

*Texas Department of Transportation  
Environmental Affairs Division*

**Standards of Uniformity for  
Projects Without Federal Highway Administration  
Involvement**

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A Guide to Projects without FHWA Involvement

**Archeological Resources**

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**Standards of Uniformity for Archeological Resources**

The SOU does not mandate use of boilerplate language, since the necessary analyses can be documented many different ways. Follow the directions of the applicable SOU for the format of the environmental document to determine what supporting documentation (such as coordination letters) needs to be included as part of the environmental document. The bottom line is that the document establishes three findings. First, it establishes whether the project will have an unresolved impact on archeological sites that warrant formal designation as State Archeological Landmarks, sites eligible for inclusion in the National Register of Historic Places, or cemeteries. Second, it establishes whether public controversy exists over the project’s impacts on archeological sites and cemeteries. Third, it establishes whether the project is consistent with other federal, state, and local statutes and regulations.

YES	NO	N/A	Description of Item Sufficiency	References/Guidance
<b>Analysis of Impacts to Archeological Sites and Cemeteries</b>				
1			The project is classified as one that does not require project-specific review and consultation (see <a href="#">Certification Standards for Projects that Do Not Require Project-Specific Review (Archeology)</a> ), or the district/other project sponsor has provided project information to ENV in accordance with the <a href="#">SOU for Coordination Requests Regarding Archeological Resources</a> .	<a href="#">Certification Standards for Projects that Do Not Require Project-Specific Review (Archeology)</a> . <a href="#">Memorandum of Understanding between TxDOT and the Texas Historical Commission (MOU) 43 TAC 2.24(e)(1)</a> <a href="#">Standards of Uniformity for Coordination Requests Regarding Archeological Resources</a> .
2			For projects that require project-specific review and consultation, technical review documents and consultation letters identify the horizontal dimensions and depth of impacts resulting from the project (the area of potential effects, or APE).  Considered cumulatively, the three-dimensional space (APE) evaluated by the various required technical review documents and consultation letters completely encompasses the project area and depth of impacts disclosed in the most recent project description.	<a href="#">MOU, 43 TAC 2.24(c)(3)(A)</a>
3			All appropriate parties with whom coordination must be undertaken have	a. 43 TAC 2.24(e)(1)

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			<p>been identified, and coordination has been undertaken.</p> <p>a) Consultation with the Texas Historical Commission occurred or was not required under the terms of the MOU.</p> <p>b) Consultation with federally-recognized Native American tribes occurred or was not required. Note that TxDOT's MOU for compliance with the Antiquities Code of Texas requires tribal consultation on all projects that require review and consultation. ENV maintains a list of tribes that must be consulted for each district.</p> <p>c) Coordination with other parties regarding project impacts to archeological sites and cemeteries occurred or was not required. This requirement can be satisfied through the district's public involvement process.</p> <p>d) Consultation with various parties such as descendents, cemetery organizations, the Texas Historical Commission, and the District Court, was not required or was completed in order to obtain permission to relocate burials from the project area.</p>	<p>and 43 TAC 2.24(f)(1)(C)</p> <p>b. 43 TAC 2.24(e)(1) and 43 TAC 2.24(e)(4)(B)</p> <p>c. 43 TAC 2.24(e)(4)(A)</p> <p>d. <a href="#">Health and Safety Code, Title 1, Section 711</a></p>
4			<p>An appropriate level of effort has been undertaken for projects that require review.</p> <p>a) Background studies or field investigations have been concluded for the project.</p> <p>b) Investigations have been completed in all areas for which a field investigation was recommended and access was available.</p> <p>c) Access to some areas requiring field investigation may have been denied by private property owners. In such cases, the document includes a commitment to complete required investigations and consultation prior to construction.</p>	<p>a. SOU for <a href="#">Background Study</a></p> <p>b. SOUs for <a href="#">Individual Antiquities Permit Applications</a> and <a href="#">Archeological Survey Reports</a>.</p>
5			<p>The document describes the potential</p>	<p>a. <a href="#">MOU</a>, 13 TAC</p>

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			<p>impacts of the project on archeological sites. It identifies whether impacts may occur to sites formally designated as State Archeological Landmarks, sites that warrant formal designation, or sites that are eligible for inclusion in the National Register of Historic Places anywhere within the project area. Typically, no impacts will occur because:</p> <ul style="list-style-type: none"> <li>a) the project, by definition, has no potential to cause such impacts; or</li> <li>b) the project area is too disturbed to contain such properties; and/or</li> <li>c) investigations of the project area demonstrate that the project area contains no archeological sites; and/or</li> <li>d) investigations of the project area demonstrate that the project area contains no sites warranting formal designation as State Archeological Landmarks and no sites eligible for inclusion in the National Register of Historic Places; and/or</li> <li>e) any State Archeological Landmarks or sites eligible for inclusion in the National Register of Historic Places in the project area would not be impacted by the project; and/or</li> <li>f) access to investigate portions of proposed right-of-way or easements was denied by the property owners.</li> </ul> <p>Similarly, the document describes the potential impacts of the project on burials and cemeteries. It identifies whether impacts may occur to cemeteries or burials. Typically, no impacts will occur because no designated cemetery property (regardless of whether burials exist within the property) occurs within the project area (note: any area with</p>	<p>26.14(e)(1) and 43 TAC 2.24(e)(1)</p> <ul style="list-style-type: none"> <li>b. <a href="#">MOU</a>, 13 TAC 26.14(f) and 43 TAC 2.24(f)</li> <li>c. <a href="#">MOU</a>, 13 TAC 26.14(f) and 43 TAC 2.24(f)</li> <li>d. <a href="#">MOU</a>, 13 TAC 26.14(f) and 43 TAC 2.24(f)</li> <li>e. <a href="#">MOU</a>, 13 TAC 26.14(f) and 43 TAC 2.24(f)</li> <li>f. <a href="#">MOU</a>, 13 TAC 26.14(l) and 43 TAC 2.24(l)</li> <li>g. <a href="#">Health and Safety Code, Title 1, Section 711</a></li> </ul>

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			human burials is considered designated cemetery property)	
6			The document identifies whether substantial controversy exists regarding the project's impacts on archeological sites, traditional cultural properties, cemeteries, or burials. Typically, no substantial controversy exists because: a) neither the District nor ENV has received an unresolved objection to the project (in any form) from a member of the public because of the project's potential impacts on such resources, or b) any objections or impacts have been resolved through further consultation. Resolution of objections or impacts is documented through formal agreements signed by the appropriate parties to indicate concurrence or to which appropriate parties expressed no objection.	43 TAC 2.10(b)(2)(B-D)
<b>Documentation of Findings in File</b>				
7			The project file contains complete documentation of appropriate investigation(s) covering the entirety of the project area, including one or more of the following documents: a. A signed form certifying that the project has no potential to impact sites that warrant formal designation as State Archeological Landmarks or sites that are eligible for inclusion in the National Register of Historic Places (signatory is ENV staff, appropriate District staff, or third-party project sponsor's representative). b. One or more background studies. c. Report(s) of field investigations.	a. <a href="#">Certification Standards for Projects that Do Not Require Project-Specific Review (Archeology)</a> b. SOU for <a href="#">Background Study</a> c. SOUs for <a href="#">Individual Antiquities Permit Applications</a> , and <a href="#">Archeological Survey Reports</a> .
8			The project file and ETS contain documentation of review completion regarding the entirety of the project area.	a. <a href="#">MOU</a> , 13 TAC 26.14(e)(1) and 43 TAC 2.24(e)(1) and <a href="#">Certification</a>

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			<p>This documentation may include the following:</p> <ul style="list-style-type: none"> <li>a. A signed form certifying that the project, by definition, has no potential to cause effects to archeological historic properties (signatory is ENV staff, appropriate District staff, or project sponsor's representative).</li> <li>b. Weekly clearance list(s) signed by ENV.</li> <li>c. Internal review memo(s) signed by ENV.</li> <li>d. Individual review letter(s), with signed concurrence from THC.</li> <li>e. Documentation of any denials of right-of-entry and TxDOT's commitment to complete required investigations and consultation once access has been acquired.</li> </ul>	<p><a href="#">Standards for Projects that Do Not Require Project-Specific Review (Archeology)</a></p> <ul style="list-style-type: none"> <li>b. <a href="#">MOU</a>, 13 TAC 26.14(j)(3) and 43 TAC 2.24(j)(3)</li> <li>c. <a href="#">MOU</a>, 13 TAC 26.14(j)(3) and 43 TAC 2.24(j)(3)</li> <li>d. <a href="#">MOU</a>, 13 TAC 26.14(f) and 43 TAC 2.24(f)</li> <li>e. <a href="#">MOU</a>, 13 TAC 26.14(l) and 43 TAC 2.24(l)</li> </ul>
9			<p>The project file and ETS contain documentation of completion of consultation with other parties, when required, including:</p> <ul style="list-style-type: none"> <li>a. federally-recognized Native American tribes, and</li> <li>b. other parties, as identified in points 3(c) and 3(d) of this checklist.</li> </ul>	<ul style="list-style-type: none"> <li>a. <a href="#">MOU</a>, 13 TAC 26.14(e)(4)(B) and 43 TAC 2.24(e)(4)(B)</li> <li>b. <a href="#">Health and Safety Code, Title 1, Section 711</a></li> </ul>
<b>Documentation of Findings in Environmental Document</b>				
10			<p>The environmental document determines the following, based on the project type and/or review and consultation:</p> <ul style="list-style-type: none"> <li>a. whether the project will have unresolved impacts on sites that warrant formal designation as State Archeological Landmarks or sites that are eligible for inclusion in the National Register of Historic Places (typically, impacts would be resolved through implementation of a mitigation plan approved by all appropriate parties), and</li> <li>b. whether the project will have an</li> </ul>	<p>43 TAC 2.10(b)(1)(B) and 43 TAC 2.24(f)(4)</p>

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			unresolved impact on a cemetery or burials (typically, such impacts would be resolved through implementation of a burial removal plan approved by all appropriate parties), and  c. whether public controversy exists regarding the project's impact on archeological sites and cemeteries.	
			The document identifies commitments. a. The document describes any mitigation measures agreed upon during consultation to resolve the impacts of the project. b. The document notes any commitments made to complete investigations in areas where access to private property has been denied by the property owners. c. The document includes a commitment to follow the post-review discovery procedures identified in the MOU if unanticipated finds are discovered during construction.	a. <a href="#">MOU</a> , 13 TAC 26.14(f)(4) and 43 TAC 2.24(f)(4) b. <a href="#">MOU</a> , 13 TAC 26.14(l) and 43 TAC 2.24(l) c. <a href="#">MOU</a> , 13 TAC 26.14(f)(5) and 43 TAC 2.24(f)(5)

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**Note:** Categorically excluded projects, by definition, can have no significant impact on cultural or historic resources (43 TAC 2.10(b)(1)(B)). TxDOT's rules governing environmental review of projects also state that no "unusual circumstances" may occur that would preclude the project from being categorically excluded. These regulations closely tie environmental analysis and compliance with cultural resources laws. "Unusual circumstances" include: substantial environmental controversy; significant impacts on properties protected by [Section 106 of the National Historic Preservation Act \(NHPA\)](#); or inconsistency with other federal, state, or local statutes, regulations, and requirements (43 TAC 2.10(b)(2)(B-D)).

This Standard of Uniformity (SOU) provides guidance to establish and document that these significant impacts and unusual circumstances do not exist. The standards for projects without FHWA involvement are similar to the standards for projects with FHWA involvement. The consultation processes differ slightly for projects with no federal involvement or for projects with no involvement from FHWA. Projects evaluated under the assumption that they do not have any federal involvement may require additional consultation if the project subsequently obtains federal funding or a federal permit or license is required for it.