

Section 106 Programmatic Agreement Renewal Fact Sheet for Tribal Governments

What is the Section 106 PA?

The [Section 106 Programmatic Agreement](#)¹ (Section 106 PA) is a formal, program-level agreement, among the Federal Highway Administration (FHWA), the Advisory Council on Historic Preservation (ACHP), the California State Historic Preservation Officer (SHPO), and the California Department of Transportation (Caltrans), that specifies how Caltrans will comply with the [National Historic Preservation Act](#) for its Federal Aid transportation projects. The United States Army Corps of Engineers (Corps) has responsibilities for issuing permits for some Federal-Aid Highway projects and is therefore an invited signatory party to the Section 106 PA.

Why is it important for tribes to be familiar with the Section 106 PA?

Caltrans' cultural resources investigations are largely guided by the Section 106 PA for compliance with Section 106 of the National Historic Preservation Act. Under the Section 106 PA Caltrans has been delegated authority to act as the [Federal Agency Official](#) for the purpose of compliance with Section 106 and is responsible for all Section 106 consultation with tribal governments about potential effects to significant cultural resources for its transportation projects. FHWA and the Corps remain legally responsible for federal diplomatic-level consultations with Indian tribes and will honor the request of any tribe for direct-government-to-government consultation.

Why is the Section 106 PA being renewed?

The Section 106 PA stipulates that the Agreement shall remain in effect for a period of ten (10) years after the date it takes effect, unless otherwise terminated or extended for an additional term, with or without revisions. The signatories have determined that the current Section 106 PA should be extended for another term *with amendments*.

What is the schedule for the revisions to the current Section 106 PA?

The duration of the current PA is from January 1, 2014, through December 31, 2023. Throughout 2023, Indian tribes with ancestral lands in California, Tribal Historic Preservation Officers, non-federally-recognized tribes as identified by the California Native American Heritage Commission (NAHC), and others who requested or who Caltrans has identified to be interested parties, are invited to review and comment on the draft second-amended Section 106 PA. All comments received will be taken into account in the revisions and execution of the final document.

¹ Formally titled the *Programmatic Agreement for compliance with Section 106 of the National Historic Preservation Act for the Administration of the Federal-aid Highway Program in California*.

How can tribes learn more about the Section 106 PA and provide input to the revisions to address tribal concerns and interests?

The Draft Second-Amended Section 106 PA is available on [Caltrans' Section 106 PA/5024 MOU Renewal webpage](#). Tribal engagement and consultation requirements are included in nearly all stipulations of the Section 106 PA for all phases of the cultural resources investigation process. *Stipulation IV and Appendix 8* of the draft second amended PA, in particular, detail the broader responsibilities and expectations for Caltrans and the other Section 106 PA signatories regarding consultation with Native American Tribes.

Caltrans will be holding tribal informational and listening sessions throughout 2023 to discuss the Section 106 PA revisions. All California Native American Tribes will be invited and notified in advance when these session dates are scheduled. The Caltrans Cultural Studies Office is also available to meet with tribes, as requested, to discuss revisions to the agreement. For meeting inquiries, please contact David Price, Caltrans Section 106 Coordinator, at david.price@dot.ca.gov and/or Statewide Native American Coordinator, Sarah Allred, at sarah.allred@dot.ca.gov.

Key Facts: Section 106 PA

- The Section 106 PA delegates the Section 106 compliance responsibilities to Caltrans, including responsibilities for initiating and conducting Section 106 consultation with Native American Tribes, though, as stated above, it does not delegate FWHAs' government-to-government consultation responsibilities.
- Any California Native American Tribe may elect to become a party to the Section 106 PA.
- The Section 106 PA does not apply to tribal lands, as defined in 36 CFR Part 800.16(x), unless the Indian tribe with jurisdiction over the affected tribal land has elected to be a party to the PA or provides express written approval to use the PA for a specific undertaking.
- The Section 106 PA does not negate or supersede any agreements between Caltrans and an Indian tribe in effect at the time the PA is executed.
- The Section 106 PA does not change the role of Indian tribes in the Section 106 process nor does it change the role of Native American individuals, organizations, or non-federally recognized tribes as participants in the Section 106 process.
- The Section 106 PA enables Caltrans to omit formal archaeological test excavations for archaeological sites that can be protected from all project impacts, thus reducing unnecessary excavation of cultural sites.
- Caltrans' Standard Environmental Reference, Volume 2 (Chapters 1 – 6) sets forth Caltrans guidance and procedures for compliance with all federal and state historic preservation laws and is an excellent go-to resources for learning more about the department's cultural studies process and tribal consultation responsibilities.