CHAPTER 7

OVERVIEW OF ENVIRONMENTAL PROCESS
APPENDICES
## CONTENTS

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-1</td>
<td></td>
</tr>
<tr>
<td>Links:</td>
<td></td>
</tr>
<tr>
<td>NEPA Assessment Checklist &amp; Instructions</td>
<td>3</td>
</tr>
<tr>
<td>NEPA Checklist Clarifications</td>
<td></td>
</tr>
<tr>
<td>23 CFR §771.117(c) NEPA Checklist – The “C” List</td>
<td></td>
</tr>
<tr>
<td>23 CFR §771.117(d) NEPA Checklist – The “D” List</td>
<td></td>
</tr>
<tr>
<td>Element-Specific Federal-Aid Eligible Highway &amp; Bridge Work Chart</td>
<td>3</td>
</tr>
<tr>
<td>7-2</td>
<td>4</td>
</tr>
<tr>
<td>Environmental Screenings</td>
<td></td>
</tr>
<tr>
<td>7-3</td>
<td>22</td>
</tr>
<tr>
<td>Sample Transmittal Letter from Sponsor to RLPL for Submission of Project for Concurrence with NEPA Categorical Exclusion Determination</td>
<td></td>
</tr>
<tr>
<td>7-4</td>
<td>23</td>
</tr>
<tr>
<td>Sample Transmittal Letter from RLPL to Sponsor Providing NYSDOT Concurrence with NEPA Categorical Exclusion Determination</td>
<td></td>
</tr>
<tr>
<td>7-5</td>
<td>24</td>
</tr>
<tr>
<td>Sample Transmittal Letter from RLPL to FHWA Requesting Concurrence with NEPA Categorical Exclusion with Documentation Determination</td>
<td></td>
</tr>
<tr>
<td>7-6</td>
<td>25</td>
</tr>
<tr>
<td>Sample Transmittal Letter from the RLPL to FHWA Requesting Endangered Species Act Section 7 Effect Determination</td>
<td></td>
</tr>
<tr>
<td>7-7</td>
<td>26</td>
</tr>
<tr>
<td>Section 106 Project Submittal Package</td>
<td></td>
</tr>
<tr>
<td>7-8</td>
<td>27</td>
</tr>
<tr>
<td>Section 106 Finding Documentation Package</td>
<td></td>
</tr>
<tr>
<td>7-9</td>
<td>29</td>
</tr>
<tr>
<td>Section 106 NYSED Reconnaissance (Phase I) Survey Report Format</td>
<td></td>
</tr>
<tr>
<td>7-10</td>
<td>33</td>
</tr>
<tr>
<td>Section 106 Memorandum of Agreement Template</td>
<td></td>
</tr>
<tr>
<td>7-11</td>
<td>37</td>
</tr>
<tr>
<td>Section 106 Memorandum of Agreement Template (Archaeology Only) with MOA - Appendix 1 and MOA Appendix 2</td>
<td></td>
</tr>
<tr>
<td>7-12</td>
<td>42</td>
</tr>
<tr>
<td>Smart Growth Screening Tool</td>
<td></td>
</tr>
<tr>
<td>7-13</td>
<td>50</td>
</tr>
<tr>
<td>Smart Growth Screening Tool Guidance</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX 7-1

LINKS

The most current versions of the documents listed below can be found on the applicable State or federal website. Click on the document name to access the webpage where the document can be found. These links will be separately listed on the PLAFAP Manual Chapter 7 webpage.

- NEPA Assessment Checklist & Instructions
- NEPA Checklist Clarifications
- 23 CFR §771.117(c) NEPA Checklist – The “C” List
- 23 CFR §771.117(d) NEPA Checklist – The “D” List
- Element-Specific Federal-Aid Eligible Highway & Bridge Work Chart, NYSDOT Project Development Manual Appendix 7 (Scoping and Design Approval Documents)
APPENDIX 7-2
Environmental Screenings

Conduct environmental screenings for applicable resource areas to identify the potential for sensitive environmental resources within the project area and to identify those areas requiring further technical studies.

Environmental Procedure Guidance

For more in-depth environmental procedure guidance, the Sponsor should refer to the NYSDOT Environmental Manual\(^1\) (TEM). This document, formerly known as the Environmental Procedures Manual (EPM), is being revised and updated to provide guidance that better meets the needs of the users and is more closely aligned with other NYSDOT guidance (i.e. Design Procedures Manual, Project Development Manual). The TEM will continue to be the repository for Department guidance on environmental issues.

Some environmental sections previously in the EPM have been revised and are now situated in the TEM. Other sections listed in the TEM will serve as place holders for sections under development. Once guidance has been developed for a section currently in the EPM, it will then reside in the TEM and these links will no longer function. Therefore, since the TEM will continuously be revised and updated as the environmental procedures and policies are being developed, the Sponsor should go to the TEM Table of Contents to determine where the most current guidance resides for a particular environmental subject section.

A. Noise (TEM Section 4.4.18)

A noise study is required for all Type I projects as defined under “Procedures for Abatement of Highway Traffic Noise and Construction”, Section 772.5(h) of 23 CFR 772.

(Note: Most locally administered federal aid transportation projects will not require a Noise Study)

A Type I project is a proposed Federal-aid highway project for the construction of a highway on new location or the physical alteration of an existing highway which significantly changes either the horizontal or vertical alignment or increases the number of through-traffic lanes.

If the project is not a Type I project under 23 CFR 772, state this in the Design Approval Document. No noise study is required.

B. Air Quality (EPM Chapter 1.A/TEM Section 4.4.16.3 CMAQ)

In order to consider air quality effects of a project, the project should be screened for the following air quality issues:

- *Carbon Monoxide (CO) Microscale/Hotspot Analysis (B.1-below).*
- *Particulate Matter (PM) Microscale/Hotspot Analysis (B.2 below).*
- *Microscale Air Quality Analysis (B.3 below).*
- *Transportation / Air Quality Conformity (B.4 below).*
- *Mobile Source Air Toxics (MSAT) (B.5 below)*
- *Construction (B.6 below).*

\(^1\)https://www.dot.ny.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm
It is recommended that the results of the screenings for each issue be clearly documented in the project environmental documentation. Depending on the outcome of the screenings, analysis of one or more of the issues is recommended, as described below.

In addition, if the project is funded through the Congestion Mitigation / Air Quality (CMAQ) Program, a demonstration of the project’s emissions benefits is required as described in the TEM Chapter 4.4.16 and in Section B.7 below.

**B.1. CO Microscale/Hotspot Analysis**

Chapter 1.1. of the EPM contains criteria for determining if a CO microscale/hotspot analysis is appropriate for a project. Regardless of the criteria, if potentially sensitive receptors (e.g., schools, hospitals, retirement communities) exist within the project area, contact the Regional Local Projects Liaison to determine if a CO microscale/hotspot analysis is appropriate.

The project may warrant a microscale air quality analysis to predict concentrations of CO if both of the following criteria apply (apply criteria to all project alternatives):

1. The level of service (LOS) for the estimated time of completion (ETC), ETC+10 years, and ETC+20 years is LOS D, E, or F.

   (AND)

2. For any of the intersections or roadways impacted by the project, one or more of the following criteria apply for any alternative:
   
   a. 10% or more reduction in the source-receptor distance (the straight-line distance from the edge of the travel lane to the receptor, typically a sidewalk).
   b. 10% or more increase in traffic volume due to the project on affected roadways for the ETC, ETC+10 or ETC+20.
   c. 10% or more increase in vehicle emissions due to changes associated with the project for ETC, ETC+10, or ETC+20.
   d. Any increase in the number of queued lanes for ETC, ETC+10, or ETC+20.
   e. 20% or more decrease in vehicle average speed when the Build average speed is less than or equal to 30 mph.

If EITHER criteria #1 or #2 is not true, and the project is not located within ½ mile of an intersection analyzed by NYSDEC for a CO State Implementation Plan (CO SIP) (see Table 2 in Chapter 1.1 of the EPM), then a CO microscale/hotspot air quality analysis is not necessary.

If BOTH criteria #1 and #2 are true, and the project is not located within ½ mile of a SIP intersection, an analysis may still not be warranted. An emissions/vehicle volume threshold matrix has been developed that allows an assessment of emissions from vehicles and the likelihood of an exceedance of the CO air quality standards. Contact your Regional Local Projects Liaison if both criteria #1 and #2 are true. To utilize the matrix, the following project information is needed: peak hour Build volumes (1-way, 2-way or both) for ETC, ETC+10 and ETC+20 (or if unavailable, design hour Build volumes and projected annual traffic volume growth rate), average travel speed, and road functional classes (to use default vehicle classification data) or project specific vehicle classification data, if available.

If the project is located within ½ mile of a SIP intersection, the subcriteria for criterion #2 are more stringent. In subcriteria a, b, and c, the 10% is replaced by 5%; in subcriteria e, 20% is replaced by
10%; and subcriteria d is unchanged. Use of the emissions/vehicle volume matrix at these locations is not recommended. Thus, a CO microscale/hotspot analysis is automatically warranted for projects within ½ mile of a CO SIP intersection if both criteria #1 and #2 are true.

If a CO microscale/hotspot air quality analysis is not needed, the following statement should be included in the project documentation to address this issue: “A CO microscale/hotspot analysis is not necessary since this project will not increase traffic volumes, reduce source-receptor distance or change other existing conditions to such a degree as to jeopardize attainment of the National Ambient Air Quality Standards for CO.”

If a microscale air quality analysis is needed, consult with the Regional Local Projects Liaison. In addition to average travel speed and roadway classification for the No-build alternative and all Build alternatives, the following additional information will be needed for all Build alternatives and the No-build alternative for ETC, ETC+10 and ETC+20:

- Location of access roads, entrances and exits, lane striping, stop lines, turning lanes, medians and shoulders.
- Locations of buildings, residences, parking lots, sidewalks, curbs and traffic control,
- Scale, north arrow grid.
- Profile and typical cross-section of the roadway, indicating the elevations, overpasses, cut and fill areas.
- Hourly traffic volumes for all movements at all intersections meeting the criteria for a microscale analysis and for intersections up to 1000 ft (305 m) beyond both ends of the project limits for AM and PM peak hour (midday or weekend periods also if they have volumes comparable to AM and PM peaks).
- Total cycle, green and yellow/all red phase signal timing at all intersections being modeled including lost time, signal type (pretimed, actuated or semi-actuated) and saturation flow rate.

B.2. PM Microscale/Hotspot Analysis

PM consists of: 1) particles ≤10 micrometers in diameter (PM$_{10}$); and 2) particles ≤2.5 micrometers in diameter (PM$_{2.5}$). To meet federal transportation / air quality conformity requirements, any project in a PM non-attainment or maintenance area is required to undergo a screening process to determine if a quantitative PM microscale/hotspot analysis is required. In such areas, per the federal transportation conformity regulation, the following projects are required to have a quantitative PM microscale/hotspot analysis:

1. New highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;
2. Projects affecting intersections that are at Level-of-Service D, E, or F with a significant number of diesel vehicles, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;
3. New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;
4. Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and
5. Projects in or affecting locations, areas, or categories of sites which are identified in the PM$_{2.5}$ or PM$_{10}$ SIP or SIP submission, as appropriate, as sites of violation or possible violation.
It is recommended that project sponsors consult with the Local Projects Liaison to determine if these criteria are met. If a project does not meet any of the five criteria listed above, then a PM microscale/hotspot analysis is not required. If a PM microscale/hotspot analysis is not warranted, the following statement should be included in the project environmental documentation: “A PM microscale/hotspot analysis is not necessary because the project is not a project of local air quality concern and will not change existing conditions to such a degree as to jeopardize attainment of the National Ambient Air Quality Standards for PM.”

A PM Microscale/hotspot analysis is recommended for projects that meet any of the five thresholds listed above that are located in a PM attainment area. In addition, if potentially sensitive receptors (e.g., schools, hospitals, retirement communities) exist within the project area, contact the Regional Local Projects Liaison to determine if a PM microscale/hotspot analysis is appropriate.

A PM microscale/hotspot analysis involves the estimation of PM concentrations in the project area. The analysis must show that PM concentrations under the Build condition are either: 1) lower than PM concentrations in the project area under the “No-build” condition, or 2) lower than the National Ambient Air Quality Standards for particulate matter. Mitigation is recommended when the microscale/hotspot analysis does not pass either of these pollutant concentration tests. Further consultation with the Regional Local Projects Liaison is recommended if a PM hotspot analysis is needed.

B.3. Mesoscale Air Quality Analysis

A mesoscale air quality analysis is performed to consider the air quality effects of projects on a broad scale. The mesoscale analysis provides a total estimate of the emissions burden associated with the project, and includes all roadways that are affected by the project. The following pollutants are included in the analysis: CO, volatile organic compounds (VOCs), nitrogen oxides (NOx), PM$_{10}$ and PM$_{2.5}$.

A mesoscale air quality analysis is recommended if the project scope includes any of the following:

- New HOV lane
- New or significant modifications to interchanges on access-controlled facilities
- Large-scale signal coordination
- Differences in vehicle miles traveled (VMT) of 10% or more
- Widening to provide additional travel lanes more than a mile in length

If the project does not involve any of the above items, a mesoscale air quality analysis is not warranted. The project environmental document should include a statement that a mesoscale analysis is not warranted due to the size and scope of the project.

If a mesoscale analysis is warranted, the project sponsor should contact the Regional Local Projects Liaison.

B.4. Transportation/Air Quality Conformity

In urban areas, all Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funded projects must be included in a Transportation Improvement Program (TIP). In all Clean Air Act non-attainment or maintenance areas, all FHWA/FTA projects must come from a conforming TIP and long range Metropolitan Transportation Plan, or, in rural counties be included in a conforming Capital Program of Transportation Projects. The conformity approval dates for these planning documents are available at: https://www.nysdot.gov/divisions/engineering/environmental-analysis/repository/tipstatu.pdf.
In nonattainment and maintenance areas, all projects (other than exempt projects per 40 CFR Part 93.126) require a project-level conformity determination. This is documentation that:

1. The project design concept and scope is consistent with the planning assumptions used in the conforming Plan and TIP.
2. The latest emission model was used, if a project-level air quality analysis was done.
3. The public has had an opportunity to consult on air quality issues about the project.
4. That there is in place a currently conforming Plan and a currently conforming TIP.
5. The project comes from the currently conforming Plan and currently conforming TIP with the dates of approval of the conformity determination of the Plan and the conformity determination of the TIP by the MPO and by FHWA/FTA.
6. The project’s design scope and concept have not significantly changed from that considered in the currently conforming Plan and currently conforming TIP.

In addition, in CO and PM non-attainment and maintenance areas, the local (i.e. microscale/hotspot) effects of projects with respect to CO and PM concentrations must be addressed and documented prior to making a project-level conformity determination. The criteria described in Sections B.1 and B.2 should be used to address the transportation conformity hotspot analysis requirements.

Documentation regarding project-level air quality conformity must be reviewed and approved by FHWA before the project can be approved. Contact the Regional Local Projects Liaison for further guidance regarding conformity.

Also, a “general” air quality conformity evaluation per 40 CFR Part 93 Subpart B is required for all other federally funded or approved projects such as those administered through the Federal Aviation Administration or Federal Railroad Administration. Contact the Regional Local Projects Liaison for further guidance regarding this issue for Federal-Aid projects that are not associated with the FHWA or FTA.

**B.5. Mobile Source Air Toxics (MSAT) Analysis**

Projects funded by FHWA must comply with FHWA’s “Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents” (updated September 30, 2009). This guidance is available at: [http://www.fhwa.dot.gov/environment/airtoxic/index.htm](http://www.fhwa.dot.gov/environment/airtoxic/index.htm). The following three levels of mobile source air toxic (MSAT) analysis are specified in the guidance:

1. No MSAT analysis for projects with no potential for meaningful effects.

   The following types of projects qualify for this analysis level:
   - Projects qualifying as categorical exclusions under 23 CFR 771.117(c), OR
   - Projects with no meaningful impacts on traffic volumes or vehicle mix

   For these projects, the environmental document should state why an MSAT analysis is not needed. The FHWA interim guidance provides example language.

2. Qualitative MSAT analysis for projects with low potential MSAT effects.

   The types of projects included in this category are those that serve to improve operations of highway, transit or freight without adding substantial new capacity or without creating a facility that is likely to meaningfully increase MSAT emissions. This analysis level should be used for projects not meeting...
Chapter 7 – Overview of Environmental Process

Prepared by NYSDOT
Chapter 7 – Overview of Environmental Process
Revised Procedures for Locally Administered Federal Aid Projects
December 2012

the criteria for analysis levels (1) and (3), and where design year traffic is projected to be less than 140,000 to 150,000 AADT.

The FHWA interim guidance provides procedures for conducting a qualitative analysis and prototype language. The project sponsor should contact the Regional Local Projects Liaison for additional assistance.

(3) Quantitative MSAT analysis to differentiate alternatives for projects with higher potential MSAT effects.

The types of projects included in this category are those that have the potential for meaningful differences in MSAT emissions among project alternatives. To qualify for this analysis level, a project must:

- Create or significantly alter a major intermodal freight facility that has the potential to concentrate high levels of diesel particulate matter in a single location, OR
- Create new or add significant capacity to urban highways, such as interstates, urban arterials, or urban collector-distributor routes, with traffic volumes where the AADT is projected to be in the range of 140,000 to 150,000 or greater by the design year
  AND
- Proposed to be located in proximity to populated areas

The project sponsor should contact the Regional Local Projects Liaison if this level of analysis is needed.

B.6. Air Quality Construction Analysis

For projects that include measures to reduce the amount of dust generated during construction, the environmental document should list the measures to be used. For projects involving the removal of lead paint from bridges or other structures, the document should reference the appropriate level of containment specified for the work and describe how releases of lead, particulates, and dust will be prevented.

As described in Chapter 1.1 of the EPM, CO and PM microscale/hotspot analyses for on-road construction emissions are required if the project involves the following:

- Construction diversions or detours lasting two years or more at any one location, OR
- Permanent improvements to other facilities as a result of project detours/diversions

If either of the above two conditions applies, the project sponsor should contact the Regional Local Projects Liaison for assistance.

In addition, any construction-related detours/diversions in non-attainment areas lasting longer than five years in any one location must be evaluated consistent with the conformity regulations. Contact the Regional Local Projects Liaison for assistance.

B.7. Congestion Mitigation / Air Quality (CMAQ) Program

Any locally administered project that is applying for funding through the CMAQ program, must receive a project eligibility completeness determination from the Office of Environment before NYSDOT can obligate CMAQ funds. See TEM Chapter 4.4.16.3 for more information.
C. Endangered Species (TEM Section 4.4.9.3)

An endangered and threatened species review should be performed for all projects. This review process is discussed in detail in TEM Section 4.4.9.3. In summary, the main elements of an endangered/threatened species review (chronological order) are:

1. Screening of USFWS county lists and NY Natural Heritage Program data to determine whether a listed species may occur in the area of impact;
2. Habitat assessment to determine whether or not suitable habitat exists in the area of impact; and

The extent of the review will vary depending on the project location and type of activity proposed. If either the screening or habitat assessment yields a negative result, then the review process ends at that point.

Write to the NYSDEC Regional Wildlife Manager to determine if there are records of federal or state endangered or threatened fish, wildlife, or plant species in the vicinity of the project area. Project sponsor correspondence to NYSDEC should contain the project PIN/BIN number(s), a brief description of the proposed project, and the appropriate section of USGS or NYSDOT quadrangle map(s) clearly delineating the project area (encompassing the area for all alternatives).

NYSDEC will send a written determination within approximately 30 days of receipt of the information request. In the determination, NYSDEC will inform the project sponsor whether or not there is a record of a natural heritage element that may be potentially affected by the project. NYSDEC will indicate the type of natural heritage record (e.g., significant fish habitat, federal endangered plant species). If there is a record of a potentially affected endangered, threatened or rare species or natural community, NYSDEC will indicate whether the species is listed on or is proposed for inclusion on the state and/or federal list(s). Include the written determination from NYSDEC in the design approval document appendices.

Based on the results of the screening and habitat assessment, if it is determined that a listed species may be affected, further investigation and agency coordination is required to determine the severity of impacts and identify mitigation measures. The project may require an incidental take permit from NYSDEC and/or a Biological Opinion from the USFWS/NMFS.

See Appendix 7.6 for the Sample Transmittal Letter from the RLPL to FHWA Requesting Endangered Species Act Section 7 Effect Determination.

D. Invasive Species

NYSDOT considers and addresses, to the extent practicable, the impacts of invasive species in all aspects of project scoping, planning, design, construction and maintenance. It is incumbent on the Sponsor to determine the extent to which an invasive species inventory and/or control measures are warranted. In general, if the project will disturb vegetated land, the Sponsor should contact the appropriate Regional Partnership for Invasive Species Management (PRISM) to determine what priority invasive species may be present in the project area. A map of PRISM areas and contacts is available at the New York Invasive Species Information (NYISI) website.2

The Sponsor should also, at a minimum, conduct on-site analysis with personnel sufficiently experienced and qualified to recognize invasive plants and signs of such insect pests as the Asian

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2 http://www.nyis.info/?action=prism_partners
Longhorn Beetle or Emerald Ash Borer. If invasive species are present, the PRISMS are a good starting point for assistance in understanding what regulations, quarantines, may apply. The Sponsor is also directed to NYSDEC and the National Invasive Species Council for detailed information on invasive species, including map limits of quarantines, and applicable text of regulations and guidance.

If invasive species are present, the contract documents should include context appropriate preventive measures to prevent their spread and context appropriate control practices as described in TEM 4.4.9.4. The Sponsor, through the RLPL, can obtain support from the Regional Landscape/Environmental Unit or the Office of Environment.

E. Surface Waters/Wetlands (EPM Chapter 4.A)

For every project involving any ground disturbance, conduct a waters/wetlands pre-screening, including review of maps and aerial photographs, to determine the areas with the potential for wetlands or surface waters to focus field investigation.

The project sponsor should review, if available:

- USGS and NYSDOT topographic maps
- National Wetlands Inventory (NWI) Maps
- State (NYSDEC/APA) Freshwater and Tidal Wetlands Maps
- USDA Natural Resources Conservation Service County Soil Survey
- Recent aerial photographs
- List of U.S. Army Corps of Engineers Navigable Waters^3 – Buffalo District only

Even if the map review indicates no wetlands or surface waters, a field screening is still recommended, as mapping is not a definitive indicator.

E.1. Surface Waters (EPM Chapter 4.A)

Conduct a general field investigation to determine the general characteristics of all bodies of surface water within and adjacent to the project, including named and unnamed tributaries, streams, creeks, rivers, ponds, lakes, wetlands, and special aquatic sites (as defined in Section 404 of the Clean Water Act).

Determine the New York State Department of Environmental Conservation (NYSDEC) surface water classification for each body of water, pursuant to 6 NYCRR Part 701.

Follow procedures in EPM Chapter 4.A and consult with the U.S. Army Corps of Engineers to determine the USACE Section 404 Individual and Nationwide Permit and NYSDEC Section 401 Water Quality Certification requirements for construction activities within Waters of the United States, including wetlands and special aquatic sites.

For each project alternative, evaluate the effects of construction activities and project changes on surface water bodies, including (but not limited to):

- Timing of the work
- Discharge of dredged or fill material
- Dredging in stream bed or bank
- Fill

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• Erosion and sedimentation
• Stream realignment
• Reduction of canopy cover
• Water temperature increases due to removal of stream bank vegetation and/or addition of stone or concrete bank stabilization
• Changes in runoff quantity and quality
• Accidental toxic spills
• Cofferdams
• Bridge washing
• Bank and channel protection
• Temporary waterway diversions

E.2. Stormwater Management and Erosion Control (EPM Chapter 4.3)

Identify drainage basins existing within or adjacent to the project site. Using this and other surface water information obtained, determine how the existing soils, vegetation, topography, climate, and seasonal nature of the proposed construction may affect the potential for erosion and sedimentation.

Following procedures in EPM Chapter 4.3, determine if the project requires coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity, NYSDEC Permit No. GP-0-10-001, or a NPDES General Permit from the EPA (for those projects disturbing Tribal Indian Lands).

E.3. Wetlands

For every project involving ground disturbance, perform a waters/wetlands field screening, focusing site walkover on obvious and potential areas with Waters of the United States, including wetland areas, based on findings from waters/wetlands pre-screening (particularly USFWS NWI Maps, NYSDEC/APA wetlands maps and USDA Natural Resources Conservation Service County Soil Survey. All other areas should be checked, at a minimum, with drive-by observations.

To identify the locations of state-regulated wetlands in the project area, review NYSDEC Freshwater Wetlands Maps, APA Freshwater Wetlands Maps and/or NYSDEC Tidal Wetlands Maps.

If the entire project is within urban or developed area with no obvious or potential Waters of the U.S. present or there are no areas within the project limits with obvious or potential Waters of the U.S. present, no further assessment is needed.

If areas within the project limits are potentially Waters of the U.S. a waters/wetlands assessment is required.

If map review and/or field observations indicate the potential for wetlands in the project area, regardless of size, a wetland survey needs to be conducted. If it is determined that wetlands are present and potentially affected by proposed project activities, a qualified individual should conduct field delineation as outlined in the Corps of Engineers’ Wetlands Delineation Manual (Environmental Laboratory, 1987) and appropriate regional supplement employing the “Routine On-site Inspection Methodology” or, where appropriate, one of the specified alternative procedures set forth in the USACE manual.

Based on the results of the site visit, wetland boundary delineation, and consultation with USACE and NYSDEC/APA, determine if federal jurisdictional and/or state-regulated wetlands will be impacted by project activities and determine permit requirements (USACE Section 404 Individual or Nationwide permit, NYSDEC/APA Article 24 or Article 25 permits) and whether an Executive Order (EO) 11990 determination will be required. Refer to EPM Chapter 4 for further guidance.
E.4. Executive Order 11990

A programmatic EO 11990 wetland finding may be applied to projects that meet all the following conditions:

1. Project is classified under NEPA as a Categorical Exclusion (CE);
2. Project uses USACE Nationwide Permits (including NWP #23 Approved Categorical Exclusions) or involves impacts to USACE non-jurisdictional wetlands;
3. Design Approval Document contains:
   a) a narrative describing existing characteristics of wetlands in the impacted area, such as locations, sizes, state/federal classifications, etc.;
   b) plans depicting wetland locations, boundaries and areas of proposed wetland impacts;
   c) a discussion of (i) type (temporary/permanent, direct/indirect) and function (see Section 5 of EO 11990) of existing wetlands, (ii) size of proposed impacts, (iii) efforts to avoid impacts, and (iv) the relation of the impacts to the functions of the wetlands;
   d) a statement and explanation that there are no practicable alternatives to the construction in wetlands;
   e) a discussion of all practicable measures to be considered to minimize impacts;
   f) mitigation, if required; and
4. The project has been developed in accordance with the procedure for a public involvement/public hearing program approved by FHWA pursuant to 23 CFR 771.111(h)(1).

Any federal-aid transportation project impacting wetlands not meeting the above conditions shall require an individual wetland finding (refer to EPM Chapter 4.A for guidance procedures.

F. Navigable Waters (EPM Chapter 4.A)

Determine if the project is subject to a Section 9 permit by the U.S. Coast Guard (USCG) and/or a Section 10 permit by the U.S. Army Corps of Engineers (USACE) and/or an Article 15, Title 5 permit by NYSDEC.

F.1. USCG Section 9 Permit

A Section 9 permit is required from the USCG for certain activities involving bridge work over a waterway that is considered navigable by the USCG. A waterway is considered navigable by the USCG if it is presently used or susceptible to use in its natural condition or by reasonable improvement to be used as a means to transport substantial interstate commerce or if it is a tidal waterway (subject to the ebb and flow of tide) that is navigable by vessels in excess of 21 feet in length. A Section 9 permit is required if the project involves a navigable waterway and any of the following:

- A new or replacement bridge, including causeway;
- A bridge modification resulting in change of width; change in horizontal or vertical clearance (including installation of fender sys on piers where none existed before, pier or abutment stabilization work such as pouring collars or encapsulating a substructure resulting in a change of horizontal clearances, or superstructure work that results in a change of vertical clearances); or major change of appearance;
- Change of bridge structure type.

Bridge rehabilitation projects generally do not require a Section 9 permit. However, the project sponsor needs to coordinate with USCG and add relevant notes to the contract proposal.
If a Section 9 permit is required, the project sponsor must complete an application package comprised of a location map, plan and elevation view of bridge (8½" x 11" sheet), Section 401 Water Quality Certification from NYSDEC, Coastal Zone Management Consistency Determination from NYSDOS if in a mapped Coastal Area, approved environmental document (CatEx, EA/FONSI, EIS), and official orders (authorization to apply).

For complete information about the need for a Section 9 permit and what is required to apply for a Coast Guard bridge permit, refer to Coast Guard publication COMDTPUB P16591, Bridge Permit Application Guide. Internet access to this publication may be found through the U.S. Coast Guard Bridge Administration Web Page (http://www.uscg.mil/hq/cg5/cg551/CP_16591_3C.pdf). Permit processing time is approximately 6 to 12 months from the time the Coast Guard District Office receives a complete application package. Complex projects may require longer review and subsequent processing time before permit approval is given.

**F.2. USACE Section 10 Permit**

The U.S. Army Corps of Engineers regulates any activity in, over or affecting a navigable water, in a way that alters the course, location, or capacity of the navigable water. The USACE defines navigable waters under Section 10 of the Rivers and Harbors Act as those waters subject to the ebb and flow of the tide and/or waters used in the past or present (or could be used with reasonable improvements) in the transporting of interstate or foreign commerce.

If a project has the potential to affect a USACE navigable water, follow procedures in EPM Chapter 4.A and consult with the USACE to determine if a Section 10 Nationwide or Individual permit is required.

**F.3. NYSDEC Article 15, Title 5 Permit**

The NYSDEC defines navigable waters as those lakes, rivers, streams and other bodies of water in the state that are navigable in fact or upon which vessels with a capacity of one or more persons can be operated notwithstanding interruptions to navigation by artificial structures, shallows, rapids or other obstructions, or by seasonal variations in capacity to support navigation. It does not include waters that are surrounded by land held in a single private ownership at every point in their total area.

If the project has the potential to affect NYSDEC navigable waters, consult with NYSDEC to determine Article 15, Title 5 permitting needs and requirements.

**G. Floodplains**

Using Flood Insurance Rate Maps (FIRMS)⁴, determine whether floodplains are present within the project location. Assess whether the project will have impacts on Flood Hazard Areas. If the project is in an area which has not been mapped, base flood evaluation must be completed by a hydraulics study. Following guidance provided in FHWA Technical Advisory T6640.8A⁵ will satisfy requirement for the following regulations:

**G.1. EO11988**

Requires federal agencies to avoid to the maximum extent practicable adverse impacts involving activities within floodplains. In order to comply with EO 11988, an evaluation of potential effects of any actions taken within the floodplain is needed, and alternatives to avoid any adverse effects need to be considered.

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G.2. 23 CFR 650, Bridges, Structures and Hydraulics, subpart A – Location and Hydraulic Design of Encroachments on Flood Plains

Implemented Federal Highway Administration (FHWA) policies and procedures for the location and hydraulic design of highway encroachments on flood plains, including direct federal highway projects administered by the FHWA.

G3. 6NYCRR 502 Flood Plain Management for State Projects

Requires that all New York State agencies ensure that the use of State lands and the siting, construction, administration and disposition of State-owned and State-financed facilities are conducted in ways that will minimize flood hazards and losses. The regulations are requirements of NYS participation in the National Flood Insurance Program. Under 6 NYCRR 502, “no portion of a project, including encroachments, fill, new construction, or substantial improvements, shall be placed or located within the adopted regulatory floodway that would result in any increase in flood levels during the occurrence of the base flood discharge, except where the effect on flood levels, due to the loss of floodway capacity, is completely offset by the creation of equal floodway hydraulic capacity at that point.”

H. Coastal Management (TEM Section 4.4.1.6)

Projects affecting the regulated coastal resources must ensure compliance with the involved agencies' regulations, including documenting consistency with state coastal policies, ensuring compliance with the coastal erosion hazard areas program, and ensuring compliance with the Coastal Barrier Resources Act.

H.1. Coastal Zone Management (NYSDOS)

During scoping, review the NYSDOS Coastal Area maps and any approved or pending Local Waterfront Revitalization Programs (LWRPs) (see TEM Section 4.4.6, Appendix D for link to current list) to determine if the project is wholly or partially in or affecting the State’s Coastal Area.

A project outside of a mapped Coastal Area may affect the Coastal Area if it will, for example:

- Cause changes in the manner in which land, water or other coastal area natural resources are used; cause limitations on the range of uses of coastal area natural resources; or cause changes in the quality of coastal area natural resources;
- Adversely affect physical features in the coastal area such as changing drainage or erosion rates or discharging toxic or hazardous substances;
- Adversely affect port development, traditional maritime activities, or other water-dependent uses;
- Adversely affect coastal fish or wildlife resources or wetlands; or
- Obstruct public access to the coastal area.

If the project is outside of and does not affect a Coastal Area, no Coastal Area consistency review is required. Document this determination in the design approval document.

If the project is in or affects the State’s designated Coastal Area and/or communities with approved or pending Local Waterfront Revitalization Programs (LWRPs) follow procedures in TEM Section 4.4.6 to document consistency with DOS-approved coastal policies.
**H.2. Coastal Erosion Hazard Areas (NYSDEC)**

A coastal erosion management permit is required for regulated activities in coastal erosion hazard areas, as mapped by NYSDEC.

If the project is not within 1000 feet of: the lakeshore of Lake Erie or Lake Ontario, the shoreline of Long Island, the shoreline of the Atlantic Ocean, and is not located on the Barrier Island section of Long Island, the project is not in a coastal erosion hazard area, thus no further steps are required for this procedure.

If the project is within 1000 feet of the lakeshore of Lake Erie or Lake Ontario, the shoreline of Long Island, the shoreline of the Atlantic Ocean, or is located on the Barrier Island section of Long Island, the project is potentially in a coastal erosion hazard area.

To determine if the project is in a mapped coastal erosion hazard area:

- Contact the NYSDEC regional contact person (listed in TEM Section 4.4.6, Appendix E) via telephone or fax with a description of project location (e.g., town name, road names, distance from shore). The NYSDEC regional contact will review the coastal erosion hazard maps to determine if the project is in a coastal erosion hazard area.

**OR:**

- If the project is not in a mapped coastal erosion hazard area, no further steps are required. Document in the design approval document that the project is not in a mapped coastal erosion hazard area.

If the project is in a mapped coastal erosion hazard area, follow procedures in TEM Section 4.4.6, Section VI, to determine if the project requires a Coastal Erosion Management Permit from NYSDEC.

**H.3. Coastal Barrier Resources System (USFWS)**

Federal law prohibits spending federal funds on construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any Coastal Barrier Resources System as mapped by the United States Fish and Wildlife Service (USFWS). Federal funds may be spent on the maintenance, replacement, reconstruction or repair, but not expansion, of any publicly owned or operated roads, structures or facilities that are essential links in a larger network or system.

In New York State, there are mapped Coastal Barrier Resources System units in Nassau, Suffolk, Queens, Jefferson, Oswego, Cayuga, Monroe and Erie Counties. If the project is not in one of these eight counties, no further procedures are required.

If the project is a federally-aided project in Nassau, Suffolk, Queens, Jefferson, Oswego, Cayuga, Monroe or Erie Counties, the Coastal Barrier Resources Act may be applicable. Review Barrier Resources Maps to determine if the project is in the Coastal Barrier Resources System in New York State (see TEM Section 4.4.6, Appendix E).

If the project is not in the Coastal Barrier Resources System, state this in the design approval document. No further steps are required.
If the project is in the Coastal Barrier Resources System, state this in the design approval document and identify the name and adoption date of the unit. Follow procedures in TEM Section 4.4.6, to determine if the project activity is permitted within the Coastal Barriers Resources System.

I. Wild, Scenic, and Recreational Rivers (TEM Section 4.4.3)

Review list of federal and state Wild, Scenic and Recreational Rivers (see TEM Section 4.4.6, Appendix D for links to current lists) to determine if the project is within ¼ mile of a National Designated Wild, Scenic, Study river, or a rivers on the Nationwide Rivers Inventory (NRI) or river corridor or within ½ mile of a State Designated River or river corridor.

If the project may affect a federal or state designated or study river or a river on the Nationwide Rivers Inventory (NRI), list, follow guidance in TEM Section 4.4.3 to assess whether or not the work of the project will affect the free-flowing characteristics of the involved river segment or will affect qualities of the river segment that pertain to its present federal/state and/or inventory classification/designation.

If the project is not in the vicinity of a designated or study river, no further study is warranted.

J. Aquifers (EPM 4.4)

Review the USEPA designated Sole Source Aquifer Areas Federal Register Notices, Maps and Fact Sheets provided in EPM Chapter 4.4 to determine if the project is located within such limits. Review the project scope to determine if the drainage pattern would be altered by such activities as filling, dredging, stream realignment, etc. Follow guidance in EPM Chapter 4.4.

If the project is not in the vicinity of a designated Sole Source Aquifer Area, no further study is warranted.

K. Historic and Cultural Resources (EPM Chapter 2)

Locally-administered, Federal-aid transportation projects are subject to Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800), which require Federal agencies to take into account the effects their actions have on historic and cultural resources. Any project with Federal funding, license, permit, or approval should be assessed to determine what is needed to satisfy the requirements of Section 106. FHWA is responsible for compliance with Section 106 for approval of federal funding.

The Project Submittal Package (PSP) (see Appendix 7-7) should be submitted to the Regional Local Project Liaison who coordinates review with the Regional Cultural Resource Coordinator to determine the need for further technical studies, assessments and documentation in compliance with Section 106.

Locally-administered, Federal-aid transportation projects are also subject to Section 4(f) (49 United States Code [U.S.C.] 303) of the Department of Transportation Act of 1966, which applies to publicly or privately owned significant historic sites. As used in the Section 4(f) regulations, the term “historic sites” is equivalent to “historic properties” under Section 106, and Section 4(f) historic sites are identified through the Section 106 process. While the Section 106 process is integral to the Section 4(f) process for historic sites, this does not alter the Department’s obligation to fully comply with both regulations by performing and documenting appropriate analysis and evaluation. For guidance on Section 4(f) for historic sites, see NYSDOT TEM Section 4.4.12.5.3.

L. Parks, Recreation Areas, Wildlife or Waterfowl Refuges - Section 4(f) (TEM Section 4.4.13.11)
Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. §303) and Section 18(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. §138) (collectively referenced as Section 4(f)) apply to publicly owned parks, recreation areas, wildlife or waterfowl refuges, and publicly or privately owned significant historic sites. The requirements of Section 4(f) apply only to agencies within the U.S. Department of Transportation which generally is the Federal Highway Administration (FHWA) for Locally Administered Federally Aid projects. The identification of Section 4(f) resources will be determined in consultation with NYSDOT, FHWA, Officials with Jurisdiction and the Sponsor.

In the event that land from a Section 4(f) resource is required for transportation ‘use’ and it is documented that (1) there is no feasible and prudent alternatives that would avoid use of the Section 4(f) resource and (2) the project includes all possible planning to minimize harm to that property, the Sponsor will need to obtain approval on the use from the FHWA in coordination with the RLPL and the Officials with Jurisdiction prior to Design Approval.

Procedural guidance for the Section 4(f) evaluation see NYSDOT TEM Section 4.4.13. Parks and Recreational Areas.

M. Parks and Recreational Areas - Section 6(f) (TEM Section 4.4.13.11)

Section 6(f) of the Land and Water Conservation Fund Act (LWCF) of 1965 (16 USC 460), is indirectly related to Section 4(f) and is only required for a small number of transportation projects that would cause the permanent conversion to uses other than for public outdoor recreation uses of parks and recreational properties acquired or developed with LWCF assistance. Acquisition of any identified LWCF land for highway use invokes the strictures of Section 6(f) and is applicable to Locally Assisted Federal Aid projects.

In the event that a Section 6(f) property is required for highway use and it has been documented that all efforts to avoid this property has been considered, the Sponsor will need to obtain approval on a conversion and land exchange from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) and the National Park Service (NPS) in coordination with the RLPL. In addition, Section 6(f) lands are often park and recreational lands protected under Section 4(f), therefore Section 4(f) approval by the FHWA would also be needed prior to any Section 6(f) conversion approval.

The first step is to determine if the project area involves Section 6(f) parkland using the NPS website. At the NPS website go to Project List by County and Summary Reports, select Detail Listing of Grants – with County Total, select New York and select the specific county. Since the NPS website only provides limited information such as LWCF grant type, sponsor name (i.e. city, town, county, agency), funding amount, and grant approval dates, further assessment is needed to determine if the parkland grant boundaries are within or adjacent to the proposed project area.

If the NPS website indicates Section 6(f) parkland is within the project vicinity, acquire the original LWCF grant application and close out map from the appropriate OPRHP Regional Grants Representative (OPRHP RGR)7.

If the description on the grant application and close out map clearly shows the proposed project activity is outside the parkland boundaries, then the Section 6(f) provisions do not apply. NOTE: No matter how or how much LWCF funds are invested in the parkland, the entire parcel included on the grant close out map is considered a Section 6(f) property.

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7 [http://nysparks.com/grants/contact.aspx](http://nysparks.com/grants/contact.aspx)
If the grant application and close out map indicates there is a Section 6(f) parkland adjacent to, or within the project area, the Sponsor will need to consult with the RLPL to determine the project activity type and finding for each alternative and the required NPS documentation for consultation with OPRHP and NPS.

N. Hazardous Waste (TEM Section 4.4.20)

Determine whether the project requires a hazardous waste screening/assessment.

If the project does not involve:

1. Acquisition of new right-of-way or permanent easement.
2. Disturbance of ground.
3. Relocation of utilities, OR
4. Demolition or substantial modification of buildings or structures, no hazardous waste screening/assessment is required.

For those projects requiring a hazardous waste screening/assessment, investigate previous activities by reviewing historical aerial photos, older maps, NYSDEC databases, and other sources. This can be performed by a database search firm (see list in Attachment 5.1.C of TEM Chapter 5.1) or by reviewing the following sources for previous activities on the property as appropriate based on the complexity and potential for contamination of the site:

- Aerial Photos - historic aerial photos, generally at 1:140,000 scale or larger, may help identify previous land uses. Sources of information include: U.S. Geological Survey (USGS) at (888) ASKUGS and the NYSDOT Inventory of Aerial Photography as developed by NYSDOT Map Information Unit.
- Older Maps - contact NYSDOT Map Information Unit as a potential source of information and old maps.
- Sanborn Maps - Sanborn Fire Insurance Maps may indicate former industrial/commercial activities and are particularly useful for historically developed areas. Maps can be viewed at the Library of the State University of New York at Binghamton and the Archives of the New York State Museum in Albany, or purchased from EDR Sanborn, Inc.
- NYSDEC Hazardous Waste Site Registry - The registry lists descriptions and status of listed contaminated sites. The registry can be obtained from NYSDEC Division of Environmental Remediation.
- NYSDEC Tank Registry List and NYSDEC Spills Database - These records of registered tanks or spills can provide an indication of the potential for contamination at a site. The information is available from NYSDEC Spill Prevention and Response or from the Regional NYSDEC Spills Management Unit for the location.
- Other State Sources - such as New York State Department of Health.
- Federal Sources - such as USEPA.
- Local Sources - such as historical societies, county health and emergency planning units
- Interviews with Residents.

Follow procedures in TEM Chapter 5.1 to conduct hazardous waste screening/survey. If information from any of the sources reviewed suggest that contaminated materials might be encountered on the project, conduct a site visit to document current site uses, filling in information on site inspection checklist (see Attachment 5.1.G of TEM Chapter 5.1).

If information from the survey or site visit indicates that significant contaminated materials might be encountered on the project, a hazardous waste and contaminated materials assessment/survey
involving testing of the suspected areas may be required. This should be conducted by qualified staff with experience in conducting hazardous waste assessments.

**O. Asbestos (TEM Section 4.4.19)**

Determine whether an asbestos screening is warranted for the project. An asbestos screening is warranted for the project to identify suspect asbestos-containing material (ACM) for assessment if the project involves:

- Demolishing or altering a building;
- Demolishing or rehabilitating a bridge or culvert; OR.
- Replacing or disturbing ANY utility conduit.

If the finding from the asbestos screening determines that the project may potentially disturb suspect asbestos-containing material (ACM), a certified consultant must conduct an asbestos survey following procedures outlined in TEM Chapter 1.3.

**P. Farmlands (TEM Section 4.4.15)**

Projects funded with federal funds are subject to the Federal Farmland Protection Policy Act (FPPA). Maps showing the federal farmland classifications of prime and unique soils need to be reviewed to determine if any farmland defined as prime, unique, or of statewide or local importance will be affected as part of the project. These maps are available from the county Natural resources Conservation Service. Projects with any of these types of farmland must coordinate with the United States Department of Agriculture (USDA) and prepare a Farmland Impact Rating Form. Refer to TEM 4.4.15.5.1 Federal Procedure.

Projects that will result in the acquisition of land in excess of 1 acre from an actively operated farm in a designated State Agricultural District or in excess of 10 acres from within any one district must coordinate with the NYS Department of Agriculture and markets and prepare a Notice of Intent. The Notice of Intent provisions also apply if state or federal funds are used for the construction of commercial, industrial, water or sewer facilities to serve non-farm structures within an Agricultural District. This applies regardless of the acreage of any real estate taking. Refer to TEM 4.4.15.5.2 State Agricultural Districts.

**Q. Energy (EPM Chapter 1.B)**

An energy analysis is performed to consider the energy impacts of major transportation projects which could affect the use of energy during construction of the facility and its subsequent operation. It is assumed that projects approved under the Local Projects program are not the type to warrant an energy analysis. If the project is a major transportation project that may warrant an energy analysis, the project sponsor should refer to the EPM Chapter 1.B and contact the Regional Local Projects Liaison.

**R. Smart Growth**

New York State Smart Growth Public Infrastructure Policy Act of 2010 (SGPIPA) applies to all projects. The purpose of the act is to minimize the unnecessary costs of sprawl-inducing development, promote the efficient use of public infrastructure and limit or reduce the adverse impacts of growth on the built and natural environment. Smart Growth means maximizing the social, economic and environmental benefits of public infrastructure investment by minimizing the costs associated with sprawl. Such adverse impacts include disinvestment in urban and suburban communities, loss of open space,
creation and continuation of inefficient transportation systems, generation of additional air pollution and related forms of environmental degradation.

Publicly supported investments in transportation infrastructure should be consistent with the smart growth public infrastructure criteria as specified in the law and related regulations. This determination is to be documented using the Smart Growth Screening Tool. The completed document will be reviewed by the NYSDOT Region; a determination will be made, and attested to, by the NYSDOT Region as to whether the project complies with intent of the act. Until Preliminary Engineering is completed, however, it may not be possible to determine whether or not the project will comply fully with the SGPIPA.

To determine if a project promotes and supports Smart Growth principles, the reviewer should consult the criteria in ECL § 6 -0107 (2) and ask the following questions:

Does the project:

a. Promote the use, maintenance or improvement of existing infrastructure?
b. Involve development located in municipal centers?
c. Involve development in areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan?
d. Protect, preserve and enhance the New York State's resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources?
e. Foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income and age groups?
f. Provide mobility through transportation choices including improved public transportation and reduced automobile dependency?
g. Coordinate between state and local government and intermunicipal and regional planning?
h. Involve participation in community based planning and collaboration?
i. Ensure predictability in building and land use codes?
j. Promote sustainability by strengthening existing communities and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring that the governance structure is adequate to sustain its implementation?

See Appendix 7-12, Smart Growth Screening Tool, and Appendix 7-13, Smart Growth Screening Tool Guidance.

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8 NYS Environmental Conservation Law: 6 NYCRR Part 617
APPENDIX 7-3
Sample Transmittal Letter from Sponsor to RLPL for Submission of Project for Concurrence with NEPA Categorical Exclusion Determination

[NOTE: Print on Sponsor’s Letterhead]

(date)
Regional Local Projects Unit, Region 1
New York State Department of Transportation
50 Wolf Rd.
Albany, New York 12232

RE: Request for Categorical Exclusion
PIN 1234.56.121; Bridge Replacement
CR 111 Over the Hannacrois Creek
Town of Coeymans, Albany County

Dear

We request your concurrence with the NEPA Categorical Exclusion determination for the subject project. A copy of the (add date) Design Report is attached. The NEPA Assessment Checklist is included in the Design Report as Appendix __. [Insert the following sentence when CE with Documentation: “The supporting documentation for the Categorical Exclusion classification is on pages __ through __ of the Design Report.”]

This project will not cause significant impacts to planned growth or land use, does not require relocation of significant numbers of people; does not have a significant impact on natural, cultural, recreational, historic or other resource; does not involve significant air, noise or water quality impacts; does not have significant impacts on travel patterns; and does not otherwise, either individually or cumulatively, have any significant environmental impacts. On the basis of 23 CFR 771, 771.115(b) and 771.117(d) and the documentation in the attached Design Report, please forward your concurrence with the Categorical Exclusion determination to our office.

All requirements requisite to these actions and approvals have been met; independent quality control reviews have been accomplished; and the work is consistent with established standards, policies, regulations and procedures, except as otherwise noted and explained in this memo.

Please contact me at (xxx) xxx-xxxx if you have any questions.

Sincerely,

John Snow, P.E.

Attachments
APPENDIX 7-4
Sample Transmittal Letter from RLPL to Sponsor Providing
NYSDOT Concurrence with NEPA Categorical Exclusion Determination

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232

(date)
John Snow, P.E.
County Highway Superintendent
Public Works Department of Albany County
5000 Main Street
Westerlo, NY 12193

RE: Request for Categorical Exclusion
PIN 1234.56.121, Bridge Replacement
CR 111 over Hannacrois Creek
Town of Coeymans, Albany County

Dear Mr. Snow:

A completeness review has been completed on the [DATE] Design Report and the NEPA Assessment Checklist. We concur with your classification of the subject project as a categorical exclusion.

If any substantial changes to the project are proposed, please contact me at (xxx) xxx-xxxx to discuss the possible need to reevaluate the project.

Sincerely,

Regional Local Project Liaison

cc: Regional Director, Region X
    Regional Liaison Section, Design Quality Assurance Bureau, POD 2-3 (w/att. Design Report and NEPA Checklist)
    Project Management Bureau, POD _____
APPENDIX 7-5
Sample Transmittal Letter from RLPL to FHWA Requesting Concurrence with NEPA Categorical Exclusion with Documentation Determination

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232

Division Administrator
Federal Highway Administration
Leo W. O’Brien Federal Building, Suite 719
Albany, New York 12207

Attention [Area Engineer]

Subject: ADD PIN, Description, Location

Dear

We request your review of the attached (insert date) Draft Design Report. We have determined that the subject project is a NEPA Class II (Categorical Exclusion with Documentation) and we request your concurrence with this determination. The NEPA Checklist is located in Appendix B. Documentation for Question 7 supporting the categorical exclusion determination is located at the end of the NEPA Checklist.

This project is considered to be SEQRA Type II.

The project is consistent with the definition of categorical exclusion found in 40 CFR 1508. Also, in accordance with 23 CFR 771.117(a), it does not cause significant impacts to planned growth or land; does not require relocation of significant numbers of people; does not have a significant impact on any natural; cultural, recreational, historic or other resources; does not involve significant air, noise, or water quality impacts; does not have significant impacts on travel patterns; or does not otherwise, either individually or cumulatively, have any significant environmental impacts.

Please contact me if you have any questions.

Very truly yours,

Regional Local Project Liaison

Enclosure: Draft Design Report

cc: Sponsor
APPENDIX 7-6
Sample Transmittal Letter from the RLPL to FHWA
Requesting Endangered Species Act Section 7 Effect Determination

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232

Division Administrator
Federal Highway Administration
Leo W. O’Brien Federal Building, Suite 719
Albany, New York 12207

Attention Area Engineer

Subject:

Dear

We request your determination of the effect of the subject project on federally listed endangered and threatened species and designated critical habitat. Attached is a summary of the species screening and habitat assessment, as well as a copy of project plans. Based on this information, we have concluded that the project [will have no effect on] [may affect] federally listed species and/or critical habitat.

Please contact me if you have any questions.

Very truly yours,

Regional Local Project Liaison

Enclosure

cc: Sponsor
APPENDIX 7-7

NEW YORK STATE DEPARTMENT OF TRANSPORTATION PROJECT SUBMITTAL PACKAGE
Section 106 of the National Historic Preservation Act
For Locally-Administered Federal-Aid Projects

A Project Submittal Package is prepared by the Local Project Sponsor (Sponsor) or their consultants for federal aid transportation projects to provide sufficient information for NYSDOT assessment of Section 106 obligations. The Sponsor sends the package to the Regional Local Project Liaison for Regional Cultural Resource Coordinator (RCRC) review. The RCRC will make recommendations to identify what is needed for Section 106 compliance for the project.

DATE:  PIN:  BIN(s) (include original construction date(s)):

IDENTIFICATION
Project Name (if any):
Project Area Boundaries:
(Indicate State or County Route # and/or local street name, and clearly defined endpoints)

County:  Town/City:  Village/Hamlet:

ALL PROJECTS SUBMITTED FOR REVIEW SHOULD INCLUDE THE FOLLOWING INFORMATION

☐ Project Description – Attach a full description of the nature and extent of the work to be undertaken as part of this project. This should include, but not limited to, potential activities that might involve drainage, cutting, excavation, grading, filling, on-site detours, new sidewalks, right-of-way acquisition. Relevant portions of the project applications or environmental statements may be submitted. This could be from sections of the Draft Design Report/Draft Scoping Document.

☐ Location Maps - Provide USGS Quad or DOT Planimetric map showing project area location. The map must clearly show street and road names surrounding the project area as well as all portions of the project.

☐ Photos - Provide clear, original color photographs of the entire project area keyed to a site plan. These photos should indicate:
  - Buildings/structures more than 50 years old that are located along the property or on adjoining property
  - Areas of prior ground disturbance (removal of original topsoil; filling and plowing are not considered disturbance)

LOCAL SPONSOR CONTACT

Firm/Agency:  
Name:  Title:  
Address:  City:  
State:  Zip:  Phone:  E-Mail:
APPENDIX 7-8
Section 106 Finding Documentation Package

PIN: XXXX.XX.XXX
SHPO PROJECT REVIEW NUMBER (PR#)
ROUTE
TOWN AND COUNTY

1. Project Description

Describe the undertaking, specifying:
- Federal involvement
- Area of Potential Effect (APE) – horizontal and vertical - and how it was defined
- Length and width / depth of APE
- Physical environment (urban, rural, village, industrial, commercial)

Reference attached project plans, maps, and photographs, as appropriate. (See Item #6, Attachments, for details).

2. Steps Taken to Identify Historic Properties

Describe steps taken to identify historic properties. List all cultural resource studies performed for the project, including title, author, and date:
- Cultural Resource Survey Report(s); identify PIN and PR# (if other than current)
- Building/Structure or Bridge Inventory Forms (if not included in CRS Reports)
- Cultural Resource Screening by the Regional Cultural Resource Coordinator (RCRC)
- Bridge evaluation by the NYSDOT Historic Bridge Inventory (2002)

3. Evaluation of Project Impact on Identified Historic Properties

List each historic property (National Register listed or eligible building, structure, district, object or archaeological site) identified within the APE. Include street address, name, or site number as appropriate, and OPRHP Unique Site Number (USN). For historic districts, list the district name followed by all contributing properties.

For each historic property, address the following:
- Characteristics that qualify the property for the National Register of Historic Places
- Contributing elements of the setting (e.g. landscape features, outbuildings, setback or placement, spatial arrangement of resources)
- Impacts associated with proposed project activities under each alternative

Summarize proposed changes, both positive and negative, to each historic property, including contributing elements of the setting. Contrast proposed changes with existing conditions, as shown on the project plans (Item #6). For a historic district, describe changes to the district as a whole as well as any changes to individual resources that contribute to its significance.

4. Basis for Recommended Project Finding

For each feasible and prudent alternative, apply the Criteria of Adverse Effect (36 CFR 800.5(a)) to all historic properties within the APE. Consider any views concerning project effects which have been provided by Consulting Parties. Identify the individual who assessed the undertaking’s effect on historic properties. While a number of individuals may contribute documentation in support of the effect finding, it is the responsibility of
the Regional Cultural Resource Coordinator (RCRC) to assess the project effect.

- If the project will have No Effect on historic properties, explain why the Criteria of Adverse Effect do not apply; OR
- Explain why the Criteria of Adverse Effect apply, considering the following:
  - Will the project alter any characteristics that qualify historic properties for the National Register?
  - Are anticipated effects to historic properties direct or indirect?
  - Will the project diminish the integrity of the historic property’s location, design, setting, materials, workmanship, feeling, or association?
- Describe any measures, including future actions, to avoid or minimize effects on identified historic properties. Future actions may include, for example, measures to avoid inadvertent impacts to archaeological sites or landscape features during construction.
- For No Adverse Effect Findings, describe any conditions to avoid adverse effects.
- For Adverse Effect Findings, describe steps proposed to resolve adverse effects, including continuing consultation, mitigation measures, and development of a Memorandum of Agreement, as appropriate.

5. Public Involvement

- Describe efforts to seek public input concerning the project’s effect on historic properties.
- Provide copies of correspondence or summaries of any views provided by Consulting Parties and the public.

6. Attachments

Project location map and plans depicting:
- Limits of the APE established for the project
- Locations of all historic properties within the APE (identified as listed under #3 )
- Boundaries for archaeological sites and historic districts
- Existing conditions and proposed design
  - Cut and fill lines
  - Existing and proposed limits of work and right of way
  - Changes in profile
  - Streetscape changes (lighting, parking, sidewalks, etc.)
  - Tree removals designated by standard notation (X)

Supplemental documentation as needed:
- For historic bridges, an inspection report or condition assessment by a Structural Engineer, with supporting photographs to illustrate condition problems
- Documentation for identified historic properties within the APE not included in Cultural Resource Survey Reports
  - NYSDOT Bridge, Historic Resource, or Historic District Inventory Forms;
  - NYS Prehistoric or Historic Site Inventory Forms;
  - National Register of Historic Places Registration Form
- Photographs of affected historic properties and their setting, keyed to site plans
- General photographs illustrating the physical environment of the APE
APPENDIX 7-9
NYSED Reconnaissance (Phase I) Survey Report Format

I. TITLE PAGE
A. Cultural Resource Survey Type
B. Program Year
C. PIN, BIN, and PR# (if available)
D. Project Name – Location
E. Prepared by [Cultural Resources Consultant Name]
F. Date
G. Sponsor Name

II. MANAGEMENT SUMMARY (OUTLINE FORMAT)
A. DOT PIN and BIN and PR# (if available): ____________________________
B. Funding type (state or federal): _________________________________
C. Cultural resource survey type: _________________________________
D. LOCATION INFORMATION
   Route (from – to): __________________________________________
   Minor Civil Division\(^9\) (give MCD number): ______________________
   County: __________________________________________________
E. SURVEY AREA
   Length: __________________________________________________
   Width: ___________________________________________________
   Acres: ____________________________________________________
F. U.S.G.S. 7.5 Minute Quadrangle Map: __________________________
G. SENSITIVITY ASSESSMENT
   Prehistoric (high, medium, low): _______________________________
   Historic (high, medium, low): _________________________________
H. ARCHAEOLOGICAL SURVEY METHODOLOGY
   Number of shovel test pits: _______
   Number of units: _______________
   Surface survey (yes/no): _______
I. RESULTS OF ARCHAEOLOGICAL SURVEY
   Number of prehistoric sites identified: _______________
   Number of historic sites identified: _______________
   Number of sites recommended for investigation: ____________
   Number of listed/eligible or potentially eligible S/NRHP sites identified:_______________
J. RESULTS OF ARCHITECTURAL SURVEY
   (Reference page number of summary charts)
   Number of buildings/structures in project area: _______________
   Number of known NR listed/eligible buildings/structures: _______
   Number recommended eligible buildings/structures or districts: ______
   Number of S/NRHP listed/eligible or recommended eligible buildings/structures identified:
K. AUTHOR/CONSULTANT: ___________________________
L. DATE: __________________________________________
M. SPONSOR NAME: ___________________________

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\(^9\) Minor civil division (MCD) is a term used by the United States Census Bureau to designate the primary governmental and/or administrative divisions of a county, such as a civil township, precinct, or magisterial district. As of 2010, MCDs exist in 29 states and the District of Columbia. [http://www.census.gov/popest/data/cities/totals/2011/SUB-EST2011-4.html](http://www.census.gov/popest/data/cities/totals/2011/SUB-EST2011-4.html)
III. **TABLE OF CONTENTS** (includes the page number of each historic resource inventory form, archaeological site form, table summarizing the location of S/NRHP eligible buildings/structures, and summary of identified S/NRHP eligible buildings/structures within the project area). List of Photographs and Figures.

IV. **ARCHAEOLOGICAL SURVEY**

A. Project description (reference source of information)
   1. Details on project work scope and location
   2. Survey Width – specify from centerline
   3. Survey Length – total length of surveyed area

B. General Project Area
   1. Maps of project location (i.e. state, county, town)
   2. Photographs of current land use (commercial, rural, suburban etc.)

C. Background Research
   1. Site file search (table format preferred). Include the site name/number, site type, location, whether it is listed (L), eligible (E), or inventoried (I) and source information:
      - New York State Museum (NYSM)
      - State Historic Preservation Office/Office of Parks, Recreation & Historic Preservation (SHPO/OPRHP)
      - Universities
      - County/town
      - Interviews
   2. Environmental Setting (Brief and Relevant)
      a. Topography
      b. Soils (summary of dominant series)
      c. Drainage and distance to nearest water source
      d. Type and extent of disturbance with documentation if available
   3. Prehistoric Context
      a. Brief overview of settlement pattern focusing on site types expect to find in project area (The scope of this overview should be specific to project area based on existing knowledge).
      b. Prehistoric site sensitivity (Based on integration of environmental information, site file data, overview, and current land use/disturbances)
   4. Historic Context (For archaeological sites, buildings, districts, structures and objects)
      a. Major historic trends or themes for project area.
      b. Historic maps – map documented structure (MDS) and structures summary table
      c. Historic site sensitivity (Based on historic map results, information about settlement prior to historic maps, and current land use/disturbance)

D. Archaeological Survey Methodology
   1. Project walkover
      a. Areas eliminated from testing (steep slope, standing water, disturbance, access denied)
   2. Testing procedures
      a. Surface survey
      b. Subsurface testing
         i. size/placement and interval/depth
         ii. total number of tests

E. Archaeological Survey Results
   1. Brief overview of results, including negative results
   2. Table summarizing the results of archaeological investigations at MDS and standing buildings/structures
   3. Site descriptions
      a. Context statement
b. Site size (horizontal and vertical)
c. Site location
d. Site characteristics (including period of significance)
e. Summary of quantity and kinds of artifacts
f. Artifact distributions – horizontal and vertical
g. Identified features
h. Integrity
i. Research potential
j. Potential impacts (include site exam request information)

4. SHPO/OPRHP site form follows each site description. This form includes the brief summary of the site, a summary of S/NRHP eligibility, and under which criteria the site is eligible for the S/NRHP.

V. ARCHITECTURAL SURVEY
(If no archaeological survey is required include from above items IV.A, IV.B, IV.C.4)
A. Methodology (Include review of SHPO/OPRHP database/discussions with SHPO/OPRHP staff)
B. Results – begin with a brief summary of findings under subheadings: Recommended S/NRHP eligible buildings/structure, historic districts, non S/NRHP eligible properties, etc.
   1. Table of all buildings/structures and objects (include bridges, monuments, and cemeteries) (Include in table local street name, if known, with street address grouped by MCD then address.)
   2. Table of recommended S/NRHP eligible (inventoried) buildings/structures and districts.
   3. NYSDOT Historic Resource Inventory Form for all eligible buildings/structures. For proposed historic districts include District Form and photos of each building/structure. Include a table listing contributing and non-contributing properties. Include NYSDOT Bridge Inventory form if the bridge has not been previously evaluated and is recommended S/NRHP eligible.
   4. Photographs
      a. Separate photographs placed after forms for all buildings/structures at least 50 years old showing associated landscape features and outbuildings
      b. Streetscapes to show the general setting for recommended S/NRHP eligible districts

5. Organization of Photographs and Inventory Forms
   a. Inventory forms with photograph and location map ordered sequentially by address and location
   b. Buildings/structures forming recommended S/NRHP eligible districts grouped together as district with photographs of streetscapes showing district boundaries. Preliminary district boundaries drawn on project map
   c. Photographs of buildings/structures at least 50 years old recommended not S/NRHP eligible placed at end of the report, ordered sequentially with and by address or location
   d. Associated outbuildings grouped and labeled with the principal building/structure

VI. APPENDICES
A. References and interviews
B. Test pit data/artifact catalog
C. Correspondence (include, SHPO/OPRHP letters, NYSDOT Region letters, S/NRHP and/or inventory forms)
D. Project map (Metric/English)
   1. Project area boundary
   2. Shovel test pits (w/ and w/out artifacts)
   3. Buildings and structures (NRE/ not NRE)
   4. MDS locations
   5. Photo angles
   6. Site names, numbers, and boundaries
7. Areas not tested (standing water, steep slope, disturbance, access denied)
8. Boundaries of recommended S/NRHP eligible and S/NRHP listed historic districts
E. Nomination forms for S/NRHP listed properties
APPENDIX 7-10
Memorandum of Agreement Template

This is the Advisory Council on Historic Preservation’s template is for a two-party agreement but can be modified to include additional parties (i.e. NYSDOT, SPONSOR).

MEMORANDUM OF AGREEMENT
BETWEEN [insert Sponsor]

AND THE

[Insert name of State or Tribe]
["STATE" or "TRIBAL"] HISTORIC PRESERVATION OFFICER

REGARDING THE [insert project name and location]

WHEREAS, the [Agency] ([insert Agency abbreviation]) plans to ["carry out" or "fund" or "approve"/"license"/"permit" or other appropriate verb] the [insert project name] (undertaking) pursuant to the [insert name of the substantive statute authorizing the Federal agency involvement in the undertaking], [insert legal cite for that statute]; and

WHEREAS, the undertaking consists of [insert a brief explanation of the undertaking]; and

WHEREAS, [Agency abbreviation] has defined the undertaking's area of potential effect (APE) as [insert written description and/or "described in Attachment XXX"]; and

WHEREAS [Agency abbreviation] has determined that the undertaking may have an adverse effect on [insert name of historic property(ies)], which ["is" or "are"] ["listed in" or "eligible for listing in"] the National Register of Historic Places, and has consulted with the [insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer ("SHPO" or "THPO") pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS [Agency abbreviation] has consulted with the [insert name of Tribe(s)], for which [insert name of historic property(ies)] ["has" or "have"] religious and cultural significance, and has invited the Tribe[s] to sign this Memorandum of Agreement (MOA) as an invited signatory [insert this whereas clause if appropriate]; and

WHEREAS, [Agency abbreviation] has consulted with [insert names of other consulting parties, if any] regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a ["invited signatory(ies)" or "concurring party(ies)"]; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), [Agency abbreviation] has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, [Agency abbreviation] and the ["SHPO" or "THPO"] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.
STIPULATIONS

[Agency abbreviation] shall ensure that the following measures are carried out:

[I.-III. (Or whatever number of stipulations is necessary) Insert negotiated measures to avoid, minimize, or mitigate the adverse effects on historic properties.]

IV. DURATION

This MOA will be null and void if its terms are not carried out within five (5) years [or specify other appropriate time period] from the date of its execution. Prior to such time, [Agency abbreviation] may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, the [Agency abbreviation] shall implement the discovery plan included as attachment [insert number of attachment] of this MOA. [Insert this stipulation if there is an indication that historic properties are likely to be discovered during implementation of the undertaking.]

VI. MONITORING AND REPORTING

Each [insert a specific time period] following the execution of this MOA until it expires or is terminated, [Agency abbreviation] shall provide all parties to this MOA ["and the ACHP" if desired] a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in [Agency abbreviation]'s efforts to carry out the terms of this MOA.

VII. DISPUTE RESOLUTION

Should any signatory * or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, [Agency abbreviation] shall consult with such party to resolve the objection. If [Agency abbreviation] determines that such objection cannot be resolved, [Agency abbreviation] will:

A. Forward all documentation relevant to the dispute, including the [Agency abbreviation]'s proposed resolution, to the ACHP. The ACHP shall provide [Agency abbreviation] with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, [Agency abbreviation] shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. [Agency abbreviation] will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, [Agency abbreviation] may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, [Agency abbreviation] shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. [Agency abbreviation]'s responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
VIII. AMENDMENTS
This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, [Agency abbreviation] must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. [Agency abbreviation] shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the [Agency abbreviation] and ["S" or "T"]HPO and implementation of its terms evidence that [Agency abbreviation] has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.**

SIGNATORIES:

[insert Agency name]

________________________________________ Date
[insert agency official name and title]

[insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer

________________________________________ Date
[insert name and title]

INVITED SIGNATORIES:

[insert invited signatory name]

________________________________________ Date
[insert name and title]

CONCURRING PARTIES:

[insert name of concurring party]

________________________________________ Date
[insert name and title]
Notes:

* This document assumes that the term "signatory" has been defined in the agreement to include both signatories and invited signatories.

** Remember that the agency must submit a copy of the executed MOA, along with the documentation specified in Sec. 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of section 106. 36 CFR § 800.6(b)(1)(iv).
APPENDIX 7-11
Memorandum of Agreement Template (Archaeology Only)

To be used when adverse effects are limited to archaeological resources and Data Recovery is agreed upon as appropriate mitigation and no other historic properties are affected by the project.

MEMORANDUM OF AGREEMENT

Among

The Federal Highway Administration
The New York State Historic Preservation Office
The New York State Department of Transportation

And

(Sponsor Name)

Pursuant to 36 CFR 800

For

RECOVERY OF SIGNIFICANT ARCHAEOLOGICAL INFORMATION

For

at the ____________ Archaeological Site (OPRHP USN#)

PIN: ___________

(C)(V)(T), ___________, County, New York

PR # __

WHEREAS, the Federal Highway Administration (FHWA), in coordination with the New York State Department of Transportation (NYSDOT) and (Sponsor Name) (Sponsor) propose a federally-funded project on Route ___ in ___________ (insert location) to _________ (insert project description); and

WHEREAS, the (SPONSOR) is the sponsor of the locally-administered Federal-aid transportation project, will be responsible for implementation of the project, has participated in consultation and has been invited by FHWA to be a signatory to the Agreement; and

WHEREAS, the Sponsor, in coordination with NYSDOT has established the Area of Potential Effect (APE) for the undertaking, as the term is defined in 36 CFR 800.16(d), as ________________ (describe APE); and

WHEREAS, the SPONSOR in coordination with NYSDOT and FHWA have conducted cultural resource studies and determined pursuant to 36 CFR 800.4(c), and in consultation with the State Historic Preservation Office (SHPO), that the following historic properties within the APE are eligible for or listed in the National Register of Historic Places (insert above and below-ground resources); and

WHEREAS, FHWA and NYSDOT, and in consultation with the State Historic Preservation Office (SHPO), have applied the Criteria of Adverse Effect, as defined by 36 CFR 800.5(a)(1), and determined the project will have an adverse effect on the _________ archaeological site(s) within the APE; and
WHEREAS, in accordance with Section 101 (d)(6)(B) of the National Historic Preservation Act, the FHWA and the NYSDOT have contacted federally-recognized tribal nations in New York State that have identified aboriginal territory in _____ County, and ensured a reasonable opportunity for consultation in the Section 106 process; and

WHEREAS, in accordance with 36 CFR Part 800, the FHWA and the NYSDOT ensure that Conditions 1 through 12 outlined in the Advisory Council on Historic Preservation's (Council), “Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites,” and attached as Appendix 1 to this document shall be satisfied; and

WHEREAS, the FHWA, the NYSDOT, NYSHPO, (and _____ Indian nation or consulting parties as appropriate) agree that recovery of significant information from the archaeological sites listed above may be done in accordance with the published guidance; and

WHEREAS the FHWA, the NYSDOT, NYSHPO, (and _____ Indian nation or consulting parties as appropriate) agree that the _____ Archaeological Site is significant and of value chiefly for the information on prehistory or history that it is likely to yield through archaeological, historical, and scientific methods of information recovery, including archaeological excavation; and

WHEREAS, the FHWA, the NYSDOT, NYSHPO and (other parties) agree that it is in the public interest to expend funds to implement this project through the recovery of significant information from the _____ Archaeological Site and mitigate the adverse effects of the project; and

WHEREAS, based on available information, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 USC. 3001), are expected to be encountered in the archaeological work;

NOW, THEREFORE, the FHWA, the NYSDOT, NYSHPO, SPONSOR (and other parties) agree that execution of this agreement evidences that the FHWA has taken into account the effects of this undertaking on significant archeological properties and fulfilled its responsibilities under Section 106 of the 1966 National Historic Preservation Act (as amended).

STIPULATIONS:

FHWA, in coordination with NYSDOT and SPONSOR, shall ensure the following stipulations are carried out:

1. Data Recovery investigations shall be implemented in accordance with the approved Archaeological Data Recovery Plan attached as Appendix 2, accepted by the NYSDOT, FHWA and SHPO.

2. Investigation and documentation shall be conducted in accordance with the Standards in the current New York State Education Department’s (SED) Cultural Resource Survey Program Work Scope Specifications for Cultural Resource Investigations for NYSDOT Projects, which incorporates the New York Archaeological Council’s [NYAC’s] "Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State," 1994 (NYAC Standards).

3. In the event that evidence of a human burial is encountered during data recovery or construction operations, NYSDOT’s Procedures for Locally Administered Federal Aid Projects - Chapter 7 shall be implemented to initiate consultation with the FHWA, NYSDOT, SHPO and Native American and other appropriate groups and determine the appropriate treatment and disposition of identified human remains and associated artifacts.

4. Any conditions or measures agreed upon to avoid or minimize effects to other historic properties shall be implemented.
TERMS AND CONDITIONS:

- Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement.

- Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the Council to assist in resolving the dispute.

- If the Data Recovery Plan is not implemented within two years of the execution of this agreement, it shall be updated and submitted to the SHPO for review. Upon the mutual written consent of all signatories, revisions to the Data Recovery Plan shall be adopted and implemented without necessitating amendments to this agreement.

Execution of this Memorandum of Agreement by the FHWA, NYSDOT, SPONSOR and SHPO, and filing with the Council as specified in 36 CFR 800.6b)(1)(IV) and the implementation of its terms shall be evidence that the FHWA has taken into account the effects of the project on historic properties.

Federal Highway Administration: ________________________________
Date: ____________________________

State Historic Preservation Officer: ________________________________
Date: ____________________________

NYS Department of Transportation Official: ____________________________
Date: ____________________________

SPONSOR: ____________________________
Date: ____________________________
APPENDIX 7-11
MOA APPENDIX 1

Advisory Council on Historic Preservation Conditions: Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites.

1. The archaeological site(s) should be significant and of value chiefly for the information on prehistory or history they are likely to yield through archaeological, historical, and scientific methods of information recovery, including archaeological excavation.

2. The archaeological site should not contain or be likely to contain human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as those terms are defined by the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC. 3001).

3. The archaeological site should not have long-term preservation value, such as traditional cultural and religious importance to an Indian tribe or a Native Hawaiian organization.

4. The archaeological site should not possess special significance to another ethnic group or community that historically ascribes cultural or symbolic value to the site and would object to the site’s excavation and removal of its contents.

5. The archaeological site should not be valuable for potential permanent in-situ display or public interpretation, although temporary public display and interpretation during the course of any excavations may be highly appropriate.

6. The Federal Agency Official should have prepared a data recovery plan with a research design in consultation with the SHPO and other stakeholders that is consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation and the Advisory Council on Historic Preservation’s Treatment of Archaeological Properties: A Handbook. The Plan should specify:

   a) The results of previous research relevant to the project;
   b) research problems or questions to be addressed with an explanation of their relevance and importance;
   c) the field and laboratory analysis methods to be used with a justification of their cost-effectiveness and how they apply to this particular property and these research needs;
   d) the methods to be used in artifact, data and other records management;
   e) explicit provisions for disseminating the research findings to professional peers in a timely manner;
   f) arrangements for presenting what has been found and learned to the public, focusing particularly on the community or communities that may have interests in the results;
   g) the curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR 79 (except in the case of unexpected discoveries that may need to be considered for repatriation pursuant to NAGPRA); and
   h) procedures for evaluating and treating discoveries of unexpected remains or newly identified historic properties during the course of the project, including necessary consultation with other parties.

7. The Federal Agency Official should ensure that the data recovery plan is developed and will be implemented by or under the direct supervision of a person, or persons, meeting at a minimum the Secretary of the Interior’s Professional Qualifications Standards (48 FR 44738-44739).

8. The Federal Agency Official should ensure that adequate time and money to carry out all aspects of the plan are provided, and should ensure that all parties consulted in the development of the plan are kept informed of the status of its implementation.
9. The Federal Agency Official should ensure that a final archaeological report resulting from the data recovery will be provided to the SHPO. The Federal Agency Official should ensure that the final report meets professional standards and to the Department of the Interior’s Format Standards for Final Reports of Data Recovery Programs (41 FR 5377-79).

10. Large, unusual, or complex projects should provide for special oversight, including professional peer review.

11. The Federal Agency Official should determine that there are no unresolved issues concerning the recovery of significant information with any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to the affected property.

12. Federal Agency Officials should incorporate the terms and conditions of this recommended approach into a Memorandum of Agreement or Programmatic Agreement, file a copy with the Council per 36 800.6(b)(iv), and implement the agreed plan. The agency should retain a copy of the agreement and supporting documentation in the project files.

**MOA Appendix 2: Data Recovery Plan (Title, Author, Date)**

[Insert Data Recovery Plan prepared by archaeological consultants, reviewed and approved by the Sponsor, NYSDOT, and SHPO.]
APPENDIX 7-12

Smart Growth Screening Tool  (STEP 1)

NYSDOT & Local Sponsors – Fill out the Smart Growth Screening Tool until the directions indicate to STOP for the project type under consideration. For all other projects, complete answering the questions. For any questions, refer to Smart Growth Guidance document.

<table>
<thead>
<tr>
<th>Title Of Proposed Project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of Project:</td>
</tr>
<tr>
<td>Brief Description:</td>
</tr>
</tbody>
</table>

A. Infrastructure:

(Addresses SG Law criterion a. - To advance projects for the use, maintenance or improvement of existing infrastructure)

1. Does this project use, maintain, or improve existing infrastructure?
   - Yes ☐
   - No ☐
   - N/A ☐

Explain: (use this space to expand on your answers above – the form has no limitations on the length of your narrative)

Maintenance Projects:

A. Continue with screening tool for the four (4) types of maintenance projects listed below, as defined in NYSDOT PDM Exhibit 7-1 and described in 7-4:
   - Shoulder rehabilitation and/or repair;
   - Upgrade sign(s) and/or traffic signals;
   - Park & ride lot rehabilitation;
   - 1R projects that include single course surfacing (inlay or overlay), per Chapter 7 of the NYSDOT Highway Design Manual.

B. For all other maintenance projects, STOP here. Attach this document to the programmatic Smart Growth Impact Statement and signed Attestation for Maintenance projects (located in Appendix 2, page 13 in Guidance document).
B. Sustainability:

NYSDOT defines Sustainability as follows: A sustainable society manages resources in a way that fulfills the community/social, economic and environmental needs of the present without compromising the needs and opportunities of future generations. A transportation system that supports a sustainable society is one that:

- Allows individual and societal transportation needs to be met in a manner consistent with human and ecosystem health and with equity within and between generations.
- Is safe, affordable, and accessible, operates efficiently, offers choice of transport mode, and supports a vibrant economy.
- Protects and preserves the environment by limiting transportation emissions and wastes, minimizes the consumption of resources and enhances the existing environment as practicable.

For more information on the Department’s Sustainability strategy, refer to Appendix 1 of the Guidance and the NYSDOT web site. www.dot.ny.gov/programs/greenlites/sustainability

(Addresses SG Law criterion j: to promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain and implement.)

1. Will this project promote sustainability by strengthening existing communities?
   Yes [ ] No [ ] N/A [ ]

2. Will the project reduce greenhouse gas emissions?
   Yes [ ] No [ ] N/A [ ]

Explain: (use this space to expand on your answers above)

C. Smart Growth Location:
Plans and investments should preserve our communities by promoting its distinct identity through a local vision created by its citizens.

(Addresses SG Law criteria b and c: to advance projects located in municipal centers; to advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan.)
1. Is this project located in a developed area?
   - Yes ☐  No ☐  N/A ☐

2. Is the project located in a municipal center?
   - Yes ☐  No ☐  N/A ☐

3. Will this project foster downtown revitalization?
   - Yes ☐  No ☐  N/A ☐

4. Is this project located in an area designated for concentrated infill development in a municipally approved comprehensive land use plan, waterfront revitalization plan, or Brownfield Opportunity Area plan?
   - Yes ☐  No ☐  N/A ☐

**Explain:** (use this space to expand on your answers above)

**D. Mixed Use Compact Development:**
Future planning and development should assure the availability of a range of choices in housing and affordability, employment, education transportation and other essential services to encourage a jobs/housing balance and vibrant community-based workforce.

(Addresses SG Law criteria e and i: to foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income groups; to ensure predictability in building and land use codes.)

1. Will this project foster mixed land uses?
   - Yes ☐  No ☐  N/A ☐

2. Will the project foster brownfield redevelopment?
   - Yes ☐  No ☐  N/A ☐

3. Will this project foster enhancement of beauty in public spaces?
   - Yes ☐  No ☐  N/A ☐

4. Will the project foster a diversity of housing in proximity to places of employment and/or recreation?
   - Yes ☐  No ☐  N/A ☐
5. Will the project foster a diversity of housing in proximity to places of commercial development and/or compact development?
   Yes ☐  No ☐  N/A ☐

6. Will this project foster integration of all income groups and/or age groups?
   Yes ☐  No ☐  N/A ☐

7. Will the project ensure predictability in land use codes?
   Yes ☐  No ☐  N/A ☐

8. Will the project ensure predictability in building codes?
   Yes ☐  No ☐  N/A ☐

Explain: (use this space to expand on your answers above)

E. Transportation and Access:
NYSDOT recognizes that Smart Growth encourages communities to offer a wide range of transportation options, from walking and biking to transit and automobiles, which increase people’s access to jobs, goods, services, and recreation.

(Addresses SG Law criterion f: to provide mobility through transportation choices including improved public transportation and reduced automobile dependency.)

1. Will this project provide public transit?
   Yes ☐  No ☐  N/A ☐

2. Will this project enable reduced automobile dependency?
   Yes ☐  No ☐  N/A ☐

3. Will this project improve bicycle and pedestrian facilities (such as shoulder widening to provide for on-road bike lanes, lane striping, crosswalks, new or expanded sidewalks or new/improved pedestrian signals)?
   Yes ☐  No ☐  N/A ☐

(Note: Question 3 is an expansion on question 2. The recently passed Complete Streets legislation requires that consideration be given to complete street design features in the planning, design, construction, reconstruction and rehabilitation, but not including resurfacing, maintenance, or pavement recycling of such projects.)

Explain: (use this space to expand on your answers above)

F. Coordinated, Community-Based Planning:
Past experience has shown that early and continuing input in the transportation planning process leads to better decisions and more effective use of limited resources. For information on community based planning efforts, the MPO may be a good resource if the project is located within the MPO planning area.
(Addresses SG Law criteria g and h: to coordinate between state and local government and inter-municipal and regional planning; to participate in community based planning and collaboration.)

1. Has there been participation in community-based planning and collaboration on the project?
   - Yes ☐
   - No ☐
   - N/A ☐

2. Is the project consistent with local plans?
   - Yes ☐
   - No ☐
   - N/A ☐

3. Is the project consistent with county, regional, and state plans?
   - Yes ☐
   - No ☐
   - N/A ☐

4. Has there been coordination between inter-municipal and regional planning on the project?
   - Yes ☐
   - No ☐
   - N/A ☐

Explain: (use this space to expand on your answers above)

**G. Stewardship of Natural and Cultural Resources:**

Clean water, clean air and natural open land are essential elements of public health and quality of life for New York State residents, visitors, and future generations. Restoring and protecting natural assets, and open space, promoting energy efficiency, and green building, should be incorporated into all land use and infrastructure planning decisions.

(Addresses SG Law criterion d: To protect, preserve and enhance the State’s resources, including agricultural land, forests surface and ground water, air quality, recreation and open space, scenic areas and significant historic and archeological resources.)

1. Will the project protect, preserve, and/or enhance agricultural land and/or forests?
   - Yes ☐
   - No ☐
   - N/A ☐

2. Will the project protect, preserve, and/or enhance surface water and/or groundwater?
   - Yes ☐
   - No ☐
   - N/A ☐

3. Will the project protect, preserve, and/or enhance air quality?
   - Yes ☐
   - No ☐
   - N/A ☐

4. Will the project protect, preserve, and/or enhance recreation and/or open space?
   - Yes ☐
   - No ☐
   - N/A ☐

5. Will the project protect, preserve, and/or enhance scenic areas?
   - Yes ☐
   - No ☐
   - N/A ☐

6. Will the project protect, preserve, and/or enhance historic and/or archeological resources?
   - Yes ☐
   - No ☐
   - N/A ☐

Explain: (use this space to expand on your answers above)

**Smart Growth Impact Statement (STEP 2)**

46
NYSDOT: Complete a Smart Growth Impact Statement (SGIS) below using the information from the Screening Tool.

Local Sponsors: The local sponsors are not responsible for completing a Smart Growth Impact Statement. Proceed to Step 3.

Smart Growth Impact Statement

PIN:
Project Name:

Pursuant to ECL Article 6, this project is compliant with the New York State Smart Growth Public Infrastructure Policy Act. This project has been determined to meet the relevant criteria, to the extent practicable, described in ECL Sec. 6-0107. Specifically, the project:

- 
- 
- 
- 
- 
- 
- 

This publically supported infrastructure project complies with the state policy of maximizing the social, economic and environmental benefits from public infrastructure development. The project will not contribute to the unnecessary costs of sprawl development, including environmental degradation, disinvestment in urban and suburban communities, or loss of open space induced by sprawl.
Review & Attestation Instructions (STEP 3)

Local Sponsors: Once the Smart Growth Screening Tool is completed, the next step is to submit the project certification statement (Section A) to Responsible Local Official for signature. After signing the document, the completed Screening Tool and Certification statement should be sent to NYSDOT for review as noted below.

NYSDOT: For state-let projects, the Screening Tool and SGIS is forwarded to Regional Director/RPPM/Main Office Program Director or designee for review, and upon approval, the attestation is signed (Section B.2). For locally administered projects, the sponsor’s submission and certification statement is reviewed by NYSDOT staff, the appropriate box (Section B.1) is checked, and the attestation is signed (Section B.2).

A. CERTIFICATION (LOCAL PROJECT)

*I HEREBY CERTIFY*, to the best of my knowledge, all of the above to be true and correct.

Preparer of this document:

Signature __________________ Date __________________

Title __________________ Printed Name __________________

Responsible Local Official (for local projects):

Signature __________________ Date __________________

Title __________________ Printed Name __________________
B. ATTESTATION (NYSDOT)

1. **I HEREBY:**

- [ ] Concur with the above certification, thereby attesting that this project is in compliance with the State Smart Growth Public Infrastructure Policy Act

- [ ] Concur with the above certification, with the following conditions (information requests, confirming studies, project modifications, etc.):

  __________________________________________________________

  __________________________________________________________

  __________________________________________________________

  __________________________________________________________

  (Attach additional sheets as needed)

- [ ] do not concur with the above certification, thereby deeming this project ineligible to be a recipient of State funding or a subrecipient of Federal funding in accordance with the State Smart Growth Public Infrastructure Policy Act.

2. **NOW THEREFORE,** pursuant to ECL Article 6, this project is compliant with the New York State Smart Growth Public Infrastructure Policy Act, to the extent practicable, as described in the attached Smart Growth Impact Statement.

NYSDOT Commissioner, Regional Director, MO Program Director, Regional Planning & Programming Manager (or official designee):

_________________________________________  ____________________
Signature                                      Date

_________________________________________  ____________________
Title                                          Printed Name
APPENDIX 7-13

Smart Growth Screening Tool
New York State Department of Transportation

Guidance on Completing the
Smart Growth Screening Tool,
Smart Growth Impact Statement and Attestation

{NOTE: Attach Screening Tool to IPP}

January, 2012
TABLE OF CONTENTS

Introduction ..................................................................................................................................................... Page __

I. What Is Smart Growth? .................................................................................................................................. Page __
II. Smart Growth Public Infrastructure Policy Act......................................................................................... Page __
III. The Broader Context................................................................................................................................... Page __
IV. How to Use This Screening Tool................................................................................................................. Page __
APPENDIX 1 - Definitions of SG Criteria Terminology .................................................................................. Page __
APPENDIX 2 (Smart Growth Impact Statement & Attestation for Maintenance Projects) ......................... Page __
Introduction

With the passage of the Smart Growth Public Infrastructure Policy Act (the Act) or (SG Law) in August 2010, state infrastructure agencies such as the New York State Department of Transportation (Department or NYSDOT) are required to ensure public infrastructure projects that we approve, undertake, support or finance undergo a consistency evaluation and attestation using 10 smart growth criteria. In addition, the infrastructure agencies must solicit input and consult on projects with affected communities and organizations within those communities. To comply with these requirements, the overall approach of the Department is to build upon existing programs in NYSDOT and integrate the Smart Growth requirements in our federal and state mandated planning and project development processes. For example, the Department has well documented public involvement processes and procedures for many of our projects and programs, thus providing an approach for “soliciting input and consulting” on projects.

This document has two purposes. First, it provides guidance to Department staff and local sponsors of projects (locally administered federal aid projects) on the basic tenets of the SG law including a discussion on the broader context. Understanding the context of the SG Law and context for projects is essential in order to effectively evaluate a project’s consistency with the criteria. While not all criteria may be relevant to an individual project, understanding the intent and purpose of the SG law can help show how a project can be compliant with the criteria. Second, the document includes the Smart Growth Screening Tool (Tool) which will be used to evaluate projects, to the extent practicable, for consistency with the criteria. This Tool is relatively simple to fill out and allows the project sponsor to demonstrate the Smart Growth merits of the project, and ultimately whether the project meets the intent of the law and should be advanced onto the Transportation Improvement Plan (TIP).

Finally, the document has an appendix entitled, “Definitions of Smart Growth Terminology”. The definitions should be used as a guide, and as the Department moves forward with the implementation of the SG Law, there may be adjustments to reflect refinements of the definitions.

10 The Smart Growth Public Infrastructure Policy Act was signed into law on 8/2010.
I. What Is Smart Growth?

The affects of sprawling land use patterns are being felt in all regions of New York State. As a growing segment of the population has moved to the suburbs so have jobs moved or are moving outside of the central business district (CBD). In a recent report on New York State Travel Demand Management\(^\text{11}\), it was pointed out that in New York City the expansion of businesses into the outer boroughs is making commuting a challenge; simply because transit service is not as widespread. Rochester has experienced a similar phenomenon, with more businesses at the fringe than in the CBD. Also, numerous cities like Binghamton are seeing a declining city-center population while the suburbs continue to expand even further away from the city. This land use trend will continue unless local governments start to adopt more sustainable land use patterns that support development and growth in our downtowns and inner suburbs.

Smart Growth is sensible, planned, efficient growth that integrates economic development and job creation with community quality-of-life by preserving and enhancing the built and natural environments. Smart Growth encourages growth in developed areas with existing infrastructure to sustain it, particularly municipal centers, downtowns ("Main Streets"), urban cores, historic districts and older first-tier suburbs.

Smart Growth means growing in a way that enhances our communities and our daily lives, now and in the future. This is growth that doesn’t magnify our traffic problems, that doesn’t result in higher municipal costs, and that doesn’t needlessly pollute or consume open space. This is growth that enhances all the places where we spend time.

Smart Growth has two primary features: the “where” and the “how.” Smart Growth occurs “where” a project can be accommodated with minimal impacts and “where” it takes advantage of existing infrastructure. Smart Growth addresses the “how” by ensuring that the completed project works in harmony with its neighbors and offers choices that can otherwise be lost to sprawl: to walk or bike to work or shop, to use transit rather than a car, to spend time with friends and family in attractive common spaces, to provide a range of housing choices for all members of the community, to avoid wasteful spending by using public infrastructure and services more efficiently.

Related to Smart Growth is the concept of complete streets. In New York State, Complete Streets legislation was signed into law by Governor Cuomo on August 15, 2011. The purpose of this law is to enable safe access to public roads for all users by utilizing complete street design principles, such as sidewalks, paved shoulders suitable for use by bicyclists, controlled signalization, cross walks, road diets, curb cuts and traffic calming measures. As with Smart Growth, there is an emphasis on providing opportunities for all modes of transportation. For more information, go to: http://open.nysenate.gov/legislation/bill/S5411A

NYSDOT supports Smart Growth as evidenced by our commitment to preserving our existing core transportation assets, as well as the many programs and initiatives in the Department that are aligned with Smart Growth. Examples include the NYSDOT GreenLITES program which can be found at http://www.dot.ny.gov/programs/greenlites, the Smart Planning website located at http://www.dot.ny.gov/programs/smart-planning, and the adoption of Context Sensitive Solutions in the design of projects.

\(^{11}\) New York State Travel Demand Management Program Analysis, Technical Memorandum # 3, prepared by ICF International, February 18, 2011
II. Smart Growth Public Infrastructure Policy Act

Purpose of the Act

The New York State Smart Growth Public Infrastructure Policy Act defines its purpose as follows:

“...to augment the state’s environmental policy by declaring a fiscally prudent state policy of maximizing the social, economic and environmental benefits from public infrastructure development through minimizing unnecessary costs of sprawl development including environmental degradation, disinvestment in urban and suburban communities and loss of open space induced by the funding or development of new or expanded transportation, sewer and waste water treatment, water, education, housing and other publicly supported infrastructure inconsistent with smart growth infrastructure criteria.”

Requirements

2. Smart Growth Consistency Evaluation: NYSDOT cannot approve, undertake, support or finance an infrastructure project, including grants, awards, loans or assistance programs, unless, to the extent practicable, it is consistent with the relevant Smart Growth Public Infrastructure Criteria.

3. Smart Growth Impact Statement: Before making any commitment, including entering into an agreement or incurring any indebtedness for the purpose of acquiring, constructing, or financing any project covered by the provisions of the Act, the NYSDOT Commissioner must attest in a written Smart Growth Impact Statement that the project, to the extent practicable, meets the relevant Smart Growth criteria. If the project does not meet the criteria or compliance is seen as impracticable, the Department must complete a statement of justification.

4. Smart Growth Advisory Committee: The NYSDOT Commissioner will create a Smart Growth Advisory Committee composed of appropriate Department personnel to advise the Department on compliance with the Smart Growth criteria as it relates to our policies, programs and projects. Also, the Committee will solicit input from and consult with various representatives of affected communities and organizations within those communities, and give consideration to the local and environmental interests affected by the activities of the Department.

What Are the Smart Growth Criteria?

Every project has different characteristics, needs, objectives, and opportunities. As a result, how we assess a project’s compatibility with Smart Growth is likely to vary project to project based on whether it is in a city, a suburb, or a rural town or village. Still, each project can work towards a better future by examining its context and weighing how it will contribute to an attractive, economically efficient, user-friendly community.

Based on the legislation signed into law the Smart Growth criteria (Section 6-0107) are outlined below:

a. To advance projects for the use, maintenance or improvement of existing infrastructure;

b. To advance projects in municipal centers;

c. To advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan;

d. To protect, preserve and enhance the state’s resources, including agricultural land, forests surface and ground water, air quality, recreation and open space, scenic areas and significant historic and archeological resources;
e. To foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income groups;

f. To provide mobility through transportation choices including improved public transportation and reduced automobile dependency;

g. To coordinate between state and local government and municipal and regional planning;

h. To participate in community based planning and collaboration;

i. To ensure predictability in building and land use codes;

j. To promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain and implement.
III. The Broader Context

In an attempt to provide additional context, and before the reviewer begins the Screening Tool it is important that they understand some of the broader issues connected with Smart Growth. This is not simply about compliance. As mentioned earlier in this document, transportation policies both at the federal and state level have helped contribute to sprawl, and unsustainable development. Even though land use decisions are made at the municipal level within New York State, those decisions impact the transportation system and vice versa. Sustainability is the overarching concern with respect to the enactment and implementation of this new law.

NYSDOT defines sustainability as follows: “A sustainable society manages resources in a way that fulfills the community/social, economic and environmental needs of the present without compromising the needs and opportunities of future generations.”

A transportation system that supports a sustainable society is one that:

- Allows individual and societal transportation needs to be met in a manner consistent with human and ecosystem health with equity within and between generations.
- Is safe, affordable, and accessible, operates efficiently, offers choice of transport mode, and supports a vibrant economy.
- Protects and preserves the environment by limiting transportation emissions and wastes, minimizes the consumption of resources and enhances the existing environment as practicable.

As part of the Department’s 2011 Comprehensive Program Update, sustainability was described as one of the four guiding principles. The intent of NYSDOT is to develop a sustainable program, one that maximizes our return on investment, extends the life of our assets, and provides our customers a safe, reliable, balanced, and environmentally sound transportation system.

NYSDOT has long recognized the importance of sustainability and the role that context evaluation has in producing quality projects. In 2001, with the issuance of Engineering Instruction 01-020, NYSDOT formally adopted the principles of Context Sensitive Solutions. The Smart Growth Screening Tool will serve as a means of renewing this commitment to context evaluation and help bring CSS to the forefront of our project development process.

CSS can be defined as follows: Context Sensitive Solutions is a collaborative, interdisciplinary approach that involves all stakeholders in providing a transportation facility that fits its settings. It is an approach that leads to preserving and enhancing scenic, aesthetic, historic, community and environmental resources while improving or maintaining safety, mobility, and infrastructure conditions. These processes are mutually inclusive and depend on one another for optimum transportation decision making.

With that said, the following Smart Growth Screening Tool is intended to address the questions necessary to ensure (as much as is practicable) that transportation decisions support sustainable solutions. You will see as you work through the Tool that this new process goes a long way toward achieving these goals. It also provides a thoughtful process, and clarifies the criteria necessary to ensure sustainable projects at NYSDOT while acknowledging the broader context.
IV. How to Use This Screening Tool

PURPOSE: The screening tool is a mechanism for documenting compliance or non-compliance with the Smart Growth criteria as described in the Smart Growth Law. The Law does not require that projects be consistent with all criteria, however, it is important that projects be assessed against all relevant criteria.

PLANNING PHASE: Complete the Screening Tool as part of the planning process by documenting compliance or non-compliance with the SG criteria to the extent practicable, and note where and why project deviates from the criteria. Include the completed Screening Tool as an attachment to the IPP.

DESIGN PHASE: Verification of SG consistency evaluation occurs as an integral part of the design process. In the event that project scope changes (e.g., village reconstruction becomes highway resurfacing) the attestation will be amended. Verification will be documented within the Design Approval Document (DAD).

DIRECTIONS: The Tool is broken into seven sections covering the 10 SG criteria. Together, the questions in these sections address the planning elements required to evaluate how the project is consistent with the Smart Growth criteria. Simply read the questions in each section and check the appropriate box “Yes”, “No” or “N/A” as follows:

- Yes If the project is compliant with the criterion, and explain how
- No If the project is not compliant with the criterion, and explain in detail
- N/A If NOT Applicable to project, and explain why not

A space has been provided at the end of each section for the reviewer to provide details on their answers with respect to the subject question. For example, if your project is located in a brownfield opportunity area plan, reference the plan and provide a link for more information.

For clarification on specific Smart Growth criteria, refer to Appendix 1.

QUESTIONS from Local Sponsors: If you need assistance with the questions, please contact your MPO (www.nysmpos.org) or NYSDOT Regional Office.

Step 1

NYSDOT: Fill out the Smart Growth Screening Tool until the directions indicate to STOP for the project type under consideration. For all other projects, complete answering the questions; incorporate brief documentation in the screening tool, along with a reference to the sections in the Initial Project Proposal where the issue is discussed. Upon completion of the Tool, go to Step 2.

Special Instructions for Maintenance Projects:
- If the project falls under one of the four types of maintenance projects listed in the screening tool, continue filling out the screening tool. If the project does not fall under the four types of maintenance projects, STOP completing the Tool and attach it to the programmatic Smart Growth Impact Statement and signed attestation for Maintenance projects, which can be found in Attachment 2 of this Guidance document.
- A smart growth consistency evaluation will not be required for “Where and When” contracts, which typically involve maintenance work. The NYSDOT Smart Growth Advisory Committee has determined that it is impracticable to evaluate these projects due to the open-scope of these contracts. “Where and When” contracts involve placing a contractor on
stand-by to supplement the Department’s maintenance forces, in order to perform scheduled or unscheduled maintenance work.

- When multiple alternatives for a project are being considered at the Planning Phase, try to incorporate answers for all alternatives on one Screening Tool, e.g. bridge replacement versus bridge rehabilitation. Any documentation that speaks to the evaluation of alternatives will be useful in complying with SEQRA and NEPA requirements.

**Local Sponsors:** Fill out the Smart Growth Screening Tool until the directions indicate to STOP for the project type under consideration. For all other projects, complete answering the questions. There will be additional guidance in Chapters 7 and 8 of the *Procedures for Locally Administered Federal Aid Projects* manual - https://www.dot.ny.gov/plafap

**Step 2**

**NYSDOT:** Complete a Smart Growth Impact Statement (SGIS) using the information from the Screening Tool. (See SAMPLE below)

**Local Sponsors:** The local sponsors are not responsible for completing a Smart Growth Impact Statement, and are to proceed to Step 3.

---

**Sample:** Smart Growth Impact Statement
PIN xxxx.xx
Bus Lane Re-Designation

Pursuant to ECL Article 6, this project is compliant with the New York State Smart Growth Public Infrastructure Policy Act. This project has been determined to meet the relevant criteria, to the extent practicable, described in ECL Sec. 6-0107. Specifically, the project:

- Is located in a municipal center.
- Proposes to realign the mainline between Main Street and Second Avenue; construct auxiliary lanes in each direction between 1st and 3rd St ramps; and pave the medium to extend the bus lanes from the existing termination at Albany Street to the west. Although these improvements are outside of the existing infrastructure, they are necessary to correct safety features and address deficiencies to facilitate traffic operations.
- Protects air quality by improving existing transit operations.
- Provides mobility through transportation choices because the project incorporates new bus lanes/HOV lanes to help promote public transit use and reduce automobile dependency.
- Received the support of the community during public meetings held by the MPO and city government (provide dates of public meetings or reference web site that contains this information).
- Is consistent with the city Comprehensive Master Plan (identify Plan and include references to passages in Plan that support the project or concept for this type of project).

This publically supported infrastructure project complies with the state policy of maximizing the social, economic and environmental benefits from public infrastructure development. The project will not contribute to the unnecessary costs of sprawl development, including environmental degradation, disinvestment in urban and suburban communities, or loss of open space induced by sprawl.
Step 3
NYSDOT: Commissioner or official designee (as per SG MAP Procedures) will review and sign the attestation for Locally Administered Projects and NYSDOT–let Projects. The signed attestation, SGIS and screening tool is attached to IPP.

Local Sponsors: Submit the completed SG Screening Tool and project certification statement to Responsible Local Official for signature. Send the documents to NYSDOT for review. The NYSDOT is responsible for signing the attestation as noted above.

APPENDIX 1 - Definitions of SG Criteria Terminology
The definitions should be used as a guide in providing clarification on the SG criteria.

A. Does the project use, maintain or improve existing infrastructure?
The majority of NYSDOT projects involves repairing or maintaining existing infrastructure, and therefore is consistent with this criterion. This policy of fixing the existing infrastructure tends to encourage or enable development in previously developed areas already served by infrastructure. Those projects on new locations or which lead to the creation of new general purpose travel lanes will require a justification for non-compliance with the criterion.

B. Does the project promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation?
Factors to consider:
- Does the project reduce automobile dependence (thus reducing transportation-based air pollution and greenhouse gas emissions) by offering alternative modes, such as transit, walking, biking, or ridesharing accommodations?
- Is the project aligned with the GreenLITES in planning criteria? [https://www.dot.ny.gov/programs/greenlites/GreenLITESplanning]
- Is the project consistent with the community’s vision for the area?

C. Is the project located in a municipal center?
A municipal center is an area of concentrated and mixed land use that serves as a center for various activities, including but not limited to, central business districts, main streets, downtowns, Brownfield Opportunity Areas, downtown areas within Local Waterfront Revitalization Program Areas, transit oriented developments, Environmental Justice areas and hardship areas. Also, areas adjacent to municipal centers are considered part of the Municipal Center when they have a clearly defined border; are designated for future development in a comprehensive plan; exhibit strong land use, transportation, infrastructure and economic connections to the center; and are appropriately zoned. In more rural areas, the main street(s) of villages/hamlets can be considered the municipal center.

D. Is the project located in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or Brownfield opportunity area plan?
The definition for “developed area” is the same as municipal center. Areas designated for concentrated “infill development” would include new development on vacant, bypassed, and underutilized land within built up areas of existing communities, where infrastructure is already in place. The designation
of a developed area or an infill developed area must be reflected in the planning documents described above.

E. Does the project foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income and age groups?
A specific transportation project may not in itself foster mixed land use, compact development, or downtown development, however, the project may be part of a community’s comprehensive plan or visioning effort that is focused on achieving those results. Determining a project’s alignment with this criterion would require some knowledge of the community’s comprehensive plans or MPO long range transportation plans. With regard to the part of the criterion that focuses on enhancement of beauty in public spaces, factors to consider include:
- Is the project design sensitive to or compatible with surrounding land uses and/or the community’s unique character? Though aesthetic treatments are usually not considered in the project initiation stage, the SG Screening Tool can still address this point in a broad sense.
- Does the project minimize the public’s view of parking by using natural barriers (trees, plantings) or locating parking spaces behind buildings?

F. Does the project provide mobility through transportation choices including improved public transportation and reduced automobile dependency?
Factors to consider include:
- The project incorporates wider shoulders to improve bicycle safety.
- The project incorporates the use of accessible and interconnected sidewalks/bicycle lanes/multi-use paths to help promote non-vehicular transportation.
- The project incorporates new bus lanes/Bus Rapid Transit (BRT) routes, with accessible stops, to help promote public transit use and reduce automobile dependency.
- The project incorporates the expansion of existing or construction of a new park and ride lot to promote carpooling.
- The project is adding HOV/HOT lanes to promote the use of carpooling.
- The project includes traffic calming streetscape design to allow safe walking/biking and accessibility to transit stops.

G. Does the project coordinate between state and local government and inter-municipal and regional planning?
NYSDOT has a policy that requires a Public Involvement Plan (PIP) be prepared and followed for all projects in the Design phase. The PIP lays out the process for coordination between the Department and all affected parties including local officials and the public. A similar process occurs in the Planning phase of projects as per the MPO public involvement activities.

H. Was there community based planning and collaboration involved in the development of the project proposal?
Community based planning and collaboration for transportation projects takes place at the planning phase and design phase for a project. For more information on the planning phase, go to the NYSDOT manual, “Public Involvement for Transportation Planning”, which describes the planning process carried out in collaboration with the State’s 13 Metropolitan Planning Organizations. For the rural areas, go to the NYSDOT “Procedures for Consultation with Public Officials in Rural Areas” on statewide transportation planning and programming activities. The
During the design phases of a project, the Public Involvement Plan lays out the strategy for public involvement.

I. **Does the project conform to building and land-use codes?**
   This criterion is not applicable to most transportation projects. There are exceptions such as transit projects that involve a building, such as an intermodal facility.

J. **Does the project protect, preserve and enhance the State’s resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources?**
   Whereas SEQRA seeks to avoid or mitigate adverse environmental impacts, Smart Growth is more proactive in that it seeks to enhance and preserve natural resources and functions. For NYSDOT projects, the SEQRA review findings can provide useful information; however, the Smart Growth Impact Statement should go beyond those findings and incorporate sustainable development components into their projects.
APPENDIX 2

Smart Growth Impact Statement & Attestation for Maintenance Projects

Smart Growth Impact Statement

Pursuant to ECL Article 6, Maintenance Projects are found to be compliant with the New York State Smart Growth Public Infrastructure Policy Act. Maintenance Projects have been determined to meet the relevant criteria, to the extent practicable, described in ECL Sec. G-0107. This finding is based on the following factors:

- Advancing projects to maintain existing facilities (maintenance-only projects) is consistent with the Department’s preservation strategy as described in the 2011 NYSDOT Comprehensive Program Update Guidance. The Guidance espouses a "planned strategy of cost effective treatments to our existing infrastructure to extend the life of or improve the serviceability of that infrastructure." This approach is considered more sustainable than previous asset management strategies.

- The location of these projects is not relevant since the projects involve maintenance, and do not involve new infrastructure or expansion of existing infrastructure. Maintaining existing facilities is considered "smart growth" since it does not contribute to sprawl development.

- Maintenance projects focus on existing infrastructure rather than new or expanded infrastructure which has potential to adversely affect agricultural land, forests, open space and other undeveloped land. By maintaining existing infrastructure, the NYSDOT helps to protect and preserve natural resources.

- And, maintaining existing transportation infrastructure helps to support established communities.

This publically funded infrastructure project complies with the state policy of maximizing the social, economic and environmental benefits from public infrastructure development. The project will not contribute to the unnecessary costs of sprawl development, including environmental degradation, disinvestment in urban and suburban communities, or loss of open space induced by sprawl.

Attestation

NOW THEREFORE, pursuant to ECL Article 6, this project is compliant with the New York State Smart Growth Public Infrastructure Policy Act, to the extent practicable, as described in this Smart Growth Impact Statement.

[Signature]
Commissioner (or designee)  
[Signature]  
Date  
10/1/12

62