

PROGRAMMATIC AGREEMENT

AMONG THE
FEDERAL HIGHWAY ADMINISTRATION
TEXAS STATE HISTORIC PRESERVATION OFFICER
ADVISORY COUNCIL ON HISTORIC PRESERVATION
and the
TEXAS DEPARTMENT OF TRANSPORTATION

WHEREAS, the Federal Highway Administration (FHWA) has determined that certain roadway construction and improvement projects within the State of Texas may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the Advisory Council on Historic Preservation (Council) and the Texas State Historic Preservation Officer (TSHPO) pursuant to Section 800.13 of the regulations (36 CFR 800 *et seq.*) implementing Section 106 of the National Historic Preservation Act of 1966 (16 USC 470f); and

WHEREAS, the FHWA provides funds to the Texas Department of Transportation (TxDOT) to construct and improve certain roadways within the State of Texas, and has granted TxDOT authority to consult with the TSHPO to determine the eligibility of historic and archeological properties for inclusion in the National Register of Historic Places, and to determine the effect of roadway improvement projects on those properties; and

WHEREAS, the term "historic property" as used in this Agreement means a building, structure, object, site, or district, other than an archeological site or district, that is listed in or eligible for inclusion in the National Register of Historic Places; and

WHEREAS, TxDOT has participated in the consultation, and has been invited to concur in this Programmatic Agreement (Agreement).

NOW, THEREFORE, the FHWA, the Council, and the TSHPO agree to the following stipulations, which satisfy the FHWA's Section 106 responsibilities for TxDOT-administered roadway construction and improvements, and bridge replacement and rehabilitation projects.

I. STIPULATIONS

The FHWA will ensure that the following measures are carried out:

1. **APPLICABILITY.** This Agreement applies to all Federal Highway Administration undertakings that are administered through the Texas Department of Transportation, except for undertakings which are funded through the Texas Statewide Transportation Enhancement Program pursuant to the Intermodal Surface Transportation Efficiency Act (ISTEA), which are the subject of a separate programmatic agreement.

2. As set forth in 36 CFR 800.4(a)(1), TxDOT shall review projects to determine whether they constitute undertakings according to 36 CFR 800.2(o).

a. If TxDOT determines that the project constitutes an undertaking, TxDOT shall proceed to coordinate the project with the TSHPO in accordance with Stipulations 3 through 29 of this Agreement.

b. TxDOT shall notify the TSHPO of all projects which have been reviewed and determined not to constitute undertakings in a monthly report. The TSHPO shall have thirty (30) days after receipt of the monthly report to provide comments on the projects listed in the monthly report. TSHPO comments, if any, shall apply to individual projects.

1. Failure by the TSHPO to provide comments on individual projects within thirty (30) days will constitute TSHPO concurrence that the projects are not undertakings and require no further consultation between TxDOT and the TSHPO.

2. If the TSHPO timely objects to the determination that a project listed on the monthly report does not constitute an undertaking, the TSHPO and TxDOT will consult and review the scope of work for the project to determine whether a field survey is necessary. If the parties agree that a survey of a particular project is warranted, TxDOT will perform the field survey specified in Stipulation 5 below and proceed according to the terms of this Agreement. If the parties cannot resolve their differences, TxDOT shall refer the matter to the FHWA, which will make a determination as to whether the project constitutes an undertaking.

3. TxDOT and the TSHPO shall consult to establish the Area of Potential Effect (APE) for undertakings subject to this agreement. TxDOT and the TSHPO may develop a categorical determination of the APE for certain types of projects, and review of the APE shall not be necessary for each undertaking.

4. TxDOT shall review the records of the Texas Historical Commission to determine if any properties that are listed in or are eligible for inclusion in the National Register of Historic Places exist within the APE. TxDOT shall also review the records of the Texas Archeological Research Laboratory (TARL) to determine if any known archeological sites exist within the APE. TxDOT shall assess what further information is necessary to identify the existence of historic or archeological properties within the APE, including seeking information from applicable local or regional governments, historical societies and historic preservation organizations, Native American tribes, and other interested parties as set forth in 36 CFR 800.4(a). TxDOT shall timely consult with the TSHPO to establish any further actions that may be necessary to identify historic or archeological properties.

5. On projects which constitute undertakings, and have been determined by TxDOT to require a cultural resources field survey, TxDOT shall conduct a field survey of the APE in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identifications*, 48 FR 44720-23, and any relevant guidelines of the TSHPO.

a. Archeological surveys shall follow the recommended approaches set out in *The Archeological Survey: Methods and Uses* (National Park Service, 1978). TxDOT shall submit a State of Texas Archeological Site Data Form for all archeological properties that are located within the APE. TxDOT shall report archeological survey results in the manner set forth in the October 24, 1992 Memorandum of Understanding between the Texas Department of Transportation, the Texas Historical Commission, and the Texas Antiquities Committee (Appendix "A").

b. TxDOT shall submit a historical evaluation for each building, structure, or object that is more than 50 years of age within the APE to the TSHPO. The evaluation shall consist of at least one 35 mm. color photograph of the property, and shall provide the following information for each property: address, if known; architectural description; and date of construction (estimated or known). Each property shall be keyed to a map showing its location. If the APE includes any portion of a historic district listed in the National Register of Historic Places, TxDOT shall identify the properties included in the district in its evaluation. TxDOT shall further evaluate whether or not any historic properties within the APE may be eligible for inclusion in a potential historic district. TxDOT shall not be responsible for delineating potential historic districts; however, if a property reasonably appears to be a contributing element to a potential historic district, TxDOT shall notify the TSHPO at the time of submission of the historical evaluation, and provide recommendations for determining the existence of a potential district.

1. A historical evaluation will not be necessary for bridges that were previously determined NOT ELIGIBLE for inclusion in the National Register of Historic Places in the Metal Truss Bridge Inventory, nor for standard type structures covered by the Concrete Bridge Inventory and do not meet the criteria set forth in Stipulation 8(b)(2). The provisions of the 1990 Historic Bridge Memorandum of Understanding (Appendix "B") shall apply to these projects. TxDOT shall report projects involving these structures to the TSHPO in the monthly letter described in Stipulation 2(b) above.

c. Additional information may be requested by the TSHPO as necessary.

6. If no properties are found within the APE, TxDOT shall notify the TSHPO of its finding.

a. For archeological surveys, TxDOT shall submit an Archeological Resources Survey Report to the TSHPO describing the project scope of work, location, survey technique and making the determination that no archeological sites are located within the APE. The TSHPO shall provide acknowledgement of the receipt of this notification and concur with the determination of no sites within thirty (30) days after receipt.

b. For historic property surveys, TxDOT shall submit a letter describing the project scope of work, location, and survey technique, and making the determination that no properties over 50 years of age, or that might otherwise be eligible for inclusion in the National Register of Historic Places are located within the APE. The TSHPO shall provide acknowledgement of the receipt of this notification and concur with the determination of no historic properties within fifteen (15) days after receipt.

c. If the TSHPO does not concur with TxDOT's determination that no archeological sites or no historic properties exist within the APE, the TSHPO shall provide TxDOT with information justifying their position. TxDOT and the TSHPO shall consult to resolve the difference. If the differences cannot be resolved, TxDOT shall notify the FHWA, which shall provide guidance for resolving the differences between TxDOT and the TSHPO.

7. When previously unevaluated properties are identified within the APE for an undertaking, TxDOT shall apply the National Register Criteria for Evaluation, 36 CFR 60.4, to determine if any of the identified properties are eligible for inclusion in the National Register of Historic Places. TxDOT shall provide such determinations of eligibility to the TSHPO, who will, within thirty (30) days from receipt, either (a) concur with TxDOT's findings, (b) request further information as required to complete their evaluation, or (c) recommend a different determination of eligibility.

8. For all properties that TxDOT and the TSHPO agree are ELIGIBLE for inclusion in the National Register of Historic Places, TxDOT and the TSHPO shall continue consultation in accordance with the terms of this Agreement.

a. The parties accept the National Register eligibility determinations for metal truss and suspension type bridges contained in the Metal Truss Bridge Inventory (MTBI), and agree to review and revise, as appropriate, the MTBI to reflect new discoveries of information on bridges in the state and any changes in the resource base over time. TxDOT will initiate such reviews every five (5) years, on or before January 1, beginning in 1996. The FHWA, TxDOT, and the TSHPO agree to follow the procedures established under the October, 1990 Historic Bridge MOU (Appendix "B") for determining and re-evaluating the National Register eligibility of metal truss bridges.

1. If an undertaking involves metal truss or suspension bridges that were not included in the MTBI, the FHWA, TxDOT, and the TSHPO shall follow the National Register eligibility process as set forth in this Agreement.

2. TxDOT will prepare individual documentation packages as set forth in the October, 1990 Historic Bridge MOU (Appendix "B") on all locally-owned bridges in the MTBI that are eligible for inclusion in the National Register, and shall submit these materials to the TSHPO. The target date for completing the documentation packages is July 31, 1996.

b. TxDOT, in consultation with the TSHPO, and in accordance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716), shall prepare the Concrete Bridge Inventory (CBI), which will cover concrete, masonry, moveable, and metal type bridges other than trusses, and will include all bridges 45 years of age or older at the time the study is initiated, as well as other bridges under 45 years of age that have exceptional historic significance. The list of bridges to be evaluated under the CBI will be generated from TxDOT's bridge database, maintained as part of the state's Bridge Inspection and Appraisal Program (BRINSAP). In addition to bridges, the CBI will include other types of structures such as culverts, overpasses, and underpasses that are classified as bridge structures on the BRINSAP system.

1. Until the Concrete Bridge Inventory (CBI) is completed by TxDOT and accepted by the TSHPO, the FHWA, TxDOT, and the TSHPO shall follow the eligibility determination process as set forth in Stipulation 8(b)(2) for all concrete, masonry, moveable, timber stringer, and non-truss metal type bridges, and culverts over 50 years of age. Once completed and accepted by the TSHPO, the National Register eligibility determinations of bridges and culverts in the CBI shall supersede the procedures set forth in Stipulation 8(b)(2). The National Register eligibility of culverts not included in the CBI shall be determined in accordance with the provisions of Stipulation 8(b)(2).

2. FHWA and TxDOT shall review standard type bridges and culverts, defined as slab, I-beam and girder bridges, including overpass and underpass structures, culverts, and timber stringer bridges that are 50 years of age or older to determine if they have engineering, architectural, or historical merit, defined as a bridge which 1) is an early, rare, or outstanding example of a bridge type, design, or method of construction; 2) is associated with Depression-era work relief agencies or that has other important historical associations; 3) has retained some or all of its historic railings or that has special decorative elements or aesthetic treatment; 4) has documented technological significance; or 5) has previously been determined eligible for or is already listed in the National Register of Historic Places. Standard type structures that meet one or more of the criteria set forth above shall be subject to the provisions of 36 CFR 800.4 for determination of their eligibility for the National Register of Historic Places.

a. TxDOT will provide the TSHPO with a monthly report of all standard type bridges and culverts that do NOT meet the criteria established in Stipulation 8(b)(2) above, specifying the structure location, crossing, and type as well as any known contextual data concerning the geographical distribution of the structure type. The structures identified in the monthly report shall be determined NOT ELIGIBLE for inclusion in the National Register of Historic Places unless the TSHPO objects within fifteen (15) days from their receipt of the report.

3. When the CBI is complete, TxDOT will amend the National Register of Historic Places Multiple Property Documentation Form for metal truss bridges to include contextual information and nomination forms for on-system bridges in the CBI. TxDOT will prepare individual nomination forms for all state-owned bridges determined to be eligible for inclusion in the National Register under the CBI. The target date for completing the CBI is September 1, 1998. TxDOT shall consult with the TSHPO after the CBI is complete to establish a time frame for the completion of these registration forms.

9. For all properties that TxDOT and the TSHPO agree are NOT ELIGIBLE for inclusion in the National Register of Historic Places, no further review shall be required.

10. Should the TSHPO request further information concerning any property to determine its eligibility, TxDOT shall provide such information as available to the TSHPO in a timely manner. If the requested information is available, the TSHPO shall complete its evaluation of the eligibility of the property within thirty (30) days after its receipt.

11. In the event of a conflict regarding the eligibility of a property, TxDOT and the TSHPO shall consult to resolve the difference. If TxDOT and the TSHPO cannot agree on the eligibility of a property, TxDOT shall request the FHWA to obtain a formal determination of eligibility from the Keeper of the National Register. The Council may also request the Keeper of the National Register to review the findings of eligibility. The decision of the Keeper shall be binding upon the parties.

12. In the event that a previously unidentified property is discovered during an undertaking, or should the undertaking have the potential to affect a known historic or archeological property in unanticipated ways, TxDOT shall cease all activities that could affect the property, and shall consult with the TSHPO to determine the eligibility of the previously unidentified property for the National Register of Historic Places. TxDOT shall notify the TSHPO that the property has been discovered during the course of construction, or that the known historic property may be affected in previously unanticipated ways by the construction, and shall consult with the TSHPO to set a mutually-agreed upon expedited time frame for TSHPO review of the eligibility and/or effect of the undertaking on the property. If the property is determined to be not eligible for inclusion in the National Register, or if the undertaking shall have no effect or no adverse effect upon an eligible or listed property, no further consultation shall be required, except for archeological properties, which shall be subject to the provisions of Stipulation 15(a) below. Submission of summary documentation for no adverse effect to the Council shall not be necessary. If the undertaking will have an adverse effect on a previously unidentified or known historic property, TxDOT and the TSHPO shall proceed in accordance with the provisions of Stipulation 17 below.

13. TxDOT shall consult with the TSHPO to apply the Criteria of Effect and Adverse Effect, 36 CFR 800.9, to the archeological or historic properties identified within the APE. TxDOT shall invite interested parties to participate in the consultation in accordance with 36 CFR 800.1(c)(2) and 36 CFR 800.5.

a. TxDOT shall evaluate the effect of each undertaking upon all properties that are listed on or determined eligible for inclusion in the National Register of Historic Places, and shall submit these determinations of effect to the TSHPO for review. Within thirty (30) days after receipt, the TSHPO shall (a) concur with the determination of effect; (b) request further information as necessary to complete the evaluation; or (c) recommend a different determination of effect.

14. If the TSHPO and TxDOT agree that the undertaking will have NO EFFECT on any of the properties identified within the APE, no further consultation will be required.

15. If the TSHPO and TxDOT agree that the undertaking will have an effect on properties that are listed on or determined eligible for inclusion in the National Register of Historic Places, but the effect is NOT ADVERSE, or if the TSHPO proposes conditions to the determination of NO ADVERSE EFFECT and TxDOT accepts the conditions, no further consultation will be necessary, except for archeological properties as set forth in subparagraph (a) below. Submission of summary documentation for NO ADVERSE EFFECT to the Council shall not be required.

a. If the TSHPO and TxDOT agree that the undertaking will have an effect on archeological properties that are listed on or determined eligible for inclusion in the National Register of Historic Places, but the effect will be NOT ADVERSE, and if the site cannot be avoided or preserved in place, TxDOT shall consult with the TSHPO to develop an appropriate data recovery plan. The plan shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation*, 48 FR 44734-37, the Council's *Treatment of Archeological Properties*, the Secretary of the Interior's *Curation of Federally-Owned and Administered Archeological Collections*, 36 CFR 79, and any relevant TSHPO regional cultural resource management plans as well as guidelines for archeological data recovery. The plan shall specify the exact location of data recovery; the identification of any property that will be destroyed or altered without data recovery; the research questions to be addressed by the data recovery, with an explanation of their relevance and importance; the methodology of the analysis, management and dissemination of the data, including a schedule; the disposition and curation standards for recovered materials and records; the procedure for including the interested public; proposed methods for disseminating results of the work to the interested public; a proposed schedule for submission of progress reports to the TSHPO; and a proposal providing for the treatment and disposition of human skeletal remains and associated grave goods, should any be discovered or excavated during the data recovery, including procedures for consulting with interested parties and Native American tribes. The plan shall be submitted by TxDOT to the TSHPO for review. Unless the TSHPO objects within thirty (30) days after receipt of the data recovery plan, TxDOT shall implement the plan as proposed. Acceptance and implementation of the data recovery plan shall complete the FHWA's Section 106 responsibilities for undertakings which have NO ADVERSE EFFECT on archeological properties. Submission of summary documentation for NO ADVERSE EFFECT to the Council shall not be required.

16. If the TSHPO objects to the determination of NO ADVERSE EFFECT, TxDOT and the TSHPO shall consult to attempt to resolve the difference. If the differences cannot be resolved, TxDOT shall initiate conflict resolution procedures in accordance with Section II of this Agreement.

17. When the TSHPO and TxDOT agree that the undertaking will have an ADVERSE EFFECT on properties that are listed on or determined eligible for inclusion in the National

Register of Historic Places, TxDOT will consult with the TSHPO to seek ways to avoid, minimize, or mitigate the effect of the undertaking. If the undertaking will have an ADVERSE EFFECT on an archeological property, TxDOT and the TSHPO shall consult to develop a comprehensive data recovery and mitigation plan. The agreement reached between the parties for historic or archeological properties will reference this Agreement and will be executed by TxDOT and the TSHPO. Interested parties shall be included in this consultation process according to the procedures set forth in 36 CFR 800.5(e)(1).

a. TxDOT, in consultation with the TSHPO, will develop standard mitigation measures for all National Register eligible or listed bridges that may be adversely affected by FHWA undertakings that are administered through TxDOT. TxDOT shall also, in consultation with the TSHPO, develop a management plan to guide decision-making for all historic bridges in Texas and establish priorities for their preservation and continued use, and make recommendations for needed preservation and rehabilitation measures. TxDOT shall submit the mitigation measures and management plan to the TSHPO on or before March 31, 1997. The standard mitigation measures will include the recordation measures, marketing procedures, and salvaging and storage efforts, if any, that are to be accomplished for each affected historic bridge. Neither the FHWA nor the Council shall be a party to either agreement. TxDOT shall implement the standard mitigation measures and management plan upon acceptance by the TSHPO.

18. FHWA and TxDOT shall implement the consultation process set out in 36 CFR 800.5(e) if any one of the following conditions applies:

1. The TSHPO withdraws from consultation;
2. Either TxDOT or the TSHPO determines that an undertaking has substantial public opposition; or
3. A National Historic Landmark is located within the undertaking's area of potential effects.
4. The FHWA, TxDOT, or the TSHPO requests that the Council participate in consultation.

19. Treatment of human remains shall be carried out in accordance with a comprehensive data recovery plan as described above and applicable federal regulations. The data recovery, treatment, and disposition plan for human remains shall be in conformance with TxDOT policy, attached as Appendix "C".

II. DISPUTE RESOLUTION AND ADMINISTRATIVE PROCEDURES

20. Should the TSHPO or the Council timely object to any plans provided for review or any actions proposed by TxDOT or the FHWA pursuant to this Agreement, TxDOT shall consult with the objecting party to resolve the objection. If TxDOT determines that the objection cannot be resolved, it, or the objecting party, shall notify the FHWA and forward supporting documentation for review by the FHWA. If the FHWA determines that the dispute cannot be resolved, it will forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either: (1) provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute, or (2) notify the FHWA that it will comment pursuant to 36 CFR 800.6(b) and issue comments. Any recommendations or comment provided by the Council will be understood to pertain only to the subject of the dispute, and the FHWA's responsibility to ensure that the remaining terms of this Agreement are carried out will remain unchanged.

21. TxDOT will ensure that all historic preservation work carried out pursuant to this Agreement is performed by or under the direct supervision of a person or persons meeting the Secretary of the Interior's *Professional Qualifications Standards*, 48 FR 44738-9, for the discipline or disciplines that are qualified to complete the required planning, design, research, and analysis.

22. If TxDOT or the FHWA determines that an emergency situation exists, resulting from a hazardous materials incident, tree or wind damage, sudden failure of water, sewer, storm drainage, electrical, or telephone lines, or the failure of a roadway or bridge structure, TxDOT shall undertake emergency repairs. If the emergency repair project could affect historic or archeological properties, TxDOT shall notify the TSHPO by telephone, where feasible. In the event of a large-scale natural disaster where local communications could be interrupted, TxDOT may undertake the stabilization and repair of historic structures without prior consultation with the TSHPO. Where possible, such emergency action will be undertaken in a manner that does not foreclose future preservation or restoration. When telephone communications are re-established, TxDOT will consult with the TSHPO on all emergency actions that affected or will affect historic properties. This provision applies only to undertakings initiated within thirty (30) days of the termination of the disaster.

23. The FHWA will ensure that TxDOT provides the public with the opportunity to receive information and participate in the Section 106 review process through the public

participation procedures under the National Environmental Policy Act and its implementing regulations set out at 40 CFR 1506.6. The FHWA shall consider any public comments received regarding undertakings covered by this Agreement.

a. If at any time during the implementation of the measures stipulated in this Agreement, a member of the public raises an objection to any measure within the Agreement or its manner of implementation, FHWA shall take the objection into account and consult with the objecting party, TxDOT, the TSHPO, and the Council to resolve the objection. If the objection pertains to FHWA's decision to implement the standard mitigation measures or the management plan for historic bridges pursuant to Stipulation 16(a) above, the FHWA shall terminate the abbreviated consultation process and initiate consultation with the TSHPO and the Council pursuant to 36 CFR 800.5(e).

24. If any of the parties to this Agreement becomes aware of another federal agency pursuing the Section 106 review process for a TxDOT-administered FHWA project, the party becoming aware of another federal agency's involvement will notify TxDOT to allow the joint coordination of Section 106 reviews for the undertaking.

25. The FHWA, the TSHPO, and the Council may monitor any activities carried out pursuant to this Agreement, and the Council will review such activity if so requested. TxDOT will cooperate with the FHWA, the TSHPO, and the Council in carrying out these monitoring and review responsibilities.

26. TxDOT, in consultation with the FHWA shall provide a bi-annual report to the Council regarding the effectiveness of this Agreement. TxDOT shall solicit the comments of the TSHPO for the report and shall incorporate the TSHPO's comments into the report, provide the TSHPO with a copy of the report before it is sent to the Council and shall solicit the TSHPO's comments on the subject and content of the report. At a minimum, the report shall list the number of undertakings which fell under the terms of this Agreement, and a statement describing how those undertakings were managed. The report may also contain a statement regarding the usefulness of the Agreement, and recommendations to improve the Agreement. The first bi-annual report shall be due on or before September 30, 1997.

27. Any party to this Agreement may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR 800.13 to consider such amendment.

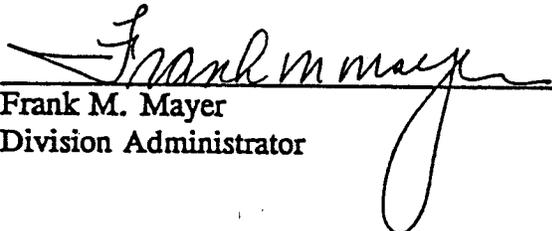
28. Any party to this Agreement may terminate it by providing thirty (30) days' written notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination.

In the event of termination, the FHWA will comply with 36 CFR 800.4-800.6 with respect to the undertakings covered by this Agreement.

29. In the event that the FHWA or TxDOT cannot carry out the terms of this Agreement, the FHWA will comply with 36 CFR 800.4-800.6.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the FHWA has afforded the Council a reasonable opportunity to comment on the undertakings subject to this Agreement, and that the FHWA has taken into account the effects of subject undertakings on historic and archeological properties.

FEDERAL HIGHWAY ADMINISTRATION



Frank M. Mayer
Division Administrator

11/17/95

Date

TEXAS STATE HISTORIC PRESERVATION OFFICE

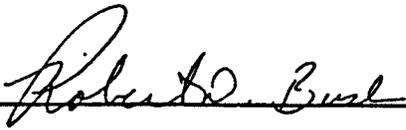


Curtis Tunnell
State Historic Preservation Officer

11-17-95

Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION



Robert D. Bush
Executive Director

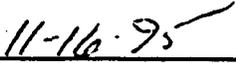


Date

TEXAS DEPARTMENT OF TRANSPORTATION



Dianna F. Noble, P.E.
Director of Environmental Affairs



Date

APPENDIX "A"

MEMORANDUM OF UNDERSTANDING

AMONG THE TEXAS DEPARTMENT OF TRANSPORTATION, THE TEXAS
HISTORICAL COMMISSION, AND THE TEXAS ANTIQUITIES COMMITTEE

L NEED FOR AGREEMENT

A. It is the practice of the Texas Department of Transportation (TxDOT) to:

1. investigate fully the environmental impacts of TxDOT transportation projects, coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordinations in the environmental documentation for each project;
2. base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;
3. complete public involvement and a systematic interdisciplinary approach as essential parts of the development process for transportation projects; and
4. mitigate project impacts to provide environmentally sound roadway projects where such mitigation is feasible and prudent and where such mitigation is agreed upon by appropriate agencies.

B. In order to pursue this policy, the Texas Department of Transportation, the Texas Historical Commission (THC), and the Texas Antiquities Committee (Committee) have agreed to develop this Memorandum of Understanding (MOU), which will supersede the TxDOT's MOU with the Committee which became effective on January 5, 1972.

C. Senate Bill 352, enacted by the 72nd State Legislature, directs TxDOT to adopt memoranda of understanding with applicable environmental resource agencies.

D. The rules for coordination of state-assisted transportation projects developed by the TxDOT and published in the June 11, 1991 Texas Register (16 TexReg 3197) underline the need for and importance of comprehensive environmental coordination for all transportation projects.

E. It is the intent of this MOU to provide a formal mechanism by which the THC and the Committee may review TxDOT projects which have the potential to affect historic properties (cultural resources) within the jurisdiction of the THC and the Committee, and to develop a system by which information held by the TxDOT, the THC, and the Committee may be exchanged to their mutual benefit.

F. This memorandum supersedes that memorandum of understanding executed by TxDOT, THC, and the Committee on January 31, 1992 and that memorandum of understanding is of no further force or effect.

II. DEFINITIONS

DAP

A. Antiquities Code of Texas (ACT): Designates the Texas Antiquities Committee as the legal custodian of all cultural resources, historic and prehistoric, within the public domain of the State of Texas, and the body which issues antiquities permits, in accordance with 13 TAC Chapter 41 and as provided in ACT Sections 191.054 and 191.091-098.

B. Antiquities Permit: A permit issued by the Texas Antiquities Committee in order to regulate site destruction, archeological testing, and archeological excavation.

C. Archeological Excavation (Data Recovery): Use of field techniques, including those of archeological testing, but with the goal of addressing specific research issues identified with the site's historic context. Excavation (data recovery) is conducted under an approved data recovery plan developed in consultation with the State Historic Preservation Officer and The Advisory Council on Historic Preservation, following the procedure set forth under 36 CFR 800, for federal undertakings; or in consultation with the Texas Antiquities Committee for non-federal undertakings, in accordance with 13 TAC Chapter 41.

D. Archeological Monitoring: Use of a professional archeologist present on-project when clearing and grubbing or other construction activities are being conducted. Should evidence of archeological remains be encountered, TxDOT will ensure that clearing and grubbing or other construction activities shall cease in the area of the archeological remains until these remains can be assessed and evaluated in accordance with appropriate state and federal laws and regulations.

E. Archeological Resource/Site: Locations where prehistoric or historic remains are found in a primary deposit, excluding extant standing structures dating from the historic time period. Note that archeological sites can be associated with a historic structure and historic structural ruins can be designated as archeological sites (TAC Rules Chapter 41 Subsection 5). However, an extant standing structure itself (as contrasted to a historic structural ruin) does not constitute an archeological site in the absence of other associated remains. Prehistoric ruins are considered to be archeological sites.

F. Archeological Survey: Archeological field methods used to locate archeological remains, including on-foot examination of the surface, shovel testing, and subsurface trenching by mechanical means where appropriate.

G. Archeological Testing: Use of field techniques including excavation of holes larger or deeper than those of a shovel test, and including mechanical trenching and removal of artifacts. Archeological field research limited to determination of eligibility for the National Register of Historic Places for federal undertakings, as defined in 36 CFR 800, or determination of significance for non-federal undertakings, as defined in 13 TAC Chapters 41-45. The review agency will determine what level of testing is appropriate under the MOU. The Committee will determine when test phase investigations warrant an antiquities permit.

H. Committee: Means the Texas Antiquities Committee.

I. Cultural Resources: A general term synonymous with "Historic Properties."

J. Eligibility: A site's eligibility for the National Register of Historic Places (NRHP) as set forth in 36 CFR 800.

K. Environmental Documents: Decision-making documents which incorporate the results of environmental studies, coordination and consultation efforts, and engineering elements. Types of documents include categorical exclusion assessments, environmental assessments, and environmental impact statements.

L. Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places (NRHP), as defined in 36 CFR 800.2.

- M. Historic Resource: A feature of the built environment which is potentially eligible for listing in the NRHP as defined in 36 CFR 60.
- N. Historic Resource Survey: Examination of the project for the presence of historic resources.
- O. Mechanical Testing: Excavation with backhoe, Gradall, or other heavy equipment in order to locate archeological remains.
- P. Project Development: The planning process of a highway project, which includes engineering design as well as environmental studies and public involvement procedures. Project development generally includes all studies of a project prior to actual construction.
- Q. Review Agency: The appropriate review agency for each particular circumstance. The Texas Historical Commission (THC) has jurisdiction over federal undertakings, as defined in 36 CFR 800, and the Texas Antiquities Committee (Committee) has jurisdiction over non-federal undertakings and the issuing of antiquities permits, as provided in ACT Sections 191.054 and 191.091-098.
- R. Right-of-Way: The land provided for a highway, usually including the roadway itself, shoulders, and areas between the roadway and adjacent properties.
- S. Shovel Testing: Excavation of test holes which shall measure at least 35 cm in diameter and shall be excavated to a basal horizon or bedrock, or to a depth of at least 1 m if a basal horizon or bedrock is not reached. This technique is used both in areas where surface visibility is low and in areas where the potential for archeological remains is high. Shovel testing is also used when surface indications of archeological remains are encountered in order to provide a preliminary determination of the depth of the cultural deposits.
- T. State Archeological Landmark: Archeological and historic properties as defined in Subchapter D of the Antiquities Code of Texas (ACT) and identified in accordance with 13 TAC Chapter 41 and 13 TAC Chapter 45.
- U. Subsurface Survey: Mechanical or hand-dug probing of a site or project area during the survey phase to record or examine subsurface deposits, for the collection of archeological or geomorphic data.

III. RESPONSIBILITIES

A. Texas Department of Transportation

1. The responsibilities of the TxDOT pertain primarily to its functions as a transportation agency, and include the following:
 - (a) planning and designing safe, efficient, cost-effective, and environmentally sound transportation facilities, and avoiding, minimizing, or compensating for environmental impacts as far as practicable when they are anticipated to occur;
 - (b) the timely and efficient construction of transportation facilities, executed in a manner consistent with approved plans or agreements which have been entered into by the department for the protection of the natural environment and cultural sites; and
 - (c) the ongoing maintenance of these facilities to provide safe, efficient, and environmentally sound transportation facilities for the travelling public, and dedication to the protection of natural and cultural resources within the jurisdiction of the TxDOT.
 - (d) TxDOT has made a commitment to the preservation and enhancement of the human environment.

2. Senate Bill 352, which became effective on September 1, 1991, directs the TxDOT to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources.

B. Texas Historical Commission

The Texas Historical Commission, through the office of the State Historic Preservation Officer (SHPO), regulates the disposition and management of historic properties which are affected by federal undertakings, as described in the National Historic Preservation Act, Section 106, and in 36 CFR 800.

C. Texas Antiquities Committee

1. The Texas Antiquities Committee regulates the disposition and management of archeological landmarks which are affected by non-federal undertakings, as described in the Antiquities Code of Texas and 13 TAC Chapter 41.

2. The Texas Antiquities Committee issues permits for the taking, excavation, restoration, or study of state archeological landmarks as provided in ACT Sections 191.054 and 191.091-098.

IV. PROVISIONS

A. Procedures for Coordination Regarding Archeological Resources

1. Initial Coordination Phase

(a) TxDOT may combine the initial coordination phase with the archeological survey phase (see item IV.A.2) in order to expedite project coordination. In these cases, the review agency will be afforded an opportunity to comment on both the survey methodology and survey results.

(b) TxDOT will identify projects requiring coordination for archeological resources, as indicated by the level of project documentation. Such projects include:

i. any project which, although classified as a categorical exclusion (CE), is judged to have the potential to affect archeological resources;

ii. all projects requiring issuance of a Finding of No Significant Impact (FONSI), when such a project is judged to have the potential to affect archeological resources; and

iii. all projects requiring an Environmental Impact Statement (EIS).

(c) TxDOT will identify projects which are not believed to require individual coordination for archeological sites and will provide the THC and the Committee with a list of such projects on a monthly basis.

(d) The TxDOT will begin coordination by conducting a search of the site files at the Texas Archeological Research Laboratory (TARL) as well as site files and survey records held at the THC and the Committee. The THC and the Committee will render TxDOT all reasonable assistance in the search.

(c) TxDOT will request a review of the project by the review agency. TxDOT will submit for review:

- i. plans, project descriptions, and other documentation required by the review agency for review;
- ii. a statement detailing the result of the site files search, including information on any sites listed in the site files and occurring on or near the project, including a list of properties on or near the project which are listed in the National Register of Historic Places, or are designated as State Archeological Landmarks (SALs); and
- iii. a statement recommending which portions of the project are to be surveyed, the techniques to be used on each part of the project, and identifying the portions of the project which have a high likelihood of yielding archeological remains.

(f) The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will include:

- i. a statement of concurrence or non-concurrence with the results of the site files check and the survey recommendations contained in the TxDOT request for review, and
- ii. any other comments relevant to the archeological resources which could be affected by the project.

(g) TxDOT will include the results of the site files search, survey recommendations, and comments received from the review agency in any environmental assessment or Draft EIS written as part of the project, and will present the findings at the public hearing, if such hearing is held.

2. Archeological Survey Phase

(a) All projects, and portions of projects, recommended for survey by the TxDOT and for which concurrence has been obtained from the review agency during the initial phase of coordination will be the subjects of archeological survey using the methods agreed upon between the TxDOT and the review agency.

(b) An archeological survey will be conducted by a member of the TxDOT professional archeological staff or other archeologist approved by the review agency.

(c) When the archeological survey has been completed, the TxDOT will request a review of the results of the survey. With its request for review, the TxDOT will include:

- i. a letter report or form detailing the results of the survey, including a discussion of any deviations from the methods agreed upon during the initial phase of coordination;
- ii. the project location plotted on 7.5' Series USGS quadrangle maps;
- iii. copies of archeological site survey forms for any new archeological sites discovered during survey;
- iv. copies of archeological site survey forms for any previously recorded archeological sites; and
- v. recommendations regarding archeological testing or archeological monitoring.

vi. If deemed necessary, the review agency may request TxDOT to produce a formal report of findings made as a result of a survey phase investigation.

(d) The review agency will respond within 30 days of receipt of the TxDOT request for review of the survey results and recommendations. The response will include:

i. a statement of concurrence or non-concurrence with the results of the site files check and the survey results contained in the TxDOT request for review, and

ii. any other comments relevant to the archeological resources which could be affected by the project.

(e) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or Final EIS, if one is prepared.

3. Archeological Testing Phase

(a) All sites and portions of sites recommended for testing by the TxDOT, the THC, or the Committee will be the subjects of archeological testing, using the methods agreed upon by the TxDOT and the review agency.

(b) The review agency may send a representative to observe any or all of the testing procedures.

(c) At the completion of testing, the TxDOT will prepare a formal report of the results of testing.

i. For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 CFR 800.

ii. For sites affected by non-federal undertakings, the report will include recommendations regarding the significance of the site and whether designation as a State Archeological Landmark is warranted, in accordance with ACT, Sections 191.091-.092, and 13 TAC Chapters 41-45.

(d) TxDOT will send the testing report to the review agency with a request for review.

(e) The THC, in accordance with 36 CFR 800, will respond to the report within 30 days of receipt of the TxDOT request for review. The response will include:

i. a statement of concurrence or non-concurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;

ii. a determination of the site's eligibility for listing in the National Register of Historic Places; and

iii. any other comments relevant to the archeological site which has undergone archeological testing.

(f) The Committee, in accordance with 13 TAC Chapter 41 and ACT Section 191, will respond to the report within 60 days of receipt of the TxDOT request for review. The response will include:

i. a statement of concurrence or non-concurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;

ii. a determination of whether the site warrants designation as a State Archeological Landmark; and

iii. any other comments relevant to the archeological site which has undergone archeological testing.

(g) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or Final EIS, if one is prepared.

(h) The Committee may require an antiquities permit be issued for some test phase investigations if the scope of the investigations warrants it. All testing performed by non-TxDOT staff archeologists must be performed under an antiquities permit.

4. Archeological Excavation/Data Recovery

(a) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or significant (for non-federal undertakings) based on consultation with the review agency during the survey phase or testing phase will be the subjects of data recovery.

(b) TxDOT (or their contracted agent), in consultation with the review agency, will develop a suitable data recovery plan for each eligible or significant archeological site on a case-by-case basis, in accordance with 36 CFR 800 for federal undertakings and ACT Section 191 for non-federal undertakings. Final data recovery plans must be approved by the review agency prior to their implementation.

(c) Results of data recovery will be published as required by 36 CFR 800 and/or ACT Section 191.

5. Archeological Sites Found After Award of Contract

(a) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction that would affect the site.

(b) A TxDOT archeologist will examine the remains and report the findings to the appropriate review agency. The Federal Highway Administration (FHWA) will enter consultations regarding the disposition of the site or sites for federal undertakings, as required by 36 CFR 800.

(c) TxDOT and the review agency will prepare a plan of action to determine eligibility or significance, and/or mitigate the effects on the site.

(d) TxDOT may continue construction in the affected area upon approval of the review agency.

B. Procedures for Coordination Regarding Historic Resources

1. TxDOT will identify projects requiring coordination with the review agency for historic resources. Coordination will be required for:

(a) any project which, although classified as a CE, is judged to have the potential to affect historical resources;

(b) any project requiring the issuance of a FONSI, when such project is judged to have the potential to affect historic resources;

(c) all projects requiring an EIS.

2. TxDOT will identify which projects require individual coordination for historic resources. The TxDOT will provide a list of those projects which do not require individual coordination to the THC and Committee on a monthly basis.
3. For projects requiring individual coordination, TxDOT will conduct a search of available records, references, and resources, including listings of Registered Texas Historic Landmarks (RTHLs), State Archeological Landmarks (SALs), and properties listed in the National Register of Historic Places (NRHP), as well as local historic property survey files on record at the THC. The THC and Committee will render all reasonable assistance to the TxDOT in the search.
4. TxDOT will conduct historic resources surveys to locate historic resources which are potentially eligible for inclusion in the National Register of Historic Places.
5. For each project requiring individual historic resources coordination with the review agency, TxDOT will provide the following:
 - (a) plans, project descriptions and other documentation as needed;
 - (b) a statement detailing the results of the records search;
 - (c) a summary of the results of the historic resources survey, describing all resources
 - i. listed in or potentially eligible for listing in the NRHP for federal undertakings, or
 - ii. which possess historical interest as defined by ACT Section 191.092 for non-federal undertakings.
6. The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will be in accordance with 36 CFR 800, ACT Chapter 191, and 13 TAC Chapter 41.
7. TxDOT will include information on historic resources in the environmental assessment or Draft EIS, and will present these findings at the public hearing, should one be held.
8. TxDOT will include information on historic resources in the environmental assessment or Final EIS, if one is prepared.
9. All historic resources either listed in or determined eligible for listing in the NRHP (for federal undertakings) or designated as SALs (for non-federal undertakings) which are affected by projects will be subject to mitigation of these effects.
10. TxDOT, in consultation with the review agency, will develop a suitable mitigation plan:
 - a. in accordance with 36 CFR 800 for historic resources listed in or determined eligible for listing in the NRHP for federal undertakings, or
 - b. in accordance with ACT Chapter 191 for historic resources designated as SALs for non-federal undertakings. Final mitigation plans must be approved by the review agency prior to implementation of mitigation efforts.

C. Artifact Recovery and Curation

1. Artifact Recovery

(a) All artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents must be cleaned, labeled, and processed in preparation for long-term curation.

(b) Recovery methods must conform to 36 CFR 800, Committee Rules, and/or Council of Texas Archeologists (CTA) guidelines to ensure proper care and curation.

2. Artifact Curation

(a) TxDOT may temporarily house artifacts and samples during their laboratory analysis research, but all artifacts must be transferred to a permanent curatorial facility within a reasonable time period, to be decided by the review agency.

(b) All artifacts and samples must be placed at the Texas Archeological Research Laboratory or some regional artifact curatorial repository which fulfills 36 CFR 800, Committee Rules, or CTA Curation Standards, as approved by the review agency.

(c) TxDOT is responsible for the curatorial preparation of all artifacts so that they are acceptable to the receiving curatorial repository and fulfill 36 CFR 79, Committee Rules, or CTA Curation Standards, as approved by the review agency.

D. Resolution of Objections

1. Should the reviewing agency timely object (within the stipulated review period) to any plans provided for review or any actions proposed by TxDOT regarding:

(a) any phase of coordination for archeological resources including initial coordination, survey, testing, excavation/data recovery, and reporting,

(b) any phase of coordination for historic resources including initial coordination, historic resources survey, and mitigation, or

(c) curation of site materials, documentation and samples

TxDOT and reviewing agency shall enter into consultation to resolve the objection.

2. If the objection cannot be resolved through the consultation process, either TxDOT or the reviewing agency may, at any time, terminate consultation and invoke the provisions of Section V. (Dispute Resolution) of this agreement.

V. DISPUTE RESOLUTION

A. In such instances when TxDOT and the review agency are unable to reach a mutually agreeable plan of action regarding survey, testing, determination of eligibility or significance, or mitigation, a good-faith effort will be made to develop a compromise plan.

B. If TxDOT and the review agency cannot arrive at a compromise plan, the dispute will be resolved in accordance with procedures established under State and Federal rules.

1. Federal undertakings will follow the procedures provided in 36 CFR 800, including consultation with the Advisory Council on Historic Preservation, if necessary.

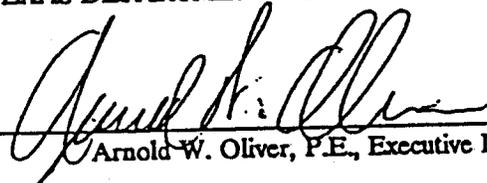
2. Non-federal undertakings will follow the procedures provided in 13 TAC Chapters 41-45.

VI. REVIEW OF MOU

This memorandum shall be reviewed and updated no later than January 1, 1997, and every fifth year after that date, as provided for in SB 352 and Article 6673g, Section 3(d) of Vernon's Texas Civil Statutes.

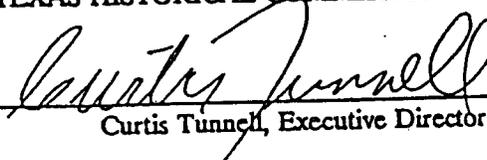
SIGNATORIES

THE TEXAS DEPARTMENT OF TRANSPORTATION

BY: 
Arnold W. Oliver, P.E., Executive Director

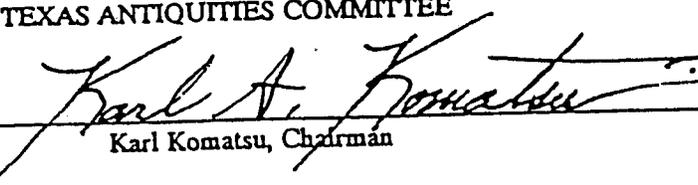
DATE: 10/16/92

THE TEXAS HISTORICAL COMMISSION

BY: 
Curtis Tunnell, Executive Director

DATE: 24 Oct. 1992

THE TEXAS ANTIQUITIES COMMITTEE

BY: 
Karl Komatsu, Chairman

DATE: 23 Oct 1992

APPENDIX "B"

MEMORANDUM OF UNDERSTANDING
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER, AND
THE TEXAS STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
REGARDING THE TEXAS HISTORIC BRIDGE INVENTORY

WHEREAS, the Texas State Department of Highways and Public Transportation (SDHPT) has initiated the Texas Historic Bridge Inventory (Inventory), an inventory of historic bridges located on and off the Federal-aid system, in an effort to determine the historic significance of Texas bridges, as required by the Surface Transportation and Uniform Assistance Act of 1987 (23 U.S.C. Part 144[o]), and has completed the first phase of the Inventory, in which all metal truss and suspension type bridges have been identified and evaluated in accordance with the Standards and Guidelines for Preservation Planning, Identification and Evaluation that are outlined in the U.S. Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716); and

WHEREAS, all Federal Highway Administration (FHWA) Undertakings with an historic bridge(s) located within their area of potential effects are coordinated with the Texas State Historic Preservation Officer (SHPO) in accordance with 36 CFR Part 800 (51FR 31115), the regulations which implement Section 106 of the National Historic Preservation Act (16 U.S.C. Part 470 et seq.);

NOW, THEREFORE, the Texas SHPO agrees that the stipulations delineated in this Memorandum of Understanding shall be considered to satisfy Section 800.4 of the regulations for those Section 106 Undertakings that involve metal truss and suspension type bridges; the FHWA will ensure that these stipulations are carried out by the Texas SDHPT on its behalf; and both the Texas SDHPT and SHPO agree to follow the timetable and terms for completing and updating the Inventory that are delineated in this Memorandum.

DEFINITIONS:

"AREA OF POTENTIAL EFFECTS": Geographic area or areas within which an Undertaking may cause changes in the character or use of historic properties.

"DAYS": For the purposes of this document, days refer to calendar days.

"EVALUATION GUIDELINES": Refers to the specific sub-criteria to the formal Criteria for listing in the National Register of Historic Places that the SHPO and the SDHPT jointly developed for evaluating the historic significance of bridges.

"HISTORIC BRIDGE": A bridge of any type that is 50 years of age or more.

"HISTORIC SIGNIFICANCE": For the purposes of this Memorandum, bridges with historic significance are defined as those bridges that demonstrate exceptional technical qualities and/or possess important historic associations in accordance with the evaluation guidelines developed under the Inventory (See Evaluation Guidelines). Those bridges with historic significance are considered to meet the criteria for listing and be eligible for inclusion in the National Register of Historic Places.

"INTERESTED LOCAL PARTY": For the purposes of this Memorandum, an interested local party is defined as any individual or local organization that has an interest in those historic bridges that lie within the area of effect of FHWA undertakings.

"NATIONAL REGISTER": The National Register of Historic Places that is maintained by the Secretary of the Interior.

"NATIONAL REGISTER CRITERIA": The standards established by the U.S. Secretary of the Interior that are used in evaluating the eligibility of properties for listing in the National Register of Historic Places.

"NATIONAL REGISTER ELIGIBILITY": Properties that meet the National Register Criteria are considered to be eligible for listing in the National Register of Historic Places. Those National Register eligible properties that are located within the area of effect of federal Undertakings are granted protection under Section 106 of the National Historic Preservation Act of 1966.

"SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966": Directs Federal agencies to take into account the effect of their Undertakings on properties that are included in or eligible for inclusion in the National Register of Historic Places. Prior to the implementation of an Undertaking, Federal agencies must coordinate projects with the SHPO of the state where a proposed Undertaking is located and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the effect of the Undertaking on any historically significant properties.

"UNDERTAKING": For the purposes of this Memorandum, an Undertaking is defined as any project, activity, or program falling under the direct or indirect jurisdiction or licensing authority of the FHWA that can result in changes in the character or use of bridges located within its area of potential effects.

STIPULATIONS:

The SHPO and the SDHPT agree to the following stipulations regarding those metal truss and suspension bridges that lie within the area of potential effects of FHWA Undertakings:

1. National Register Eligibility Determinations of Bridges Established Under the State Historic Bridge Inventory. The eligibility concurrence determinations that were finalized under the Inventory shall be considered to satisfy the Section 106 regulations regarding evaluations of historical significance. Further Section 106 coordination will only be required for those bridges determined to be eligible for listing in the National Register of Historic Places under the Inventory evaluations. Lists of the bridges that have been determined eligible and not eligible for inclusion in the National Register of Historic Places under the Historic Bridge Inventory are included in Exhibits A and B.
2. Individual Evaluations For Unrecorded, Historic Metal Truss and Suspension Bridges. The SDHPT will ensure that those projects involving historic metal truss and/or suspension bridges not included in the Inventory (and not listed in Exhibit A) will be coordinated with the SHPO on a case-by-case basis in accordance with 36 CFR 800.4. The SHPO agrees to evaluate the National Register eligibility of these bridges using the guidelines that were established during the Inventory. The evaluation guidelines are delineated in Exhibits C and D.
3. Changing the Eligibility Status of Bridges that are Mutually Agreed Upon by the SHPO and the SDHPT. At any time, either the SDHPT or the SHPO can propose to change the National Register eligibility of those bridges on which new information has been obtained. Both the SDHPT and the SHPO must agree to a re-classification of a bridge's eligibility for a change to become final. By mutual consent, a bridge's eligibility status can be changed in either direction -- from not eligible to eligible or from eligible to not eligible. Bridges formally listed on the National Register of Historic Places

would be exempted from this process since a change in their eligibility status requires a formal de-certification of listing by the Keeper of the Register.

4. Changing the Eligibility Status of Bridges Involved in Federal Undertakings From Not Eligible to Eligible As a Result of Local Historical Interest. The following process shall apply for all Undertakings involving metal truss and/or suspension bridge(s) included in the Bridge Inventory:

a.) The SDHPT will contact the appropriate County Historical Commission(s) at the onset of an Undertaking affecting an historic bridge.

b.) If an interested local party believes that a bridge classified as not eligible under the Inventory has historic significance, it shall have 30 days from the time it is contacted to respond to the SDHPT and to notify the SHPO concerning its interest. If the SHPO is not contacted within the 30 day time limit concerning a not eligible bridge, then the process is ended and the FHWA is considered to have completed its Section 106 obligations for that bridge.

c.) In the event that an interested local party contacts the SHPO within the 30 day time limit, the SHPO will then furnish that party with a National Register of Historic Places Registration Form and advise the party that it has 30 more days to submit a draft nomination on the bridge. The SHPO agrees to inform the SDHPT of local interest in the bridge within 15 days from the time the interested party contacts the SHPO. If the SHPO does not receive a draft nomination within the 30 day time limit, the SHPO will then inform the SDHPT that the process is ended and that the FHWA's Section 106 obligations for the bridge have been fulfilled.

d.) Within 15 days following receipt of the draft Registration Form, the SHPO shall forward a copy of the Form to the SDHPT with its comments and recommendations for eligibility. The SDHPT shall also reassess the bridge's eligibility and inform the SHPO of its recommendations within 15 days after its receipt of the draft Registration Form package from the SHPO. Both parties agree to base their assessments of eligibility on the evaluation guidelines established under the Inventory (See Exhibits C and D.)

1.) If both the SHPO and the SDHPT concur that the bridge should be reclassified from not eligible to eligible, then the procedure described in Section 3 for changing a bridge's eligibility classification by mutual consent shall apply. The bridge will then warrant further consideration under the Section 106 process. The SHPO shall notify the

interested party of this decision within 30 days after the date the draft Registration Form was originally submitted to the SHPO.

2.) The SHPO and the SDHPT can also concur that the bridge remains classified as not eligible. The SHPO shall notify the interested party of this decision within 30 days after the date the draft Registration Form was originally received by the SHPO and inform the party that the SHPO will not initiate a hearing on this bridge before the State Board of Review. If the interested party agrees with the not eligible classification, then the process is ended and the FHWA is considered to have satisfied its Section 106 obligations. If, however, the interested party disagrees with this decision, then it still can approach the State Board of Review through its own initiatives and request that it evaluate the National Register eligibility of the bridge.

3.) When the SHPO receives a conflicting eligibility recommendation from the SDHPT, it shall then notify the interested party of the disagreement and inform the party that it must complete a final National Register of Historic Places Registration Form for the bridge within 30 days. If the interested party does not submit an acceptable final version of the Registration Form to the SHPO within the 30 day time limit, then the process is ended and the FHWA is considered to have satisfied its Section 106 obligations. If the SHPO receives an acceptable final version of the Registration Form within the 30 days, it will then schedule a hearing on the nomination before the State Board of Review at the earliest possible date. If the State Board of Review approves the nomination of the bridge, then the Registration form will be forwarded to the Keeper of the Register, the bridge will be formally listed on the National Register of Historic Places, and further Section 106 coordination will be required. If, however, the State Board of Review does not approve the nomination, then the process is ended and the FHWA is considered to have fulfilled its Section 106 obligations.

TIMETABLES:

The SDHPT and the SHPO agree to the following timetable and terms for completing and updating the Texas Historic Bridge Inventory:

1. Interim Report on the Inventory of Metal Truss and Suspension Bridges. The SDHPT agrees to complete an interim technical report on the Inventory of metal truss and suspension bridges in consultation with the SHPO. The report shall be completed within one year from the date this Memorandum of Understanding is signed.

2. Programmatic Agreement on Metal Truss and Suspension Bridges. The SDHPT, acting on behalf of the FHWA, and the SHPO agree to develop a Programmatic Agreement concerning those bridges determined to meet the criteria for listing in the National Register of Historic Places and to complete the Agreement within one year from the date of this Memorandum. The Programmatic Agreement will address the following: 1.) Mitigation procedures; 2.) A preservation plan for bridges; 3.) Bridge marketing; and 4.) Photo-recordation, other documentation, and other items as needed.

3. Completing an Inventory of Concrete, Masonry, and Other Metal Bridges and an Interim Report. The SDHPT agrees to initiate the second phase of the Inventory, which will inventory and evaluate historic concrete, masonry, and other metal type bridges, within one year from the date this Memorandum of Understanding is signed. The SDHPT agrees to implement phase two of the Inventory in consultation with the SHPO and to complete it in a timely manner, with a January 1, 1994, target completion date. At the conclusion of the Inventory, an interim report on the concrete, masonry, and other metal bridges will be prepared and a list delineating the eligibility of these bridges will be appended to Exhibits A and B. Any additional guidelines that are developed for evaluating the National Register eligibility of these bridges will also be added to Exhibits C and D. At that time, the bridges included in phase two of the Inventory will also fall subject to the Stipulations delineated in the previous section.

4. Popular Report Covering All Historic Bridges. The SDHPT and the SHPO agree to jointly develop and produce a popular report covering all of the bridge types included in both phases of the Inventory. A target date for the report's publication is one year after phase two of the Inventory is completed.

5. Providing the SHPO With Updated Reports on the Bridges Annually. At the beginning of each year, the SDHPT will furnish the SHPO with the following: 1.) A report detailing the effects of individual Undertakings on bridges included in the Inventory; 2.) A report listing bridges that are known to have been removed by other factors such as County replacement projects or natural causes. 3.) A list of any new discoveries of bridges; and 4.) Updated versions of Exhibits A and B that incorporate any changes in the National Register eligibility classification of the bridges.

6. **Reviewing and Revising the National Register Eligibility Methodology and Re-Evaluating the Bridges Included in the Inventories.** The SDHPT and the SHPO agree to jointly re-assess the methodology employed in the National Register eligibility evaluations of each phase of the Inventory within five years from the date it is completed. (The date of this Memorandum shall serve as the effective date for the completion of the Inventory of metal truss and suspension bridges.) The methodologies may be revised during the re-evaluations to reflect changes in the composition of the resource base. The bridges included in the Inventory will be re-evaluated accordingly. Exhibits A, B, C, and D shall be revised to reflect all changes made to the methodology and/or the lists of National Register eligibility during these re-assessments.

The execution of this Memorandum of Understanding evidences that the Inventory of metal truss and suspension bridges implemented by the SDHPT has followed the U.S. Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation", and that the National Register evaluation process and eligibility determinations established under the Inventory fulfill the FHWA's Section 106 responsibility to evaluate the National Register eligibility of metal truss and suspension bridges in accordance with Section 800.4 of the regulations. The execution of this Memorandum of Understanding also establishes the time frame and terms by which the SDHPT shall complete phase two of the Inventory, covering historic concrete, masonry and other metal type bridges; update its findings; and publish reports. It is further agreed that any item in this Memorandum can be modified at any time if mutually agreed upon by the SHPO, the SDHPT, and the FHWA.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

BY Frank M. Meyer DATE 10/24/90

TEXAS STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

BY Frank D. Holzmann DATE 10/12/90
Frank D. Holzmann, P.E.
Deputy Director, Project Development

TEXAS STATE HISTORIC PRESERVATION OFFICER

BY Quintin Jewell DATE Oct. 18, 1990

APPENDIX "C"

TxDOT POLICY REGARDING THE TREATMENT OF HUMAN REMAINS

In the event of the discovery of human interments within the Area of Potential Effect (APE) on a Texas Department of Transportation (TxDOT) project, the following policy shall govern the treatment of human remains.

TxDOT shall comply with all state cemetery laws, NAGPRA, applicable standards of the Secretary of the Interior, and all other applicable federal and state regulations regarding human interments. TxDOT personnel qualified by applicable state and federal legislation to perform work relating to the discovery, reporting, and excavation of human interments shall direct work involving human burials.

TxDOT shall make a reasonable and good faith effort to identify and to consult with family members, descendants, culturally affiliated groups (including Native American tribes), and interested parties regarding the treatment and disposition of human burials. TxDOT shall consult with the TSHPO regarding treatment and disposition plans.

If excavation is necessary, TxDOT archeologists shall excavate human interments by hand in a careful and respectful manner, retaining all materials associated with each burial for reinterment with the human remains. Burials will be treated like archeological features: they will be fully exposed and recorded *in situ* before disinterment. Coffin fill, or in the case of no coffin being present, the fill immediately around the burial will be screened.

Analysis of human skeletal material shall be limited to that needed to identify age, sex, obvious pathology, and racial affiliation if possible. A more detailed analysis may be performed if deemed necessary and appropriate following consultation with interested parties and the TSHPO.

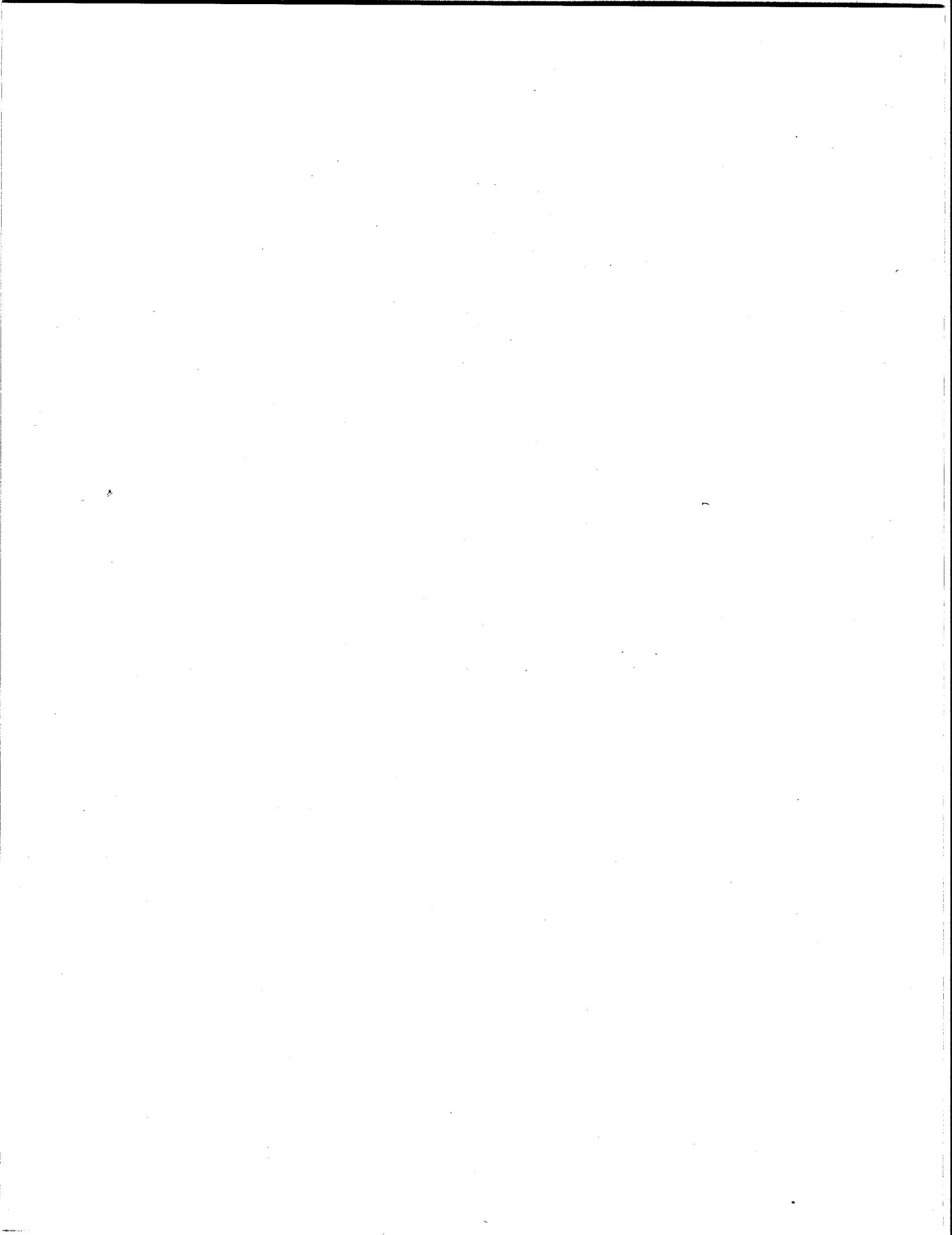
As soon as possible following discovery, TxDOT shall initiate NAGPRA consultation with Native American groups and federally-supported repositories regarding the treatment and disposition of Native American human remains and associated funerary objects.

TxDOT shall comply with the provisions of the Texas Antiquities Permit regarding each project with human interments. TxDOT shall also accommodate the wishes of family members, descendants, and interested parties to the extent possible in the excavation and reinterment of human remains. Reburial will be in a cemetery designated by descendants if known, in a cemetery of the appropriate religion if known, or in a local cemetery having available space if no other preference is indicated. Reburial shall be within a reasonable time after excavation. A monument will be erected at the place of reburial indicating the original location and identity (as far as can be determined) of the remains, and the date of reburial.

In the absence of provisions of the Antiquities Permit and/or requests of family members, descendants, or interested parties, reburial containers will hold all bones, clothing remnants,

burial goods, and coffin hardware, and shall bear an identification number indicating the original location of each burial. During reburial, the original burial pattern will be retained insofar as space permits, so that burials of family members may remain proximate. Reburial will be accompanied by appropriate ceremonies as indicated by consultation with the appropriate interested parties.

TxDOT policy precludes the public exhibition of human remains. Associated burial goods will not be publicly exhibited unless such exhibition is expressly provided for in the Antiquities Permit or other applicable agreement with known descendants or interested parties.



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TITLE 43	TRANSPORTATION
PART 1	TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 2	ENVIRONMENTAL POLICY
SUBCHAPTER B	MEMORANDA OF UNDERSTANDING WITH NATURAL RESOURCE AGENCIES
RULE §2.24	Memorandum of Understanding with the Texas Historical Commission

(a) Purpose.

(1) It is the policy of the Texas Department of Transportation (TxDOT) to:

- (A) identify the environmental impacts of TxDOT transportation projects, to coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordination in the environmental documentation for each project;
- (B) base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;
- (C) receive input from the public through the public involvement process;
- (D) utilize a systematic interdisciplinary approach as an essential part of the development process for transportation projects; and
- (E) strive for environmentally sound transportation activities through appropriate avoidance, treatment or mitigation, where feasible and prudent, in coordination with appropriate resource agencies.

(2) In order to pursue this policy, the Texas Department of Transportation and the Texas Historical Commission (THC) have agreed to develop this Memorandum of Understanding (MOU), which will supersede the MOU which became effective on October 16, 1992.

(3) It is the intent of this MOU to provide a formal mechanism by which THC may review TxDOT projects which have the potential to affect cultural resources within the jurisdiction of THC in order to assist TxDOT in making environmentally sound decisions, and to develop with TxDOT a system by which information developed by TxDOT and THC may be exchanged to their mutual benefit. Unless otherwise specified in this MOU, all definitions in 13 TAC Chapter 26, Rules of Practice and Procedures for the Antiquities Code of Texas, Texas Historical Commission, will be used.

(b) Authority.

(1) The Texas Transportation Code, §201.607, directs TxDOT to adopt MOUs with appropriate environmental resource agencies, including THC. The rules for coordination of state-assisted transportation projects found in §§2.40-2.51 of this title (relating to Environmental Review and Public Involvement for Transportation Projects), underline the need for and importance of comprehensive environmental coordination for all transportation projects.

(2) This MOU complements a Programmatic Agreement (PA) that TxDOT executed with the Federal Highway Administration (FHWA), the Texas State Historic Preservation Officer (TSHPO), and the Advisory Council on Historic Preservation (Council) in December of 1995. The PA delineates the process by which the signatory parties agree to carry out the National Historic Preservation Act, §106 (16 U.S.C. 470f) for federally assisted, permitted and licensed transportation projects within the state.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Antiquities Code of Texas (ACT)--The state statute that designates the Texas Historical Commission as the legal custodian of all cultural resources, historic or prehistoric, within the public domain of the state, the body which issues antiquities permits, in accordance with 13 TAC Chapter 26 and as provided in ACT §191.054 and 191.091-098. The Texas Historical Commission assumed these responsibilities from the Texas Antiquities Committee which was abolished under Senate Bill 365, enacted by the 74th Legislature in 1995.

(2) Antiquities permit--A permit issued by the Texas Historical Commission in order to regulate the taking, alteration, damage, destruction, salvage, archeological survey, testing, excavation and study of state archeological landmarks including prehistoric and historic archeological sites, and the preservation, protection, stabilization, conservation, rehabilitation, restoration, reconstruction, or demolition of historic structures and buildings.

(3) Area of potential effects--The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist, as defined in 36 CFR Part 800.

(4) Cultural resources--A general term referring to buildings, structures, objects, sites, and districts more than 50 years of age with the potential to have significance in local, state, or national history.

(5) Eligibility--A site's eligibility for the National Register of Historic Places as set forth in 36 CFR Part 800, or for designation as a State Archeological Landmark, as set forth in 13 TAC Chapter 26.

(6) Historic property--Any prehistoric or historic district, site, building, structure, or object which is included or eligible for inclusion in the National Register of Historic Places, as defined in 36 CFR Part 800, or meets the requirements for designation as a State Archeological Landmark as set forth in 13 TAC Chapter 26. (This term is used interchangeably with "significant properties" and "significant cultural resources.")

(7) National Register--The National Register of Historic Places (NRHP), which is the nation's inventory of historic places maintained by the U.S. Secretary of the Interior. (Historic properties included in or eligible for inclusion must meet National Register criteria for evaluation, as defined in 36 CFR Part 60.)

(8) State Archeological Landmark (SAL)--Archeological and historic properties as defined in Subchapter D of the Antiquities Code of Texas (ACT) and identified in accordance with 13 TAC Chapter 26.

(d) Responsibilities.

(1) Texas Department of Transportation. The responsibilities of TxDOT pertain primarily to its functions as a transportation agency, and include:

(A) planning and designing safe, efficient, effective, and environmentally sensitive transportation facilities while avoiding, minimizing, or compensating for impacts to cultural resources to the fullest extent practicable;

(B) the timely and efficient construction of transportation facilities, in a manner consistent with approved plans and agreements which TxDOT has executed regarding the protection of significant cultural resources; and

(C) ongoing maintenance to provide safe, efficient, and environmentally sound transportation facilities for the traveling public.

(2) Texas Historical Commission. The responsibilities of THC relate primarily to its functions as a cultural resource agency, and include:

(A) serving as the State Historic Preservation Office in Texas with responsibility under 36 CFR Part 800--the regulations implementing §106 of the National Historic Preservation Act (16 U.S.C. 470f);

(B) reviewing federally assisted, licensed, or permitted undertakings with the potential to affect properties included in or eligible for inclusion in the National Register of Historic Places;

(C) providing assistance to agencies in their efforts to comply with the §106 process;

(D) regulating the disposition and management of State Archeological Landmarks which are affected by non-federal undertakings, as described in the Antiquities Code of Texas and 13 TAC Chapter 26; and

(E) issuing permits for the taking, excavation, restoration, or study of State Archeological Landmarks as provided in ACT, §§191.054 and 191.091-098.

(e) Early project planning for cultural resources.

(1) TxDOT is committed to performing early identification efforts for cultural resources located within the area of potential effects of proposed transportation projects and initiating THC coordination during the early planning stages of these projects, when the widest range of alternatives is open for consideration.

(2) TxDOT is committed to implementing, in consultation with THC, alternative methods, techniques, and other strategies that are reasonable and feasible and that will enhance efficiency in complying with cultural resource laws. These include, but are not limited to, a programmatic approach to coordination of selected types of cultural resources, geoarcheological research to reduce archeological liabilities, development of significance standards, and alternative mitigation strategies. When implemented, with the concurrence of THC, such alternative strategies will replace the procedures set forth in this MOU.

(3) TxDOT is also committed to providing the public and interested parties with opportunities to provide input and express their views concerning potential project impacts to historic properties, and will ensure that cultural resource issues are incorporated into its regular public participation programs carried out under the National Environmental Policy Act (42 USC 4321-4347 et seq.), and §§2.42-2.43 of this title (relating to Highway Construction Projects-Federal Aid, and Highway Construction Projects-State Funds), as far as practicable.

(4) Cultural resource investigations by consultants.

(A) TxDOT has the right to perform cultural resource investigations using staff or consultants who meet the professional standards of 13 TAC Chapter 26, and as required by 36 CFR Part 800.

(B) Cultural resource surveys, investigations, permit applications, and other work performed by consultants shall be coordinated with THC through TxDOT's Environmental Affairs Division.

(f) Procedures for coordination regarding archeological resources. Survey and eligibility testing of archeological resources performed by the archeological staff of TxDOT's Environmental Affairs Division will not require an antiquities permit. All other archeological investigations shall require an antiquities permit. TxDOT and THC will consult to discuss the feasibility and benefits of TxDOT submitting a compilation of survey and test excavation results to THC in an annual or biannual report.

(1) Identification.

(A) TxDOT will undertake sufficient background research to determine which proposed projects require archeological surveys. Background research may include a search of records and files at THC and/or the Texas Archeological Research Laboratory (TARL), gathering information on soils, and a geomorphic history of the projects.

(B) Based on the results of background research, TxDOT will identify projects requiring coordination and/or archeological investigation for archeological resources.

(C) TxDOT will identify projects which are not believed to require individual coordination for archeological sites and will provide THC with a list of such projects on a monthly basis.

(2) Archeological surveys.

(A) All projects, and portions of projects, recommended for survey by TxDOT during the initial phase of coordination will be subject to archeological survey using the methods agreed upon between TxDOT and THC in conformance with 36 CFR Part 800.

(B) An archeological survey will be conducted by a TxDOT professional archeological staff member or other archeologist who meets the state and federal standards. Surveys may be limited to an evaluation of existing impacts or stratigraphic integrity when these are sufficient to determine that any sites present are unlikely to be eligible.

(C) When the archeological survey has been completed, TxDOT will submit the results of the survey to THC in a report of investigations, and request THC's review of the report. With its request for review, TxDOT will include:

(i) details of the results of the survey, including project description, anticipated project impact, and existing disturbance in the project area;

(ii) environmental data on topography, soils, land use, survey methodology, survey results, and recommendations;

(iii) the project location plotted on 7.5' Series USGS quadrangle maps;

(iv) descriptions of any sites found;

(v) submission of electronic or paper copies of archeological site survey forms to TARL; and

(vi) recommendations regarding whether the site(s) merit archeological testing or archeological monitoring.

(D) THC will respond within 30 days of receipt of the TxDOT request for review of the survey results and recommendations. The response will include:

(i) a statement of concurrence or non-concurrence with the results of the survey; and

(ii) any other comments relevant to the archeological resources which could be affected by the project.

(E) TxDOT will include the results of the archeological survey and recommendations in the environmental document for the project, as far as practicable.

(3) Archeological eligibility testing phase.

(A) All sites and portions of sites recommended for eligibility testing by THC will be subject to archeological testing, using the methods agreed upon in writing by TxDOT and THC.

(B) THC may send a representative to observe any or all of the testing procedures.

(C) At the completion of testing, TxDOT will prepare a formal report of the results of testing.

(i) For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 CFR Part 800.

(ii) For sites affected by non-federal undertakings, the report will include recommendations regarding the significance of the site and whether designation as a State Archeological Landmark is warranted, in accordance with ACT, §§191.091-092, and 13 TAC Chapter 26.

(D) TxDOT will send the testing report to THC with a request for review.

(E) In accordance with 36 CFR Part 800, THC will respond to the report within 30 days of receipt of TxDOT's request for review. The response will include:

(i) a statement of concurrence or non-concurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review; and

(ii) a determination of the site's eligibility for listing in the National Register of Historic Places, or for designation as a State Archeological Landmark.

(4) Archeological excavation/data recovery.

(A) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or eligible for designation as a State Archeological Landmark (for non-federal undertakings) based on consultation with THC during the survey phase or testing phase, will be subject to data recovery in conformance with a data recovery plan approved by THC.

(B) TxDOT, in consultation with THC, will develop a data recovery plan for each eligible site on a case-by-case basis, in accordance with 36 CFR Part 800 for federal undertakings and ACT §191 for non-federal undertakings.

(C) Results of data recovery will be published as required by 36 CFR Part 800 and/or ACT §191.

(D) All data recovery will be performed under an antiquities permit.

(5) Archeological sites found after award of contract.

(A) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction or any other activities that would affect the site.

(B) A TxDOT archeologist will examine the remains and report the findings to THC within 48 hours of the examination. The Federal Highway Administration (FHWA) and/or TxDOT will enter consultations regarding the disposition of the site or sites for federal undertakings, as required by 36 CFR Part 800, or as required by the Texas Antiquities Code for state funded projects.

(C) TxDOT and THC will prepare a plan of action to determine eligibility or significance, and/or mitigate the effects on the site or sites.

(D) TxDOT may continue construction in the affected area upon approval of THC.

(6) Artifact recovery and curation.

(A) Artifact recovery.

(i) The type and quantity of artifacts to be recovered will be detailed in the scope of work and will be selected to address the research questions.

(ii) Artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents that address the research questions must be cleaned, labeled, and processed in preparation for long-term curation.

(iii) To ensure proper care and curation, recovery methods must conform to 36 CFR Part 800, 13 TAC Chapter 26, and Council of Texas Archeologists (CTA) guidelines, as applicable.

(B) Artifact curation.

(i) TxDOT or its permitted contractor may temporarily house artifacts and samples during laboratory analysis and research, but upon completion of the analysis, all artifacts must be transferred to a permanent curatorial facility in accordance with the terms of the antiquities permit.

(ii) Artifacts and samples will be placed at the Texas Archeological Research Laboratory or some regional artifact curatorial repository which fulfills 36 CFR Part 79, the ACT, or CTA Curation Standards, as approved by THC. When appropriate, TxDOT will consult with THC to identify collections or portions of collections that do not have identifiable value for future research or public interpretation. This information may serve as the basis for future consultation between TxDOT and THC regarding the disposition of such collections or portions of collections. Final approval regarding the disposition of collections will be made by THC.

(iii) TxDOT is responsible for the curatorial preparation of all artifacts so that they are acceptable to the receiving curatorial repository and fulfill 36 CFR Part 79 and 13 TAC Chapter 26, as approved by THC.

(g) Procedures for coordination regarding historic properties, early project development. For purposes of this subsection and subsections (h) and (i) of this section, the term historic properties will refer only to non-archeological historic properties.

(1) Early in the project development process, TxDOT will determine whether federally assisted, licensed, or permitted transportation projects (federal projects) constitute undertakings under 36 CFR Part 800. In consultation with THC, it has been determined that certain types of projects do not require individual coordination and may be included in a monthly report. These projects involve culverts and other structures and objects which lack engineering, architectural or historical merit and projects which have a minimal potential to affect historic properties if such are present in the area of potential effects. TxDOT will notify THC of all such projects in a monthly report. The monthly report will include a summary of each project that is sufficient to allow THC to determine if more information is needed. THC will have 30 days to approve the monthly report or to request additional information concerning any of the projects on the list.

(2) Early in the project development process, TxDOT will review its non-federal transportation projects and other activities occurring on any of the lands of the State of Texas (state projects) to determine whether they have the potential to affect properties 50 years of age or older under the terms of the ACT, 13 TAC Chapter 26. Effects include the removal, alteration, or renovation of one or more contributing elements to a historic property. TxDOT will notify THC of state projects which will not have an effect on any properties 50 years of age or older in a monthly report. The monthly report will include a summary of each project that is sufficient to allow THC to determine if more information is needed. THC will have 30 days to approve the monthly report or to request additional information concerning any of the projects on the list.

(3) If TxDOT determines that a federal project constitutes an undertaking as defined in 30 CFR Part 800, or that a state project has the potential to affect a historic property, TxDOT will then individually coordinate the project with THC, except as noted in this MOU, in accordance with the provisions provided in subsequent sections of this agreement.

(h) Identification and evaluation of historic properties.

(1) For state and federal projects requiring individual THC coordination, TxDOT will identify properties 50 years of age or more that will be affected by state projects or that are located within the area of potential effects for federal projects. TxDOT will conduct a search of available records, including listings of Registered Texas Historic Landmarks, State Archeological Landmarks, and properties listed in the National Register as well as local historic property survey files on record at THC. THC will render all reasonable assistance to TxDOT in performing record searches on potentially historic properties.

(2) TxDOT will conduct field surveys for all projects except those which qualify for inclusion on a monthly list. These surveys will be conducted in order to locate properties 50 years of age or more or properties that may otherwise be eligible for inclusion on the National Register of Historic Places or which may qualify as SALs. If no such properties are identified, the following procedures will apply.

(A) For state projects, the project will be added to the monthly report coordinated with THC as described in this MOU.

(B) For federal projects, TxDOT will inform THC in accordance with 36 CFR Part 800.

(3) If the identification efforts reveal properties 50 years of age or more, TxDOT will evaluate the significance of each property to determine if the property:

(A) qualifies as a SAL as defined by ACT, §191.092, for state projects; or

(B) is eligible for inclusion in the National Register, or is a contributing element of a National Register eligible or listed district, for federal projects.

(4) If a state or federal project has the potential to affect a bridge-class structure more than 50 years of age and the structure is included in the State Historic Bridge Inventory (SHBI) that has been formally accepted by THC, the following procedures apply.

(A) If the structure has been determined not historically significant under the SHBI, TxDOT will coordinate with appropriate local entities to determine if the structure has local interest or significance. If no local interest or significance is identified, TxDOT will add the project to the monthly report. If TxDOT or THC identifies local interest or significance in these structures, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(B) If the bridge-class structure has been determined historically significant under the SHBI, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(5) If a state or federal project has the potential to affect a bridge-class structure more than 50 years of age that has not been included in a SHBI that has been formally accepted by THC, TxDOT will assess the significance of the structure to determine if it has potential engineering, architectural, or historic merit.

(A) In consultation with THC, bridge-class structures of types determined to have no potential merit will include, but not be limited to, common-type structures with no distinguishing features and those structures which have been substantially altered or widened within the past 50 years. When TxDOT determines that a bridge has no potential engineering, architectural or historic merit, TxDOT will add the project to the monthly report.

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(B) When TxDOT determines that a bridge has potential engineering, architectural, or historic merit, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(C) If a state or federal project has the potential to cause an adverse effect to properties 50 years of age or more, as far as practicable, TxDOT will seek information and input concerning the historic significance of these properties from local entities, such as county historical commissions, local governments, city preservation officers, and neighborhood associations, that are likely to have knowledge of, or an interest in these properties.

(D) TxDOT will coordinate with THC early in the project planning process to determine the historic significance of properties identified as 50 years of age or older that will be affected by state projects or that are located within the area of potential effects for federal projects. For state projects, TxDOT will initiate coordination with THC no later than 60 days prior to the contract bid opening for construction, as required by ACT, §191.098 and 13 TAC §26.22, or for federal projects, coordination for historic significance will follow 36 CFR Part 800 to ensure proper care and curation.

(E) For each project coordinated with THC, TxDOT will provide:

(i) a project description and scope;

(ii) a map showing the location of the project as well as all properties 50 years of age or older documented through identification efforts;

(iii) a statement detailing the efforts and methodology used to identify potentially historic buildings and structures in the project area;

(iv) documentation on each identified property, including at least one photograph of the property, the address if known, an architectural description, and date of construction (estimated or known), and any known local, state or national historical designations;

(v) a statement of historic significance for each identified property, including:

(I) for a state project, whether the property qualifies as a SAL;

(II) for a federal project, whether each property 50 years of age or more is eligible for inclusion in the National Register, including information as to whether the property is a contributing element of a National Register listed historic district or may be a contributing element of a potential National Register

district;

(vi) results of any coordination with interested parties concerning the significance of identified properties; and

(vii) the results of TxDOT's historic significance evaluation for each identified property.

(F) THC will respond within 30 days of receipt of TxDOT's request for review of individual projects as follows.

(i) For a state project, THC response will indicate whether the project will require an historic structures permit for a SAL or whether THC or another party intends to institute SAL proceedings for a property previously not designated a SAL in accordance with 13 TAC §§26.11, 26.12 and 26.22, and ACT, §191.098. If THC does not respond within 30 days, TxDOT will assume that THC has no objection, and TxDOT will proceed with the project without further coordination with THC regarding historic property issues.

(ii) For a federal project, all coordination with THC will follow the provisions of 36 CFR Part 800.

(i) Assessing and mitigating effects. TxDOT will assess the effects of state and federal projects on properties determined to qualify as SALs for state projects and on properties determined to be listed or eligible for inclusion in the National Register for federal projects. TxDOT will then consult with THC using the following procedures.

(1) For a state project, TxDOT will consult with THC to determine if a historic structures permit is required for any proposed removals, alterations, or renovations to SALs or to properties on which THC decides to institute SAL proceedings in accordance with 13 TAC §26.22 and ACT, §191.098.

(2) For a federal project, TxDOT will apply the criteria of effect and consult with THC for a determination of effect in accordance with the provisions set forth in 36 CFR Part 800.

(3) TxDOT will, to the maximum extent practicable, provide an early opportunity for the public and interested parties to receive information and to express their views on projects when a historic property may be negatively affected by a transportation project.

(4) TxDOT will also consult with THC to seek ways to avoid, minimize, or mitigate any negative effects on historic properties caused by federal and state projects in accordance with the following procedures.

(A) State project. TxDOT shall take THC comments into account when projects will have an effect on properties that are determined to qualify as SALs or other properties that are listed or determined eligible for listing in the National Register. TxDOT will apply for historic structure permits for all projects that alter, renovate, or remove SALs or other properties on which THC has instituted SAL proceedings, following the procedures delineated in 13 TAC §26.22 and ACT, §191.098.

(B) Federal project. TxDOT will follow the consultation procedures set out in 36 CFR Part 800.

(j) Environmental document and public involvement. TxDOT will include information on its efforts to identify archeological sites and historic properties, to determine the effects of projects on archeological sites and historic properties, and to mitigate any negative effect on these sites or properties in the environmental document, if one is prepared, and will include this information in public involvement

activities to the maximum extent practicable.

(k) Dispute Resolution.

(1) If THC and TxDOT cannot reach agreement on any plans or actions carried out pursuant to this agreement, THC and TxDOT will consult to resolve the objection.

(2) If THC and TxDOT cannot reach a compromise solution or otherwise resolve the objection through consultation, either TxDOT or THC may choose to invoke the dispute resolution provisions which are set forth in paragraph (3) of this subsection.

(3) When these dispute resolution provisions are invoked, if TxDOT and THC cannot resolve their disagreement, the two agencies will resolve their dispute in accordance with the procedures established under state and federal rules.

(A) Federal undertakings will follow the dispute resolution procedures as stipulated in 36 CFR Part 800.

(B) State projects will follow the procedures provided in 13 TAC Chapter 26.

(l) Review of MOU. This memorandum shall be reviewed and updated by January 1, 2002, and by every fifth year from that date, as provided for in Transportation Code, §201.607.

Source Note: The provisions of this §2.24 adopted to be effective December 13, 1998, 23 TexReg 12451.

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