

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 action complies with Section 106 of the National Historic Preservation Act. The proposed action site is not located within a Historic Preservation Exemption "Green" Zone (HPEZ), but does meet the Tier I Stipulation II.A allowance stated within Appendix B of the Program's Programmatic Agreement (see RRE0027856MFHistoricPreservationExemptionZoneMap; see RRE0027856MFProgrammaticAgreement). While no tax assessment record for this property was available from the New Jersey Association of County Tax Boards and no date of construction was provided by DCA, historic imagery reviewed by a URS architectural historian demonstrated that the present building was constructed between 1995 and 2002 (see RRE0027856MFDateOfConstructionVerification). That allowance is stated within Appendix B, which reads:

Tier I Allowances

II. Buildings

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

The Programmatic Agreement also states that an archaeological investigation of the proposed action site is not required if it is a rehabilitation project, if no significant new land disturbance will result (see RRE0027856MFProgrammaticAgreement). That allowance is stated under Appendix B, Tier I Stipulation I, which states:

Tier I Allowances

I. GROUND DISTURBING ACTIVITIES AND SITE WORK, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

Following discussion between NJHPO, NJDEP and NJDCA, that allowance was defined to mean that consultation on archaeological matters are not required if the project activity involves the rehabilitation of a building (without elevation) that was extant at the time Hurricane Sandy struck. The proposed project activity meets that criteria therefore no archaeological studies were required, nor was consultation with NJHPO or Native American Tribes on the undertaking.

Sources: RRE0027856MFProgrammaticAgreement;
RRE0027856MFHistoricPreservationExemptionZoneMap;
RRE0027856MFDateOfConstructionVerification.