



# Guidance

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## List of Projects that Do Not Require Review or Coordination for Archeological Compliance

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## **1.0 Introduction**

This guidance document identifies the types of projects that require no review or coordination regarding potential project effects on archeological sites or cemeteries. Based on past experience, these project types do not cause new impacts. The document contains three lists:

- The first list addresses potential effects to archeological sites and applies to FHWA undertakings (any project for which FHWA is providing funding or any project which requires some kind of FHWA approval [e.g., an interstate access agreement]), and
- The second list addresses potential effects to archeological sites and applies to highway projects on nonfederal public lands of the state of Texas (e.g., state right of way) for which no other federal money, license, or approval is required and for which TxDOT is the project sponsor.
- The third list addresses potential effects to cemeteries and applies to highway projects on nonfederal public lands of the state of Texas (e.g., state right of way) for which TxDOT is the project sponsor.

Note that the lists differ in some important details, so they should be read carefully.

## **2.0 List of FHWA Undertakings That Have No Potential to Cause Effects to Archeological Sites**

Pursuant to 36 CFR § 800.3(a)(1), certain routine projects constitute undertakings with no potential to cause effects on archeological historic properties. In addition, the 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 identifies several categories of undertakings that have minimal potential to cause effects.

Routine roadway maintenance projects and projects with minor levels of ground disturbance, by their nature and definition, do not have the potential to affect archeological historic properties, and do not require review or consultation regarding their potential project impacts on archeological historic properties. Such projects include vegetation control, traffic control, and routine painting and striping.

The following activities also do not require review or consultation regarding their potential effects on archeological historic properties:

- A. Installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;
- B. Projects involving purchase or acquisition of land without associated ground-disturbing activities<sup>1</sup>;
- C. Routine structural maintenance and repair of bridges, highways, railroad crossings, picnic areas, and rest areas;
- D. In-kind repair, replacement of lighting, signals, curbs and gutters, and sidewalks<sup>2</sup>;

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<sup>1</sup> Review of potential effects, if required, would be done during development of the associated construction project.

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- E. Crack seal, overlay, milling, grooving, resurfacing, and restriping;
- F. Replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts<sup>3</sup>;
- G. Intersection improvements, including repair or replacement of overpasses, that require less than 0.5 acres of additional right-of-way at each intersection;
- H. Placement of riprap to prevent erosion of waterway banks and bridge piers provided no ground disturbance is required;
- I. All maintenance work between a highway's main lanes and an adjacent frontage road;
- J. Installation of noise barriers or alterations to existing publicly owned buildings, to provide for noise reduction;
- K. Driveway and street connections;
- L. All work within interchanges and within medians of divided highways;
- M. All work between the flowlines of the ditches and channels and above the original line and grade;
- N. Ditch and channel maintenance provided removal of fill is above the original line and grade;
- O. The installation and modification of sidewalks (including the addition of Americans with Disabilities Act (ADA) ramps) except:
  - a. Sidewalk installations where the depth of impacts exceeds one foot;
  - b. Sidewalk and ADA ramp projects within the historic districts in the following cities or towns: Goliad, Rio Grande City, Roma, San Antonio, San Elizario, and San Ygnacio; and
  - c. Sidewalk and ADA ramp projects within the limits of the following cities or towns: Anahuac, Nacogdoches, San Patricio, and Socorro;
- P. Bridge replacements where construction activities will be entirely confined within existing right-of-way and the bridge alignment and dimensions will not be altered;
- Q. Activities with less than 100 cubic yards of ground disturbance below the original grade; and/or
- R. Design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in this section<sup>4</sup>

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<sup>2</sup> Sidewalk replacement work can exceed one foot in depth as long as this work does not exceed the original depth of impacts. Criterion O addresses new sidewalk construction, which cannot exceed one foot in depth.

<sup>3</sup> The cumulative extent of impacts below the original line and grade could exceed 100 cubic meters under this criterion, as might be the case if work occurs at many different locations.

<sup>4</sup> This criterion applies to projects which did not originally qualify as a type of undertaking with no potential to cause effects. For such projects, some type of review and consultation must be completed. A minor design change (e.g., extending the project limits to improve signals at intersections beyond the original area of potential effects) that would, in isolation, be considered to have no potential to cause effects does not trigger additional review and consultation.

### **3.0 List of Projects on Nonfederal Public Lands of the State of Texas That Have No Potential to Cause Effects to Archeological Sites**

Pursuant to 43 TAC 2.257, certain routine projects constitute projects that are excluded from review for archeological resources.

Routine roadway maintenance projects and projects with minor levels of ground disturbance, by their nature and definition, do not have the potential to affect historic properties, and do not require review of their potential project impacts on archeological resources. Such projects include vegetation control, traffic control, routine painting and striping, and other activities with less than 100 cubic yards of ground disturbance below the original grade.

The following activities also do not require review of their potential impacts on archeological resources under this chapter or under this MOU:

- A. Installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;
- B. Projects involving purchase or acquisition of land without associated ground-disturbing activities;
- C. Routine structural maintenance and repair of bridges, highways, railroad crossings, picnic areas and rest areas;
- D. In-kind repair, replacement of lighting, signals, curbs and gutters, and sidewalks;
- E. Crack seal, overlay, milling, grooving, resurfacing, and restriping;
- F. Replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts;
- G. Intersection improvements, including repair or replacement of overpasses, that require less than 0.5 acres of additional right of way at each intersection;
- H. Placement of riprap to prevent erosion of waterway banks and bridge piers provided no ground disturbance is required;
- I. All maintenance work between a highway's main lanes and an adjacent frontage road;
- J. Installation of noise barriers or alterations to existing publicly owned buildings less than 50 years old, to provide for noise reduction except in potential or listed National Register districts;
- K. Driveway and street connections;
- L. All work within interchanges and within medians of divided highways;
- M. All work between the flowlines of the ditches and channels and above the original line and grade;
- N. Ditch and channel maintenance, provided removal of fill is above the original line and grade;
- O. Repairs needed as a result of an event, natural or man-made, which causes damage to a designated state highway, resulting in an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce<sup>5</sup>;
- P. The installation and modification of sidewalks (including the addition of American with Disabilities Act (ADA) ramps) except:
  - a. Sidewalk installations where the depth of impacts exceeds one foot;

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<sup>5</sup> An equivalent criterion does not exist for FHWA undertakings.

- b. Sidewalk and ADA ramp projects within the historic districts in the following cities or towns: Goliad, Rio Grande City, Roma, San Antonio, San Elizario, and San Ygnacio; and
  - c. Sidewalk and ADA ramp projects within the limits of the following cities or towns: Anahuac, Nacogdoches, San Patricio, and Socorro; or
- Q. Design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in this section<sup>6</sup>.

#### **4.0 List of Projects on Nonfederal Public Lands of the State of Texas That Have No Potential to Cause Effects to Cemeteries**

Pursuant to 43 TAC 2.257, certain routine projects constitute projects that are excluded from review for potential effects to cemeteries. Verification that projects meet these criteria requires an understanding of project design elements. Verification does not require archeological expertise. Review of the Texas Historic Sites Atlas, topographic maps, soil maps, aerial photographs, and/or project area photographs typically provides sufficient information to determine whether known cemeteries and burials occur adjacent to the project area.

Projects that are exempt from project-specific review under Section 3.0 are also exempt from review as long as the project meets the following two additional conditions:

- A. Pavement would not be extended within 15 feet of the boundary of a known cemetery founded earlier than 1955; and;
- B. No other project element would directly affect known burials.

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<sup>6</sup> This list does not include an equivalent to Criterion P in the list for FHWA undertakings in Section 3.0.

## **Appendix A: Revision History**

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

<b>Revision History</b>	
<b>Effective Date Month, Year</b>	<b>Reason for and Description of Change</b>
December 7, 2015	Version 2 release. <ul style="list-style-type: none"><li>• Updated Federal undertaking list to reflect changes made to the list in the new Section 106 programmatic agreement</li><li>• Added list for cemeteries to create consistency with the new Section 106 programmatic agreement and scope development tool.</li></ul>
June 2014	Version 1 release.