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 initiated by URS on behalf of the program in an email dated April 22, 2015. The email included the form developed by NJHPO for Section 106 disaster recovery evaluations, specifically the "Form 1" which indicated that no historic properties or intact archaeological sites were on the property (SRP0042552RDEPForm1URSSubmission).

The Form 1 submission presented information on the former building and its viewshed. It noted that the building was not located within a designated Historic Preservation Exemption Zone, and was a two-story residence built in the first quarter of the twentieth century (historicaerials.com) in the vernacular style that lacked integrity of materials and design prior to Hurricane Sandy based on the application of vinyl siding to the exterior, and the construction and attachment of the side additions (SRP0042552RHistoricPreservationExemptionZoneMap). Additionally, the building lacked sufficient historic integrity to be individually eligible for listing on the NRHP due to alterations that have occurred since it was built. The Form 1 also noted that the property was not in a NRHP-listed or eligible historic district, so indirect affects to those types of historic properties was not possible. The NJHPO replied by signing the Form 1 on April 24, 1015 that they concurred with the assessment made by URS and the undertaking would not impact historic properties (SRP0042552RDEPForm1NJHPOResponse). 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.

The Programmatic Agreement also states that an archaeological investigation of the project area is not required when it is a reconstruction project, if it is located on a barrier island the property is less than 5 acres in area and there are no known archaeological sites nearby (see SRP0042552RProgrammaticAgreement). That allowance is stated under Appendix B, Tier II Stipulation I, which states:

Tier II Allowances

I. BARRIER ISLANDS ONLY - GROUND DISTURBING ACTIVITIES AND SITE WORK:
Any projects located on a barrier island will be exempt from archaeological review by the New Jersey State Historic Preservation Office except when any of the following conditions applies:
A. There is a known shipwreck site on or adjacent to the project site; or
B. There is a known archaeological site on or adjacent to the project site;
C. Local officials or members of the public identify to the federal agency archaeological resources, or strong potential, within the project site; or
D. Footprint of ground disturbance exceeds 5 acres; or
E. FEMA personnel meeting or exceeding the Secretary's Professional Standards for archaeology assesses the project site as possessing a high potential for the presence of significant archaeological deposits, as guided by archaeological site sensitivity models developed for the region.

The application parcel is 0.326 acres in area, is located on a northern New Jersey barrier island and there are no known sites located in the area based on NJHPO records. None of the above exceptions apply; therefore the project is exempt from an archaeological review. As the proposed activity is permitted under the PA allowances, consultation with Native American Tribes was not needed.