

22.0 INTRODUCTION

As per the 2014 City Environmental Quality Review (CEQR) Technical Manual, unavoidable adverse impacts occur when significant adverse impacts would be unavoidable if the project is implemented regardless of the mitigation employed (or if mitigation is impossible).

As described in the previous chapters of this environmental impact statement (EIS), the Proposed Actions have the potential for a significant adverse archaeological resources impact (to be ascertained during future field testing or excavation). If significant archaeological deposits are identified and impacts on such deposits cannot be avoided, these would be considered unavoidable adverse impacts (as discussed below). In addition, the Proposed Actions would result in adverse impacts from the loss of approximately 3.6 acres of Waters of the U.S. and associated habitat due to the portion of the breakwaters above mean high water (MHW). This adverse impact would be fully mitigated as described in Chapter 20, "Mitigation and Minimization of Impacts," and therefore would not result in unavoidable adverse impacts.

22.1 ARCHAEOLOGICAL RESOURCES

As described in the Phase 1A prepared for the Proposed Actions, the construction of the proposed Shoreline Project and the proposed Water Hub (including landscaping elements), once a final location is selected, would require subsurface excavation. The Phase 1A study recommended that Phase 1B archaeological testing be completed within areas identified as archaeologically sensitive to determine the presence or absence of archaeological resources within the area of potential effect (APE) prior to the commencement of construction. Any additional archaeological analysis will occur prior to construction and in consultation with the New York State Historic Preservation Office (SHPO), the New York City Landmarks Preservation Commission (LPC), and the Tribal Nations.

Pursuant to Section 106 and CEQR, should significant (e.g., National Register-eligible) archaeological resources be identified in sensitive areas through Phase 1B and Phase 2 archaeological investigations, disturbance or removal of such resources through construction would constitute an adverse effect under Section 106 and a significant adverse impact under CEQR. However, at this time only the *potential* for archaeological resources has been identified in certain locations on the project site. As set forth in the *CEQR Technical Manual*, a "site's actual, rather than potential, sensitivity cannot be ascertained without some field testing or excavation."¹ Therefore, it is conservatively assumed for purposes of Section 106 and CEQR that the proposed project could *potentially* result in an adverse effects and significant adverse

¹ *CEQR Technical Manual* (March 2014): page 9-10
(http://www.nyc.gov/html/oec/downloads/pdf/2014_ceqr_tm/09_Historic_Resources_2014.pdf).

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impacts, with the actual presence of any significant resources to be determined through additional archaeological investigations and consultation as set forth in the Programmatic Agreement. However, should no significant archaeological resources be identified through Phase 1B or any subsequent Phase 2 archaeological investigations, and LPC, SHPO and the Tribal Nations concur with the conclusions of those investigations, no *actual* adverse effects or significant adverse impacts would occur.

As mandated by Section 106 of the National Historic Preservation Act of 1966 (NHPA), the Governor's Office of Storm Recovery (GOSR) is participating in an ongoing consultation process with SHPO, LPC, and the Tribal Nations with respect to potential effects on archaeological and architectural resources. As part of this ongoing process, measures have been explored to avoid, minimize, or mitigate any significant adverse effects to archaeological and architectural resources. Development of these measures is set forth in the Programmatic Agreement executed in May 2013 among the Federal Emergency Management Agency (FEMA), SHPO, the New York State Office of Emergency Management, the Delaware Nation, the Delaware Tribe of Indians, the Shinnecock Nation, the Stockbridge-Munsee Community Band of Mohicans, LPC, and Advisory Council on Historic Preservation (ACHP) and specifically outlined within Appendix D to the Programmatic Agreement, which pertains to the New York State's Community Development Block Grant-Disaster Recovery (CDBG-DR) program for activities in New York City.

The Programmatic Agreement describes the measures to be implemented and the consultation that is required during the project's design process, to avoid, minimize, or mitigate adverse effects of the project on historic and archaeological resources. GOSR would implement the various provisions of the Programmatic Agreement and would continue to consult with the consulting parties regarding the identification of the potential for the Proposed Actions to impact archaeological resources and GOSR would perform additional archaeological investigations as required. If significant archaeological deposits are identified and impacts on such deposits cannot be avoided, these would be considered unavoidable adverse impacts. GOSR would identify and implement any additional measures that may be required to mitigate adverse effects on archaeological resources in accordance with applicable Project Review provisions in the Programmatic Agreement. *