



Caltrans

Section 106 PA and PRC 5024 MOU

Renewal



What is Section 106?

Section 106 of the National Historic Preservation Act of 1966 as amended:

Requires all federal agencies to **take into account** the **effects** of their **undertakings** on **historic properties**.

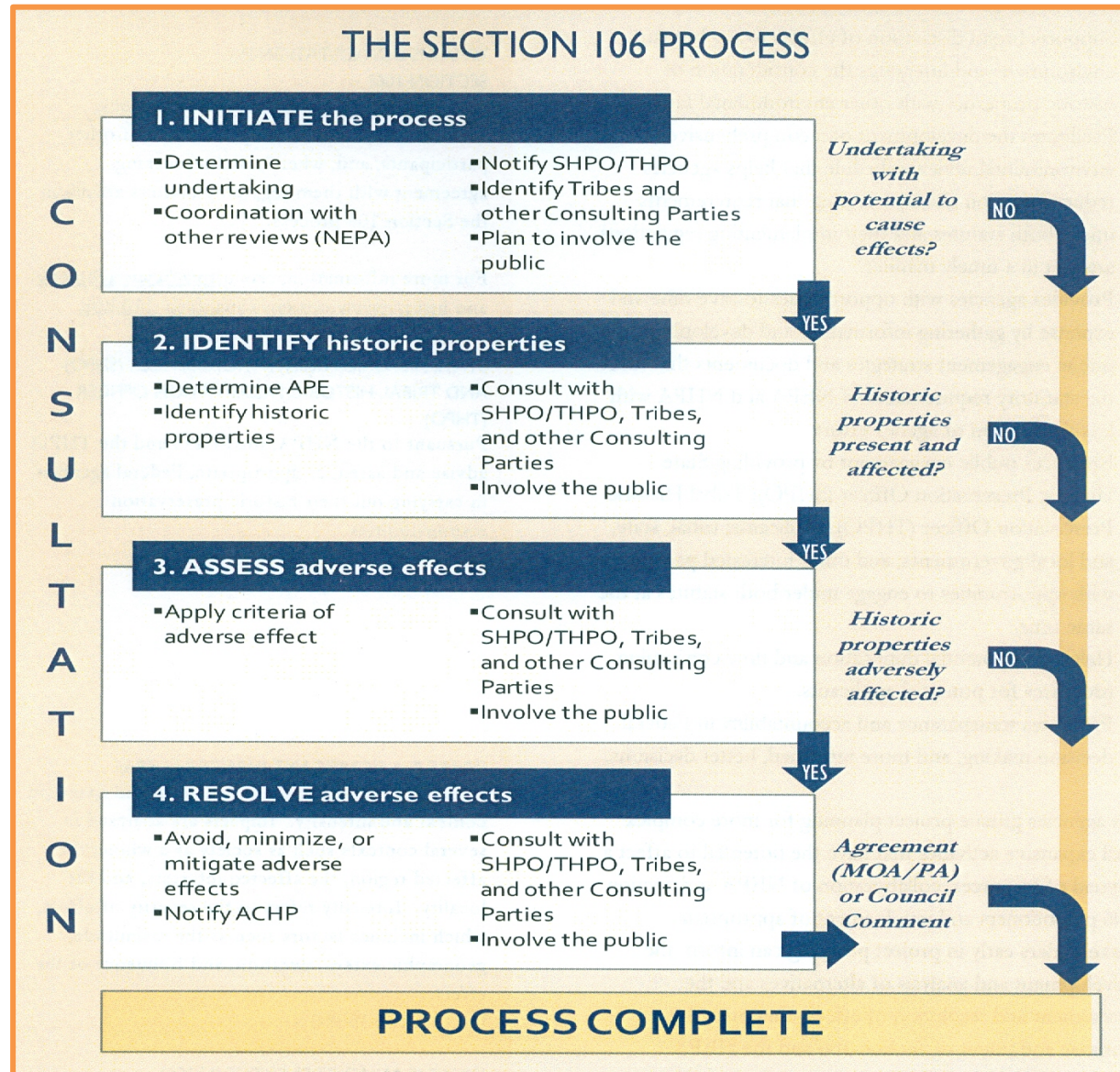
Applies to Projects:

- carried out with federal funding (most Caltrans Local Agency projects)
- requiring a federal license, permit, or approval
- actions directly carried out by, or on behalf of, a federal agency



Section 106 Regulations

Title 36
Code of Federal
Regulations
(CFR) Part 800



The Section 106 Programmatic Agreement (PA)

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**

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 approved state and locally-sponsored transportation projects (Local Assistance) that are administered by the California Department of Transportation (Caltrans); and

WHEREAS, Title 23 United States Code Section 327 (23 USC § 327) allows the United States Department of Transportation (USDOT) Secretary, acting through FHWA, to assign responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other federal environmental laws to a State Department of Transportation through a memorandum of understanding; and

WHEREAS, Title 23 United States Code Section 326 (23 USC § 326) allows the USDOT Secretary, acting through FHWA, to assign responsibilities for Categorical Exclusion (CE) determinations to a State Department of Transportation through a memorandum of understanding; and

WHEREAS, Caltrans and FHWA, entered into a NEPA Assignment Memorandum of Understanding and a CE Assignment Memorandum of Understanding (collectively MOUs) concerning the State of California's participation in the Program in which FHWA assigned and Caltrans assumed FHWA's responsibilities under NEPA and Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) and associated implementing regulations at 36 CFR Part 800; and

WHEREAS, pursuant to the MOUs, Caltrans is deemed to be a federal agency for all Federal-aid Highway projects it has assumed, and in that capacity Caltrans assigned the role of "agency official" to the Caltrans Division of Environmental Analysis (DEA) Chief for the purpose of compliance with 36 CFR Part 800, and to provide for effective compliance, the DEA Chief delegated day-to-day responsibilities to the Cultural Studies Office (CSO) Chief; and

WHEREAS, FHWA California Division Administrator retains responsibility for environmental review, consultation and decision-making for specific undertakings identified in the MOUs and therefore shall be the "agency official" for those specific undertakings; and

WHEREAS, the United States Army Corps of Engineers' (Corps) Sacramento, San Francisco, and Los Angeles Districts (collectively Corps Districts) may also have Section 106 of the NHPA responsibilities since it administers a permit program under the authority of Section 10 of the Rivers and Harbors Act of 1899, as amended (33 USC § 403), and Section 404 of the Clean Water Act of 1972 as amended (33 USC § 1344) (DA Permits) to which Federal-aid Highway projects in California may be subject and therefore has participated in this consultation and is an invited signatory to this Programmatic Agreement (Agreement); and

What is Public Resources Code (PRC) 5024?

- Requires state agencies to ensure preservation of state-owned historical resources under their jurisdictions.
- The PRC 5024 MOU is a program-level agreement between the SHPO and Caltrans that specifies how Caltrans will comply with PRC 5024 and Governor's Executive Order W-26-92 (EO W-26-92).

Key Facts about the PRC 5024 MOU

Mirrors Section 106 PA, but guides implementation of PRC 5024

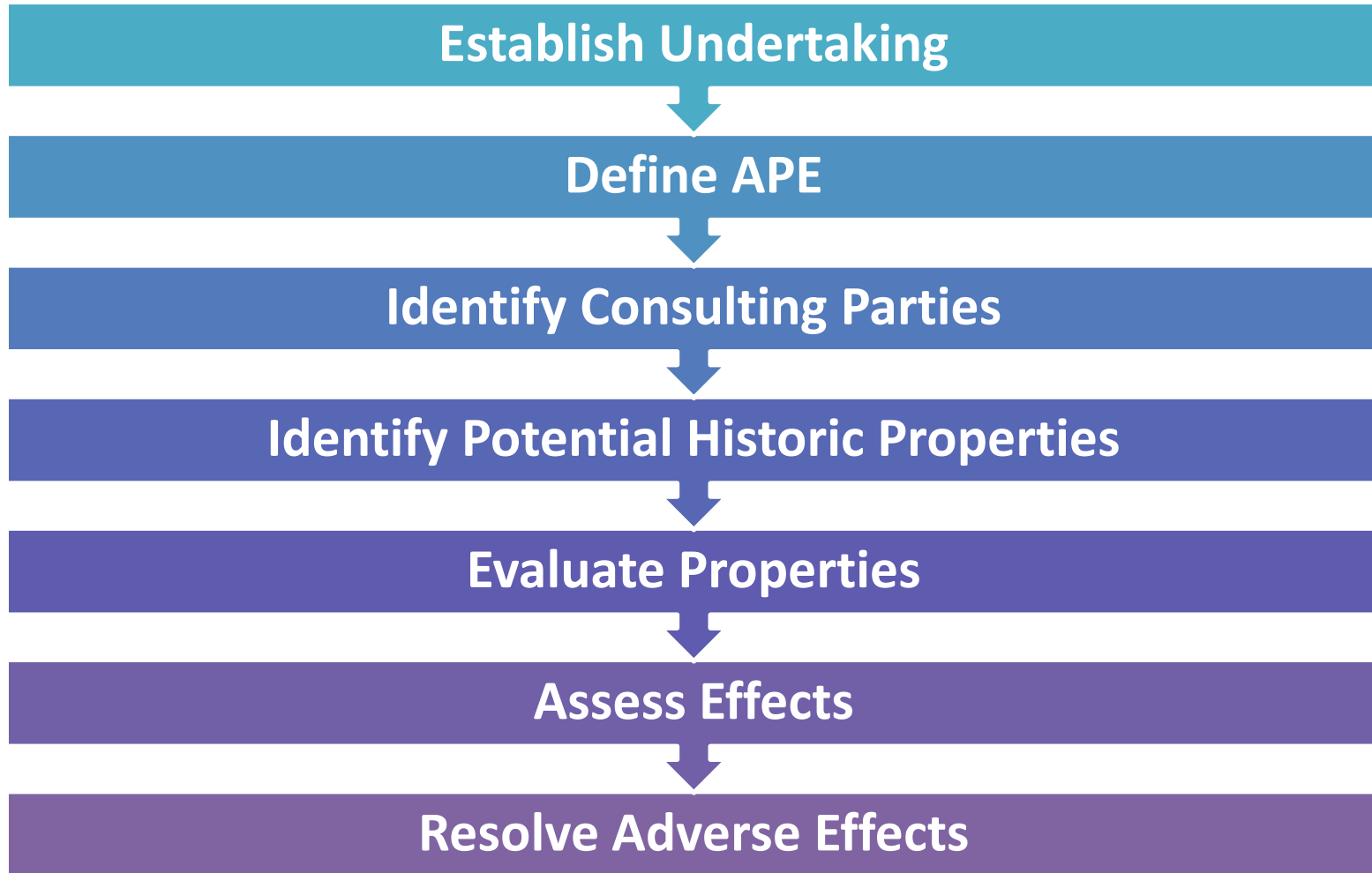
Applies to projects on Caltrans-owned facilities.

Cannot be used for project on Local Agency's systems.

Can be used for Local Agency oversight projects on Caltrans system

Has Standard Condition for parcel transfers to Local Agencies

PA and Standard Regulations: Similarities



Tribal Consultation Requirements

- *Consultation with Tribes:*
 - PA does **not** change Caltrans policies or practice.
 - FHWA retains responsibility for Government-to-Government consultation.
 - Consult early and often throughout the entire process.
 - Consultation is respectful of tribal sovereignty.

Why the PA is important to project delivery

PA provides significant time and cost efficiencies:

- PQS conduct many tasks and approvals otherwise required of SHPO or FHWA
- Properties exempt from evaluation
- Screened undertakings
- NAEs with Standard Conditions

Professionally Qualified Staff (PQS)

Responsible for
ensuring 106 PA is
Implemented
appropriately

Only **Caltrans**
Staff can be PQS

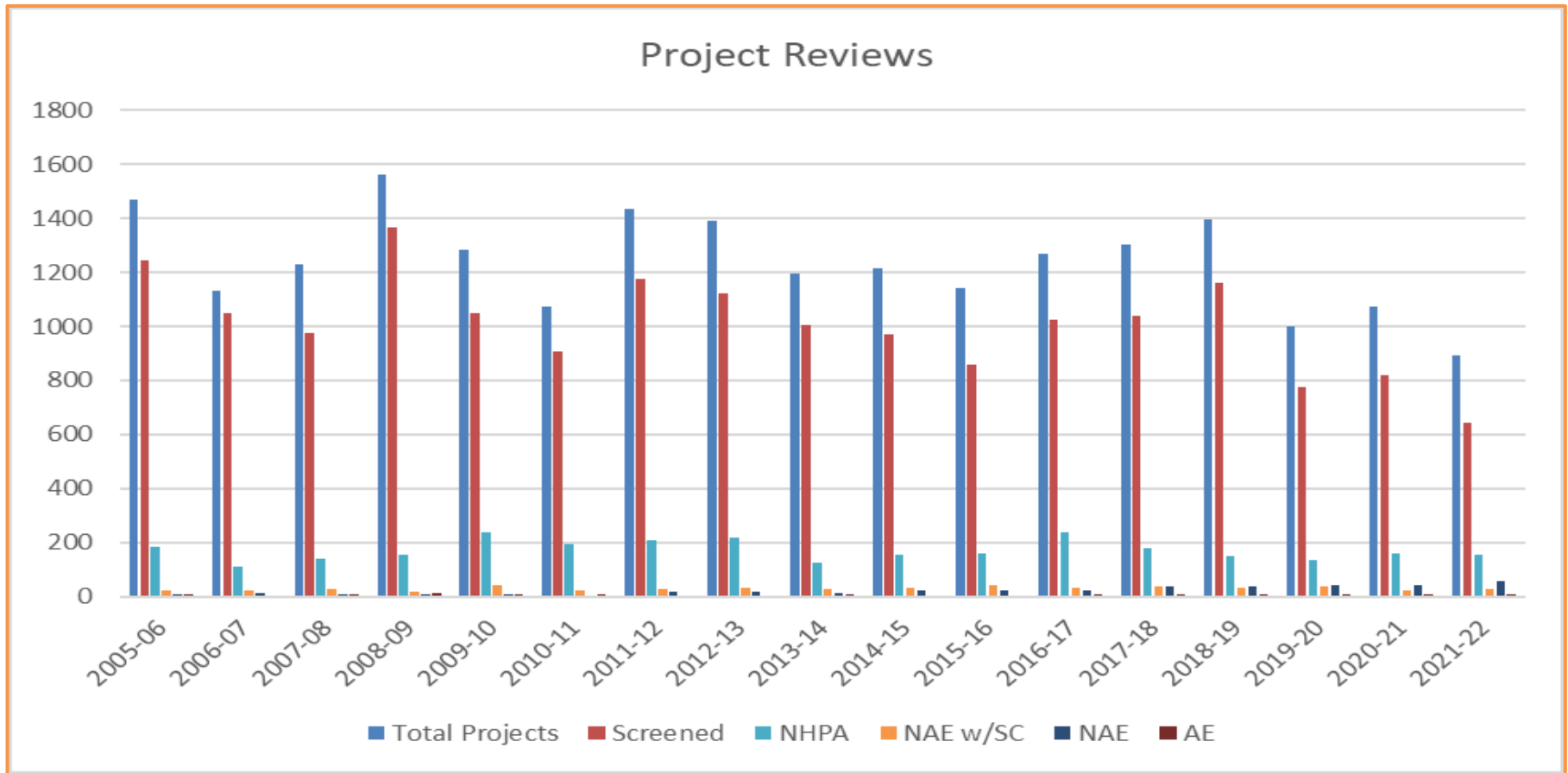
PQS must be
certified and
trained by HQ

PQS must review
and approve all
consultant-
prepared work

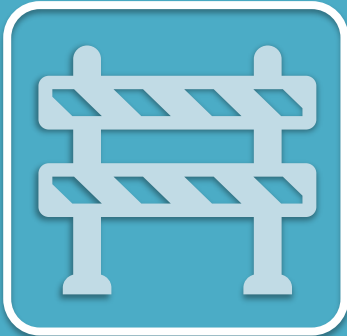


Properties Exempt from Evaluation

Screened Undertakings and Total Findings



No Adverse Effect with Standard Conditions



NAE w/ Standard Conditions- Environmentally Sensitive Area (ESA)

- When a project will have no effect to historic properties because some or all can be protected from any effects through the establishment of an ESA



NAE w/ Standard Conditions- Secretary of the Interior Standards (SOIS)

- When a project working on a built-environment historic property will adhere to the applicable SOIS

Proposed Changes to the PA



New tribal consultation appendix that defines local agency and Caltrans responsibilities and procedures



New guidance for developing Area of Potential Effects



New Standard Condition for Vegetation Management Projects



Ability to use PA within exterior boundaries of tribal land with their written permission



New tribal consultation appendix with Local Agency protocols

WE WANT
YOUR
INPUT!

- Caltrans draft Second Amended Section 106 PA and 5024 MOU available at <https://dot.ca.gov/programs/environmental-analysis/cultural-studies/section-106-pa-prc-5024-mou-renewal>
 - (Link anticipated to be active March 13, 2023)
- Provide comments or suggestions by email to pa-mou-renewal@dot.ca.gov
- Accepting comments through May 1, 2023.