4.4.12.1 INTRODUCTION

Section 106 of the National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470 et seq.) applies to any project that is funded, licensed, assisted or approved by a Federal agency that may directly or indirectly have an effect on historic properties. The Section 106 review process is outlined in revised regulations issued by the Advisory Council on Historic Preservation, effective January 11, 2001. Under these regulations (36 CFR Part 800, “Protection of Historic Properties”), Federal agencies must take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment.

For transportation projects with federal funding, the Federal Highway Administration (FHWA) is legally responsible for all Section 106 determinations. On February 7, 2000, the FHWA delegated to NYSDOT the authority to initiate Section 106 consultation for the purpose of identifying historic properties and making effect findings for Federal transportation projects in New York State. (FHWA letter Feb 7, 2000) FHWA has not granted similar authority to Local Project Sponsors for locally-administered, federal aid projects receiving funding through or approval by NYSDOT. Therefore, NYSDOT provides direction and oversight to Local Project Sponsors to ensure consistency with the Department’s Section 106 procedures.

The Department has not received similar delegation from any other Federal agency that may have the lead for Section 106 review when Federal funding is not involved (for example, the Army Corps of Engineers).

The New York State Historic Preservation Act (NYSHPA) of 1980 was established as a counterpart to the National Historic Preservation Act and declares historic preservation to be the public policy and in the public interest of the state. Section 14.09 of the NYSHPA applies to 100% State funded projects with no Federal involvement. Projects reviewed by the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act do not require separate review under Section 14.09.

4.4.12.2 SECTION OBJECTIVES

This section provides guidance and procedures to follow in fulfillment of statutory obligations under Section 106 of the National Historic Preservation Act (NHPA) for projects undertaken by the New York State Department of Transportation. Developed by NYSDOT in coordination with FHWA and SHPO, these procedures incorporate changes in the revised Section 106 regulations that went into effect on January 11, 2001. With minor changes, these procedures may also be used to fulfill requirements under Section 14.09 for 100% State-funded projects.
Section 106 / 14.09 Procedures

4.4.12.2.1 Roles and Responsibilities

The New York State Historic Preservation Act of 1980 was established as a counterpart to the National Historic Preservation Act and declares historic preservation to be the public policy and in the public interest of the state. The act created the New York State Register of Historic Places, the official list of sites, buildings, structures, areas or objects significant in the history, architecture, archeology or culture of the state, its communities or the nation. The act also requires state agencies to consult with the SHPO if it appears that any projects being planned may or will cause any change, beneficial or adverse, in the quality of any historic, architectural, archeological or cultural property that is listed on the National Register of Historic Places or listed on the State Register or that is determined to be eligible for listing on the State Register. It requires state agencies, to the fullest extent practicable, consistent with other provisions of the law, to avoid or mitigate adverse impacts to such properties, to explore all feasible and prudent alternatives and to give due consideration to feasible and prudent plans that would avoid or mitigate adverse impacts to such property. The act also establishes agency preservation officers within state agencies for the purpose of implementing these provisions.

4.4.12.2.1.1 New York State DOT Agency Preservation Officer (APO)

Definition
Agency Preservation Officer (APO) shall mean the commissioner, director or chairperson of any State department, agency, board, commission, public benefit corporation or public authority, or a representative identified in accordance with the provisions of subdivision 2 of Section 14.05 of the Parks, Recreation and Historic Preservation Law.

Legal Authority
New York Parks, Recreation and Historic Preservation Law, Article 14

NYSDOT Agency Preservation Officer Duties
The NYSDOT Agency Preservation Officer (APO) resides in the Office of Environment (OOE). The APO ensures that Department programs, projects, and activities are developed and implemented in a manner consistent with applicable State and Federal laws and regulations pertaining to historic and cultural resources. The APO is responsible for implementing provisions under the New York State Historic Preservation Act for Department actions subject to Section 14.09. For federally funded actions, the APO ensures that Department actions comply with Section 106 of the National Historic Preservation Act, under the authority delegated by FHWA to the Department.

These duties are carried out within the broader context of the Department’s environmental policies, obligations, and initiatives.
4.4.12.2.1.2 New York State DOT Office of Environment

At the time of its development, the Department’s Section 106 procedures defined NYSDOT responsibilities to be carried out through coordination between the NYSDOT Environmental Analysis Bureau (EAB) and the Regions. The former EAB has since been incorporated within the current Office of Environment, which takes the place of EAB in these procedures.

The APO may delegate specific tasks or responsibilities to cultural resources staff within the Office of Environment meeting professional qualification standards under 36 CFR 61. In this role, the APO or his/her designate will:

- Develop policy, guidance and procedures for compliance with applicable State and Federal historic preservation laws and regulations;
- Provide technical assistance to Regional and Main Office staff in the area of cultural resources (archaeology, architecture, historic preservation) and the interpretation of historic preservation laws, regulations, and standards;
- Serve as the Department’s liaison to the SHPO, FHWA, and other State and Federal agencies on programmatic issues relating to historic and cultural resources;
- Develop statewide Programmatic Agreements in coordination with the SHPO, FHWA, and other State and Federal agencies for Department programs, similar types of projects or classes of resources;
- Serve as the Department representative for standing committees relating to historic and cultural resources;
- Manage the statewide Cultural Resource Evaluation Program (CREP) in coordination with the NYS Education Department/State Museum for the timely and cost-effective delivery of cultural resource surveys in compliance with Section 106/14.09 requirements;
- Participate in multi-disciplinary project teams for major or complex projects, to provide guidance, technical assistance, and expertise in the area of cultural resources;
- Provide or coordinate training to ensure that Department staff are equipped with the knowledge and resources to meet Section 106/14.09 obligations for delivery of capital projects;
- Conduct QA and QC reviews of Environmental Impact Statements, Environmental Assessments, and other environmental documentation within the area of cultural resources.

4.4.12.2.1.3 New York State DOT Regional Cultural Resource Coordinator (CRC)

Definition:
The Cultural Resource Coordinator is a designated position with responsibility for coordinating
Regional actions to comply with State/ Federal regulations pertaining to historic and cultural resources, including the delegated authority for responsibilities in compliance with Section 106.

**NYSDOT CRC Duties**

- On behalf of the Region, identifies issues to meet compliance needs and to support NYSDOT policy with respect to historic and cultural resources.

- Coordinates with and serves as Regional liaison to State and Federal agencies for project-specific consultation on cultural resource issues (FHWA, NPS, ACHP, USACOE, NYS OPRHP/SHPO, etc.).

- Consults with the Regional Maintenance Environmental Coordinator (MEC) to identify and address cultural resource issues for maintenance projects and actions.

- Consults with the Regional Construction Environmental Coordinator (CEC) to address cultural resource issues and ensure commitments for avoidance, minimization, and mitigation of identified resources are carried out.

- Implements Department procedures in compliance with Section 14.09 of the NYS Historic Preservation Act as appropriate for state-funded projects with no federal involvement.

- Under authority delegated by the Federal Highway Administration, implements the Department’s Section 106 procedures, as applicable, for federally-funded projects.
  
  ➢ Reviews the Region’s Capital Program and scope of work to determine which projects have the potential to affect cultural resources, and are subject to Section 106 review.

  ➢ Coordinates with appropriate Regional staff and conducts Cultural Resource Screenings in accordance with statewide procedures and guidance, as needed, to determine potential for historic properties and assess survey needs.

  ➢ Submits requests for cultural resource surveys to the OOE CREP Manager. Assembles project information, defines survey limits, and communicates with the NYS Education Department / Cultural Resource Survey Program (SED) through the OOE CREP Manager.

  ➢ Prepares, or coordinates preparation of, Section 106 correspondence and documentation, including evaluation of project effect.

  ➢ Coordinates with appropriate Regional staff to explore measures to avoid, minimize, or mitigate project effects on identified historic properties.

  ➢ Serves as primary Regional liaison to federally-recognized Native American tribes for the purpose of initiating Section 106 consultation and sharing information for individual projects.
Facilitates Section 106 compliance for locally-administered federal-aid projects by serving as the point-of-contact for consultation with the SHPO, FHWA, and Native American tribes, and by providing oversight to ensure consistency with the Department’s established procedures and documentation standards.

Conducts Section 4(f) evaluation for historic sites as applicable; prepares, circulates, and coordinates Section 4(f) documentation for these properties.

Prepares, reviews, or contributes to cultural resources sections of environmental documentation for Regional projects prepared in compliance with the National Environmental Policy Act (NEPA) and New York State Environmental Quality Review Act (SEQR).

Prepares, reviews, or contributes to cultural resources sections of Design Reports.

Fulfills requirements under the Workforce Development Competency Program. Participates in appropriate meetings, workshops, and training to maintain working knowledge of relevant State/Federal laws and regulations, and Department policies, guidance, and procedures for cultural resources.

### 4.4.12.2.1.4 Coordination

The Office of Environment (OOE) and the Regional CRC work in coordination to carry out delegated responsibilities under Section 106, consistent with the Department’s statewide policies, procedures, and guidance for historic and cultural resources.

- Implementing Procedures for the Revised Section 106 & Section 14.09 Regulations
- List of Project Activities with No Potential to Cause Effects on Historic Properties
- NYSDOT Cultural Resources Screening Procedures
- Form A (Cultural Resource Survey Checklist) for NYSDOT Projects
- Guidelines for Completing Form A
- NYSDOT Bridge Inventory Form
- NYSDOT Guidelines for Evaluating Historic Bridges
- Section 106 Finding Documentation Template
- Advisory Council on Historic Preservation (ACHP) Template for Section 106 Memorandum of Agreement (MOA)
- NYSDOT Template for Section 106 Memorandum of Agreement (MOA) – Archaeological Resources

To this end, the Regional CRC will:

- Copy the OOE on all Section 106 documentation and correspondence with the SHPO, FHWA, Tribal Nations, and other consulting parties.
• Submit all Adverse Effect findings and Draft Memoranda of Agreement (MOA) to OOE for internal review prior to external distribution.

• Contact the OOE CREP Manager for coordination with SED regarding scope changes, alternative approaches, schedule, delivery, or meetings with SED to address any other issues concerning cultural resource surveys.

• Notify and involve OOE in meetings with SHPO and FHWA
  - to initiate consultation for complex projects;
  - to develop project-specific Programmatic Agreements; and
  - to resolve adverse effects and other cultural resource issues for individual projects.

4.4.12.3 POLICY

It is the policy of NYSDOT to plan, develop and carry out actions affecting cultural resources in accordance with applicable State and Federal laws and regulations, and to strategically integrate considerations for the protection and enhancement of historic and cultural resources in the decision-making process.