

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 (NHPA). Consultation with the New Jersey Historic Preservation Office (NJHPO, also SHPO) was initiated by URS on behalf of the program in an email dated November 24, 2014. The email included the form developed by NJHPO for Section 106 disaster recovery evaluations, specifically the “Form 2” which stated that the current building is a historic property individually eligible for listing in the National Register of Historic Places (NRHP) under Criterion A for its local, state, and national significance as one of the earliest regional US Lifesaving Service Stations (USLSS), the precursor to the United States Coast Guard. The submitted form also stated the opinion that the proposed rehabilitation project would not adversely affect historic properties, including the building itself and the surrounding National Register of Historic Places (NRHP) eligible South Atlantic City Historic District. It was suggested that HPO staff consider recognizing the building’s prior function through a state marker or plaque but that was not made into a project condition (see [SBL39524DEPForm2URSSubmission](#)).

The Form 2 submission presented information on the existing building and its viewshed compiled by Michael Verderosa, a SOI-qualified architectural historian from URS. No construction date was present on the tax card, however based on research URS assessed that the building was likely designed in the mid-1890s by architect George R. Tolman and that it was constructed within the next decade by the US Life Saving Service. It is noted that this type of facility can be seen in the National Park Service’s publication, *U.S. Government Lifesaving Stations*. Historic aerials were used to confirm that the main structure and tower were present by 1920, and that a one-story addition was added to the northeast (rear) elevation between 1963 and 1970.

The Form 2 noted that the following alterations over the years had caused a loss of historic integrity to the building in the areas of design, materials, and workmanship: the construction and attachment of a large one-story addition to the rear of the building; the replacement of doors and fenestration alterations throughout the building; and the use of vinyl siding to the exterior. In addition, the property’s setting and feeling have been altered from the time it was built, with the once likely lone building in the seaside area now located in a downtown environment, and the addition of the wrap-around parking lot. The integrity of association was affected as well, as it is no longer owned or operated by the Coast Guard.

The NJHPO replied in an email dated December 5, 2014 that they did not concur with the URS assessment. The agency stated that the building was evaluated at a New Jersey State Historic Preservation Office (HPO) eligibility staff meeting on December 3, 2014 and determined that it was not eligible for listing on the NRHP, and that there are no historic properties affected within the project’s Area of Potential Effects (see [SBL39524DEPForm2NJHPOResponse](#)). New Jersey

DEP and DCA accept the SHPO finding and the project may proceed without further SHPO consultation for above ground concerns. The proposed project is not situated in a local historic district and so consultation with the municipal government was not required.

The Programmatic Agreement for the program 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 [SBL39524ProgrammaticAgreement](#)). 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 Section 106 consultation on archaeological matters is 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 is limited to rehabilitation activities, therefore no archaeological studies were required, nor was consultation with NJHPO or Native American Tribes.

Sources: SBL39524DEPForm2URSSubmission; SBL39524DEPForm2NJHPOResponse; SBL39524ProgrammaticAgreement.