

## **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 consists of repairs and improvements to a public facility that involves two distinct areas with no change in land use. Area 1 includes the beachfront, fishing piers, a public park and esplanade, and seven tennis courts. Repairs and improvements to Area 1 will include refurbishing the boat ramp and installing a new rack for kayaks and canoes near Second Street (involves a driven piling) as well as installation of six beach volleyball courts and portable aluminum bleachers on the beach. A new public restroom will be constructed on the park area adjacent to the beach, along with two seasonal open beach wash-down stations installed at the ramps. Other improvements include four drinking fountains and replacement in place of five tennis courts, potentially including new lighting and fencing. Bayview Park comprises Area 2. Bayview Park improvements include terracing the park to mitigate future erosion, installing ADA access ramps, and reconstructing a 6-foot wide and 6-inch thick sidewalk on Front Street. New curbs, striping, signage, and landscaping with drip irrigation will be installed. Damaged public lighting will be replaced. A Tideflex valve will be installed on the pipes discharging into Staten Island Sound, which will prevent water from entering during high tide or storm surges. The final product will result in a new and improved waterfront. The improvements will greatly increase attraction to the new amenities and will become a protection for waterfront communities.

The proposed action site was not located within the Historic Preservation Exemption Zone (see [NCR39567HistoricPreservationExemptionZoneMap.pdf](#)). Consultation with the New Jersey Historic Preservation Office (NJHPO, also SHPO) was initiated by URS on behalf of the program in an email dated December 15, 2014. The email included the form developed by NJHPO for Section 106 Hurricane Sandy disaster recovery evaluations, specifically the "Form 2" which stated that the proposed action would have no adverse effect for architectural resources

and there was no adverse effect for archaeological concerns provided that certain conditions were met (see NCR39567DEPForm2URSSubmission.pdf).

The Form 2 submission presented information on the existing building and its viewshed compiled by Lorin Farris, a URS SOI-qualified architectural historian, Jeremy Lazelle, a URS SOI-qualified archaeologist. The form stated that the Lawrence Kearney House (63 Catalpa Street), a historic property listed on the NJ State Register and on the National Register of Historic Places (NRHP), was located within Area 1. It also stated that the formerly extant McCormick Tenant House, listed on the NJ State Register, was once present within the boundaries of Area 2 but historic aerial photography ([www.historicaerials.com](http://www.historicaerials.com)) confirmed that the structure was demolished between 1986 and 1995, and the site of this building is now covered by a parking lot. Additionally, the Perth Amboy Ferry Slip is located to the immediate north of Area 2; in fact, the southern boundary for the resource extends into the proposed action site. The ferry slip is listed on both the NRHP and the NJ State Register. The form stated the opinion that the proposed action would have No Adverse Effect on architecture because all resources as all new construction will take place close to the beach, which is located several blocks away from the historic resources (see NCR39567DEPForm2URSSubmission.pdf).

In regards to archaeological concerns, the Form 2 stated that there were most likely no colonial-era archaeological deposits with the Lawrence Kearny House located in Area 1 because it was moved to the current location from its original site. A Revolutionary War skirmish was fought on the bluff, located near the present day intersection of Water and Lewis Streets, but the evaluation stated it is unlikely that the encounter resulted in archeological deposits that would be NRHP-eligible or add to a better understanding of the history of that event. The northern tip of Area 1 and all of Area 2 are located within Archaeological Grid EF119. Archaeological deposits associated with the McCormick Tenant House may be preserved beneath the parking lot that covers its former location. The Form 2 also stated that maps of historic era fill and aerial imagery were consulted in order to determine areas that were favorable for having moderate archaeological potential. Three distinct fill episodes were noted in 1940, 1953, and 1963 (see NCR39567DEPForm2URSSubmission.pdf).

Many of the areas of archaeological potential have been covered with fill and the Form 2 stated to NJ HPO the opinion that the proposed action would have No Adverse Effect on archaeological concerns with the condition that disturbance from the proposed action does not extend below the depth of fill or that the ground disturbance is confined to portions of the property that fall outside of the areas of moderate archaeological potential. The scope of work description for Area 1 indicates that the park improvements are unlikely to adversely affect archaeological resources in the proposed action site. As currently designed, terracing in Area 2 will take place outside of the areas that contain moderate archaeological potential (see NCR39567DEPForm2URSSubmission.pdf).

Clarification of the proposed action site and proposed action were communicated via email between NJ HPO and URS; a final Form 2 was sent to NJ HPO on December 17, 2014 (see [NCR39567URSNJHPOCorrespondence.pdf](#)).

The NJ HPO provided consultation comments in a letter sent dated December 30, 2014. The NJ HPO concurred that the proposed action would have No Adverse Effect on architectural properties located within the boundaries of the proposed action site. In regards to archaeological concerns, they concurred that Lawrence Kearney House was moved to the current location in the 1920s and did not possess archaeological deposits that would be associated with the structure's period of significance. NJ HPO concurred potential archaeological deposits may be present that are associated with the McCormick Tenant House and the Perth Amboy Ferry Slip. NJ HPO concurred with the areas recommended to possess moderate potential for archaeological resources and added the area located between the location of the former McCormick Tenant House and the extant Perth Amboy Ferry Slip; this is a parking lot that encompasses Block 52, Lots 5, 5.01, 6, 6.01, 7, and 7.01. The NJ HPO concurred that the proposed improvements in Area 1 of the new public restroom, drinking fountains, beach wash-down stations, and terracing of Bayview Park in Area 2 would have No Adverse Effect on listed resources or areas possessing high potential for archaeological resources and added the condition that if future activities requiring state or federal permits to construct the proposed bike path are designed, that further consultation regarding the level of ground disturbance would be required with the NJ HPO, prior to the work commencing ([NCR39567DEPForm2NJHPOResponse.pdf](#)).

Sources: [NCR39567HistoricPreservationExemptionZoneMap.pdf](#);  
[NCR39567DEPForm2URSSubmission.pdf](#); [NCR39567URSNJHPOCorrespondence.pdf](#);  
[NCR39567DEPForm2NJHPOResponse.pdf](#)