

CULTURAL RESOURCE REGULATIONS

For Local Public Agency (LPA) Federal-aid Projects

In Iowa, there are four sets of regulations governing effects on cultural resources such as historic properties or archaeological sites by LPA construction projects. Each set of regulations and a summary of their requirements is outlined below.

Iowa Code Section 314.24 – Natural and Historic Preservation

1. Construction of streets and highways must, to the extent practicable, preserve and protect natural and historic sites or areas.
2. Destruction of such sites shall be avoided if reasonable alternatives are available at no significantly greater cost.
3. The LPA must make a diligent effort to identify and examine the comparative costs for alternatives.

Iowa Code Sections 263B.7-9 and 716.5 and Iowa Administrative Code [685-11.1](#) requirements governing cemeteries and burials

1. All human burials are protected from unauthorized disturbance, whether by public or private actions.
2. Prehistoric (over 150 years old) burials are under the authority of the Office of State Archaeologist (OSA).
3. If a burial site is identified before construction, the site should be avoided if possible.
4. If a burial site is discovered during construction, notify the proper authorities. If the burial is modern, contact the local sheriff.
5. If the burial is not modern, there is now a division of responsibilities under Iowa law and Federal law for contacts involving burials. Mark Kerper in the Iowa DOT Office of Location & Environment (OLE) at 515-239-1591 should be the initial contact for liaison with the OSA and the Iowa Indian Advisory Committee. The OSA can help identify the age and culture of human remains. The Cultural Resources (CR) section of OLE needs to be involved for Section 106 and FHWA responsibilities. Mark will work with Randy Faber or Judy McDonald in the CR section of OLE.

Section 4(f) of the United States DOT Act of 1966

1. Besides publicly owned parks, recreational lands, greenbelts or wildlife refuges, these regulations also apply to historic properties.
2. Archaeological sites in Iowa are usually exempted from these requirements.

Section 106 of the National Historic Preservation Act of 1966

Key Players

1. *Federal Agencies.* Federal agencies usually involved with implementing the Section 106 requirements include: the Federal Highway Administration (FHWA), the United States

Army Corps of Engineers (Corps) and the Federal Emergency Management Agency (FEMA). Final authority and responsibility for carrying out the provisions of this act rests with the various federal agencies involved. However, the federal agencies may choose to delegate these responsibilities. The OLE is officially delegated to carry out all Section 106 responsibilities for FHWA funded actions in Iowa including consultation with Indian Tribes. OLE will prepare project information, maps, correspondence, and other documentation for use in tribal contacts. The FHWA will become actively involved in tribal consultation when a project will have an adverse affect to a historic property of tribal interest.

2. *State Historic Preservation Officer (SHPO)*. This position is appointed by the governor and is required by the National Historic Preservation Act of 1966, as amended. This position and the accompanying State Historic Preservation Office is funded by a combination of state and National Park Service funds. SHPO is acting for the Advisory Council on Historic Preservation and must be given an opportunity to review and comment on all federal actions in the state which have potential to affect historic properties.
3. *Advisory Council on Historic Preservation (ACHP)*. This group consists of nineteen members (plus a staff of archaeologists and historians) from federal, state and local governments as well as the private sector and educational institutions. ACHP has final review and comment authority on all federal actions with potential to affect historic properties. However, the ACHP rarely becomes directly involved in consultation for individual projects unless there is a failure in the consultation process at the state level.

It is important to note that neither SHPO nor ACHP has the authority to stop a project. However, federal agencies are required by law to consider SHPO and ACHP comments, and these comments are taken very seriously. In certain cases, ACHP comments may have to be addressed by the Washington D.C. office of FHWA. Also, individuals with an interest in historic preservation may go to court to stop or alter a roadway project that affects historic properties.

Definitions

Archaeological Site: The remains of people's activities. These can be classified as historic or prehistoric. Historic sites would include such things as pioneer farmsteads, cabin sites or sites like the sunken steamboat Bertrand at DeSoto Bend on the Missouri River. Prehistoric sites typically include Native American campsites, villages or tool sites.

Historic Property: Historic properties include archaeological sites as well as structures. To be considered as an historical property, houses, barns, bridges or boats usually must be at least 50 years old. While unusual, some properties less than 50 years old are classified as historic.

Historic Districts: Historic farmsteads, town squares or neighborhoods, and in some cases, even landscapes. These can sometimes encompass a large area. Historic Districts can include a cluster of archaeological sites.

Procedures

1. *Establish the area of potential effect.*

Some projects have little or no potential effect on historic properties. A programmatic agreement with SHPO allows FHWA to authorize projects that have no potential to cause an effect on historic properties without any SHPO involvement. Projects that fall into such a category do not require any additional right-of-way, including permanent or temporary easements or borrow and will not affect any historic structures or historic districts.

For projects with a very low potential to cause effect to historic properties with a very small amount of right-of-way, temporary or permanent easement (<2 acres), either provide information that documents that area has been previously disturbed or have an archaeologist conduct record search and an assessment of the project's affects. OLE has a contract with the OSA to provide this service. However, other archaeology firms are qualified to conduct an assessment. The archaeologist will provide the LPA a letter-report of the findings, either recommending a survey or "no survey recommended." If no survey is recommended, OLE will use this letter assessment to document to SHPO that no historic properties will be affected. If a survey is recommended, contact an archaeologist to complete the survey.

The public involvement for a project as described above with little or no potential to cause an effect to historic properties would be minimal and limited to normal public notices of proposed LPA federal-aid projects. For projects that do have a potential effect on historic properties, see the next step.

2. *The LPA/consultant completes a Phase I survey and report.*

A Phase I survey and report identifies any historic properties or archaeological sites which could be impacted by the project. This report must be submitted by the LPA/consultant to the Cultural Resource Section in OLE at the Iowa DOT.

Phase I archaeology involves research of historical and previous survey records and a close inspection of the ground surface, including shovel tests and post holes in areas of poor visibility. The geomorphology in stream valleys is also inspected. Field work for Phase I archaeology usually cannot be done during the winter months. Archaeologists usually conduct background research, lab analysis and report writing during the winter months.

Phase I historic studies include a site visit for purposes of an architectural evaluation and taking photos. Historical records are also researched. The Iowa DOT recommends historians to determine National Register eligibility during the initial review to eliminate the need for Phase II evaluations.

SHPO maintains a list of archaeological and historical consultants who meet the minimum standards set by the Secretary of the Interior. However, this is not a guarantee that the consultant's work will be adequate. Archaeologists should follow the 1999 Guidelines for Archaeological Investigations in Iowa to make sure that they have checked and documented all potential archaeological information for SHPO's review. Historians should use the Iowa Site Inventory Forms for recording structures over 50 years old.

Before conducting a Phase I survey, it is important to identify the limits of the project. Preliminary plans that show the limits of the proposed improvements and the right-of-way are desirable, but in some cases (such as bridge replacement projects), a survey can be conducted without preliminary plans.

3. *OLE sends Phase I report to SHPO and interested Indian Tribes for review and comment.*

SHPO will review reports within 30 days of receipt or relinquish their right to comment. Because SHPO is significantly understaffed, OLE tries to assist SHPO by some pre-review and summary in the Iowa DOT determination of affect letter. If the report is adequate, SHPO usually concurs with the findings of the report and OLE's determination. They will sign the concurrence line on the Iowa DOT determination letter and return it to OLE. If the report did not identify any sites or properties that will be affected by the project, the Section 106 process is complete.

The public involvement for projects with no historic properties affected would note the hiring of an archaeologist or historian to review the project in the published agenda of the Board meeting and the published minutes of the meeting. Instruct the archaeologist to include his/her public contacts in the report. Include the results of the cultural resource survey in the minutes of the Board meeting when it is presented to the Board. If the report did identify sites or properties with potential significance, continue to the next step.

4. *The LPA/consultant completes a Phase II archaeological evaluation and report.*

Before beginning the Phase II survey, the LPA may want to study alternatives that would avoid impacts to the site or property. Phase II archaeology may require another season for fieldwork. Excavation of several one square meter test pits and additional lab analysis are required. The consultant should discuss Phase II methodology with SHPO before proceeding.

A Phase I historical study is generally the identification stage while a Phase II historical study is the evaluation stage, which involves more research of historical records. Most historic structures should be sufficiently investigated at the Phase I level to determine their eligibility for the National Register. Sometimes additional research, such as a Phase II study, is needed to determine eligibility for the National Register. The LPA may consider directing the historian to complete the identification and determination of eligibility phases at the same time.

The Phase II report must be submitted by the LPA/consultant to the Cultural Resources Section of the OLE at the Iowa DOT.

5. *OLE forwards the Phase II report to SHPO and interested Indian Tribes for review and comment.*

SHPO reviews the report and responds to the OLE's determination of effect. If the Phase II report finds that the site or property is not eligible for the National Register of Historic Places (NRHP), and SHPO and interested Indian Tribes concur with this determination, the Section 106 process is complete.

If the site or property is eligible for the NRHP, continue to the next step.

6. *Again the LPA should consider alternatives to avoid or minimize impacts.*

Mitigation of adverse effects will require that the LPA sign a Memorandum of Agreement (MOA) among the FHWA, SHPO, and Iowa DOT.

For all adverse effects, whether to archaeology sites or historic structures, consultation with SHPO will be required. A notice must be sent to the ACHP along with specified documentation and a summary of actions. The ACHP is offered an opportunity to participate in consultation. Consultation often includes the interested tribes, the property owner and interested members of the public. The LPA/consultant should work with the OLE to complete this process. Several things should be considered by the LPA/consultant:

- An archaeological site may be significant only for the information that it contains. In this case, avoidance is not mandatory, but data recovery is usually required. This will typically require an additional season for fieldwork and often is very expensive.
- ACHP requires adequate public involvement. If the site is prehistoric, tribes will need to be consulted, which OLE will take care of, but could add time to the process. Keep in mind that sites of tribal interest are confidential, especially burials and sacred sites. For historic sites, archaeology and structures, the LPA should notify the owner(s) of properties listed on the historic register, local historical society and ask for their comments. Any newspaper articles should be clipped and sent to OLE. Any cultural resource discussions at the Board meeting should be documented in the minutes. If there is controversy due to the cultural resources, document the concern and resolution.
- Under the Section 4(f) requirements, historic structures must be avoided if feasible and prudent. It is important to note that cost is not a consideration in this determination. Draft and final 4(f) documentation of alternative and minimization considerations are required.

- For all adverse effects to historic structures or sites, if avoidance is not possible, an MOA will be required. The MOA stipulates measures that will be employed to minimize or mitigate impacts to the historic property. The MOA must be signed by the Iowa DOT, FHWA and SHPO. The LPA will be asked to sign the MOA and other interested parties such as interested Indian tribes or local historical societies will be given an opportunity to sign. The signed MOA is then sent to ACHP for their files.
- For archaeological sites that are to be mitigated by data recovery, it is recommended that the archaeological consultant write a Research Design / Data Recovery Plan. This needs to be reviewed by SHPO, attached to the MOA, and can be used for requesting Phase III proposals.
- For impacts to historic properties that are not adverse, a Finding of No Adverse Effect must be sent to SHPO .
- Before a project can proceed to letting, the MOA must be completed and approved by all the reviewing agencies. In addition, the stipulations contained in the MOA must be completed to SHPO's satisfaction prior to letting (SHPO approval of the mitigation field work will usually allow a project to proceed).

For more information on the Section 106 process, refer to [Chart 6C – Section 106 Process](#) in the Flow Charts section of the Project Development Information Packet.

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