

Historic Preservation Assessment Regulatory Background

Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, requires the lead federal agency with jurisdiction over an undertaking to consider impacts to historic properties, before the undertaking occurs. Undertakings in this sense include activities, projects, or programs that are directly or indirectly funded by a federal agency, such as the CDBG funding source from Housing and Urban Development for this application's improvements. The implementing regulation of Section 106 is 36 CFR Part 800, overseen by the Department of Interior's Advisory Council on Historic Preservation (ACHP).

The NHPA defines a historic property as any archeological site, district, building, structure, or object that is listed in, or eligible for inclusion in, the National Register of Historic Places (NRHP). Under this definition, other cultural resources may be present within a project's Area of Potential Effects but are not historic properties if they do not meet the eligibility requirements for listing in the NRHP. To be eligible for the NRHP, a property generally must be historically significant and greater than 50 years of age, although there are provisions for listing recent cultural resources if they are of exceptional federal, state or local importance.

36 CFR 800 establishes the three-step processes for: (1) identifying whether historic properties will be affected by the proposed undertaking; (2) assessing the undertaking's effects on identified historic properties, and (3) engaging in consultation with stakeholders to avoid, reduce, or mitigate any adverse effect from the undertaking. Adverse effects include, but are not limited to (per 36 CFR 800.5): destruction or alteration of all or part of a property; isolation from or alteration of its surrounding environment; introduction of visual, audible, or atmospheric elements that are out of character with the property or that alter its setting; transfer or sale of a federally owned property without adequate conditions or restrictions regarding preservation, maintenance, or use; and neglect of a property resulting in its deterioration or destruction.

36 CFR Part 800 specifies that certain parties must be consulted during the process. These parties include: the State Historic Preservation Officer (SHPO) who is appointed by each state to protect the interests of its cultural heritage; and federally-recognized Native American Tribes that have stated a claim to the area. Sections 101(b)(3) and 101(d)(6)(B) of the NHPA provides each SHPO and Tribe, respectively, a prominent role in advising the responsible federal agencies and ACHP in their efforts to carry out Section 106 requirements. Federal agencies usually consult with the SHPO and Tribes when developing methodologies related to cultural resource investigations and are required to notify SHPO and Tribes when making findings related to the establishment of an undertaking, findings of NRHP-eligibility of identified cultural resources, project effects to historic properties, and resolution of adverse effects. That process has been formalized for this New Jersey Hurricane Sandy disaster recovery program through the execution of a Programmatic Agreement signed in 2013. For projects located within municipal boundaries, the assessment and resolution of adverse effects must also be comply with local building codes and ordinances, and any local historic district requirements that are mandated by a Certified Local Government or local Historic Preservation Commission.

The Programmatic Agreement stipulations state that each SHPO and Tribe generally are required to respond within 15 days of receiving a request to review a proposed action, or a request to make a finding or determination regarding historic properties located within the project's Area of Potential Effect. In the event that the SHPO/Tribe does not respond within this time frame, 36 CFR 800.3(c)(4) states that the lead agency (DCA) can decide to (1) proceed to the next step in the application process based on any earlier findings or determinations that have been made up to that point; or (2) consult directly with the ACHP in lieu of the SHPO/Tribe. If, after this step is followed, the SHPO or Tribe decides to re-enter the Section 106 process, 36 CFR 800.3(c)(4) further states that the lead agency may continue the consultation proceeding without being required to reconsider previous findings or determinations.

Assessment of Section 106 Compliance

The proposed project will involve the reconstruction and improvement of a public facility, Lakeview Field, which will include improvements to the existing lighting, fencing, playing surface, and dugouts throughout the 5 fields. The 14.9 acre, Lakeview Field, is composed of 5 baseball/softball fields, of which two joining fields are inset within a football field, a stocked lake, gazebo, playground, and small walking trail. The project will include grading of the existing fields as needed, excavation of 6-12 inches of soil and installing synthetic turf at all of the fields. The synthetic turf installation will include an underdrain system, a perimeter edge where the turf and natural grass abut, base stone laid without damaging the soil bed, geotextile liner or drains, a layer of finishing stone, the synthetic turf, and a resilient layered infill. In preparation for the synthetic turf installation, all topsoil, organic, and non-compactable materials need to be removed, the soil bed must have a minimum slope of 0.5%, the soil bed must be compacted, the soil bed must be prepared to tolerances of not more than 1/2" from design grade to allow for even drainage, and lastly, a geotextile fabric is required to cover the soil bed. Additionally, the project will replace all field lights with highly energy efficient 'green' lighting and install a lighting control system that will allow the city to remotely operate the lumens so that only the proper amount of lighting is emitted, thereby reducing electrical usage and costs. The project will also replace damaged or older fencing throughout the park, and replace the dugouts throughout the park. The dugouts will consist of eight (8) 6'X17' all steel single slope shelters placed on a 4" minimum thickness reinforced concrete slab. 24 gauge exposed fastener metal roofing and prime painted tube steel will be used to complete each of the dugouts.

The proposed project complies with NHPA Section 106 requirements. The property was exempt from the Section 106 review for above-ground historic buildings given the allowances contained within the Programmatic Agreement between NJHPO and Federal Emergency Management Agency (FEMA) for Hurricane Sandy and its subsequent expansion to include the state Departments of Environmental Protection (NJDEP) and Community Affairs (NJDCA). That document exempts the requirement for a Section 106 review for above-ground historic buildings if it falls within the Historic Preservation Exclusion "Green" Zone that was defined by staff of FEMA and the NJHPO through windshield surveys conducted soon after the storm. That exemption / allowance is stated within Stipulation II.D.1 of the Programmatic Agreement and Appendix B, which reads:

Main Document, Stipulation II.D.1

D. Emergency Demolition and Debris Removal of Privately-Owned Properties: FEMA may need to fund debris removal activities involving the demolition and removal of buildings and structures that are damaged beyond repair or that are completely collapsed and/or disassembled by the actions of the storm and therefore must be removed for health and safety reasons). FEMA is required by the NHPA to determine if its specific actions in response to disasters will cause adverse effects to any historic properties. FEMA EHP will review these projects using the following emergency process outlined below.

1. Areas in the surge zone where there is substantial and widespread damage to improved property and where it is anticipated that FEMA funds will be used for the emergency removal of private property will be targeted for surveys by a joint FEMA-SHPO team. The purpose of the survey is to delineate areas of no above ground historic properties. FEMA and SHPO survey team will jointly identify these areas through background research and a windshield survey. The post-survey write-up will provide a description of the survey boundary where the no historic

above ground properties. It also includes information about where there are properties that will require more information if an undertaking takes place. The boundaries of the area where there are no historic above ground properties are digitally mapped. The survey write-up, the maps and photos taken during the survey comprise the consultation package which is formally submitted to SHPO for review and approval. Undertakings occurring within these areas have been formally determined to contain no above ground historic properties in accordance 36 CFR§ 800.4(d)(I) and will have no effect on historic properties. FEMA may approve undertakings to above ground resources in these areas without further consultation with SHPO.

The joint FEMA / NJHPO survey that designated this location as not having above-ground historic preservation concerns was Little Ferry Borough NJHPO project number 13-0610-1 and was conducted on March 11, 2013. The NJHPO chronological log number for it is I2014-542). Its position within this zone is shown in the enclosed map (See 0230_6.04_1_HistoricPreservationExemptionZoneMap).

The NJHPO was consulted for archaeological concerns as the project will involve the reconstruction of existing fencing and lighting, along with the rehabilitation/reconstruction of playing surfaces with the park and the replacement of dugouts. Although Tier II PA allowances (II.B.1 and 2) include provisions for recreational facilities, the supporting documents identified a scope of work greater than in-kind replacement or considered to be minor upgrades. Consultation with the New Jersey Historic Preservation Office (NJHPO, also SHPO) was initiated by URS on behalf of the program in an email dated September 16, 2014. The email included the form developed by NJHPO for Section 106 disaster recovery evaluations, specifically the "Form 1" which indicated that no historic properties or intact archaeological sites were on the property (See NCR39505_DEP_Form1_NJHPO_Submission_NCR_TO1047). The NJHPO replied by signing the Form 1 on September 23, 2014 that they concurred with the assessment made by URS and the undertaking would not impact historic properties or archaeological sites (See NCR39505_DEP_Form1_NJHPO_Response_NCR_TO1047).

Sources: NCR39505_PA_NCR_TO1047; 0230_6.04_1_HistoricPreservationExemptionZoneMap;
NCR39505_DEP_Form1_NJHPO_Submission_NCR_TO1047;
NCR39505_DEP_Form1_NJHPO_Response_NCR_TO1047.