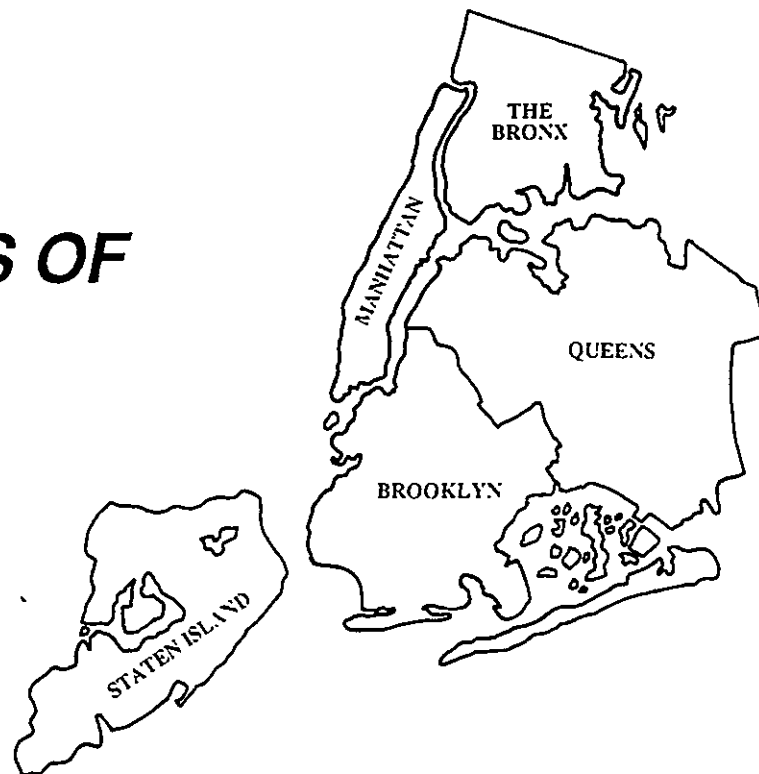


# **P**ROFESSIONAL **A**RCHAEOLOGISTS OF **N**EW **Y**ORK **C**ITY



Newsletter No. 53

March 1991

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Material for the PANyc Newsletter may be sent to Rebecca Yamin, editor, Ebasco Environmental, 160 Chubb Ave., Lyndhurst, New Jersey 07071. To ensure inclusion in the next issue, please submit material at least 10 days prior to the next scheduled meeting.

NOTICE OF NEXT MEETING: March 13, 1991  
Hunter College, Room 710  
General Membership: 7:00 PM

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Minutes of the PANYC/NYAC Annual Joint Meeting  
January 19, 1991, Barnard Hall, Barnard College

Marshall called the meeting to order at 11:00 AM. Reports from NYAC officers interspersed with those from PANYC. PANYC participation is reported below:

SECRETARY'S REPORT: Minutes of Nov. 28, 1990 accepted, with the following corrections: remove "Spring" from announcement of lecture series; Ed Lenik visited Burial Ridge, not Pagano.

TREASURER'S REPORT: Notices of 1991 dues to go out in March. Members may not vote in upcoming election if 1990 dues are unpaid. Spritzer now able to sign checks on PANYC account. Balance is approx. \$1600.

PRESIDENT'S REPORT: 1) Jan. 18th meeting with NYC Parks Dept. included Mary Ellen Hern, Director of Historic Houses; Marianne Ann Cramer, Dep'y Comm. of Planning for Central Park; and Alex Brash, Chief of Urban Park Service, with positive responses on several issues: a) a Central Communications number (212-427-6100) may be used to report vandalism at Parks properties. Responding officers may arrest and confiscate looted materials. b) discussion of permitting process; a need was recognized to adopt uniform standards re digging, use of metal detectors in parks. c) training of urban rangers to include ecology, archaeological sensitivity; maps of sensitive areas requested for ranger patrol. 2) Parks Comm. Gottbaum responded to letter re Burial Ridge: an enforcement patrol has been mobilized to police and backfill area; Police Dept. and Parks maintenance have been notified. 3) No response received to PANYC letter to LPC, supporting Landmarks program to date and urging continuance of Urban Archaeologist line.

MEMBERSHIP REPORT: Spritzer reported for committee on revision of membership application. Committee suggests that a statement be added to reflect the purpose of PANYC, which is to promote communication between archaeologists in NYC, and to advise and educate NYC public agencies. PANYC Board suggested to the General Membership that the application be revised to include: 1) statement of PANYC's purpose as defined in by-laws 2) list of committees and request that applicants indicate area of interest 3) statement of applicant's interest in NYC archaeology 4) statement that PANYC is an organization focused on NYC issues. Hartgen described NYAC application, which addresses similar issues. In discussion, Cantwell suggested that phrasing should be positive, to encourage participation; Bridges notes that people offering contracts should know PANYC is not an accrediting agency; Winter concurred that people do use PANYC membership as an accreditation, but this may be unavoidable. It was decided not to include a statement on the application regarding this issue. Additions to application as suggested by the Board were approved by vote. As per Rothschild's suggestion, it was agreed to further discuss ethics and certification issues. Committee to bring draft of revised application for next meeting. Winter joined committee.

ACTION: 1) Response re. Burial Ridge, as reported above by President.  
2) Rothschild reported late 19th c. building in Tribeca area proposed for designation; support letter to be sent to L. Beckman, LPC.

AWARDS: Cantwell has announced 1991 Salwen Award in Newsletter; deadline for application 4/2/91. Hartgen described additions to NYAC's awards program. NYAC will grant merit awards and service certificates to recipients identified by membership. As per Geismar's suggestion, PANYC Awards Committee to consider developing a service award at Public Meeting.

LEGISLATION: Cantwell called attention to letter in current Newsletter re. repatriation bill.

NEWSLETTER: Yamin thanked Hartgen for contributions to Newsletter.

SPECIAL PUBLICATIONS: Cantwell reports special publication, "Archaeology of New York: an Introduction," to be ready by May Public Meeting. Desktop mechanical to be prepared for printer; members will explore choice of printers. \$1200 production ceiling approved 26-page booklet.

PARKS: See President's report.

PUBLIC PROGRAM: Rothschild reports program with theme "Neighborhood Archaeology" to be held at the Museum of CNY on May 4, 1:00 PM.

RESEARCH AND PLANNING: Pagano reports Historic Context committee will present a statement for the next meeting.

NOMINATIONS: J. Klein, Davis to assist Marshall. Nominations to be sent in now. Members whose dues are not current may not vote.

OLD BUSINESS: Pagano reports staff cuts expected in professional staff of LPC. No replacement in Urban Archaeologist position expected at this time but position will be retained. LPC may seek private funding assistance.

NEW BUSINESS: 1) PANYC to support NYAC resolution, condemning SHPO use of Circles and Squares model as basis of evaluation of archaeological sensitivity of project sites, with letters to DEC Commissioner and SHPO.  
2) Pagano reports Principal Saltzman of J.F.K. High School in Bronx interested in developing an archaeological program for high school students (school is on site of former Johnson Foundry). Yamin to head school education committee, to contact and offer resources for positive, nonintrusive activity. Pagano, Geismar, Kirkorian on committee.

NEXT MEETING: Wednesday, March 13, 1991, 7:00 PM.

Respectfully submitted, Barbara Davis, Secretary 1990-91

# HISTORICAL PERSPECTIVES INC.

January 23, 1991



Charles Salzman, Principal  
John F. Kennedy School  
99 Terrace View Avenue  
Bronx, NY 10463

RE: Archaeological Education Curriculum

Dear Mr. Salzman,

Professor Gilbert, Fordham University, and Daniel Pagano, New York City Landmarks Preservation Commission, brought to the attention of the Professional Archaeologists of New York City (PANYC) your desire to initiate an archaeological curriculum at the John F. Kennedy High School. A PANYC committee, under the leadership of Rebecca Yamin, has been appointed to assist you in reviewing the options available for a secondary school system. I will be serving on this committee. Ms. Yamin and/or Mr. Pagano will be contacting you shortly.

A few years ago my partner and I conducted an archaeological documentary study on property adjacent to your school. I have enclosed an office copy of this study for your files. The report will give you an idea of the breadth and depth of archaeological and archival research that is often required for a project in the city. Please call if you have any questions on the report.

Sincerely,

Cece Kirkorian  
PANYC Committee

encl. /  
cc: PANYC Committee members  
✓ Yamin, chair  
Pagano  
Geismar

# PROFESSIONAL ARCHAEOLOGISTS OF NEW YORK CITY

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217 Edgewood Avenue  
Westfield, New Jersey 07090  
January 31, 1991

Dr. Diana diZerega Wall  
Curator of Archaeology  
South Street Seaport Museum  
207 Front Street  
New York, New York 10038

Subject: PANYC-NYAC Visit To  
New York Unearthed

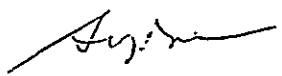
Dear Diana:

On behalf of the Professional Archaeologists of New York City (PANYC) and the New York Archaeological Council (NYAC), I wish to thank you and your staff for making New York Unearthed available to us for visitation on Saturday, January 19, 1991. Those of us who visited the facility were favorably impressed with the displays, the conservation laboratory and the UeNYSE elevator and we look forward to seeing the facility again in the Spring when the entire exhibit has been installed. The exhibit is informative and fun, a winning combination for generating public interest and support for New York City archaeology. In addition, your presentation at the PANYC-NYAC meeting with Joel Grossman and Amy Eller was an excellent introduction to the State Street facility.

I would especially like to thank Gary McGowan for spending his Saturday in the conservation lab. His enthusiasm and willingness to answer a barrage of questions were appreciated.

Again, thank you for arranging this special event for this year's PANYC-NYAC joint meeting.

Sincerely,

  
Sydne B. Marshall, Ph.D.  
PANYC President

CC: G MacGowan  
S Yerkovich

# PROFESSIONAL ARCHAEOLOGISTS OF NEW YORK CITY

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217 Edgewood Avenue  
Westfield, New Jersey 07090  
January 31, 1991

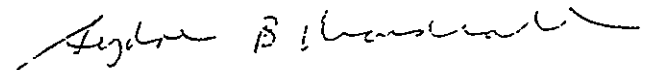
Ms. Amy Eller  
Spiegel-Horton  
228 E 51 Street  
New York, New York 10022

Dear Ms. Eller:

On behalf of the Professional Archaeologists of New York City and the New York Archaeological Council, I wish to thank you for participating with Joel Grossman and Diana Wall in the presentation on New York Unearthed. It was very interesting for our members to hear a new point of view regarding the challenges of communicating with the public about archaeology. Those of us who visited the exhibit following the meeting were very favorably impressed with the facility. It is informative and fun, a winning combination for generating public enthusiasm about New York City archaeology.

Again, thank you for sharing your experiences on this project with PANYC and NYAC.

Sincerely,



Sydne B. Marshall, Ph.D.  
PANYC President

# PROFESSIONAL ARCHAEOLOGISTS OF NEW YORK CITY

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217 Edgewood Avenue  
Westfield, New Jersey 07090  
January 31, 1991

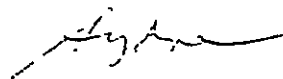
Dr. Joel Grossman  
Grossman and Associates  
201 E 16 Street  
New York, New York 10003

Dear Joel:

On behalf of the Professional Archaeologists of New York City and the New York Archaeological Council I wish to thank you for your presentation on New York Unearthed with Diana Wall and Amy Eller at the joint PANYC-NYAC Meeting on January 19. We all appreciated hearing about the conception of the project and its implementation and especially, we enjoyed the opportunity to then view the exhibit in person. Those of us who visited 17 State Street enjoyed it thoroughly and look forward to seeing the completed project.

Again, thank you for sharing your experiences on this project with PANYC and NYAC.

Sincerely,



Sydne B. Marshall, Ph.D.  
PANYC President

# PROFESSIONAL ARCHAEOLOGISTS OF NEW YORK CITY

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217 Edgewood Avenue  
Westfield, New Jersey 07090'  
February 6, 1991

Ms. Mary Ellen W. Hern  
Director, Historic Houses  
City of New York  
Parks and Recreation  
The Arsenal, Central Park  
New York, New York 10021

Dear Ms. Hern:

I thank you, Marianne Cramer and Alex Brash, on behalf of The Professional Archaeologists of New York City (PANYC), for meeting with me, Joel Klein, Nan Rothschild, and Joan Geismar on January 18, 1991. We were very encouraged by the discussions we had together and we look forward to an ongoing, productive relationship between PANYC and Parks.

We were very pleased to be given a phone number which could be called in the event that vandalism in the parks is identified. I would again like to stress our willingness to participate in archeology sensitivity training sessions for the Urban Park Rangers and other park personnel. We would also like to work with you in developing priorities for patrol (obviously from an archeological perspective) which might help prevent future vandalism.

Most of all, we appreciate your willingness to keep the lines of communication open between Parks and PANYC. Whether by telephone or in-person meetings, we hope that we can work together to preserve and manage the archeological resources in the parks.

Again, we thank you all for your time and concern. Please feel free to call me at (201) 460-6404 if you wish to discuss any issues about which PANYC may make a contribution.

Sincerely,



Sydne B. Marshall, Ph.D.  
PANYC President

cc: M Cramer  
A Brash  
W Dalton



## Professional Archaeologists of New York City

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217 Edgewood Avenue  
Westfield, New Jersey 07090  
February 27, 1991

Mr. Lloyd Adams  
Assistant Counsel  
NYS Parks, Recreation & Historic Preservation, ESP, Agency  
Building #1  
Albany, New York 12238

Subject: Comments on Proposed Revisions  
NYS Historic Preservation Act

Dear Mr. Adams:

On behalf of the Professional Archaeologists of New York City (PANYC), I am providing comments on the proposed revisions to the New York State Historic Preservation Act.

We are pleased to see this effort made towards clarifying and standardizing both the process by which state agencies will comply with Article 14 of the Parks, Recreation and Historic Preservation Law (PRHPL) and the manner in which a property can be deemed or determined eligible for listing on the State Register of Historic Places. However, PANYC wishes to suggest some additional areas where even further clarification would be useful.

Among the many issues about which PANYC is concerned is the inventoried data base upon which the State Historic Preservation Office (SHPO) will rely to provide its input to the Commissioner. The emphasis on previously inventoried data perpetuates the misconception that the current inventories accurately reflect prehistoric and early historic archeological site distribution in the state. This is simply not true. The extant inventories are biased and should not be the sole basis for providing feedback to the Commissioner regarding proposed project site archeological sensitivity. Demonstration that an area has lost its archeological integrity through such documentation as photographs or description of soil profiles, etc. should be the primary basis for determining a lack of archeological sensitivity at a proposed project site. This may require conduct of field investigation in areas which are suspected as being disturbed as well as in areas which have never previously been investigated and which are clearly undisturbed. Reliance on models of archeological site distribution which have not been tested is an unacceptable basis for evaluating project impacts to cultural resources.

The proposed revisions refer to Project Review Data Sheets. However, these are not included in the package available for review. This seems to be a significant omission since these PRDS's will influence actions to be taken by the agencies with regard to evaluating project impacts.

While PANYC recognizes that the proposed rulemaking establishes the general structure for project review, we are hopeful that a set of clear guidelines which will explain the actual process will follow without delay. Guidelines are needed to explain the point of decision making and how they will take place. In fact, PANYC members would be more than happy to work with you towards development of such guidelines.

PANYC is concerned that there seems to be no provision for a determination of no adverse effect comparable to that provided in the National Historic Preservation Act. This concept and the associated process has been extremely useful in NHPA.

There needs to be a requirement for a professional report to be prepared as a product of any decision-making triggered by proposed state actions. Such report, even if it is just a letter report, should be placed in a permanent repository such as at the SHPO and should be made available to other professionals.

Overall, PANYC members believe that the proposed revisions to SHPA are a positive step. Thank you for this opportunity to comment. If you wish to contact PAONYC, you may reach me at my office at Ebasco Environmental, (201) 460-6404.

Sincerely,



Sydne B. Marshall, Ph.D.  
PANYC President

# Professional Archaeologists of New York City

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217 Edgewood Avenue  
Westfield, New Jersey 07090  
March 12, 1991

Mr. Orin Lehman, Commissioner  
New York State Department of Parks, Recreation  
and Historic Preservation  
Empire State Plaza, Agency Building #1  
Albany, New York 12238

Dear Mr. Lehman:

The Professional Archaeologists of New York City (PANYC) wish to inform you of our support of the October 13, 1990 Resolution of the New York Archaeological Council (NYAC). NYAC resolved that:

- 1) the New York State Office of Parks, Recreation and Historic Preservation, federal, state and local agencies should immediately institute a comprehensive professional review process;
- 2) the New York State Office of Parks, Recreation and Historic Preservation, federal, state and local agencies are strongly urged to discontinue using the Inventory Map as the basis for determining the need for archaeological surveys in lieu of professional evaluation of project effects to archaeological resources;
- 3) it is further urged that federal, state and local agencies require a good faith effort to locate eligible sites and take a hard look at project effects on archaeological resources as required by law; and
- 4) the New York State Office of Parks, Recreation and Historic Preservation is asked to avoid or remove all reference (direct or indirect) to the use of the Inventory Map for determining the need for archaeological surveys in implementing regulations for the New York State Historic Preservation Act and to advise other responsible agencies of appropriate review procedures.

Attached for your review is a copy of the full NYAC Resolution which PANYC supports. Please feel free to contact us if you have any questions or comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sydne B. Marshall".

Sydne B. Marshall, Ph.D.  
PANYC President

CC: J. Stokes  
D. Gillespie  
T. Jorling (Commissioner, DEC)  
J.W. Aldridge (DEC)

## Resolution of the New York Archaeological Council

Passed at the October 13, 1990 Meeting by the Board of Directors and Membership concerning the use of the New York Statewide Archaeological Inventory Map

WHEREAS: the New York Statewide Archaeological Inventory Map (Inventory Map), commonly referred to as the circles and squares map, reflects only locational information on inventoried archaeological sites (known, previously identified, recorded); and

WHEREAS: the use of inventory information alone has been found in the federal courts to not constitute a "good faith effort" required of federal agencies to identify all National Register Historic Places eligible resources within a project's area of potential effects in accordance with the requirements of National Historic Preservation Act and the National Environmental Policy Act<sup>1</sup>; and

WHEREAS: the Inventory Map has further been found in court cases relating to the New York State Environmental Quality Review Act to not constitute the mandated "hard look" at project impacts<sup>2</sup>; and

WHEREAS: the Inventory Map fails to take into account the complex behavioral and environmental factors governing past human settlement in New York State and therefore cannot be characterized as being based on sound scientific archaeological research; and

WHEREAS: the New York State Board for Historic Preservation's Predictive Modeling Committee Report of February 28, 1990 notes that "...maps of known resources are in themselves not predictive tools," and calls for replacement of the current circles and squares approach with a predictive model; and

WHEREAS: the Committee report also recommends that predictive models should be considered planning tools and should not be used as the sole basis for deciding when or where to require archaeological survey; and

WHEREAS: the Committee report requests "...that New York follow the lead of states requiring some level of professional examination of all projects submitted for SHPO approval." and that "No predictive model can substitute for qualified examination."; and now, therefore, be it

### RESOLVED, That

1. the New York Archaeological Council supports implementation of the Committee's recommendations for replacing the deterministic use of the inventory map with a professionally acceptable approach;
2. That this approach involve a brief site visit to each project area by a qualified professional archaeologist, to determine survey need; and
3. That the development of predictive modeling and other planning tools be carried out in consultation with the professional archaeological community; and, now, therefore, be it further

**RESOLVED, That**

1. the New York State Office of Parks, Recreation and Historic Preservation, federal, state and local agencies should immediately institute a comprehensive professional review process as noted above; and
2. That the New York State Office of Parks, Recreation and Historic Preservation, federal, state and local agencies are strongly urged to discontinue using the Inventory Map as the basis for determining the need for archaeological surveys in lieu of professional evaluation of project effects to archaeological resources;
3. That it is further urged that federal, state and local agencies require a good faith effort to locate eligible sites and take a hard look at project effects on archaeological resources, as required by law; and
4. That the New York State Office of Parks, Recreation and Historic Preservation is asked to avoid or remove all reference (direct or indirect) to the use of the Inventory Map for determining the need for archaeological surveys in implementing regulations for the New York State Historic Preservation Act and to advise other responsible agencies of appropriate review procedures.

<sup>1</sup> Aluli v. Brown, 1977; Romero-Barcello v. Brown, 1981; Wilson v. Block, 1983.

<sup>2</sup> Save Good Groundwater v. Planning Board, 1986; North Fork Environmental Council v. Janoski et al.

State of New York  
NYS Office of Parks, Recreation and Historic Preservation  
 (Agency)

NOTICE OF PROPOSED RULE MAKING

**DIRECTIONS: ALL ITEMS MUST BE COMPLETED**

Pursuant to the provisions of the State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

1. Proposed action:

Amend Subchapter M of Title 9 NYCRR.

2. Statutory authority under which the rule is proposed:

Parks, Recreation and Historic Preservation Law (PRHPL)  
 Article 14.

3. Subject of the proposed rule:

Implementation of the New York State Historic Preservation Act of 1980.

4. Purpose of the proposed rule:

To clarify and standardize the process by which state agencies comply with Article 14 of PRHPL and the manner in which a property can be deemed or determined eligible for listing on the state register of historic

5. Terms of the proposed rule:

Check applicable box:

The proposed rule contains 2,000 words or less. The original ribbon copy of the text of the proposed rule is a part of this notice and is attached to this form. The typing for the text conforms to the instructions presented in section 260.2 of Title 19 of the *Official Compilation of Codes, Rules and Regulations of the State of New York*.

The proposed rule contains more than 2,000 words. The original ribbon copy of a description of the substance of the proposed rule is a part of this notice and is attached to this form. The typing for the description of the substance conforms to the instructions presented in section 260.2 of Title 19 of the *Official Compilation of Codes, Rules and Regulations of the State of New York*.

Pursuant to section 202(7)(b) of the State Administrative Procedure Act, the agency elects to print a description of the subject, purpose and substance of the proposed rule. The description contains less than 2,000 words. The original ribbon copy of the description is attached to this form. The typing for the description conforms to the instructions presented in section 260.2 of Title 19 of the *Official Compilation of Codes, Rules and Regulations of the State of New York*.

6. The text of the proposed rule, the regulatory impact statement and the regulatory flexibility analysis may be obtained from:

Name of agency representative

Lloyd Adams, Assistant Counsel

Office address

NYS Parks, Rec. & Hist. Pres., ESP, Agency  
 Bldg. #1, Albany, NY 12238

Telephone number

518 486-2926

7. Regulatory impact statement (check applicable box):

- A regulatory impact statement (form 8) of 2,000 words or less is submitted with this notice.
- Because the text of the regulatory impact statement exceeds 2,000 words, a summary is submitted with this notice. No special form is required for this summary.
- A consolidated regulatory impact statement is submitted with this notice and is being used because:
  - the proposed rule is one of a series of closely related and simultaneously proposed rules.
  - the proposed rule is one of a series of virtually identical rules proposed during the same year.
- A regulatory impact statement is not submitted with this notice because the proposed amendment is a technical amendment and, therefore, exempt from the provisions of section 202-a of the State Administrative Procedure Act. Attached to this notice is a statement of the reason or reasons for claiming this exemption.
- A regulatory impact statement is not submitted with this notice because the proposed rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, identification number \_\_\_\_\_, on page \_\_\_\_\_ of issue \_\_\_\_\_, volume \_\_\_\_\_, date \_\_\_\_\_, of the State Register.
- A regulatory impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act and, therefore, exempt from the provisions of section 202-a of such act.

8. Regulatory flexibility analysis (check applicable box):

- A regulatory flexibility analysis (form 9) of 2,000 words or less is submitted with this notice.
- Because the regulatory flexibility analysis exceeds 2,000 words, a summary is submitted with this notice. No special form is required for this summary.
- A regulatory flexibility analysis is not submitted with this notice because the proposal will not impose any adverse economic impact on small businesses and, in addition, will not impose any reporting, recordkeeping or other compliance requirements on small businesses. However, attached to this notice is a statement setting forth this agency's findings, as well as the basis for those findings, that the proposal will not impose any adverse economic impact on small businesses, and, in addition, will not impose any reporting, recordkeeping or other compliance requirements on small businesses. This attached statement includes a description and explanation of the methods used by this agency to ascertain that the proposal will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.
- A regulatory flexibility analysis is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
- A consolidated regulatory flexibility analysis is submitted with this notice and is being used because this proposal is the first of a series of closely related rules which will be the subject of the attached analysis.
- A regulatory flexibility analysis is not submitted with this notice because the proposed rule is subject to a consolidated regulatory flexibility analysis that was previously submitted with a notice of proposed rule making, identification number \_\_\_\_\_, printed on page \_\_\_\_\_ of issue \_\_\_\_\_, volume \_\_\_\_\_, date \_\_\_\_\_, of the State Register.

9. Expiration date (check only if applicable):

- The notice of proposed rule making will not expire in 180 days because it is within the definition in section 102(2)(a)(ii) of the State Administrative Procedure Act.

10. Public hearings (check box and complete as applicable):

- A public hearing is required by law and will be held at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_.
- A public hearing is not required by law, and a public hearing has not been scheduled.
- A public hearing is not required by law, but a public hearing will be held at 10:00 a.m./p.m. on February 21, 19 91, at the 1st floor hearing room of the Alfred E. Smith State Office Building, Albany, NY.

11. Interpreter Services (Check only if a public hearing has been scheduled):

- Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within a reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in paragraph (6) of this notice.



12. Accessibility (Check appropriate box only if a public hearing has been scheduled):

All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

All public hearings except the following have been scheduled at places reasonably accessible to persons with a mobility impairment:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

None of the public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

*NOTE: If one or more public hearings will not be reasonably accessible to persons with a mobility impairment, an agency may provide an explanation; however, an agency is not required to do so. An explanation, if provided, should be submitted as an attachment to this notice.*

Check this box if an explanatory attachment is being submitted as part of this notice.

13. Data, views or arguments may be submitted to (complete only if different than item 6):

Name of agency representative \_\_\_\_\_  
Office address \_\_\_\_\_  
Telephone number \_\_\_\_\_


14. Additional matter required by statute:

Check box if not applicable. (See Attached)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of the State Administrative Procedure Act and Parts 260, 261, 262 and 263 of Title 19 of the *Official Compilation of Codes, Rules and Regulations of the State of New York*, and I hereby certify that this notice complies with all applicable provisions.

This notice was prepared by:

  
(signature)  
Name Lloyd Adams, Assistant Counsel  
Address NYS Parks, Rec. & Hist. Pres., ESP, Agency  
BLDG #1, Albany, NY 12238  
Dated 1/23/91  
Telephone 518 486-2926

Please read before submitting this notice:

- (a) Except for typing done on Form 1 itself, all typing must be done in scannable form and must comply with 19 NYCRR section 260.2.
- (b) Submit the original and two copies of this notice, properly collated (Form 1, the text or summary, the regulatory impact statement and the regulatory flexibility analysis).
- (c) This notice may be hand-delivered or mailed.
  - (1) hand-delivered material must be delivered to the *State Register/Compilation Unit*, NYS Department of State, Room 408, One Commerce Plaza, 99 Washington Avenue, Albany, NY.
  - (2) material submitted by mail must be addressed to the *State Register/Compilation Unit*, NYS Department of State, 162 Washington Avenue, Albany, NY 12231.

Parents



An Environmental Assessment of the revised regulations has been prepared and may be obtained from the contact listed above. OPRHP has tentatively determined, pursuant to Article 8 of Environmental Conservation Law and based on the analysis of potential impacts provided in this assessment, that adoption and implementation of the revised regulations will not have a significant impact on the environment. Comments on the assessment and on the tentative determination may be submitted to the contact.

## Summary of Proposed Rule

This proposal revises Subchapter M of Chapter III of Subtitle I of Title 9NYCRR. This Subchapter sets forth the rules and regulations by which the Office of Parks Recreation and Historic Preservation implements the State Historic Preservation Act (Article 14 of Parks, Recreation and Historic Preservation Law).

In Part 426 of 9NYCRR project impact area is newly defined as the geographic area in which a project may change a property which is either eligible for or listed on the State or National Registers of Historic Places. The definition of an undertaking is clarified by specifically including approvals, licensing, permitting or other entitlements by State agencies to physical activities which could impact eligible or listed property. The definitions of historic property and registered property are simplified but not substantively changed.

In Part 427 of 9NYCRR the application of the criteria for listing is clarified by stating that the commissioner alone applies those criteria to determine eligibility but applies them in consultation with the State Board for Historic Preservation in deciding which eligible properties should be listed on the State Register of Historic Places.

A determination of National Register eligibility by the United States Department of the Interior will now automatically result in eligibility for the State Register.

Part 428 of 9NYCRR is clarified by stating that a DEIS can be used as an agency's consultation submission provided that the commissioner finds it sufficiently detailed to address the needs of

the consultation process. Where multiple agencies are involved in an undertaking they may agree that one of them will serve as lead agency. However, the initiating agency is primarily responsible for compliance with the Preservation Act and all involved agencies remain responsible for assuring that their individual activities are carried out in accordance with the Act.

APO's are required to consult with the commissioner when their agency's undertaking might cause any change in an eligible or listed property and are encouraged to consult with the commissioner in determining if such change will occur.

APO's are required to request an eligibility determination from the commissioner if it appears that a property in the project impact area may be eligible for the State or National registers. The commissioner must make this determination within 30 days of reviewing an adequately documented request.

If it is determined that an undertaking is subject to review, APO's must notify the commissioner and request an impact determination. This request must be documented in sufficient detail to allow the commissioner to make a reasoned decision. Additional information may be required by the commissioner.

The commissioner determines impact based on whether the undertaking will result in the alteration, destruction or neglect of eligible or listed property or the alteration of such a property's setting. The commissioner must notify the APO of the impact determination within 30 days of receiving adequate documentation on which to base a decision. If it is determined that

the impact of an undertaking will be adverse, the consultation process must commence.

Consultation is initiated by the commissioner formulating recommendations on how to avoid or mitigate the adverse impact of the undertaking and forwarding those recommendations to the APO. The APO must then respond in writing by agreeing or disagreeing with the recommendation, stating the facts which form the basis of that decision and, in the case of disagreement, proposing an alternative backed by the supporting facts.

Recommendations and alternatives are analyzed primarily for consistency with the state's historic preservation policy as stated in Article 14 of Parks Law with such other factors as cost, program needs, safety and code requirements also being taken into consideration.

Public participation in the consultation process is the responsibility of the undertaking agency. SEQRA is the primary means of obtaining public input on undertakings. The APO and the commissioner consult at the beginning of consultation to coordinate this process. In the case of disagreement between the APO and the commissioner either may initiate public hearings unilaterally.

The end product of consultation is a Letter of Resolution. If the APO and the commissioner agree on a method of avoiding or mitigating adverse impacts the specifics of that agreement are embodied in a Letter of Resolution signed by both parties. If the commissioner and the APO cannot reach agreement the APO may unilaterally declare that the undertaking is in the public interest and that no means of avoiding or mitigating adverse impacts

exists. This declaration must be in writing and state the facts on which it is based. If the commissioner and the APO agree that there is no way to avoid or mitigate adverse impacts they issue a joint declaration to that effect stating the facts which support the conclusion.

## Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because the proposal will not impose any reporting, recordkeeping or other compliance requirements on small businesses and will have no adverse economic impact on such businesses. The proposal would only affect state agencies. Because the veracity of this conclusion is self-evident from a reading of Article 14 of Parks Law and the regulations found in Part 428 of Subchapter M of Title 9NYCRR no additional study was undertaken to support it.

## Regulatory Impact Statement

### 1. Statutory authority:

Section 14.09 of Parks, Recreation, and Historic Preservation Law establishes that the review of state agency activities which may or will cause a change in properties listed on or eligible for the state and national registers of historic places is one of the duties of the commissioner.

Section 3.09 (8) of Parks, Recreation and Historic Preservation Law authorizes the Commissioner to adopt, rescind or amend such rules and regulations as may be necessary for the exercise of the duties of the office.

### 2. Legislative objective:

To establish a process whereby state agencies must, to the fullest extent possible, avoid or mitigate the adverse impact of their activities on state and national register listed or eligible properties by consulting with the commissioner.

### 3. Needs and benefits:

The proposed amendments are needed to clarify, standardize and document the process by which state agencies comply with section 14.09 of the Parks Law. Experience with the current system as well as comments from other agencies, the public and the state board for historic preservation highlighted this need. The benefits of the proposal will be a logically arranged process with all decision-making being documented and justified in writing.



4. Costs:

It is anticipated that the proposed changes will not directly result in increased costs to state government beyond the cost associated with existing regulations.

5. Paperwork:

Additional paperwork in the form of written decisions and justifications for those decisions will be required.

6. Duplication:

The proposal does not duplicate any existing state or federal programs or requirements.

7. Alternatives:

An alternative to the current proposal was considered by the agency in consultation with Agency Preservation Officers from other agencies. This alternative was a mandatory eligibility survey by other agencies to help the Commissioner determine if eligible properties would be impacted by their projects. This alternative was rejected as somewhat overboard as well as too costly and time consuming.

**SUBCHAPTER M**  
**Historic Preservation**

**DRAFT**

**PART**

- 426 Authority and Purpose; Definition of Terms; Notification and Inquiries  
 427 State Register of Historic Places  
 428 State Agency Activities Affecting Historic or Cultural Properties

**PART 426**

**AUTHORITY AND PURPOSE; DEFINITION OF TERMS;  
 NOTIFICATION AND INQUIRIES**

(Statutory authority: Parks, Recreation and Historic  
 Preservation Law, § 3.09[8], art. 14)

Sec.  
 426.1 Authority and purpose  
 426.2 Definition of terms

Sec.  
 426.3 Notification and inquiries

**Historical Note**

Part (§§ 426.1-426.9, 426.11) added by renum. Part 282, Title 6, filed Sept. 1971; re-pealed, filed June 6, 1974; new (§§ 426.1-426.3) filed Sept. 23, 1981 eff. Sept. 23, 1981.

**Section 426.1 Authority and purpose.** (a) These regulations implement article 14 of the Parks, Recreation and Historic Preservation Law, which was enacted by the New York State Historic Preservation Act of 1980 (chapter 354 of the Laws of 1980). The act became effective on August 22, 1980.

(b) The purpose of the State Historic Preservation Act is to continue and advance the State's historic preservation programs and activities, to continue the responsibility for the coordination of such programs and activities with the Commissioner of Parks, Recreation and Historic Preservation, to foster consistency of State activities with historic preservation policy, to encourage and assist local governments in local preservation programs and activities, and to encourage and assist private agencies and individuals undertaking preservation by private means.

(c) The act declares it to be the public policy and in the public interest of this State to engage in a comprehensive program of historic preservation.

(d) The act authorizes the Commissioner of Parks, Recreation and Historic Preservation, in consultation with the State Board for Historic Preservation, to establish the New York State Register of Historic Places, consisting of sites, districts, structures, buildings, areas or objects above or below the surface of the earth whether on land or in the waters of the State, together with any designated improvements thereon, significant in the history, architecture, archeology or culture of the State, its communities or the nation.

(e) The act requires State agencies to consult with the commissioner if it appears that any project which is being planned may or will cause any change, beneficial or adverse, in the quality of any historic, architectural, archeological or cultural property that is listed on the National Register of Historic Places or property listed on the State Register of Historic Places or that is determined by the commissioner to be eligible for listing on the State Register of Historic Places. It requires State agencies, to the fullest extent practicable, consistent with other provisions of the law, to avoid or mitigate adverse impacts to such properties, to fully explore all feasible and prudent alternatives and to give due consideration to feasible and prudent plans which would avoid or mitigate adverse impacts to such property. It establishes agency preservation officers for the purpose of implementing these provisions.

(f) In addition, the act reinforces and expands the role of the State Board for Historic Preservation as an advisory body to the commissioner.

(1) It continues the board's existing functions of:

(i) advising the commissioner on policy matters affecting historic preservation and the historic site system;

(ii) providing consultation to the commissioner on historic site management, development and interpretation;

(iii) reviewing and making recommendations to the commissioner on whether properties meet the criteria for listing on the State and National Registers of Historic Places; and

(iv) reviewing and advising the commissioner on the statewide survey and plan for historic preservation.

(2) It adds to the board's existing duties, new functions consisting of:

(i) reviewing and making recommendations to the commissioner on grant applications and use of Federal and State grants-in-aid; and

(ii) reviewing and commenting on selected projects which are being reviewed by the commissioner under section 106 of the National Historic Preservation Act of 1966 and section 14.09 of the Parks, Recreation and Historic Preservation Law, and commenting on environmental impact assessments or statements, or as otherwise provided by law, on undertakings which may have an impact on historic resources.

#### Historical Note

Sec. added by renum. 282.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

**426.2 Definition of terms.** Whenever used in these regulations, the following terms shall have the following meanings unless the context otherwise requires:

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

(b) **Board** shall mean the State Board for Historic Preservation established pursuant to article 11 of the Parks, Recreation and Historic Preservation Law.

(c) **Chairman** shall mean the chairman of the State Board for Historic Preservation.

"Eligible property" shall mean any place or property within the

(d) state which the commissioner determines meets the criteria for

listing on the State Register found at section 427.3 of this

part. or which is deemed eligible pursuant to section 427.6 of this subchapter

(e) **Historic preservation** shall mean the study, designation, protection, restoration, rehabilitation and use of buildings, structures, historic districts, areas and sites significant in the history, architecture, archeology or culture of this State, its communities or the nation.

(f) **Historic and/or cultural place or property of historic resource** shall mean any building, structure, district, area, site or object, including underground and underwater sites, that is of significance in the history, architecture, archeology or culture of the State, its communities or the nation.

(g) **Interested party** shall mean any State or municipal official or member of the public.

(h) Inventoried property shall mean:

(1) any property listed on the statewide inventory of historic property established under subdivision 2 of section 14.07 of the Parks, Recreation and Historic Preservation Law;

(2) any property within the areas specified on the statewide archeological inventory map; and

(3) any property listed on the Office of General Services inventory of properties under the jurisdiction or control of, or otherwise owned or used by, any State agency.

These lists, or information pertaining to properties included in the inventory, may be obtained from the commissioner pursuant to section 426.3 of this Part.

(i) Municipality shall mean any county, city, town or village.

(j) Municipal official shall mean the chief executive officer of any municipality or his or her designated representative.

(k) National Register shall mean the National Register of Historic Places established under the National Historic Preservation Act of 1966.

(l) "Project impact area" shall mean the geographic area or areas within which a proposed undertaking may cause any change, beneficial or adverse, in the character or use of an eligible or registered property.

(m) Project Review Data Sheet (PRDS) shall mean the information required by the commissioner to make an informed and reasonable determination as to whether or not a proposed undertaking may have an adverse impact on a registered or eligible property. A suggested form is provided in Appendix I-8 of this Title.

(n) Registered property shall mean any ~~historic~~ place or property within the boundaries of the State nominated by the commissioner for listing on the National Register of Historic Places or listed on the New York State Register of Historic Places established pursuant to section 14.07 of the Parks, Recreation and Historic Preservation Law.

(o) Register shall mean the New York State Register published by the Secretary of State under article 6-A of the Executive Law.

(p) State agency shall mean any State department, agency, board or commission of the State, or a public benefit corporation or public authority at least one of whose members is appointed by the Governor.

(q) State Register shall mean the State Register of Historic Places established under section 14.07 of the Parks, Recreation and Historic Preservation Law.

(r) Undertaking shall mean any of the following:

(1) any physical activity undertaken by a State agency, including the alteration or demolition of property, and the transfer, lease or sale of property;

(2) the funding by a State agency of any physical activity, including the alteration or demolition of property, and the transfer, lease or sale of property; and

(3) The approval, licensing, permitting or any other entitlement by a State agency of any physical activity, including the alteration, demolition, transfer, lease or sale of property.

filed Sept. 23, 1961 eff. Sept. 23, 1961.

**426.3 Notification and inquiries.** (a) All notices required by these regulations and all inquiries and requests for documents and forms referred to in these regulations should be addressed to:

Commissioner of Parks, Recreation and Historic Preservation  
Attention: Historic Preservation Field Services Bureau  
Agency Building 1, Empire State Plaza

(b) Notices to the State Board for Historic Preservation should be addressed to:

State Board for Historic Preservation  
Attention: Chairman, Division of Historic Preservation  
Agency Building 1, Empire State Plaza  
Albany, N.Y. 12238

**Historical Note**

Sec. added by renum. 282.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

**426.4-426.7**

**Historical Note**

Secs. added by renum. 282.4-282.7, Title 6, filed Sept. 1971; repealed, filed June 6, 1974 eff. June 10, 1974.

**426.8**

**Historical Note**

Sec. added by renum. 282.8, Title 6, filed Sept. 1971; repealed, new filed May 12, 1972; repealed, filed June 6, 1974 eff. June 10, 1974.

**426.9**

**Historical Note**

Sec. added by renum. 282.9, Title 6, filed Sept. 1971; repealed, filed June 6, 1974 eff. June 10, 1974.

**426.11**

**Historical Note**

Sec. added by renum. 282.11, Title 6, filed Sept. 1971; repealed, filed June 6, 1974 eff. June 10, 1974.

**PART 427**

**STATE REGISTER OF HISTORIC PLACES**

(Statutory authority: Parks, Recreation and Historic Preservation Law, § 14.07(1))

<b>Sec.</b>	<b>Sec.</b>
427.1 Concurrent consideration of properties for listing on the State and National Registers	427.5 Review and listing
427.2 Nomination of properties to the State Register only	427.6 Properties determined by the United States Secretary of the Interior to be eligible for listing on the National Register
427.3 Criteria for listing	427.7 Revisions to listings
427.4 Notice and comment	427.8 Public access to information

**Historical Note**

Part (§§ 427.1-427.6, 427.20) added by renum. Part 283, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new (§§ 427.1-427.8) filed Sept. 23, 1981 eff. Sept. 23, 1981.

**Section 427.1** Concurrent consideration of properties for listing on the State and National Registers. All historic places within the State listed on or nominated by the commissioner for inclusion on the National Register shall be listed on the State Register.

(a) Except as provided for in subdivision (b) of this section, all proposals for the listing of properties on both the National Register and State Register shall be submitted, reviewed and acted upon in accordance with the regulations governing the National Register (36 CFR 1202), including any amendments to these regulations and any regulations which shall subsequently take the place of these regulations.

(b) At certain points in the listing process, the statutory requirements for the two registers are different. In these instances, and only in these instances, the procedures for listing a property on the National Register and those for listing it on the State Register shall be followed separately. The procedures which the commissioner shall follow for listing a property on the State Register that differ from National Register procedures are as follows:

(1) Those regulations which prohibit listing on the National Register when property owners object shall not apply to nominations for the State Register.

(2) Notice of a proposed listing on the State Register and the provision of a comment period shall be made in accordance with the provisions of section 427.4 of this Part.

(3) A decision on listing a property on the State Register shall be made no later than 180 days from receipt of the nomination and sufficient supporting documentation in accordance with the provisions of section 427.5 (b) of this Part.

(4) Any statutory provision or other procedure established subsequent to the effective date of this Part for listing a property on the National Register which differs from the New York State Historic Preservation Act of 1980 or the provisions of this Part shall not apply to listings on the State Register.

(c) On the date that the commissioner signs a nomination for listing on the National Register, the property will be listed on the State Register, and all benefits and protections of listing shall accrue in full force and effect from that date. Following the listing of a property on the State Register, the commissioner shall provide notification as required in section 427.5 (d) of this Part.

(d) If a property is withdrawn from consideration for nomination to the National Register due to the recommendation of a local historic preservation commission or municipal official, or because the property owner has filed an objection to the listing, it will continue to be considered for listing on the State Register according to the provisions of section 427.5 of this Part.

#### Historical Note

Sec. added by renum. 283.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

**427.2 Nomination of properties to the State Register only.** (a) Nomination proposals may be submitted by an APO, municipal official, local historic preservation board or commission or a member of the public.

(b) All nomination proposals to the State Register are to be made on standard National Register forms, as revised. The forms and standards for their completion are available pursuant to section 426.3 of this Subchapter.

(c) If the commissioner determines that the nomination form is incomplete and the supporting documentation is insufficient, he shall ask the party submitting the nomination proposal to provide such additional documentation as is required to make a decision on listing the property on the State Register.

(d) Completed proposals should be submitted to the commissioner and must be accompanied by a letter stating that the nomination is to be considered for listing only on the State Register.

#### Historical Note

Sec. added by renum. 283.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

427-3  
Criteria for  
History

The following criteria shall be used by the commissioner when determining if properties are eligible for the State Register and by the commissioner, in consultation with the Board, in determining which eligible properties should be listed on the State Register.

(a) The quality of significance in American history, architecture and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

- (1) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (2) that are associated with the lives of persons significant in our past; or
- (3) that embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) that have yielded, or may be likely to yield, information important in prehistory or history.

(b) Special considerations. Ordinarily, cemeteries, birthplaces or graves of historic figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the State Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- (1) a religious property deriving primary significance from architectural or artistic distinction or historical importance;
- (2) a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with an historic person or event;
- (3) a birthplace or grave of an historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;
- (4) a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;
- (5) a reconstructed building, when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;
- (6) a property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own historical significance; or
- (7) a property achieving significance within the past 50 years if it is of exceptional importance.

**Historical Note**

Sec. added by renum. 283.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

**427.4 Notice and comment.** (a) Upon receipt of a nomination proposal with sufficient documentation, and no later than 30 calendar days prior to the review of the proposal by the board, the commissioner shall provide notice of the proposed listing to the APO and/or municipal official having jurisdiction over the property and, except as provided in subdivision (b) of this section, shall provide such notice by mail to each owner, if privately owned, at his last known address.

(b) Whenever a listing is proposed where there are more than 50 property owners, or the owner or owners cannot be ascertained, the notice of pending listing shall be made by publication in a newspaper of general circulation in the area where the property is located.

(c) No later than 30 calendar days prior to the review of the proposal by the board, the commissioner shall cause notice of the proposed listing to be published in the Register. Such notice shall state when the board will review the proposal and how an interested party may submit comments on it.

(d) If the municipal official and/or APO with jurisdiction over any property, or the owner or owners of such property, advises the commissioner in writing within 20 calendar days of mailing or publishing of notification that the official or owner questions the eligibility of the proposed property, the commissioner and the board shall postpone consideration of the proposal for no more than 60 days to allow the official or owner a reasonable opportunity to present a written statement to the commissioner and the board.

(e) Any interested party may submit comments relating to a nomination proposal. Comments should be addressed to the commissioner who shall cause them to be appended to the nomination form and reviewed along with the proposal. In addition, any interested party may appear before the board to present comments relating to a nomination proposal. Such party should notify the board of his intention to present comments no later than 10 calendar days prior to the board meeting.

**Historical Note**

Sec. added by renum. 283.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

**427.5 Review and listing.** (a) The nomination proposal, together with all comments, shall be reviewed by the board which shall consult with and make recommendations to the commissioner as to whether the property meets the criteria for listing on the State Register.

(b) After consideration of the recommendations of the board, the commissioner shall include on the State Register all places he determines to be of significance.

(c) The commissioner shall make such determination no later than 180 calendar days after receipt of the proposal with sufficient supporting documentation as provided for in section 427.2 of this Part, including all written comments provided for in subdivision (d) of section 427.4.

(d) The commissioner shall issue his decision on listing the property, with an appropriate finding in support, in writing.

(e) In addition, the commissioner shall specify whether a listed property is primarily of national, State or local significance.



(f) (1) Promptly, and in no case later than 45 calendar days after the commissioner makes a decision relating to the listing of a property on the State Register, the commissioner shall:

(i) notify the appropriate APO and/or municipal official and, except as provided for in paragraph (2) of this subdivision, each owner of privately owned property at his last known address;

(ii) publish a notice of the decision in a newspaper of general circulation in the area where the property is located; and

(iii) publish a notice of the listing in the Register.

(2) Whenever a listing would affect property in which there are more than 50 property owners, or the owner or owners cannot be ascertained, the notice published pursuant to subparagraph (ii) of paragraph (1) of this subdivision shall be in lieu of the personal notice provided for in subparagraph (i) of paragraph (1).

(g) A property which the commissioner has decided not to list on the State Register may be repropoed for nomination if additional pertinent information, not previously considered, regarding the property's historical and cultural significance can be provided to the commissioner. A reproposal for nomination should be submitted and will be considered in the same manner as a new proposal.

**Historical Note**

427.6 Effect of National Register Eligibility Determination on State Register Eligibility. Properties which have not been nominated by the commissioner for listing on the National Register, but which have been determined eligible for such listing by the Department of the Interior of the United States shall also be deemed eligible for listing on the State Register and may be nominated thereto in accordance with section 427 of this Part.

Sec. filed Sept. 23, 1961.

**427.7 Revisions to Listings.** The commissioner may remove a property from the State Register if he determines, after consultation with the board, that the qualities that gave it significance and for which it was initially listed no longer exist. The provisions of sections 427.4 and 427.5 of this Part shall be complied with for the proposed deletion of a property from the State Register in the same manner as for a proposed listing.

**Historical Note**

Sec. filed Sept. 23, 1961 eff. Sept. 23, 1961.

**427.8 Public access to information.** The commissioner shall make available information relating to properties proposed for listing or listed on the State Register of Historic Places in accordance with the Freedom of Information Law, article 6 of the Public Officers Law, and Part 463 of this Title. Information on archeological sites that may be damaged by unauthorized investigators if their location be generally known may be withheld from the public at the discretion of the commissioner in consultation with the Commissioner of Education, and will be released, where appropriate, in a format approved by such commissioners.

**Historical Note**

Sec. filed Sept. 23, 1961 eff. Sept. 23, 1961.

**427.20**

**Historical Note**

Sec. added by ramun. 283.30, Title 6, filed Sept. 1971; repealed, filed June 6, 1974 eff. June 10, 1974.

**PART 428**

**STATE AGENCY ACTIVITIES AFFECTING HISTORIC OR CULTURAL PROPERTIES**

(Statutory authority: Parks, Recreation and Historic Preservation Law, § 14.06[1], [2])

<p>Sec. 428.1 Responsibility of State agencies with regard to registered and eligible property 428.2 Coordination with other review procedures 428.3 Activities undertaken by more than one State agency 428.4 Undertakings subject to review; Project Review Data Sheet 428.5 Request for determination of eligibility 428.6 Determination of eligibility 428.7 Assessment of impact</p>	<p>Sec. 428.8 Criteria of adverse impact 428.9 Exploration of alternatives 428.10 Individual undertakings exempt from review 428.11 Designation of categories of undertakings exempt from review 428.12 Establishment of standards for series of similar undertakings 428.13 Changes different from those normally occurring 428.14 State Board for Historic Preservation 428.15 Written record; report</p>
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**Historical Note**

Part (§§ 428.1-428.5) added by renum. Part 284, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new (§§ 428.1-428.15) filed Sept. 23, 1981 eff. Sept. 23, 1981.

**Section 428.1** Responsibility of State agencies with regard to registered and eligible property. To the fullest extent practicable, it is the responsibility of every State agency, consistent with other provisions of law, to avoid or mitigate adverse impacts to registered or eligible property. Every agency shall fully explore all feasible and prudent alternatives and give due consideration to feasible and prudent plans which avoid or mitigate adverse impacts on such property.

**Historical Note**

Sec. added by renum. 284.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

**428.2** Coordination with other review procedures. (a) No project requiring review by the commissioner acting in his capacity as State Historic Preservation Officer in accordance with section 106 of the National Historic Preservation Act of 1966, as implemented by the regulations of the Federal Advisory Council on Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR 800), shall be reviewed in accordance with these procedures.

(b) A draft environmental impact statement (DEIS) prepared in compliance with the State Environmental Quality Review act (SEQR) shall be submitted to the commissioner and to the chairman of the board and may be accepted for the purpose of complying with subdivisions (b) and (c) of section 428.8 of this Part provided the commissioner determines that the DEIS contains sufficient detailed information to satisfy the requirements of those subdivisions.

section 428.3<sup>b</sup> and provided that the commissioner has been allowed to comment on the EM&CP. This subdivision does not affect the responsibilities of the PSC under articles VII and VIII of the Public Service Law or change the existing relationship between the commissioner and the PSC relating to the selection of corridors under article VIII.

**Historical Note**

Sec. added by renum. 284.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

**428.3 Activities undertaken by more than one State agency.**

- (a) If more than one State agency is involved in an undertaking which is subject to review under this Part, a single consolidated review will be acceptable, provided that it encompasses all agency activities associated with the undertaking.
- (b) The primary responsibility for complying with the provisions of this Part is on the agency initiating the undertaking. However the involved agencies may agree among themselves which agency shall act as lead agency for purposes of this Part.
- (c) Notwithstanding the provisions of subdivisions (a) and (b) of this section, every State agency involved in an undertaking shall be responsible for ensuring that the provisions of this Part are complied with.

428.4 Undertakings Subject to Review.

(a) As early in the planning process as possible, and in any case prior to the preparation or approval of any final design or plan or the permitting or approval of an undertaking the APO shall determine if the undertaking is subject to review under this Part. APOs are strongly encouraged to consult with the commissioner when making this determination.

(b) Except as provided in sections 428.11 through 428.13 such review is mandatory whenever it appears that any aspect of the proposed undertaking may or will cause any change, beneficial or adverse, in the quality of any eligible or registered property in the project impact area. For purposes of this Part a change includes but is not limited to; the whole or partial restoration or rehabilitation of a property, landscape, or improvements to a site; any action which might lead to the destruction or alteration of all or part of a property; the alteration of a property's surrounding environment; the introduction of any visual, audible or atmospheric elements or any other actions which might cause or contribute to the destruction, alteration or neglect of an eligible or registered property.

(c) If it appears that any property in the project impact area may meet any of the criteria for listing set forth in section 427.3 of this Part, the APO shall request an eligibility determination in accordance with section 428.5 of this Part. This request shall be made prior to or concurrently with the notice and request for determination of impact made pursuant to subdivision (d) of this section.

(d) If it is determined that an undertaking is subject to review under this Part, the APO shall notify the commissioner in writing and request that the impact of the undertaking on eligible or registered property be determined. This notice must list all State agencies participating in the undertaking and review and indicate if a single consolidated review is being conducted pursuant to section 428.3 of this Part.

(e) The APO shall provide sufficient documentation for the commissioner to make an informed and reasoned determination concerning the impact of the undertaking on eligible or registered property. Submission of a completed PRDS will generally be deemed sufficient for this purpose. However, the commissioner may determine that the PRDS is not adequate and require the agency to submit any additional studies or documentation deemed necessary.

#### 428.5 Request for determination of eligibility.

(a) At the request of an APO or any other interested party, the commissioner shall determine if any property which may be affected by an undertaking is eligible for the State Register.

(b) A request for an eligibility determination under this section shall be made at a reasonable time prior to the

implementation of the undertaking. The commissioner, after notifying the APO in accordance with the provisions of subdivision (d) of this section, will determine on a case-by-case basis what constitutes a reasonable time, and this determination shall be conclusive.

(c) The request, whether made by an APO or an interested party, shall be accompanied by sufficient information concerning the property for the commissioner to make an informed and reasoned determination of eligibility. The commissioner may require submission of whatever additional information is deemed necessary to this determination. When an APO requests a determination of eligibility a completed PRDS should accompany the request.

(d) If an interested party requests a determination of eligibility the commissioner shall notify the APO of any agency having jurisdiction over the property or known to be involved in the undertaking. The commissioner may ask the APO to submit a completed PRDS or any other information relating to the undertaking and give the APO an opportunity to comment on the request.

428.6 Determination of eligibility pursuant to request.

(a) Within 30 days of receiving sufficient information pursuant to section 428.5, the commissioner shall determine if the property meets any of the criteria for listing found in section 427.3 and is therefore eligible for the State Register. Notice of the commissioner's ruling shall be given to the party who requested the determination and to the relevant APO.

(b) If the commissioner identifies eligible properties or resources, the APO must comply with the provisions of section 428.4.

428.7 Assessment of impact.

(a) In determining whether an undertaking will have an adverse impact on eligible or registered property, the commissioner shall consider whether the undertaking is likely to cause:

(i) destruction or alteration of all or part of a property;

(ii) isolation or alteration of a property's environment;

(iii) introduction of visual, audible or atmospheric elements which are out of character with the property or alter its setting;

(iv) neglect of a property resulting in its deterioration or destruction.

(b) When a determination of eligibility is made pursuant to section 428.6 following the submission of a completed PRDS and any other information requested pursuant to section 428.5 the commissioner shall determine the impact of the undertaking at the same time eligibility is determined. Both determinations shall be included in the notice given to the APO under section 428.6(a).

(c) In all other cases the commissioner shall determine if the project will have an adverse impact on eligible or registered property and notify the APO of this determination within

30 days of receiving a completed PRDS and any other information requested pursuant to section 428.4(e).

(d) If, upon reviewing a project as proposed by the undertaking agency, the commissioner is satisfied that it will cause no adverse impact on eligible or registered property, notice of this determination shall be given to the APO and no further review or consultation under this Part shall be required.

428.8 Consultation Process: Exploration of Feasible and Prudent Alternatives. To the fullest extent possible it is the duty of every State agency to avoid or mitigate the adverse impacts of its undertakings on eligible or registered properties. To protect these irreplaceable assets and meet their legal obligations, agencies must make every effort to reconcile their programs with the public policy of the State regarding historic preservation by finding a feasible and prudent means to avoid or mitigate any adverse impact of the undertaking identified by the commissioner. To this end, the following procedures shall be followed:

(a) If the commissioner determines that an undertaking will have an adverse impact on eligible or registered property recommendations shall be formulated which the undertaking agency must consider when exploring all feasible and prudent alternatives. These recommendations shall accompany the notice of adverse impact given by the commissioner pursuant to section 428.7. When appropriate, the commissioner's recommendations shall include methods for curating archaeological finds produced as a result of the undertaking.



(b) Unless the agency elects to abandon the project, it shall fully explore and give thorough consideration to the commissioner's recommendations and respond to them in writing within a reasonable time. The agency's response must specify if it agrees or disagrees with the commissioner's recommendations and, if it disagrees, give the factual basis for its position.

(c) If the agency disagrees with one of the commissioner's recommendations, its response under subdivision (b) of this section must also include an alternative proposal which, in the agency's opinion, would avoid or mitigate to the greatest extent possible adverse impacts identified by the commissioner. Any such proposal must include a statement of the facts which support it.

(d) In formulating recommendations or alternatives, both the commissioner and the undertaking agency must give primary consideration to the State's historic preservation policy as expressed in article 14.00 of the Parks, Recreation and Historic Preservation Law. Other factors such as cost, program needs, safety, efficiency, code requirements or alternative sites may also be considered. However, none of these factors standing alone shall be determinative of whether a particular proposal is feasible or prudent.

#### 428.9 Consultation Process: Public Participation.

(a) The agency proposing the undertaking is responsible, through the State Environmental Quality Review process or similar procedures, for obtaining the views of the public concerning the undertaking.

(b) At the commencement of the consultation process, the APO shall confer with the commissioner to establish a process for appropriate public notification and participation which may include public hearings at which representatives of local government and interested citizens may express their views on the undertaking or on any alternatives which would avoid or mitigate the adverse impacts of the undertaking on eligible or registered properties. If it is determined that a public hearing is appropriate it should, whenever possible, be conducted concurrently with other public hearings which the undertaking agency might be required to hold under other provisions of law. If the commissioner and the APO do not agree on the need for a public hearing or the adequacy of hearings held under other provisions of law either of them may unilaterally decide to conduct a public hearing. Notice of any public hearing held pursuant to this section shall be given at least 15 days in advance of the hearing date.

428.10 Consultation Process: Letter of Resolution. The dialogue contemplated by Sections 428.8 and 428.9 should, if at all possible, culminate in the execution of a Letter of Resolution between the commissioner and the undertaking agency. To this end, the following procedure shall be followed:

(a) After reviewing all information regarding the proposed undertaking and after any on-site inspection or public hearings, the agency and the commissioner shall determine if there are feasible and prudent alternatives which would avoid or mitigate any adverse impact of the undertaking on eligible or registered property.

(b) If the commissioner and the agency agree on a course of action which would avoid or satisfactorily mitigate an adverse impact, their agreement shall be embodied in a Letter of Resolution, executed by both parties, and specifying how the undertaking will proceed.

(c) At the conclusion of the undertaking the agency shall confirm in writing that the undertaking has been completed in accordance with a Letter of Resolution. The Commissioner may request drawings, photographs or other materials to document satisfactory completion of the undertaking.

(d) If the agency determines that there are no feasible and prudent alternatives which would avoid or satisfactorily mitigate adverse impacts and also determines that it is nevertheless in the public interest to proceed with the undertaking, it may unilaterally declare that no feasible and prudent alternative exists. The agency must give the commissioner written notice of this determination which shall include the reasons for the agency's decision and the facts supporting it.

(e) The agency and the commissioner may agree that there are no feasible and prudent alternatives which would avoid or mitigate adverse impacts but that it is nonetheless in the public interest to proceed with the undertaking. In such event, the agency and the commissioner shall make a joint written declaration to this effect which shall include the factual basis for their decision.

428.11 ~~425.70~~ Individual undertakings exempt from review. When an undertaking is exempt, the agency shall have no further obligations under these procedures. The following undertakings shall be exempt:

(a) an undertaking which has been certified by the Director of the Budget, pursuant to section 10 of the New York State Historic Preservation Act of 1980 (chapter 354 of the Laws of 1980), as one on which substantial time, work and money have been expended prior to the effective date of the act; and

(b) an undertaking which is a State project necessary to prevent an immediate and imminent threat to life or property.

**Historical Note**

Sec. filed Sept. 23, 1981 eff. Sept. 23, 1981.

428.12 ~~428.11~~ Designation of categories of undertakings exempt from review. At the request of an APO, the commissioner shall consider the designation of certain categories of undertakings as being exempt from review pursuant to this Part. In order to be designated by the commissioner as an exempt category, the category of undertaking must not be likely to change the quality of historic resources. The designation of exempt categories will occur in the following manner:

(a) The APO shall make a written request to the commissioner for designation. The request must be accompanied by the following documentation:

(1) a complete description of the nature of all activities that would be implemented in the particular category of undertaking; and

(2) a statement from the APO concerning the reason(s) <sup>for</sup> ~~he~~ <sup>ing</sup> believed that activities implemented in the particular category of undertaking will not cause a change to any registered or eligible property.

(b) If the commissioner determines that the documentation submitted is insufficient, the agency shall provide additional documentation requested by the commissioner in order for the commissioner to make a determination.

(c) The commissioner shall consider the information provided pursuant to subdivisions (a) and (b) of this section, and shall respond whether the category of undertaking will be exempt from review pursuant to these regulations. The commissioner shall provide the reason(s) for this determination.

(d) The commissioner shall respond to the request within 30 calendar days of receipt. If the commissioner requests that additional information be submitted pursuant to the provisions of subdivision (b) of this section, the commissioner shall respond within 30 calendar days of the receipt of the additional material.

(e) If an agency makes a request to the commissioner for certification of an exempt category, until such time as the commissioner issues a written determination that the category is exempt the agency shall comply with the provisions of this Part as if the category of undertaking is not exempt.

**Historical Note**

Sec. filed Sept. 23, 1981 eff. Sept. 23, 1981.

<sup>13</sup>  
~~428.12~~ **428.13** Establishment of standards for series of similar undertakings. (a) If an agency anticipates a series of similar undertakings that are not exempt from review pursuant to section 428.10 of this Part and are not in an exempt category designated pursuant to section 428.11, but would otherwise require individual reviews, the APO may request the establishment of overall standards for the implementation of the undertakings, eliminating the need for a review of such undertakings on a case-by-case basis. The APO shall provide:

- 11  
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- (1) a request for consultation with the commissioner; and
  - (2) a description of the series of similar undertakings under consideration.

(b) If the commissioner concurs with the APO that establishment of standards for the purpose of eliminating the need for review on a case-by-case basis would be appropriate, then the commissioner and APO will confer further for the purpose of defining the series of undertakings and establishing mutually acceptable standards for their implementation.

(c) For as long as the standards are strictly conformed to by the agency in the implementation of each undertaking of the series of similar undertakings, the undertakings will be exempt from further review. However, if the commissioner determines that an agency is not conforming to standards established pursuant to subdivision (b) of this section, he will so notify the agency, and the agency will be required to comply with the provisions of this Part for each undertaking in the series as if it were a separate undertaking.

(d) Until such time as standards have been agreed to pursuant to subdivision (b) of this section, the agency will comply with the provisions of this Part for each undertaking in the series as if it were a separate undertaking.

**Historical Note**

Sec. filed Sept. 23, 1981 eff. Sept. 23, 1981.

<sup>14</sup>  
~~428.14~~ **428.14** Changes different from those normally occurring. Notwithstanding the provisions of sections 428.11 and 428.12 of this Part, if an APO learns that any activity in an exempt category, or in a series of undertakings for which standards have been agreed upon, shall have a result different from the result contemplated in designating the category or establishing the standards, the agency shall review the activity as a separate undertaking pursuant to the provisions of sections 428.4 through 428.9 of this Part.

**Historical Note**

Sec. filed Sept. 23, 1981 eff. Sept. 23, 1981.

<sup>15</sup>  
428.14 State Board for Historic Preservation. (a) The board may review and comment in writing to the commissioner on projects of its choosing which are being reviewed by the commissioner. It may review and comment on environmental assessments or statements submitted to it pursuant to subdivision (b) of section 428.2 of this Part. In addition, the board may review and comment, as otherwise provided by law, on undertakings where it appears that any aspect of the undertaking may or will cause any change, beneficial or adverse, in the quality of the historic, architectural, archeological or cultural character that qualifies an historic or cultural place for listing on the State Register.

(b) At the request of the board, the commissioner shall provide the board with the PRDS and other documentation relating to any project selected by it for review.

(c) The board may submit its comments to the commissioner for his consideration and inclusion in the record relating to the project.

**Historical Note**

Sec. filed Sept. 23, 1981 eff. Sept. 23, 1981.

<sup>16</sup>  
428.15 Written record; report. (a) The commissioner shall maintain a written record of all materials submitted to him, all documents and all findings and comments thereon, and shall make them available pursuant to the Freedom of Information Law and Part 463 of this Title.

(b) An AFO shall provide the reasons for a determination that an undertaking is not subject to the review of the commissioner, pursuant to section 428.4 of this Part, to any interested party requesting this information in writing.

(c) The commissioner shall issue an annual report of State agency undertakings on which comment has been requested and issued, including the results of the review process and alternatives proposed or implemented by State agencies.

**Historical Note**

Sec. filed Sept. 23, 1981 eff. Sept. 23, 1981.

**ART WHAT THOU EAT**  
Images of Food in American Art

Linda Weintraub, Editor  
The Edith C. Blum Art Institute,  
Bard College

ART WHAT THOU EAT traces the changes in America's eating habits, its food passions, and its fads and fancies during the nineteenth and twentieth centuries. 150 years of art from 80 artists range from works by Jasper Johns, Roy Lichtenstein, Alice Neel, Andy Warhol, and Mary Cassatt, to lesser-knowns Janet Fish, Lucille Corcos and Frank di Gioia.

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IMAGES OF FOOD IN AMERICAN ART



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# New York Archaeological Council

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b. Applicants must have had at least six weeks of professionally supervised archaeological field training and at least four weeks of supervised laboratory analysis and/or curation experience. Requirements for both field and laboratory analysis will be considered to have been met by attendance at an archaeological field school which meets the guidelines set forth by the Society for Professional Archaeologists.

c. Applicants must demonstrate professional experience in one or more areas of archaeological activity, such as: field research and excavation, research on archaeological collections, archival research, administration of units within public or private agencies oriented toward archaeological research, conduct of cultural resource management studies for public agencies, or teaching with an emphasis on archaeological topics. Applicants meeting the education and training criteria and having other professional interests related to archaeology will be considered on a case by case basis.

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