

**Lesson Overview**

This lesson describes Step 3 of the historic preservation review process under Section 106 of NHPA.

**Lesson Objectives**

At the end of this lesson, you will be able to:

- Define adverse effects.
  - Identify examples of adverse effects.
  - Assess adverse effects in a case study.
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**Step 3: Assess Adverse Effects**

First, we'll look at the basic procedures for Step 3.

**Key Points**

- In Step 3 of the Section 106 process, FEMA assesses the possible adverse effects of an undertaking to historic properties.
  - FEMA makes a finding that there will or will not be an adverse effect.
  - Step 3 concludes after FEMA allows the SHPO/THPO to concur or non-concur with its finding.
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**Identification and Evaluation of Historic Properties**

The previous lesson discussed Step 2 in the Section 106 process: identification and evaluation of historic properties.

Step 2 involved:

- Defining the area of potential affects (APE).
- Determining the National Register eligibility of properties in the APE.
- Making a finding of whether historic properties will be affected by the undertaking.

If historic properties will be affected by the undertaking, the review process continues with Step 3: assessing adverse effects.

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**Adverse Effects**

An "adverse effect" is an effect of an undertaking that may alter a historic property's characteristics in a way that could jeopardize its inclusion in the National Register.

In Step 3, FEMA determines whether there are adverse effects. In making the adverse effect finding, FEMA consults with:

- The SHPO/THPO.
  - Other parties, including any Native American Tribe that attaches religious or cultural significance to the property.
  - The public.
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**When Do Adverse Effects Occur?**

Adverse effects to a historic property may occur:

- At the same time and place as the undertaking.
    - For example, the acquisition and demolition of historic properties.
  - At a distance from the location of the undertaking, or some time in the future.
    - For example, expansion of a vehicular bridge adversely affecting the viewshed of a historic district.
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**Examples of Adverse Effects**

Adverse effects to historic properties include:

- Physical destruction of all or part of a property.
    - For example, demolishing a historic school.
  - Relocation of a property.
    - For example, moving a home out of a historic district.
  - Transfer, lease, or sale of property out of Federal ownership or control.
    - For example, selling the National Emergency Training Center to a private developer.
  - Alteration of a property.
    - For example, building an addition to a historic property.
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### **Additional Examples of Adverse Effects**

Adverse effects to historic properties also include:

- Change in the property's use.
    - For example, converting a historic auditorium to city offices.
  - Introduction of elements that diminish integrity.
    - For example, installing vinyl siding or other modern materials that are not in-kind.
  - Neglect and/or abandonment of a property that causes deterioration, except where such neglect is a recognized quality of a property of religious or cultural significance.
    - For example, closure and abandonment of a Federal facility without long-term maintenance.
  - Alteration or destruction of an archeological site, whether or not recovery of archaeological data from the site is proposed.
    - For example, construction of a road through a known archeological site.
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### **Disasters and Adverse Effects**

Only damage from an undertaking is considered an adverse effect to historic properties. Damage to historic properties from a disaster is **not** an adverse effect, since FEMA's actions did not cause the damage.

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### **Intentional Adverse Effects**

Section 110(k) of NHPA prohibits FEMA from granting assistance if an applicant has "intentionally significantly adversely affected a historic property."

This may occur when an applicant proceeds with an action after being informed of FEMA's Section 106 responsibilities, but prior to the completion of the Section 106 review process.

However, FEMA may, in consultation with the Advisory Council on Historic Preservation (ACHP), determine that there are circumstances that justify granting such assistance.

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### **The Finding of Adverse Effects**

Only someone who meets the Secretary of the Interior's Professional Qualifications Standards can determine if an undertaking will cause adverse effects.

This person will have the professional training needed to judge what types of actions will diminish a property's integrity based on its historic significance.

Once FEMA makes the finding of adverse effects, then the Agency informs the SHPO/THPO and other consulting parties of its decision.

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**No Adverse Effect Finding: Agreement**

If FEMA, the SHPO/THPO, and the other consulting parties are in agreement that the undertaking will **not** cause adverse effects, then:

- FEMA documents the finding in the project files.
  - The historic review process is complete and the undertaking may proceed.
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**Adverse Effect Finding: Agreement**

If FEMA, the SHPO/THPO and the other consulting parties agree that an undertaking **will** cause an adverse effect, then:

- FEMA documents the finding in the project files.
  - FEMA notifies the ACHP of the adverse effect and invites them to participate as a consulting party, if the project meets the Appendix A criteria of 36 CFR Part 800.
  - FEMA invites the Secretary of the Interior, through the National Park Service, to participate as a consulting party, if the project will adversely affect a National Historic Landmark.
  - The Section 106 process continues with Step 4: resolving adverse effects.
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**Disagreement on the Finding**

The SHPO/THPO has 30 days to disagree with FEMA's finding of adverse effect or no adverse effect.

If the SHPO/THPO disagrees, then FEMA may either:

- Consult with the SHPO/THPO to resolve the disagreement, or
  - Refer the finding to the ACHP to resolve the dispute.
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**Documentation for the ACHP**

If the ACHP is invited to participate in the finding of adverse effects or if there is disagreement about the finding, then FEMA will provide the following items to the ACHP:

- A project description, including the Project Worksheet or Statement of Work, maps, and photographs.
  - A description of the steps used to identify historic properties.
  - Any supporting information about the affected historic properties.
  - An explanation of the project's effects on the historic properties.
  - Copies or summaries of views provided by consulting parties or the public.
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**Moving to Step 4**

At this point in the review process, FEMA must have:

- Used qualified professionals to make adverse effects findings.
- Assessed the adverse effects of the project on identified historic properties.
- Determined whether the project will have adverse effects.
- Consulted with the SHPO/THPO and received concurrence.
- Conferred with other consulting parties.

Once these steps have been completed, Step 4 of the review can begin.

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**Lesson Summary**

You have now completed the fifth lesson in the Historic Preservation section of this course. You should be able to:

- Define adverse effects.
  - Identify examples of adverse effects.
  - Assess adverse effects in a case study.
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