

NYS DOT Procedures for Section 106 Consultation with Federally-Recognized Tribes for Federal Aid Projects

In accordance with Section 106 of the National Historic Preservation Act and its revised regulations (36 CFR Part 800), the Federal Highway Administration is required to consult with Indian Tribes regarding undertakings occurring on or affecting historic properties on tribal lands. The FHWA is also required to afford Indian Tribes that attach religious and cultural significance to historic properties located off tribal lands, which may be affected by an undertaking, the opportunity to consult with respect to the proposed undertaking (800.2(c)).

In accordance with 36 CFR 800.2(c)(2)(ii), consultation will provide each Federally-recognized tribal nation “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.”

Section 106 Consultation for projects off tribal lands

1. The NYS DOT will notify the appropriate tribal nation of any project requiring a Cultural Resource Survey (CRS) and which has the potential to cause ground disturbance. The NYS DOT will provide designated tribal contacts with a project location map and description to formally initiate consultation for each Federal-aid highway project in the identified area of interest that is subject to the Section 106 process and involves ground disturbance.
2. For new projects, the notification package will include a project location map and preliminary information available during the Scoping or Preliminary Design Phase of project development. Additional information may be provided to continue consultation for further cultural resource investigations, as needed, as the project is progressed through Design.
3. Transmittal of the project notification will include a request by the NYS DOT for information regarding tribal concerns for locations of religious or cultural significance.
4. The NYS DOT Cultural Resource Coordinator will be the primary contact for project-specific questions and information.
5. FHWA will be copied on the transmittal letters and all subsequent correspondence when the nations express interest in a project.
6. Tribal contacts may check project locations against their own archaeological and historical inventories, as well as resources of oral history and tradition, to determine whether the NYS DOT project may impact known cultural resources or culturally important sites.
7. Any party may request confidentiality regarding information exchanged in consultation.
8. Whether or not the tribal nations respond to the initial notification, NYS DOT will continue to inform designated contacts of the project status and provide documentation prepared in accordance with Section 106 procedures, including Cultural Resource Survey Report(s), the effect finding, and summary documentation. The tribal nations may comment on these documents within the 30 or 45 day review period, as appropriate.

9. If the NYSDOT identifies an adverse effect or potential adverse effect on an archaeological resource with religious or cultural significance, the tribal nations will be provided an opportunity to review and comment on the Draft Data Recovery Plan or Draft Archaeological Monitoring Plan.
10. In the event of the inadvertent discovery of human remains during construction, appropriate tribal contacts will be notified and invited to participate in consultation with the NYSDOT and other interested parties, in accordance with NYSDOT protocol and procedures.

Section 106 Consultation for projects on tribal lands:

If there is a Tribal Historic Preservation Officer (THPO), the THPO takes the place of the SHPO in the Department's established Section 106 procedures.

If there is no THPO, consult with the designated tribal representative in addition to the SHPO, following the Department's established Section 106 procedures. Seek the concurrence of the designated tribal representative for all Section 106 findings and determinations.

Section 106 Project Notification Package

The initial notification letter to federally-recognized tribal nations should provide the following information:

- **Subject Line:** "Section 106 Initial Notification for FHWA / DOT Projects in New York State".
- **List of Projects:** List all new projects within the tribal area of interest, identified by PIN, project name, municipality, county and state. For multiple projects, please indicate priorities for a response.
- **Project Description:** For each project, briefly describe the project type, scope and activities, including but not limited to ground disturbance. Identify each project's area of potential effects and total size (estimated length/width).
- **Location Maps:** USGS Quad or DOT Planimetric map at original scale, showing project area location. Show boundaries of APE or cultural resource survey limits.
- **Archaeological Potential:** Provide a copy of GIS archaeological sensitivity mapping from the NYSHPO web site: <http://nysparks.state.ny.us>. Provide additional cultural resources screening information if available.
- **Response Form:** A standard form can be enclosed for the use of tribal representatives in response to the initial notification of new projects, to either confirm or decline interest in the project and Section 106 consultation.
- **FHWA:** Formal correspondence (hard copies) to tribal nations should include in the cc: list, the current FHWA Division Administrator, NY Division, and the FHWA Area Engineer. For transmittal via e-mail, copy the FHWA Area Engineer only.