

**PART III**  
**CHAPTER 1**  
**Overview-State Laws and Specifications**

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## 1-1.0 Overview

In addition to completing Section 106 for projects with federal participation, INDOT and LPA projects must also comply with state cultural resource laws. Where possible, FHWA's and INDOT's Section 106 procedures integrate state law compliance. However, it is important to understand state law requirements, when they apply and how they should be adhered to, especially when they follow a distinct compliance path from that of Section 106. The following subchapters summarize the relevant cultural resource state laws. Part III Chapters 2-5 provide further detailed guidance on the more substantive laws and requirements as they relate to transportation projects.

## 1-2.0 Indiana Historic Preservation and Archaeology Act (IHPAA) ([IC 14-21-1](#))

State cultural resource laws fall under the umbrella of the Indiana Historic Preservation and Archaeology Act ([IHPAA](#)). One of the primary provisions of the IHPAA is protection of archaeological sites that date before December 31, 1870. It also establishes protection for human burial sites that date before January 1, 1940. Refer to the following subchapters for a summary of relevant cultural resource state laws and Chapters 2-4 for detailed guidance on specific provisions including IC 14-21-1-18, IC 14-21-1-26.5 and IC 14-21-1-29

## 1-3.0 Indiana Register of Historic Places ([IC 14-21-1-9](#))

The Indiana Register of Historic Sites and Structures (IRHSS) was created by an act of the Indiana General Assembly in 1981 (IC 14-21-1-9), and is administered by the DHPA. All properties on the NRHP are automatically listed in the State Register. However, a number of properties are listed on the IRHSS Register only. The criteria for listing properties on the IRHSS are virtually the same as the NRHP criteria.<sup>1</sup>

## 1-4.0 Transfers of property by the state ([IC 14-21-1-14](#))

IC 14-21-1-14 states that before real property owned by the state may be sold or transferred, the Indiana Department of Administration (IDOA) must notify DHPA at least 90 days before the proposed transfer. The DHPA must advise IDOA of the location of any historic sites or

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<sup>1</sup> Indiana properties listed on both the State and National Registers are listed on the DHPA website (<http://www.in.gov/dnr/historic/files/hp-nrlist.pdf>). Indiana properties listed only on the State Register are also listed on the DHPA website (<http://www.in.gov/dnr/historic/files/hp-nrlist.pdf>). Indiana properties listed on the National Register are also listed in the Indiana State Historic Architectural and Archaeological Research Database (SHAARD): <https://secure.in.gov/apps/dnr/shaard/welcome.html>.

structures on the property. If historic sites or structures are present, IDOA will reserve control of the historic property through a covenant or easement.

### **1-5.0 Field investigations or alteration of historic property without permit ([IC 14-21-1-16](#))**

IC 14-21-1-16 requires a permit for archaeological fieldwork conducted on state-owned property. Permit requests are to be submitted to DHPA with INDOT-CRO receiving a copy for its project files. Requests are to include written permission from the property owner and an outline of general field methodologies. DHPA will provide authorization to conduct archaeological field investigations on state property and issue a permit number upon their review. A copy of this authorization is to be carried by archaeologists in the field. The permit number is to be referenced in subsequent archaeological reports.

A permit is not required when conducting work on state property owned by INDOT such as right-of-way. INDOT has obtained an approved permit for Phase Ia field investigations on INDOT properties (Permit #2009032) (See Part V Forms for the permit). This permit should be carried by archaeologists working on INDOT projects.

### **1-6.0 Alteration of historic sites or structures requiring certificate of approval ([IC 14-21-1-18](#))**

IC 14-21-1-18 (a) and (b) require that a Certificate of Approval (COA) be obtained before using state funds to alter, demolish, or remove an historic site or historic structure, if it is owned by the state or if it is listed in either the Indiana Register of Historic Sites and Structures or the NRHP. The term “property,” as defined in IC 14-21-1-18, refers to both above-ground structures and archaeological sites.

Please see Chapter 2 for detailed guidance on compliance with IC 14-21-1-18.

### **1-7.0 Cemetery Development Plans ([IC 14-21-1-26.5](#))**

State law (IC 14-21-1-26.5) requires that a person may not disturb the ground within one hundred (100) feet of a burial ground for the purpose of excavating or covering over the ground or erecting, altering, or repairing any structure that would impact a burial ground or cemetery without having a development plan approved by the DHPA.

Please see Chapter 3 for detailed guidance on compliance with IC 14-21-1-26.5.

## **1-8.0 Disturbance of Human Remains or Burial Grounds ([IC 14-21-1-27](#))**

Prior to disturbance of human remains or burial grounds, IC 14-21-1-27 requires that a person notify the DHPA within two (2) business days of the time of the disturbance and treats or reburies the human remains in a manner and place according to rules adopted by the Natural Resources Commission or a court order and permit issued by the State Department of Health under IC 23-14-57.

## **1-9.0 Accidental Discovery ([IC 14-21-1-29](#))**

Under IC 14-21-1-29, if a person accidentally discovers a burial object or artifact while disturbing the ground for another purpose (such as construction or utility excavation), the person shall immediately stop work within 100 feet of the discovery and notify DHPA within two business days. Following notification, the DHPA will decide if:

1. The ground-disturbing activity may continue with or without conditions, or in accordance with an approved, systematic plan for scientific recovery, analysis, and disposition of the material;
2. The situation may be resolved under another law; or
3. The area requires protection and avoidance.

Please see Chapter 4 for detailed guidance on compliance with IC 14-21-1-29.