MEMORANDUM
Department of Transportation

TO: Regional Design Engineer, Reg. 1-11
Regional Cultural Resources Coordinator, Reg. 1-11

FROM: D. P. Hitt, Environmental Analysis, POD 4-1

SUBJECT: IMPLEMENTING PROCEDURES FOR THE REVISED SECTION 106 & 14.09 REGULATIONS

DATE: May 18, 2006

In February 2000, the Federal Highway Administration (FHWA) delegated the responsibility under 36 CFR Part 800.2(c) to the New York State Department of Transportation (NYSDOT) for progressing projects in accordance with Section 106 of the National Historic Preservation Act (see attached letter). Based on this delegation, procedures for complying with Section 106 were developed in coordination with the FHWA and NY State Historic Preservation (SHPO) staff (see attached table, outline and flowchart). As you are aware, the FHWA agreed to support the streamlined Section 106 procedures in March 2001 (see attached letter).

At that time, the Department proceeded to implement those procedures on the basis of verbal concurrence by the SHPO. Though requested, no written agreement with the SHPO is on record from 2001. Therefore, this Office recently requested and received the SHPO’s formal agreement with the Department’s Section 106/14.09 procedures. In response to a similar request, the FHWA has also reconfirmed their acceptance of the Department’s Section 106 procedures.

Since 2001 we have implemented those procedures to progress FHWA projects, 100% state funded projects requiring federal permits, and state funded projects subject to Section 14.09 of the NYS Parks, Recreation and Historic Preservation Act. Significant time and resource savings have been achieved as a result. The process has helped streamline the Section 106 and Section 14.09 processes without sacrificing the protection and enhancement of vital historic and archaeological resources across New York State.

Attached for your information are copies of:

- correspondence with the SHPO and the FHWA requesting acceptance of the Department’s Section 106 and 14.09 procedures,
- the signature sheet indicating agreement by the SHPO, NYSDOT, and FHWA to the procedures, and
- the Department’s procedures for implementing Sections 14.09 and 106

Please note, that FHWA has not delegated to NYSDOT the Section 106 responsibility for locally administered Federal-aid projects, therefore, municipal sponsors of those
local projects should be advised to request eligibility and effect determinations directly from the SHPO.

DPH/MCS

cc: M.E. Ivey, Environmental Analysis, POD 4-1
    P. Clark, Office of Design, POD 2-3
    R. Griffith, FHWA, NY Division
Dear Mr. Griffith:

Attached for your information is NYS DOT's correspondence to the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) requesting confirmation of their agency's acceptance of our Section 106/14.09 procedures.

Upon receipt of the OPRHP's signature confirming their acceptance to these procedures, we will in turn be requesting the same confirmation and acceptance of the Section 106 procedures from FHWA.

If you have any questions, please call me at 457-5672.

Sincerely,

MARY E. IV
Director, Environmental Analysis Bureau

ME/DPH/LHO
Attachments

cc: Ruth Pierpont, OPRHP
March 27, 2006

Ruth Pierpont
Director
NYS Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, P. O. 189
Waterford, New York 12188-0189

RE: IMPLEMENTING PROCEDURES FOR THE REVISED SECTION 106 & 14.09 REGULATIONS

Dear Ms. Pierpont:

In February 2000, the Federal Highway Administration (FHWA) delegated the responsibility under 36 CFR Part 800.2(c) to the New York State Department of Transportation (NYSDOT) for progressing projects in accordance with Section 106 of the National Historic Preservation Act (see attached letter). Based on this delegation, the procedures for complying with Section 106 were developed with your staff and implemented (see attached table, outline and flowchart). This Department had requested confirmation of the SHPO’s acceptance of those procedures on August 24, 2000 (see attached letter). However, we can not locate any correspondence from your Office stating a formal agreement to those procedures. We understand you have not been able to locate the signed agreement in your Office either.

As you are aware, your agency and the FHWA have previously agreed to support these streamlined procedures. We have since then been implementing those procedures to progress FHWA projects, 100% state funded projects requiring federal permits, as well as, state funded projects under Section 14.09 of the Parks, Recreation and Historic Preservation Act and have seen significant time and resource savings as a result. The process has helped streamline the Section 106 and Section 14.09 processes without sacrificing the protection and enhancement of vital historic and archaeological resources across New York State.

Please note, that FHWA has not delegated to NYSDOT the Section 106 responsibility for locally administered projects, therefore, municipalities will continue to request eligibility and effect determinations from SHPO.
At this time we request your agency confirm your acceptance of the NYSDOT’s Section 106 / 14.09 procedures by signing the attached sheet.

If you have any questions, please call me at 457-5672.

Sincerely,

[Signature]

MARY E. IVZY
Director, Environmental Analysis Bureau

MEI/DPH/LHO
Attachments

cc: FHWA
RE: IMPLEMENTING PROCEDURES FOR  
THE REVISED SECTION 106 & 14.09  
REGULATIONS

To follow up on my March 27, 2006 letter to you on the referenced subject, I would like to request the Federal Highway Administration’s (FHWA) reconfirm their agreement with the NYSDOT’s procedures for implementing the Section 106 procedures. Attached, please find a copy of these procedures as well as three copies of the signature page previously signed by the NYSDOT and the NYS Historic Preservation Officer (SHPO).

As you are aware, in February 2000 the FHWA delegated the responsibility under 36 CFR Part 800.2(c) to the NYSDOT for progressing projects in accordance with Section 106 of the National Historic Preservation Act (see attached letter). Based on this delegation, the procedures for complying with Section 106 were developed with SHPO staff and implemented (see attached table, outline and flowchart). On August 24, 2000 the Department had requested confirmation from the SHPO of the acceptance of those procedures (see attached letter). However, we have not able to locate any correspondence from the SHPO’s stating a formal agreement to those procedures.

Since the FHWA’s delegation of the Section 106 responsibilities, and support of the Department’s procedures as noted in March 2001, we had been in discussions with the SHPO and we have been aware of their support of these streamlined procedures. Since that time we have been implementing those procedures to progress FHWA projects, 100% state funded projects requiring federal permits, as well as, state funded projects under Section 14.09 of the Parks, Recreation and Historic Preservation Act and have seen significant time and resource savings as a result. The process has helped streamline the Section 106 process without sacrificing the protection and enhancement of vital historic and archaeological resources across New York State.

Please note, we understand that the FHWA has not delegated to NYSDOT the Section 106 responsibility for locally administered projects, therefore, municipalities will continue to request eligibility and effect determinations directly from the SHPO.
At this time we request your agency reconfirm your support of the NYSDOT’s Section 106 procedures by signing all three copies of the attached signature sheet. Once signed, please retain one copy of the signature sheet and the enclosed copy of the procedures, and return the remaining two copies of the signature sheet to this Office.

If you have any questions, please call me at 457-5672.

Sincerely,

[Signature]

MARY E. IVEY
Director, Environmental Analysis Bureau

MEI/DPH
Attachments
We have reviewed the procedures for implementing the Section 106 regulations to the National Historic Preservation Act for FHWA federally funded, NYSDOT projects. We agree to progress NYS DOT projects in accordance with these procedures:

Deputy

State Historic Preservation Officer

April 12, 2006

[Signature]

[Signature]

Federal Highway Administration

May 10, 2006

[Signature]

New York State Department of Transportation

March 27, 2006
Memorandum

Subject: Delegation of 106 Consultation 36 CFR, Part 800

Date: February 7, 2000

Reply To: Attn of: HPD-NY

From: Harold J. Brown
Division Administrator
Albany, New York

To: Director, Assistant Commissioner & Chief Engineer *5-504, MC 050 4
New York State Department of Transportation
Albany, New York

The Advisory Council on Historic Preservation issued revised regulations effective June 17, 1999 regarding Protection of Historic Properties, pursuant to Section 106 of the National Historic Preservation Act. The regulations permit the Federal Agency Official to authorize an applicant to initiate consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO) and other consulting parties.

In accordance with the provisions in Title 23 of the U.S. Code for a State-administered Federal-aid program, and pursuant to 36 CFR, Subpart A, Section 800.2(c)(5), the New York State Department of Transportation (NYSDOT) is authorized to initiate consultation with the SHPO/THPO and other consulting parties (as defined in Section 800.3), on behalf of the Federal Highway Administration (FHWA).

The FHWA retains legal responsibility for all Section 106 findings and determinations. Therefore, please copy this office on all correspondence with consulting parties.

Similar delegation of the initiation of Section 106 consultation may be desired by local governments. We would support efforts to delegate to locals, which is in keeping with the environmental streamlining initiatives under TEA-21 legislation. This, however, would require your specific project by project authorization, assessing the procedures/process and staff that would be used by the locals to meet the Section 106 requirements of the Federal regulations. We request copies of all correspondence between NYSDOT and the local government that is related to the Section 106 consultation process.

Jonathan D. McDade
Chief, Planning & Program Development
This is in reference to your letter of February 20, 2001 requesting our support for the Department's Section 106 Historic and Cultural Resource procedures. The procedures implement the new National Historic Preservation Act regulations, published on December 12, 2000. We have reviewed the procedures periodically during their development and provided you with informal comments.

We support these procedures and will take the actions indicated therein to process Federal projects. We understand the State Historic Preservation Officer has also agreed to their role in the process, and we would appreciate receiving a copy of their official acceptance of the procedures also.

Thank you for the opportunity to participate in the development of the procedures, which should help to streamline the process without sacrificing the protection and enhancement of vital historic and archeological resources across New York State.

Jonathan D. McDade
Chief, Planning and Program Development

cc: Ms. Ruth Pierpont, Director of Field Services, SHPO
DATE: April 5, 2001

TO: Regional Design Engineers, Regions 1-11

FROM: Mary E. Ivey, Head, Cultural Resource Section

RE: Section 106 National Historic Preservation Act

Per the attached March 15, 2001 letter, the Federal Highway Administration (FHWA) supports the Revised Section 106 Procedures and will take the actions indicated therein to process Federal projects. The State Historic Preservation Officer (SHPO) supports these procedures but requested that we provide training on the new procedures to all NYSDOT Regions before we implement them. This training, which the SHPO and FHWA staff participated in, was completed at the end of February and the new procedures went into effect on March 1, 2001. (Training material is attached.)

Under the new procedures NYSDOT is responsible for identifying the properties in a project's area of potential effect that are eligible for inclusion in the National Register of Historic Places and assessing the effect that the project will have on these historic properties. Under these new procedures the Region will provide SHPO with findings of effect and the SHPO will not respond if they agree. At the training session we provided draft model letters for submission to SHPO and an outline on the information that should be included in the Findings Documentation that supports the Region’s finding of effect. The Findings Documentation Outline has been revised based on comments and discussions during the training sessions. The revised outline is attached.

Based on comments in the training sessions, we met with the New York State Museum and discussed the Revised Section 106 Procedures and the information that should appear in our Cultural Resource Survey Reports on the Building Inventory Forms to support their recommendations on eligibility. We also discussed with the NYS Museum how the Table of Contents should be structured so the Regional project managers and designers can easily find the forms and tables that provide the information they need on the historic properties. We recommend that you carefully review the recommendations on eligibility in the Cultural Resource Survey Reports and that you contact us if you have any concerns.

We recognize that there will be questions as we begin to use the revised Section 106 procedures. Please discuss these with your Region’s Cultural Resource Coordinator. If we can assist you in any way please do not hesitate in contacting either me or Linda Harvey Opiteck at (518) 457-1722, Mary Santangelo at (518) 485-9967 or Karen McCann at (518) 2457-7313.
MEMORANDUM
DEPARTMENT OF TRANSPORTATION

TO: Mark Silo, Regional Design Engineer, Region 1
Stephen Zywiak, Regional Design Engineer, Region 2
John E. Fietze, Regional Design Engineer, Region 3
Kenneth N. Hulbert, Acting Regional Design Engineer, Region 4
Gabriel Del Vecchio, Regional Design Engineer, Region 5
Paul McAnany, Regional Design Engineer, Region 6
William R. Ferguson, Regional Design Engineer, Region 7
Phillip C. Crocker, Regional Design Engineer, Region 8
Frank T. Moorhead, Regional Design Engineer, Region 9
Joseph Scariza, Regional Design Engineer, Region 10
Albert Jablowsky, Regional Design Engineer, Region 11

FROM: Philip J. Clark, Design Division, 5-405, MC 0748

SUBJECT: Section 106 National Historic Preservation Act
New DOT Procedures

DATE: July 2, 2001

In February, 2000, the Federal Highway Administration (FHWA) delegated the responsibility for progressing projects in accordance with newly revised National Historic Preservation Act Section 106 regulations to the Department. A revised set of procedures for complying with Section 106 has been developed, training to all NYSDOT Regions has taken place and the new procedures have been implemented statewide.

Under the new procedures the Department is responsible for identifying properties within a project’s area of potential effect that are eligible for the National Register of Historic Places and assessing the effect that the project will have on these historic properties. The Regional Cultural Resource Coordinators actually make the effect determinations and, after 30-45 days, FHWA will issue a letter that completes the Section 106 process. The New York State Historic Preservation Officer (SHPO) only provides a letter within the agreed upon time frame if there is an objection to an effect finding.
FHWA and the SHPO have agreed to support our new streamlined procedures and we all hope to realize significant time and resource savings as a result. The new procedures should help streamline the process without sacrificing the protection and enhancement of vital historic and archaeological resources across New York State.

Our strong partnerships with the SHPO and FHWA have allowed us to reach agreement on a new way of doing business. The strong partnerships are based on trust and confidence in our staff's abilities to objectively assess project impacts to significant historic resources. Your support of your staff in their new decision making role is particularly important now.

The new procedures are in place. Please do whatever you can to ensure that the Regional Cultural Resource Coordinators know they have the support of Design in making the new process a success.

PC/MEI/JV

cc: Thomas Boehm, Office of the Commissioner, 5-506, MC 0506
Fred Hiffa, Office of the Commissioner, 5-506, MC 0506
Paul T. Wells, Office of Engineering, 5-504, MC 0504
James M. O'Connell, Structures Design & Constr. Div. 5-6th Fl. MC 0600
Gary R. McVoy, Environmental Analysis Bureau, 5-303, MC 0473
David H. Fasser, Landscape Architecture Bureau, 4-110, MC 0412
John S. LaBarge, Consultant Mgmt. Bureau, 4-G01, MC 0433
Dan D'Angelo, Design Quality Assurance Bureau, 5-410, MC 0750
Peter Bellair, Design Services Bureau, 4-214A, MC 0432
Ruth Pierpont, SHPO
Robert Arnold, FHWA
Regional Directors, Regions 1-11, Region__
Regional Planning & Program Mgmt. Groups, Regions 1-11, Region__
Regional Environmental Contacts, Regions 1-11, Region__
Regional Cultural Resource Coordinators, Regions 1-11, Region__
**Section 106 Procedures for NYSDOT**

**STEP 1 - INITIATE THE SECTION 106 PROCESS (800.3)** (1)*

*The NYSDOT, early in the NEPA process, shall consult with SHPO/THPO, NYSDOT to identify consulting parties & invite them to participate in the Section 106 process (i.e. local officials, other federal/state agencies, public organizations/groups) (800.8(a)(2)).*

**Region** Establishes if Project has Potential to Cause Effect on Historic Properties** (800.3 (a))

I. **Determines Project has No Potential to Cause Effect on Historic Properties**
   A. Document in Design Report
   B. Section 106 Complete

II. **Determines Project may Cause Effect on Historic Properties**
   A. Go to STEP 2

**STEP 2 - IDENTIFY HISTORIC PROPERTIES (800.4)** (2)

*The NYSDOT, in consultation with SHPO/THPO and identified consulting parties, shall take steps necessary to identify historic properties within the Area of Potential Effects (800.4(b)).*

**Region** Applies Screening/Survey Criteria

I. **Determines Screening Needed - Screening Conducted** (2A)
   A. No Potential Historic Properties Identified
      1. Document in Design Report
      2. Section 106 Complete
   B. Potential Historic Properties Identified (12 or less) in Consultation with EAB (Above Ground Concerns Only)
      a. Proceed to STEP 2.III.B for Assessing Affects
   C. Determines Survey Needed (12 or more Potential Historic Properties Identified or Archeological Sensitive and No Prior Ground Disturbance Demonstrated)
      a. Proceed to STEP 2.II
   D. Entirely w/in S/NRHP Listed or Eligible Historic District Prepares Inventory Forms for Potential Historic Properties
      a. Proceed to STEP 2.II

II. **Determines Survey Needed**
   A. Determine Survey Type
      1. Survey Needed for Buildings/Structures (12 or more) & Archeology
      2. Survey Needed for Buildings/Structures only (12 or more)
      3. Survey Needed for Archeology Only
   B. Initiate Survey - Prepares and Submits Form A & Maps to SED and EAB
      1. SHPO Copied - Early Project Notification
III. Survey Report Results

A. No Historic Properties Identified - SED Sends all Reports to EAB
   1. EAB Agrees with SED’s Eligibility Recommendations
      a. EAB Requests FHWA’s Concurrence that No Historic Properties Affected
      b. EAB Notifies SHPO of Finding Concurrently with FHWA and Distributes Survey Report to FHWA, SHPO & Regions
         (1) No Response from SHPO within 30 Days
             (a) Assume Agreement
             (b) FHWA Provides Notification to NYSDOT & SHPO that Section 106 Complete
         (2) SHPO Objects within 30 Days - Copies FHWA & NYSDOT
             (a) SHPO Identifies Potential Historic Properties
                 i) NYSDOT Does Not Agree with SHPO’s Eligibility Recommendations
                    a) FHWA Requests Department of Interior (DOI) Opinion on Eligibility
                       1.1 DOI Determines Property Eligible
                       1.2 Proceed to STEP 3.1 to Assess Project Effect
                 ii) NYSDOT Agrees with SHPO’s Eligibility Recommendations
                     a) Proceeds to STEP 3.1 to Assess Project Affects
   2. EAB/Region Disagree with SED’s Eligibility Recommendations
      a. EAB Distributes Reports to SHPO, FHWA and Region with Potential Historic Property Recommendations
      b. Proceed to STEP 2.III.B.1a.

B. Historic Properties Identified
   1. SED Survey Report/Regional Inventory Forms sent to SHPO - NYSDOT & FHWA copied
      a. No Response from SHPO within 45 Days Regarding Historic Property Recommendations
         (1) Assume Agreement w/SED Eligibility Recommendations
         (2) Region Proceeds to STEP 3.1 to Assess Project Affects
      b. SHPO Responds with Disagreement on All or Several eligibility determinations within 45 Days - Copies NYSDOT & FHWA on All or Part of SED’s Recommendations
         (1) If SHPO Finds Historic Properties Eligible
             (a) EAB/Region Disagree with SHPO’s Eligibility Determinations
                i) Go to STEP 2.III.A.1.b.(2)(a)(i)a)
             (b) EAB/Region Agrees with SHPO’s Eligibility Determinations
                i) Go to STEP 3.
         (2) If SHPO Finds No Historic Properties Eligible
             (a) NYSDOT Requests FHWA’s Concurrence that No Historic Properties Affected
                i) FHWA Concurs - Copies SHPO & NYSDOT
ii) 36 CFR, Part 800 is Complete

c. SHPO Requests More Information
   (1) SED or Region Provides Information to SHPO - FHWA and EAB copied
   (2) Proceed to STEP 2.III.B.1

STEP 3 - ASSESS EFFECTS TO HISTORIC PROPERTIES (800.5) (3)

The NYSDOT, in consultation with SHPO/THPO and identified consulting parties, shall consult regarding the undertaking's effect on historic properties during the NEPA scoping and the preparation of the NEPA Documents (i.e. EA or DEIS/EIS), and hold public hearings, publish notice of EA/EIS availability in local papers, publish notice of opportunity for a design or combined corridor design for public hearings (800.5(c)(2)). Also through this consultation, alternatives & proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties will be described in the EA or DEIS/EIS.

I. Region Evaluates Affect to Historic Properties
   A. Avoids Affecting Historic Properties - Prepares Finding Documentation & Requests FHWA’s Concurrence that No Historic Properties Affected - SHPO Notified (No Effect)
      1. No Response from SHPO within 30 Days
         a. Assume Agreement with Finding
         b. FHWA Provides Concurrence Letter to Region - Copies SHPO & EAB
         c. Section 106 Complete
      2. SHPO Objects within 30 Days
         a. FHWA & NYSDOT Notified of Objection
         b. Additional Consultation Needed
         c. Proceed to STEP 4 If Can Not Resolve Issues
   B. Region Finds, in Consultation with EAB & SHPO, that Historic Properties Affected - Proceed with STEP 4.

STEP 4 - APPLY CRITERIA OF ADVERSE EFFECT (800.5(a)) (4)

I. Region Applies Criteria of Adverse Effect (800.5(a))
   A. Determines Project will have an Adverse Effect on Historic Properties - Proceed to STEP 5 for Assessment of Adverse Effects

II. Region Proposes Finding of No Adverse Effect (800.5(b)) (NAE)
   A. Prepares Finding Documentation & Sends to SHPO, EAB & FHWA
      1. No Response from SHPO within 45 Days
         a. Assume Agreement
         b. FHWA Gives Concurrence - Copies SHPO & EAB
      2. SHPO Responds to Finding to NYSDOT within 45 Days - Copies FHWA
         a. Additional Information Requested
         b. Conditions Modified/Added
         c. Return to STEP 4.I.
      3. SHPO Disagrees to Finding to NYSDOT within 45 Days - Copies FHWA
         a. Proceed to STEP 5 if No Adverse Effect Is Not Resolved
STEP 5 - RESOLUTION OF ADVERSE EFFECT (800.6) (5)

I. NYSDOT Explores Avoidance/Modifications Alternatives
   A. Successful - Avoids Adverse Effect
      1. Return to STEP 3. if Recommended No Historic Properties Affected (NE)
      2. Return to STEP 4. if Recommend No Adverse Effect (NAE)
   B. Region Concludes Adverse Effect
      1. Provides Finding Documentation to SHPO (800.11(e)) - Copies Other Consulting Parties, FHWA & EAB
      2. SHPO Concurs within 45 Days
         a. Issues Adverse Effect Letter and Draft MOA to Region - Copies Other Consulting Parties, FHWA & EAB
         b. FHWA Concurs - Notifies Council - (Council has 15 Days to Respond)
            (1) Requests Council’s Involvement
            (2) Determines Council will not be Involved
         c. FHWA Forwards Council Response to Region - Copies Other Consulting Parties, EAB & SHPO
      3. SHPO Does Not Concur - Proceed to Step 5.I.

II. Region Progresses Draft MOA (5A)
   A. Agrees with MOA/Stipulations & Signs Agreement - Circulates to SHPO & FHWA for Signatures
   B. Disagrees with MOA/Stipulations
      1. Consults with SHPO & FHWA on Stipulations & Modifies MOA with Agreed upon Stipulations
      2. Signs MOA & Circulates to SHPO & FHWA for Signatures

III. Council Participation
   A. If Council Not Consulting Party, FHWA Provides Council with Copy of Signed MOA and Summary Documentation (If not previously submitted) - Copies SHPO, NYSDOT & Other Consulting Parties
      1. Date of FHWA Notification Letter to Council - Section 106 Process Complete
   B. If Council Participates
      1. FHWA Provides Council with Original MOA and Draft Design Approval Document
      2. FHWA Requests Council Concurrence & Signature
         a. Council Agrees & Signs MOA - Returns to FHWA
            (1) FHWA Distributes Copies to NYSDOT, SHPO & Consulting Parties - Section 106 Process Complete
         b. Council Disagrees
            (1) Consults with FHWA & SHPO

*Refers to the numbering in the New Section 106 Implementation Procedures Table
**Historic Properties = Buildings, Structures, Objects, Districts & Archeological Sites eligible for or listed on the National Register of Historic Places
*** NYSDOT = EAB & Regions

1/03/2001
**STEP 1 - INITIATE THE SECTION 106 PROCESS**

- Establish Undertaking
  - Plan for public involvement
    - Coordinate w/ other reviews

  Does project have potential to affect historic properties? (FHWA Exempt list)

  - No
    - Summarize in environmental document
      - End Section 106 process

  - Yes
    - **STEP 2 - IDENTIFY HISTORIC PROPERTIES (600.4)**

      Determine Area of Potential Effects (APE)

      Region Assesses Need for Cultural Resource Screening/Survey

      - CRC Conducts Screening - Prepares Inventory Forms
        - Survey Needed - CRC Submits Form A

      Are Historic Properties identified within APE?

      - No
        - Summarize in environmental document
          - Section 106 Complete

      - Yes
        - EAB Sends Survey Reports to FHWA and SHPO

      SHPO Responds within 30 Days

      - Yes
        - SHPO Responds to Region within 45 Days

      - No
        - Assume SHPO concurrence

      FHWA Concurs - No Historic Properties Affected

      - Yes
        - Assume SHPO concurrence

      - No
        - Assume SHPO concurrence

      **SEDI Region Provides Additional Information to SHPO**

      - SHPO Disagrees w/ Recommendations:
        - Identifies Additional Historic Properties
        - Requests Additional Information

      - Yes
        - Continue to Page 2

      - No
        - Historic Properties Affected?

          - Yes
            - Continue to Page 2

          - No
            - Historic Properties Affected?
# Revised Section 106 Implementation Procedures

*corresponding number in Section 106 outline

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<tr>
<th>Step</th>
<th>Action</th>
<th>Who</th>
<th>Finding</th>
<th>Duration</th>
<th>Documentation</th>
<th>To</th>
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<th>Section 106</th>
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<tbody>
<tr>
<td>1.</td>
<td>Determine Potential to Cause Effect</td>
<td><strong>NYSDOT Region</strong></td>
<td>Project has NO Potential to Cause Effect (Step 1.I)*</td>
<td>Design Approval Document</td>
<td></td>
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<td>Complete</td>
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<td></td>
<td>Project has Potential to Cause Effect (Step 1.II)*</td>
<td>Screening/Survey</td>
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<td>Continue (2)</td>
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<td>2.</td>
<td>Identify Historic Properties</td>
<td><strong>NYSDOT Region</strong></td>
<td>Cultural Resources Survey or Screening Needed (Step 1.I and 1.II)*</td>
<td>Screening Results/Survey Report</td>
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<td>Continue (2A or 2B)</td>
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<td></td>
<td>No Potential Historic Properties Identified (Step 2.I.A)*</td>
<td>Design Approval Document</td>
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<td>Complete</td>
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<td>Potential Historic Properties Identified (12 or less structures); Consult with EAB (Step 2.I.B)*</td>
<td>Inventory Forms</td>
<td>SHPO/THPO</td>
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<td>Continue (3)</td>
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<td>Survey Needed (Step 2.I.C)* - 12 or more Structures Identified, Archeologically Sensitive and/or No Prior Ground Disturbance Demonstrated</td>
<td>Form A &amp; Maps</td>
<td>SED EAB SHPO/THPO</td>
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<td>Continue (2B1 or 2B2)</td>
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<td>2B1</td>
<td>No Historic Properties Identified</td>
<td><strong>SED</strong></td>
<td>Recommendation - No Historic Properties Identified (Step 2.III.A)*</td>
<td>Cultural Resources Survey Report</td>
<td>EAB</td>
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<td>Continue to EAB Response</td>
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<td><strong>EAB</strong></td>
<td>EAB Disagrees with Recommendation (Step 2.III.A.1)*</td>
<td>Finding Notification/Survey Report</td>
<td>SHPO/THPO FHWA Region</td>
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<td>Continue (2B2) SHPO/THPO Response</td>
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<td>EAB Agrees with Recommendation (Step 2.III.A.1)*</td>
<td>Finding Notification/Survey Report</td>
<td>FHWA SHPO/THPO Region</td>
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<td>Continue to SHPO/THPO Response</td>
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## Revised Section 106 Implementation Procedures

*corresponding number in Section 106 outline*

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**SHPO/THPO**

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<tr>
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<th>No Response (Step 2.III.A.1.b(1))</th>
<th>30 days</th>
<th>Assume Agreement; No Documentation Required</th>
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<td>Objects to Recommendation (Step 2.III.A.1.b(2))</td>
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<td>Letter of Eligibility</td>
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**FHWA**

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<th>Concurs with NYSDOT if SHPO/THPO Does Not Object (Step 2.III.A.1.b(1)(b))</th>
<th>After Notification that Section 106 is Complete</th>
<th>EAB</th>
<th>SHPO/THPO Region</th>
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**2B2. Historic Properties Identified**

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<th>Makes National Register Eligibility Recommendations (Step 2.III.B.1)</th>
<th>Survey Report/Additional Information</th>
<th>SHPO/THPO</th>
<th>NYSDOT FHWA</th>
<th>Continue to SHPO/THPO Response</th>
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**SHPO/THPO**

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<td>Disagrees with Recommendation (Step 2.III.B.1.b)</td>
<td>45 days</td>
<td>Letter of Eligibility</td>
<td>Region EAB FHWA</td>
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<td>Requests more Information (Step 2.III.B.1.c)</td>
<td>45 days</td>
<td>Letter Requesting Additional Information</td>
<td>Region EAB FHWA</td>
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**SED or Region**

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<th>Responds to Request (Step 2.III.B.1.c(1))</th>
<th>Additional Information</th>
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<th>NYSDOT SED FHWA</th>
<th>Return to (2B2) SHPO/THPO Response</th>
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## Revised Section 106 Implementation Procedures

*corresponding number in Section 106 outline*

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
<th>Who</th>
<th>Finding</th>
<th>Duration</th>
<th>Documentation</th>
<th>To</th>
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<th>Section 106</th>
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<tbody>
<tr>
<td>3.</td>
<td>Assess Affect to Historic Properties</td>
<td>Region</td>
<td>Historic Properties Affected (Step 3.1.B)*</td>
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<td>No Historic Properties Affected (NE). (Step 3.1.A)*</td>
<td>Letter Requesting FHWA Concurrence</td>
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<td>SHPO/THPO</td>
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<td>SHPO/THPO</td>
<td>Objects to Finding (Step 3.1.A.2)</td>
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<td>Affect Opinion Letter</td>
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<td>Concurs with NYSDOT if SHPO/THPO does not Object. (Step 3.1.A.1.b)*</td>
<td>After SHPO/THPO 30 day review</td>
<td>Notification that Section 106 Complete</td>
<td>Region</td>
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<td>4.</td>
<td>Apply Criteria of Adverse Effect</td>
<td>Region</td>
<td>Adverse Effect (Step 4.I.A)*</td>
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<td>Findings Documentation</td>
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<td>No Adverse Effect (Step 4.II.A)*</td>
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<td>No Response (Step 4.II.A.1.a)*</td>
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<td>Assume Agreement after 45 days; No Documentation Required</td>
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<td>Concurs; adds Conditions (Step 4.II.A.2.b)*</td>
<td>45 days</td>
<td>Letter with Conditions</td>
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<td>Requests Additional Information (Step 4.II.A.2.a(i))</td>
<td>45 days</td>
<td>Letter Requesting Information</td>
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<td>Disagrees with Finding (Step 4.II.A.3)*</td>
<td>45 days</td>
<td>Letter of Project Effect</td>
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## Revised Section 106 Implementation Procedures

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<th>Finding</th>
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<tbody>
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<td>5.</td>
<td>Explore Avoidance of Adverse Effect</td>
<td>Region (A)</td>
<td>Meets Conditions</td>
<td>Revised Findings Document</td>
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<td>SHPO/THPO/EAB</td>
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<td>Does not Meet Conditions</td>
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<td>SED or Region (B)</td>
<td>Responds to Request for Additional Information (Step 5.1.A.2.a(i))</td>
<td>Additional Information</td>
<td>SHPO/THPO</td>
<td>NYSDOT SED FHWA</td>
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<td>FHWA</td>
<td>Concurs with NYSDOT if SHPO/THPO Does not Disagree after 45 day review</td>
<td>Notification that Section 106 is Complete</td>
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<td>SHPO/THPO/EAB</td>
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<td>5.</td>
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<td>Avoids Effect (NE) (Step 5.1.A.1)*</td>
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<td>Avoids Adverse Effect (NAE) (Step 5.1.A.2)*</td>
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<td>Adverse Effect (AE) (Step 5.1.B)*</td>
<td>Findings Document</td>
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<td>EAB FHWA</td>
<td>Continue to SHPO/THPO Response</td>
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<td>SHPO/THPO</td>
<td>Concurs with Finding. (Step 5.1.B.2)*</td>
<td>Letter of AE; Draft MOA</td>
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<td>EAB FHWA</td>
<td>Continue to FHWA Response</td>
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<td>Disagrees with Finding. (Step 5.1.B.3)*</td>
<td>Letter Requesting Further Consultation</td>
<td>Region</td>
<td>EAB FHWA</td>
<td>Continue (Return to (5), Explore Avoidance)</td>
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<td>Concurs with AE; Determines ACCHP Involvement. (Step 5.1.B.2.b)*</td>
<td>15 days</td>
<td>Letter of Findings Documentation</td>
<td>ACHP</td>
<td>SHPO/THPO/NYSDOT</td>
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## Revised Section 106 Implementation Procedures

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<table>
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<tr>
<th>Step</th>
<th>Action</th>
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<tr>
<td>5A</td>
<td>Resolves Conditions, Progresses MOA</td>
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<td>Concurs with AE Conditions to MOA; Signs MOA. (Step 5.II.A.1)*</td>
<td>MOA Signed by Region</td>
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<td>EAB FHWA</td>
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<td>Disagrees with MOA Conditions; Consults with SHPO/THPO, FHWA. (Step 5.II.A.2)*</td>
<td>Modified MOA</td>
<td>SHPO/THPO</td>
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<td>SHPO/THPO</td>
<td>Agrees with MOA Conditions; Signs MOA. (Step 5.II.A.1)*</td>
<td>MOA Signed by Region, SHPO/THPO</td>
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<td>FHWA</td>
<td>Agrees with MOA Conditions; Signs MOA. (Step 5.II.A.1)*</td>
<td>Signed MOA; Finding Document; (Draft Design Approval Document if Council consulting party)</td>
<td>Council SHPO/THPO</td>
<td>NYSDOT</td>
<td>Continue to Council Action</td>
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<td>Failure to Agree to MOA (any party).</td>
<td>Letter of Disagreement Council</td>
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<td>Consulting Party, Agrees to MOA. (Step 5.III.B.2.a)*</td>
<td>Letter of Agreement; Signed MOA</td>
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<td>Consulting Party, Disagrees to MOA. (Step 5.III.B.2.b)*</td>
<td>Letter of Disagreement; Revised MOA</td>
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<td>Consult with FHWA, SHPO/THPO (Return to (5A))</td>
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1/29/01