

EXHIBIT 2.8: Finding of No Adverse Effect Format and Content Guide

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EXHIBIT 2.8: Finding of No Adverse Effect Format and Content Guide

Introduction

In accordance with the Section 106 Programmatic Agreement (Section 106 PA¹) [Stipulation XVIII](#), the Finding of No Adverse Effects reports must be consistent with the documentation standards set forth in [36 CFR 800.11](#). For State-owned historical resources, the Finding of No Adverse Effects reports must be consistent with the Public Resources Code 5024 Memorandum of Understanding² ([5024 MOU](#)).

Findings of No Adverse Effects with Standard Conditions

There are two types of Findings of No Adverse Effects with Standard Conditions (FNAE-SC): those for which the standard condition is the establishment of an Environmentally Sensitive Area (FNAE-SC: ESA) that protects a historic property, and those for which the standard condition is the use of the Secretary of the Interior's Standards for the Treatment of Historic Properties and relevant guidance (FNAE-SC: SOIS) to avoid adverse effect. For State-owned historical resources there is a third type of standard condition for the transfer or relinquishment of State-owned historical resources that have been designated under a Certified Local Government (CLG) preservation ordinance (FNAE-SC: CLG Designation).

When Caltrans finds that one or more of the FNAE-SCs outlined in [Section 106 PA Stipulation X.B.1](#) and [5024 MOU Stipulation X.B.1](#) and [Attachment 5](#) are applicable, Caltrans districts submit the finding and supporting documentation to the Headquarters

FNAE-SC Tips:

- FNAE-SCs may be included in an HPSR/HRCR or a Supplemental HPSR/HRCR.
- The 15-day review period will **not** begin until CSO and FHWA as applicable, receives complete supporting documentation.
- Complete documentation for FNAE-SC: ESA is the ESA Action Plan **and** all of its attachments; see Exhibit 2.7.
- Complete documentation for FNAE-SC: SOIS is the SOIS Action Plan **and** all of its attachments; see Exhibit 7.1.
- FNAE-SCs are contingent on SHPO's concurrence on National Register eligibility.
- Section 106/PRC 5024 is complete when the CSO and FHWA as applicable do not object to the FNAE-SC: ESA, SOIS or CLG Designation within 15 days of receipt.

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 *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*, effective January 1, 2015.

Cultural Studies Office (CSO) for a 15-day review and approval. This finding may be accomplished by checking the appropriate box in the “HPSR/HRCR to CSO” section of the HPSR or Supplemental HPSR/HRCR form and for State-owned historical resources affected by federal undertakings in the Findings for State-owned Properties “Findings to CSO” section of the HPSR, or adding a statement to that effect in a narrative HPSR/HRCR or Supplemental HPSR/HRCR, and attaching, as appropriate:

1. FNAE-SC: ESA. An Environmentally Sensitive Area (ESA) Action Plan in accordance with [Section 106 PA/5024 MOU](#) Stipulation X.B.1a, [Exhibit 2.7](#), [Chapter 5](#) and [Chapter 2](#) Section 2.4.3 contain guidance and information for ESA Action Plans.
2. FNAE-SC: SOIS. Secretary of the Interior’s Standards for the Treatment of Historic Properties (SOIS) Action Plan in accordance with [Section 106 PA/5024 MOU](#) Stipulation X.B.1.b, [Exhibit 7.5](#) contain guidance and information for SOIS Action Plans.
3. FNAE-SC: CLG Designation: A copy of the CLG designation resolution or approval in accordance with 5024 MOU [Stipulation X.B.1.c](#) and [Attachment 5](#).

Notification of Finding of No Adverse Effect with Standard Conditions

When Caltrans finds that the FNAE-SCs outlined in [Section 106 PA/5024 MOU](#) Stipulation X.B.1 are applicable, the Caltrans district submits a hard copy of the finding and supporting documentation (ESA Action plan and attachments or SOIS Action Plan and attachments or CLG designation) to CSO for a 15-day review, concurrently provide documented notification of the finding to any consulting parties that have expressed views regarding potential effects to historic properties. For projects where Caltrans has not assumed FHWA’s responsibilities for environmental review and compliance, the Caltrans district concurrently submits the finding and supporting documentation to CSO and FHWA.

If CSO or FHWA does not object to the FNAE-SC: ESA or FNAE-SC: SOIS, or FNAE-SC: CLG Designation within 15 days of receipt, Section 106/PRC 5024 is complete, pursuant to [Section 106 PA/5024 MOU](#) Stipulation X.B.1.

Headquarters CSO is responsible for providing summary notifications to the SHPO of all NAE-SC findings on a quarterly basis in accordance with [Section 106 PA Stipulation XX.G.3](#) and [5024 MOU Stipulation XIX.E](#).

Headquarters CSO Review

Upon receipt of a FNAE-SC, Headquarters CSO will log in the finding and assign it to a PQS staff in the appropriate discipline for review. If the documentation is sufficient and CSO agrees with the finding, the CSO PQS staff doing the review will e-mail the Caltrans district of the finding and copy the CSO Section 106 Programmatic Agreement and Coordination Branch Chief (Section 106 Branch Chief) or the Built Environment Preservation Services Branch Chief (BEPS Chief), as appropriate. If the documentation is incomplete or the Standard Conditions have been inappropriately applied, the Section 106/BEPS Chief will respond to the Caltrans district either via e-mail or by mailing a memo.

The 15-day review period begins when Headquarters CSO has received complete FNAE-SC documentation.

If there are questions on the finding or if it has been inappropriately applied, the 15-day review period is suspended until the district provides the additional requested information. Headquarters CSO staff, however, will make every effort to work with district staff to resolve the questions or application of the Standard Conditions within 15 days.

Timing of Review

Depending on the timing of a project and when the supporting documentation for a FNAE-SC is complete, it is possible to transmit the finding in an HPSR/HRCR by completing the HPSR/HRCR to CSO and HPSR/HRCR to SHPO sections and simultaneously sending the HPSR/HRCR to SHPO for concurrence on National Register of Historic Places (NRHP) eligibility, or California Historical Landmark (CHL) eligibility for State-owned resources, and to CSO, or FHWA as applicable, for review of the FNAE-SC finding. Keep in mind that the FNAE-SC is contingent upon SHPO concurring that the properties subject to the FNAE-SC are eligible for inclusion in the NRHP and/or CSO approval that properties are considered NRHP eligible for purposes of the project only pursuant to the [Section 106 PA Stipulation VIII.C.4](#) or [5024 MOU Stipulation VIII.C.4](#) for State-owned cultural resources.

If SHPO previously concurred with NRHP eligibility and/or CSO previously approved properties that are considered eligible as described above, a Supplemental HPSR/HRCR may be prepared, completing only the relevant sections, attaching the ESA Action Plan, SOIS Action Plan, or CLG Designation as applicable, and transmitting the documentation to CSO/FHWA, as described above.

Effects Re-Assessment

If the undertaking will not be implemented as proposed relative to the historic properties, the Caltrans District PQS must determine whether to re-open consultation on effects, pursuant to [Section 106 PA/5024 MOU](#) Stipulation X and consistent with [36 CFR 800.5\(d\)\(1\)](#), or PRC 5024(f) or PRC 5024.5, as applicable.

State Projects

For compliance with CEQA, when a project also is a federal undertaking and Caltrans is the lead CEQA agency, complete the CEQA Considerations Section of the HPSR and refer to the appropriate FNAE-SC: ESA and/or FNAE-SC: SOIS attached documentation. Provide this documentation to the district generalist for the CEQA findings.

When a project or activity is *not* a federal undertaking, complete a Historical Resources Evaluation Report (HRCR), using a determination of no substantial change to CEQA historical resources or reduced to the level of less than significant impact through the establishment of ESAs or the application of the SOIS, and attach the ESA Action Plan or SOIS Action plan as appropriate.

Finding of No Adverse Effect without Standard Conditions

When it is possible to avoid adverse effects to historic properties by placing conditions on the project that are not standard conditions, as described above, or when consulting with Tribal Historic Preservation Officers (THPOs) that have assumed Section 106 responsibilities, it is still possible to have a Finding of No Adverse Effect without Standard Conditions (FNAE-No SC) either because the project design will result in an effect, but the effect is not adverse, or by placing conditions on the project to avoid adverse effect. The compliance process under the Section 106 PA however is slightly different in that after CSO review, the finding is forwarded to SHPO for review.

FNAE Tips:

- FNAE without Standard Conditions is a stand-alone document, and is first sent to CSO and FHWA as applicable, not to SHPO/THPO. For state-only projects, they can be combined in the HRCR.
- CSO, and FHWA as applicable, will begin reviewing when the finding with **complete** supporting documentation is received.
- CSO forwards the FNAE to SHPO/THPO and notifies FHWA.
- Approvals by CSO, and FHWA as applicable, are contingent on SHPO/THPO's concurrence on NRHP eligibility.
- Section 106/PRC 5024 is complete when SHPO/THPO concurs with the FNAE.

Notification of Finding of No Adverse Effect without Standard Conditions

When Caltrans proposes a finding of No Adverse Effect *other* than a finding of No Adverse Effect with Standard Conditions, the Caltrans District submits two hard copies of the proposed FNAE and its supporting documentation, and an electronic (Microsoft Word) copy of the transmittal letter to CSO for review. If CSO agrees with the finding, CSO will forward the FNAE to SHPO/THPO for review, as outlined in [Section 106 PA Stipulation X.B.2.](#)

For State-owned historical resources the notification process is the same for those resources that are on the Master List of Historical Resources (Master List; see [5024 MOU Stipulation IV.E](#) for a definition), and the process is outlined in [5024 MOU Stipulation X.B.2.c.](#)

For State-owned historical resources that are *not* on the Master List, CSO has 15 days to review the finding and it does not go to SHPO unless there is a disagreement that cannot be resolved between the district and CSO or there is public concern. If CSO does not object within 15 days PRC 5024 compliance is complete.

Headquarters CSO Review

Upon receipt of the FNAE, Headquarters CSO will log in the finding and assign it to a PQS staff to review. If the documentation is sufficient and CSO agrees with the finding, the Section 106 Chief will forward the FNAE and supporting documentation to SHPO/THPO for review and notify the district. For projects where Caltrans has not assumed FHWA's responsibilities for environmental review and compliance, CSO concurrently notifies FHWA of the finding.

Upon receipt of notification from the Section 106 Chief, the Caltrans district then concurrently provides documented notification of the FNAE to consulting parties that have expressed views regarding potential effects to historic properties and request that any comments be directed to CSO, or FHWA as appropriate, within 30 days of receipt of notification from the Caltrans district.

If the documentation is insufficient, the Section 106 Branch Chief will respond via email or mailing a memo on what is additional information or documentation is required. The CSO staff assigned to the project will work directly with District staff to revise the FNAE. When the FNAE is sufficient and final, the Section 106 Chief will forward the FNAE to SHPO following the process described above. The Caltrans district then concurrently provides documented notification of the FNAE to consulting parties as described above.

SHPO/THPO Review

SHPO/THPO has 30 calendar days within which to review the FNAE. Confirmation of SHPO/THPO's 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/THPO.

If neither SHPO/THPO nor any consulting party objects to the FNAE within 30 calendar days of receipt, Section 106 compliance for the undertaking is complete, as outlined in [Section 106 PA Stipulation X.B.2.b](#), and for State-owned historical resources, PRC 5024 compliance is completed as outlined in [5024 MOU Stipulation X.B.2.d](#).

CSO and SHPO (or FHWA where Caltrans has not assumed FHWA's responsibilities for environmental review and compliance, and SHPO) may agree to extend the 30-day time frame for SHPO's review. But, if the 30-day period expires *without* SHPO comment or agreement to extend the review period, Caltrans may move forward upon the District's notification to the SHPO via e-mail or other written communication. Disagreements or objections to a finding of no adverse effect will be addressed in accordance with [Section 106 PA Stipulation X.D](#) for federal undertakings and in accordance with [5024 MOU Stipulation X.F](#) for State-owned historical resources.

Effects Re-Assessment

If the undertaking/state-only project or activity will not be implemented as proposed relative to the historic properties, the Caltrans District PQS must determine whether to re-open consultation on effects, pursuant to Section 106 PA [Stipulation X](#) and consistent with [36 CFR 800.5\(d\)\(1\)](#), and for State-owned historical resources, pursuant to [5024 MOU Stipulation X](#).

FNAE Format and Content

Caltrans district PQS or a consultant prepares an FNAE document for CSO review according to the following outline:

Title Page

The title page identifies the project by:

- Name of project in a brief descriptive title, such as "Finding of No Adverse Effect for Curve Correction on Route 989 between Forestview Drive and Limekiln Road"
- County, route and post-miles

- E-FIS³ project number and phase (For Local Assistance projects, use the Federal-Aid project number.)

The page also includes

- Name, title, location and signature of the Caltrans District Branch Chief (DEBC) for whom the document was prepared. The DEBC's signature on the title page indicates approval and acceptance of the document
- Name, title and signature of the Caltrans Professionally Qualified Staff (PQS) or consultant PQS who prepared the document, along with the address for the PQS
- Name, title and signature of the Caltrans Professionally Qualified Staff (PQS) who reviews the document for approval, along with the address for the PQS
- Month and year FOE was prepared (appears at bottom of page) If a consultant PQS prepares the FOE, the project contract number should appear below the E-FIS project number (or Federal-Aid project number for Local Assistance projects)

Introduction

Summarize the project Section 106/5024 MOU compliance activities to date. Include the date the HPSR/HRCR was processed and briefly describe the historic properties and their NRHP status. Specify the properties for which there will be No Adverse Effect as a result of the project, and any for which a No Historic Properties Affected/No State-owned Historical Resources Affected finding is applicable.

For the undertaking as a whole, state that Caltrans, in applying the Criteria of Adverse Effect, proposes that an FNAE is appropriate and is seeking SHPO's concurrence in the finding, pursuant to 36 CFR 800.5(c) and [Section 106 PA Stipulation X.B.2](#). Similarly, for State-owned historical resources state at Caltrans, in applying the List of Adverse Effects proposes that an FNAE is appropriate and

FINDING OF NO ADVERSE EFFECT FORMAT

- Title page
- Introduction
- Description of Undertaking/Project/Activity
- Public Participation
- Description of Historic Properties/Historical Resources
- Application of the Criteria of Adverse Effect
- Conditions Proposed
- Conclusions
- Attachments
 - Maps
 - Correspondence
 - Other Exhibits

Don't forget an electronic word version of the draft transmittal letter to CSO, SHPO or THPO.

³ E-FIS stands for Enterprise Resource Planning Financial Infrastructure. Beginning in July, 2010, the former project Expenditure Authorization number became an E-FIS project number. This is a 10-digit number, followed by a phase number of one or more digits.

is seeking SHPO's concurrence in the finding (for state-owned historical resources on the Master List) and is notifying CSO of the finding (for state-owned historical resources not on the Master List) pursuant to [5024 MOU Stipulation X.B.2](#).

Description of the Undertaking, Project or Activity

- Identify the undertaking, project or activity (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

- Summarize efforts to involve the public in the Section 106 process as well as any comments received to date. For State-owned historical resources subject to the 5024 MOU, describe consultation with tribes and interested parties.
- Identify any additional consulting parties, such as other federal and state agencies, Native Americans, or local governments, and summarize consultation efforts and results to date.
- Describe the ongoing NEPA 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 process.

Description of Historic Properties

Provide a brief description of the steps taken to identify historic properties or State-owned historical resources, as applicable. Discuss any comments received from the public or consulting parties that aided in the identification process.

Describe each affected historic property, including

- Date of NRHP listing; date of Keeper determination of NRHP eligibility, stating that it was a Keeper determination of eligibility; date of SHPO concurrence with the 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 under which the property is listed or eligible, including a brief reason why and the level(s) and period(s) of significance.
- Brief NRHP boundary description

- Description and ranking of their essential physical features, also known as character-defining features (CDFs), see [Exhibit 7.1](#).
- Photographs of the historic properties, including a general contextual view(s) and views depicting CDFs that would be affected by the proposed project work.

For built-environment properties, while these descriptions can be in narrative format, it may be more efficient to use a Character-defining Features Summary Form (CDF Summary Form) for each affected historic property. To reduce text in this section of the FNAE-No SC, the form can be attached to the FNAE-No SC with reference made to the form(s) in this section of the plan instead of a narrative description. In addition, these forms also can be provided in advance to the project manager and project team for reference when developing treatments that would avoid or minimize impact.

CDF Summary Form templates are available on the Caltrans *Standard Environmental Reference Volume 2-Cultural Resources* ([SERv2](#)) website and their use is explained in [Exhibit 7.1](#).

Application of the Criteria of Adverse Effect

- Discuss the application of the Criteria of Adverse Effect for each historic property. State the specific criteria that apply and describe in detail why the effect is not adverse.
- Describe the physical effects of the project on each property, as well as any indirect effects, such as increased noise or introduction of visual elements out of character with the property.
- Provide sufficient detail to allow a reviewer not familiar with the project or the project area to understand the extent of any direct or indirect effects on each historic property (see [Exhibit 2.15](#) for additional guidance).

Similarly, apply the List of Adverse Effects to State-owned historical resources (see [5024 MOU Stipulation IV.D](#) for the list), and follow the process above.

Discussion of No Adverse Effect and Conditions Proposed

- Include a justification why the project as designed would result in no adverse effect (e.g., sliver takes of non-contributing elements that do not diminish the characteristics that make a property NRHP eligible). No Action Plan is required when conditions do not need to be imposed, but responsible parties need to be identified.
- Discuss in detail any conditions proposed to avoid adverse effect to each historic properties.

- Present separate sub-sections on engineering conditions (e.g., modifications to the undertaking) and conditions directly related to the property itself (e.g., establishing an ESA, replacement of historic materials in kind).
- If ESAs are proposed, an ESA Action Plan⁴ that discusses specific protection and enforcement measures for each property, as described in [Exhibit 2.7](#) is included as an attachment.
- If use of the SOIS is proposed, an SOIS Action⁵ Plan that discusses the measures, as described in [Exhibit 7.5](#), for each historic property is included as an attachment.
- If the transfer/relinquishment is for a State-owned historical resource that has been designated under a CLG preservation ordinance, provide the name of the CLG and a copy of the designation, as described in the [5024 MOU Stipulation Attachment 5](#).
- If conditions are imposed other than use of an ESA, the SOIS, or the CLG designation, include an FNAE Action Plan as an attachment that discusses those conditions; follow the Action Plan format in either the ESA or SOIS Action Plan exhibits 2.7 and 7.5, respectively.

Responsible Parties

Identify appropriate Caltrans staff, agency staff, consultants or others who are the responsible parties, as well as which aspects of the plan for which they are responsible. A clear chain of command should be established, with specific tasks and contact information identified for each responsible party (e.g., Caltrans PQS Principal Architectural Historian, Environmental Construction Liaison, Resident Engineer). Identify the parties by Position/Title to ensure continuity of accountability in the event of personnel change on a project. All parties must be aware of and acknowledge their responsibilities. See the sample [Action Plan Tables](#) in [Exhibit 2.7: ESA Action Plan](#) or [Exhibit 7.5 SOIS Action Plan](#)

Conclusions

Briefly summarize the contents of the document that resulted in the Finding of No Adverse Effect. If warranted, include a table that summarizes effects and conditions proposed for each historic property and alternative (see Table 1 below).

Table 1. Example Table for Finding of No Adverse Effect Document

Property	Effect Finding (Alt. 1)	Avoidance / Minimal Impact
CA-ABC-1234	Not Adverse - indirect potential for destruction	ESA – see ESA Action Plan
Jones House	Not Adverse – ROW take of non-contributing element	N/A

⁴ When the undertaking will occur on or affect lands held in trust by Indian tribes or the Section 106 PA otherwise does not apply, the FNAEs with Standard Conditions also do not apply. Establishment of ESAs, as described in the Section 106 PA Attachment 5 also may be used here. The review times, however are different.

⁵ Like the ESA Action Plan, use of the SOIS as described in the Section 106 PA Attachment 5 also may be used here.

Table 1. Example Table for Finding of No Adverse Effect Document

Property	Effect Finding (Alt. 1)	Avoidance / Minimal Impact
City Park	Not Adverse – ROW take of non-contributing element	N/A

Property	Effect Finding (Alt. 2)	Mitigation
CA-ABC-1235	Not Adverse – indirect potential for destruction	ESA – see ESA Action Plan
Jones House	Not Adverse – new soundwall	New soundwall is at the rear of the house within the ROW and the design for all soundwalls in the APE are compatible with the surrounding environment including the Jones House
City Park	Not Adverse – ROW take of non-contributing element	N/A

Attachments

Include the following attachments:

- Project Vicinity Map
- Project Location Map
- Project APE/PAL Map (detail location of the historic property, including the NRHP 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 government agency)
- Exhibits pertaining to the historic properties discussed (e.g., photographs, construction drawings, photo simulations)
- FNAE Action Plan Table (and/or ESA Action Plan for archaeological properties)
- Restrictions or conditions to ensure preservation such as a local agency resolution or protective covenants (for buildings and structures)

When Adverse Effects Cannot be Avoided

See [Exhibit 2.9](#) for guidance in preparing a Finding of Adverse Effect.