

*Editor's note: This article was revised on July 27, 2001, as follows: Criteria for determining if a site is eligible to be placed on the National Register were corrected.*

## Iowa Tribal Summit on Historic Preservation and Transportation: What does it mean for local governments?

by Duane Smith, Associate Director of Outreach

THE IOWA DIVISION of FHWA and the Iowa DOT recently hosted a historic, first-in-the-nation summit with representatives from Indian tribes having current or historical interests in Iowa. The topic: Section 106 reviews for road improvements. The goal: Develop common ground for agency-tribal communications about historic preservation and transportation.

Why would you be interested? Local agencies' responsibility to comply with Section 106 of the National Historic Preservation Act (NHPA) should affect the way you approach some road projects.

### NHPA? Section 106?

Through NHPA, enacted in 1966, congress established a comprehensive program to preserve the country's historical and cultural foundations. Section 106 of NHPA requires federal agencies to consider the effects of their actions (including road construction and other road-related activities) on historic properties and to provide Indian tribal communities with an opportunity to comment on federal projects, including highway projects, before the projects are implemented.

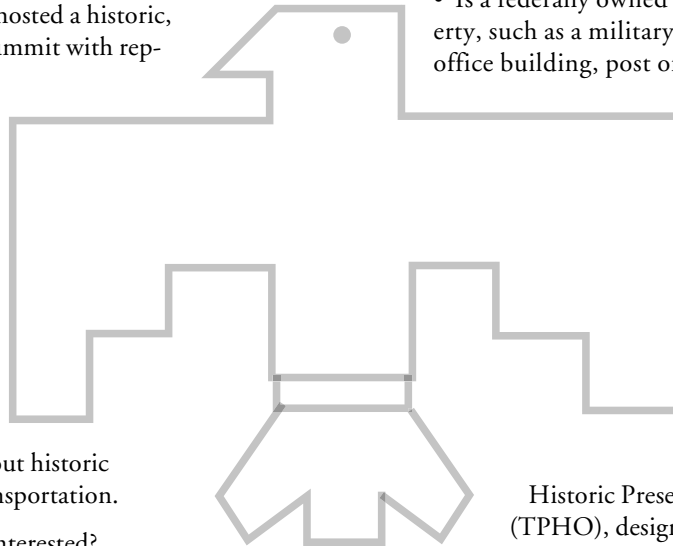
The regulations implementing Section 106 (36CFR 800) were revised in January 2001 to provide greater flexibility and, generally, to clarify its requirements.

### How does this affect local governments?

If the federal government is involved in your local road project, you need to comply with NHPA's Section 106. To determine if there is federal involvement, ask these questions:

- Is the project receiving federal funds, grants, or loans?

- Does the project require a federal permit, license, or other approval?
- Is a federally owned or controlled property, such as a military base, park, forest, office building, post office, or courthouse, involved?



If the answer to any of these questions is yes, you must initiate a Section 106 review with the State Historic Preservation Officer (SHPO). If tribal lands are involved, a Tribal

Historic Preservation Officer (TPHO), designated by each federally recognized Indian tribe, will also participate in the review process.

The purpose of Section 106 is not to stop projects. It is to ensure that agencies fully consider historical preservation issues and the views of the public (including Indian tribes) during project planning.

### What is a Section 106 review?

To successfully complete an NHPA Section 106 review, agencies must

- determine if Section 106 applies to a given project and, if so, initiate the review,
- gather information to decide if any properties in the project area are listed on or eligible for the National Register of Historic Places,
- determine how historic properties might be affected by the project,
- explore alternatives to avoid or reduce harm to historical properties, and
- reach an agreement with tribal and state officials about measures to deal with or mitigate any "adverse effects."

**Criteria.** A site is eligible for the National Register only if it

- is associated with historically important person(s) or events,

Orville Little Owl, representing the Mandan/Hunkpapakota tribe, opened each day of the tribal summit.

Photo courtesy of J. Cory Heintz, photographer, Iowa DOT.



- exhibits unique constructional or aesthetic values, or
- contains historically important information.

Additionally, an eligible property must have “integrity”; that is, it cannot have been drastically altered or disturbed. (See the precise language describing the criteria at [www.cr.nps.gov/nr/listing.htm](http://www.cr.nps.gov/nr/listing.htm).)

Criteria relevant to Indian tribes include sites of historic or religious significance.

**Adverse effects.** Adverse effect occurs if a project may alter the characteristics that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property.

Adverse effects can be direct or indirect. They may include reasonably foreseeable impacts that may occur later in time, or cumulative impacts.

Typical examples of adverse effects are

- physical destruction or damage,
- alteration inconsistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties,
- relocation of the property,
- change in the character of the property’s use or setting,
- introduction of incompatible visual, atmospheric, or audible elements,
- neglect and deterioration, and/or
- transfer, lease, or sale out of federal control without adequate preservation restrictions.

**Memorandum of agreement (MOA).** When it’s determined that historic properties will be harmed, Section 106 review usually ends with a legally binding MOA between the agency and interested parties (e.g., Indian tribes). The MOA establishes how the agency will address identified adverse effects.

#### **What was accomplished at the summit?**

Through the summit, agencies and tribes have begun developing a relationship based on trust and communication.

The tribal summit initiated a process for identifying effective communication strategies (consultation) between state/federal agencies and Indian tribes with interests in Iowa lands. An important first step is being planned:

Tribal representatives will be invited to visit a state project corridor at various stages in the project planning process. At each stage, agency and tribal representatives will review the historical, archeological, and related information that’s been collected about the corridor. Through this process, tribal representatives will gain a better understanding of the project planning process. Both tribes and agencies will then work together to identify those critical points in the project planning process where tribes will be consulted.

The Iowa Division of the FHWA will include those critical consultation points in a draft general agreement. The agreement will guide how the FHWA and Iowa DOT will conduct Section 106–related business with Indian tribes. Working closely with each of the tribes interested in Iowa lands, the FHWA will finetune individual working agreements with each tribe.

Agency representatives at the summit learned the critical value of personal, face-to-face communications with Indian tribal representatives. The FHWA and Iowa DOT may therefore periodically conduct additional summits. City and county agencies will be encouraged to participate and take advantage of these valuable opportunities for developing personal working relationships with tribal leaders.

#### **For more information**

Much of the information for this article came from “Protecting Historic Properties, A Citizen’s Guide to Section 106 Review” prepared by the Advisory Council on Historic Preservation, Washington D.C.

Summit proceedings will soon be published summarizing the event’s activities and results. You’ll be able to access the proceedings from the Iowa DOT and CTRE web sites ([www.dot.state.ia.us/](http://www.dot.state.ia.us/), or [www.ctre.iastate.edu/](http://www.ctre.iastate.edu/)). Hard copies will be available for loan through CTRE’s library; see contact information below.

In fall 2001, the Local Systems Office of the Iowa DOT will distribute a new project development information packet to guide local public agencies as they develop federal aid projects. The packets will include information about Section 106 reviews.

For a copy of the informational video, “Through the Generations: Identifying and Protecting Traditional Cultural Places,” developed by the U.S. Department of the Interior and others, contact Jim Hogan, library coordinator, 515-294-9481, [hoganj@iastate.edu](mailto:hoganj@iastate.edu). •

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## **For more information**

FOR INFORMATION about the Iowa Tribal Summit and/or the implications of Section 106 for Iowa’s local agencies, contact any of the following:

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