

## **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 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 Agreement 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). That document exempts the requirement for a Section 106 review for above-ground historic buildings if it falls 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 determined 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 this location as not having above-ground historic preservation concerns was Seaside Heights Borough NJHPO project number 13-0367-1 and was conducted on January 29, 2013. The NJHPO chronological log number for it is A2013-254. Its position within this zone is shown in the accompanying Historic Preservation Exemption Zone map.

The Programmatic Agreement also states that an archaeological investigation of the project area is not required if it is a rehabilitation project, if no significant new land disturbance will result. 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 archaeological investigations are not required if the project activity involves the rehabilitation of a building (including 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. 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.

Sources: Programmatic Agreement for New Jersey Hurricane Sandy Disaster Recovery. NJHPO Historic Preservation Exemption Zone map layer.