

**TECHNICAL MEMORANDUM 002
EAST SIDE COASTAL RESILIENCY
CEQR No. 15DPR013M
ULURP Nos. N190356ZRM and 190357PQM
December 22, 2021**

A. INTRODUCTION

On December 6, 2019, the New York City Office of Management and Budget (OMB), as the U.S. Department of Housing and Urban Development (HUD)-designated responsible entity and Lead Agency under the National Environmental Policy Act (NEPA), and the New York City Department of Parks & Recreation (NYC Parks), as Lead Agency under the New York State Environmental Quality Review Act (SEQRA) and New York City Environmental Quality Review (CEQR), issued a Joint Record of Decision (ROD), SEQRA, and CEQR Findings Statement for the East Side Coastal Resiliency Project (the proposed project). The Joint ROD and Findings Statement documented OMB’s and NYC Parks’ findings and decision to proceed with the Preferred Alternative for the proposed project as described in the Final Environmental Impact Statement (FEIS), which was published on September 13, 2019.

Prior to the issuance of the Joint ROD and Findings Statement, in accordance with commitments made in the FEIS and with Section 106 of the National Historic Preservation Act of 1966 (NHPA), a Programmatic Agreement (PA) was finalized and executed on December 4, 2019, among OMB, the State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP) with five consulting parties—NYC Parks, the Landmarks Preservation Commission, the Municipal Art Society, the New York Landmarks Conservancy, and the Lower East Side Preservation Initiative. On June 18, 2020 after execution of the PA and completion of the proposed project’s environmental review and the Authority to Use Grant Funds (AUGF) was received from HUD on February 7, 2020, SHPO reversed its earlier determination made in 2017 and found that two properties in the Area of Potential Effect (APE) for Historic and Cultural Resources—the East River Park Track House and the Tennis Center Comfort Station—were individually eligible for listing on the National Register of Historic Places (NRHP) under Criterion C in the area of architecture. This Technical Memorandum considers whether the change in NRHP eligibility of the two structures would affect the conclusions of the FEIS as codified in the Joint ROD and Findings Statement. This Technical Memorandum also serves as OMB’s NEPA re-evaluation under 24 CFR Section 58.47.

This Technical Memorandum concludes that the revised NRHP eligibility determination to include the East River Park Track House and Tennis Center Comfort Station would not affect the conclusions of the FEIS. Pursuant to the Section 106 process, on October 12, 2021, an Amendment to the PA was executed among OMB, SHPO, and ACHP that memorialized OMB and NYC Parks’ commitment to undertake a Historic American Building Survey (HABS) recordation to mitigate the effects on the two newly identified architectural resources. Because the effects on the two resources were addressed pursuant to the Section 106 process, the conclusions of the FEIS, as reflected in the Joint ROD and Findings Statement, would not be affected.

B. BACKGROUND

The NEPA review and the EIS were completed in coordination with Section 106 of the NHPA, as implemented by federal regulations appearing in 36 CFR Part 800, in consultation with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), acting in its capacity as the SHPO, and the ACHP.

Section 106 mandates that federal agencies consider the effects of their actions on any properties listed or determined eligible for listing on the NRHP and affords the ACHP a reasonable opportunity to comment on such undertakings. In 2016, pursuant to 36 CFR Part 800.4, Identification of Historic Properties, OMB submitted an inventory of potential historic and cultural resources in the APE to SHPO for their concurrence, which included the East River Park Track House and Tennis Center Comfort Station. SHPO, in a letter dated April 25, 2016, found that the East River Park Track House and Tennis Center Comfort Station were not individually eligible for NRHP listing, although SHPO deemed them to be contributing structures to East River Park, which was not in the inventory of potential historic and cultural resources but was determined to be NRHP eligible. In response to the East River Park determination, in November 2016, the City submitted a memorandum to SHPO that provided information on changes to the context of East River Park since its construction in the 1930s and the effects of those changes on the park's integrity of setting. The memorandum also described alterations to the park since its construction and assessed how those alterations had affected the park's integrity of design. In December 2017, based on information provided in that memorandum, SHPO concurred that East River Park did not meet the eligibility criteria for NRHP listing due to a loss of integrity. Therefore, the East River Park Track House and Tennis Center Comfort Station were no longer considered to be historic properties, were not identified in the FEIS as historic resources, and an assessment of the proposed project's effects on those two buildings was not necessary.

On December 30, 2019, after the Joint ROD and Findings Statement was issued and the PA was executed and signed by all consulting parties, the Lower East Side Preservation Initiative submitted a report to the SHPO about the East River Park Track House and Tennis Center Comfort Station proposing to reverse the 2017 ineligibility determinations. On June 18, 2020, six months after completion of the proposed project's environmental review and subsequent to commencing work, SHPO modified their original determination and found that the East River Park Track House and Tennis Center Comfort Station were individually eligible for listing on the NRHP. Due to this change in determination, OMB pursued additional Section 106 consultation with the PA signatories and consulting parties. A meeting was held on September 8, 2020, to discuss the next steps in the Section 106 process followed by another meeting on November 19, 2020. The November meeting was held at the request of the Lower East Side Preservation Initiative to provide them with an additional opportunity to advocate for preserving the East River Park Track House and Tennis Center Comfort Station. A third meeting with the consulting parties was held on May 6, 2021, to discuss the preparation of the Amendment to the PA.

The Amendment to the PA was prepared, and it included a new stipulation to the PA requiring the preparation of HABS Level 2 recordation of the East River Park Track House and Tennis Center Comfort Station prior to the start of demolition as mitigation for the removal of the two NRHP-eligible structures. In the spring of 2021, a draft of the Amendment to the PA was provided to the PA signatories and consulting parties for review and comment. On October 12, 2021, the PA signatories executed the Amendment to the PA, which was also signed by all consulting parties. The Amendment to the PA is attached to this Technical Memorandum.

C. ENVIRONMENTAL EFFECTS OF THE PREFERRED ALTERNATIVE

This section examines whether the change in NRHP eligibility of the East River Park Track House and Tennis Center Comfort Station would affect the conclusions of the FEIS.

HISTORIC AND CULTURAL RESOURCES

ARCHAEOLOGICAL RESOURCES

The NRHP eligibility determination of the East River Park Track House and Tennis Center Comfort Station would not affect the conclusions of the FEIS regarding archaeological resources, because the change in eligibility would not affect where the Preferred Alternative would result in ground disturbance as assessed in the FEIS, nor would it affect the determination of areas of archaeological sensitivity.

ARCHITECTURAL RESOURCES

The FEIS included a thorough analysis and determined that the Preferred Alternative would not result in adverse direct or indirect effects on architectural resources, in part because the PA included the following stipulations: development and implementation of construction protection plans in consultation with SHPO and the New York City Landmarks Preservation Commission (LPC) for thirteen architectural resources located within 90 feet of project construction; coordination of construction affecting the FDR Drive with the New York City Department of Transportation to ensure that it is protected during construction of the Preferred Alternative; and coordination with SHPO and LPC of the design of the floodwalls and closure structures adjacent to the Asser Levy Public Baths and the identified, feasible flood resilience measure for the Engine Co. 66 Fireboat House, which designs would also be undertaken in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

As noted above, on June 18, 2020 SHPO reversed an earlier determination and found that the East River Park Track House and Tennis Center Comfort Station are individually eligible for listing on the NRHP under National Register Criterion C in the area of architecture. As stated above, the FEIS did not assess effects on these two buildings because of the prior determination by SHPO in 2017.

Under the Preferred Alternative, the two additional architectural resources identified within the Primary APE would be demolished. Therefore, pursuant to Section 106, OMB initiated additional consultation with the consulting parties, including a meeting on September 8, 2020, to discuss the next steps in the Section 106 review with follow-up meetings on November 19, 2020, and May 6, 2021. The Section 106 review concluded that the proposed project would have adverse effects on the two newly NRHP-eligible structures, and OMB and NYC Parks, with concurrence from SHPO and ACHP, determined that mitigation measures that preserve the structures are not implementable. On October 12, 2021, an Amendment to the PA was executed and signed by all consulting parties. This Amendment documents the adverse effects to the East River Park Track House and Tennis Center Comfort Station and includes the following stipulation regarding mitigation for the adverse effect:

In accordance with Stipulation X.B.—Duration, Amendment, and Termination of the PA, OMB, SHPO, and the ACHP agree to amend the PA as follows:

1. Stipulation XI shall be added to the Amendment: OMB will ensure that HABS Level 2 recordation of the East River Park Track House and Tennis Center Comfort Station will be undertaken prior to the start of construction. Recordation shall consist of:
 - a. Two sets of black and white photographs (4- by 5-inch prints on archival paper) and one set of 4- by 5-inch negatives that record the exterior appearance and interior spaces of the East River Park Track House and Tennis Center Comfort Station, with up to 15 photographs of each building.
 - b. Measured drawings are not required but a good faith effort shall be made to locate exterior elevations and floor plans of the East River Park Track House and Tennis Center Comfort Station in the NYC Parks archives and appropriate civic and historic repositories. If located, copies shall be included in the recordation submission.
 - c. A historic narrative pertaining to the history of the buildings shall be prepared to illustrate the historic and architectural significance of both the East River Park Track House and Tennis Center Comfort Station. The narrative will provide an appropriate historic context for the structures.
 - d. The SHPO will have 30 calendar days from receipt of the draft report to review and provide written comments.
 - e. Two copies of the report will be prepared. One copy of the report will be submitted to the SHPO for forwarding to the New York State Archives (which will include one set of archival negatives and a compact disc containing the report), and one copy of the report (which will include one set of archival negatives) will be kept in the NYC Parks archives.

By addressing effects to the East River Park Track House and Tennis Center Comfort Station pursuant to the Section 106 process and committing to HABS recordation in the Amendment to the PA, the change in the NRHP eligibility of the two structures, would not affect the conclusions presented in the FEIS regarding architectural resources.

D. CONCLUSION

This Technical Memorandum has been prepared to address the change in NRHP status of the East River Park Track House and Tennis Center Comfort Station, which were reclassified as “individually eligible” by SHPO after completion of the FEIS. Review of the proposed project under Section 106 was ongoing through the project’s environmental review culminating with a PA executed on December 4, 2019 and the Joint ROD and Findings Statement for the project issued December 6, 2019. Additional Section 106 consultation was pursued to assess the change in the NRHP eligibility determination of the East River Park Track House and Tennis Center Comfort Station and resulted in the execution of an Amendment to the PA on October 12, 2021. The Amendment stipulated the preparation of HABS recordation of the two buildings, which was completed on November 3, 2021. By addressing effects on the two properties pursuant to the Section 106 process and stipulating to mitigation, the conclusions of the FEIS, as reflected in the Joint ROD and Findings Statement, would not be affected. Therefore, this Technical Memorandum concludes that the change in NRHP eligibility status of the East River Park Track House and Tennis Center Comfort Station would not result in any new or different significant adverse environmental impacts not already identified in the FEIS.



12/22/2021

David Cerron
Assistant Commissioner for Planning and Development
City of New York/NYC Parks

Date

Attachment:
A) Revised Programmatic Agreement

Attachment A
Revised Programmatic Agreement



October 12, 2021

Ms. Olivia Parker
Senior Analyst
New York City Mayor's Office of Management & Budget
255 Greenwich Street, 8th Floor
New York, NY 10007

Ref: *Amendment to the PA for the Construction of the East Side Coastal Resiliency (ESCR) Project
New York City, New York
ACHP Project Number: 016271*

Dear Ms. Parker:

Enclosed is your copy of the fully executed *Amendment to the Programmatic Agreement among the New York City Office of Management and Budget, the New York State Historic Preservation Office, and the Advisory Council on Historic Preservation, regarding the East Side Coastal Resiliency Project in New York City, New York.*

By carrying out the terms of the Agreement as amended, the New York City Office of Management and Budget, acting as a Responsible Entity for the Community Development Block Grant (CDBG), will fulfill its responsibilities under Section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation. Please ensure that all consulting parties are provided a copy of the executed amendment. The original amendment will remain on file at our office.

If we may be of further assistance as the Agreement is implemented, please contact Anthony Guy Lopez at (202) 517-0220 or by e-mail at alopez@achp.gov and reference the ACHP Project Number above.

Sincerely,

Jaime Loichinger
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing, and Assistance Section

Enclosure

AMENDMENT
TO
PROGRAMMATIC AGREEMENT
Among
The New York City Office of Management and Budget,
The New York State Historic Preservation Office,
and
The Advisory Council on Historic Preservation
Regarding
The East Side Coastal Resiliency Project
New York City, New York

WHEREAS, the *Programmatic Agreement Among the New York City Office of Management and Budget, the New York State Historic Preservation Office, and the Advisory Council on Historic Preservation regarding the East Side Coastal Resiliency Project New York City, New York* (the Agreement) was executed on December 4, 2019; and

WHEREAS, the New York City Office of Management and Budget (OMB) followed the Section 106 review process and made a reasonable and good faith effort pursuant to 36 CFR § 800.4(b)(1) to identify and evaluate historic properties in the Area of Potential Effect, including providing information on the National Register of Historic Places (NRHP) eligibility of the East River Park and the structures within it to the New York State Historic Preservation Office (SHPO) in 2016; and

WHEREAS, on December 6, 2019, OMB and the New York City Department of Parks & Recreation (NYC Parks) issued a Joint Record of Decision, State Environmental Quality Review Act, and City Environmental Quality Review Findings Statement that documented OMB's and NYC Park's findings and decision to proceed with the Preferred Alternative as described in the Final Environmental Impact Statement (FEIS) for the East Side Coastal Resiliency Project, which was published on September 13, 2019; and

WHEREAS, after the Agreement was executed and project approvals were obtained, the SHPO on June 18, 2020 reversed an earlier determination made in 2017 and found that two properties

in the Area of Potential Effect—the East River Park Track House and the Tennis Center Comfort Station—are individually eligible for listing on the NRHP under Criterion C in the area of architecture; and

WHEREAS, SHPO’s new eligibility determination relied on information provided to SHPO on December 30, 2019 by the Lower East Side Preservation Initiative, a consulting party and concurring party to the Agreement; and

WHEREAS, the Preferred Alternative would demolish the East River Park Track House and Tennis Center Comfort Station for construction of the project; and

WHEREAS, the FEIS considered five With Action alternatives to the proposed project, but as the East River Park Track House and Tennis Center Comfort Station had been determined during the Section 106 review process and the concurrent environmental review process not to be eligible for inclusion on the NRHP, OMB was not required to assess any potential effects nor identify any avoidance, minimization, and/or mitigation measures for these two structures; and

WHEREAS, considering the revised NRHP eligibility determination from the SHPO, OMB has agreed to revise its initial NRHP determination of eligibility for the East River Park Track House and Tennis Center Comfort Station that they are eligible for listing on the NRHP under Criterion C and their demolition would result in an Adverse Effect; and

WHEREAS, in light of the revised effects determination at this stage in the project, OMB has determined that mitigation measures that preserve the structures are not implementable, as raising the structures above the grade of the elevated park or relocating them to a new location within the elevated park would necessitate new engineering and design studies for the project, which obtained the necessary approvals to proceed in December 2019. Any further consideration to preserving these structures, including but not limited to additional study, planning, design, coordination, and review, falls outside the already constrained project budget and schedule, which has been exacerbated by the current constraints resulting from the COVID-19 pandemic; and

WHEREAS, since the revised effects determination, OMB initiated additional consultation with the consulting parties, with one meeting held on September 8, 2020 to discuss the next steps in the Section 106 review process followed by another meeting on November 19, 2020;

NOW, THEREFORE, in accordance with Stipulation X.B. – Duration, Amendment, and Termination of the Agreement, OMB, SHPO, and the Advisory Council on Historic Preservation agree to amend the Agreement as follows:

1. Stipulation XI shall be added to the Amendment:

OMB will ensure that Historic American Buildings Survey (“HABS”) Level 2 recordation of the East River Park Track House and Tennis Center Comfort Station will be undertaken prior to the start of construction. Recordation shall consist of:

A. Two sets of black and white photographs (4- by 5-inch prints on archival paper) and one set of 4- by 5-inch negatives that record the exterior appearance and interior spaces of the East River Park Track House and Tennis Center Comfort Station, with up to 15 photographs of each building:

B. Measured drawings are not required but a good faith effort shall be made to locate exterior elevations and floor plans of the East River Park Track House and Tennis Center Comfort Station in the NYC Parks archives and appropriate civic and historic repositories. If located, copies shall be included in the recordation submission.

C. A historic narrative pertaining to the history of the buildings shall be prepared to illustrate the historic and architectural significance of both the East River Park Track House and Tennis Center Comfort Station. The narrative will provide an appropriate historic context for the structures.

D. The SHPO will have 30 calendar days from receipt of the draft report to review and provide written comments.

E. Two copies of the report will be prepared. One copy of the report will be submitted to the SHPO for forwarding to the New York State Archives (which will include one set of archival negatives and a compact disc containing the report), and one copy of the report (which will include one set of archival negatives) will be kept in the NYC Parks archives.

2. Stipulation XII will be added to the Amendment:

The City is preparing flood resilience design plans for the NRHP-eligible Engine Company 66 Fireboat House in accordance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. OMB will submit the pre-final design plans for the identified flood resilience measures to the SHPO, LPC, Municipal Art Society, New York Landmarks Conservancy, and

Lower East Side Preservation Initiative for review. The parties will have 30 calendar days to review and provide written comments.

- a. If the City does not receive written comments within the 30-day review period, then it will proceed with finalizing the plans.
- b. If the City receives timely written comments on the proposed plans, the City shall revise the plans to address comments or recommendations to the extent that it is feasible.
- c. If the City does not agree with the comments or if another Party or Parties do not agree with the proposed plans, the City will follow the Dispute Resolution process in Stipulation VII of the Agreement.

3. With the exception of items explicitly delineated in this Amendment to the Agreement, all other terms and stipulations of the Agreement shall remain unchanged and in full force and effect.

**APPROVAL AND SIGNATURE PAGE FOR AMENDMENT TO PROGRAMMATIC
AGREEMENT**

Among

The New York City Office of Management and Budget,

The New York State Historic Preservation Office, and

The Advisory Council on Historic Preservation

Regarding

The East Side Coastal Resiliency Project

New York City, New York

NYC OFFICE OF MANAGEMENT AND BUDGET

By: Christopher Blanco

Name: Christopher Blanco

Title: Associate Director, Budget Resources and Recovery Grant Management

Date: September 29, 2021

**APPROVAL AND SIGNATURE PAGE FOR AMENDMENT TO PROGRAMMATIC
AGREEMENT**

Among

**The New York City Office of Management and Budget,
The New York State Historic Preservation Office, and
The Advisory Council on Historic Preservation**

Regarding

**The East Side Coastal Resiliency Project
New York City, New York**

NEW YORK STATE HISTORIC PRESERVATION OFFICE

By: Robert Daniel Driscoll

Name: ROBERT DANIEL DRISCOLL

Title: DSHPD

Date: 10/6/2021

**APPROVAL AND SIGNATURE PAGE FOR AMENDMENT TO PROGRAMMATIC
AGREEMENT**

Among

**The New York City Office of Management and Budget,
The New York State Historic Preservation Office, and
The Advisory Council on Historic Preservation**

Regarding

**The East Side Coastal Resiliency Project
New York City, New York**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  _____

Name: Reid J. Nelson

Title: Director, Office of Federal Agency Programs

Date: October 12, 2021

**INVITED SIGNATORY PAGE FOR AMENDMENT TO PROGRAMMATIC
AGREEMENT**

Among

**The New York City Office of Management and Budget,
The New York State Historic Preservation Office, and
The Advisory Council on Historic Preservation**

Regarding

**The East Side Coastal Resiliency Project
New York City, New York**

NEW YORK CITY DEPARTMENT OF PARKS & RECREATION

By:  _____

Name: DAVID CERRON

Title: ASSISTANT COMMISSIONER, PLANNING AND DEVELOPMENT

Date: 10/1/21

**CONCURRING PARTY SIGNATURE PAGE FOR AMENDMENT TO
PROGRAMMATIC AGREEMENT**

Among

**The New York City Office of Management and Budget,
The New York State Historic Preservation Office, and
The Advisory Council on Historic Preservation**

Regarding

**The East Side Coastal Resiliency Project
New York City, New York**

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION

By: 

Name: Sarah Carroll

Title: Chair

Date: September 27, 2021

**CONCURRING PARTY SIGNATURE PAGE FOR AMENDMENT TO
PROGRAMMATIC AGREEMENT**

Among

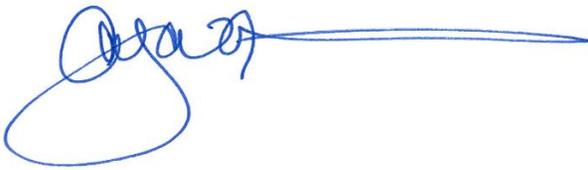
**The New York City Office of Management and Budget,
The New York State Historic Preservation Office, and
The Advisory Council on Historic Preservation**

Regarding

**The East Side Coastal Resiliency Project
New York City, New York**

MUNICIPAL ART SOCIETY

By:

A handwritten signature in blue ink, consisting of a large, stylized initial 'E' followed by a long horizontal line.

Name: Elizabeth Goldstein

Title: President

Date: October 5, 2021

**CONCURRING PARTY SIGNATURE PAGE FOR AMENDMENT TO
PROGRAMMATIC AGREEMENT**

Among

**The New York City Office of Management and Budget,
The New York State Historic Preservation Office, and
The Advisory Council on Historic Preservation**

Regarding

**The East Side Coastal Resiliency Project
New York City, New York**

THE NEW YORK LANDMARKS CONSERVANCY



By: _____

Name: Peg Breen

Title: President

Date: 9/29/2021_____

**CONCURRING PARTY SIGNATURE PAGE FOR AMENDMENT TO
PROGRAMMATIC AGREEMENT**

Among

**The New York City Office of Management and Budget,
The New York State Historic Preservation Office, and
The Advisory Council on Historic Preservation**

Regarding

**The East Side Coastal Resiliency Project
New York City, New York**

LOWER EAST SIDE PRESERVATION INITIATIVE

By:  * _____

Name: Richard D. Moses

Title: President

Date: 9/29/21 _____

* Lower East Side Preservation Initiative stands by its objections to the Amendment to Programmatic Agreement, including the demolition of the East River Park's Track House and Tennis Center Comfort Station, as outlined in our letter to the NYC Office of Management and Budget dated May 11, 2021, and to the Office of the Deputy Mayor for Operations dated August 10, 2021.