



3.8 HISTORICAL RESOURCES

The purpose of this section is to identify all the cultural resources and parklands that could potentially be affected by the proposed Irving/DFW LRT project. In general, this includes resources within 500 feet of the proposed alignment; however, in areas where an elevated structure is proposed or where noise or visual effects could extend farther than the immediately adjacent area, resources as far away as 700 feet have been included.

Although cultural resources and parklands are discussed separately within this chapter, it is important to remember that these areas are often closely related. In particular, the **Department of Transportation Act of 1966 (49 U.S.C. 303), Section 4(f)** regulates both parklands and certain cultural resources. Under this act, parklands as well as properties either listed on or eligible for listing on the **National Register of Historic Places** are subject to the same rules and regulations. This Act is further discussed below in Section 9.2 – Applicable Legal and Regulatory Requirements.

3.8.1 Applicable Legal and Regulatory Requirements

National Historic Preservation Act of 1966 (16 U.S.C. 470)

The proposed project is subject to compliance with the **National Historic Preservation Act** (NHPA) of 1966, as amended. The following section within the NHPA applies to FTA's responsibilities, as the lead federal agency, regarding the identification and treatment of historic properties.

Section 106 (16 U.S.C. 470f) According to Section 106, the responsible federal agency is required to take into account the effect of a project on historic properties included in or eligible for inclusion in the National Register of Historic Places (National Register). Determination of National Register eligibility of historic properties, determination of effect and adverse effect, and development of Memoranda of Agreement on mitigation is done by the lead federal agency in coordination with the State Historic Preservation Officer (SHPO). The federal Advisory Council on Historic Preservation is given the opportunity to comment.

Antiquities Code of Texas

The **Antiquities Code of Texas** (Texas Natural Resources Code of 1977, Title 9, Heritage, Chapter 191) establishes the Texas Historical Commission (THC) as the legal custodian of all cultural resources, historic and pre-historic, within the public domain of the State of Texas (§191.051). The authority of the THC extends to designation and protection of State Archeological Landmarks, which can be historic buildings and structures, shipwrecks, or archaeological sites.

Section 191.092(a) of the Antiquities Code states that State Archeological Landmarks include:

Sites, objects, buildings, artifacts, implements, and locations of historical, archeological, scientific, or educational interest, ...as well as archeological sites of every character that are located in, on, or under the surface of any land belonging to the State of Texas or to any county, city, or political subdivision of the state are state archeological landmarks and are eligible for designation.

The law states that a structure or building has historical interest if it:

- (1) *was the site of an event that has significance in the history of the United States or the State of Texas;*
- (2) *was significantly associated with the life of a famous person;*
- (3) *was significantly associated with an event that symbolizes an important principle or ideal;*



- (4) *represents a distinctive architectural type and has value as an example of a period, style, or construction technique; or*
- (5) *is important as part of the heritage of a religious organization, ethnic group, or local society. [§191.092(b)]*

Part II of Title 13 of the **Texas Administrative Code** includes a chapter governing the practice and procedure of the Texas Historical Commission (13 TAC 26). Section 26.7 of this chapter states that a historic structure can be designated a state archeological landmark if the structure or building (1) is situated on lands owned or controlled by the State of Texas or any of its political subdivisions or is privately owned and listed in the **National Register of Historic Places**, and (2) meets one of the six eligibility criteria listed below.

- (A) *is associated with events that have made a significant contribution to the broad patterns of our history;*
- (B) *is associated with the lives of persons significant in our past;*
- (C) *is important to a particular cultural or ethnic group;*
- (D) *is the work of a significant architect, master builder, or craftsman;*
- (E) *embodies the distinctive characteristics of a type, period, or method of construction, possesses high aesthetic value, or represents a significant and distinguishable entity whose components may lack individual distinctions; or*
- (F) *has yielded or may be likely to yield information important to the understanding of Texas culture or history.*

If the structure or building is privately owned, consent of the owner is not required. Once a resource is considered to be a State Archeological Landmark, it may not be removed, altered, damaged, or destroyed without a contract or a permit issued for that purpose by the THC. Once this permit is issued, the THC will grant, at maximum, one time extension beyond the original time frame for the required investigations.

Department of Transportation Act of 1966 (49 U.S.C. 303)

Projects using U.S. Department of Transportation funds or requiring a license from its agencies must meet the requirements of Section 4(f) of the **Department of Transportation Act of 1966** (now 49 U.S.C. 303). Section 4(f) declares it a national policy to make a special effort to preserve the natural beauty of the countryside, including parks and recreation land, wildlife and waterfowl refuges, and historic sites. Section 4(f) prohibits the Secretary of Transportation from approving projects that require the use of significant publicly owned parks, recreation areas, or wildlife and waterfowl refuge, or any significant historic site protected under Section 4(f) unless a determination is made that:

- (1) *there is no feasible and prudent alternative to such use, and*
- (2) *the project includes all possible efforts to minimize harm resulting from such use.* [49 U.S.C. 303]

A Section 4(f) “use” occurs:

- (1) *when land is permanently incorporated into a transportation facility;*
- (2) *when there is a temporary occupancy of land that is adverse in terms of the statute’s preservationist purposes as determined by the length of occupancy, scope of work,*



- (3) *anticipated permanent adverse physical impact of the occupancy of land, and possibility of restoration to the resource's original condition prior to occupancy; or when there is a constructive use of land. [23 CFR 771.135(p)]*

These different types of “uses” are further explained below:

Permanent Acquisition (Direct Impact) – The physical and permanent taking of a protected resource for use by a transportation project is known as an actual use.

Temporary Use – Short-term, temporary use (e.g., for a construction easement) of a Section 4(f) resource would not constitute a use under Section 4(f) as long as the following conditions are met: occupancy of the resource is temporary (i.e., shorter than the construction period for the entire project) and there is no change in ownership; changes or effects to the resource are minimal; there are no permanent adverse impacts resulting from the temporary use; and there is a documented agreement between relevant jurisdictions regarding temporary use of the resource.

Constructive Use (Indirect Impact) – A constructive use occurs when a project does not incorporate land from a protected resource but when the project generates impacts due to proximity (e.g., noise or visual impacts). Constructive use occurs when the project negatively affects the purposes for which the resource is of value to the public (i.e., its activities, features, or attributes).

If a project will affect Section 4(f) resources, documentation of no feasible or prudent alternative and efforts to minimize harm must be provided in the federal environmental document. The document may also be prepared as a separate free-standing report for distribution within the Department of Transportation.

Land and Water Conservation Fund Act

Section 6(f) of the ***Land and Water Conservation Fund Act*** (Public Law 88-578) requires that recreation land acquired or developed with assistance under this section remain in use exclusively for public outdoor recreation. It may not be converted to other uses without the approval of the National Park Service.

Texas Parks and Wildlife Code

Chapter 26 of the ***Texas Parks and Wildlife Code*** was established to protect parks, recreation and scientific areas, wildlife refuges, and historic sites from being taken by state or local agencies for public projects. Chapter 26 applies to all DART rail projects. Section 26.001 of Chapter 26 prescribes that:

(a)A[n] [agency] of this state may not approve any program or project that requires the use or taking of any public land designated and used prior to the arrangement or the program or project as a park, recreation area, scientific area, wildlife area or historic site unless the [agency], acting through its duly authorized governing body or officer, determines that:

- (1) *there is no feasible and prudent alternative to the use or taking of such land; and*
- (2) *the...project includes all reasonable planning to minimize harm to the land as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from the use or taking.*

Chapter 26 is comparable to Section 4(f) of the ***National Transportation Act of 1966***, but has additional restrictions regarding temporary parks, recreation areas, or wildlife refuges that are designated by the affecting body and recently designated facilities. The supplemental section on “Excluded Lands” (§26.004) does not pertain to historic resources or scientific areas.



Chapter 26 excludes parks, recreation areas, or wildlife refuge in certain cases. Section 26.004 provides that a department, agency, board, or political subdivision having control of the public land is not required to comply with this chapter if:

- (1) *the land is originally obtained and designated for another public use and is temporarily used as a park, recreation area, or wildlife refuge pending its use for the originally designated purpose;*
- (2) *the program or project that required the use or taking of the land being used temporarily as a park, recreation area, or wildlife refuge is the same program or project for which the land was originally obtained and designated; and*
- (3) *the land has not been designated by the department, agency, political subdivision, county, or municipality for use as a park, recreation area, or wildlife refuge before September 1, 1975.*

This section on “Excluded Lands” does not pertain to historic resources or scientific areas.

3.8.2 Cultural Resources

Methodology

The inventory of cultural resources provided in this section is subject to the following regulations, discussed in detail in section 9.2 Applicable Legal and Regulatory Requirements:

- **National Historic Preservation Act of 1966**, as amended (16 U.S.C. 470)
- **Executive Order 11593**
- **Department of Transportation Act of 1966** (49 U.S.C. 303) / Section 4(f) – *National Register listed or eligible properties only*
- **Antiquities Code of Texas**

Between June 22 and June 24 2005, architectural historians who meet the Secretary of the Interior’s Professional Qualifications conducted a reconnaissance survey of the project area. During the field survey, buildings within 500 feet of the proposed alignment that appear to meet the eligibility criteria for listing in the **National Register of Historic Places** (National Register) and those that are potentially significant at the local level were noted and photographed. Archival research included identifying resources that are currently listed on the National Register, **Registered Texas Historical Landmarks**, locally designated landmarks, or resources that had been identified during a previous survey as meriting further research and evaluation. In addition, national, state, and local agencies and organizations were solicited for information regarding any resources that did not appear on any of the aforementioned lists.

3.8.3 Historic Resources

Within 500 feet of the proposed alignment, no historic properties were identified during the field survey and archival research. The architectural historians determined through field survey and research that there are no National Register-listed properties, no Recorded Texas Historic Landmarks, no properties identified as important by the City of Irving Community Development Department or Heritage Society, no City of Dallas Landmarks and no properties evaluated by the Dallas County Historical Commission within 500 feet of the centerline of the proposed alignment.

3.9 ARCHEOLOGICAL RESOURCES

There are 14 known sites within 1 mile of the identified Irving/DFW Line (**Figure 3-24**). Portions of the proposed project have high potential to affect archeological sites due to proximity to waterways, ROW requirements, and indirect construction impacts. Details can be found in the **Existing Conditions Technical Memorandum** (DART, 2005).