

**Lesson Overview**

This lesson describes Step 4 of the historic preservation review process under Section 106 of NHPA.

**Lesson Objectives**

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

- Describe the resolution of adverse effects.
  - Identify possible treatment measures.
  - Describe agreements to resolve adverse effects.
  - Apply the historic preservation review process to a case study.
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**Step 4: Resolve Adverse Effects****Key Points**

- Step 4 involves avoiding, minimizing, or compensating for the adverse effects identified in Step 3.
  - Agreements to address adverse effects outline treatment measures agreed upon by the consulting parties to minimize or compensate for the adverse effects.
  - Step 4 concludes when FEMA executes an agreement document and funds the project, while ensuring that the stipulations are implemented.
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**Assessing Adverse Effects**

During Step 3 of the Section 106 process, FEMA found that the undertaking will cause adverse effects to historic properties.

FEMA then proceeds to Step 4 of the review process: resolving adverse effects.

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**Resolving Adverse Effects**

Resolving adverse effects refers to modifications to an undertaking to avoid, minimize, or compensate for the adverse effects through an agreement between all of the consulting parties.

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### **Avoiding Adverse Effects**

Having determined that the project will cause an adverse effect, FEMA works with the SHPO/THPO and other consulting parties to re-examine the project to find ways to avoid adverse effects, if possible.

Examples of avoiding adverse effects include:

- Moving a project to a location that will not cause ground disturbance to an archeological site.
  - Scheduling construction in winter months when the ground is frozen to prevent ground disturbance, if the movement of heavy equipment necessary to complete a project will damage an archeological site.
  - Modifying the repair of a historic building in a manner that avoids changes to qualifying characteristics, utilizing the Secretary of the Interior's Standards for the Treatment of Historic Properties.
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### **Resolving Adverse Effects**

If a project cannot be modified to avoid an adverse effect, then FEMA must:

- Notify the SHPO/THPO, other consulting parties, and the Advisory Council on Historic Preservation (ACHP) of the adverse effect. If the property is a National Historic Landmark, FEMA must also notify the Secretary of the Interior through the National Park Service.
- Confer with the SHPO/THPO and other consulting parties to identify measures that will minimize or compensate for the adverse effect.
- Provide an opportunity for public input.

Although consultation involves many parties, FEMA is ultimately responsible for ensuring the resolution of adverse effects. FEMA may not fund an undertaking until the adverse effect is resolved.

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### **Treatment Measures**

If the project cannot be modified to avoid an adverse effect, FEMA must work with the consulting parties to develop treatment measures. FEMA should examine a wide range of treatment measures as appropriate to the project and the adverse effects.

Some of the more common treatment measures for FEMA projects include:

- Recordation.
  - Curation.
  - Elevation.
  - Relocation.
  - Repairs/modifications in keeping with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
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**Treatment Measures: Recordation**

Recordation of a historic property according to professional standards ensures that information about the property will be available to the public and future researchers.

Recordation may include:

- Measured drawings.
- Photographs.
- Written architectural descriptions.
- Written history or documented oral history.
- Commemorative plaques or markers.

For example, to ensure that information about the historic high school in Molalla, Oregon will be available, FEMA conducted photo documentation of the school before it was scheduled to be demolished.

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**Treatment Measures: Curation**

Curation refers to the collection, preservation, and interpretation of elements of a historic property.

Curation efforts might include donating significant architectural elements of a property to a local museum or other organization or repository.

For example, in Albany, Georgia, FEMA funded the relocation of a wastewater treatment plant that disturbed an archeological site. As a treatment measure, artifacts from the site were curated for public display.

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**Treatment Measures: Elevation**

A common treatment measure to avoid demolition is elevation of a property at the current site to comply with floodplain management ordinances.

Elevation in and of itself could be an adverse effect, but it is often used to minimize the much more severe effect of demolition. The decision to elevate often results in rescoping of the project. Elevation needs to be carefully planned with the SHPO/THPO and with public input.

In Belhaven, North Carolina, town officials worked with FEMA to elevate numerous residential buildings in the town's historic district, to mitigate the effects of frequent flooding while preserving the buildings' historic facades.

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**Treatment Measures: Relocation**

Another common treatment measure to avoid demolition is relocation—physically moving a property out of a hazardous area, such as a floodplain.

Relocation in and of itself could be an adverse effect. However, depending upon the locational significance of the historic property, relocation may be much less of an adverse effect.

A relocation success story is the historic Bruchmann residence in Fulton, New York. This property was severely damaged by floodwaters but was spared from demolition by an agreement to relocate the entire residence.

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**Treatment Measures: Repairs/Modifications in Keeping With Standards**

Adverse effects for repair/modification projects can be avoided or minimized through adherence to the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Repairs/modifications to these standards need to be carefully coordinated with the SHPO/THPO.

In Olympia, Washington, FEMA is funding repair and modifications to historic government buildings as a result of damage from the Nisqually earthquake. In order to minimize the adverse effects, FEMA worked with the applicant to incorporate the Secretary of the Interior's Standards into the scope of work.

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**Treatment Measures: Archeological Sites**

Appropriate treatment measures for affected archeological sites, or portions of archeological sites, include:

- Active preservation in place for future study or otherwise.
  - Recovery or partial recovery of archeological data (if using ACHP guidelines).
  - Public interpretive display.
  - Any combination of these and other measures.
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**Alternative Treatment Measures**

In addition to the more common treatment measures, FEMA can develop measures that provide public benefit but that are not necessarily related to the undertaking. In development of such measures, FEMA and the consulting parties may exercise creativity and should not limit their options.

Alternative treatment measures:

- Must have a tangible benefit to FEMA and/or the community.
- Must have reasonable costs.

Alternative treatment measures might be appropriate when:

- There are many similar properties in an undertaking or series of undertakings.
  - The property type already has been extensively documented.
  - The public benefit of more common treatments is unclear.
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### **Examples of Alternative Treatment Measures**

Examples of alternative treatment measures include:

- Community-wide heritage preservation plans.
  - Risk assessments within historic communities.
  - Large-area historic property surveys and inventories.
  - Training or education programs for hazard reduction in historic communities.
  - Educational and interpretive programs such as museum exhibits; portable displays; or walking tours with plaques, monuments, or guidebooks.
  - Contributions to Tribal, State, or local Geographic Information Systems (GIS) for historic properties.
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### **Agreement Documents**

The treatment measures that will be used to minimize or compensate for adverse effects must be outlined in a legally binding agreement document. These documents record the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

FEMA uses two types of agreements:

- Memorandum of Agreement (MOA).
  - Project-specific Programmatic Agreement.
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### **Memorandum of Agreement**

While the content of MOAs differs based on the treatment measures proposed by the consulting parties, FEMA follows a standard format for their development.

The signatories on an MOA will always be:

- FEMA.
  - The SHPO/THPO.
  - The ACHP (if participating in the consultation).
  - Other consulting parties who have specific responsibilities outlined in the MOA (signatories or concurring parties).
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### Project-Specific Programmatic Agreement

It is sometimes more useful to take a programmatic approach to resolving adverse effects, such as in cases where an undertaking or series of similar undertakings will affect several historic properties and specific outcomes are not yet known.

This can be done through a Project-specific Programmatic Agreement rather than an MOA. If the project(s) is being reviewed under an "umbrella" Programmatic Agreement, then it is called a Secondary Programmatic Agreement. The Programmatic Agreement is:

- Useful when FEMA is approving many similar projects with multiple applicants without individual SHPO/THPO review.
  - Signed by FEMA, the SHPO/THPO, the ACHP (if participating), and any other consulting parties.
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### Failure to Resolve Adverse Effects

In some cases, FEMA and the other consulting parties cannot agree on resolving adverse effects. In this case, **which occurs very rarely**, consultation may be terminated by FEMA or any of the other consulting parties.

After consultation is terminated, FEMA must submit to the ACHP:

- All project documentation.
- The reason for termination of consultation.
- The proposed plan of action for proceeding with the project.

The ACHP will provide comments on FEMA's plan of action to the Director of FEMA. FEMA must take these comments into account, but ultimately FEMA makes the final decision on how to proceed with the project.

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### Section 106 Review Process

This module has covered the four steps in the historic preservation review process, as prescribed by Section 106 of NHPA.

Step 1: Initiate the process.

Step 2: Identify and evaluate historic properties in the project area.

Step 3: Assess adverse effects.

Step 4: Resolve adverse effects.

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### Completing the Review Process

There are several points at which the Section 106 review process is complete:

1. The undertaking has no potential to cause effects to historic properties.
  2. There are no historic properties in the APE.
  3. The undertaking has no adverse effects to historic properties.
  4. All adverse effects are resolved.
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**Lesson Summary**

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

- Describe the resolution of adverse effects.
  - Identify possible treatment measures.
  - Describe agreements to resolve adverse effects.
  - Apply the historic preservation review process to a case study.
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