

# IOWA TRIBAL CONSULTATION PROCESS

## INITIATIVES AND RECOMMENDATIONS

Sponsored by  
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## **ABSTRACT**

In January 2001, new regulations mandated by Section 106 of the National Historic Preservation Act (NHPA) took effect, including required consultation with American Indian tribes by any agency when planning federally funded improvements that could potentially impact properties with cultural and/or religious significance to those tribes. To meet and comply with these new regulations in Section 106 of NHPA, the Federal Highway Administration–Iowa Division and the Iowa Department of Transportation initiated activities to establish an acceptable consultation process with tribes having a current and/or historic interest in Iowa properties.

Two events were planned and carried out: (1) the State of Iowa Tribal Summit on Historic Preservation and Transportation and (2) the State of Iowa Tribal Consultation Workshop. These efforts are described in this document. Specific concerns raised by tribal representatives suggest that, while this two-phased initiative was quite successful, this should be viewed as only the beginning of a consultation process that could require several years to achieve satisfactory levels of trust and communication. Specific successes and recommendations are provided in the report.

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The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the Federal Highway Administration or the Iowa Department of Transportation.

CTRE's mission is to develop and implement innovative methods, materials, and technologies for improving transportation efficiency, safety, and reliability while improving the learning environment of students, faculty, and staff in transportation-related fields.

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## TABLE OF CONTENTS

INTRODUCTION .....	1
IOWA TRIBAL CONSULTATION PROCESS INITIATIVES.....	2
Phase I. State of Iowa Tribal Summit .....	2
Phase II. State of Iowa Tribal Consultation Workshop .....	3
CONCLUSIONS AND RECOMMENDATIONS .....	5
ACKNOWLEDGMENTS .....	6
APPENDIX A: PROCEEDINGS OF THE STATE OF IOWA TRIBAL SUMMIT ON HISTORIC PRESERVATION AND TRANSPORTATION	
APPENDIX B: SELECTED DOCUMENTS PERTAINING TO THE STATE OF IOWA TRIBAL CONSULTATION WORKSHOP	

## INTRODUCTION

The National Historic Preservation Act (NHPA) of 1966 contains specific requirements for federal involvement and oversight of programs and activities that affect historic and culturally sensitive properties. In January 2001, new regulations mandated by Section 106 of this act took effect, including required consultation with American Indian tribes by any agency when planning federally funded improvements that could potentially impact properties with cultural and/or religious significance to those tribes. These regulations impact properties both on and off actual tribal lands, and consultation requirements apply to any tribe with current or historic interest in those subject properties.

In order to comply with the new regulations, the Federal Highway Administration (FHWA)–Iowa Division and the Iowa Department of Transportation (Iowa DOT) initiated activities to establish a consultation process with tribes having a current and/or historic interest in Iowa properties. Two events were planned and carried out: (1) the State of Iowa Tribal Summit on Historic Preservation and Transportation and (2) the State of Iowa Tribal Consultation Workshop.

A programmatic agreement is being prepared among the FHWA–Iowa Division, Iowa DOT, Iowa State Historic Preservation Office (Iowa SHPO), and Advisory Council on Historic Preservation (ACHP) that will incorporate the Iowa provisions for implementing tribal consultation as a part of the Section 106 process. Subsequent to approval of the programmatic agreement, individual agreements and/or memoranda of understanding (MOU) will be sought with each tribe to more fully describe the consultation process.

## **IOWA TRIBAL CONSULTATION PROCESS INITIATIVES**

To help facilitate the consultation process, the FHWA–Iowa Division and Iowa DOT sponsored two initiatives: (1) the State of Iowa Tribal Summit on Historical Preservation and Transportation and (2) the State of Iowa Tribal Consultation Workshop.

### **Phase I. State of Iowa Tribal Summit**

Phase I of the initiative involved a three-day workshop with tribes indicating an interest in Iowa properties. This activity took place May 15–17, 2001, in Ames, Iowa, and was attended by 49 individuals, representing 11 tribal interests and 12 federal and state agencies.

The workshop included the following events:

- Orville Little Owl of the Mandan/Hunkpapa Lakota Sioux tribe (see figure) offered stories, and a blessing to the four directions. Handmade gifts were provided for all summit attendees.
- Presentations were made by the FHWA–Iowa Division, Iowa DOT, Iowa SHPO, and the State Archaeologist of Iowa.
- Agency staff and tribal representatives met in separate caucuses to discuss communications issues connected with planned highway projects in Iowa.
- Tribal representatives described their issues and concerns.
- Joint agency/tribal issues were identified.
- The Iowa DOT’s project planning process was described.
- A joint decision was made regarding the next steps for developing a process for communicating about planned highway projects in Iowa as part of Section 106 reviews.



**Orville Little Owl of the Mandan/Hunkpapa Lakota Sioux Tribe  
at the State of Iowa Tribal Summit**

The following accomplishments were made at the State of Iowa Tribal Summit:

- Tribal and agency representatives initiated relationships and began to understand differing communications needs, styles, priorities, and strategies.
- The Section 106 review process was explained, and tribal representatives had opportunities to ask questions and express concerns about the process.
- A decision was reached to draft memoranda of understanding among the agencies and each tribe regarding Section 106 reviews. The first step will be development of a draft MOU “template” that can then be individualized with each tribe.
- To help tribes better understand the project planning process in Iowa, a decision was reached to plan a follow-up project site visit during which tribal representatives would see highway project corridors at various stages in the planning process. This will help tribes and agencies build on relationships initiated at the summit and work together to identify critical “consultation points” during the project planning process.

A detailed description of the Phase I workshop is contained in the *Proceedings of the State of Iowa Tribal Summit on Historic Preservation and Transportation*, which is included in Appendix A of this report (and is also available through the Center for Transportation Research and Education [CTRE]). While this effort was beneficial to all attending parties, it also pointed to a need for a continuation of the consultation process.

## **Phase II. State of Iowa Tribal Consultation Workshop**

In response to a conclusion from the Phase I, the State of Iowa Tribal Summit in May 2001, and as a continuation of communications development, the FHWA–Iowa Division and Iowa DOT determined a need for a supplemental meeting with the tribes. A workshop was envisioned at which invited tribal representatives would have an opportunity to become more acquainted with Iowa’s transportation development process and archaeological investigation methods, while also providing valuable assistance in establishing a consultation procedure for future tribal involvement.

Representatives from the Iowa SHPO, Iowa Indian Advisory Council, CTRE, and Louis Berger Consultants were invited to assist the FHWA–Iowa Division and Iowa DOT in planning the event, which was schedule for October 2001.

Letters of invitation and descriptive brochures were mailed to approximately 100 individuals, including 67 tribal representatives from 26 tribes in 10 states. Invitations were also issued to interested federal and state agencies such as the FHWA, Iowa SHPO, Office of the State Archaeologist, and Iowa DOT. In addition to invitation letters, some tribal representatives were also contacted by telephone. Positive responses were received from 12 tribal representatives from 10 different tribes.

Total participation at the first day workshop presentations was 29. Several handouts were provided to workshop participants in a three-ring binder, including program agenda, copies of the presentation slides, illustrations of Iowa’s project development process, the Section 106 review process, a proposed tribal notification form, information regarding the highway projects to be visited, common definitions and terms, and miscellaneous maps and brochures.

The program for the first day featured presentations that provided valuable background of and insight into Iowa's highway project development process and how cultural resources are addressed. Mitigation methods commonly employed in Iowa were described, including avoidance, acquisition and preservation of properties, as well as special designs to protect important features. When none of these options is possible, documentation and data recovery are undertaken; a description of these archaeological investigations provided additional beneficial information. The topic of major interest was an introduction to a proposed tribal consultation process for Iowa. Samples of information and materials that would accompany each consultation point were displayed. All presentations were supplemented with descriptive handouts.

The second day of the workshop featured a brief description of highway improvements to be visited, followed by a van tour and on-site review of two archaeological data recovery sites in the Mt. Pleasant area where avoidance was not possible. This area contained examples of all cultural resource mitigation methods applied as standard practice in Iowa, including the first choice, avoidance, but also acquisition and preservation, as well as a specially designed retaining wall to protect a sensitive site. Approximately 25 tribal and agency representatives participated in the field visit. The tour concluded with a summary meeting at a local Iowa DOT office, where participants completed evaluations, offered comments for this workshop, and provided suggestions for future activities in the consultation process.

Completed evaluations were received from 14 workshop participants. Evaluation ratings and comments indicated that participants found the experience to be beneficial. There was an overwhelming recommendation that additional such meetings be scheduled in the future. This conclusion was further augmented by discussion during the summary session at the end of the second day. However, some deficiencies were also noted in workshop schedule and format that should be addressed for future activities.

Appendix B contains selected documents pertaining to the Phase II, the State of Iowa Tribal Consultation Workshop, including copies of the invitation, agenda, brochure, Section 106 "can do" chart, tribal notification form, and a summary of the evaluation comments. Complete sets of summit and workshop documents are on file at CTRE.

## CONCLUSIONS AND RECOMMENDATIONS

Specific concerns raised by tribal representatives suggest that, while this two-phased initiative was quite successful, this should be viewed as only the beginning of a consultation process that could require several years to achieve satisfactory levels of trust and communication.

Specific recommendations for the future included the following:

- Institute the consultation process described in the State of Iowa Tribal Consultation Workshop for primary highway projects, including the use of the tribal notification form that was introduced and found acceptable by the tribes.
- Continue with development of a similar consultation process for local highway projects with consideration of a compressed development time. The tribal notification form can also be adopted for use here.
- Tribes have strong sensitivities regarding certain cultural features such as burials and other sacred sites. Appropriate, continuing effort to assure tribes that the FHWA–Iowa Division and Iowa DOT share those concerns is needed.
- Develop guidelines for providing information to the public, media, and property owners regarding cultural features and archaeological recovery sites. Site-specific, one-page handouts should be considered, possibly prepared by a consultant.
- Develop a standard process to protect burials and sacred sites that will transcend generations; share this information with affected tribes.
- Establish a position or assign duties at the Iowa DOT as a direct point of contact for tribes. This person would be a focus for tribal concerns and provide a trustworthy communication conduit between the agency and tribal representatives.
- Consider a workshop for planners, designers, and consultants to present and explain the Section 106 consultation process and how it relates to Iowa DOT project development procedures.
- Subsequent to approval of a Section 106 programmatic agreement by consulting agencies (FHWA–Iowa Division, Iowa DOT, Iowa SHPO, and ACHP), develop a supplemental tribal workshop to present and further explain the consultation process, proposed agreements, and/or memoranda of understanding with individual tribes.

Subsequent to completion of these activities, staff from CTRE presented a summary of these initiatives during a poster session at the annual Transportation Research Board meeting in Washington, DC, on January 16, 2002. The presentation, entitled “Tribal-State Consultation for Section 106 Process,” was well received.

## **ACKNOWLEDGMENTS**

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**APPENDIX A**

**PROCEEDINGS OF THE STATE OF IOWA TRIBAL SUMMIT  
ON HISTORIC PRESERVATION AND TRANSPORTATION**

**APPENDIX B**

**SELECTED DOCUMENTS PERTAINING TO  
THE STATE OF IOWA TRIBAL CONSULTATION WORKSHOP**