



# Environmental Handbook

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## Historic Properties

This handbook outlines the process steps necessary to conduct TxDOT's review of non-archeological historic properties in compliance with Section 106 of the National Historic Preservation Act and the Antiquities Code of Texas.

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### **1.0 Introduction**

This handbook outlines the process steps necessary to conduct a Texas Department of Transportation (TxDOT) review of non-archeological historic properties in compliance with Section 106 of the National Historic Preservation Act (NHPA) and the Antiquities Code of Texas (ACT). While the acts define the process for review, most of the work is conducted in accordance with the programmatic agreement (PA) and memorandum of understanding (MOU) that streamline project review and approval conducted under Section 106 and the ACT. Results of this process must be integrated into the National Environmental Policy Act (NEPA) documentation for the project.

#### **1.1 TxDOT Policy**

It is TxDOT's policy to adhere to the federal and state laws that protect historically significant properties and seek ways to accommodate preservation concerns through consultation with resource agencies and the interested public.

#### **1.2 Responsible Party**

The project sponsor is responsible for developing technical studies and maintaining documentation supporting resultant decisions. When TxDOT is the project sponsor or the project is funded by the Federal Highway Administration (FHWA), the Environmental Affairs Division (ENV) coordinates with the State Historic Preservation Officer (SHPO) or Texas Historical Commission (THC), and, when appropriate, the Advisory Council on Historic Preservation (ACHP).

When the project sponsor is a local government and the funding source is not FHWA, the local government is responsible for coordinating with the SHPO or the THC, as well as the ACHP or other lead federal agency, when appropriate.

#### **1.3 Applicable Project Types**

Section 106 applies to all projects that are funded, permitted, or licensed by a federal agency irrespective of the associated activities. The ACT applies to all projects on state lands, particularly where properties designated as State Antiquities Landmarks (SALs) are present within the project's area of potential effect (APE). It is possible for both Section 106 and ACT regulations to apply to a single project.

#### **1.4 Critical Sequencing**

Efforts to identify historic properties should begin at the onset of project development to facilitate assessment of the potential for adverse effects. Because project developers must consider meaningful ways to minimize or mitigate such adverse effects, any identified historic properties should be integrated into the design process as constraints requiring engineering solutions. These steps must be completed prior to the NEPA approval of the project for integration into the decisional document.

#### **1.5 Helpful Suggestions**

Project sponsors should conduct a formal risk assessment at the onset of project development to determine if additional coordination is required. The next step is to submit the Project Coordination Request (PCR) Form to TxDOT historians. Based on information submitted in this format, TxDOT

historians can assist the project sponsor in the development of an appropriate scope of work. The PCR form is available online in the TxDOT [Historical Studies Toolkit](#).

## 2.0 Regulatory Overview

The Section 106 review process is defined in federal regulations issued by the ACHP entitled “Protection of Historic Properties,” as codified in the U.S. Code of Federal Regulations ([36 CFR 800](#)). The [Section 106 Programmatic Agreement](#) establishes a process that ensures compliance with the Section 106 review process for all TxDOT projects with FHWA involvement. The PA authorizes TxDOT to make internal, peer-review determinations without requiring direct oversight by SHPO and FHWA for projects that pose no adverse effects to historic properties. The PA streamlines the regulatory process, establishes documentation standards for demonstrating compliance with the law, and outlines an audit process. Refer to the [TxDOT Historical Studies Toolkit](#) for additional guidance.

The ACT, codified in the Texas Natural Resource Code [9 TNRC 191](#), is administered by the THC. The state MOU, codified in the Texas Administrative Code ([13 TAC 26.25](#)), establishes a process that ensures compliance with the ACT for all projects without FHWA involvement. It codifies TxDOT’s authority to review and approve projects without requiring THC’s direct oversight. The project scopes of work and documentation standards adopted for the PA also are used for projects coordinated under the MOU. Refer to the [TxDOT Historical Studies Toolkit](#) for additional guidance.

As these two agreements satisfy the statutory requirements of the laws and are intentionally parallel, TxDOT’s historic property review process for Section 106 and the ACT ensures compliance with both state and federal requirements. No matter which process is followed, retain the documentation of analyses and consultation in the project file.

NEPA regulations further specify the integration of the resultant findings from these processes into the project’s public participation activities and NEPA documentation.

### 2.1 National Historic Preservation Act

Section 106 of the NHPA ([16 USC 470](#)) requires “federal agencies to take into account the effects of their undertakings on historic properties and afford . . . a reasonable opportunity to comment on such undertakings” ([36 CFR 800.1](#)). Under 36 CFR 800, federal agencies or their delegates are required to conduct the following activities.

- Identify and document National Register of Historic Places (NRHP) listed properties and historic resources that may be eligible for listing in the NRHP.
- Evaluate historic resources and determine if they are eligible for NRHP listing.
- Assess the potential effects of the proposed project on NRHP listed or eligible properties.
- Consider ways to avoid, minimize, or mitigate any adverse effects to historic properties.
- Consult with the public about the resultant findings of these steps.

As FHWA’s delegate, TxDOT assumes responsibility for these efforts. If a proposed project’s adverse effects cannot be avoided or minimized through redesign, TxDOT must document its efforts and seek ways to appropriately mitigate the adverse effects. The project cannot move forward without agreement between TxDOT, the lead federal agency, and appropriate consulting parties on an appropriate mitigation commitment.

### 2.2 Antiquities Code of Texas

The ACT ([9 TNRC 191](#)) requires that TxDOT identify, document, consider, and minimize impacts to properties protected by the Antiquities Code of Texas (ACT) . However, such non-archeological properties must be designated historic (e.g. NRHP, SAL, RTHL or local historical zoning) to fall under the provisions of the ACT. Actions that would adversely impact a property protected by the ACT must be submitted to the THC for review.

### 3.0 Procedural Requirements

These six procedural steps and Figure outline TxDOT's coordination process for Section 106 and ACT compliance. Successfully scoping project coordination activities requires customization to reflect specific project needs.

**Step One** – Conduct a risk assessment to identify key components of project scoping, such as determining the lead federal agency, appropriate regulatory framework, project-specific APE, likely presence/absence of historic-age resources and proposed land use beyond the right of way (ROW). If activities associated with project are determined to pose no potential effect per the [Section 106 Programmatic Agreement](#) definitions, document the determination in the project file.

**Step Two** – Develop [Project Coordination Request](#) (PCR) documentation based on a desktop study and overview field assessment in the project area to identify the potential for historic-age properties in the APE. Submit a completed PCR to TxDOT Environmental Affairs Historic Studies (ENV-HIST) for further guidance on amending the scope of the project. Prepare or update a constraints map to indicate the presence of historic properties for consideration in the design process. Document the results in the project file.

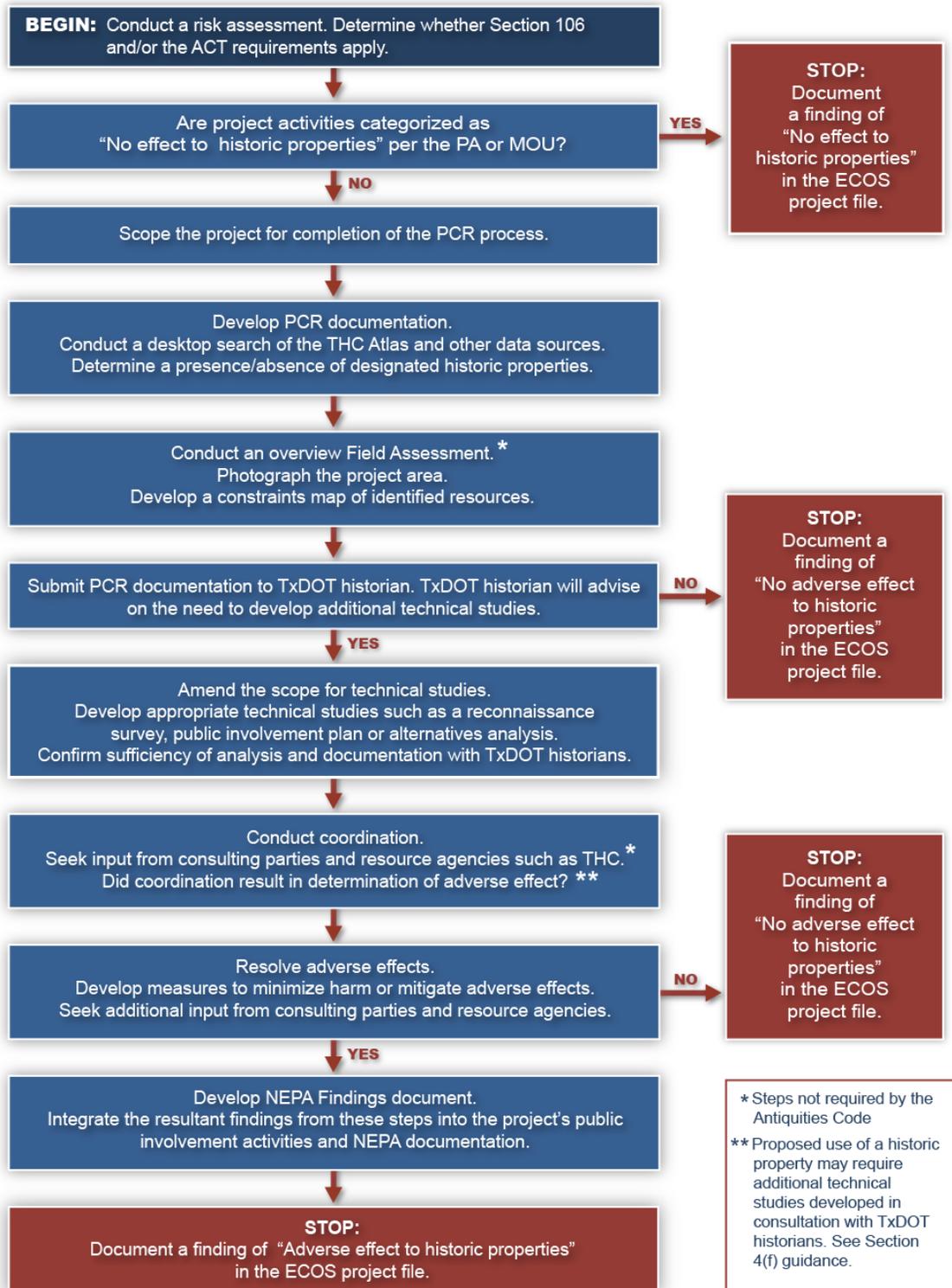
**Step Three** – Based on consultation with ENV-HIST, professionally qualified historians may need to prepare additional technical studies to identify, evaluate, and document all historic-age resources in the APE. Generally, this effort will take the form of a reconnaissance survey and is conducted in compliance with the appropriate TxDOT standards, which are located in the [TxDOT Historical Studies Toolkit](#). Additional public involvement beyond what is required by NEPA may be warranted at this step of the process to obtain input regarding the findings. Document the results in the project file.

**Step Four** – Based on instructions from ENV-HIST, determine whether documentation is sufficient to complete coordination with SHPO/THC ([36 CFR 800.4](#)). Additional technical studies may be warranted by the potential for adverse effects to historic properties. Additional public involvement also may be warranted at this step of the process to obtain input regarding the findings. Document the results in the project file.

**Step Five** – Document any measures to avoid, minimize, or mitigate adverse effects to historic properties ([36 CFR 800.6](#)), and complete coordination with SHPO/THC. Additional public involvement also may be warranted at this step of the process to obtain input regarding the findings. Integrate findings into the project file.

**Step Six** – Integrate resultant findings from these steps into the project's public participation activities and NEPA documentation.

Figure 1  
Section 106 and ACT Compliance Process



### 4.0 Project Scoping and Planning

TxDOT must make a reasonable and good faith effort to identify and evaluate historic properties affected by transportation projects. Such efforts should be commensurate with the nature and extent of the potential adverse effects to historic properties.

#### 4.1 Evaluating Risk

Tools to assist planners in determining any potential risks regarding Section 106 or the ACT implications for a transportation project are available in the [TxDOT Historical Studies Toolkit](#). Its purpose is to facilitate early identification of Section 106 or ACT issues in the project's APE.

Before conducting the RA, project planners should gather preliminary information necessary to answer the following questions. Existing data available to support this desktop analysis includes the [Texas Historical Sites Atlas](#), historic maps, aerial photographs, and documentation for existing as-built project plans.

- Does the project require an approval (e.g. funding, permit, or license) by a federal agency (e.g. FHWA, IBWC, or USACE)?
- Are there any historic properties per [36 CFR 800.4\(c\)](#) in the project APE? Scoping efforts need to be focused on the presence of sensitive property types such as courthouse squares, historic downtown commercial areas, historic residential neighborhoods, farmsteads, historic road corridors, and bridges.
- Would the project require a physical use (a temporary occupancy or permanent incorporation) of historic properties? Does the project's indirect and cumulative effects, as defined in [36 CFR 800.5](#), adversely affect a historic property?

##### 4.1.1 NHPA Triggers

The most common trigger for compliance with the NHPA is federal funding for the project. Whether TxDOT relies on funding from FHWA or serves as a conduit for passing on grants from FTA and FAA, the project must satisfy the requirements of the NHPA.

Other required federal approvals, such as FHWA approval to access the interstate system, also trigger the obligation to comply with the NHPA. Any project that requires a nationwide or individual permit from the USACE or a U.S. Coast Guard permit also must comply with the NHPA. Finally, any project that includes work on federal lands must comply with the NHPA. For instance, this situation arises when a TxDOT project includes work within the International Boundary and Water Commission's (IBWC) jurisdiction or on U.S. Forest Service lands.

In cases where FHWA is not the lead federal agency, consultation with the lead federal agency is necessary to ensure that project coordination under the terms of the TxDOT-THC MOU *will* satisfy NHPA obligations in conjunction with that agency's established procedures. This may require additional review effort and time beyond what would have been required if FHWA had been the lead federal agency. An important part of meeting compliance obligations is knowing the parties involved and understanding their respective responsibilities.

##### 4.1.2 ACT Triggers

The most common trigger for compliance with the ACT involves proposed projects with ground-disturbing activities on non-federal public lands of the state of Texas. In addition to the state highway system, such lands include city, county, and other state properties. Examples of such projects include improvements at municipal airports, county road bridge replacements or

widening of a state highway facility. Refer to the [TxDOT Historical Studies Toolkit](#) for additional guidance.

### **4.2 Constraints Mapping**

The transportation planning process can be substantially enhanced when environmental constraints, such as historic properties, are integrated into maps or project plans. Mapping relationships between identified historic properties and proposed project ROW is a critical component of the PCR submittal. Tracking the relationship between historic properties and the proposed build alternatives also allows decision-makers to consider implications such as potential Section 4(f) restrictions, that could lengthen the planning process. Such maps also facilitate communications during the public involvement process. The [TxDOT Historical Studies Toolkit](#) provides additional guidance how to document historic properties located in the APE.

### **4.3 Project Scoping**

The TAC ([43 TAC 2.44](#)) requires that the department delegate and project sponsor jointly prepare a project scope. Such scopes establish the responsibility of each party, regarding the compliance obligations.

In general, projects should be scoped only through the completion of the PCR process until consultation with ENV-HIST indicates otherwise. Both the MOU and PA codify types of minor projects that need no additional assessment due to their low potential for risks to historic properties.

Using data gathered for the RA and additional minimal assessment of field constraints, stakeholders develop the project scope and prepare the PCR Form. Submission of this information provides an opportunity for consultation with the professionally qualified ENV-HIST staff. Completion of the PCR review by ENV-HIST staff satisfies coordination requirements, under most circumstances.

### **4.4 Triggers Prompting Amendments to the Project Scope**

Additional technical studies may be needed if the risks of the project outstrip the considerations for minor projects provided by the PA and MOU. Work usually proceeds through these steps in a linear fashion, so each task serves as a predecessor to the next technical study. Additional guidance on these steps is provided in the [TxDOT Historical Studies Toolkit](#).

#### **4.4.1 Reconnaissance Survey**

A Reconnaissance Survey Report documents baseline information on all historic-age resources documented in the project APE. It is typically necessary for projects that expand the footprint of the facility beyond existing ROW, either through acquisition or through easements.

#### **4.4.2 Intensive Survey**

An intensive survey requires the development of additional documentation on historic-age resources to support finalized determinations of eligibility under both Section 106 and the ACT. It is typically necessary when proposed project actions include the acquisition of parcels associated with properties identified as potentially NRHP eligible in the reconnaissance survey.

#### **4.4.3 Effects Determination/Alternatives Analysis**

An alternative analysis and effects determination are typically necessary when the proposed project has the potential to cause adverse effects or proposes the acquisition of a historic property determined NRHP eligible in the intensive survey process.

#### **4.4.4 Public Involvement Plan**

A public involvement plan is typically necessary when a project has the potential to cause pervasive historic property issues for a project, suggesting the need to integrate Section 106 public involvement considerations fully into the overall NEPA public involvement process.

### **4.4.5 Other Triggers**

Additional developments or conditions may prompt revision to the environmental project scope. To avoid substantial delays in obtaining environmental clearance, consultation with ENV-HIST is recommended in the following instances.

- Design changes that require additional ROW and were not previously disclosed
- Design changes not previously disclosed that alter the proposed footprint of the roadway or add capacity
- Design changes that alter the vertical or horizontal alignment of the proposed roadway and were not previously disclosed
- The incorporation of additional permanent and/or temporary easements that were not previously disclosed
- Proposed use of a nation-wide permit or an individual permit from the USACE or another lead federal agency not previously disclosed
- Changes from state or local funding to federal funding through FHWA or another lead federal agency

Changes from state or local funding to federal funding also trigger NHPA compliance requirements, including the need to expand the APE in recognition of the need to assess indirect effects and cumulative impacts.

## **5.0 Public Involvement and Coordination with Resource Agencies**

The TxDOT coordination process requires consultation with members of the interested public, federal agencies, SHPO/THC, and local governments. TxDOT must seek and consider public views of proposed projects, preferably at the same time as procedures for public involvement efforts planned for NEPA compliance.

Depending on the scale of the project and the effects posed to historic properties, it may be advantageous to integrate these efforts through the creation of a formal public involvement plan, which accounts for special circumstance. For example, TxDOT typically consults County Historical Commissions in the development of bridge replacement projects. Guidance and standards to assist project sponsors in the development of public participation plans are available online in the [TxDOT Historical Studies Toolkit](#).

### **5.1 Consulting Parties**

When a determination of adverse effects on a historic property is anticipated, efforts may be warranted to formally integrate additional individuals and organizations into the public involvement process ([36 CFR 800.2\(c\)\(5\)](#)). Consulting parties are provided opportunities to comment on identification and evaluation efforts and consideration of ways to avoid, minimize and mitigate the adverse effects. For example, the Historic Bridge Foundation serves as a consulting party on all projects that pose an adverse effect to historic bridges.

The outcome of the consultation must be integrated into the coordination process with THC and be included in the public involvement summary retained in the project file.

### 5.2 Consultation with THC

The PA and MOU significantly streamline the consultative process between TxDOT and SHPO/THC. Typically, much of the review process is carried out by the professionally qualified staff of ENV-HIST. TxDOT historians routinely conduct historic property determinations and non-adverse effects determinations of effects for transportation projects without formally consulting SHPO/THC under either federal or state regulations. Appropriate documentation of these determinations is required to be retained in the project file to facilitate routine audit procedures. These audit procedures ensure the process is working effectively and fosters continuous improvement of the process.

Projects with anticipated findings of adverse effects, however, require formal consultation between TxDOT and SHPO/THC. In addition, the following circumstances also may warrant formal consultation.

- Public controversy arises regarding determinations made by TxDOT staff.
- Adverse effects on historic properties are anticipated.
- Additional regulations such as State Antiquities Landmark designations or courthouse preservation regulations are applicable.
- When SHPO/THC is fulfilling its role as the Section 4(f) official with jurisdiction (OWJ) is required
- The use of a formally designated historic property invokes the provisions of Chapter 26 of the Texas Parks and Wildlife Code (PWC), including the requirement for a formal public hearing.

## 6.0 Project Documentation

TxDOT's review of non-archeological historic properties in compliance with Section 106 of the NHPA and the ACT must be summarized for integration into the NEPA process and the project file. Documentation of efforts to identify historic properties, determinations of eligibility and effects for historic properties, consultation efforts, and mitigation agreements are all essential components of the project file. Additional guidance is found online in the [TxDOT Historical Studies Toolkit](#).

### 6.1 Project File

The project file is the record documenting the basis for concluding the regulatory process for historic properties and will be used to build the administrative record for legal purposes if necessary. Summaries of documented outcomes must be integrated into the NEPA documentation and are based on the findings presented in the internal coordination memos or external coordination letters with THC. It is the responsibility of TxDOT historians to retain this documentation and the appropriate technical studies in the project file. It is the responsibility of the project sponsor to create the appropriate summaries of the documented outcomes, based on the following list and the appropriate documentation standards in the TxDOT Historical Studies Toolkit, for integration into the NEPA findings.

For all projects, the internal coordination memo or the external coordination packet sent to THC and the following documentation is required, typically in the form of any supporting technical studies.

- A description of the project and its APE, including a description of the type, extent, and degree of conditions that could affect the integrity of historic properties
- Documentation of any archival or background research

- Justification of the level of effort needed to identify and evaluate the historic properties and documentation of efforts to identify and evaluate historic properties
- A map showing the location of evaluated properties in the APE
- Photographs, survey forms, and field notes appropriate to documenting historic properties
- NRHP eligibility determinations justifying the application of criteria outline in [36 CFR 60.4](#)
- Effects determinations, including – when appropriate – associated notes, photographs, plans, specifications, estimates, and documentation detailing the application of the criteria for an adverse effect, pursuant to [36 CFR 800.5](#)
- Description of measures, if any, to resolve adverse effects
- As appropriate, a record of public involvement efforts, particularly interaction with potential consulting parties and consideration of any views they provide
- Description of planning efforts to avoid or minimize harm to historic properties, including mitigation efforts, commitments and assessment of safety and environmental constraints

When a local government project sponsor assumes responsibility for coordination with SHPO/THC, a signed concurrence letter from the agency – retained in the project file – and a summary – included in the environmental review document or retained in the project file to support a CE – is sufficient documentation of successful regulatory compliance.

### **6.2 NEPA Summary Findings**

In addition to the documentation components listed above, appropriate summaries of the outcomes should be integrated into the NEPA documentation to be shared with the public and decision-makers. Additional guidance is found online in the [TxDOT Historical Studies Toolkit](#).

Summaries must establish one of the following findings based on the internal coordination memo or the external coordination packet sent to SHPO/THC.

- The project will have no effect on historic properties.
- The project will have no adverse effect on historic properties.
- The project's adverse effects on historic properties were resolved by following a mitigation plan agreed upon by consulting parties and the SHPO/THC.

Briefly identify the technical studies (e.g. reconnaissance survey) conducted and the consultation efforts, attaching any consultation letters and technical studies that support the findings. In the summary, reference mitigation commitments and documentation of concurrence achieved through consultation, as shown in the following example.

*A reconnaissance survey was performed within the project's area of potential effects of 150 feet beyond proposed ROW (see Appendix # – Historical Resources Survey). TxDOT initiated consultation with the Dallas County Historical Commission on May 12, 2013 (see Appendix # – Consultation). For this project, individual consultation with the Texas Historical Commission/Texas State Historic Preservation Officer was required (see Appendix # – Consultation).*

Note that direct consultation with SHPO/THC is required only in cases of adverse effect in accordance with the PA and the MOU. In all other cases, internal TxDOT-ENV review memos or findings may be found in the project file.

Briefly summarize the results of technical studies and consultation. Include a brief discussion of appropriate Section 106 public involvement efforts.

*The reconnaissance survey identified no historic resources, and consulting parties did not object to the proposed finding of no effect on historic properties. No controversy exists regarding project effects on historic properties, therefore additional consulting parties were not integrated into public involvement efforts.*

Finally, cite the appropriate finding based on the outcome.

*TxDOT historians determined project activities pose no potential for effects to historic properties. Individual project coordination with SHPO is not required. Refer to the uploaded documentation.*

OR

*TxDOT historians determined project activities pose no adverse effects to historic properties. Individual project coordination with SHPO is not required. See uploaded documentation.*

Findings of adverse effect require customized language developed through consultation with ENV HIST.

## 7.0 Glossary

**Advisory Council on Historic Preservation (ACHP)** – The ACHP is an entity established by the NHPA to monitor its implementation and to comment on undertakings of federal agencies.

**Antiquities Code of Texas (ACT)** – This state historic preservation law mandates the identification, protection, and preservation of locations of historical, archeological, educational, or scientific interest.

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

**Determination of Effects** – This is the determination made regarding impacts on historic properties from proposed project activities, as made by TxDOT historians in consultation with SHPO/THC.

**Determination of Eligibility** – This is the determination is made regarding the presence or absence of significance and integrity of historic properties rendering them eligible for listing on the NRHP, as made by TxDOT historians in consultation with SHPO/THC.

**Federal Undertakings** – activities funded, licensed or permitted through an agency of the Federal Government

**Historic-Age Resource** – Any building, structure, object, or non-archeological site (in accordance with 36 CFR 60) that is at least 45-years-old at the time of a transportation project's letting is classified as a historic-age-resource.

**Historic Property** – A historic property is any district, building, structure, object, or non-archeological site with characteristics meriting formal inclusion on federal and/or state registers.

**Intensive Survey** – This level of historic survey, completed after a reconnaissance survey, consists of detailed survey efforts to compile additional documentation on a historic property in support of finalized determinations of NRHP eligibility and adverse effects.

**Mitigation** – Mitigation is the result of the process to resolve adverse effects to a historic property, and mitigation is developed in consultation with appropriate resource agencies and the interested public.

**National Register of Historic Places (NRHP)** – The NRHP is an honorary list of historic properties maintained by the Keeper at the Department of Interior authorized by the NHPA.

**Project Area** – The geographic area in which construction activities are undertaken for a project is called the project area.

**Property** – A property is any parcel of land including of buildings, structures, and objects located on a single parcel of land.

**Reconnaissance Survey** – This initial survey effort provides project decision-makers with contextual information, photo-documentation, locational data, and preliminary assessments of significance and integrity for all historic-age resources in the project APE.

**Scoping** – This is the process of determining what actions to identify, evaluate, and document potential impacts to historic properties in the project's APE are required and who will conduct those actions.

**Section 106 of the National Historic Preservation Act** – This federal regulation requires the consideration of project effects on historic properties to be made in consultation with resource agencies and the interested public prior to the finalized decision-making conducted in compliance with the NEPA process.

**Study Area** – The TxDOT standard definition of a study area is the geographic area within 1300' of the project area that will be evaluated to foster development of appropriate contextual analysis.

**Technical Studies** – Technical studies include studies, research, surveys, and other activities compiled to support decision-making in association with an environmental document.

## **8.0 Abbreviations and Acronyms**

ACHP	Advisory Council on Historic Preservation
ACT	Antiquities Code of Texas
APE	Area of Potential Effect
CFR	Code of Federal Regulations
ENV	TxDOT Environmental Affairs Division
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
HIST	Historical Studies Branch of ENV
IBWC	International Boundary and Water Commission
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
OWJ	Official with Jurisdiction
PA	Programmatic Agreement
PCR	Project Coordination Request
PWC	Parks and Wildlife Code
RA	Risk Assessment Questionnaire
ROW	Right of Way
RTHL	Registered Texas Historic Landmark
SAL	State Antiquities Landmark
SHPO	State Historic Preservation Officer
TAC	Texas Administrative Code
THC	Texas Historical Commission
TNRC	Texas Natural Resource Code
TxDOT	Texas Department of Transportation
USACE	United States Army Corps of Engineers
USC	United States Code
U.S. DOT Act	United States Department of Transportation Act

## **Appendix A**

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>
April 2014	Version 1 release