

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 archeological 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 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 Archeologist (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 Department of Transportation (DOT) Office of Design, Corridor and Development and Pre-location Section, should be the initial contact for liaison with the Iowa Indian Advisory Committee and the OSA. The Office of Environmental Services needs to be involved for Section 106 and FHWA responsibilities. Mark will work with Randy Faber or Judy McDonald in Environmental Services. The OSA can help identify the age and culture of human remains.

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. Archeological sites in Iowa are usually excepted from these requirements.

Section 106 of the National Historic Preservation Act of 1966

Key Players

1. *Federal Agencies.* 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 Iowa DOT Office of Environmental Services is officially delegated to carry out all Section 106 responsibilities for FHWA funded actions in Iowa except for consultation with Indian Tribes when there is an adverse effect. Environmental Services will assist in preparation of correspondence, documentation packages, etc. for FHWA use in tribal contacts. Federal agencies usually involved with implementing the Section 106 requirements include: the Federal Highway Administration (FHWA), the United States Army Corps of Engineers (COE) and the Federal Emergency Management Agency (FEMA).

2. *State Historic Preservation Officer (SHPO)*. This position is appointed by the governor and is required by the United States Secretary of Interior. 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 can go to court to stop or alter a roadway project that affects historic properties.

Definitions

Archeological 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: 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, neighborhoods or even landscapes. These can sometimes encompass a large area.

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 these type of projects without any SHPO involvement. For other projects with low potential effect on historic properties, documentation is sent to the Office of Environmental Services. Environmental Services then forwards this documentation to SHPO. This usually results in SHPO signing the concurrence line of a standard determination letter for “No Historic Properties Affected.” A records search by a qualified archaeologist may be needed. The Office of Environmental Services has contracted with the OSA to provide this service for LPAs that are developing federal-aid projects. The LPA may also hire their own archeologist to perform the records search. After the records search is performed, the archeologist must submit a letter to SHPO stating their recommendations concerning the need for an archeological survey and report. For projects that do have 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 archeological sites which could be impacted by the project. This report must be submitted by the LPA/Consultant to the Office of Environmental Services.

Phase I archeology 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 archeology usually cannot be done during the winter months. Archeologists usually schedule lab analysis and report writing for 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.

SHPO maintains a list of archeological 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 (ROW) are desirable, but in some cases (such as bridge replacement projects), a survey can be conducted without preliminary plans.

3. *Environmental Services 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. If the report is adequate, SHPO usually concurs with the findings of the report. They will sign the concurrence line on the DOT submittal letter and return it to

Environmental Services. If the report did not identify any sites or properties, the Section 106 process is complete. 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 archaeological evaluation, the LPA may want to study alternatives that would avoid impacts to the site or property. Phase II archeology may require another season for field work. 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. The LPA may also want to consider including the preparation and submittal of a Research Design / Data Recovery Plan in the scope of the Phase II work, or include a contingency amount in the Phase II contract if this work becomes necessary.

A Phase II historical study involves more research of historical records. Most historic structures are sufficiently evaluated at the Phase I level to determine their eligibility for the National Register.

The Phase II report must be submitted by the LPA/Consultant to the Office of Environmental Services.

5. *Environmental Services forwards the Phase II report to SHPO and interested Indian Tribes for review and comment.* SHPO reviews the report and responds to the Office of Environmental Services. 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. *The LPA again considers alternatives to avoid or minimize impacts.* Mitigation of adverse effects will require that the LPA sign a Memorandum of Agreement (MOA).

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 record of efforts to consult with the tribes and provide appropriate opportunities for public comment. The ACHP is offered an opportunity to participate in consultation. The LPA/consultant should work with the Office of Environmental Services to complete this process. Several things should be considered by the LPA/consultant:

- An archeological site may be significant only for the information that it contains. In this case, avoidance is not mandatory, but data recovery is required. This will typically require an additional season for field work and often is very expensive.
- 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.

- 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 archeological sites that are to be mitigated by data recovery, the LPA/consultant will need to write a Research Design / Data Recovery Plan. This must 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 this packet.

Office of Design, Iowa Indian Advisory Committee contact

Mark Kerper (515.239.1591) mark.kerper@dot.state.ia.us

Mailing Address:
Office of Design
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

Office of Environmental Services, cultural resource contacts

Randy Faber (515.239.1215) randall.faber@dot.state.ia.us
Judy McDonald (515.239.1795) judy.mcdonald@dot.state.ia.us
Matt Donovan (515.239.1097) matt.donovan@dot.state.ia.us
Fax: (515.239.1726)

Mailing Address:
Office of Environmental Services
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010