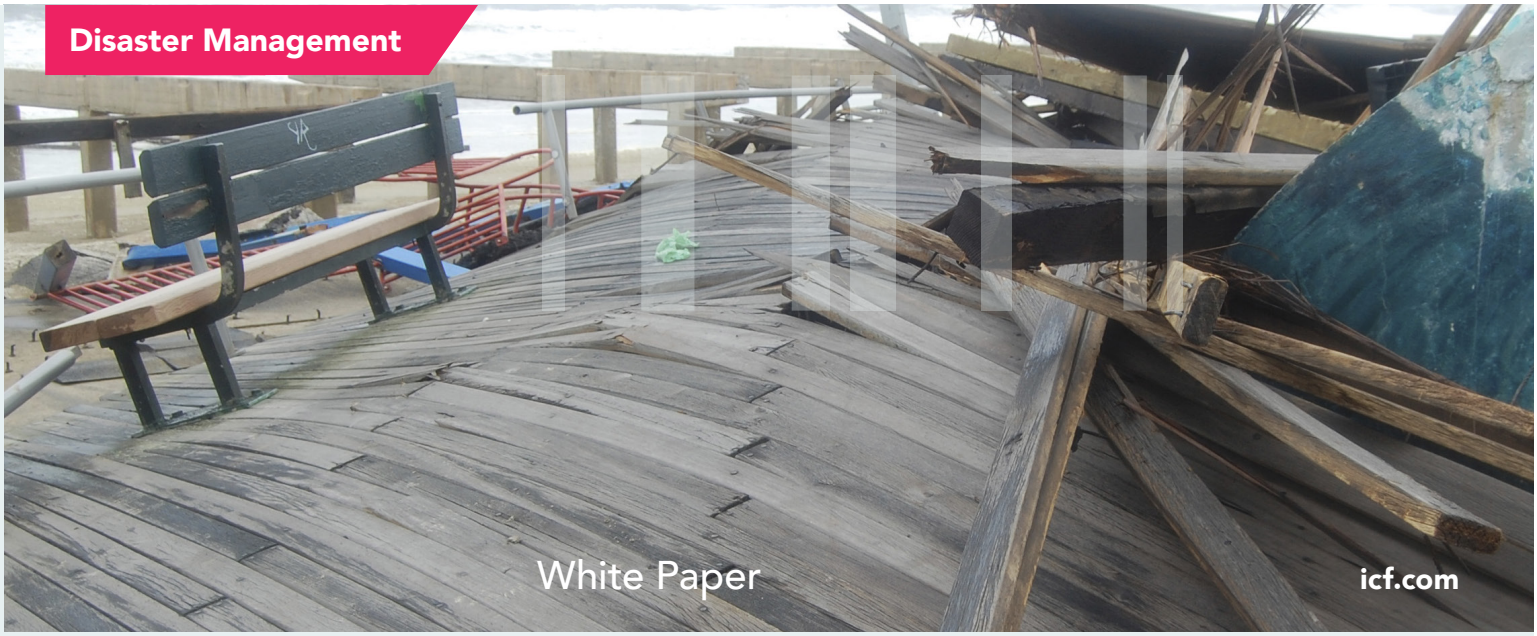
Disaster Management



Historic Preservation Laws and Disaster Recovery: Seven Approaches for Streamlining Compliance

By Richard Starzak, ICF

Shareables

- The current Section 106 process works well for disasters of typical size. But for large natural disasters that damage over 10,000 properties, there are opportunities to enhance efficiency.
- Reverse triage, grouping, and screening out properties with a low likelihood of meeting National Register criteria can all facilitate a faster recovery process for large disasters with damage to historic properties.
- ICF has devised seven methods for rapid assessment of damages to historic properties after a catastrophic weather event, allowing funds to reach eligible projects more quickly.

Introduction

With the increasing size and frequency of natural disasters, federal, state, and local agencies face the growing challenge of identifying great numbers of damaged historic properties. Before receiving recovery funds, each case must go through a rigorous four-step historic preservation review. This process takes serious time and effort after a large event, as every project is screened on an individual basis.

In this white paper, ICF's disaster recovery team offers seven recommendations to speed up review. We discuss the regulatory background that shapes the process and possible approaches to increase efficiency. By investigating these options, you can minimize barriers and quickly get your projects through the required steps.

 ©Copyright 2019 ICF

Wind, water, and earth energy deliver destruction in the form of hurricanes, tornadoes, floods, wildfires, and earthquakes—each affecting buildings and structures in different ways. Disasters of such enormous scale can bankrupt private insurance companies, creating even more reliance on recovery funding from FEMA and HUD.

Regulatory context: Larger-scale disasters and historic preservation compliance

The regulations set by the Advisory Council on Historic Preservation (ACHP) allow a federal agency to customize how it complies with Section 106 of the National Historic Preservation Act (NHPA) for complex or repetitive programs using a programmatic agreement [36 CFR § 800.14(b)(4)].

The Federal Emergency Management Agency (FEMA) developed a prototype programmatic agreement (106PPA) in coordination with the ACHP to be ready for disaster recovery. It serves as the basis for Section 106 compliance for FEMA and the United States Department of Housing and Urban Development's (HUD) responsible entities in all 50 states and U.S. territories. The structure of the 106PPA—which is based on the normal four-step Section 106 process applied to each project (i.e., undertaking)—is well thought out, offers streamlining opportunities, and can be a very effective tool for recovery from disasters of typical size.

The four-step Section 106 process is described on AHCP's website[1] as follows:

1. **Initiating Section 106** — The federal agency identifies who should be involved in consultation and plans to involve the public.
2. **Identifying historic properties** — The federal agency identifies historic properties[2] in the area where the project could have effects.
3. **Assessing effects** — The federal agency consults to assess the effects of the project on historic properties.
4. **Achieving a resolution** — The federal agency explores alternatives to avoid, minimize, or mitigate adverse effects.

Since Hurricane Katrina in 2005, however, the U.S. has been more frequently hit by disasters of enormous geographical scale and with greater magnitude of force—resulting in damages to more properties seeking funds from FEMA and HUD.

Wind, water, and earth energy deliver destruction in the form of hurricanes, tornadoes, floods, wildfires, and earthquakes—each affecting buildings and structures in different ways. Disasters of such enormous scale can bankrupt private insurance companies, creating even more reliance on recovery funding from FEMA and HUD.

[1] Available at https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106 , accessed on July 8, 2019.

[2] Properties listed on or determined eligible for the National Register of Historic Places (NRHP) are termed "historic properties" for the purposes of Section 106.

 ©Copyright 2019 ICF

For the purpose of this white paper, we define a large-scale disaster as one that damaged more than 10,000 properties. The impact of these disasters makes the typical four-step Section 106 process for each damaged property too time-consuming to be efficient—straining even the streamlining opportunities afforded by the 106PPA.

Reverse triage approach

For disasters with large numbers of damaged properties, one approach to historic preservation compliance is "reverse triage." This process can be summed up in three steps:

1. Quickly dismiss the cases where repairs to damage have negligible potential to harm historic properties, whether or not they are known to be present.
2. Give further consideration to some cases in order to evaluate the presence of historic properties or to understand the extent of repairs needed, then dismiss those unlikely to have an effect.
3. Study the cases that remain after steps 1 and 2 until effects are assessed or a resolution is achieved.

Grouping before individual study

We can save time and budget if we apply the typical four-step Section 106 process across entire groups of properties instead of each property one at a time. The 106PPA generally requires evaluation of buildings and structures over 45 years old for historic significance (Step 2). Currently, that would comprise those built before 1974—likely to be a high percentage of the built environment in older communities.

When a large-scale disaster does hit a region, it is possible to facilitate recovery by amending the 106PPA to gain economies of scale by:

- Categorizing damaged properties into groups and highlighting those that are not "historic" because they possess little potential to meet National Register of Historic Places (NRHP) criteria.
- Based on the specific disaster, considering commonly-proposed efforts to repair damages that would have negligible potential to affect the historic characteristics of a property—regardless of the property's potential for meeting NRHP criteria.

Refocus efforts on NRHP-listed or eligible properties.

The goal is to spend resources on important things and quickly dismiss immaterial things. To minimize delays in assistance for large-scale disasters, practitioners need to hold true to the purpose of Section 106: "to take into account effects on historic properties."

 ©Copyright 2019 ICF

ICF experts offer seven suggested approaches to reach this goal for large-scale disasters.

- Green-area mapping of non-historic zones
- Drones
- Archaeological sensitivity screening
- Customize and expand second-tier allowances
- Screen properties not representing significant historic context
- Mitigation banking
- Documenting historic properties

We need to consider ways to refocus our collective efforts to spend less time and resources evaluating recovery efforts with little potential to adversely affect historic properties. Instead, resources should remain focused on ways to effectively avoid, minimize, or mitigate adverse effects on NRHP-listed or eligible properties—allowing us to better resolve damages to the places that truly need assistance.

ICF experts offer seven suggested approaches to reach this goal for large-scale disasters.

1. Green-area mapping of non-historic zones: Spot areas of no historic concern

Green-area mapping has precedent in New Jersey from Superstorm Sandy recovery efforts. It proved to be an effective way to screen places with negligible potential for historic buildings from further Section 106 review. If the state historic preservation officer (SHPO) and consulting parties assist FEMA and HUD to create or concur with the mapped results, it will streamline Section 106 reviews in those areas.

Areas should be prioritized based on the density of damaged structures or where previous historic survey efforts or construction years indicate little potential to contain NRHP-eligible properties. Properties outside of a green area would continue to be subject to individual Section 106 review pursuant to the stipulations in the 106PPA.

2. Drones: Use eyes-in-the-sky

Drones are increasingly used to canvas damaged areas following a major disaster. Their imagery can be linked to geographic information system (GIS) maps, construction year, databases of known historic properties, and local archival survey data to facilitate green-area mapping.

ICF's disaster recovery team made a presentation on February 6, 2018, to HUD's Federal Preservation Officer and regional leaders about the concept of using drones instead of vehicular surveys to screen areas containing no or few buildings likely to be NRHP-eligible. The maps and imagery can be viewed via desktop to keep travel costs down, and to work around scheduling constraints among the federal agency, SHPO, consulting parties, and qualified consultant architectural historians.

 ©Copyright 2019 ICF

It is not recommended to use drone imagery exclusively while conducting detailed historic property surveys, however. Field observations by qualified staff are needed to see subtle altered features and materials that can be missed in drone footage.

3. Archaeological sensitivity screening: Learn from the past

For large-scale disasters, we can amend the 106PPA to facilitate quick screening of properties with negligible potential to contain archaeological sites. When working with SHPO(s) early in the process, sensitivity factors based on the likelihood of encountering archaeological sites could be applied to the entire disaster area—thereby prioritizing conditions where qualified archaeologists are needed to review projects involving ground disturbance.

4. Customize and expand second-tier allowances: Use those exempt activities

For large-scale disasters, we can amend and expand the second-tier allowances in Appendix B of the 106PPA to better suit the types of damage caused by the specific disaster (flooding, hurricanes, earthquakes, wildfires, and so on) on the regional building type materials and natural soil types. Commonalities may be addressed after the first stage of damage inventory is recorded.

5. Screen properties not representing significant historic context: Screen the low-hanging fruit

As stated by the National Park Service: "To qualify for the National Register, a property must be significant; that is, it must represent a significant part of the history, architecture, archeology, engineering, or culture of an area, and it must have the characteristics that make it a good representative of properties associated with that aspect of the past.[3]" This means properties that do not represent a significant historic context could be effectively screened out early on during the Section 106 process because they are not eligible for the NRHP.

Currently, the 106PPA for disaster recovery allows buildings constructed within the last 45 years to be exempt from further Section 106 review. Early consultation with SHPO after a disaster may reveal certain property types commonly damaged have negligible chance of meeting NRHP criteria. This approach could effectively screen large numbers of common building types from further Section 106 review early in the process.

[3] U.S. Department of the Interior, National Park Service (1990 rev. 1991, 1995, 1997). How to Apply the National Register Criteria for Evaluation. p. 7. Available from: https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf; Accessed 6/10/2019.

 ©Copyright 2019 ICF

This approach could be added to the existing allowances in the 106PPA simply by amending with text such as:

> The effects of the proposed undertaking would be limited to a property type determined to have no demonstrable basis to meet National Register criteria, as reached through consultation with SHPO and other consulting parties with knowledge of significant historic contexts in the disaster recovery area.

6. Mitigation banking: Expand our horizons

For large-scale disasters, we can explore mechanisms to use equivalent funds as mitigation banking instead of hiring qualified professionals to conduct extensive research and survey efforts in areas unlikely to contain NRHP-eligible properties. If consultation with SHPO(s) shows this to be a useful approach, a memorandum of agreement (MOA) could be drafted to memorialize the conditions necessary to resolve potential, but unknown, adverse effects.

While not explicit, the 106PPA contains the following relevant justification in Stipulation II.C.6.b.3:
"The MOA may also include treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional measures." Those treatment measures—included as an appendix to the 106PPA—could be amended to include thoughtful measures for broader preservation needs recognized in the particular states.

7. Documenting historic properties: Use tech and tools

State-of-the-art technology and techniques can save time and resources needed to document NRHP eligibility (or lack thereof), so the federal agency or responsible entity can submit to SHPO for review and concurrence.

 ©Copyright 2019 ICF

For example, SHPO's historic property inventory forms could be linked to GIS to allow better tracking of field observations, the consultation process, submission to SHPO, and concurrence by SHPO. Typically, this is done by letter. But, it could be all-electronic—shared via desktop to make the entire process from damage inventory to SHPO concurrence much more efficient. The actual identification and documentation could be facilitated at the outset, as some fields can be auto-populated from property data, historic building permit information, archival maps, and other layers of information collected for the disaster recovery.

Conclusion

Effectively implemented, these seven approaches save significant time and money during historic preservation compliance for disaster recovery. Each recommendation should be carefully considered. Because economies of scale are not currently factored into the 106PPA, the ACHP needs to be included in development before changes are made to a current agreement in a state or U.S. territory.

 ©Copyright 2019 ICF

About the Author

Rick Starzak specializes in consultation on behalf of public agencies for compliance with Section 106 of the National Historic Preservation Act (NHPA). He has 40 years of experience as an architectural historian, including 35 years at ICF, and meets the Secretary of the Interior's Professional Qualifications Standards.

Earned after conducting consultation in 44 states for at least a dozen different federal agencies, Rick has a reputation for problem solving historic preservation constraints by developing creative alternatives, approaches, consultation documents, and mitigation.

For example, working directly with FRA Headquarters, Rick was the primary author of a Congressional study to streamline historic preservation compliance for federally funded railroad and rail transit infrastructure projects. In December 2015, the FAST Act included three of the study's four recommendations. The USDOT is now implementing them through a Section 106 "Program Comment" issued by the Advisory Council on Historic Preservation.

Rick has assisted ICF with Section 106 compliance in various disaster recovery contracts, including New Jersey's Superstorm Sandy (2014-2017) and Puerto Rico's Hurricane Maria (2018-present).

 ©Copyright 2019 ICF

Historic Preservation Laws and Disaster Recovery: Seven Approaches for Streamlining Compliance

Visit us at icf.com/icf.com/work/disaster-management

For more information, contact:

Richard Starzak, Vice President, Historic Preservation Specialist
richard.starzak@icf.com

twitter.com/ICF
linkedin.com/company/icf-international
facebook.com/ThisIsICF

About ICF

ICF (NASDAQ:ICFI) is a global consulting services company with over 7,000 full- and part-time employees, but we are not your typical consultants. At ICF, business analysts and policy specialists work together with digital strategists, data scientists and creatives. We combine unmatched industry expertise with cutting-edge engagement capabilities to help organizations solve their most complex challenges. Since 1969, public and private sector clients have worked with ICF to navigate change and shape the future. Learn more at **icf.com**.

Any views or opinions expressed in this white paper are solely those of the author(s) and do not necessarily represent those of ICF. This white paper is provided for informational purposes only and the contents are subject to change without notice. No contractual obligations are formed directly or indirectly by this document. ICF MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, AS TO THE INFORMATION IN THIS DOCUMENT.

No part of this document may be reproduced or transmitted in any form, or by any means (electronic, mechanical, or otherwise), for any purpose without prior written permission.

ICF and ICF INTERNATIONAL are registered trademarks of ICF and/or its affiliates. Other names may be trademarks of their respective owners.

icf.com ©Copyright 2019 ICF