

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 for NEP0232 Sites A and B

The proposed project complies with NHPA Section 106 requirements. Consultation with the New Jersey Historic Preservation Office (NJHPO, also SHPO) was not required for this project given the allowances contained within the Programmatic Allowance 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). The preamble to Appendix B states the types of reviews that do not require SHPO consultation:

The allowances consist of two tiers - Tier I and Tier II. The Tier I allowances will have no effect on historic properties. FEMA staff may apply Tier I allowances without meeting any professional historic preservation qualification standards. Tier II allowance will have limited effect on historic properties. Only FEMA staff meeting the applicable Secretary Professional Qualifications in accordance with Stipulation I.B.1.a of this Agreement may apply Tier II allowances to ensure that the work is in conformance with the Secretary for the Treatment of Historic Properties.

The Tier I Allowances exempts the requirement for a Section 106 review for above-ground historic buildings if they were constructed less than 48 years ago. That exemption / allowance is stated within Appendix B, Tier I allowance Stipulation II, which reads:

Tier I Allowances

II. BUILDINGS

A. Repair or retrofit of buildings less than 48 years old when the disaster was declared.

The tax assessment record for this property from the New Jersey Association of County Tax Boards does not have a date of construction listed. In order to determine if the application met the Tier 1 allowance, a review of historic imagery was made. It demonstrated that there was no building on the lot in 2012, before Hurricane Sandy made landfall. Aerial imagery from Bing and Google Earth imagery shows that there has been no building on this parcel since 1991, the earliest date that imagery is available. Given that this will be new construction that will not impact a historic building that was on the lot at the time of the storm, the proposed project meets this allowance. See vacant lot verification file and tax card.

The Programmatic Agreement also states that an archaeological investigation of the project area is not required when it is a reconstruction project, if it is located on a barrier island. That allowance is stated under Appendix B, Tier II Stipulation I, which states:

Tier II Allowances

I. BARRIER ISLANDS ONLY - GROUND DISTURBING ACTIVITIES AND SITE WORK:

Any projects located on a barrier island will be exempt from archaeological review by the New Jersey State Historic Preservation Office except when any of the following conditions applies:

- A. There is a known shipwreck site on or adjacent to the project site; or
- B. There is a known archaeological site on or adjacent to the project site;
- C. Local officials or members of the public identify to the federal agency archaeological resources, or strong potential, within the project site; or
- D. Footprint of ground disturbance exceeds 5 acres; or
- E. FEMA personnel meeting or exceeding the Secretary's Professional Standards for archaeology assesses the project site as possessing a high potential for the presence of significant archaeological deposits, as guided by archaeological site sensitivity models developed for the region.

The city of Wildwood is located on the southernmost barrier island of New Jersey, which it shares with the communities of North Wildwood, Wildwood Crest and Diamond Beach. None of the above exceptions apply; therefore the project is exempt from an archaeological review. The application of this allowance was made by Jeremy Lazelle of URS, an archaeologist who meets the Secretary of Interior's professional standards for archaeology.

The proposed project is not situated within a local historic district and so consultation with the municipal government regarding potential historic preservation concerns was not required. Furthermore, as the proposed program action is permitted under the Tier II allowance for archaeology, consultation with the Native American Tribe signatories to the Programmatic Agreement was not needed.

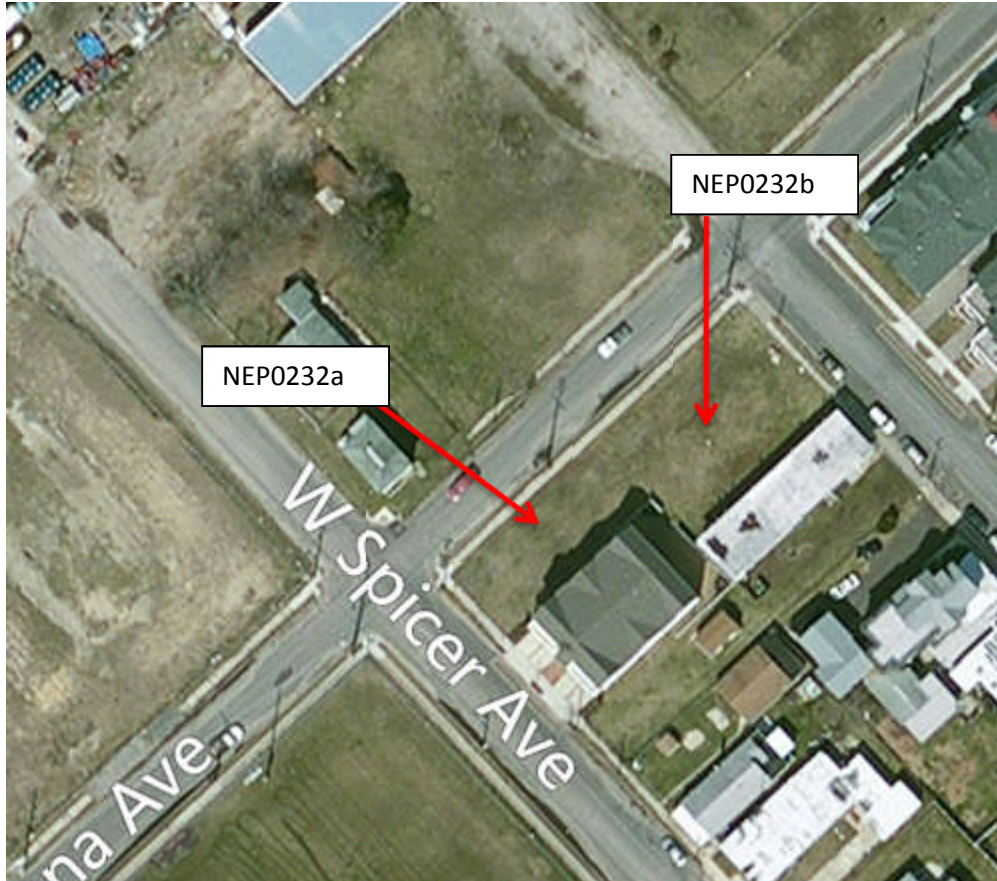
Sources: Programmatic Agreement for New Jersey Hurricane Sandy Disaster Recovery, URS Vacant Lot Verification Document (below), and Property Tax Card (below).

NEP0232a & NEP0232b

Lorin Farris, MA

Property Photograph: No building existed prior to the Hurricane Sandy at 442-444 West Garfield Avenue or 455 West Spicer, Wildwood City, NJ (Bing Images 2012).

Bing Images: Parcel vacant in 2012.



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Block: 151	Prop Loc: 455 W SPICER AVE	Owner: DOLPHIN CREEK, LLC	Square Ft: 0
Lot: 1	District: 0514 WILDWOOD	Street: 3501 RT 42 BD 130 STE 164	Year Built:
Qual:	Class: 1	City State: TURNERSVILLE, NJ 08012	Style:
Additional Information			
Prior Block:	Acct Num: 00054640	Add Lots:	EPL Code: 0 0 0
Prior Lot:	Mtg Acct:	Land Desc: 11000 SQ FT	Statute:
Prior Qual:	Bank Code: 0	Bldg Desc:	Initial: 000000 Further: 000000
Updated: 01/09/13	Tax Codes:	Class4Cd: 0	Desc:
Zone: R-2	Map Page: 26	Acreage: 0.2525	Taxes: 5808.00 / 0.00
Sale Information			
Sale Date: 09/05/02	Book: 3000 Page: 12	Price: 1 NU#: 25	

Sr1a	Date	Book	Page	Price	NU#	Ratio	Grantee
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TAX-LIST-HISTORY

Year	Owner Information	Land/Imp/Tot	Exemption	Assessed	Property Class
2013	DOLPHIN CREEK, LLC 3501 RT 42 BD 130 STE 164 TURNERSVILLE, NJ 08012	220000	0	220000	1
2012	DOLPHIN CREEK, LLC PO BOX 1171 RIO GRANDE, NJ 08242	300000	0	300000	1
2011	DOLPHIN CREEK, LLC PO BOX 1171 RIO GRANDE, NJ 08242	300000	0	300000	1
2010	DOLPHIN CREEK, LLC PO BOX 1171 RIO GRANDE, NJ 08242	340000	0	340000	1