Guidance

Historical Studies Review Procedures

This guidance document provides instructional material regarding how to review and process project activities in accordance with TxDOT’s Section 106 of the National Historic Preservation Act Programmatic Agreement and other federal and state preservation laws.
# Table of Contents

1.0 Introduction.................................................................................................................................................. 3

2.0 Appendix 3 No Potential to Affect Historic Properties .............................................................................. 3

3.0 Appendix 4 Minimal Potential to Affect Historic Properties ........................................................................ 4

4.0 Bridge Projects .............................................................................................................................................. 6

5.0 Local Government Sponsored Projects ....................................................................................................... 7

6.0 Re-coordination of Projects with HIST ...................................................................................................... 7

7.0 Antiquities Code of Texas Documentation ................................................................................................... 8

8.0 Frequently Asked Questions ......................................................................................................................... 9

9.0 Abbreviations and Acronyms ..................................................................................................................... 11

Appendix A ......................................................................................................................................................... 12
1.0 Introduction

This guidance document serves to provide Texas Department of Transportation (TxDOT) District environmental staff with coordination and review procedures regarding federal and state historic preservation laws. The majority of the guidance document discusses how to coordinate TxDOT projects under TxDOT’s Section 106 of the National Historic Preservation Act (NHPA) Programmatic Agreement (Section 106 PA). The PA facilitates and expedites cultural resources review of common project types when funded by Federal Highway Administration (FHWA). Under the Section 106 PA, certain types of TxDOT’s common projects are divided into three appendices. These appendices list various “undertakings” (aka projects) and prescribe them into three categories:

- **No potential** to cause effects on historic properties (Appendix 3)
- **Minimal potential** to cause effects on historic properties (Appendix 4)
- **All other** project types

Because proposed projects can affect archeological and non-archeological resources differently, both the Cultural Resources Management (CRM) Archeology Branch and the Historical Studies Branch (HIST) have specific project types listed separately in the first two categories. For example, an in-kind bridge replacement would be considered a “no potential to cause effects” under archeological historic properties, but would be considered a “minimal potential or potential to cause effects” under non-archeological resources.

Texas Environmental Compliance Oversight System (ECOS) documentation of these findings will change as the software is updated to reflect the new Section 106 PA provisions.

**Note that the procedures in Sections 2.0-5.0 below ONLY apply to Federal Highway Administration (FHWA)-funded projects. See Section 7.0 for state-funded project procedures.**

2.0 Appendix 3—No Potential to Affect Historic Properties

The following activities do not require review or consultation regarding project effects on non-archeological historic properties. TxDOT’s risk analysis, internal policies and Section 110 of the NHPA inventories shall reinforce any necessary exceptions for specific historic properties. Per the Section 106 PA, the State Historic Preservation Officer (SHPO) or the Advisory Council on Historic Preservation (ACHP) may review project files.

1. Installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;
2. In-kind repair, replacement of lighting, signals, curbs and gutters, and sidewalks;
3. Maintenance, repair, or replacement of non-brick roadway surfacing, including crack seal, overlay, milling, grooving, resurfacing, and restriping;

---

1 Some safety end treatments require extending the culvert to apply the treatment. This is allowable under Appendix 3.
2 “Maintenance” in this instance refers to all work completed within the existing roadbed, as long as vertical changes are less than 5 feet.
4. 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 subsection; and/or

5. Certain bridge projects, as detailed in Section 4.0.

TxDOT District staff will review project descriptions and other project information as necessary to evaluate whether a project is a type with “no potential to cause effects” on historic properties. The department delegate has authority to approve a finding that the project is a type with “no potential to cause effects” on historic properties. The department delegate shall retain documentation, which is the project description in ECOS/the Work Plan Development Tool, which establishes the basis of any such findings. Undertaking types listed in Appendix 3 shall not be further reviewed under Section 106 of the NHPA.

Please note that the list of undertakings that can be cleared by the department delegate is different under this agreement versus the previous PA. If a project does not fit the categories listed above, the department delegate should determine if it is an Appendix 4 project.

3.0 Appendix 4—Minimal Potential to Affect Historic Properties

The following project types require the department delegate to contact the appropriate historian to discuss the project and ensure there are no sensitive property types in the area of potential effect (APE). Sensitive property types (per the Section 106 PA) are courthouse squares, historic downtown commercial areas, historic residential neighborhoods, farmsteads, historic road corridors, and bridges. These property types are likely previously identified in local, state, or national registers of historic properties and can be found by checking existing records or through public involvement efforts.

These activities require minimal identification efforts to evaluate the undertaking’s potential to cause effects on historic properties. The department delegate shall retain documentation that establishes the basis of any such findings. Undertakings that require no further review for sensitive property types will be found to have no effect on historic properties.

1. Routine structural maintenance and repair of bridges, highways, railroad crossings, picnic areas, and rest areas;

2. Replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts;

3. Maintenance, repair, reconfiguration, or correction of roadway geometrics, including intersection improvements and driveway and street connections;

4. Maintenance, repair, installation, or modification of pedestrian and cycling-related features, including Americans with Disabilities Act (ADA) ramps, trails, sidewalks, and bicycle and pedestrian lanes;

5. Maintenance, repair, relocation, addition, or minor widening of roadway, highway, or freeway features, including turn bays, center turn lanes, shoulders, U-turn bays, right turn lanes, travel lanes, interchanges, medians, and ramps;

---

3 See section 4.0 for specific bridge project guidance.

4 “Routine structural maintenance and repair of…highways” in this instance refers to all work completed within the existing non-brick roadbed, as long as vertical changes are less than 5 feet. For Historical Studies clearance, work that falls under this description for “highways” should be cleared under Appendix 3, Number 3. Keep in mind that this statement has a different application for Archeology, which is why the wording can be confusing for Historical Studies applications.
6. Maintenance, repair, replacement, or relocation of features at crossings of irrigation canals, including bridges, new vehicle crossings, bank reshaping, pipeline and standpipe components, canal conversion to below-grade siphons, and utilities;

7. Installation of new safety or mast lighting; and/or

8. Landscaping projects completely within current right of way (ROW).

The following steps are required for Appendix 4 projects:

1. The department delegate MUST send an email to the CRM historian about the project,⁵ and:
   a. Upload the email to ECOS (as a document under Historical Studies)
   b. The email MUST state the following:
      “TxDOT reviewed the following historic resources maps (Texas Historic Sites Atlas, Texas Historic Districts and Properties and Historic Bridges of Texas) and found no previously recorded properties in the project’s Area of Potential Effects.”⁶
   c. If sensitive property types are identified in the project’s Area of Potential Effects (APE), the department delegate must complete and upload a Project Coordination Request (PCR) for the project.

2. Ensure the historian has access to the following in ECOS:
   a. Detailed project description (in ECOS/Work Plan Development Tool)
   b. Amount of any new ROW, temporary, and permanent easements (in Work Plan Development Tool)
   c. Aerial project location map
   d. Photographs, if necessary for project

3. Historian may request additional information.

CRM historians will review the project and supporting documentation to determine if the APE contains sensitive project types:

1. If yes, then the historian will request a Project Coordination Request (PCR) form.

2. If no, then the historian will document their findings on the Coordination Page in ECOS. All Coordination tasks will be under “Environmental—Historical (ENV-H)” until the ECOS software updates add new stipulations.

If the project activity does not fall under Appendix 3 or 4 projects, a full PCR is required.

---

⁵ The e-mail should include the CSJ for the project.
⁶ The standard APE is as follows:
   1. No new ROW = APE is existing ROW
   2. New ROW along existing road alignment = APE is 150-feet on either side of the current and proposed new ROW
   3. New alignment = APE is 300-feet on either side of the proposed new ROW
4.0 Bridge Projects

Appendix 3 Project Types

CRM historians determined that the following bridge activities are categorized under Appendix 3, projects with “no potential to cause effects” on a historic property, as long as the bridge is not within or adjacent to a historic district. All bridge projects listed below shall be documented in ECOS per the Appendix 3 instructions above:

1. Routine maintenance, replacement, widening, upgrades, or repair of bridges less than 45 years old at the time of project letting, as long as no additional ROW or easements are necessary to complete the project.

2. Routine maintenance, replacement, widening, upgrades, or repair of bridges on the Interstate Highway system, as long as no additional ROW or easements are necessary to complete the project, unless the bridge is one of the six on this list: https://www.environment.fhwa.dot.gov/histpres/highways_list.asp.

3. Routine maintenance, replacement, widening, upgrades, or repair of concrete bridge-class culverts or timber stringer bridges, as long as no additional ROW or easements are necessary to complete the project.

4. Routine maintenance, replacement, widening, upgrades, or repair of historic-age bridges determined to be “not eligible” under TxDOT’s Historic Bridge Inventory (available here: http://arcg.is/1EyejQ4), as long as the applicable County Historical Commission (CHC) has no comments or concurs with the bridge replacement and no additional ROW or easements are necessary to complete the project. Documentation of CHC consultation in ECOS will include the District’s letter/e-mail/phone call to the CHC, the signed concurrence letter, or any other CHC response. No additional documentation, other than the initial outreach, is necessary if the CHC chooses to not respond.

Appendix 4 Project Types

CRM historians determined that the following bridge activities are categorized under Appendix 4, projects with “minimal potential to cause effects” on a historic property. All bridge projects listed below shall be documented in ECOS per the Appendix 4 instructions above:

Bridge projects under Appendix 3 that require less than 1 acre of new ROW and/or easements to complete the project.

---

7 “Upgrades” include rail/guardrail repair and replacement
8 CHC letter required for:
   - Non-truss bridge constructed between 1865 and 1945
   - Metal truss bridges
   - Depression-Era masonry bridges
   - 1945-1965 bridges
   - Timber stringer bridges of any age
9 Contact the assigned CRM historian if the CHC provides any comments in response to the letter, e-mail, or phone call, to discuss appropriate next steps.
5.0 Local Government Sponsored Projects

For FHWA-funded projects that have a local government sponsor, TxDOT must coordinate the Section 106 of the National Historic Preservation Act review through the Section 106 PA. If a project has FHWA funds and the local government is a sponsor, the following tasks must be completed:

1. Local government completes the Scope Development Tool (or similar) and provides it to the District.\(^{10}\)
2. The District enters the Scope Development Tool into ECOS as a Work Plan Development Tool.
3. The District makes a determination of the appropriate appendix for the project based on the information provided by the local government.
4. The appropriate documentation for Appendix 3, Appendix 4, or other project types must follow this guidance document.

6.0 Re-coordination of Projects with HIST

Certain circumstances require the District to contact the CRM historians to determine if a project is still in compliance with the Section 106 determination. The following process MUST be followed when changes are made to:

1. Funding source (federal to state, or state to federal funds)
2. Letting date\(^{11}\)
3. Amount of ROW, temporary, or permanent easements\(^{12}\)
4. Scope of work changes
5. Project location expanding or contracting\(^{13}\)

Assign the district’s CRM historian a “Respond to Questions and/or Comments” task in ECOS with a description of the proposed changes, including appropriate maps and photographs. The historian will:

1. Review the changes to ensure that previous Areas of Potential Effect (APEs) and documentation methods remain sound.
2. Request a new PCR that covers the changes, as appropriate.
3. Document findings for re-coordination within the Respond to Questions and/or Comments task (if no PCR necessary) or as a Coordination Page (if PCR necessary).

---

\(^{10}\) The process of completing a Project Work Plan for a local government sponsored project is allowed to vary from this procedure laid out in this guidance.

\(^{11}\) Notify CRM HIST if the letting date changes by more than 5 years AFTER HIST clearance but BEFORE overall NEPA clearance. Once NEPA clearance is issued, HIST is less concerned with the letting date change.

\(^{12}\) Changes in ROW may affect the Area of Potential Effect (APE) for the project.

\(^{13}\) Changes in project location (expanding or contracting) may affect the APE for the project.
7.0 Antiquities Code of Texas Documentation

The majority of reviews under the Texas Administrative Code provisions for the Antiquities Code of Texas (ACT) will be for archeological resources. The Historical Studies branch will review projects for the presence or absence of known and designated historic properties. The following steps detail how to coordinate any state- or locally-funded projects for ACT compliance.

1. The District sends an e-mail to the CRM historian about the project, and:
   a. Uploads the email to ECOS (as a document under Historical Studies)
   b. The email MUST state the following:
      "TxDOT reviewed the following maps (Texas Historic Sites Atlas, Texas Historic Districts and Properties, and Historic Bridges of Texas) and found no previously recorded properties in the project location. There are required or anticipated federal funding, approvals, permits or licenses (e.g. Corps of Engineers, Coast Guard, International Border and Water Control, Forest Service, etc.) that would trigger review under Section 106 of the National Historic Preservation Act."
   c. If previously recorded properties are within the project location, the District must contact the CRM historians to discuss the next steps.

2. The District ensures the historian has access to the following in ECOS:
   a. Detailed project description (in ECOS/Work Plan Development Tool)
   b. Amount of any new ROW, temporary, and permanent easements (in Work Plan Development Tool)
   c. Aerial project location map
   d. Photographs, if necessary for project

3. Historian will review maps to confirm the presence or absence of National Register of Historic Places-listed or State Antiquities Landmark-listed properties within the existing or proposed ROW or easements for the project.

4. Historian will create a Coordination page in ECOS, under “Environmental—History” with ACT findings.

---

14 The e-mail must include the CSJ.
15 If federal approvals or permits are required for any part of the project, Section 106 compliance procedures may apply.
8.0 Frequently Asked Questions

1. **Does the Section 106 PA apply to non-federal projects?**

   *No*, the Section 106 PA *only* applies to those projects that require FHWA approval, funding or permitting. The PA *does not apply* to state-funded projects or any other federally funded or permitted projects.

2. **How does the new PA differ from the old PA?**

   The new PA splits the undertaking analysis into archeological impacts and non-archeological impacts. This approach recognizes that the same types of projects may affect resources differently. The new PA further splits the project types into those that do not need any historic property consideration, versus those that only need consideration when historic properties are present. This PA spells out the old scoping threshold exceptions. However, the new PA requires documentation of the absence of historic properties in a project area. This is done by confirming district findings with the historical studies staff.

   FHWA's National Environmental Policy Act (NEPA) Assignment MOU with TxDOT requires reporting and quality control measures in our decision-making. The historian confirmation ensures that we are meeting our FHWA requirements and documenting our process appropriately for internal and external audits of project files.

3. **Why have the Appendix 3 criteria changed?**

   The Appendix 3 criteria did not change, but were divided into two groups. The project types under Appendix 3 are those that can be performed even if historic properties are in the project area. The majority of project types in Appendix 4 can be performed with minimal review, as long as no historic properties are present. Of course, there are always those outlier projects, so if you have a question or are unsure if a project falls under Appendix 3, contact your CRM historian.

4. **Why is the Work Plan Development Tool required?**

   The Project Work Plan and Development Tools are designed to document a District's decision-making under the PA. This documentation is necessary for FHWA audits under NEPA Assignment. Historical Studies worked with the ECOS team to design the Work Plan Development Tool to replace the Risk Assessment form.

5. **Why do the districts now have to coordinate with the historians for Appendix 4 projects?**

   FHWA's NEPA Assignment MOU requires reporting and quality control measures in our decision-making. The historian confirmation ensures that we are meeting our FHWA requirements and documenting our decision-making appropriately for internal and external audits of project files.

6. **Under the standard Section 106 process, does each step require a separate 30-day review period?**

   *Yes*, but the PA provides a significant streamlining opportunity to complete the review process in-house or to consult with the THC/SHPO in a condensed 20-day review period. Some complex or controversial projects still follow the standard process to accommodate integration of comments of consulting parties, but approximately 95% of project coordination under the PA takes advantage of its significant streamlining opportunities.
7. **How does this all work in ECOS?**

ECOS documentation should include, depending on Appendix:

a. Work Plan Development Tool or PCR
b. E-mail with statement of background research
c. Aerial project location map
d. No Coordination page for projects cleared under Appendix 3
e. Historians will create the Coordination page for projects cleared under Appendices 4 and 6

8. **When do we have to contact County Historical Commissions?**

CHCs should be contacted when a project plans to **replace** a historic-age concrete or masonry bridge. Historical Studies has a specific letter template that Districts may use for contacting CHCs. It is no longer necessary to contact CHCs when the following non-historic bridges are proposed for replacement:

a. Bridges constructed between 1945 and 1965
b. Metal truss bridges
c. Depression-era masonry bridges (1930-1943)
d. Concrete box culverts and bridge-class culverts
e. Timber bridges

Historical Studies changed the CHC notification requirement for these bridges because large-scale, statewide findings have been made for these bridges. We conducted statewide outreach and public notification on our list of historic bridges constructed between 1945 and 1965 during the Summer of 2014. Therefore, the consultation threshold is already met for those bridges. Truss bridges are universally determined to be eligible for the National Register of Historic Places, while concrete box culverts, bridge-class culverts, and timber bridges are universally determined to be not eligible for the National Register of Historic Places.

Historical Studies encourages contacting CHCs or Certified Local Governments (CLGs), as appropriate, for any large, complex, or controversial projects. Developing a relationship with CHCs and CLGs will assist TxDOT in determining when certain consulting parties prefer to be contacted.

9. **When must we recoordinate a project with CRM HIST?**

It is important to contact Historical Studies when the following occurs on a project:

a. Amount of ROW, temporary, or permanent easement increases or decreases
b. Project location expanded or contracted
c. Scope change
d. Funding sources change (state to federal and federal to state)
e. Letting date change

Changes in amount of ROW or project location, either increasing or decreasing, will affect the project’s Area of Potential Effect (APE). Letting date changes may affect the validity of a historic
Historical Studies Review Procedures

resources survey and its findings. It is most important to notify Historical Studies about letting date changes AFTER HIST clearance, but before overall NEPA clearance. If you are not sure HIST needs to review a letting date change, contact the historians and ask.

Historical Studies will confirm that the original finding is still valid, or will request additional information

9.0 Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACHP</td>
<td>Advisory Council on Historic Preservation</td>
</tr>
<tr>
<td>ACT</td>
<td>Antiquities Code of Texas</td>
</tr>
<tr>
<td>ADA</td>
<td>American’s with Disability Act</td>
</tr>
<tr>
<td>APE</td>
<td>Area of Potential Effects</td>
</tr>
<tr>
<td>CHC</td>
<td>County Historical Commission</td>
</tr>
<tr>
<td>CLG</td>
<td>Certified Local Governments</td>
</tr>
<tr>
<td>CRM</td>
<td>Cultural Resources Management</td>
</tr>
<tr>
<td>ECOS</td>
<td>Texas Environmental Compliance Oversight System</td>
</tr>
<tr>
<td>HIST</td>
<td>Historical Studies Branch, Cultural Resources Management, Environmental Affairs Division</td>
</tr>
<tr>
<td>NEPA</td>
<td>National Environmental Policy Act</td>
</tr>
<tr>
<td>PA</td>
<td>Programmatic Agreement</td>
</tr>
<tr>
<td>PCR</td>
<td>Project Coordination Request</td>
</tr>
<tr>
<td>ROW</td>
<td>Right-of-Way</td>
</tr>
<tr>
<td>SHPO</td>
<td>State Historic Preservation Officer</td>
</tr>
<tr>
<td>THC</td>
<td>Texas Historical Commission</td>
</tr>
</tbody>
</table>

TxDOT Environmental Affairs Division
Appendix A
The following table shows the revision history for this guidance document.

<table>
<thead>
<tr>
<th>Effective Date Month, Year</th>
<th>Reason for and Description of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2016</td>
<td>Version 1 was released</td>
</tr>
</tbody>
</table>