile sediments, and a Discovery Plan for the remainder of project area. The recovery of archaeological materials from the test pile sediments has been completed and a report is in preparation. To date, the remainder of the work has yet to be completed due to the high lake levels, but it is anticipated to be conducted in the 2011-2012 construction season.

Somes Bar Landslide Emergency, District 1

On February 27, 2010, a landslide occurred in District 1 in Humboldt County on State Route 96 that completely closed the road, resulting in declaration of an emergency. The landslide and resulting clean up impacted properties significant to the Karuk Tribe.

The identified potential Historic Property has been variously identified as "the Golden Stair Steps" and "the beginning of the trail home"; the trail which the spirits of the deceased use to ascend to the Milky Way. This property is potentially eligible under Criterion A for its association with Karuk history. In addition, this property is a contributing element to the as yet formally evaluated Katamin Traditional Cultural Property (TCP) District. In brief, the Katamin TCP district incorporates Katamin as the Karuk 'center of the world', multiple dance places associated with World Renewal, First Salmon and other ceremonies. Multiple village locations and trails associated with both mundane and sacred activities are also part of the district. The landslide is within the viewshed of many of the potential contributing elements to the Katamin TCP District.

Caltrans consulted with the Karuk Tribe of California and reached agreement that the undertaking directly altered the 'trail' and potentially indirectly affected contributing elements of the potential Katamin TCP district through visual impacts. Six Rivers National Forest cultural staff agreed that Caltrans would assume the role of lead agency under Section 106.

Caltrans entered into an MOA on May 25, 2010 with the SHPO, with the Forest and Tribe as concurring parties. The MOA provided several mitigation measures, including Tribal monitoring of the work, botanical survey and revegetation, documentation of the historic property, and eventual closure and restoration of Ike’s Bar maintenance disposal site. Caltrans is currently working with the Forest and the Tribe to complete these mitigation requirements.

OBJECTION TO IMPLEMENTATION OF THE PA

In April 2010, the Los Angeles Conservancy (LAC) and the California Preservation Foundation (CPF) submitted objections pursuant to PA Section XVII.A.8 regarding the removal of the center median as a part of the Arroyo Seco Parkway Side Barrier, Median Barrier, and Lighting project. These organizations maintained that the Section 106 documentation Caltrans prepared did not identify the center median as a character defining feature of the Parkway and that the removal of the curb would cause an adverse effect to the resource. Caltrans had submitted a Finding of No Adverse Effect with Standard Conditions for this project to the SHPO and other interested parties in March 2008, which elicited no comment. As a result of the LAC's and CPF's objections, Caltrans immediately informed the ACHP and SHPO and asked them for comment. In May 2010 the SHPO recommended, even though the objections raised were not timely, that Caltrans try to preserve as much of the median as possible particularly the sections that had been date stamped during the Parkway's original construction. In June 2010 the ACHP agreed with the SHPO and urged Caltrans to be responsive to SHPO's recommendations. Caltrans took into account the comments from the SHPO and ACHP, and responded later that same month to the SHPO, ACHP, LAC, and CPF that while the contractor had been instructed to preserve, if possible, the date stamped portions of the median, this was probably not feasible due to the nature of the proposed safety work. Caltrans found that the PA had been carried out appropriately, and the matter was resolved.

There were no other reported ESA failures associated with PA actions during the reporting period, nor were there any foreclosures. Caltrans responded to these events appropriately and continues to develop improved processes for establishing and enforcing ESAs, taking historic properties into consideration, and responding to post-review discoveries. From Caltrans perspective, it is important to note that the outcome of the above events would have been no different without the PA, and in fact the PA streamlining provisions facilitated Caltrans' response in the two discovery situations permitting the projects to proceed. In summary, Caltrans PQS continue to implement the PA responsibly, while taking advantage of the PA's streamlining opportunities.

QUALITY ASSURANCE MEASURES

Under the PA, Caltrans PQS have taken on much of the responsibility for ensuring that effects to cultural resources are taken into account and that there is no loss in quality of work. As the results of this report indicate, this responsibility is being handled competently. To ensure that this level of quality continues, the following quality assurance measures occurred:

- In September 2009, CSO delivered a 12-hour PA training class for PQS in Sacramento.
- In February 2011, CSO sponsored a 4-day Statewide Functional Workshop for all cultural resource staff in Riverside. Other agencies, including the USFS, BLM, ACOE, BIA, OHP, FHWA and ACHP, participated in the workshop to better understand our PA and discuss approaches toward complying with Section 106.
- In March 2011, CSO delivered a-2 day Principles of Tribal Consultation class in Santa Rosa. The workshop provided practical guidance and tools for consulting with Native American tribes, groups, and individuals on identifying, evaluating, and treating historic properties on highway projects.

- In March 2011, CSO and District 4 personnel delivered a PA workshop at the Society for California Archaeology conference in Rohnert Park.
- CSO delivered webinars on the Preparation and Processing of Findings of Effect and MOAs and on the Use of Web-Based Guidance and Environmental Handbooks.
- To insure quality and consistency in evaluations of historic properties, two research contexts for historic archaeological properties were completed: Townsite properties and Mining properties.

Quality assurance measures also included:

- Quarterly meetings with the Districts, CSO and SHPO to discuss workload and cultural resource issues of statewide concern.
- Periodic "Section 106 Bulletins" sharing SHPO and CSO comments statewide.
- Bulletins and other guidance were posted on the CSO website.
- CSO review and approval of all "No Adverse Effect without Standard Conditions" and "Adverse Effect" reports, MOAs and MOA attachments.
- Peer reviews by CSO staff, as requested by Districts.

In addition to training and guidance for in house staff, Caltrans sponsored informational seminars about our PA with other agencies with whom we coordinate, including the Sacramento District of the Army Corps of Engineers in November 2010 and a meeting with the Sierra and Sequoia National Forests in May 2011.

CONCLUSION

It is Caltrans' finding that the PA continues to accomplish the goals of the signatory agencies, as evidenced by the results of this Biennial report. It has improved project delivery by delegating to Caltrans a substantial role in the process for Section 106 compliance, and achieved considerable project cost and time savings for Caltrans. It also has succeeded in reducing the SHPO staff workload in that fewer Caltrans projects require external review.

Caltrans finds that the PA remains an efficient and effective program alternative for taking into account effects of the Federal-Aid Highway Program on historic properties in California and for affording the ACHP a reasonable opportunity to comment on undertakings covered by the PA.