

# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities

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From: Local Systems Bureau

I.M. No. 4.120

Subject: Cultural Resource Regulations

**Contents:** This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to assist them in complying with the cultural resource regulations. This I.M. also includes the following attachments:

[Attachment A](#) – Cultural Resources Process for Swap Projects Flowchart

[Attachment B](#) – Cultural Resources Process for Fed-Aid Projects Flowchart

### ACRONYMS

**ACHP - Advisory Council on Historic Preservation**

**APE - Area of Potential Effect**

**CRA - Cultural Resources Assessment**

**CRE - Cultural Resources Evaluation**

**FEMA - Federal Emergency Management Agency**

**FHWA - Federal Highway Administration**

**HPC - Historic Preservation Commission**

**HS - Historical Society**

**LEB - Location and Environment Bureau**

**LPA - Local Public Agency**

**MOA - Memorandum of Agreement**

**NEPA - National Environmental Policy Act**

**NRHP - National Register of Historic Places**

**OSA - Office of State Archaeologist**

**SHPO - State Historic Preservation Officer**

**SOI - Secretary of Interior**

**USACE - United States Army Corps of Engineers**

### 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, tool manufacturing locations and burial mound sites.

**Cultural Resources:** A generic term referring broadly to many types of resources associated with human activities and the built landscape, whether relatively recent or from some time in the distant past. Some cultural resources qualify as historic properties as defined in Section 106 of the National Historic Preservation Act; this definition would also apply to historic sites under Iowa Code.

**Ground Disturbance:** Project activities where there will be excavation or other ground disturbance, outside of the toe of foreslope for a rural cross section (i.e. the backslope and original ditch bottom are considered ground disturbance). For an urban cross section, this would be below the top of subgrade or below subgrade prep accomplished since 1960 to a depth of 12 inches. Existing utility trenches where the ground had been previously disturbed, including any bedding (usually rock) placed in a utility trench, are not considered ground disturbance. See the example [Cross Section](#). The cross section is just an example of any possible existing ground disturbance, and does not cover all potential situations.

**Historic Property:** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register of Historic Places (NRHP) including artifacts, records, and remains which are related to such district, site, building, structure, or object. Historic properties include historic barns, historic districts, archaeological sites, and other properties. To be considered as a historical property, houses, barns, or bridges 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, commercial districts, or neighborhoods, and in some cases, even landscapes. These can sometimes encompass a large area. Historic Districts can include one or more archaeological sites.

*National Register of Historic Places:* The United States federal government's official list of districts, sites, buildings, structures, and objects deemed worthy of preservation for their historical significance; eligibility is determined by careful evaluation of specific criteria, as determined in consultation with the State.

*Non-Ground Disturbance:* Project activities that are limited to previously excavated (disturbed) areas, such as the area between the toes of foreslopes and below the ditches of a rural cross section. For an urban cross section, the area between the back of sidewalks, and above the top of subgrade or subgrade prep accomplished since 1960 to a depth of 12 inches, and/or bottom of previously disturbed utility trenches. See the example [Cross Section](#). The cross section is just an example of any possible existing ground disturbance, and does not cover all potential situations.

## GENERAL

In Iowa, there are four main 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 are outlined below.

### **Iowa Code Sections [314.24](#), Natural and Historic Preservation, and [263B.5](#), State Department of Transportation Contracts**

1. Construction of streets and highways must, to the extent practicable, preserve and protect natural and historic sites or areas. Action shall be taken to ensure that historical objects are not needlessly destroyed.
2. Destruction of such sites shall be avoided if reasonable alternatives are available at no significantly greater cost.
3. The LPA shall make a diligent effort to identify and examine the comparative costs for alternatives.

### **Iowa Code Sections [263B.7-9](#), [523I.316\(6\)](#), Discovery of Human Remains, and [716.5](#), Criminal Mischief in the Third Degree; and [Iowa Administrative Code 685-11.1](#), Ancient Human Skeletal Remains**

1. All human remains, whether from formal graves or burials, or found as scattered fragments, are protected from unauthorized disturbance, whether by public or private actions.
2. Ancient (over 150 years in age) human remains are under the authority of the University of Iowa Office of State Archaeologist (OSA).
3. If human remains are identified before construction, the site should be avoided if possible; in any case, consultation with the Iowa DOT Location and Environment (LEB) Cultural Resources Manager is required prior to undertaking ground-disturbing activities or moving any human remains.
4. If human remains are discovered during construction, the LPA shall immediately secure the area and notify the proper authorities, including local law enforcement, the county or state medical examiner, OSA, and LEB.
5. LEB will assist with coordination and work with the LPA and responsible agencies. The OSA can assist with identifying the age and ethnic affiliation of human remains to establish proper jurisdiction and consultation responsibilities. LEB will be involved regarding Section 106 and FHWA responsibilities.

### **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. These properties are known as 4(f) properties.
2. 4(f) is one of the highest levels of protection offered to properties by Department of Transportation agencies; these properties should only be impacted when all other prudent and feasible options have been exhausted.
3. Archaeological sites in Iowa are sometimes 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 (USACE) 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. LEB is officially delegated to carry out most Section 106 responsibilities for FHWA-funded actions in Iowa including consultation with Native American Tribes and Nations. LEB 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 effect to a historic property of Tribal interest or by specific request of a consulting party.
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 shall 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 24 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.

Federal agencies, including FHWA, 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.

4. *Native American Tribes and Nations:* Many Native American Tribes and Nations once called Iowa home. Today the Federal Highway Administration and the Iowa DOT consult with over 30 of these Tribes and Nations under the National Historic Preservation Act. These Sovereign Nations have either a historical, ancestral or ceded land connection to Iowa. There are elements of treaty laws that only apply to these Sovereign Nations that are different from state and federal law.
5. *Interested Parties:* The National Historic Preservation Act requires consultation with interested parties and the public; these may include local historical societies, historic preservation commissions, certified local governments, land holders and other preservation groups.

### Cultural Resource Investigations in Iowa

In Iowa, there are generally four types of Cultural Resource Investigations. These Investigations can typically apply to both archaeological or architectural/historical. These include the following:

- Phase Ia - this is the same as a Desktop Review, where generally no field work is done.
- Phase I - this is an Identification Survey that focuses on field work.
- Phase II - this is a National Register Evaluation.
- Phase III - this is a Data Recovery and documentation effort.

### PROCEDURES FOR SWAP PROJECTS

1. *Establish the Project Scope and Limits*

Establishing project limits is an important first step for a project. This will aid resource professionals with knowing where to look to see if any known resources are recorded and to assess any potential for any yet to be recorded resources. The Iowa DOT recommends that if the limits of the project are not yet well defined, always make the limits slightly larger, as it is much easier to reduce limits without additional work versus expanding limits where additional review or survey may be necessary. Further, the Iowa DOT

recommends the LPA prepare maps of the project. At a minimum two are recommended, one at the county or city level to see the approximate location and a second, more detailed map that shows existing easements (permanent or temporary).

2. *LPA Determines whether the project involves ground disturbance or not, and has review conducted by Cultural Resource Professional*

The LPA shall determine whether the project involves ground disturbance or not, by reviewing the above definitions.

For projects with [ground disturbance](#), the LPA shall request review of the project by a Secretary of the Interior (SOI) Qualified Professional, and should provide as-built plans or an accurate existing cross section (including known utilities) to the SOI Qualified Professional. The SOI Qualified Professional shall complete a Cultural Resources Evaluation (CRE). The purpose of the CRE is to evaluate whether field work is needed. The CRE shall review local environmental conditions, archival information (county history, historical atlases), other appropriate resources and known site information (*I-Sites*) and then provide a recommendation stating that either no survey is needed or that field work is needed. The LPA can work with an SOI Qualified Professional of their choosing including professionals from the private industry, the Iowa DOT, or the University of Iowa Office of the State Archaeologist (Blane Nansel, 319.384.0729, [blane-nansel@uiowa.edu](mailto:blane-nansel@uiowa.edu)). As always if there are questions the LPA can contact their assigned cultural resources manager with LEB.

For projects with [non-ground disturbance](#), the LPA shall complete a Cultural Resources Assessment (CRA) form ([Form 231033](#)). The CRA form ([Form 231033](#)) was designed to be flexible and can be completed with the LPA's local [Historic Preservation Commission](#) (HPC), Historical Society (HS), or SOI Qualified Professional. The CRA form can be used for a single project or for an entire program depending on the desire of the LPA. In review of the form, the following resources should be considered: local historic sites or landmarks inventory, county or city history, archival information, other appropriate records, and/or the Iowa SHPO database. The form is self-explanatory, and if the project or program form concludes with an assessment of "No Impact" no further work is needed. The LPA is encouraged to retain this form in the project files. If the form is concluded with an assessment of "Minor Impact" or "Impact" the LPA shall continue this process on to the next step. If there are questions the LPA can contact their assigned [Cultural Resources Manager with LEB](#).

Submit the CRE and/or CRA Form ([Form 231033](#)) to the USACE, if a 404 permit is needed on the project.

The Iowa DOT recommends that LPAs share their 1 or 2 year plans with Native American Tribes and Nations that have interest (historical, ancestral, or ceded land) in their city or county. Often Tribes/Nations have unique knowledge about ancestral homelands that can facilitate the identification of cultural resources. LEB can facilitate information sharing if LPAs have questions about specific Tribes/Nations.

3. *The LPA/consultant Completes an Identification Survey and Report.*

Depending on the recommendations from step 2, an identification or evaluation survey may be needed. Most often this survey will be a Phase I Archaeological Investigation, but it may also include a national register evaluation for an archaeological site, a historical/architectural reconnaissance, or a historical/architectural intensive survey of standing structures. These reports come with recordation requirements (archaeological site forms and site inventory forms for standing structures) and it is important for the LPA to confirm with their consultant to make sure these requirements have been fulfilled. In all cases these reports shall conclude with a clear recommendation for the LPA; the recommendation shall state that either no additional survey is needed or that the property may be or is eligible for the National Register of Historic Places (synonymous with the definition under Iowa Code section 303.2 for "historic site") and that avoidance is recommended. If avoidance is recommended it is necessary under [Iowa Code Section 314.24](#) for the LPA to consider alternatives that avoid or minimize impacts to the site. The LPA shall list any cultural resources commitments on the Project Development Certification. The LPA should enlist the help of the assigned cultural resources manager with LEB.

4. *LEB coordinates identification report (SHPO, Native American Tribes/Nations, and Interested Parties) for review and comment - Consultation.*

When an LPA completes a Phase I Archaeological Investigation, a historical/architectural reconnaissance, a historical/architectural intensive survey of standing structures, or a national register evaluation, this information shall be provided to the assigned Cultural Resources Manager with LEB. LEB will coordinate with and seek comments from the appropriate parties, which may include SHPO, Native American Tribes/Nations, the State Archaeologist, and/or local historical groups. If avoidance can be achieved, then the LPA has met their requirements under the state law. If avoidance cannot be achieved or is in question, a meeting with LEB and other parties may be needed. At this point, National Register Evaluation (Phase II) may be required.

5. *Develop Agreement on any needed Mitigation*

Following the development of avoidance alternatives and consideration of [Iowa Code Section 314.24](#) requirements, if a property(ies) cannot be avoided, the LPA shall work with LEB to develop a mitigation agreement. In this agreement, the LPA shall take steps to follow [Iowa Code Section 314.24](#) and consider the comments of reviewing parties. Mitigation outcomes may include, but are not limited to, archaeological data recovery, a historical booklet or plaque (e.g. documenting a bridge move or demolition), a National Register nomination, or other public outreach. Upon the conclusion of stipulations outlined in the agreement document the LPA will have met their requirements under state law. LEB staff have examples of mitigation agreements for Iowa DOT projects that did not have Federal-aid; those are available upon request.

For a flowchart of the Swap Projects Cultural Resource process, refer to [Attachment A](#) to this I.M.

## **PROCEDURES FOR FEDERAL-AID PROJECTS**

1. *Establish the Area of Potential Effect (APE).*

The Area of Potential Effect (APE) always includes the footprint of the project but can also include things like viewsheds and audio disturbances. FHWA and Iowa DOT also consider vibration effects and have protocols in place for projects that may produce vibration levels that can damage historic properties. Some projects have little or no potential effect on historic properties. The Statewide Agreement is between the Iowa DOT, SHPO, and FHWA.; The Statewide Agreement allows LEB, on behalf of FHWA, to authorize projects that have no potential to cause an effect on cultural resources without any SHPO involvement. Projects that fall into such a category typically do not have a construction component.

2. *Complete the Concept Statement.*

For information on completing the Concept Statement, see [I.M. 3.020](#), Concept Statement Instructions. Be sure to include maps of the project. At a minimum two are recommended, one at the county or city level to see the approximate location and a second, more detailed map that shows existing easements (permanent or temporary). Preliminary plans generally work well. The LPA should check with OSA concerning known cultural resources; the I-Sites public website <https://archaeology.uiowa.edu/services/i-sites> shows broad patterning at the section level. This resource provides an LPA a way to quickly assess recorded historic structures or buildings in a project area, as well as determine the number of archaeological sites recorded in the section(s) corresponding to the project's location.

3. *Review of Project by Cultural Resources Staff at LEB and Early Consultation.*

Once the concept statement is approved by the Administering Team, it will be submitted to LEB for National Environmental Policy Act (NEPA) and National Historic Preservation Act (Section 106/SHPO) review. Once the cultural resources staff reviews the concept statement, one of three scenarios will be completed. The first is that the project will meet exclusions to the Statewide Agreement between Iowa SHPO, FHWA and Iowa DOT. If this is the case the cultural resources manager will issue a cultural resources clearance email memo. These projects often lack new easement (permanent or temporary) or are located in places where complete disturbance can be documented.

NOTE: Agricultural disturbance typically does not constitute complete disturbance; coordinate with LEB if the LPA has questions.

The second scenario is that the project will not meet the criteria for exclusions allowed under the Statewide Agreement, and need consultation with SHPO. These projects often involve activities with low potential to affect historic properties, but historic properties are near and consultation shall occur.

The third scenario occurs when an exclusion to the Statewide Agreement between Iowa DOT, SHPO, and FHWA is not met and further investigation is needed. LEB cultural resources managers will make specific recommendations to the LPA which will lead to predictable project delivery. Those recommendations include the completion of a cultural resources evaluation, for which LEB has a contract with the OSA to provide this service. However, other cultural resources consulting firms are qualified to conduct the same type of assessment; the decision is left to the LPA on who they use. Consult LEB for a list of qualified consultants. The archaeologist will provide the LPA a report of their findings, either recommending a field investigation or “no survey recommended.” If no survey is recommended, LEB will use this letter assessment to document to SHPO that no historic properties will be affected. Many of these projects often fall into the [Minor Projects](#) (Appendix C) part of the Statewide Agreement between SHPO, FHWA, and Iowa DOT. If a survey is recommended, contact a qualified consultant to complete the survey.

Sometimes the cultural resources evaluation is not needed and LEB will provide a recommendation for an investigation directly to the LPA. This saves the LPA the time and effort of an evaluation when it will clearly not be sufficient. If there are questions about this recommendation or why it is needed the LPA should contact the appropriate cultural resources manager in LEB.

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.

#### 4. *The LPA/consultant Completes a Cultural Resources Field Investigation and Report.*

A cultural resources field investigation survey and report identifies any historic properties or archaeological sites which may be impacted by a project. This report shall be submitted by the LPA or consultant, to the appropriate cultural resource manager in LEB, making sure to include the Administering Team. The report shall specify if the resources identified are eligible, potentially eligible, or not eligible for listing in the National Register of Historic Places. Eligibility findings should connect each resource identified to one or more specific National Register Significance Criteria (A-D). If a consultant indicates an identified cultural resource is “unevaluated” it may impact project delivery if avoidance and preservation-in-place is not possible.

Unique to **2023 through 2025**, it will be necessary to complete either a historical bridge assessment or an intensive historical evaluation for bridges 45-years in age or older. Currently, both of the previous statewide historic bridge surveys are out of date, and not being accepted by Iowa SHPO. Per 36 CFR 800, identification of historic properties is the responsibility of the agency or their applicant. The historical bridge assessment or intensive historical evaluation are different levels of investigation that result in different products. If the LPA has questions about the appropriate level of effort/product they should contact the [designated cultural resources manager for their transportation district within LEB](#). The historical bridge assessment is a desktop effort that will look at the historic context of the bridge, provide some appropriate documentation and will conclude with the SOI qualified historian making an assessment of the need for intensive survey. A key to the scope of the historical bridge assessment is that the completion of an Iowa Site Inventory Form is not required. Generally, these efforts do not involve field work by the SOI qualified historian, but they will likely involve the exchange of specific information about the bridge, or other similar bridges from the LPA to the SOI qualified historian. To find an SOI qualified historian, refer to this website:

[http://www.preservationiowa.org/directory/dir\\_category/architectural-historian/](http://www.preservationiowa.org/directory/dir_category/architectural-historian/)

Conversely, the intensive historical bridge evaluation will require field time, as well as visits to local archives or institutions that repose historical documents by the SOI qualified historian or associated staff. The intensive historical bridge evaluation also requires the completion of a robust historical context and an Iowa Site Inventory Form. This level of documentation should be consistent with Iowa SHPO’s draft *Guidelines for Historic Architectural Survey in Iowa*. The Iowa Highway Research Board and the Iowa DOT are leading efforts to complete our **3<sup>rd</sup> generation statewide historical bridge survey** that is

anticipated to be completed in late 2025. Once completed, individual bridge assessments or intensive historical evaluations for most bridges in the state should not be required.

Phase I Archaeological Investigations involve research of historical records; review of pertinent previous investigation results; or collection of field data including thorough ground surface inspection and excavation using a shovel, auger, or post holes in areas of poor surface visibility. Various geomorphologic considerations shall also be taken into account. Field work for Phase I archaeology usually cannot be done during the winter months due to frozen ground or snow cover, so LPAs are encouraged to plan their work according to the field season.

Reconnaissance level historic studies focus on infrastructure and include a site visit for purposes of architectural evaluation, data collection, archival research, and photo documentation. These studies are preliminary in nature and may or may not include National Register eligibility determinations. If further work is needed, it will lead to an intensive historical/architectural evaluation, shown below in Step 6.

The Association of Iowa Archaeologists maintains a list of qualified archaeological consultants and Preservation Iowa maintains a list of historical consultants who meet the minimum standards set by the Secretary of the Interior for this type of work. However, this is not a guarantee that the consultant's work will be adequate. Archaeologists shall follow the [Guidelines for Archaeological Investigations in Iowa](#) to make sure that they have checked and documented all potential archaeological information for SHPO's review. Historians shall use the Iowa Site Inventory Forms for recording structures over 50 years old. If the LPA has questions about an investigation or other parts of the process direct communication with the cultural resources manager in LEB is recommended.

Before conducting a Phase I survey, it is important to identify the limits of the project; this is one of the most critical steps for the LPA. 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. It is recommended to always survey an area slightly larger than is needed, in order to accommodate design modifications.

5. *LEB sends identification report to SHPO, Native American Tribes/Nations, and Interested Parties for review and comment - Consultation.*

SHPO will review reports within 30 days of receipt or request additional time from LEB. Iowa SHPO has limited staff; therefore, LEB assists SHPO by reviewing and summarizing the findings from the report. If the report is adequate, SHPO usually concurs with the findings of the report and LEB's determination. They will sign the concurrence letter and return it to LEB. If the report did not identify any sites or properties that will be affected by the project, the Section 106 process is usually complete. One of the most important parts of this process is that LEB makes a determination of effect for the project, which refers to the cultural resources identified and corresponding NRHP eligibility recommendations as to whether or not these meet the definition of historic properties. If the report did not identify any cultural resources that will be affected by the project, the Section 106 process is usually complete. There are four determinations available, it's up to LEB and FHWA to apply the correct determination. The determinations are:

- No Potential to Cause Effect (meaning no cultural resources identified)
- No Historic Properties Effected (meaning no cultural resources meeting the definition of historic properties identified)
- No Adverse Effect (meaning historic properties identified but will be avoided, sometimes these determinations come with conditions)
- Adverse Effect (meaning to one or more historic properties and some mitigation solution is needed)

The Section 106 process requires public involvement. Some examples of public involvement can include discussion of the project in an open meeting and/or publishing of County Board of Supervisors or City Council minutes of a meeting where the project was discussed. It is recommended that the LPA follow state law and not disclose the nature or location of archaeological sites; however, standing structure information is public information. If the report did identify sites or properties with potential significance, continue to the next step.

6. *The LPA/consultant Completes a National Register Evaluation and Report.*

If a significant historic property or potentially significant historic property is identified, further investigation may be needed if the property or resource cannot be avoided by the project. Historic properties which cannot be avoided are subject to additional investigation (Phase II Investigation) to establish an appropriate data recovery scope-of-work and research questions. Unevaluated cultural resources which cannot be avoided are subject to Phase II investigation to complete evaluation as a historic property, and as appropriate, establish data recovery specifications. Before beginning Phase II investigation, the LPA shall study alternatives that would avoid impacts to the resource or historic property. Phase II Archaeological Investigations may require another season for fieldwork. Phase II Archaeological Investigation consists of a larger sample of the archaeology; therefore, larger test units and additional lab analysis are required. LPAs can expect additional costs for increased field work, specialized analyses like radio carbon dating, as well as artifact analysis and report writing.

A Phase II Historical/Architectural (intensive level) Investigation is the evaluation stage, which involves more research of historical records. Some historic structures may be sufficiently investigated at the Phase I (reconnaissance) level to determine 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 Investigation and report shall be submitted by the LPA/consultant to the cultural resources manager of LEB. At this step additional direct communication with the cultural resources manager is highly recommended, this can help address the project timeline and facilitate the discussion or avoidance alternatives.

7. *LEB forwards the Phase II report to SHPO, Native American Tribes/Nations, and Interested Parties for Review and Comment - Consultation.*

SHPO reviews the report and responds to the LEB's determination of effect. If the Phase II report finds that the cultural resource is not eligible for the National Register of Historic Places (NRHP), and SHPO concurs with this determination, the Section 106 process is complete. Native American Tribes/Nations and Interested Parties can use this time to share comments about the cultural resource or the project with the Iowa DOT, FHWA, and the LPA. If the evaluated cultural resource is eligible for the NRHP as a historic property, continue to the next step.

8. *Consideration of Alternatives to Avoid or Minimize Impacts by LPA and Mitigation of Effects to Historic Properties.*

At this step, all options that avoid impacts need to be considered or reconsidered, including the "no build" alternative. If adverse impacts are not avoidable, mitigation of adverse effects will require that the LPA sign a Memorandum of Agreement (MOA) with the FHWA, SHPO, and Iowa DOT. The MOA process is substantial and LPAs should expect a minimum of 18 months to complete.

For all adverse effects to historic properties, whether to archaeological sites or historic structures, consultation with SHPO and all interested parties is required. A notice shall be sent to the ACHP along with specified documentation and a summary of actions. The ACHP will be offered an opportunity to participate in consultation. Consultation often includes the interested Tribes/Nations, the property owner, and interested members of the public (and for archaeological sites, the OSA). The LPA or consultant shall work with the LEB cultural resources manager to complete this process. Several things should be considered by the LPA/consultant:

- For all adverse effects to historic properties, if avoidance is not possible, a MOA will be required. The MOA stipulates measures that will be employed to minimize or mitigate impacts to the historic property. The MOA is to be signed by the SHPO, the FHWA, the Iowa DOT, and the LPA. Other interested parties such as interested Tribes/Nations, OSA, or local historical societies will be given an opportunity to sign. The signed MOA is then sent to ACHP for their files.

- An archaeological site may be significant as a historic property 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 expensive, as data recovery involves both extensive fieldwork and intensive laboratory analyses and reporting. Additionally, mitigation that is designed to benefit the public will likely be required. Check with LEB cultural resource managers for examples.
- For archaeological sites that are to be mitigated by data recovery, the archaeological consultant writes a Research Design/Data Recovery Plan. This needs to be reviewed by LEB and then by SHPO, attached to the MOA, and may be used for requesting Phase III proposals from qualified cultural resources consultants.
- ACHP requires adequate public involvement. If the site is prehistoric, Tribes/Nations will need to be consulted. LEB staff will lead this effort, but the LPA shall provide support as needed and this does add time to the process. Keep in mind that sites of Tribal interest are confidential, especially burials and sacred sites. For historic sites, archaeological contexts, and structures, the LPA should work with local historical societies or historic preservation commissions to gain their input. Any cultural resource discussions at a County Board of Supervisors or City Council 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, 4(f) properties shall 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.
- Before a project can proceed to letting, the MOA shall be completed and approved by all the reviewing agencies. In addition, the stipulations contained in the MOA will 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 *Cultural Resources Process Flowchart*.

Section 106 was built around the concept of consultation, therefore it's important to communicate plans and seek input to ensure smooth project delivery. If you have questions about the Section 106 process contact the cultural resources manager in LEB for your district.

For a flowchart of the Federal-aid Cultural Resource process, refer to [Attachment B](#) to this I.M.

For Location & Environment Bureau, Cultural Resource contacts, utilize the following website:  
<https://iowadot.gov/ole/cultural-resources/about>