



NFEnergía
puerto rico

NFEnergía LLC

San Juan Micro-Fuel Handling Facility

**Resource Report 4
Cultural Resources**

**Docket No.
CP21-____-000**

September 15, 2021

NFEnergía LLC
SAN JUAN MICRO-FUEL HANDLING FACILITY
RESOURCE REPORT 4—CULTURAL RESOURCES

Minimum Filing Requirements for Environmental Reports:	Addressed in Section:
<p>1. Resource Report 4 must contain:</p> <ul style="list-style-type: none"> (i) Documentation of the applicant's initial cultural resources consultation, including consultations with Native Americans and other interested persons (if appropriate); (ii) Overview and Survey Reports, as appropriate; (iii) Evaluation Report, as appropriate; (iv) Treatment Plan, as appropriate; and (v) Written comments from State Historic Preservation Officer(s) ("SHPO"), Tribal Historic Preservation Officers ("THPO"), as appropriate, and applicable land-managing agencies on the reports in paragraphs (f)(1)(i)-(iv) of this section. 	<p>Sections 4.6 through 4.8 and Appendix 4B</p>
<p>2. Initial filing requirements. The initial application must include the documentation of initial cultural resource consultation, the Overview and Survey Reports, if required, and written comments from SHPOs, THPOs and land-managing agencies, if available. The initial cultural resources consultations should establish the need for surveys. If surveys are deemed necessary by the consultation with the SHPO/THPO, the survey report must be filed with the application.</p> <ul style="list-style-type: none"> (i) If the comments of the SHPOs, THPOs, or land-management agencies are not available at the time the application is filed, they may be filed separately, but they must be filed before a final certificate is issued. (ii) If landowners deny access to private property and certain areas are not surveyed, the unsurveyed area must be identified by mileposts, and supplemental surveys or evaluations shall be conducted after access is granted. In such circumstances, reports, and treatment plans, if necessary, for those inaccessible lands may be filed after a certificate is issued. 	<p>Sections 4.6 through 4.8 and Appendix 4B</p>
<p>3. The Evaluation Report and Treatment Plan, if required, for the entire project must be filed before a final certificate is issued.</p> <ul style="list-style-type: none"> (i) The Evaluation Report may be combined in a single synthetic report with the Overview and Survey Reports if the SHPOs, THPOs, and land-management agencies allow and if it is available at the time the application is filed. (ii) In preparing the Treatment Plan, the applicant must consult with the Commission staff, the SHPO, and any applicable THPO and land-management agencies. (iii) Authorization to implement the Treatment Plan will occur only after the final certificate is issued. 	<p>Not Applicable</p>
<p>4. Applicant must request privileged treatment for all material filed with the Commission containing location, character, and ownership information about cultural resources in accordance with §388.112 of this chapter. The cover and relevant pages or portions of the report should be clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE."</p>	<p>Noted</p>
<p>5. Except as specified in a final Commission order, or by the Director of the Office of Energy Projects, construction may not begin until all cultural resource reports and plans have been approved.</p>	<p>Not Applicable</p>

NFEnergía LLC
SAN JUAN MICRO-FUEL HANDLING FACILITY
RESOURCE REPORT 4—CULTURAL RESOURCES

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ACRONYMS AND ABBREVIATIONS

ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effects
CFR	Code of Federal Regulations
Council	Consejo para la Protección del Patrimonio Arqueológico Terrestre de Puerto Rico (Council for the Protection of the Archaeological Terrestrial Heritage of Puerto Rico)
Cultural Resources Report	Phase IA and Phase IB archaeological report
FERC	Federal Energy Regulatory Commission
LNG	liquefied natural gas
MFH Facility	San Juan Micro-Fuel Handling Facility
NFEnergía	NFEnergía LLC
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
PREPA	Puerto Rico Electric Power Authority
SHPO	Puerto Rico State Historic Preservation Office
THPO	Tribal Historic Preservation Officers
USACE	United States Army Corps of Engineers

NFEnergía LLC
SAN JUAN MICRO-FUEL HANDLING FACILITY
RESOURCE REPORT 4—CULTURAL RESOURCES

4.0 RESOURCE REPORT 4—CULTURAL RESOURCES

4.1 Introduction

NFEnergía LLC (“NFEnergía”) is seeking authorization from the Federal Energy Regulatory Commission (“FERC”) under Section 3 of the Natural Gas Act to continue operating the San Juan Micro-Fuel Handling Facility (“MFH Facility”), a liquefied natural gas (“LNG”) import and regasification facility. The MFH Facility is located on approximately 6.1 paved and fenced acres of an industrial area at Wharves A and B of the Puerto de San Juan (Port of San Juan), Puerto Rico, which is situated among existing industrial uses in the north of Puerto Rico where it can supply power generation sources serving nearby load centers using minimal additional infrastructure. To operate the MFH Facility, “pocket-sized” LNG vessels (also called “shuttle vessels”) bring LNG into the San Juan Harbor where the LNG is transferred from the shuttle vessel to a non-jurisdictional floating storage unit vessel that is semi-permanently moored adjacent to the MFH Facility site. The floating storage unit transfers LNG onshore where certain quantities remain liquefied and are transloaded onto trucks for over-the-road delivery to end users and certain quantities are regasified and made available to Units 5 and 6 of the adjacent San Juan Power Plant via a 75-foot long, 10-inch diameter segment of power plant piping. The MFH Facility has a regasification capacity of 130 million standard cubic feet per day and a truck loading capacity of 87.52 million standard cubic feet per day.

NFEnergía initially developed the MFH Facility to serve its commercial customers via a truck loading operation for distribution of LNG for regasification and use at behind-the-fence power generation facilities across Puerto Rico—typically multinational companies with manufacturing operations. In July 2018, Puerto Rico Electric Power Authority (“PREPA”) issued a request for proposals to retrofit Units 5 and 6 of the San Juan Power Plant to enable dual-fuel capability and to supply PREPA with natural gas. NFEnergía participated in that competitive process and was chosen as the successful bidder. PREPA and NFEnergía entered into a contract to effectuate the award in March 2019 and the MFH Facility began operating in March 2020 and became fully operational in May 2020.

FERC’s National Environmental Policy Act review process requires that an applicant submit an Environmental Report consisting of up to 13 individual resource reports. This resource report is consistent with and meets or exceeds all applicable FERC filing requirements. A checklist showing the status of FERC’s filing requirements for Resource Report 4 (18 Code of Federal Regulations [“CFR”] § 380.12) is included before the table of contents.

Resource Report 4 provides a discussion of existing cultural resources near the MFH Facility, the results of cultural resources investigations completed prior to construction of the MFH Facility, and potential operational impacts of the MFH Facility on cultural resources.

4.2 Regulatory Authority

Construction of the MFH Facility required approvals and permits from federal and Commonwealth entities, including authorization from the United States Army Corps of Engineers (“USACE”) under authority of Section 10 of the Rivers and Harbors Act of 1899. Prior to granting

that authorization, the USACE was required to comply with Section 106 of the National Historic Preservation Act (“NHPA”) of 1966, as amended. Section 106 of the NHPA (54 United States Code § 306108) requires federal agencies to take into account effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (“ACHP”) an opportunity to comment. Historic properties are defined as cultural resources that are listed or eligible for listing in the National Register of Historic Places (“NRHP”) (CFR, Title 36, Part 60).

If a development project in the Commonwealth of Puerto Rico is not a federal undertaking, the NHPA is not applicable and the Puerto Rico State Historic Preservation Office (“SHPO”) is not required to be consulted and, therefore, has no involvement in the review process. The Commonwealth of Puerto Rico enacted legislation that applies to antiquities not protected under federal law.

The Commonwealth of Puerto Rico enacted Law Number 112 of July 20, 1988, as amended, which approved the creation of the Consejo para la Protección del Patrimonio Arqueológico Terrestre de Puerto Rico (Council for the Protection of the Archaeological Terrestrial Heritage of Puerto Rico [“Council”]). The Council, which is attached to the Instituto de Cultura Puertorriqueña (Institute of Puerto Rican Culture), is the governmental body responsible for protecting and guarding “every site, object, deposit, artifact, document or archaeological material that is a relic of man's past, whether it is material of nature, or whether it is built by man, that exists or is found on or under the surface of the earth resources.” The Council is also responsible for promoting the scientific inventory and the study of archaeological values in harmony with the public policy of the Commonwealth of Puerto Rico. The Council has powers for antiquities enforcement and can take punitive action such as monetary fines and prison time. The Council has obligations to review excavation, construction, and reconstruction work carried out in Puerto Rico.

4.3 Area of Potential Effects

By definition, the Area of Potential Effects (“APE”) is the geographic area in which an undertaking may directly or indirectly alter the character or use of historic properties. This includes the construction footprint, direct APE, and the indirect APE that could be affected by the introduction of visual, atmospheric, and in some cases, physical elements that would alter a property’s setting and feeling.

During its Section 106 consultation over the construction activities at Wharf B, the USACE defined the direct APE as the dock where rehabilitation of the pier structure at Wharf B occurred. The work at the pier included repair of 66 existing 18 inch by 18 inch concrete piles and replacement (within the same footprint) of a concrete platform slab measuring 226 feet by 33 feet. The USACE did not include the upland area adjacent to the pier structure or the marine vessel routes used by the shuttle vessels to support operations of the MFH Facility, in its APE.

4.4 Background Research

Prior to beginning field investigations, NFEnergía’s consultants completed a review to gather information about previous cultural resource investigations in San Juan Bay and known archaeological sites within 1.2 miles (2 kilometers) of the MFH Facility operations. Previous investigations are listed in table 4-1 and known archaeological sites are listed in table 4-2. No known archaeological sites were located in the MFH Facility operations’ footprint.

Table 4-1: Previous Terrestrial and Underwater Investigations.

Year	Report
1990	Phase IA Archaeological Project, Office Park Project.
1991	Archaeological Study Phase IA, Warehouse building, Lot N-17 Calle D, Industrial Park.
1992	Archaeological Evaluation Phase III, Cave (crack) Buchanan 3 (Cueva Canejas), Port Rican Cement Inc.
1993	Magnetometer Survey of the Navigation Channel Area for Maintenance and Widening Works of the San Antonio Canal by USACE.
1993	Archaeological Evaluation Phase III Metropolitan Detention Center.
1993	Phase II of the Navigation Channel Area for Maintenance and Widening Works of the San Antonio Canal by USACE.
1994	Archaeological Evaluation Phase IA, Plots Project of 19 and 34 ropes, Kennedy Avenue Port Area, Kilometer 2.1.
1994	Underwater Investigation to Ground Truth Two Potentially Significant Submerged Cultural Resources, San Juan Harbor.
1995	Archaeological Evaluation Phase IA, Proposed Project San Patricio Plaza Master Plan.
1995	Archaeological Phase IA, Field Operations Center, Puerto Rico Telephone Company.
1995	Inspections of the Area Adjacent to Buoy 4.
1995	Phase II—San Antonio Channel for the Replacement Project of Bridges 1 and 86, Caño San Antonio.
1996	Study of Cultural Resources Phase IB, La Esperanza Project, Bay View Bahía, Casco Pueblo, Expansión Central and La Puntilla.
1996	Archaeological Evaluation Phase IA, International Mercantile Center.
1997	Phase IA and IB Underwater Archaeological Evaluation for the Construction of Pier 2 Project in Old San Juan.
1996	Archaeological Evaluation Phase IA-IB, Earth and Slope Stabilization of a Haystac Project Hill Project Fort Buchanan Military Reserve.
1997	Phase IA and IB Archaeological Evaluation for the Development of the Maritime Front of Cataño Project.
1997	Phase IA and IB Underwater Archaeological Evaluation for the Isla de Cabras Facilities Improvement Project in Toa Baja.
1999	Archaeological Evaluation Phase IA, Iriarte Office Park.
1999	Phase IA for the Expansion of the Docks 3, 4, and 5.
2000	Archaeological Evaluation Phase IB, Paseo del Puerto and Parking Building Multi-floors.
2001	Archaeological Survey Fort Buchanan, Stage IA-IB.
2002	Archaeological Evaluation Phase IA-IB, Industrial Project.
2002	Archaeological Evaluation Phase IA-IB, Miradores de Sabana Project, Calle Ponce de León, Rodrigode Triana, and Juancho Lópe.
2003	Archaeological Evaluation Phase II, Construction of the Paseo del Puerto and Multi-floor Parking.
2003	2001: Dredging activities in San Juan Bay project was stopped in the area of Buoy 4 as per request of the State Office of Historic Preservation based on Fontáñez study (2001). 2003: Dredging contractor request Panamerican Consultants for the archaeological investigation.
2003	Phase IA, Submitted as Part of the Environmental Compliance Process for the Project Rehabilitation of the Docks 11–14 in Puerta de Tierra.
2003	Archaeological Evaluation Phase IA, 38 kilovolt Line Underground Project San Juan Plant up to San Fernando substation in Puerto Nuevo.
2004	Phase IA-IB for the Rehabilitation of the Dock of the Cataño Boat Project.
2005	Phase IA-IB for the Underground Line Project of 115 KV Between the Generation Plants of San Juan and Palo Seco, Cataño.
2006	Archaeological Evaluation Phase IA-IB, Villa Concepción II and III Project.
2012	Archaeological Evaluation Phase IA, Central Market of San Juan Project.
2015	Archaeological Assessment Phase IA, Improvements to the Petroleum Products Terminal.

Table 4-2: Previously Recorded Archaeological Sites.

Site ID	Site Name	Time Period	Site Type
CT-2	Western Railway Line	19 th through 20 th centuries	Structures and railroad easements
GB-5	Montes de Canejo	Indigenous Period	Indigenous archaeological site
GB-6	Caneja Cave	Indigenous Period	Indigenous archaeological site
GB-7	Caparra	Spanish Period	Structure
GB-9, SJ-BU-1	N/A	Indigenous Period	N/A
GB-10	Pueblo Viejo	Contact Period	Indigenous and Colonial occupations
SJ-44	Ingenio Constanza de Torres	N/A	Demolished structure

The previously recorded architectural resources are more than 2 miles from the MFH Facility and include six properties listed in the NRHP. These properties are located on the islet of San Juan and include the Castillo de San Felipe del Morro portion of the San Juan National Historic Site (SJ0100029), Faro del Castillo Morro (SJ0200003), United States Post Office and Courthouse, La Fortaleza (SJ0100031), United States Custom House (SJ0200044), and Distrito Histórico del Viejo San Juan (Old San Juan Historic District). Both the Distrito Histórico del Viejo San Juan and La Fortaleza are National Historic Landmarks, Castillo de San Felipe del Morro is a National Historic Site, and La Fortaleza and San Juan National Historic Site are included in the United Nations Educational, Scientific, and Cultural Organization World Heritage List as an outstanding example of European developments in military architecture in the Caribbean from the sixteenth to twentieth centuries. Table 4-3 lists these architectural resources and figure 4-1, included in appendix 4A, depicts these resources.

Table 4-3: Architectural Historic Properties.

Site ID	Site Name	NRHP Status	Site Type
SJ0100029	San Juan National Historic Site	National Historic Landmark and United Nations Educational, Scientific, and Cultural Organization World Heritage List	Fort protecting San Juan Harbor
SJ0100031	La Fortaleza	NRHP Listed and United Nations Educational, Scientific, and Cultural Organization World Heritage List	Original fortification protecting San Juan Harbor
SJ0200003	Faro del Castillo Morro	NRHP Listed	Lighthouse
SJ0200044	San Juan Custom House	NRHP Listed	Spanish-Colonial Revival Architecture
N/A	United States Post Office and Courthouse	NRHP Listed	American Institutional Architecture
N/A	Old San Juan Historic District	National Historic Landmark	16 th through 19 th century structures

4.5 Cultural Resource Survey

As part of the process to obtain all relevant authorizations to develop the MFH Facility on the site, NFEnergía performed a cultural resources analysis in 2018, which was summarized in a Phase IA and Phase IB archaeological report (the “Cultural Resources Report”) and presented to the Puerto Rican authorities. This Cultural Resources Report determined that development on the property would not cause any adverse effects on cultural historical resources. The Institute of Puerto Rican Culture and the Oficina de Gerencia de Permisos (Permits Management Office) received and reviewed this Cultural Resources Report, approved its accompanying environmental assessment, and allowed the construction of the MFH Facility to proceed. A copy of this report is included as appendix 4B and is marked “CUI/PRIV—Do Not Release.”

The environmental assessment also considered historic maps to determine prior site usage. The historical United States Geological Survey 7.5-minute quadrangle map from 1947 shows the MFH Facility site as open water and marsh. The 1949 USGS 7.5-minute quadrangle map shows Wharves A and B as filled areas, and by 1957, the filled area extends beyond the two wharves. The assessment concluded that construction of the MFH Facility was not anticipated to encounter any landslide archaeological resources.

The development of the property required the demolition of two existing 1950’s-era warehouses on Wharves A and B. Prior to their demolition, NFEnergía documented the buildings through archival research, photographic documentation, and the preparation of building plan drawings. This demolition was included within the site work assessed by the Permits

Management Office in their approval of the environmental assessment, as well as under a separate demolition permit granted by the Municipality of San Juan and asbestos-containing material removal permit granted by the DNER. The demolition was conducted in compliance with Law Number 112.

Additionally, a professional archaeologist monitored the excavation of 16 trenches in and near the warehouses to confirm that no unanticipated discovery of sensitive cultural materials occurred during construction of the MFH Facility. The monitoring confirmed the presence of modern fill in all trenches that were excavated to depths between 3 and 9 feet.

4.6 State Historic Preservation Office Consultation

In a letter dated September 6, 2018, the USACE indicated that NFEnergía's proposed rehabilitation of the pier structure may qualify for verification under Nationwide Permit 3. The USACE noted that General Condition 20 of Nationwide Permit 3 provided the procedures for addressing the requirements of Section 106 of the NHPA. To satisfy the requirements of General Condition 20, the USACE consulted with the SHPO.

In a letter to the USACE dated September 18, 2018, the SHPO requested a copy of the complete archaeological survey report (only a portion of the report had been provided) and photographs of the APE. Upon receipt of the complete report, the SHPO provided additional comments to the USACE in a letter dated November 1, 2018, also requesting that the USACE define the APE and conduct an identification and evaluation survey of the warehouses.

In a letter dated December 4, 2018, the SHPO requested that USACE contact the ACHP regarding the applicability of Section 110(k) of the NHPA¹ for the demolition by NFEnergía of two warehouses in the footprint of the proposed MFH Facility directly abutting Wharf B. The SHPO also claimed that NFEnergía's actions foreclosed the ACHP's ability to comment on the MFH Facility. Copies of the SHPO correspondence in NFEnergía's possession are included in appendix 4C.²

4.7 Advisory Council on Historic Preservation Consultation

As requested by the SHPO, the USACE initiated consultation with the ACHP and provided documentation on January 31, 2019. The ACHP did not respond to the USACE within 30 days. On March 19, 2019, the USACE documented its final determination of effects of the nationwide permit verification on historic properties in a letter to the SHPO.

The USACE completed an assessment of the potential NRHP-eligibility of the warehouses after their demolition and determined that rehabilitation of the pier structure on Wharf B did not have a direct or indirect effect on the warehouse buildings. The USACE concluded that the location of the warehouses was outside the area of the undertaking and outside the APE. Therefore, no historic properties were affected by the undertaking. The USACE also commented

¹ Section 110(k) prohibits a federal agency from granting a permit, license, or other assistance to an applicant who, with intent to avoid Section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur.

² The USACE consulted directly with the SHPO and, therefore, NFEnergía does not have a complete record of this correspondence.

that NFEnergía demolished the structures in compliance with the documentation and mitigation requirements of the local historic preservation review that was a prerequisite for a demolition permit. The USACE concluded that the MFH Facility had no effect on historic properties under 36 CFR 800.4(d)(1)(iv)(A) and that Section 110(k) of the NHPA was not applicable. The ACHP provided advisory comments in response to the January 31, 2019 submittal, dated March 25, 2019, which is included in appendix 4C.

4.8 Consultation with Federally Recognized Tribes

No federally recognized tribes are in Puerto Rico; therefore, tribal consultation is not required for the continued operation of the MFH Facility.

4.9 Operational Impacts

No historic properties occur within the MFH Facility or the vessel transit routes. Therefore, no operational activities will affect historic properties within the direct APE.

Potential indirect operational impacts on historic properties include visual, atmospheric, and erosion.

The operation of the MFH Facility will not alter the existing industrial character of the harbor. The closest NRHP-listed property is more than 2 miles from the MFH Facility and therefore, viewshed impacts on the historic properties listed in table 4-3 are not anticipated.

The main atmospheric pollutant that may contribute to the deterioration of historic buildings, particularly stonework, includes sulphur dioxide. When mixed with rain water, the sulphur dioxide produces sulphurous acid known as acid rain (Dinesen, 2021). The largest source of sulphur dioxide emissions results from fossil fuel combustion at industrial facilities (USEPA, 2021). As addressed Resource Report 9, the combustion of natural gas supplied by the MFH Facility at the PREPA power generation facility results in significant air quality emission reductions, including up to 623.8 tons per year less of sulphur dioxide. The impacts of atmospheric pollutants are not anticipated to contribute to the degradation to the historic properties during continued operation of the MFH Facility.

Finally, the existing revetments and other erosional control measures (e.g., sea walls) in San Juan Harbor protect near-shore historic properties from erosional effects of vessel wakes. Thus, no impacts on historic properties are anticipated from continued operation of the MFH Facility.

4.10 References

Dinesen, Chris. 2021. Pollution's Impact on Historical Monuments. 10 August 2021. Available online: <https://sciencing.com/about-6372037-pollution-s-impact-historical-monuments.html>. Accessed: August 2021.

United States Environmental Protection Agency (USEPA). 2021. Sulphur Dioxide Basics. Available online: <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics>. Accessed: August 2021.

APPENDIX 4A FIGURES

Filed under separate cover as CUI/PRIV

APPENDIX 4B CULTURAL RESOURCE REPORT

Filed under separate cover as CUI/PRIV

APPENDIX 4C AGENCY CORRESPONDENCE



GOBIERNO DE PUERTO RICO
Oficina Estatal de Conservación Histórica
State Historic Preservation Office

US ARMY CORPS
OF ENGINEERS

2010 SEP 28 A 9:45

Tuesday, September 18, 2010

Sindulfo Castillo

Chief, Antilles Regulatory Section
Jacksonville District Corps of Engineers
Department of the Army
Fund. Ángel Ramos Annex Bldg., Suite 202
383 Franklin Delano Roosevelt Ave.
San Juan, Puerto Rico 00918

ANTILLES REGULATORY SECTION
RECEIVED

SHPO: 09-10-18-01 PUERTO NUEVO WHARF B IMPROVEMENTS, PR-28, KM. 4.9, SAN JUAN, PUERTO RICO/SAJ-2010-02341 (NWP-CGR)

Dear Mr. Castillo,

As part of our responsibilities under the National Historic Preservation Act (NHPA), the Puerto Rico State Historic Preservation Office (SHPO) advises and assists, as appropriate, Federal and State agencies and municipalities in carrying out their historic preservation responsibilities under 54 USC 306108 (commonly known as Section 106 of the NHPA) and its implementing regulation 36 CFR Part 800: Protection of Historic Properties. Section 106 of the NHPA requires Federal agencies and other responsible entities to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation an opportunity to comment on such undertakings. The SHPO participates in a four step Section 106 review process: 1) Initiating the process; 2) Identifying historic properties; 3) Assessing adverse effects; and 4) Resolving adverse effects.

The following information is necessary to initiate the review:

1. Project information:
 - a) Current photographs taken from ground level of the project's area of potential effects (at a minimum, the project site and its surroundings). Traditional photographs may be substituted by digitals only if submitted in JPEG or PDF formats and saved in a compact disc (CD) or a USB Flash Drive. No Polaroid's or photocopies will be accepted.
2. A Stage I cultural resource survey report was partially included in your submittal as an enclosure. While the report is supposed to have 151 pages, we received only 15. We hereby request a complete printed original report so we may continue with our review of this undertaking.

Cuartel de Ballajá (Tercer Piso),
Calle Norzagaray, Esquina Beneficencia, Viejo San Juan, P.R. 00901

PO Box 9023935, San Juan, P.R. 00902-3935
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OFICINA ESTATAL DE
CONSERVACIÓN HISTÓRICA
OFICINA DEL GOBERNADOR
STATE HISTORIC
PRESERVATION OFFICE
OFFICE OF THE GOVERNOR

Sindulfo Castillo
Tuesday, September 18, 2018
Page 2

SHPO: 09-10-18-01 PUERTO NUEVO WHARF B IMPROVEMENTS, PR-28, KM. 4.9, SAN JUAN, PUERTO RICO/SAJ-2018-02341 (NWP-CGR)

Please include the SHPO project number in any future correspondence. If the requested documentation is not available, the Federal agency official or responsible entity must explain why it has not been submitted and when it can reasonably be expected to be provided to the SHPO.

The SHPO will have 30 days to respond after receiving an adequately documented finding or determination made by the agency official as per 36 CFR 800.3(c)(4), § 800.4(d)(1), § 800.5(c) and § 800.11. However, additional information may be required after initiating the section 106 process.

If you have any questions, please contact our Office at (787) 721-3737.

Sincerely,



Carlos A. Rubio-Cancela
State Historic Preservation Officer

CARC/GMO/MC

Cuartel de Ballajá (Tercer Piso),
Calle Norzagaray, Esquina Beneficencia, Viejo San Juan, P.R. 00901

PO Box 9023935, San Juan, P.R. 00902-3935
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SHPO
OFICINA ESTATAL DE
CONSERVACIÓN HISTÓRICA
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**STATE HISTORIC
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GOBIERNO DE PUERTO RICO

Oficina Estatal de Conservación Histórica
State Historic Preservation Office

Thursday, November 1, 2018

Sindulfo Castillo

Chief, Antilles Regulatory Section
Jacksonville District Corps of Engineers
Department of the Army
Fund. Ángel Ramos Annex Bldg., Suite 202
383 Franklin Delano Roosevelt Ave.
San Juan, Puerto Rico 00918

SHPO: 09-10-18-01 PUERTO NUEVO WHARF B IMPROVEMENTS, PR-28, KM. 4.9, SAN JUAN, PUERTO RICO/SAJ-2018-02341 (NWP-CGR)

Dear Mr. Castillo,

Our Office received the complete stage I cultural resources survey report dated July 3, 2018 by archaeologist F. Freytes, as requested in our letter dated September 18, 2018.

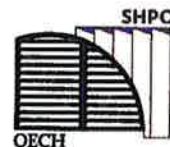
The document identifies several structures within the project site that we believe are potentially eligible for inclusion in the *National Register of Historic Places*. Therefore, the US Army Corps of Engineers (USACE) needs to carry out further efforts of identification and evaluation of the structures located within the proposed project boundaries in consultation with our Office. To this end, it is essential that the USACE determines the Area of Potential Effects which, to this day, has not been defined. In the evaluation stage, please refer to the National Register Bulletin: *How to Apply the National Register Criteria for Evaluation* and any other US Department of the Interior-National Park Service reference you deemed necessary.

If you have any questions or require our further assistance, do not hesitate to contact our Office at (787) 721-3737.

Sincerely,

Carlos A. Rubio-Cancela
State Historic Preservation Officer

CARC/GMO/MC/SG





GOBIERNO DE PUERTO RICO

Oficina Estatal de Conservación Histórica
State Historic Preservation Office

RECEIVED
OFFICE OF THE GOVERNOR
APR 11 12:30
OFFICE OF THE GOVERNOR

December 4, 2018

Sindulfo Castillo

Chief, Antilles Regulatory Section
Jacksonville District Corps of Engineers
Department of the Army
Fund. Angel Ramos Annex Bldg., Suite 202
383 Franklin Delano Roosevelt Ave.
San Juan, PR 00918

SHPO: 09-10-18-01 PUERTO NUEVO WHARF B IMPROVEMENTS, PR-28,
KM. 4.9, SAN JUAN, PUERTO RICO / SAJ-2018-02341 (NWP-CGR)

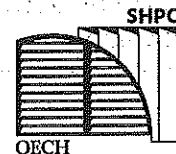
Dear Mr. Castillo:

The SHPO has received and reviewed the above referenced project in accordance with 54 USC 306108 (commonly known as Section 106 of the National Historic Preservation Act, as amended) and 36 CFR Part 800: *Protection of Historic Properties*. The State Historic Preservation Officer (SHPO) is to advise and assist federal agencies and other responsible entities when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce the project's effects. Reference is made to a meeting we held on November the 28th with Carlos López Freytes of Edge Legal Strategies, PSC, Lee Evans of New Fortress Energy and archaeologist Federico Freytes of Arqueo Consulting Group regarding your agency's Joint Permit Application number 1587. In our discussion, it was confirmed that two potentially historic buildings located within the boundaries of the project site were recently demolished.

As stipulated in §800.1, the Section 106 process must be completed prior to the approval of the expenditure of funds on the undertaking or issuance of any license or permit. No actions should be carried out that restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertakings adverse effects on historic properties. It appears that project actions were implemented that undermine the goal of Section 106 consultation: to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties. They also compromise our ability to provide you comments on the proposed project:

Cuartel de Ballajá (Tercer Piso),
Calle Norzagaray, Esquina Beneficencia, Viejo San Juan, P.R. 00901

PO Box 9023935, San Juan, P.R. 00902-3935
Tel: 787-721-3737 Fax: 787-721-3773
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OFICINA ESTADAL DE
CONSERVACIÓN HISTÓRICA
OFICINA DEL GOBERNADOR
STATE HISTORIC
PRESERVATION OFFICE
OFFICE OF THE GOVERNOR

Sindulfo Castillo
December 4, 2018
Page 2

SHPO: 09-10-18-01 PUERTO NUEVO WHARF B IMPROVEMENTS, PR-28, KM. 4.9, SAN JUAN, PUERTO RICO / SAJ-2018-02341 (NWP-CGR)

Therefore, in accordance with §800.9, the federal agency official with jurisdiction over this undertaking will need to contact the ACHP to determine the applicability of Section 110(k) of the NHPA and for the Council to determine whether their opportunity to comment has been foreclosed. Project documentation should be forwarded to the Advisory Council on Historic Preservation, 401 F Street, Suite 308, Washington DC, 20001.

If you have any questions or comments regarding this matter, do not hesitate to contact our Office.

Sincerely,



Carlos A. Rubio-Cancela
State Historic Preservation Officer

c. Lee Evans, Vice President, New Fortress Energy

CARC/GMO/SG



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
ANTILLES OFFICE
FUND. ANGEL RAMOS ANNEX BLDG., SUITE 202
383 F. D. ROOSEVELT AVE.
SAN JUAN, PUERTO RICO 00918

19 March 2019

Regulatory Division
South Permits Branch
Antilles Permits Section
SAJ-2018-02341(NW-CGR)

Mr. Carlos A. Rubio-Cancela
State Historic Preservation Officer
State Historic Office
P.O. Box 9023935
San Juan, Puerto Rico 00902-3935

Dear Mr. Rubio:

The U.S. Army Corps of Engineers (Corps) has conducted additional review of the Puerto Nuevo Wharf B project in detail following the information provided in your letters to the Corps dated September 18, 2018, November 1, 2018, and December 4, 2018. Your office also requested that the Corps contact the Advisory Council of Historic Preservation (ACHP) to determine the applicability of Section 110(k) of the National Historic Property Act and for the Council to determine whether their opportunity to comment has been foreclosed. As requested, the Corps consulted the ACHP providing project documentation on January 31, 2019. The ACHP acknowledged receipt of our consultation package on February 2, 2019. However, after various follow ups with the ACHP, no response letter was received within the 30 day period established by regulation. This letter, therefore, constitutes the Corps' final determination of effects for this project.

As noted in our previous correspondence, the undertaking is the rehabilitation of a pier structure at Wharf B, which includes repair of the pier pilings and replacement of the concrete platform slabs. The Corps defined the permit area as the waters of the United States directly affected by the proposed project (rehabilitation of the pier structure) in a letter dated September 6, 2018. For the nature and scope of this project, any other activities taking place within the uplands portions of the property are outside of the Corp's jurisdiction. More relevant to addressing your concerns, the Corps can consider indirect effects of an undertaking on eligible historic properties adjacent to the permit area if there is a compelling reason to do so and it is acknowledged that your office requested this evaluation of effects to the adjacent warehouse buildings in a letter dated November 1, 2018. However, the buildings had been demolished by the time your office notified us of their potential eligibility. An after-the-fact assessment by the Corps indicated it is likely that the proposed undertaking, minor upgrades to the Wharf B pier structure, would have had no direct or indirect effect to the eligibility of the warehouse buildings had they still existed. Therefore, the Corps re-affirms our determination made in a letter dated September 6, 2018 that no historic properties were to be affected by the proposed undertaking.

In regards to your stated concern about applicability of Section 110(k) of the National Historic Preservation Act, the Corps notified the ACHP and considered this concern but finds that the applicant conducted due diligence with regards to the historical nature of the structures,

having sought a demolition permit by the government of Puerto Rico which included a historic review by the Institute of Puerto Rican Culture. During the state permit review process, the applicant conducted intensive documentation of the warehouse structures as well as archaeological testing within the warehouse footprints. As part of the requirements of a state agency (the Institute of Puerto Rican Culture), the applicant prepared an Archaeological Study - Phases 1A and B, dated July 3, 2108, where the buildings were documented, including a description, plans, and photographs prior to demolition of the buildings. All of these actions were conducted under legal process with the government of Puerto Rico, and resulted in appropriate mitigation for demolition of the warehouses. As mentioned above, these actions were part of a project that did not require a Corps permit to proceed. Based upon the efforts made by the applicant to thoroughly identify and document historic and archaeological resources across the Puerto Nuevo property, upon the applicant's coordination with the appropriate authorities for demolition of the historic structures, and upon the minor scope of the undertaking for which a Corps permit was needed, the Corps finds the applicant did not violate Section 110(k) of the NHPA. The applicant demolished the structures using an appropriate and good faith manner with regards to cultural resources protection considerations. Therefore, the Corps determines Section 110(k) of NHPA is not applicable for this project.

Based on the above, the Corps determines that the project will have no effect to historic properties and, pursuant to 36 CFR 800.4(d)(1)(iv)(A), the Corps has fulfilled our responsibility under Section 106 of NHPA.

Thank you for your cooperation in our Regulatory Program. If you have any questions please contact Robin Moore, SAJ Archaeologist at 904-232-3270, or me at 787-289-7040.

Sincerely,

Sindulfo Castillo
Chief, Antilles Regulatory Section

ec: ACHP



Preserving America's Heritage

March 25, 2019

Mr. Shawn Zinzser
Chief, Regulatory
Army Corps of Engineers, Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019

Ref: Puerto Nuevo Wharf B
USACE Permit Application # SAJ 2018-02341; Puerto Rico SHPO: 09-10-18-01
San Juan, Puerto Rico
ACHP Connect: 13588

Dear Mr. Zinzser:

The Advisory Council on Historic Preservation (ACHP) has received a submission from the Army Corps of Engineers, Jacksonville District (USACE) regarding its review of the referenced undertaking for compliance with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. part 800). The submission also cites a disagreement with the Puerto Rico State Historic Preservation Officer (SHPO) regarding the USACE's definition of the undertaking under review, its delineation of the Area of Potential Effects (APE), and its finding of "No Historic Properties Affected" for the referenced undertaking. You also note SHPO's concerns about the applicability of Section 110(k) (54 U.S.C. 306113) of the NHPA as a result of the demolition of two structures that may have been eligible for inclusion on the National Register of Historic Places (National Register) prior to the conclusion of the Section 106 review process.

Based upon our review of the information provided, and additional background information subsequently provided by the USACE and SHPO, the ACHP will comment on the following issues:

- how the USACE has defined the undertaking subject to Section 106 review;
- the associated delineation of the APE;
- the applicability of Section 110(k) of NHPA; and
- the appropriateness of the USACE's finding of "No Historic Properties Affected".

Undertaking and APE

In its submission, the USACE states that the undertaking subject to Section 106 review is limited to the rehabilitation of a pier structure at Wharf B, which includes repair of pier pilings and replacement of concrete platform slabs. The USACE has defined its Permit Area as confined to the pier structure and limited the APE to the footprint of the pier. The USACE based its definition of the undertaking and delineation of the Permit Area and associated APE on Appendix C ("Procedures for the Protection of

Historic Properties”) of 33 C.F.R. 325 (“Processing of Department of the Army Permits”). As you know, in accordance with the NHPA, the ACHP is the only agency authorized to promulgate regulations to implement Section 106. Further, under those implementing regulations, the ACHP has not approved Appendix C as an alternate procedure to substitute for any or all of 36 C.F.R. 800.

The Section 106 regulations define the undertaking as a “project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval” (36 C.F.R. § 800.16(y)). The undertaking is not solely the federal issuance of assistance or authorization or the specific activity that requires the assistance or authorization. Rather, the undertaking subject to Section 106 encompasses the entire project which includes components that require federal authorization or assistance. The APE is defined as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist” (36 C.F.R. § 800.16(d)). Based on review of information subsequently available to us, including a Cultural Resources Assessment Survey (CRAS) sponsored by the project proponent, it seems clear that the rehabilitation of Wharf B is part of a larger undertaking, which involves construction of a Micro Fuel Handling Facility (MFHF) directly abutting the wharf. The MFHF will include truck-loading operations and provide Liquid Natural Gas (LNG) to the Puerto Rico Electric Power Authority as well as other customers in Puerto Rico. The pier at Wharf B is being rehabilitated in order to facilitate off-loading of LNG for processing by the proposed MFHF.

In failing to define the undertaking correctly, the USACE has also delineated the APE too narrowly. In a federal permitting situation, the APE should encompass the entire footprint of the undertaking, and not be limited to the area of activities specifically requiring the permit. It should also encompass those nearby areas where an undertaking may cause reasonably foreseeable effects to historic properties. These steps are important as they inform how the agency will conduct a reasonable and good faith effort to identify historic properties that may be affected by the undertaking. The federal agency must do this in consultation with SHPOs, Tribal Historic Preservation Officers (THPOs) as appropriate, and any tribes that might ascribe religious and cultural significance to such properties.

The ACHP recognizes that federal agencies often have variable and at times limited control over the larger undertaking beyond the specific portion requiring a federal permit or assistance. The Section 106 regulations provide flexibility in the federal agency’s efforts to comply with the steps of the Section 106 review, taking into account, among other factors, the degree and scope of the federal involvement in the undertaking and the relationship of federal actions to the overall undertaking (36 C.F.R. § 800.4(b)(1)). This can inform consideration of the extent of federal agency responsibility to engage in an active identification effort in the larger undertaking beyond the agency’s strict area of jurisdiction and the nature and extent of steps to resolve adverse effects that the agency might consider. In this case, the USACE is obligated to consider the effects on historic properties from the larger undertaking which is focused on the construction of a MFHF for which the upgrade of the pier at Wharf B appears to be a critical component.

Section 110k of NHPA

In its letter of December 4, 2018, the Puerto Rico SHPO requested that the USACE contact the ACHP to address the applicability of Section 110(k) of the NHPA for the demolition by the permit applicant of two warehouses in the footprint of the proposed MFHF directly abutting Wharf B. It was the SHPO’s opinion that the demolished structures may have been eligible for inclusion on the National Register. As you know, Section 110(k) prohibits a federal agency from granting a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid Section 106, has intentionally significantly adversely affected an historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur. In accordance with both the statute and 36 C.F.R. § 800.9(c) of the Section 106 regulations, it is the responsibility of the federal agency to make a determination regarding the applicability of Section 110k of the NHPA.

By email dated March 6, 2019, USACE staff informed ACHP that it had determined that Section 110k does not apply to the demolition of the two warehouses. The justification for that determination is based on the USACE's position that the undertaking subject to Section 106 review was limited to the pier repairs at Wharf B, and the location of the warehouses was outside the area of the undertaking and outside the APE as defined by USACE. The USACE also suggests that the permit applicant demolished the structures only after compliance with the documentation and mitigation requirements of a local historic preservation review that was a prerequisite for a demolition permit. Thus, it is the Corp's opinion that based on the scope of the activity for which a USACE permit was needed, the efforts made by the applicant to identify and document historic and archaeological resources across the Puerto Nuevo property, and the due diligence manifest in the applicant's coordination with the appropriate local authorities for demolition of the historic structures, Section 110(k) does not apply.

The Section 106 regulations do not require that a federal agency consult with the ACHP in considering the applicability of Section 110(k). They also do not require that the ACHP approve or concur with a federal agency's determination. That being said, while we do not challenge the determination in this case, we do wish to point out that the USACE reliance on Appendix C to determine the scope of review and, therefore, the geographical area under which it reviews the actions of applicants for applicability under Section 110k to be too narrowly and improperly constrained. . We also acknowledge that the applicant's participation in the local historic preservation review and its sponsoring of the CRAS would appear to demonstrate its good faith and due diligence in addressing historic preservation issues. However, a local historic preservation review is not a substitute for a federal agency's Section 106 review in consultation with the SHPO and other appropriate consulting parties. The ACHP would urge the USACE to advise applicants on the broader scope of Section 110k and advise them not to engage in activities that adversely affect historic properties within the APE as defined by the Section 106 regulations prior to the completion of the Section 106 review. Failure to do so may make the USACE's issuance or verification of a permit subject to challenge.

USACE finding of "No Historic Properties Affected"

The USACE proposed a finding of "No Historic Properties Affected" based on its reasoning that the planned improvements to the pier structure would have no effect on historic properties because the USACE determined that none existed in the APE. It is the ACHP's advisory opinion that such a finding in this case is not appropriate nor was it made in compliance with critical provisions within the Section 106 regulations. As a result of the USACE's reliance on Appendix C for a definition of the undertaking and delineation of the APE, the identification effort carried out by the USACE did not meet the reasonable and good faith standard required by the Section 106 regulations. In summary, in utilizing Appendix C to narrow the scope of its review, the USACE's efforts to engage in the Section 106 consultation with the Puerto Rico SHPO and other appropriate consulting parties fell significantly short of the Section 106 requirements.

The ACHP encourages the USACE to consider these advisory comments. Pursuant to 36 C.F.R. § 800.4(d)(iv)(B), the USACE must take the ACHP's comments into account prior to making a decision regarding this dispute and prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, and provide it to the ACHP, the SHPO, and the consulting parties. If the USACE's initial finding will be revised, the USACE shall proceed in accordance with the revised finding. If the final decision of the USACE is to reaffirm the initial agency finding of "No Historic Properties Affected", once the summary of the decision has been shared with the ACHP, the SHPO, and the consulting parties, the Section 106 process will be completed. To the extent that the USACE does not rectify its failure to comply with the Section 106 implementing regulations, its compliance with Section 106 is subject to challenge.

We look forward to receiving the USACE's response to our advisory comments. If you have any questions, please contact Dr. John Eddins at (202) 517-0211 or via email at jeddins@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid J. Nelson", with a long horizontal flourish extending to the right.

Reid J. Nelson
Director
Office of Federal Agency Programs