

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 activities include reconstruction and improvement activities at sections of five roads and their associated drainage infrastructure — Kero Road (see map NCR40029a), Jomike Court (NCR40029b), Barell Avenue (NCR40029c), Eastern Way (NCR40029d), and Starke Road (NCR40029e) - within the Borough of Carlstadt, Bergen County, New Jersey. Additionally, storm water system improvements will be completed at 455 16th Street within the same community. The scope of this project will include the reconstruction of various outfalls, the installation of a backflow preventer / check valve, the purchase of equipment for ongoing maintenance, the purchase of Tiger Dams, and the reconstruction of roadway surfaces.

- Activities at the Kero Road project location will involve street repaving (approximately 110,000 square feet) from the intersection of Kero Road and Washington Avenue through the end of Kero Road (cul-de-sac).
- Activities at the Jomike Court project location will involve street repaving (approximately 52,000 square feet) of Jomike Court, southeast of Washington Avenue (intersects with Washington Avenue at start and end points).
- Activities at the Barell Avenue project location will involve street repaving (approximately 92,000 square feet) from the intersection of Barell Avenue and Washington Avenue through the south end of Barell Avenue.
- Activities at the Eastern Way project location will involve Street repaving (approximately 32,400 square feet) from the intersection of Eastern Way and Moonachie Avenue through the south end of Eastern Way.
- Activities at the Starke Road project location will involve street repaving (approximately 144,000 square feet) from the intersection of Starke Road and Gotham Parkway to the Carlstadt - Moonachie municipal line as well as the reconstruction of three handicap ramps.
- Activities at the 455 16th Street project location will involve storm water system improvements with associated soil erosion and sediment control as well as associated excavation and concrete reconstruction. Storm water system improvements include installing a concrete headwall, four 10' concrete manholes, 575 linear feet of elliptical concrete pipe, a TideFlex valve, and five storm connections.

All of these combined reconstruction activities will address the damage to the drainage system and roads caused by Superstorm Sandy and associated flooding events. The final product will result in improved roadways and drainage systems for these impacted areas. These improvements do not involve any change in land use, will allow for the continued safe use of these roadways during future potential flooding events, and will effectively reduce damage from flooding to nearby public and private infrastructure by allowing for proper and timely storm water drainage.

All six of the above proposed action sites were 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, which was expanded in 2013 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 concerns if they fall 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, Stipulation VII.A.2, which read:

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.

Appendix B, Stipulation VII. OTHER PROGRAM ACTIVITIES

A. Elevation, Demolition, and Reconstruction

Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than 45 years of age the so long as the proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils including any staging area, and the buildings or structures are not located within or adjacent to a historic district. Undertakings may take place using Federal funds to resources located within the areas surveyed by the joint FEMA-SHPO team that have formally been determined to contain no above -ground historic properties without further consultation with NJ SHPO.

2. Undertaking occurring within areas previously surveyed by the joint FEMA-SHPO survey team that have been formally detemlined to contain no above ground historic properties in accordance with Section 106 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 the six proposed project areas as not having above-ground historic preservation concerns was Carlstadt Borough, NJHPO project number 13-0608-1, which was conducted on March 4, 2013. Its NJHPO chronological log number is C2013-15. The locations of the proposed action sites within this zone are shown in the enclosed map (NCR40029OverviewHistoricPreservationExemptionZoneMap). Because the tiger dams are temporary architectural structures that will be removed from the proposed action sites when not needed, they are further exempted from Section 106 review.

The six proposed action sites also comply with Section 106 of the NHPA for below-ground (archaeological) concerns under Tier II PA allowance Stipulations IV.A.1, IV.A.3, and IV.A.5, which read (NCR40029PANCRTO1062):

Appendix B, Stipulation IV. TRANSPORTATION FACILITIES

A. Roads and Roadways

1. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches except where in close proximity to known archaeological sites or within the view shed of historic districts that re listed or eligible for listing on the National Register.
3. In-kind repair or when necessary in-kind replacement or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially confirms to the existing footprint. For stone and brick culverts or arches beneath roadways, this allowance only applies

to in-kind repair.

5. In-kind repair or, where necessary, in-kind replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

These allowances apply to the road repaving, handicap ramp and curb replacements, storm water improvements and culvert system upgrades that will occur at proposed action sites NCR40029 (a) through (f). As the proposed undertaking is limited to infrastructure activities exempted from review under the Programmatic Agreement, consultation with the Native American Tribe signatories was not needed.

Sources: NCR40029ProgrammaticAgreement; NCR40029OverviewHistoricPreservationExemptionZoneMap