



Environmental Handbook

Archeological Sites and Cemeteries

This handbook outlines the process steps necessary to comply with the National Historic Preservation Act (NHPA), the Antiquities Code of Texas, and the Health and Safety Code.

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1.0 Introduction

This environmental handbook outlines the process steps necessary to comply with the National Historic Preservation Act (NHPA), the Antiquities Code of Texas, and the Health and Safety Code. These laws require consideration of potential project effects on archeological sites and cemeteries. Archeological sites and cemeteries may include – but are not limited to – prehistoric camps and villages; prehistoric and historic cemeteries; isolated burials; shipwrecks; and historic farmsteads. project sponsors can use the chapter to identify what compliance obligations may be triggered by their project, in order to scope them appropriately. Anyone with responsibility for developing compliance documentation can use the chapter to identify the specific requirements to meet these obligations.

1.1 TxDOT Policy

It is TxDOT's policy to meet its compliance obligations regarding potential project effects on archeological sites and cemeteries by:

- Following the procedures in the First Amended [Programmatic Agreement](#) among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings (PA-TU) for FHWA undertakings, and
- Following the [Memorandum of Understanding](#) (MOU) with the Texas Historical Commission for projects that occur on nonfederal public lands in the State of Texas.

1.2 Responsible Party

The project sponsor has responsibility for documenting project compliance with the NHPA, the Antiquities Code of Texas, and the Health and Safety Code, as applicable. TxDOT's role varies depending on whether or not the project has a local government sponsor. Figure 1 summarizes the roles and responsibilities of local government project sponsors and TxDOT under various circumstances.

- For projects that are not FHWA undertakings, a local government project sponsor can coordinate directly with the Texas Historical Commission and other appropriate agencies.
- For projects that are FHWA undertakings, a local government project sponsor can oversee technical studies but must coordinate that work through TxDOT's Environmental Affairs Division.

The department delegate (as defined in 43 TAC 2.8) – working with the project sponsor – oversees investigations and coordination to satisfy compliance requirements.

- For projects that are not FHWA undertakings, the local government project sponsor can undertake investigations and coordination without involvement of TxDOT's Environmental Affairs Division.
- For projects that are FHWA undertakings, TxDOT's Environmental Affairs Division has responsibility for coordination with all appropriate parties, including the Texas State Historic Preservation Officer/Texas Historical Commission and federally-recognized tribes, per the terms of the PA-TU.

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Figure 1: Roles and responsibilities for local government project sponsors

Highway Project	Federal Involvement	Lead Federal Agency	Local Government Responsibilities	TxDOT Responsibilities
Yes	Yes	FHWA (FHWA funding or approval required)	<ul style="list-style-type: none"> • Develops scope and schedule for compliance activities in coordination with TxDOT • Performs studies 	<ul style="list-style-type: none"> • Performs required coordination and consultation for project, using technical studies produced by Local Government • Provides documentation to Local Government for administrative record
Yes	Yes	Other (No FHWA funding/approval)	Local government performs all studies and coordination, following Federal Agency procedures	Receives copies of documentation of completed compliance activities for administrative record
Yes	No	N/A	Local Government performs all studies and coordination	Receives copies of documentation of completed compliance activities for administrative record
No	Yes	FHWA (funding or approval required)	Local Government performs studies per the terms of its AFA	Performs required coordination and consultation for project, using technical studies produced by Local Government
No	Yes	Other	Local Government performs all studies and coordination, following Federal Agency procedures	<ul style="list-style-type: none"> • No responsibility for many project types (e.g. utility installation unassociated with highway improvement) • May coordinate with THC/TSHPO for FAA, FTA, and rail projects
No	No	N/A	Local Government performs all studies and coordination	No responsibility for many project types (e.g. utility installation unassociated with highway improvement)

1.3 Applicable Project Types

All highway projects require some level of consideration of project effects on archeological sites and cemeteries, if only to establish that they do not require individual review or coordination.

Many projects are sufficiently minor that, per the terms of the PA-TU and MOU, no additional work or coordination is required. Some of these minor projects require no additional documentation.

For all other projects, some type of review and coordination is required.

1.4 Critical Sequencing

The following key deadlines should be considered during project planning.

Review and coordination of potential project effects in compliance with the NHPA and the Antiquities Code must be completed prior to project approval. The following considerations will further affect the scheduling of project work.

- If a draft environmental document (other than a DEIS) is being prepared for review, work and coordination should be completed in sufficient time so the results can be incorporated into that document.
- If an EIS is being prepared for a project, review and coordination may be done in stages. For state projects, however, such arrangements should be documented in the project scope.
 - A. Prior to submission of the DEIS, some form of investigation must be completed. Fieldwork is not required, but the investigation must address all alternatives to an equal extent. This investigation must be coordinated with appropriate parties.
 - B. A comprehensive investigation of the preferred alternative and coordination of such a study must be completed in sufficient time to be incorporated into the FEIS.

In documented cases where access to private property for conduct of required fieldwork has been denied, review and coordination in compliance with the NHPA and the Antiquities Code must be completed prior to construction.

Mitigation of project effects in compliance with the NHPA and the Antiquities Code must be undertaken after project approval and, usually, prior to construction.

Compliance with Health and Safety Code requirements must be completed prior to construction within the boundaries of a cemetery.

1.5 Helpful Suggestions

In order to initiate work and coordination on a project, TxDOT's Environmental Affairs Division needs a project description and location information of sufficient detail to identify the horizontal and vertical dimensions of the project.

In order to complete work and coordination on a project, TxDOT's Environmental Affairs Division needs a sufficiently detailed project description and/or project layouts to define the project's area of potential effects (APE).

The APE includes:

- Project limits,
- The width of existing right of way,
- The location and dimensions of any new right of way,
- The location and dimensions of any easements (permanent or temporary),
- The location and dimensions of any other project-specific location specified by the project sponsor, and
- The depth of impacts.

2.0 Regulatory Overview

2.1 National Historic Preservation Act

National Historic Preservation Act is codified at [16 USC 470](#).

Section 106 requires federal agencies to consider the effects of their undertakings on historic properties.

This requirement is procedural, and [36 CFR 800](#) provides the implementing regulations. For FHWA undertakings, the [PA-TU](#) provides the procedures to be followed.

There are four paths to compliance:

- The project does not require review or consultation due to its minor scope. In the regulatory language, such projects are determined to have no potential to cause effects to historic properties.
- The project is found to have no effect on archeological historic properties because review and consultation identified no such properties within the project's area of potential effects. This finding may be reached under two different circumstances:
 - A. In some cases, investigation of the area of potential effects finds no sites or cemeteries, or
 - B. In other cases, investigation finds such sites but those sites do not have characteristics that make them eligible for inclusion in the National Register of Historic Places.
- The project will have no adverse effect on archeological historic properties. Review and consultation identified one or more historic properties within the project's area of potential effects, but the project's effects on such properties were determined to not be adverse.
- The project will have an adverse effect on archeological historic properties, as determined from review and consultation. The adverse effects are resolved in consultation with appropriate parties.

Definitions

Area of potential effects ([36 CFR 800.16\(d\)](#)) means the geographic area or areas within which an undertaking may cause alterations in the character or use of historic properties, if any such properties exist.

Effect ([36 CFR 800.16\(i\)](#)) means alteration to the characteristics of a historic property that qualify it for inclusion in or eligibility for the National Register.

An **FHWA undertaking** is any project for which FHWA is providing funding or any project which requires some kind of FHWA approval (e.g., an interstate access agreement).

Historic properties ([36 CFR 800.16\(l\)\(1\)](#)) means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior.

2.2 The Antiquities Code of Texas

The Antiquities Code of Texas is codified at Natural Resources Code, Title 9, Chapter 191.

The Antiquities Code requires notification of the Texas Historical Commission (THC) prior to breaking ground at a project location on state or local public land, so the THC may consider the potential effects of the project on archeological sites. The THC will then determine what level of investigation is appropriate to consider and address these effects.

The requirement is procedural, and the rules for implementing the Antiquities Code can be found in Title 13 Texas Administrative Code (TAC) Part 2 Chapter 26. Within these rules at 13 TAC 26.25, TxDOT has a [memorandum of understanding](#) (MOU) with the THC for Antiquities Code compliance. Among other things, the MOU standardizes jargon, so findings are discussed using the language employed for projects that require compliance with the NHPA.

There are four paths to compliance:

- The project does not require review or coordination due to its minor scope. In the regulatory language, such projects are determined to have no potential to cause effects to historic properties.
- The project is found to have no effect on archeological historic properties because project review identified no such properties within the project's area of potential effects. This finding may be reached under two different circumstances:
 - A. In some cases, investigation of the area of potential effects finds no sites or cemeteries, or
 - B. In other cases, investigation finds such sites but those sites do not have characteristics that warrant formal designation of the sites as State Antiquities Landmarks.
- The project will have no adverse effect on archeological historic properties. Review and coordination identified one or more historic properties within the project's area of potential effects, but the project's effects on such properties were determined to not be adverse.
- The project will have an adverse effect on archeological historic properties, as determined from review and coordination. The adverse effects are resolved in coordination with the THC.

Definitions

Area of potential effects means the three-dimensional space within which an undertaking may cause alterations in the character or use of historic properties, if any such properties exist.

Effect means alteration to the characteristics of a historic property that qualify it for formal designation as a State Archeological Landmark.

Historic properties means any prehistoric or historic district, site, building, structure, or object warranting formal designation as a State Antiquities Landmark or formally designated as a State Antiquities Landmark.

2.3 Relevant Provisions of the Health and Safety Code

Relevant provisions of the Health and Safety Code are codified at Health and Safety, Title 1, Section 711.

The Health and Safety Code prohibits the use of cemetery property for non-cemetery purposes.

This requirement is substantive. Procedures for the treatment of previously-unknown or abandoned cemeteries occur at [13 TAC 22](#). Any location with human burials (including both prehistoric and historic burials) or property that has been formally dedicated as a cemetery in deed records must be de-dedicated and any burials must be removed prior to use of that location for non-cemetery purposes.

There are two paths to compliance:

- The project can be redesigned to avoid using cemetery property.
- Burials, if any, have to be relocated to a perpetual-care cemetery and the area to be used for non-cemetery purposes must be de-dedicated. Depending on the nature of the cemetery, these efforts may require extensive local outreach, coordination, and consultation with various parties.

Definitions

A cemetery is any place where human burials occur and need not be formally dedicated.

An abandoned cemetery is a non-perpetual care cemetery that is not under the care of a cemetery organization.

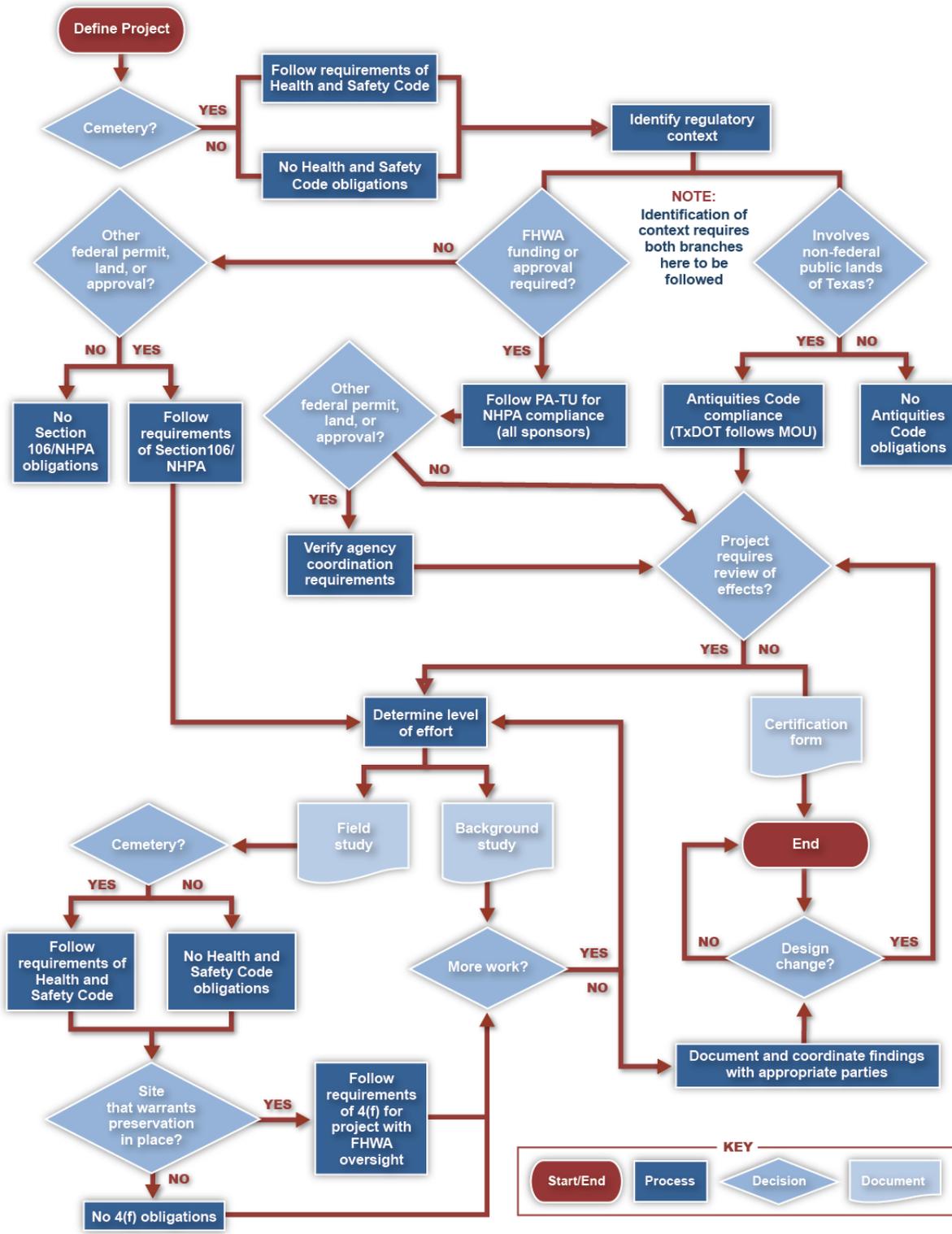
A perpetual care cemetery has a perpetual care trust fund established for its benefit.

An unknown cemetery is a non-perpetual care cemetery that is not marked by obvious cemetery elements and is not recorded in deed records.

Dedication means that human burials are present or that the area was formally identified as a cemetery in deed records.

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Figure 2: Project evaluation flowchart for archeological studies



3.0 Procedural Requirements

The procedural requirements outlined below were developed and implemented through formal agreements by TxDOT to streamline documentation and compliance with the National Historic Preservation Act (NHPA), Antiquities Code of Texas, and Health and Safety Code. Figure 2 shows the complete project evaluation process; this figure provides an overview of this process. For more specific guidance on initiating work, Figure 3 details the process of determining the initial level of effort required for evaluating potential project effects.

3.1 National Historic Preservation Act Requirements

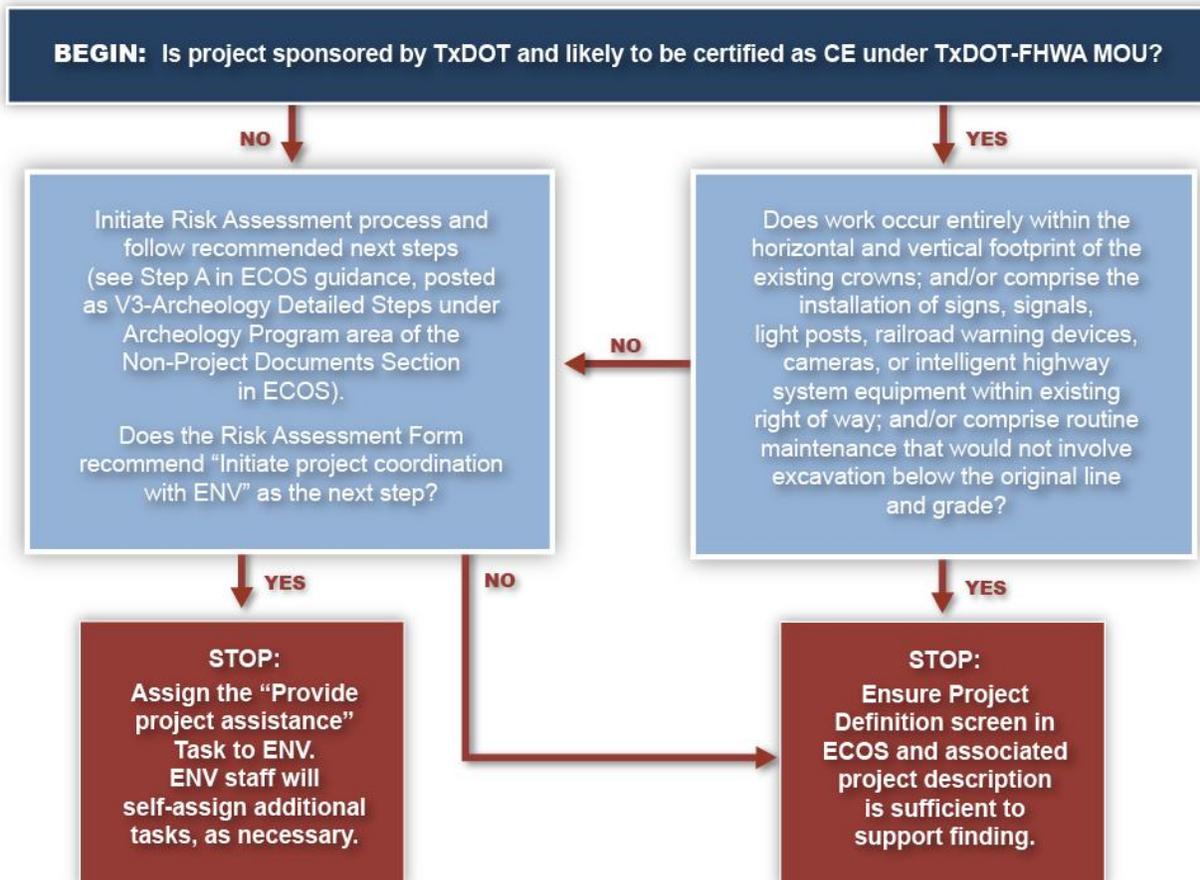
For projects that are FHWA undertakings, TxDOT has developed programmatic agreements that limit review to certain project types and streamline compliance for projects that do require review. Projects must comply with the terms of the programmatic agreements, regardless of whether TxDOT or a local government serves as the project sponsor. For all FHWA undertakings, TxDOT's Environmental Affairs Division initiates and conducts required consultation for the project (see also Figure 1). The project sponsor determines if the project is a type that requires review and consultation.

- The [PA-TU](#) contains a list of project elements (in Appendix 3, PA-TU) for which no project-specific review or consultation is required.
- If a project entails only the list's elements, the project does not require review or consultation.
- In some cases, projects conforming to the list of elements on Appendix 3 in the PA-TU require no additional documentation. Such a project requires no additional documentation if:
 - A. The project is sponsored by TxDOT and is likely to be certified as a Categorical Exclusion under the TxDOT-FHWA MOU; and
 - B. The work occurs entirely within the horizontal and vertical footprint of the existing crowns; and/or comprises the installation of signs, signals, light posts, railroad warning devices, cameras, or intelligent highway system equipment within existing right of way; and/or comprises routine maintenance that would not involve excavation below the original line and grade.
- For other projects conforming to the list of acceptable project elements in Appendix 3 of the PA-TU, the project sponsor should complete the Risk Assessment form in ECOS to verify that use of the list is appropriate. Based on the information input to the form, the form will determine whether or not additional review and coordination are necessary.
- All projects with elements not on the list require review and consultation.

When review and coordination are required, the project sponsor oversees a reasonable and good faith effort to investigate the project's area of potential effects for historic properties.

- The investigation may take the form of a background study or field investigation. For TxDOT-sponsored projects, TxDOT's Environmental Affairs Division would review or perform these studies. **In order to conduct this work, the project sponsor must provide professional archeologists with the information described in Section 1.5, Helpful Suggestions.**
- The nature of the investigation depends on the scale of potential project impacts and the potential of the project setting to contain historic properties.

Figure 3: Initial project evaluation flowchart



TxDOT’s Environmental Affairs Division conducts consultation with appropriate parties, including federally-recognized tribes, the Texas State Historic Preservation Officer, local governments with jurisdiction over the project area, and other parties, to determine if the project will have an adverse effect on any historic properties.

Prior consultation has identified the areas of interest for federally-recognized tribes. TxDOT conducts consultation with federally-recognized tribes for projects within their areas of interest.

Some federally-recognized tribes have programmatic agreements with FHWA and TxDOT that limit consultation to the following cases:

- Major projects on new location.
- Projects with Native American sites.

All other federally-recognized tribes must be consulted on all projects within their area of interest.

Most projects do not require consultation with the Texas State Historic Preservation Office.

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- If investigation of the project APE indicates that the project will not have an adverse effect on historic properties, the PA-TU specifies that consultation with the Texas State Historic Preservation Office is not required.
- If investigation of the project APE indicates that the project may have an adverse effect on historic properties, the PA-TU specifies that consultation with the Texas State Historic Preservation Office is required.

If review and consultation results in a determination that the project will have an adverse effect on a historic property, the project sponsor and TxDOT's Environmental Affairs Division develop plans to resolve the adverse effect.

- The plans can take the form of avoidance or some type of mitigation.
- TxDOT's Environmental Affairs Division consults with appropriate parties during the development of this plan.

For projects where another federal agency serves as a lead federal agency, the project sponsor should follow the direction of that federal agency for compliance with Section 106 responsibilities.

3.2 Antiquities Code of Texas Requirements

In cases where the project will also be under the jurisdiction of the NHPA, the work and coordination done for NHPA compliance will also typically satisfy Antiquities Code requirements.

For projects where TxDOT serves as project sponsor, TxDOT has developed an [MOU](#) with THC that limits review to certain project types and streamlines compliance for projects that do require review.

The project sponsor determines if the project requires review and consultation.

- The MOU contains a list of project elements for which no project-specific review or coordination is required.
- If a project entails only those elements on the list, the project does not require review or coordination. The project sponsor should complete the Risk Assessment form in ECOS to verify that use of the list is appropriate. Based on the information input to the form, the form will determine whether or not additional review and coordination are necessary.
- All projects with elements not on the list require review and coordination.

For TxDOT projects that require review and coordination, ENV performs a reasonable and good faith effort to investigate the project's APE for historic properties. **In order to conduct this work, the project sponsor must provide the information described in Section 1.5, Helpful Suggestions.**

The nature of the investigation depends on the scale of potential project impacts and the potential of the project setting to contain historic properties.

The investigation may take the form of a background study or field investigation.

Any field investigations must be performed under a permit issued by THC, and TxDOT's Environmental Affairs Division coordinates the permit request with THC.

TxDOT's Environmental Affairs Division coordinates findings with the THC, as required under the MOU.

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- If investigation of the project APE indicates that the project will not have an adverse effect on historic properties, the MOU specifies that coordination with the THC is not required.
- If investigation of the project APE indicates that the project may have an adverse effect on historic properties, the MOU specifies that coordination with the THC is required.

If review and consultation results in a determination that the project will have an adverse effect on a historic property, TxDOT's Environmental Affairs Division develops plans to resolve the adverse effect, coordinates the plan with THC, and implements the plan.

For projects where a local government serves as project sponsor and the project is not an FHWA undertaking, the project sponsor may coordinate directly with the THC (see Figure 1).

While local government project sponsors ordinarily coordinate directly with THC, such project sponsors may instead coordinate their projects through TxDOT under the terms of the MOU, if TxDOT and the project sponsor formally agree to this procedure.

If a project scope exists or is being developed, this arrangement is formalized in the project scope. Otherwise, the local government project sponsor should get agreement in writing from the department delegate, if the project sponsor wishes to coordinate their project under the terms of the MOU.

The project is then coordinated in one of two ways:

- The project sponsor establishes that the project does not require review or coordination.
- TxDOT's Environmental Affairs Division coordinates work overseen by the project sponsor.

3.3 Health and Safety Code Requirements

When TxDOT is the project sponsor or the project is otherwise coordinated under the terms of the MOU, certain very minor projects do not require review and coordination regarding their potential effects on burials.

The [MOU](#) contains a list of project elements for which no project-specific review or consultation is required.

If a project entails only those elements on the list, the project does not require review or consultation. The project sponsor need only complete the Risk Assessment form in ECOS to verify that use of the list is appropriate.

All projects with elements not on the list require review and consultation.

When review and coordination are required, the project sponsor oversees a reasonable and good faith effort to determine whether any burials exist within the project area.

- Investigations, coordination, and consultation conducted to determine whether a Health and Safety Code compliance issue exists may be done simultaneously with the tasks conducted to satisfy the NHPA and Antiquities Code of Texas requirements.
- The investigation may take the form of a background study or field investigation.
 - A. Any field investigation on non-federal public lands or that involves unknown or abandoned cemeteries should be done in coordination with the THC.

B. The THC will issue a permit for field investigations and burial removals in these circumstances.

- If a field investigation discovers a previously-unknown cemetery, local law enforcement officials should be notified to verify that the discovery does not constitute a crime scene under their jurisdiction.
- A discovery of a previously-unknown cemetery requires notification of County deed clerk within ten days of completing the investigation ([13 TAC 22.5\(c\)\(2\)\(F\)\(iii\)](#)).

3.3.1 Removal of Burials

These procedures vary, depending on the nature of the cemetery and burials. This work should also be performed in conjunction with investigations and consultation for compliance with the NHPA and Antiquities Code of Texas.

Removal of burials within existing ROW adjacent to a cemetery maintained by a cemetery organization:

The burials in the ROW should be treated as part of the cemetery.

- These burials can be relocated from the ROW into the formally-designated cemetery area.
- If the burials only extend partially into the ROW, they can be marked and left in place, if all appropriate parties agree.
- The project sponsor should formally coordinate with the cemetery organization to obtain permission to re-inter the burials within the cemetery proper or to mark them in place.

Under certain circumstances, such graves may be moved to a plot within the formal cemetery boundaries without prior notification of plot owners, descendants, or other relations ([Health and Safety Code](#), Title 1, Section 711.004(e)).

Prior notification of plot owners, descendants, or other relations is not necessary if the relocation will occur from one plot to another within the same cemetery and the cemetery meets one of the following conditions ([Health and Safety Code](#), Title 1, Section 711.004(e)(1)):

- The cemetery is a family, fraternal, or community cemetery that is not larger than 10 acres;
- The cemetery is owned or operated by an unincorporated association of plot owners not operated for profit;
- The cemetery is owned or operated by a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or
- The cemetery is a public cemetery owned by this state, a county, or a municipality.

Otherwise, removal of burials from their existing plot requires additional consent.

Consent is required from the current plot owner(s) and one of the following individuals, in order of priority ([Health and Safety Code](#), Title 1, Section 711.004(a)):

- The decedent's surviving spouse;
- The decedent's surviving adult children;

- The decedent's surviving parents;
- The decedent's adult siblings; or
- The adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

Removal of historic burials or marking of burials requires coordination with the THC if the work occurs on nonfederal public lands.

Relocation of burials within a cemetery does not require a permit from the state registrar ([25 TAC 181.6\(d\)](#)).

The cemetery organization is responsible for pursuing dedication removal ([Health and Safety Code](#), Title 1, Section 711.036(a)).

Removal of burials from an unknown or abandoned cemetery:

A court order must be obtained from a district court for de-dedication and -- if all remains have not been removed previously -- to order the removal of the remains

([Health and Safety Code](#), Title 1, Section 711.010).

A disinterment permit should then be obtained from the state registrar (the Vital Statistics Unit at the State Department of Health Services).

A permit should also be obtained from the THC.

The final disposition of the remains will be either:

- At a perpetual care cemetery, or
- For Native American burials, the disposition will be determined through consultation in compliance with the Native American Graves Protection and Repatriation Act.

If the burials do not conform to either circumstance (removal of burials from ROW to adjacent cemetery property; removal of burials from an unknown or abandoned cemetery), obtain additional legal guidance.

4.0 Project Scoping and Planning

4.1 Initial Evaluation

Some very minor projects require no additional documentation (see Figure 3). These projects must meet the following two conditions:

- The project is sponsored by TxDOT and likely to be certified as a Categorical Exclusion under the TxDOT-FHWA MOU.
- The work occurs entirely within the horizontal and vertical footprint of the existing crowns; and/or comprises the installation of signs, signals, light posts, railroad warning devices, cameras, or intelligent highway system equipment within existing right of way; and/or comprises routine maintenance that would not involve excavation below the original line and grade.

Projects that meet these two conditions only need to have a completed Project Definition screen in ECOS with an associated project description.

Projects that do not meet both of these two conditions must go through a formal Risk Assessment, using the Risk Assessment Form in ECOS. The form identifies compliance triggers related to archeological sites and cemeteries.

- Some projects will be sufficiently minor that no additional documentation beyond the Risk Assessment Form is required; in these cases, the Risk Assessment Form will indicate “No Project-Specific Review Required”. The Project Definition screen in ECOS and associated project description should be sufficient to support the finding that the project requires no further work.
- For all other projects, the form will indicate “Initiate project coordination with ENV”, and professional archeologists must undertake additional risk evaluation and scoping, per Sections 4.2 and 4.4. **In order to conduct this work, the project sponsor must provide professional archeologists with the information described in Section 1.5, Helpful Suggestions.**

4.2 Evaluating Risk

Risk evaluation starts with a review of a project’s potential impacts based on existing data which may include – but is not limited to – the following sources:

- Texas Archeological Sites Atlas
- Geologic maps, soil maps, Potential Archeological Liability Maps (PALM)
- Historic maps
- As-built plans for existing roadways
- Project area photographs and aerials
- Proposed project plans, layouts, and typical sections

While not comprehensive, the following risk factors increase the likelihood that an issue will be identified requiring additional time and resources to address.

- The presence of Holocene-age sediments, such as those sediments deposited by rivers or wind
- Proximity of fresh water
- Navigable waters where shipwrecks may occur
- Adjacent historic cemeteries
- Known historic settlement
- Substantial new right-of-way or easement requirements

The risk evaluation results in a determination of what additional work and coordination, if any, needs to be conducted.

4.3 Constraints Mapping

Per the [Natural Resources Code](#), Title 9, Section 191.004, information specifying the location of any archeological site on non-federal public lands or other State Archeological Landmark should not be made available to the public.

Cemeteries comprise the primary resource type addressed in this chapter for which mitigation entails the most risk and hazards.

- Most cemeteries can be plotted on a constraints map without violating the Natural Resources Code.
- Information on known cemetery locations can be obtained from the Texas Historic Sites Atlas and other public information sources.

4.4 Project Scoping

Some minor projects under the purview of the [MOU](#) and/or the [PA-TU](#) will not require additional tasks per the terms of those agreements (see Section 3.0).

Additional tasks may take the following forms, which archeologists sometimes have special names for:

- Background study and associated coordination/consultation
- Field investigations (“survey”) and associated coordination/consultation
- Archeological site-specific evaluation (“testing”) and associated coordination/consultation
- Mitigation (typically “data recovery”) and associated coordination/consultation

In order to conduct this work, the project sponsor must provide professional archeologists with the information described in Section 1.5, Helpful Suggestions. Note that work may terminate at any point along the aforementioned sequence of tasks, if that work determines that the areas investigated do not merit additional consideration.

Work usually proceeds through these steps in a linear fashion, so each task serves as a predecessor to the next task.

Consultation and coordination can typically encompass multiple phases of work, so a project that proceeds through background study and field investigations need not entail two rounds of associated coordination and consultation.

5.0 Requirement Triggers

The following paragraphs identify specific compliance triggers.

5.1 *National Register of Historic Places (NRHP) Compliance*

NHPA compliance is required when a project obtains federal funds, requires a federal license, permit or approval; or occurs on federal lands.

Examples:

- TxDOT receives money from FHWA for many of its own projects, and TxDOT also serves as a conduit for FHWA funding for projects sponsored and developed by local governments.
- TxDOT is also regularly involved in projects funded by FTA, FRA, and FAA.
- Approval is required from FHWA to access the interstate system.
- Any project that requires a nationwide permit or individual permit from the US Army Corps of Engineers also has to comply with the NHPA.
- A project that requires a permit from the Coast Guard would need to comply with the NHPA.
- TxDOT projects sometimes include work on a military base like Fort Hood or lands owned by the United States Forest Service.

5.2 *Antiquities Code of Texas Compliance*

[Antiquities Code of Texas](#) compliance is required for any ground-disturbing project that occurs on non-federal public lands of the State of Texas.

Such lands include city, county, and state properties, and the state highway system.

Examples of the projects that require compliance with the Antiquities Code include:

- Improvements to a runway at a municipal airport,
- A county road bridge replacement, or
- Widening of a roadway on the state highway system.

5.3 *Health and Safety Code Compliance*

[Health and Safety Code](#) compliance is required whenever a project area includes a cemetery.

Cemeteries are any areas where human burials occur. They do not have to be formally dedicated in deed records or marked.

The discovery of burials at any point in project development is thus a trigger to comply with the Health and Safety Code.

Any portion of a formally-dedicated cemetery that is or may become used for transportation purposes requires compliance with Health and Safety Code provisions even if that portion of the cemetery does not contain burials.

Examples of projects that require compliance with the Health and Safety Code include the following:

- During environmental investigation of roadway improvement project, unmarked burials are discovered within existing ROW.
- An area of new ROW includes a portion of a formally-dedicated cemetery that has been reserved for new burials, but no burials have been interred in that portion of the cemetery yet.
- During construction, burials are discovered with the project area.

6.0 Technical Guidance

The following checklists are available to guide production of technical reports. Note that the checklist criteria are intended to be comprehensive. Not all criteria may apply to a particular project. Adherence to all checklist items would guarantee sufficiency of documentation, but reports may deviate from the checklist as circumstances warrant.

- List of Project Types that Do Not Require Review or Coordination Archeological Background Study
- Review Standards for Archeological Survey Reports, Individual Permit
- Review Standards for Archeological Interim Testing Report

7.0 Public Involvement and Coordination with Resource Agencies

7.1 National Register of Historic Places (NRHP)

Compliance with the NHPA does require additional public involvement, but this requirement can be satisfied through the public involvement being conducted in compliance with NEPA, per the terms of the [PA-TU](#).

The NHPA also requires consultation with the Texas State Historic Preservation Officer and other parties. Because this consultation is integral to the compliance process, the procedural requirements of Section 3.1 address them.

7.2 Antiquities Code of Texas

Compliance with the [Antiquities Code](#) of Texas does not require public involvement.

The Antiquities Code of Texas requires coordination with the Texas Historical Commission. Because this coordination is integral to the compliance process, the procedural requirements of Section 3.2 address them.

7.3 Health and Safety Code

No public involvement is required, but public outreach efforts may be necessary to identify plot owners, relatives, or descendants of the decedent.

Removal of burials may require coordination and consultation with various parties. Because this coordination and consultation is integral to the compliance process, the procedural requirements of Section 3.3 address them.

8.0 Documentation Requirements

The following tables (Figure 4) summarize the typical documents that should exist in the project files to demonstrate satisfaction of compliance requirements related to archeological sites and cemeteries. The tables identify the common tasks, forms, and coordinations that should be present in ECOS, the file of record. They also indicate the associated supporting technical reports that should be uploaded to ECOS. The next three subsections describe the contents of the project file in more detail.

8.1 National Register of Historic Places (NRHP) Compliance

When the project is an FHWA undertaking, the following documentation should be produced:

- For projects that do not require review or consultation, the project sponsor:
 - A. ensures that the Project Definition screen in ECOS and associated project description is sufficient to support a finding that no further review or consultation is needed, and
 - B. completes the Risk Assessment Form, if the project will not be certified as a Categorical Exclusion under the TxDOT-FHWA MOU or if the project impacts exceed the very low threshold described under Section 4.1. The Risk Assessment Form should contain a recommendation of “No Project-Specific Review Required”.
- For projects that would have no effects or no adverse effects, the project sponsor verifies that the project file contains:
 - A. A form in ECOS that documents a finding of “no effect” or “no adverse effect”, and
 - B. Copies of all consultation letters sent to federally-recognized tribes and other consulting parties and any responses (Note that, in many instances, some tribes will not respond to a request for comment, so the file will not contain a formal expression of concurrence with proposed findings and determinations from those tribes), and
 - C. A TxDOT memo listing all projects approved that week or a TxDOT project-specific memo approving the project, and
 - D. One or more associated technical reports.
- For projects that would have adverse effects, the project sponsor verifies that the project file contains:
 - A. A form in ECOS that documents a finding of “adverse effect,” and
 - B. Copies of all consultation letters sent to federally-recognized tribes and other consulting parties and any responses (Note that, in many instances, some tribes will not respond to a request for comment, so the file will not contain a formal expression of concurrence with proposed findings and determinations from those tribes), and
 - C. A letter from TxDOT to the Texas State Historic Preservation Office with the Texas State Historic Preservation Officer’s signed concurrence with the documentation of the findings, determinations, and recommendations for the resolution of adverse effects, and
 - D. One or more associated technical reports.

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- If right of entry was denied to one or more areas where field investigations were required, the project file should contain a memo identifying the areas and committing the project sponsor to completion of the required work prior to construction

When another agency is the lead federal agency, the following documents should typically be produced, at the direction of the agency:

- A form in ECOS that documents a finding, and
- A letter from TxDOT to the Texas State Historic Preservation Office with the Texas State Historic Preservation Officer's signed concurrence with the documentation of the findings, determinations, and recommendations, and
- One or more associated technical reports.

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Figure 4: Documentation in the Project File

ECOS Forms, Findings, and Associated Documentation for Completed Investigations						
Type of Review		ECOS Documentation				Notes
		Tasks	Form Finding	Coordinations	Documents	
1	None required	n/a	n/a	n/a	CE Determination	Project description should support “no review” finding
2	Risk Assessment	Risk Assessment	No -Specific Review Required	n/a	n/a	Project description should support “no review” finding
3	Background Study	Risk Assessment	Initiate project coordination with ENV	n/a	n/a	District self-assigns and completes Form
		Provide Project Assistance	n/a	n/a	n/a	District assigns task to ENV
		Background Study	No effect/no adverse effect on archeological sites and cemeteries	Yes (see below)	Maps (location, soil, Atlas), project description	ENV self-assigns this task as necessary
		Coordinate with consulting party	Approved	ENV-A (typical) or THC-A	Internal memo (ENV-A) or letter (THC-A)	
		Coordinate with consulting party	Approved	NPA tribal	Letter copy and any responses (responses not typical)	NPA tribal consultation is not required in AMA, AUS, CHS, CRP, DAL, ELP, LBB, ODA, and PHR
		Coordinate with consulting party	Approved	PA tribal and/or Other (neither is common)	Letter copy and any responses (not typical)	

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Figure 4: Documentation in the Project File (Continued)

4	Survey	Risk Assessment	Initiate project coordination with ENV	n/a	n/a	District self-assigns and completes Form
		Provide Project Assistance	n/a	n/a	n/a	District assigns task to ENV
		Survey	No effect or no adverse effect	Yes (see below)	In-house report or consultant report	ENV self-assigns this task as necessary
		Coordinate with consulting party	Approved	ENV-A (typical) or THC-A	Internal memo (ENV-A) or letter (THC-A)	
		Coordinate with consulting party	Approved	NPA tribal	Letter copy and any responses (responses not typical)	NPA tribal consultation is not required in AMA, AUS, CHS, CRP, DAL, ELP, LBB, ODA, and PHR
		Coordinate with consulting party	Approved	PA tribal and/or Other (neither is common in this circumstance)	Letter copy and any responses (responses not typical)	
5	Testing	Risk Assessment	Initiate project coordination with ENV	n/a	n/a	District self-assigns and completes Form
		Provide Project Assistance	n/a	n/a	n/a	District assigns task to ENV
		Testing	No effect or no adverse effect	Yes (see below)	In-house report or consultant report	ENV self-assigns this task as necessary
		Coordinate with consulting party	Approved	ENV-A (typical) or THC-A	Internal memo (ENV-A) or letter THC-A	
		Coordinate with consulting party	Approved	NPA tribal	Letter copy and any responses (responses not typical)	NPA tribal consultation is not required in AMA, AUS, CHS, CRP, DAL, ELP, LBB, ODA, and PHR
		Coordinate with consulting party	Approved	PA tribal and/or Other (neither is common in this circumstance)	Letter copy and any responses (responses not typical)	

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Figure 4: Documentation in the Project File (Continued)

6	Cemetery Investigation	Risk Assessment	Initiate project coordination with ENV	n/a	n/a	District self-assigns and completes Form
		Provide Project Assistance	n/a	n/a	n/a	District assigns task to ENV
		Cemetery Investigation	No effect or no adverse effect	Yes (see below)	In-house report or consultant report (when fieldwork conducted)	ENV self-assigns this task as necessary; in many cases, no fieldwork is required to vet potential for burials so no report is necessary
		Coordinate with consulting party	Approved	Cemetery organization	Letter copy and any responses	
		Coordinate with consulting party	Approved	THC-A (when fieldwork conducted)	Letter copy and any responses (separate response not typical)	
		Coordinate with consulting party	Approved	Other (not common)	Letter copy and any responses	

8.2 Antiquities Code of Texas Compliance

When TxDOT is the project sponsor, the following documents should be produced:

- For projects that do not require review or consultation, the project sponsor completes a Risk Assessment Form in ECOS and ensures that the Project Definition screen in ECOS and associated project description is sufficient to support a finding that no further review or consultation is needed.
- For projects that would have no effects or no adverse effects, the project sponsor verifies that the project file contains:
 - A. A form in ECOS that documents a finding of “no effect” or “no adverse effect,” and
 - B. A TxDOT memo listing all projects approved that week or a TxDOT project-specific memo approving the project, and
 - C. One or more associated technical reports.

- For projects that would have adverse effects, the project sponsor verifies that the project file contains:
 - A. A form in ECOS that documents a finding of “adverse effect,” and
 - B. A letter from TxDOT to the THC with the THC’s signed concurrence with the documentation of the findings, determinations, and recommendations for the resolution of adverse effects; and
 - C. One or more associated technical reports.
- If right of entry was denied to one or more areas where field investigations were required, the project file should contain a memo identifying the areas and committing the project sponsor to completion of the required work prior to construction.

When a local government is the project sponsor, the documentation comprises a signed letter from THC, establishing that project review has been completed.

8.3 Health and Safety Code Compliance

For burials within the ROW adjacent to a cemetery maintained by a cemetery organization, the following documents should be produced:

- Letters from the cemetery organization and any other required parties which formally approve the relocation, and
- If burials are historic, a technical report and a letter from THC that approves the report.

For burials from an unknown or abandoned cemetery, the following documents should be produced:

- When previously-unknown cemeteries are discovered, written verification from appropriate local law enforcement officials that the discovery does not constitute a crime scene under their jurisdiction
- A district court order for the de-dedication of the cemetery area and removal of remains
- A disinterment permit from the state registrar (Vital Statistics Unit, Department of State Health Services) and
- A technical report and a letter from THC that approves the report

9.0 Review and Approval Process

9.1 National Register of Historic Places (NHPA) Compliance

When the project is an FHWA undertaking, completion of NHPA compliance is achieved under the following circumstances:

- For projects that do not require review or consultation, the project sponsor approves the environmental document that establishes the project has no potential to cause effects to archeological sites or cemeteries.
- For projects that would have no effects or no adverse effects:

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- A. No federally-recognized tribe or other consulting party objects to the findings and determination. In many instances, some tribes will not respond to the request for comment, so the project file will not contain a formal expression of concurrence with proposed findings and determination from those tribes.
 - B. TxDOT approves the documentation of the finding and determination, on a weekly memo listing all projects approved that week or on a project-specific memo.
- For projects that would have adverse effects:
 - A. No federally-recognized tribe or other consulting party objects to the findings and determinations, including recommendations for the resolution of adverse effects. In many instances, some tribes will not respond to the request for comment, so the project file will not contain a formal expression of concurrence with proposed findings and determination from those tribes.
 - B. The Texas State Historic Preservation Office concurs with the documentation of the findings, determinations, and recommendations for the resolution of adverse effects.

When another agency is the lead federal agency, the Texas State Historic Preservation Office should concur with the findings, determinations, recommendations, and no objections should be received from federally-recognized tribes or other consulting parties.

9.2 Antiquities Code of Texas Compliance

When TxDOT is the project sponsor, completion of Antiquities Code of Texas compliance is achieved under the following circumstances:

- For projects that do not require review or consultation, the project sponsor approves the environmental document that establishes the project has no potential to cause effects to archeological sites or cemeteries.
- For projects that would have no effects or no adverse effects, TxDOT-ENV approves the documentation of the finding and determination, on a weekly memo listing all projects approved that week or on a project-specific memo.
- For projects that would have adverse effects, THC concurs with the documentation of the findings, determinations, and recommendations for the resolution of adverse effects.

When a local government is the project sponsor and the project is not an FHWA undertaking, compliance is achieved when THC concurs with the documentation of the findings, determinations, and recommendations for the resolution of adverse effects (if any).

9.3 Health and Safety Code Compliance

For burials within the ROW adjacent to a cemetery maintained by a cemetery organization, compliance is achieved under the following circumstances:

- The cemetery organization and any other required parties formally approve the relocation,
- The burials are relocated, and
- If burials are historic, THC approves the resulting report.

For burials from an unknown or abandoned cemetery, compliance is achieved under the following circumstances:

- The district court issues the order for the de-dedication of the cemetery area and removal of remains,
- The state registrar (Vital Statistics Unit, Department of State Health Services) issues a disinterment permit,
- The burials are relocated, and
- THC approves the resulting report.

10.0 Presentation of Results in an Environmental Document

The following guidance provides the minimum set of findings that must be established in order to:

- verify that a Categorical Exclusion has no unusual circumstances related to project effects on archeological sites and cemeteries, and/or
- determine that the project will have no significant impacts on archeological sites or cemeteries

Thus, this guidance may be used to prepare a Categorical Exclusion, EA, or EIS under most common circumstances. When an environmental document (EA or EIS) has to be prepared, these criteria can be established in the document in approximately five to six sentences.

Projects that do not have unusual circumstances or significant impacts must satisfy all of the following criteria.

The document and/or project file:

- Contains a project description that supports a finding that project has no potential to cause effects and has a completed CE Determination Form, or
- Contains a project description that supports a finding that project has no potential to cause effects and contains a finding that the project has no potential to cause effects to archeological historic properties or cemeteries, or
- Contains one of the following two findings:
 - A. The project will have no effect on archeological historic properties (because no sites were present or because the sites were not historic properties), or
 - B. The project will have no adverse effect on archeological historic properties.
- Incorporates by reference any consultation letters and technical studies that support such findings.
- In cases where right of entry to private property to conduct required investigations was denied for portions of the area of potential effects, the document includes a commitment to complete all required studies and consultation prior to construction.

The document and/or project file must establish that an FHWA undertaking will not use an archeological 4(f) property.

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- This criterion is implicitly met when the project has no potential to cause effects, or has no effect, or has no adverse effect on archeological historic properties.
- This criterion must be addressed explicitly when the project will entail an adverse effect. Archeological sites are typically exempt from 4(f) analysis per 23 CFR 774.13(b).

The document and/or project file establishes compliance with the Health and Safety Code. The project will either:

- Not use cemetery property, or
- Includes a commitment that all burials within the project's area of potential effects will be relocated and the area de-dedicated prior to construction.

Finally, the document and/or project file establishes -- based on the results of the required public involvement for the project -- that no controversy exists regarding project effects on archeological sites and cemeteries.

If any of the foregoing conditions are violated, the project sponsor should contact TxDOT's Environmental Affairs Division for further, project-specific guidance.

In most cases, a potential adverse effect that can be resolved by following a mitigation plan which has been agreed upon by consulting parties is not a significant impact. Nevertheless, the project sponsor should consult with TxDOT's Environmental Affairs Division staff in those rare cases where the project will have an adverse effect. Not all properties are equal, and there may be rare cases where the adverse effect still constitutes a significant impact, even after mitigation.

11.0 Glossary

Abandoned cemetery – An abandoned cemetery is a non-perpetual care cemetery that is not under the care of a cemetery organization.

Area of potential effects – The area of potential (APE) effects is the geographic area or areas within which an undertaking may cause alterations in the character or use of historic properties, if any such properties exist.

Cemetery – Any place where human burials occur is a cemetery.

Dedication – Dedication means human remains are present or that the area was formally identified as a cemetery in deed records.

Effect – An effect is an alteration to the characteristics of a historic property that qualify it for further consideration under existing cultural resource laws and regulations.

An **FHWA undertaking** is any project for which FHWA is providing funding or any project which requires some kind of FHWA approval (e.g., an interstate access agreement).

Historic properties – A historic property is any prehistoric or historic district, site, building, structure, or object with characteristics that merit it for formal inclusion on federal and/or state registers.

Perpetual care cemetery – A cemetery with a perpetual care trust fund established for its benefit is a perpetual care cemetery.

Unknown cemetery – An unknown cemetery is a non-perpetual care cemetery that is not marked by obvious cemetery elements and is not recorded in deed records.

12.0 Abbreviations and Acronyms

AFA	Advance Funding Agreement
APE	Area of Potential Effects
DEIS	Draft Environmental Impact Statement
ECOS	Environmental Compliance Oversight System
EIS	Environmental Impact Statement
ENV	Environmental Affairs Division
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FTA	Federal Transit Authority
MOU	Memorandum of Understanding with the Texas Historical Commission
NHPA	National Historic Preservation Act
PALM	Potential Archeological Liability Maps
PA-TU	First Amended Programmatic Agreement among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings
ROW	Right of Way
TAC	Texas Administrative Code
THC	Texas Historical Commission
TxDOT	Texas Department of Transportation

Appendix A

The following table shows the revision history for this guidance document.

Revision History	
Effective Date Month, Year	Reason for and Description of Change
April 2014	Version 1 release
June 2014	<p>Version 2 release</p> <ol style="list-style-type: none">1) The manual chapter includes a summary of local government responsibilities, depending on the circumstances of the project.2) The manual chapter details a revised process for initiating work and handling minor projects. In particular, the “No Project-Specific Review Required” certification form in ECOS is now optional. The only required documentation for minor projects is a completed project description on the Project Definition page in ECOS and, in some cases, a Risk Assessment Form.3) Documentation requirements are further detailed in Section 8, including the typical elements that need to be in the project file (ECOS).4) The chapter includes a new section (Section 10) on how to document archeological compliance work in an environmental document. <p>These changes reflect procedural changes and guidance developed in response to NEPA assumption.</p>
November 2014	<p>Version 3 release</p> <p>Revised Figure 4 to include “Cemetery Investigation,” a type of investigation that was inadvertently dropped from the original version of this figure.</p>