

Lesson Overview

This lesson provides an introduction to the course and highlights the importance of early consideration of environmental/historic preservation issues in disaster operations and project development.

Lesson Objectives

At the completion of this lesson, you will be able to describe the purpose of environmental/historic preservation review in disaster operations.

Environmental/Historic Preservation Review and Disaster Operations**Key Points**

- FEMA, which has been incorporated into the U.S. Department of Homeland Security, is the lead Federal agency for planning and preparedness for all types of peacetime radiological emergencies. In this course, we'll focus on incidents at nuclear facilities.
 - Responsibility for planning and preparedness activities within and outside the nuclear power plant boundaries is divided between the U.S. Nuclear Regulatory Commission (NRC) and FEMA.
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Welcome

Welcome to Coordinating Environmental/Historic Preservation Compliance.

This course is designed to help you navigate through environmental/historic preservation compliance issues that affect FEMA's programs. An important goal of this course is recognizing when to initiate environmental/historic preservation review for FEMA projects and activities.

Course Objective

This course will show how environmental/historic preservation compliance issues are addressed in Federal, Tribal, State, and local decisionmaking during disaster operations, which include response, recovery, and mitigation activities.

Environmental/historic preservation issues must be considered early in the process in order for projects to be funded expeditiously.

Course Content: Module 1

This course is divided into three main content Modules, with a fourth Module for course review and the final exam.

Module 1 provides an overview of FEMA's disaster operations and programs, activities that may trigger environmental/historic preservation review, and responsibilities in the environmental/historic preservation review process.

Module 1 lessons are:

- Course Overview
 - Disaster Operations Overview
 - Recovery Programs
 - Hazard Mitigation Programs
 - FEMA-Funded Activities
 - Responsibilities
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Course Content: Module 2

Module 2 introduces some of the laws and Executive orders that must be followed in the environmental/historic preservation review process, including the National Environmental Policy Act (NEPA).

Module 2 lessons are:

- National Environmental Policy Act
 - FEMA Exclusions Under NEPA
 - EA & EIS
 - Laws & Executive Orders:
 - Water
 - Biology
 - Pollution & Debris Mgt
 - Socioeconomics
 - Coastal Areas
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Course Content: Module 3

Module 3 describes historic preservation laws, including National Historic Preservation Act, and the historic preservation review process.

Module 3 lessons are:

- Historic Preservation Laws Overview
 - NHPA: Sections 106 & 110
 - Step 1: Initiate the Process
 - Step 2: Identify & Evaluate
 - Step 3: Assess Adverse Effects
 - Step 4: Resolve Adverse Effects
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FEMA's Mission

FEMA's mission is unique, and therefore requires a flexible and streamlined approach to environmental/historic preservation review. FEMA should always conduct environmental/historic preservation review in support of its mission and to facilitate the delivery of disaster assistance.

Emergencies and Environmental/Historic Preservation Compliance

Although most environmental/historic preservation laws have specific emergency procedures (discussed in the later lessons of this course), it is important to understand that a disaster situation does not automatically exclude FEMA from its environmental/historic preservation responsibilities.

To deliver disaster assistance efficiently, FEMA must coordinate with other agencies and organizations to identify and resolve environmental/historic preservation compliance issues.

Lesson Summary

You have now completed the first lesson in the Disaster Operations and FEMA Programs section of this course. You should be able to describe the purpose of environmental/historic preservation review in disaster operations.

Lesson Overview

This lesson describes the events that take place before and after a disaster declaration, and explains when potential environmental/historic preservation compliance issues should be considered.

Lesson Objectives

At the completion of this lesson, you will be able to describe the role of environmental/historic preservation compliance in a disaster operation.

Disaster Operations Overview**Key Points**

- Disaster operations normally begin with a Preliminary Damage Assessment (PDA).
 - After a disaster declaration is made, FEMA opens the Disaster Field Office (DFO).
 - FEMA's Individual Assistance (IA), Public Assistance (PA), and hazard mitigation programs provide funding for disaster planning, response, recovery, and mitigation activities.
 - At each point in the disaster operations process, environmental/historic preservation concerns may be addressed.
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Environmental/Historic Preservation Review & Disaster Operations

FEMA environmental/historic preservation review:

- Is the process of evaluating proposed FEMA-funded projects and activities to ensure that they are in compliance with Federal environmental/historic preservation laws and Executive orders.
 - Integrates environmental/historic preservation considerations into disaster planning, response, recovery, and mitigation.
 - Should be incorporated into all of FEMA's programs and activities, rather than treated as a separate process.
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Pre-Disaster Planning

To effectively address environmental/historic preservation issues, pre-disaster planning is essential. This planning includes:

- Establishing interagency contacts to facilitate coordination among agencies and organizations.
 - Identifying major environmental/historic preservation concerns in the FEMA region, such as the location of historic properties or endangered species habitat.
 - Educating communities on the benefits of preparedness and mitigation measures to protect environmental/historic resources.
 - Participating in training (such as this course) on environmental/historic preservation considerations in disaster operations.
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Preliminary Disaster Assessment

In the wake of a disaster, a Preliminary Damage Assessment (PDA) is conducted by local, State, Tribal, Federal, and volunteer organizations to help determine losses and response and recovery needs.

Even at this early stage, environmental and historic preservation concerns may be identified. Therefore, an environmental specialist may participate in the PDA process.

For example, a notation should be made if:

- Any damaged buildings appear to be in a historic district or may potentially be historic.
 - Any emergency activities or damaged structures are near bodies of water.
 - Debris removal activities have the potential to affect air or water quality.
 - Hazardous materials are present.
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Disaster Declaration

The Governor may request a disaster declaration if the disaster impact exceeds Tribal, State, or local capability to respond and recover from the disaster.

FEMA evaluates the request and recommends action to the President based on the severity of the disaster, and the Tribe, State, or local community's ability to respond and recover.

The President then approves or denies the request. This decision process could take hours, days, or weeks depending on the nature of the disaster.

Disaster Declaration and FEMA Assistance

Once the President makes a disaster declaration in a state, designated counties become eligible for certain types of disaster assistance from FEMA.

Typically, the State Emergency Management Agency is the grantee of FEMA funding. Local governments and eligible private non-profit organizations are the applicants for FEMA assistance, also known as the sub-grantees. Depending on the program and state law, Federally recognized tribes may serve as the grantee and/or subgrantee.

Disaster Field Office (DFO)

Once the President has issued a disaster declaration, FEMA establishes a DFO to assist in the response and recovery effort. The DFO is managed by the Federal Coordinating Officer (FCO), who is designated by the President.

FEMA's activities require successful coordination with Federal and State agencies, such as the Army Corps of Engineers (USACE), Fish and Wildlife Service (FWS), State Historic Preservation Officer (SHPO), and State Emergency Management Agency (SEMA).

Scoping Process

The scoping process develops a strategy to:

- Address environmental/historic preservation issues.
- Coordinate an exchange of information.
- Identify key players.

The scoping process begins when FEMA's Regional Environmental Officer (REO), operating under the title of Environmental Liaison Officer (ELO) at the DFO, contacts Federal, Tribal, and State resource agencies to:

- Notify them of a pending or declared disaster, and
 - Begin to collect information about resources and requirements specific to the disaster area.
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Scoping Meeting

The ELO then holds a meeting to determine how environmental/historic preservation review will be conducted for the disaster. This meeting takes place early in the disaster operation.

While attendance at the scoping meeting varies, it generally includes representatives from any agency or organization who may be involved in resolving environmental/historic preservation issues for the disaster.

Typical attendees include:

- FEMA environmental/historic preservation staff.
 - FEMA and State program officers and staff.
 - Federal and State resource agencies
 - Tribal government, if a grantee.
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Scoping Meeting Objectives

In the meeting, the ELO should facilitate a discussion of the following:

- **Contacts:** The key players.
 - **Consultation Process:** The process to be followed and ways to expedite the process.
 - **Issues:** Planned response and recovery activities, such as debris removal or temporary housing, that will likely have environmental/historic preservation issues.
 - **Resources:** Known natural and historic resources identified by resource agencies.
 - **Emergency Situations:** Process for resolving compliance for emergency situations.
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Scoping Meeting Outcomes

Scoping meeting attendees should:

- Provide input on the draft of disaster-specific environmental/historic preservation guidance (sometimes known as the "Green Book"). Once finalized, this document will be used to inform FEMA program staff and applicants of potential issues and contacts.
 - Develop a plan for public involvement, as public participation is required for the resolution of many environmental/historic preservation issues.
 - Identify potential issues and schedule followup meetings to develop or review compliance protocols.
 - Identify existing agreements and steps necessary to develop, revise, and finalize needed agreements.
 - Provide input for the development of written guidance and briefings for program staff and managers (e.g., the Public Assistance field personnel briefing).
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Lesson Summary

You have now completed the second lesson in the Disaster Operations and FEMA Programs section of this course. You should be able to describe the environmental and historic actions that occur before and after a disaster declaration.

Lesson Overview

This lesson describes two of FEMA's recovery programs—Individual Assistance and Public Assistance—and how the environmental/historic preservation review process relates to these programs.

Lesson Objectives

At the completion of this lesson, you will be able to describe the relationship between FEMA's recovery programs and the environmental/historic preservation review process.

Recovery Programs**Key Points**

- Individual Assistance (IA) and Public Assistance (PA) are the two primary recovery programs.
 - With few exceptions, IA projects do not undergo environmental/historic preservation review.
 - Because PA activities have greater potential to affect resources, environmental/historic preservation review is incorporated into the PA process.
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Individual Assistance Program

Assistance to individuals and households may include:

- Housing
 - Lodging assistance
 - Rental assistance
 - Home repair
 - Home replacement
 - Permanent housing construction
 - Other needs
 - Medical, dental, funeral costs
 - Transportation costs
 - Other disaster-related needs
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IA and Environmental/Historic Preservation Review

The only IA activity subject to environmental/historic preservation review is the construction of temporary or permanent housing sites. All other IA activities are nondiscretionary and are directed at individual recovery.

Public Assistance Program

The PA program provides assistance to Tribal, State, and local governments, and to certain Private Non-Profit organizations for:

- Debris removal.
- Implementation of emergency protective measures.
- Permanent restoration of infrastructure, including:
 - Buildings and structures
 - Roads and bridges
 - Water control facilities
 - Utilities
 - Parks and recreational areas

The program also encourages protection from future damage by providing assistance for hazard mitigation measures for damaged facilities during the recovery process.

Improved Projects

While PA funds may be used to repair facilities to their pre-disaster condition, applicants performing restoration work on a damaged facility may elect to make additional improvements to the damaged facility while still restoring the function of the facility. Or, applicants may elect to replace the facility with a new structure that restores the function of the damaged facility. Projects that incorporate such improvements are called "improved projects."

Alternate Projects

If approved by FEMA, PA funding may be used for alternate projects.

Alternate projects involve the repair, mitigation, or expansion of another public facility. In certain cases, if an applicant determines that the public welfare would not be best served by restoring a damaged facility or its function to the pre-disaster condition, the applicant may use a percentage of eligible funds for an alternate project.

An alternate project may include:

- Repair or expansion of another public facility.
 - Construction of a new facility.
 - Purchase of capital equipment, such as computers or vehicles.
 - Hazard mitigation measures.
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Mitigation

If approved by FEMA and cost-effective, PA funding may be used for select mitigation measures in conjunction with the repair of damaged facilities. These measures must be related to eligible disaster-related damages and must directly reduce the potential of future, similar disaster damages to the eligible facility.

Responsibilities Under the Public Assistance Program

The following table summarizes the responsibilities of FEMA, the Tribe/State, and applicants under the PA program.

Party	Responsibility
FEMA	<ul style="list-style-type: none"> ▪ Has legal responsibility for the Federal environmental/historic preservation review process and documentation. ▪ Coordinates with Tribe/State regarding project formulation, verification of basic environmental information, and further data collection.
Tribe/State	<ul style="list-style-type: none"> ▪ As grantee, provides coordination and monitoring. ▪ Establishes and maintains contacts with REO, ELO, and agencies. ▪ Conducts Applicants' Briefings where environmental/historic preservation issues are discussed.
Applicant	<ul style="list-style-type: none"> ▪ Provides basic environmental/historic information by answering the Special Considerations Questions. ▪ Obtains all appropriate permits. ▪ Complies with Federal, State, and local laws applicable to local government/non-Federal actions. ▪ Implements grant conditions resulting from FEMA's compliance review.

FEMA Program Staff: Overview

The Public Assistance program staff consists of field personnel who:

- Assist the applicant during the recovery process.
- Ensure that issues in addition to project eligibility, such as environmental/historic preservation compliance, are addressed in the recovery process.

FEMA Program Staff: Public Assistance Officer

A FEMA Public Assistance Officer (PAO) manages the program in coordination with Tribal/State counterparts.

The PAO's environmental/historic preservation responsibilities include:

- Ensuring that proper procedures are followed.
- Obtaining adequate training for staff in environmental/historic preservation considerations.
- Ensuring that environmental/historic preservation review has been completed, documented, and approved prior to funding.

FEMA Program Staff: Public Assistance Coordinator

A Public Assistance Coordinator (PAC) is assigned to each applicant to help with the PA process from start to finish. The PAC is the initial and final reviewer of projects.

The PAC's environmental and historic preservation responsibilities include:

- Playing a key role in educating applicants and ensuring compliance with environmental and historic preservation laws.
 - Working closely with environmental and historic preservation specialists to determine which projects require environmental and historic preservation review.
 - Conducting the final review of projects prior to obligation of funds.
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FEMA Program Staff: Project Officers

Project Officers (POs) are responsible for assisting applicants with the development of PA projects and cost estimates.

The PO's environmental and historic preservation responsibilities include:

- Identifying environmental and historic preservation issues as projects develop.
 - Ensuring that a clear and concise scope of work is developed, so projects can be reviewed expeditiously.
 - Working with the environmental and historic preservation specialists to identify and resolve issues in project formulation.
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FEMA Program Staff: Special Considerations Liaison

When this position is staffed, the Special Considerations Liaison (SCL) coordinates the resolution of all special considerations issues, including insurance, mitigation, and environmental/historic preservation considerations.

This person works closely with the PACs, PAO, Environmental Liaison Officer (ELO), and other PA staff.

FEMA Program Staff: Environmental and Historic Preservation Specialists

Specialists are technical experts who conduct the appropriate environmental or historic preservation review for specific projects.

Specialists may be drawn from:

- The environmental and historic preservation cadre.
- Contractors.

Specialists' environmental and historic preservation responsibilities include:

- Coordinating and preparing environmental/historic review documentation.
 - Working with the PO/PAC.
 - Providing technical expertise as needed.
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Public Assistance and Environmental/Historic Preservation Review

The chart below illustrates the major steps in the Public Assistance process.

- Event
- Preliminary Damage Assessment
- Disaster Declaration
- Applicant Briefing
- Kickoff Meeting
- Project Formulation
- Project Review
- Project Funding
- Project Implementation
- Project Monitoring

At most of these steps, known and potential environmental and historic issues should be identified and/or addressed.

Applicants' Briefing

The Applicants' Briefing:

- Is conducted by the Tribe/State.
 - Occurs after a disaster declaration.
 - Provides the Tribe/State an opportunity to explain application procedures, administrative requirements, and eligibility criteria to potential applicants.
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Applicants' Briefing: Environmental/Historic Preservation Points

At this briefing, the Tribe/State informs applicants that they must:

- Comply with environmental and historic preservation laws.
- Not begin work before the environmental/historic preservation review process is complete (with certain exceptions).

FEMA representatives should explain that all efforts are taken to streamline the review and that potential issues should be addressed as early as possible in the disaster recovery.

Kickoff Meeting

After the Applicants' Briefing, applicants complete a Request for Public Assistance. Upon receipt of these documents, the PAC assigned to the applicant schedules a Kickoff meeting.

The Kickoff Meeting:

- Focuses on the specific needs of the individual applicant.
 - Is an opportunity to educate the applicants on environmental and historic preservation requirements and the review process.
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Kickoff Meeting: Environmental/Historic Preservation Issues

During the Kickoff Meeting, the PAC or specialist:

- Discusses flood plains, wetlands, mitigation, insurance, and other issues in the Special Considerations Questions attached to the Project Worksheet.
 - Distributes copies of the "Green Book."
 - Discusses proposed scopes of work, including planned demolition work, ground-disturbing activities, and other projects that may have environmental and historic preservation issues.
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Project Formulation

Project formulation is the process of defining the scope of work and estimating costs for each project. FEMA/Applicants use the Project Worksheet to document the proposed project.

To facilitate the environmental/historic preservation review process, applicants work with the Tribe/State and FEMA throughout project formulation to:

- Provide a clear and complete scope of work.
 - Provide as much information as possible about potential environmental or historic resources affected by the proposed project, including project maps, photos, and dates of construction.
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Project Formulation: FEMA PO/PAC

The PO/PAC works with the applicant to identify environmental and historic issues as soon as possible. A worksheet containing the nine Special Considerations Questions must be completed for each project.

The PO/PAC also reviews the applicant's answers to the Special Considerations Questions attached to the Project Worksheet. If any answer is "Yes" or "Unsure," then the applicant, PO/PAC, and environmental/historic preservation specialist work together to provide detailed comments. FEMA uses these comments to help determine the level of environmental review required.

Project Implementation and Monitoring

It is important to remember that FEMA's environmental/historic preservation responsibilities do not end with the funding of the project.

During project implementation, applicants must inform the Tribe/State (which then notifies FEMA) of:

- Any changes to the proposed scope of the work. FEMA then determines if there are any environmental/historic considerations associated with these changes.
- Unexpected discoveries, such as archeological sites or endangered species/critical habitat near the project site.

FEMA and the Tribe/State must monitor grant conditions to ensure that applicants comply with all environmental and historic preservation laws, and they cannot provide funds to applicants who violate these requirements.

Lesson Summary

You have now completed the third lesson in the Disaster Operations and FEMA Programs module of this course. You should be able to describe the relationship between FEMA's recovery programs and the environmental/historic preservation review process.

Lesson Overview

This lesson describes FEMA's hazard mitigation programs and how the environmental/historic preservation review relates to these programs.

Lesson Objectives

At the completion of this lesson, you will be able to describe the relationship between FEMA hazard mitigation programs and the environmental/historic preservation review process.

Hazard Mitigation Programs**Key Points**

- FEMA's mitigation programs are designed to protect homes, businesses, and public facilities from future disaster damages.
 - Like Public Assistance projects, hazard mitigation projects must undergo environmental/historic preservation review before being implemented.
 - Early identification of environmental and historic preservation issues can help streamline the grant approval process.
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Hazard Mitigation Programs

FEMA also funds mitigation programs designed to protect homes, businesses, and public facilities and infrastructure from future disaster damages.

FEMA's hazard mitigation programs include:

- Hazard Mitigation Grant Program (HMGP).
 - Pre-Disaster Mitigation (PDM) program.
 - Flood Mitigation Assistance (FMA) program.
 - Occasional supplemental assistance, such as Unmet Needs.
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Environmental/Historic Preservation Review

Although some of these programs are not tied to a specific disaster, and thus may not be part of a disaster operation, many of the same environmental/historic preservation review requirements apply.

In all mitigation programs, the State plays an important role in planning, prioritizing, and selecting projects. All mitigation programs require applicants to provide a thorough identification of potential environmental/historic preservation resources that may be affected by project.

Applicants are encouraged to integrate environmental and historic preservation considerations early during project planning and evaluation of alternatives.

Hazard Mitigation Grant Program

Authorized under Section 404 of the Stafford Act, the HMGP provides grants to Tribes, States, local governments, and certain Private Non-Profits to implement long-term hazard mitigation measures throughout the Tribal lands/State after a major disaster declaration. The purposes of the program are to:

- Reduce the loss of life and property due to disasters.
- Enable mitigation measures to be implemented during the recovery from a disaster.

In recognition of the importance of mitigation planning, Tribes/States with an approved enhanced Tribe/State Mitigation Plan in effect at the time of a disaster declaration may receive additional HMGP funding.

HMGP Projects

Projects eligible for funding under the HMGP must provide:

- Long-term solutions to problems (for example, retrofitting of public facilities to reduce the risk of earthquake damage).
- Long-term benefits that outweigh the cost of implementing the project.

HMGP funds may be used to protect either public or private property or to purchase property that has been subjected to, or is in danger of, repetitive damage.

Pre-Disaster Mitigation (PDM) Program

The PDM program provides grants to Tribes, States, and local governments for cost-effective hazard mitigation activities that complement a comprehensive multi-hazard mitigation program. To be eligible for PDM funding, applicants must participate in and be in good standing with the National Flood Insurance Program (NFIP). Eligible projects are similar to those under the HMGP.

Funding under the PDM is not tied to a disaster. The program is nationally competitive on an annual basis.

Flood Mitigation Assistance (FMA) Program

The FMA program provides funding to assist Tribes, States, and local communities in implementing measures to reduce or eliminate the long-term risk of flood damage. Examples of eligible FMA projects include the elevation, acquisition, and relocation of buildings, manufactured homes, and other structures insurable under the NFIP.

Like PDM, FMA is not tied to a disaster. This annual program is not nationally competitive; instead, States prioritize and select projects.

Hazard Mitigation Roles

Roles in hazard mitigation programs are somewhat different than those in the Public Assistance program. In hazard mitigation programs:

- Applicants are completely responsible for project development, and work with the Tribe/State for technical assistance.
- Tribes/States take a very active role managing the program and initiating the compliance process by working with applicants to collect information and ensure complete applications.
- FEMA conducts final environmental/historical preservation review and approval, and works through the Tribe/State to contact applicants.

Responsibilities Under Hazard Mitigation Programs

The following table summarizes the responsibilities of FEMA, the Tribe/State, and applicants under the hazard mitigation programs.

Party	Responsibility
FEMA	<ul style="list-style-type: none"> ▪ Has legal responsibility for the Federal environmental/historic preservation review process and documentation. ▪ Typically goes through the Tribe/State to obtain clarification from the applicant regarding project scope, verification, or further environmental/historical preservation data.
Tribe/State	<ul style="list-style-type: none"> ▪ Assists applicants to prepare applications. ▪ Ensures that project applications contain appropriate environmental/historical preservation data, maps, and coordination. ▪ Provides coordination and monitoring as grantee.
Applicant	<ul style="list-style-type: none"> ▪ Typically responsible for independent formulation of project scope, design, and application. Provides detailed environmental/historic preservation information in the State application form. Complies with Federal, State, and local laws. Implements grant conditions resulting from FEMA's compliance review.

FEMA Program Staff: Hazard Mitigation Officer

The Hazard Mitigation Officer manages the program in disaster operations in coordination with Tribe/State counterparts.

The Hazard Mitigation Officer's environmental/historic preservation responsibilities include:

- Ensuring that proper procedures are followed.
- Ensuring that the environmental/historic preservation review has been completed, documented, and approved prior to funding.

FEMA Program Staff: HMGP Grant Manager/Project Reviewer

The HMGP Grant Manager/Project Reviewer conducts eligibility reviews.

The HMGP Grant Manager/Project Reviewer's environmental/historic preservation responsibilities include:

- Coordinating with the Regional Environmental Officer/Environmental Liaison Officer (REO/ELO).
 - Managing the environmental/historic preservation review process.
 - Working with an environmental/historical preservation specialist to ensure that the environmental/historical preservation review is complete.
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FEMA Program Staff: Environmental/Historic Preservation Specialist

Specialists are technical experts who conduct the appropriate environmental/historic preservation review for specific projects.

Specialists may be drawn from:

- The environmental/historic preservation cadre.
- Contractors.

Specialists' environmental/historic preservation responsibilities include:

- Coordinating and preparing environmental/historic review documentation.
 - Working with the Grant Manager/Project Reviewer.
 - Providing technical expertise as needed.
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Lesson Summary

You have now completed the fourth lesson in the Disaster Operations and FEMA Programs section of this course. You should be able to describe the relationship between FEMA's hazard mitigation programs and the environmental/historic preservation review process.

Lesson Overview

This lesson describes the FEMA-funded activities that trigger environmental/historic preservation review.

Lesson Objectives

At the completion of this lesson, you will be able to identify the types of FEMA-funded activities that may require environmental/historic preservation review.

FEMA-Funded Activities**Key Points**

- Certain FEMA-funded activities have higher potential than others to affect the environment or historic properties.
 - These activities must be reviewed in greater detail for environmental/historic preservation compliance regardless of which FEMA program provides funding.
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FEMA-Funded Activities

Environmental/historic preservation compliance applies whether an activity is funded under recovery programs, hazard mitigation programs, or any other FEMA program. This lesson discusses FEMA-funded activities and identifies those that are most likely to trigger a review.

FEMA Activities and Environmental/Historic Preservation Review

The potential of FEMA-funded activities to affect the environment or historic properties depends on the nature and location of the activity. The most common FEMA-funded categories of activities that may affect the environment or historic properties are:

- Emergency protective measures.
- Debris removal.
- Repairs.
- Modification, mitigation, or expansion of existing structures.
- New construction and ground disturbance.

The remainder of this lesson presents information about the potential environmental or historic preservation impact of each type of activity.

Emergency Protective Measures

Emergency protective measures are funded by the Public Assistance (PA) program and may include:

- Police, fire, and rescue response.
- Health and safety measures.
- Emergency access and communications.
- Sandbagging, temporary levees, or pumping.
- Emergency demolition and temporary repairs.

Many projects in this category, such as reimbursement for police overtime, generally do not involve physical impacts. However, actions such as emergency demolitions may trigger an environmental/historic preservation review.

Debris Removal

Debris removal actions are typically funded through the PA program.

Debris removal includes:

- Clearance of fallen trees and woody debris.
- Debris and sediment clearance from streams.
- Removal of mud and silt deposits.
- Debris collection, staging, and disposal.

Typical activities that would trigger a higher level of review include burning, stream clearing, and using a non-permitted disposal site.

Emergency Actions

Some emergency actions, such as construction of a temporary stream-crossing, and demolition of unsafe structures, do have physical impacts. These activities are subject to an environmental/historic preservation review. The compliance process for these actions is often addressed with expedited emergency procedures that rely on early coordination between Federal, Tribal, State, and local agencies.

Repairs

FEMA funds a wide variety of repair projects. Under PA, these projects include repairs to public facilities, usually to pre-disaster conditions. Repairs to pre-disaster condition must be reviewed for compliance with environmental/historic preservation requirements. These requirements will be addressed in Modules 2 and 3.

In the Individual Assistance (IA) program, funding is available for the minimal repair of private residences. However, these activities are exempt from environmental/historic preservation review.

Modification, Expansion, and Mitigation

Projects involving modification, expansion, or mitigation of existing structures usually encounter more environmental and historic preservation issues than projects involving repair to pre-disaster condition. These projects may be funded under the PA or hazard mitigation programs.

One of the most obvious examples of extensive modification to an existing facility is demolition. Other examples include:

- Building an addition
 - Retrofitting
 - Floodproofing
 - Elevation
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New Construction and Ground Disturbance

This category has the greatest potential to affect environmental/historic resources. Examples of these types of activities include:

- Constructing new facilities.
 - Changing water courses or topography by adding flood control features or structures.
 - Preparing a site for temporary housing units.
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Lesson Summary

You have now completed the fifth lesson in the Disaster Operations and FEMA Programs section of this course. You should be able to identify the types of FEMA-funded activities that may require an environmental/historic preservation review.

Lesson Overview

This lesson describes the areas of responsibility for environmental/historic preservation review in different FEMA programs.

Lesson Objectives

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

- Describe the five main areas of responsibility for environmental and historic preservation review.
- Describe how responsibilities differ from program to program.

FEMA-Funded Activities

Key Points

- The main areas of responsibility in environmental/historic preservation review are:
 - Legal Responsibility
 - Oversight/Management
 - Legwork
 - Project Development
 - Project Implementation
- FEMA, the Tribe/State, the applicant, and Federal or State regulatory agencies may have different responsibilities depending on the program.

Major Areas of Responsibility

Ensuring environmental/historic preservation compliance requires that all parties fulfill their responsibilities. These responsibilities are categorized into five major areas.

Legal Responsibility	<ul style="list-style-type: none"> ▪ Ensure environmental review is done properly under the law. ▪ Conduct formal consultation with certain agencies, as required by law or regulations.
Oversight/Management	<ul style="list-style-type: none"> ▪ Manage the process to ensure that environment/historic preservation is built into program implementation. ▪ Ensure that applicants have been properly advised of environment/historic preservation requirements. ▪ Provide assistance/guidance to applicants. ▪ Ensure review proceeds expeditiously. ▪ Ensure projects and grant conditions are implemented properly. ▪ Conduct any necessary followup.

Major Areas of Responsibility (Continued)

Legwork	<ul style="list-style-type: none"> ▪ Collect data, maps, and baseline information. ▪ Prepare analyses, correspondence, and agreements. ▪ Conduct informal consultation. ▪ Issue public notices. ▪ Document the review.
Project Development	<ul style="list-style-type: none"> ▪ Develop an accurate scope of work containing sufficient detail. ▪ Identify alternatives. ▪ Coordinate with appropriate specialists early in project planning.
Project Implementation	<ul style="list-style-type: none"> ▪ Implement the project as proposed. ▪ Implement any grant conditions. ▪ Obtain permits. ▪ Seek appropriate approval for scope changes.

Responsible Entities

FEMA has overall responsibility for oversight of the environmental/historic preservation review process. As FEMA is the entity that is held legally responsible for ensuring compliance with Federal historic preservation laws and many Federal environmental laws, FEMA cannot delegate this responsibility.

The remaining responsibilities are divided up among FEMA, the Tribe/State, the Applicant, and the Federal/State Resource Agencies, depending on the project and the program.

General Responsibilities

This chart indicates who is generally responsible for each major area of responsibility.

Major Area	Responsible Party			
	FEMA	Tribe/State	Applicant	Federal/State Resource Agencies
Legal Responsibility	✓			
Oversight/Management	✓	✓		
Legwork	✓	✓	✓	✓
Project Development	✓	✓	✓	
Project Implementation		✓	✓	

FEMA Management Positions

FEMA is legally responsible for ensuring compliance with laws applying to Federal actions. The table below outlines some of the FEMA personnel involved and their role in environmental compliance.

Position	Responsibilities
Undersecretary for Emergency Preparedness and Response Directorate (EPR), Regional Director (RD), Federal Coordinating Officer (FCO)	<ul style="list-style-type: none"> ▪ Has overall legal responsibility for environmental/historical preservation review compliance. ▪ Has overall funding authority.
Regional and Headquarters Program Managers	<ul style="list-style-type: none"> ▪ Ensure that proper procedures are followed for program actions. ▪ Ensure that environmental review has been completed and approved before a project is approved for funding.
Environmental Officer (EO), Federal Preservation Officer (FPO)	<ul style="list-style-type: none"> ▪ Provides nationwide oversight, guidance, interagency coordination, and technical assistance. ▪ Reviews and approves certain high-level documents.
Regional Environmental Officer (REO) Environmental Liaison Officer (ELO)	<ul style="list-style-type: none"> ▪ Oversees regional environmental/historic preservation review process. ▪ Approves and certifies the adequacy of the review for certain levels of environmental compliance.

Resolution of Environmental/Historic Preservation Issues

In most cases, environmental/historic preservation issues in a disaster operation can be resolved at the DFO.

More complex environmental/historic preservation issues often require the involvement of the REO, Regional program managers, or the Office of General Counsel (OGC).

FEMA Headquarters, including the Environmental Officer, Federal Preservation Officer, OGC, and program managers, assists in the resolution of complex or controversial issues and provides policy guidance.

Delegating Responsibilities to the Tribes/States

Where possible, FEMA works with Tribes/States to delegate greater responsibility to manage and implement FEMA programs.

For environmental/historic preservation review, Tribes/States are assuming more responsibility for collecting required information and making initial determinations.

However, FEMA must still serve as the final review authority for all environmental/historic preservation reviews related to Federal laws and Executive orders.

Public Assistance (PA): Tribal/State Management of Disasters

Under the PA Program, Tribal/State Management of Disasters (SMD) gives more authority and responsibility to Tribes/States. SMD operates through an Operations Agreement between FEMA and individual Tribes/States.

FEMA piloted SMD in three States and now has made it available to any Tribe/State with the capability to manage disasters.

FEMA still conducts environmental/historic preservation review, although Tribes/States may perform legwork activities.

Hazard Mitigation Grant Program (HMGP): Managing Grantee

The HMGP Managing Grantee initiative operates through a Memorandum of Understanding and regulations implementing the Disaster Mitigation Act of 2000.

As a Managing Grantee, Tribe/State mitigation staff perform some or all of the functions usually performed by FEMA staff, including:

- Reviewing proposals for conformance with Federal regulations.
 - Completing benefit-cost analyses.
 - Performing environmental/historic preservation documentation for FEMA review and approval.
 - Coordinating with environmental/historic preservation resource officials.
-

Lesson Summary

You have now completed the final lesson in the Disaster Operations and FEMA Programs section of this course. You should be able to:

- Describe the five main areas of responsibility for environmental review.
 - Describe how responsibilities differ from program to program.
-

Lesson Overview

This lesson describes the main components of the National Environmental Policy Act (NEPA).

Lesson Objectives

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

- Describe the purpose and requirements of NEPA.
 - Identify major Federal actions covered by NEPA.
 - Describe information required for a NEPA review.
 - Determine FEMA and applicant responsibilities under NEPA.
 - Identify NEPA review outcomes.
-

National Environmental Policy Act

Let's begin by looking at the act that established a national policy on the environment.

Key Points

- FEMA must comply with an array of environmental laws, regulations, and Executive orders.
 - The keystone of all these regulations is the National Environmental Policy Act, or NEPA.
 - Congress passed NEPA in 1969 in response to public concerns about the Nation's environment.
 - NEPA requires Federal agencies to consider environmental factors in their planning and decisionmaking processes.
-

FEMA's Mission and the Environment

While FEMA's mission is to prepare for, prevent, respond to, and recover from disasters, FEMA in its actions must comply with laws designed to protect the environment.

FEMA's Mission Statement

Lead America to prepare for, prevent, respond to, and recover from disasters.

National Environmental Policy Act Overview

NEPA created a comprehensive national policy and set forth clear goals for Federal agencies:

- To foster "productive harmony between man and nature" . . .
- So as to "fulfill the social, economic, and other requirements of present and future generations of Americans."

The next section reviews the major NEPA requirements, beginning with Section 101 of the act.

NEPA Components: Section 101

Under Section 101 of NEPA, the Federal Government:

- Is tasked with the responsible stewardship of the environment.
 - Must use all practicable means to improve and coordinate Federal plans, functions, programs, and resources that may affect the environment.
-

NEPA Components: Section 102

Under Section 102, Federal agencies must take the following into account for any action significantly affecting the environment:

- The environmental impact of the proposed action.
 - Any adverse environmental effects.
 - Alternatives to the proposed action.
 - The relationship between local short-term uses and long-term productivity.
 - Any irreversible and irretrievable commitments of resources.
-

NEPA Components: Section 202

Section 202 created the President's Council on Environmental Quality (CEQ). The CEQ coordinates Federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives.

The CEQ established regulations implementing NEPA, which are found in 40 CFR Part 1500. Each Federal agency is required to develop its own individual regulations to implement NEPA. FEMA's regulations on implementing NEPA are found in 44 CFR Part 10. Since FEMA is part of the Department of Homeland Security (DHS), FEMA will be able to utilize NEPA procedures developed by DHS, in addition to their own.

In addition, as part of their policy guidance, the CEQ has published a list of 40 commonly asked questions on NEPA.

NEPA Planning Process

Under Section 102 of NEPA, Federal agencies are required to evaluate the environmental effects of any proposed action. To evaluate their actions, a specific planning process must be followed.

This planning process:

- Requires that agency decisionmakers be fully informed about the environmental consequences of their decision to fund or conduct an action;
 - Mandates that the public be informed of the proposed actions, the consequences of those actions, and the ultimate agency decision; and
 - **Must be completed before any work is initiated.**
-

Federal Actions

Any Federal agency action that may affect the environment should be reviewed under NEPA.

Some examples of Federal actions include:

Type of Action	Examples
Federal Funding	FEMA funded actions
Federal Permit	Clean Water Act, Section 404 permit
Federal Lands, Facilities, and Equipment	Construction of new roads or buildings at FEMA's National Emergency Training Center
Agency Rulemaking	National Flood Insurance Program

Defining the Action

The level of NEPA review for a proposed action is directly related to:

- The nature of the action.
- The potential environmental effects.

Before the required review and documentation level can be determined, the scope of the Federal action must be clearly defined.

Connected Actions

Part of defining the action is to identify all connected actions. All activities connected to a proposed action must be evaluated during the NEPA process.

According to the NEPA definitions, "connected actions" means that:

- One action justifies the other.
 - For example, replacing a two-lane bridge with a four-lane bridge justifies widening of the highway leading to the bridge.
- One action federalizes the other.
 - For example, FEMA funding for the construction of a wing of a proposed hospital federalizes the entire hospital project.
- One action requires the other.
 - For example, building a sewage treatment plant requires the construction of settlement ponds.

Segmentation

Agencies must not attempt to circumvent the required level of NEPA review by:

- Dividing a large proposed action into a series of smaller actions, or
- Considering the proposed action separate from other dependent actions.

Ensuring Adequacy of Information

All needed information must be obtained before the environmental review can be completed.

Inadequate description of the proposed action on the Project Worksheet or grant application can slow down the environmental review process.

Before an environmental review of the worksheet or application can be completed, the following questions must be addressed:

- Does the project description clearly define the action, alternatives if required, and area of effect?
 - Are there any studies, plans, maps, drawings, etc., to clarify the proposed action?
 - Have any permits or clearances been applied for and/or received?
-

FEMA's NEPA Responsibilities

Under NEPA, FEMA has the responsibility to:

- Obtain and confirm a clear, complete project description.
- Determine the level of NEPA review required.
- Collect necessary information and documents.
- Contact other Federal agencies (OFA) and collect data.

FEMA must conduct NEPA reviews even if State requirements are more stringent. Before FEMA can fund or implement an action, Agency decisionmakers must:

- Evaluate the environmental effects of the proposed action and alternatives when required, and
 - Make that information available to the public, when required.
-

Applicant's Responsibilities

In order to receive Federal funding, an applicant has the responsibility to:

- Prepare a clear, complete project description.
 - Supply information as required by FEMA.
 - Notify the grantee/FEMA of any change in the scope of activity.
 - Obtain required State and local permits.
 - Wait to start work until approval is given.
-

NEPA Review Outcomes: Exclusions

When considering the need for NEPA compliance, it may be found that the action qualifies for one of the following exclusions:

- **Statutory Exclusion (STATEX):** A STATEX is a FEMA action exempted from NEPA compliance under the Stafford Act Section 316.
- **Categorical Exclusion (CATEX):** A CATEX is a FEMA action requiring minimal NEPA review because it falls within a category of actions based on agency experience to normally not have a significant effect upon the environment.

Detailed information on exclusions is presented in the next lesson.

NEPA Review Outcomes: EA and EIS

If an action does not qualify as STATEX or CATEX, then it is considered a major Federal action requiring the following NEPA review and documentation:

- **Environmental Assessment (EA):** An EA is a concise public document that provides evidence and analysis for determining the extent of environmental effects or consequences of a proposed action and reasonable alternative actions. An EA may help to determine if an environmental impact statement must be prepared.
- **Environmental Impact Statement (EIS):** An EIS is a detailed analysis of the impact and consequences of a proposed action and alternatives on the environment.

Detailed information on the EA and EIS processes is presented in a later lesson.

NEPA Benefits

This lesson has presented a brief overview of NEPA requirements. In summary, the benefits of NEPA include:

- **Safeguarding the Environment:** NEPA helps Federal agencies incorporate environmental values in their planning and decisionmaking processes.
 - **Providing Better Solutions:** Because NEPA enhances the planning process, it can result in more effective solutions for the applicant. The NEPA process can identify problems—environmental or otherwise—with the proposed action or its alternatives.
 - **Addressing Other Laws:** Under the NEPA review process, other environmental laws must be addressed.
-

Lesson Summary

You have now completed the first lesson in the Environmental Review section of this course. You should be able to:

- Describe the purpose and requirements of NEPA.
 - Identify major Federal actions covered by NEPA.
 - Describe information required for a NEPA review.
 - Determine FEMA and applicant responsibilities under NEPA.
 - Identify NEPA review outcomes.
-

Lesson Overview

This lesson describes exclusions granted to FEMA under the National Environmental Policy Act (NEPA).

Lesson Objectives

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

- Identify those FEMA actions that are **statutorily excluded** from NEPA review.
 - Identify those FEMA actions that are **categorically excluded** from NEPA review.
-

National Environmental Policy Act

Now let's consider some of the special NEPA provisions available to FEMA.

Key Points

- Under NEPA, Federal agencies must consider the environment, but are not required to choose the alternative with the least environmental impact.
 - Congress has granted FEMA exclusions from NEPA for some of its actions.
 - Certain categories of actions are excluded from the NEPA review process.
-

NEPA Outcomes

As discussed in the previous lesson, there are four possible outcomes of a NEPA review of a FEMA action.

- The action may qualify as a:
 - **Statutory exclusion** (STATEX), meaning that it is by law exempted from NEPA review.
 - **Categorical exclusion** (CATEX), meaning that it belongs to a category of actions that do not normally have a significant effect upon the environment and are excluded from further NEPA review.
 - If the action does not qualify as a STATEX or CATEX, it will require additional review and documentation, including either an:
 - **Environmental assessment** (EA), and/or
 - **Environmental impact statement** (EIS).
-

NEPA Outcomes: STATEX and CATEX

In this lesson, we will consider the two most common outcomes: STATEX and CATEX.

Of all the FEMA-funded actions that are reviewed for NEPA applicability, approximately:

- 94% are STATEX.
- 5% are CATEX.
- 1% are subject to an EA or EIS.

The next lesson will discuss the EA and EIS process.

Statutory Exclusions - Section 316

Section 316 of the Stafford Act provides FEMA with a statutory exclusion from NEPA compliance. This STATEX exempts some FEMA actions from having to comply with NEPA.

This exclusion:

- Often applies to actions that are emergency in nature or are necessary for the preservation of life and property.
- Applies to most Individual Assistance and Public Assistance actions.
- Does not apply to hazard mitigation, flood mitigation, unmet needs projects, or any FEMA grant programs.

STATEX Actions (Screen 1 of 2)

The actions exempted by Section 316 are funded under the following sections of the Stafford Act and are typically emergency in nature:

Section	Action
Section 402	<ul style="list-style-type: none"> ▪ Utilization of personnel, equipment, supplies, technical and advisory services, etc., in support of disaster assistance. ▪ Assistance in support of medicine, food, and other consumable supplies and emergency assistance.
Section 403	<ul style="list-style-type: none"> ▪ Use of Federal resources (equipment, supplies, facilities, etc.), medicine, food, and other consumables. ▪ Work and services to save lives and protect property (debris removal, search and rescue, clearance of roads, demolition of unsafe structures, warning of further risks and hazards, etc.).

STATEX Actions (Screen 2 of 2)

Additional actions include:

Section	Action
Section 406	<ul style="list-style-type: none"> ▪ Restoration of a facility to its pre-disaster condition. In general, this means restoring the facility to the same function, capacity, and footprint.
Section 407	<ul style="list-style-type: none"> ▪ Debris removal.
Section 502	<ul style="list-style-type: none"> ▪ Utilization of personnel, equipment, supplies, technical and advisory services, etc., in support of disaster assistance. ▪ Assistance in support of medicine, food, and other consumable supplies and emergency assistance.

Compliance With Other Laws

Although these emergency actions are statutorily exempted from the NEPA review process, they must still be reviewed for compliance with all other environmental laws, regulations, and Executive orders.

The major environmental laws and Executive orders will be discussed in later lessons within this module.

Does the Proposed Action Qualify as a STATEX?

Before any environmental review can take place, there must be an adequate description of the proposed action.

After all the applicable information has been gathered, the first question to ask is, "Does the proposed action fall under the sections noted in 316 and therefore qualify as a STATEX?"

- If the answer is **yes**, then NEPA does not apply, but the proposed action can only proceed after it has been reviewed for compliance with all other environmental laws.
 - If the answer is **no** (the proposed action is not a STATEX), a NEPA review is required.
-

Categorical Exclusions

If an action is not a STATEX, the next level of review is the categorical exclusion, or CATEX.

Based on past experience, NEPA allows FEMA to develop and publish a list of categories of actions determined to typically have no significant effect on the environment. As a result, actions falling in these categories are generally excluded from further detailed review or documentation, such as an environmental assessment or environmental impact statement. This determination is called a CATEX. CATEXs developed in Department of Homeland Security (DHS) procedures are also available for FEMA's use.

The list of these categorical exclusions is found in 44 CFR 10.8(d)(2).

CATEX Levels of Documentation

While there are about 20 different categories of CATEX actions, FEMA has organized these actions into three groups based on the required level of NEPA documentation:

- Level 1 - No NEPA Documentation
- Level 2 - Notation
- Level 3 - Full Documentation

These are spelled out in FEMA's Policy Memo #5 (1997). Other documentation may be required under other laws.

Level 1 CATEXs

CATEX actions identified as Level 1 are of a day-to-day, administrative nature and generally have no potential to affect the environment.

These actions:

- Are administrative or related to training, procurement, or routine maintenance.
 - Are not generally associated with extraordinary circumstances. (Extraordinary circumstances will be discussed later in this lesson.)
 - Seldom trigger other laws.
-

Actions Included Under Level 1 (Screen 1 of 2)

The categories of actions that require Level 1 review and documentation include:

- Administrative actions (e.g., personnel actions, travel, procurement of supplies). (44 CFR 10.8(d)(2)(i))
 - Preparation and revision of documentation. (ii)
 - Studies that involve no commitment of resources other than manpower and funding. (iii)
 - Inspection and monitoring activities to enforce standards or regulations. (iv)
 - Training activities and exercises using existing facilities, established procedures, and land-use designations. (v)
 - Procurement of goods and services to support emergency operation activities. (vi)
-

Actions Included Under Level 1 (Screen 2 of 2)

Additional categories of actions included under Level 1 include:

- Acquisition or lease of existing facilities when the planned uses conform to past use or local land-use requirements. (vii)
 - Routine maintenance, repair, and groundskeeping activities at FEMA facilities. (x)
 - Planting of indigenous vegetation. (xi)
 - Granting of community-wide exceptions to floodproof residential basements. (xiv)
 - Listed planning and administrative activities in support of emergency and disaster response and recovery. (xviii)
 - Listed emergency and disaster response, recovery, and mitigation activities under the Stafford Act, including:
 - General Federal assistance.
 - Essential assistance.
 - Debris removal.
 - Temporary housing. (ixx)
-

Level 1 Documentation

While CATEXs included in Level 1 require no NEPA documentation, when appropriate the following information should be part of the project record:

- Indication of the CATEX used.
 - Documentation of compliance with any other required law.
-

Level 2 CATEXs

CATEX actions subject to Level 2 documentation are actions, which while project-oriented, generally have little potential to affect the environment.

Unlike CATEX actions requiring Level 1 documentation, those requiring Level 2 documentation may:

- Have certain extraordinary circumstances associated with a proposed action. (The nature of these extraordinary circumstances will be discussed shortly.)
 - Have an impact on historic properties (which will be addressed in Module 3).
-

Actions Included Under Level 2 (Screen 1 of 2)

The categories of actions that require Level 2 review and documentation include:

- Acquisition of properties and associated demolition/removal when:
 - The acquisition is from a willing seller,
 - The buyer coordinated acquisition planning with affected authorities, and
 - The acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices. (44 CFR 10.8(d)(2)(vii))
 - Acquisition, installation, or operation of utility or communication systems that use existing distribution systems/facilities or currently used infrastructure rights-of-way. (ix)
 - Demolition or disposal of uncontaminated structures to permitted off-site locations. (xii)
-

Actions Included Under Level 2 (Screen 2 of 2)

Additional categories of actions included under Level 2 include:

- Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development. (xiii)
 - Repair, reconstruction, restoration, elevation, retrofitting, or upgrading of structures to current codes and standards. (xv)
 - Replacement of any facility in a manner that substantially conforms to the pre-existing design, function, and location. (xv)
 - Actions conducted within enclosed facilities, including the installation of equipment (e.g., generators, sprinkler systems, emergency lighting). (xvii)
-

Level 2 Documentation (Screen 1 of 2)

For CATEXs included in Level 2 documentation, the following information should be part of the project record:

- Indication of the CATEX used.
- Record of all consultations and agreements implemented to comply with the National Historic Preservation Act (NHPA) when historic properties will be affected.
- Documentation of compliance with any other required law.

(You will learn more about the NHPA in Module 3: Historic Preservation Review Process.)

Level 2 Documentation (Screen 2 of 2)

The following additional documentation must be considered:

- Indication that extraordinary circumstances were addressed.
 - An assessment of the likelihood that extraordinary circumstances present are associated with the proposed action or its location.
 - If, because of the nature or location of a particular action, an extraordinary circumstance is identified that could cause adverse effects, then the more thorough review and documentation as described for Level 3 will be required.
-

Level 3 CATEXs

The final level of documentation is Level 3. A CATEX action documented under Level 3:

- Has potential to affect the environment.
 - May have extraordinary circumstances associated with the action.
-

Actions Included Under Level 3

The only CATEX (44 CFR 10.8(d)(2)(xvi)) included under Level 3 is improvements to existing facilities and construction of small-scale mitigation measures in developed areas with infrastructure, when:

- The immediate project area has been disturbed.
- Basic functions are not altered.
- The capacity of other system components is not exceeded.
- The intended land use is not modified.
- The operation does not adversely affect the human environment.

This CATEX level is open to the broadest interpretation.

Level 3 Documentation

For a CATEX action identified as Level 3, the following documentation is required:

- Justification of the use of CATEX xvi. (Why does the project qualify for this category?)
- Discussion of extraordinary circumstances, if any.
- Documentation of compliance with any other required law and consultation with appropriate resource agencies.

For projects processed in the FEMA disaster database system, a narrative must be entered in the environmental comment field indicating that the CATEX conditions have been met.

Additional Considerations

When it is determined that an action fits a categorical exclusion, two additional questions must be answered:

- Do extraordinary circumstances exist?
- Are there other applicable environmental laws or Executive orders which have separate environmental requirements and considerations?

Once identified, extraordinary circumstances often indicate which additional environmental laws and Executive orders might be triggered.

Additional Considerations - Extraordinary Circumstances

An "extraordinary circumstance" is something about the nature or location of the proposed action that makes it substantially different from a typical action of its category.

- **CATEXs Under Level 1:** Very rarely involve extraordinary circumstances.
- **CATEXs Under Level 2 or 3:** May have one or more extraordinary circumstances. If these extraordinary circumstances have adverse effects that cannot be mitigated, the action may no longer qualify for an exclusion and an environmental assessment may need to be completed.

Extraordinary circumstances are defined in 44 CFR 10.8(d)(3). Some examples are presented on the next screens.

Extraordinary Circumstances (Screen 1 of 3)

Extraordinary circumstances are:

- Greater project scope and size than normally experienced. (For example, 200 acquisitions may not be extraordinary for a city, but would be extraordinary for a small town.)
 - High level of environmentally-based public controversy.
 - Potential to degrade already poor environmental conditions, especially when there is the potential for cumulative effects.
-

Extraordinary Circumstances (Screen 2 of 3)

Additional extraordinary circumstances are:

- Use of unproven technology with potential adverse effects or involving unique or unknown environmental risks.
 - Presence of endangered or threatened species or their critical habitat with the potential to be affected by the action.
 - Presence of archeological, cultural, historical, or other protected resources with the potential to be affected by the action.
 - Presence of toxic or hazardous substances at levels exceeding Federal, Tribal, State, or local regulations or standards and requiring action or attention.
-

Extraordinary Circumstances (Screen 3 of 3)

Additional extraordinary circumstances are:

- Potential to affect special status areas such as wetlands or coastal zones.
 - Potential for adverse effects on health or safety.
 - Potential to violate a Federal, Tribal, State, or local law or requirement imposed for the protection of the environment.
 - Potential for significant cumulative impact when the proposed action is combined with other past, present, and reasonably foreseeable future actions (private or governmental), even though the effects of the proposed action may not be significant by themselves.
-

Additional Considerations - Other Environmental Laws

Even if an action is found to be exempt from NEPA (STATEX) or excluded from further NEPA review (CATEX), other environmental laws and Executive orders must still be followed.

These additional environmental laws and Executive orders will be explained in later lessons.

Does the Proposed Action Qualify as a CATEX?

If a given action was not exempt from NEPA review as a STATEX, the next question to ask is "Does the proposed action qualify as a CATEX?"

- If the answer is **yes**, then the level of documentation required must be determined.
 - If the answer is **no** (the proposed action is not a CATEX), the review must continue.
-

Lesson Summary

You have now completed the second lesson in the Environmental Review section of this course. You should be able to:

- Identify those FEMA actions that are **statutorily excluded** from NEPA review.
 - Identify those FEMA actions that are **categorically excluded** from NEPA review.
-

Lesson Overview

This lesson describes environmental assessments (EAs) and environmental impact statements (EISs), and explains when each is required.

Lesson Objectives

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

- Describe the key components of an EA and explain when one is required.
 - Describe the key components of an EIS and explain when one is required.
-

Environmental Assessments and Environmental Impact Statements

The previous lesson described the statutory exclusions (STATEXs) and categorical exclusions (CATEXs) granted to FEMA under the National Environmental Policy Act (NEPA). Now let's consider the two remaining possible outcomes of the NEPA review process.

Key Points

- Actions that are not eligible for STATEX or CATEX must undergo an environmental assessment.
 - An EA may lead to an environmental impact statement.
 - While the NEPA review process requires Federal agencies to consider the effects of their actions on the environment, an agency is not necessarily obligated to choose the most environmentally sound alternative.
-

NEPA Outcomes

As discussed in the previous lesson, there are four possible outcomes of a NEPA review.

- The action may qualify as a:
 - **Statutory exclusion** (STATEX)
 - **Categorical exclusion** (CATEX)
- If the action does not qualify as a STATEX or CATEX, it will require additional reviews and documentation, consisting of either:
 - An **environmental assessment** (EA), or
 - An **environmental impact statement** (EIS).

In this lesson, we will describe procedures for conducting an environmental assessment and an environmental impact statement.

Pathways to an EA or EIS

The following "If-Then" statements explain the pathways leading to an EA or EIS.

- If the action qualifies as a STATEX or CATEX, then the environmental review process under NEPA is complete.
 - If the action does not qualify as a STATEX or CATEX, then an EA is required.
 - If the EA produces a Finding of No Significant Impact (FONSI), then the environmental review is concluded.
 - If the EA cannot result in a FONSI, then a Notice of Intent (NOI) is prepared and the EIS initiated.
 - When the EIS is completed, then the environmental review process concludes with a Record of Decision (ROD).
-

Environmental Assessment

Actions that do not qualify as a STATEX or a CATEX must undergo an environmental assessment.

An EA is a concise document that presents an evaluation of the potential environmental, historical, and societal impact of the proposed project and alternatives.

While EAs need to consider impacts on the human and natural environment, an EA should not provide exhaustive information on any one area. Rather, the EA should provide a full description of a proposed action and a concise analysis of its potential impact.

EA Functions

The main functions of an environmental assessment in the NEPA review process are to:

- Determine if there are no significant impacts or if an EIS must be prepared.
 - Document compliance with NEPA when no EIS is required.
 - Facilitate preparation of an EIS when one is required.
-

EA Preparation

Regional program offices are responsible for the documentation of their projects, including EA preparation. The EA may be produced in-house or through contractors, but the Regional Environmental Officer is responsible for final approval.

While FEMA regulations may dictate when an EA is required, Regional Directors may request the preparation of an environmental assessment at any time to assist planning and decision making.

The average time required to complete an EA is 3 to 6 months, depending on the complexity of the project.

Public Involvement

An EA seeks the input of and coordination with local, State, Tribal, and Federal agencies.

The public in the affected area should be notified so they may become involved in the process and solution.

EA Outcomes

As part of the NEPA review process, the EA can result in two different outcomes:

- Finding of No Significant Impact (FONSI). If an EA concludes with a FONSI, the environmental review is concluded.
 - Notice of Intent (NOI) to prepare an EIS. If a project's adverse impacts cannot be reduced below a significant level, an environmental impact statement is required.
-

Environmental Impact Statement

An EIS examines a major Federal action that significantly affects the quality of the human and natural environment.

The main difference in documentation between an EA and an EIS is the scale. Although EISs have many of the same components as EAs, the breadth and depth of analysis for an EIS is much greater. An EIS provides a complete evaluation of the action and all feasible alternatives.

EIS Functions

The main functions of an EIS in the NEPA review process are to:

- Further examine an action identified by an EA as having significant environmental impact or controversy.
 - Fully document the impact.
 - After public review, allow a project to be implemented if it is determined that the benefits outweigh the adverse effects.
 - Conclude the NEPA review process with a Record of Decision (ROD).
-

EIS Preparation

When an EA results in a Notice of Intent (NOI) to prepare an EIS, then the following occurs:

- First, the notice is published in the Federal Register.
- During the preparation process, there is extensive public involvement and coordination with local, State, Tribal, and Federal agencies, and interested publics.

The average time required for the completion of an EIS is 12 months or longer. FEMA very seldom funds projects that require an EIS.

An EIS results in a ROD, which concisely explains the reasons for selecting a certain action, the environmental effects of the action, and the proposed mitigation procedures.

Key Components of EAs and EISs

EAs and EISs have key components in common. Each component is outlined below, and will be discussed individually in greater detail.

Component	Purpose
Purpose and Need	<ul style="list-style-type: none"> ▪ States the problem to be solved. ▪ Guides the development of alternatives.
Alternatives	<ul style="list-style-type: none"> ▪ Presents possible solutions to the problem. ▪ Determines the affected environment.
Affected Environment	<ul style="list-style-type: none"> ▪ Specifies characteristics of the physical setting for the proposed action and alternatives. Is essential to determining potential environmental consequences.
Environmental Consequences	<ul style="list-style-type: none"> ▪ Considers what impacts may happen when the proposed action is put into the affected environment.
Mitigation Measures	<ul style="list-style-type: none"> ▪ Considers ways to avoid or minimize potential adverse effects.

Purpose and Need

The purpose or goal is general in nature and relates the disaster damage or need to the FEMA program being used. For example:

"The purpose of the proposed action is to help the (applicant) recover from the effects of (disaster description) through the use of (program) funds provided by FEMA."

Purpose and Need: Guidelines

The need clearly defines the specific problem being addressed and defining the need is one of the most important steps in the NEPA review process. If the need is not defined correctly, alternatives cannot be adequately identified.

The need should **not**:

- Be in the form of a solution. In other words, the need is not to build a dam, but to reduce damage for a specific area.
- Be stated in a way that unduly limits the range of alternatives that can be considered.

Typically, the basic need for most FEMA projects is to repair or recover from damaged caused by an event (e.g., flood, fire, earthquake, etc.) or to minimize the potential for future damage.

Alternatives

The alternatives section of an EA or EIS describes solutions considered to meet the need or problem.

The alternatives section should clearly describe:

- The no action alternative. (What would happen if no Federal action was taken.)
 - At least one other viable alternative. (One that could be used if the proposed alternative became unavailable.)
 - The proposed alternative. (The applicant's desired solution to the problem or need.)
 - If an EIS, all reasonable alternatives must be included.
-

Alternatives: Screening

Alternatives that were considered and eliminated should also be briefly listed in the alternatives section. Alternatives are commonly dropped from consideration for the following reasons:

- **Economic** – Is the alternative cost-effective compared to other alternatives?
 - **Technical** – Are there any issues that affect the feasibility of an alternative (e.g., geotechnical, hydrologic)?
 - **Environmental** – Are there resource issues associated with an alternative that would be too time consuming, costly, or difficult to resolve?
-

Alternatives: Environmental Impact (Screen 1 of 3)

When considering the environmental impact of included alternatives, the following items **must** be directly addressed in an EA or EIS:

- Floodplains
- Wetlands
- Endangered species
- Cultural resources
 - Historic buildings and structures
 - Archeological sites
- Minority/low-income populations

Even if none of these areas is likely to be affected by a project, the EA or EIS should include a statement to that effect.

Alternatives: Environmental Impact (Screen 2 of 3)

Other resource areas where there is any likelihood of impact should also be considered in the evaluation of alternatives. They include:

- Air quality
- Surface water
- Coastal zones
- Agricultural lands
- Public health and safety
- Hazardous materials

When considering alternatives, the level of analysis should be proportional to the potential level of impact. Eliminating unlikely areas of impact will help keep a project's EA concise.

The laws governing these and other environmental impacts will be considered in later lessons.

Alternatives: Environmental Impact (Screen 3 of 3)

Remember that the NEPA review process does not require a Federal agency to propose or select actions with the least environmental impact.

Rather, agency decision makers can select the solution that best meets the identified need or solves the problem as long as they:

- Assess the consequences of their decision, and
 - Share that information with the public.
-

Affected Environment

The Affected Environment section of an EA or EIS:

- **Defines the Project Setting/Geographic Area.** It is important that this description include sufficient information to allow the FEMA Regional Environmental Officer to make a finding.
- **Includes the Area of Effect.** The total area of potential effect of the proposed action and each alternative action must be included.

Each resource evaluated may have its own area of potential effect. Some resources, like archaeology wetlands, are site specific. Other resources are not directly related to the geographic area, such as air quality or economics.

Environmental Consequences

After the need has been defined, alternatives considered, and the affected environment described, the positive and negative environmental consequences of the proposed action and alternatives are identified. Environmental consequences can be:

- **Quantitative**, such as number of acres of wetlands, or
- **Qualitative**, such as sense of community or quality of life.

An EIS will provide much greater detail and analysis of the environmental consequences than an EA.

Environmental Consequences: Actions and Impact

When evaluating environmental consequences, it is helpful to consider these consequences as cause-and-effect relationships. The proposed action is the cause and any environmental impact is the effect.

For example, assume that the proposed action is a ditch channelization project. The table below summarizes potential causes and effects.

Action/Cause	Impact/Effect
Remove vegetation	<ul style="list-style-type: none"> ▪ Loss of habitat ▪ Increased sedimentation
Fill wetlands	<ul style="list-style-type: none"> ▪ Loss of habitat ▪ Loss of wetland functions
Increase water conveyance	<ul style="list-style-type: none"> ▪ Larger quantities downstream ▪ Suspensions of solids ▪ Shoreline and bed erosion ▪ Changes to aquatic and riparian habitat

Environmental Mitigation

After the environmental consequences of the alternatives have been identified, the next step is to consider environmental mitigation.

Mitigation measures reduce the environmental impacts that would be caused by the proposed action or alternatives.

Mitigation measures should be considered throughout the NEPA process, but must be addressed in detail in an EIS.

Mitigation: Categories

The four categories of mitigation, in descending order of preference, are:

- **Avoiding** the impact by not taking certain actions or parts of an action.
 - For example, changing a road design to bypass an archeological site.
 - **Minimizing** impacts by limiting the degree or magnitude of the action.
 - For example, reducing the footprint of a building.
 - **Rectifying** the impact by repairing, rehabilitating, or restoring the affected environment.
 - For example, repairing a stream or wetland after it is affected by a project.
 - **Compensating** for the impact by replacing or providing substitute resources or environments.
 - For example, constructing a new wetland or restoring critical habitat.
-

Public Involvement

Public involvement is required for both an EA and an EIS. The public involvement required for an EIS is more involved and formal.

For an EA:

- Distribution of a draft EA is optional. It is advisable for complex or controversial projects.
- The final EA must be made available to the public.
- The Finding of No Significant Impact (FONSI) must be made available to the public.

For an EIS:

- Public involvement is required during the scoping and development of alternatives.
 - A 30-day review period is required for a draft EIS. A 45-day review period is required for a final EIS.
 - The Record of Decision must be made available to the public.
-

Lesson Summary

You have now completed the third lesson in the Environmental Review section of this course. You should be able to:

- Describe the key components of an EA and explain when one is required.
 - Describe the key components of an EIS and explain when one is required.
-

Lesson Overview

This lesson describes different laws and Executive orders (EOs) concerning wetlands, waterways, and water bodies, and how each affects FEMA's actions.

Lesson Objectives

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

- Describe the key components of the following laws and EOs:
 - Clean Water Act
 - EO 11988: Floodplain Management
 - EO 11990: Protection of Wetlands
 - Fish and Wildlife Coordination Act
 - Describe the responsibilities of FEMA and the applicant under these acts and EOs.
-

Laws and Executive Orders: Water

This lesson will introduce the key laws and EOs designed to protect the Nation's waterways.

Key Points

- In addition to NEPA, Federal agencies must comply with laws and Executive orders designed to protect the Nation's waterways.
 - The Clean Water Act addresses water quality by regulating the discharge of pollution into waterways.
 - EO 11988 for Floodplain Management requires Federal agencies to evaluate their actions in a floodplain.
 - EO 11990 for Protection of Wetlands requires Federal agencies to avoid, to the extent possible, adverse impact to wetlands.
 - The Fish and Wildlife Coordination Act requires Federal agencies to consider the effects of their projects on fish and wildlife resources.
-

Clean Water Act

Passed by Congress in 1972, the Clean Water Act is intended to restore and maintain the quality of the Nation's water resources by limiting pollution.

Under the Clean Water Act:

- Major industries must meet pollution control standards.
 - States must set water quality criteria and develop water pollution control programs to meet those criteria.
 - States receive money to help them reduce water pollution, such as funding for water treatment plants.
 - Wetlands and other aquatic habitats are protected.
 - The Corps of Engineers grants permits for dredging and filling in the "waters of the United States."
-

"Waters of the United States"

The phrase "waters of the United States" is used to describe the jurisdiction of the Clean Water Act. This includes:

- Rivers and streams
 - Lakes and ponds
 - Coastlines
 - Wetlands
 - Estuaries
-

Permits and the Clean Water Act

The Clean Water Act established a permitting process to regulate the discharge of dredged or fill materials and pollutants into the waters of the United States.

Applicants must comply with both State and Federal permitting requirements.

Whether or not Federal funding is involved, an applicant must receive permits for work within the waters of the United States.

Section 401: State Certification

Under Section 401 of the Clean Water Act, States have the authority to issue their own water quality certifications, which may be stricter than Federal regulations. Before a project can be implemented, the applicant must coordinate with the State for certification that the proposed activity will not violate applicable State water quality standards.

Section 404: Federal Certification

Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers is responsible for issuing Federal permits for the discharge of dredged or fill materials into the waters of the United States.

FEMA's disaster recovery efforts often take place around the Nation's waters and may involve dredging and filling. This type of work will likely require the applicant to obtain an appropriate Section 404 permit.

Two types of Section 404 permits, general and individual, will be discussed on the following screens.

Section 404: General Permits

General permits:

- Are issued on a nationwide, regional, or State level for activities that are predetermined to have minimal impact.
- Require substantially less review than an individual permit would require.
- Require varying levels of U.S. Army Corps of Engineers (USACE) review.

Local USACE districts should be contacted for applicability.

General Permits and FEMA

Some of the categories of general permits most relevant to FEMA's actions in disaster response, recovery, and mitigation include:

- Maintenance of existing structures.
 - Debris removal.
 - Bank stabilization.
 - Minor dredging.
 - Headwaters and isolated waters discharges.
 - Maintenance of existing flood control projects.
 - Temporary construction, access, and dewatering.
 - Emergency watershed protection.
-

Section 404: Individual Permits

Individual permits are:

- Issued to a single entity (individuals, companies, or governments) to authorize specific activities.
 - Required in cases where a proposed project does not meet the terms and/or conditions of either a regional or nationwide general permit due to:
 - The type of activity,
 - The size of the project, or
 - The scale of impact to the aquatic environment.
-

Responsibilities Under the Clean Water Act

The following table summarizes the responsibilities of FEMA and the applicant under the Clean Water Act.

Party	Responsibilities
FEMA	<ul style="list-style-type: none"> ▪ Ensure that Tribal, State, and local governments understand and comply with requirements of the law.
Applicant	<ul style="list-style-type: none"> ▪ Determine if waters of the U.S. (including wetlands) may be affected. ▪ Contact the local U.S. Army Corps of Engineers District Regulatory Office. ▪ Obtain and comply with a Section 404 permit if dredging or filling in waters of the United States is planned. ▪ Obtain and comply with State 401 certification. ▪ Keep FEMA informed of project and permitting progress.

EOs: Floodplain Management and Wetland Protection

Wetlands and floodplains play an important role in wildlife habitat, pollution control, and flood control.

Because of the critical nature of wetlands and floodplains, these resources have been granted further protection under two Executive orders. (EOs are issued by the President and apply only to Federal agencies.)

The following screens will discuss these orders.

Executive Order for Floodplain Management

EO 11988, Floodplain Management, requires Federal agencies to:

- Maintain the natural and beneficial values of floodplains.
- Avoid development or new construction in floodplains.
- Evaluate the potential effects of actions that are in or may affect a floodplain.
- Avoid, to the extent possible, actions within or affecting a floodplain, particularly those that increase the base flood elevation.

Identifying Floodplains

For most projects, the regulations established in this EO apply to 100-year floodplains.

However, for projects that involve critical facilities, the regulations include 500-year floodplains. A "critical facility" is defined as any facility for which even a slight chance of flooding would cause an unacceptable level of loss, such as an emergency center, school, or hospital.

Flood insurance rate maps (FIRMs) produced by FEMA's National Flood Insurance Program (NFIP) should be consulted to determine if a project is located in either a 100-year or 500-year floodplain.

Executive Order for Protection of Wetlands

EO 11990, Protection of Wetlands, requires Federal agencies to:

- Avoid, to the extent possible, adverse impact of wetlands.
 - Avoid direct or indirect support of actions that affect wetlands if practicable alternatives exist.
-

Identifying Wetlands

A large array of natural environments can be classified as wetlands, including swamps, marshes, bogs, potholes, river overflows, mudflats, and natural ponds.

On the basis of vegetation, soil, and hydrology, specialists can identify wetlands.

Sources of information on wetlands include the Corps of Engineers, State or Federal natural resource agencies, and the Fish and Wildlife Service and its National Wetlands Inventory (NWI).

Compliance Process for EO 11988 and EO 11990

Implementing regulations (44 CFR Part 9) for EO 11988 and EO 11990 require FEMA to conduct an eight-step decisionmaking process for all projects that may be in or affect floodplains and/or wetlands.

This decisionmaking process parallels the NEPA process, and compliance with both regulations can be streamlined. Where NEPA review is required, analysis and reporting can be performed for both NEPA and these requirements at the same time.

Eight-Step Process

Roll your mouse over each of the eight steps to learn more about the decisionmaking process for projects affecting wetlands or floodplains.

Step 1: Determine Project Location

Determine whether the project is located in or may affect a wetland or floodplain. If not, the process is complete.

Step 2: Encourage Public Involvement

If a proposed project is located in a wetland or a floodplain, notify the public at the earliest possible time to involve interested parties.

Step 3: Evaluate Alternatives

Determine if there are reasonable alternatives to locating a project in a floodplain or wetland. If reasonable alternatives exist, FEMA cannot locate the project in the floodplain or wetland.

Step 4: Assess Impact

If the project must be located in or may affect the wetland or floodplain, then identify the full range of effects associated with the action.

Step 5: Minimize Impact

After potential effects have been identified, develop feasible ways to avoid, minimize, or compensate for all potential adverse impacts.

Step 6: Determine Practicability

Reevaluate the project to determine if it is still practicable given exposure to flood hazards, increased hazards to others, and damage to wetland or floodplain values.

Step 7: Provide Public Explanation

Prepare and publicize an explanation of why affecting a wetland or floodplain is the only practicable alternative.

Step 8: Comply With Executive Orders

Review project implementation to ensure that the EO requirements are fully met.

Similarities

Both NEPA and the wetlands/floodplain eight-step process require:

- Public involvement.
- Evaluation of alternatives.
- Assessment of impact.

Differences

The eight-step process requires the selection of an alternative outside of wetlands or floodplains if practicable, or the minimization of impact. NEPA is only a procedural law and cannot require any specific outcome. The NEPA process must conform to the eight-step process in selection of alternatives.

Responsibilities in the Eight-Step Process

The following table summarizes the responsibilities of FEMA and the applicant under the eight-step process for complying with the Executive orders on wetlands and floodplains.

Party	Responsibilities
FEMA	<ul style="list-style-type: none"> ▪ Must use the eight-step process to assess the likely impacts of the proposed action and alternatives on floodplains and wetlands. ▪ Must comply with the determination of that process.
Applicant	<ul style="list-style-type: none"> ▪ Must comply with FEMA's findings of the eight-step process. ▪ Must notify FEMA of any changes in the proposed action so that the revised action can be assessed using the eight-step process. ▪ Must comply with State and local floodplain management and wetlands regulations.

Fish and Wildlife Coordination Act

While the Clean Water Act was passed to improve and protect the quality of water in the United States, the Fish and Wildlife Coordination Act (FWCA) was enacted to protect fish and wildlife affected by Federal actions that control or modify natural streams or water bodies.

The statute requires Federal agencies to:

- Take into consideration the effect that water-related projects would have on fish and wildlife resources.
- Take action to prevent loss or damage to these resources.
- Provide for the development and improvement of these resources.

Actions Regulated Under the FWCA

To comply with the requirements specified in the law, Federal agencies must first determine whether a proposed activity will control or modify a natural stream or water body.

Typical actions that would fall under the jurisdiction of the act include:

- Channelization or bank stabilization of streams.
- Construction, modification, or operation of dams, levees, impoundments, or water-diversion structures.

Exemptions From the FWCA

Two general types of activities exempt from review under the act are:

- Water impoundments, such as dams, dikes, or floodgates, with a water surface area of less than 10 acres.
- Programs for land management and use carried out by Federal agencies on land under their jurisdiction.

In addition, the provisions of the act do not apply to the Tennessee Valley Authority.

Complying With the FWCA

Under the Fish and Wildlife Coordination Act, if a project involves modifying a natural stream or body of water, or its hydrology, then a Federal agency such as FEMA must consider mitigating project-related losses of fish and wildlife resources.

Consultation Under the FWCA

Mitigation measures must be developed in consultation with the Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS), as appropriate, and the State fish and wildlife agency.

This consultation includes addressing concerns about general plant and wildlife species and should be coordinated with other FWS/NMFS consultations addressing wetlands and endangered species.

Responsibilities Under the FWCA

The following table summarizes the responsibilities of FEMA and the applicant under the Fish and Wildlife Coordination Act.

Party	Responsibilities
FEMA	<ul style="list-style-type: none"> ▪ Review proposed activities for projects affecting natural streams or water bodies. ▪ Consult with the FWS, NMFS, and State wildlife agency regarding potential effects of FEMA action to fulfill official Federal role under FWCA. ▪ Ensure project integrates reasonable measures for mitigating impacts, taking into consideration FWS, NMFS, and State agency comments.
Applicant	<ul style="list-style-type: none"> ▪ Consult with FWS, NMFS, and State wildlife agency regarding impact during project planning. ▪ Incorporate prescribed measures to avoid, minimize, or otherwise mitigate adverse impact to water bodies and wildlife.

Lesson Summary

You have now completed the fourth lesson in the Environmental Review section of this course. You should be able to:

- Describe the key components of the following laws and EOs:
 - Clean Water Act
 - EO 11988: Floodplain Management
 - EO 11990: Protection of Wetlands
 - Fish and Wildlife Coordination Act

 - Describe the responsibilities of FEMA and the applicant under these acts and EOs.
-

Lesson Overview

This lesson describes the Endangered Species Act (ESA) and how it affects FEMA's actions.

Lesson Objectives

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

- Describe the key components of the ESA.
 - Describe the responsibilities of FEMA and other parties under the act.
-

Laws and Executive Orders: Biology

This lesson will introduce a key piece of legislation designed to protect endangered species.

Key Points

- Congress passed the Endangered Species Act in 1973 as a result of growing concern worldwide over the disappearance of plant and animal species.
 - The ESA currently protects more than 1,200 species in the United States and is credited with the recovery of a number of species.
 - All individuals and Federal agencies must comply with the ESA.
-

The Endangered Species Act (ESA)

The Endangered Species Act of 1973 protects endangered and threatened species and their critical habitats.

In passing the act, Congress recognized that "these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people."

ESA Requirements

Under the ESA, Federal agencies are required to:

- Consider the effects of their actions on threatened or endangered species.
 - Be proactive in conservation activities.
 - Avoid harm to listed species or the critical habitat of listed species.
-

Endangered vs. Threatened

The two categories of species that are given protection under the ESA are:

- **Endangered:** Any fish, animal, or plant that is in danger of extinction.
- **Threatened:** Any fish, animal, or plant that is likely to become endangered in the foreseeable future.

While not given formal protection, species being considered for listing by the ESA are known as "candidates."

Prohibition Against Taking Endangered Species

Under the ESA, it is unlawful to "take" any endangered species. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

The ESA:

- Applies to everyone, from individuals to Federal agencies.
 - Has very stiff penalties, including imprisonment and fines. If a Federal action violates the ESA, the project may be halted and the area returned to its pre-project condition.
-

ESA, Section 7

The requirements of Section 7 of the ESA apply specifically to Federal agencies whenever they permit, authorize, fund, or carry out an action.

Under the National Environmental Policy Act (NEPA), certain FEMA emergency actions are statutorily excluded from NEPA compliance. However, as a separate law with separate requirements, the ESA has no such emergency exclusions. Any FEMA action must comply with the ESA requirements even if totally exempted from NEPA.

ESA, Section 10

Under Section 10 of the ESA, an incidental take of Federally listed species may be permitted if the take is likely to occur as a result of actions carried out by a private landowner on private property.

These actions must not:

- Require a Federal permit to lawfully undertake, and
 - Be funded by Federal money.
-

Consultation Under the ESA

Before taking action that has the potential to affect the natural environment, even in most emergency situations, FEMA must first consult with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS). (NMFS should be consulted in cases involving marine species and anadromous species such as salmon; FWS should be consulted in all other cases.)

Initially, FEMA determines if, due to the nature of the project, there is any potential for its action to affect protected species. If no potential to effect is determined, then no consultation with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) is required.

If the action has the potential to affect species/habitat, even in most emergency situations, FEMA must initiate consultation with the FWS and/or the NMFS to determine:

- The effects on protected species and their critical habitats.
- What avoidance or minimization is required to reduce adverse effects.

While this consultation is usually informal, it may proceed to the formal level.

Emergency Actions

An emergency action is one that must be taken to protect life or property.

If emergency action must be taken, and if time permits, the FWS should be notified that the action is being taken.

Once the emergency situation is no longer critical, the FWS should be contacted for consultation about addressing any adverse effects resulting from emergency action.

Informal Consultation Process

Consultation begins with the informal consultation process, which is used to determine whether or not formal consultation is required. This process typically includes discussions, telephone conversations, meetings, and correspondence between FWS or NMFS and FEMA.

Under the informal consultation process:

- FEMA asks FWS/NMFS whether protected species or critical habitat may be present within the proposed project area.
- FWS/NMFS must respond within 30 days with a species list.
- FEMA shares its determination of effect with FWS/NMFS.

Informal consultation will usually determine whether or not formal consultation is required.

Outcomes of Informal Consultation

The possible outcomes of an informal consultation are as follows:

- No effect, and no further consultation necessary.
- May affect but not likely to adversely affect, which requires FWS or NMFS concurrence of determination with possible avoidance or minimization measures.
- Likely to adversely affect, which requires a biological assessment initiating formal consultation.

The level of effect may be reduced by the implementation of prescribed avoidance or minimization measures.

Formal Consultation

To begin a formal consultation, FEMA must send a written request to FWS or NMFS, accompanied by a biological assessment.

The biological assessment will contain the following information:

- A description of the action being considered.
 - The geographic area that may be affected by the action.
 - Any listed species or critical habitat that the action may affect, and how the action may affect the species or critical habitat.
 - Cumulative effects on any listed species or critical habitat.
 - Any other relevant information on the action, affected species, or critical habitat.
-

Outcomes of Formal Consultation

The formal consultation process concludes with the FWS and/or NMFS issuing a biological opinion. The biological opinion has three possible findings:

- The action will not jeopardize protected species, and the action may proceed.
- The action is likely to jeopardize protected species.
- The action will jeopardize the continued existence of protected species.

The next screens present information on the two outcomes that require further revision or mitigation: "likely to jeopardize" and "jeopardize continued existence."

Likely to Jeopardize

When FWS/NMFS issues a "likely to jeopardize" biological opinion, the potential to jeopardize may be avoided or minimized to below significant levels.

Along with avoidance and minimization measures to reduce the likelihood of jeopardizing protected species, the opinion may include a statement regarding the incidental taking of a protected species.

Remember . . . To "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a protected species. An **incidental** take is a take that is the result of, but not the purpose of, an otherwise lawful activity.

Incidental Take Statement

An incidental take statement includes:

- Estimates of permissible incidental takes.
 - Reasonable and prudent measures to minimize impact.
 - Measures for complying with other laws, if necessary.
 - Terms and conditions with which FEMA or other agencies must comply.
 - Procedures for handling any actual takings.
-

Jeopardize Continued Existence

If FEMA receives a "jeopardize continued existence" biological opinion, the project cannot proceed as is. After major redesign or relocation, the consultation process may be reinitiated and the project re-evaluated.

Memorandum of Understanding

In an effort to streamline the consultation process, Federal agencies may develop programmatic procedures for ESA compliance, such as a Memorandum of Understanding (MOU) between the agency and FWS/NMFS.

An MOU could include the following:

- Activities grouped by type, area, or disaster.
 - Activities with "no effect" determinations.
 - Programmatic biological assessment.
 - Take conditions and procedures.
 - Programmatic biological opinions.
-

Disaster-Specific Procedures

Streamlined disaster-specific procedures are defined early in the recovery effort in an agreement between FEMA and the FWS/NMFS. Agreements may be informal or formal.

Subjects addressed in the agreement include:

- Areas within declared counties with no protected species concerns.
- Mutually agreed-upon types of projects and conditions not needing ESA review.
- Minimization procedures under specific conditions.
- Procedures for expedited processing.

Responsibilities Under the ESA

The following table summarizes the responsibilities of FEMA and the applicant under the Endangered Species Act.

Party	Responsibilities
FEMA	<ul style="list-style-type: none"> ▪ Ensure its activities do not jeopardize protected species. ▪ Review project area/action and determine level of effect. ▪ Conduct an informal or formal consultation, as required. ▪ Complete a biological assessment, if required. ▪ Ensure that all parties abide by the decisions and conditions resulting from consultations.
Applicant	<ul style="list-style-type: none"> ▪ Work with FEMA to comply with the Federal ESA requirements. ▪ Comply with the provisions of a biological opinion, incidental take statement, or any other agreement, if applicable. ▪ Notify FEMA of any changes to the proposed action. ▪ Comply with ESA provisions that apply to members of the general public (Section 10) even if Federal funds are not involved.

Lesson Summary

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

- Describe the key components of the ESA.
- Describe the responsibilities of FEMA and other parties under the act.

Lesson Overview

This lesson describes the Clean Air Act and the Resource Conservation and Recovery Act and explains how these laws affect FEMA's work.

Lesson Objectives

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

- Describe the key components of:
 - The Clean Air Act.
 - The Resource Conservation and Recovery Act.
 - Describe how these laws relate to debris management.
 - Describe the responsibilities of FEMA and the applicant under these acts.
-

Laws and Executive Orders: Hazards

This lesson will examine legislation concerned with air quality and disposal of wastes.

Key Points

- The Clean Air Act of 1970 set new standards for air quality, placed limits on air pollution, and increased funding for air pollution research.
 - The Resource Conservation and Recovery Act of 1976 established requirements for the generation and waste management of hazardous materials.
-

Clean Air Act

Although there have been previous laws aimed at minimizing air pollution and protecting public health, the Clean Air Act (CAA), as amended in 1970, was the first to set standards for ambient air quality.

In addition, the CAA:

- Established new limits for stationary and mobile sources of air pollution.
 - Increased funding for air pollution research.
-

CAA: Goals

Some of the goals of the CAA are to:

- Protect and enhance the quality of the Nation's air resources.
 - Provide technical and financial assistance to Tribal, State, and local governments.
 - Assist in regional air pollution prevention and control programs.
 - Make States responsible for implementing air pollution prevention and control programs.
-

Complying With the CAA

One of the keys to CAA compliance is finding ways to reduce or limit the amount of pollutants released into the environment.

This reduction can be accomplished by:

- Using safe, lower-emitting alternatives.
 - Employing low-emission practices.
 - Encouraging effective traffic management.
 - Complying with State and local requirements.
 - Requiring mitigation on federally funded projects.
-

The CAA and Disaster Operations

The CAA requires that FEMA's actions be consistent with the protection and enhancement of the Nation's air resources.

Following disasters, air quality becomes a consideration. Listed below are several examples of disaster recovery activities that could affect air quality:

- Burning of debris that generates high quantities of smoke and particulates.
 - Equipment exhaust and fugitive dust from cleanup and construction activities.
 - Demolition of properties containing potentially harmful materials which may become airborne, such as asbestos or lead-paint dust.
-

The CAA and NEPA

Even if an activity is statutorily excluded from compliance with NEPA, that activity must still comply with the CAA as defined by particular State-designated standards. Consequently, in developing and funding projects that may affect air quality, reasonable care needs to be exercised, especially in areas where air pollutants exceed permissible levels ("non-attainment areas") established by the Environmental Protection Agency.

Responsibilities Under the CAA

The following table summarizes the responsibilities of FEMA and the applicant under the Clean Air Act.

Party	Responsibilities
FEMA	<ul style="list-style-type: none">▪ Ensure that air quality standards are met for FEMA-funded projects.▪ Ensure State and local laws are followed regarding:<ul style="list-style-type: none">▪ Debris burning▪ Equipment exhaust▪ Construction dust▪ Consider air quality changes due to new traffic patterns as a result of projects.
Applicant	<ul style="list-style-type: none">▪ Follow State and local laws regarding:<ul style="list-style-type: none">▪ Debris burning▪ Equipment exhaust▪ Construction dust▪ Obtain required permits.▪ Evaluate effects of actions on air quality.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) mandates that:

- The generation of hazardous waste must be reduced or eliminated.
- Waste that is generated must be treated, stored, transported, or disposed of so as to minimize the threat to public health and the environment.

RCRA: Goals

The goals of the RCRA are to:

- Promote the recycling of waste materials.
- Require the safe disposal of waste materials.
- Provide assistance to Tribal, State, and local governments for recycling and waste disposal programs.

RCRA and Debris Removal

Typically, FEMA encounters issues with RCRA compliance in debris removal activities.

Although debris removal funded under Sections 403 and 407 is statutorily excluded from NEPA, it is still subject to other laws such as the CAA and RCRA.

To comply with the RCRA:

- All debris should be recycled to the extent practical.
- Debris may be disposed of only at permitted sites, with hazardous materials being given special consideration.
- Debris staging and reduction sites should be reviewed for compliance with other environmental laws and Executive orders.

Responsibilities Under the RCRA

The following table summarizes the responsibilities of FEMA and the applicant under the Resource Conservation and Recovery Act.

Party	Responsibilities
FEMA	<ul style="list-style-type: none">▪ Ensure that waste materials are being recycled where appropriate.▪ Ensure that hazardous materials are disposed of appropriately.▪ Encourage coordination between the applicant, State, and local agencies.
Applicant	<ul style="list-style-type: none">▪ Develop a debris management plan during normal operations.▪ Identify and permit debris staging and disposal sites (also during normal operations).▪ Activate the debris management plan following a disaster.▪ Use appropriate recycling and waste volume reduction methods.▪ Identify and appropriately dispose of hazardous materials.

Lesson Summary

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

- Describe the key components of:
 - The Clean Air Act.
 - The Resource Conservation and Recovery Act.
- Describe how these laws relate to debris management.
- Describe the responsibilities of FEMA and the applicant under these acts.

Lesson Overview

This lesson describes a law and an Executive order (EO) concerning socioeconomic issues and how they affect FEMA's work.

Lesson Objectives

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

- Describe the key components of:
 - The Farmland Protection Policy Act (FPPA).
 - EO 12898 for Environmental Justice.
 - Describe the responsibilities of FEMA and the applicant under this act and EO.
-

Laws and Executive Orders: Socioeconomics**Key Points**

- The Farmland Protection Policy Act (FPPA) requires Federal agencies to examine the potential effects before approving any activity that would convert farmland to other use.
 - Executive Order 12898 for Environmental Justice ensures that Federal activities do not have a disproportionately high and adverse affect on a minority or low-income populations.
-

Farmland Protection Policy Act

Passed by Congress in 1981, the Farmland Protection Policy Act (FPPA) discourages Federal actions that contribute to the conversion of farmland to other use.

Under the FPPA, Federal programs are required to protect:

- Prime farmland.
 - Unique farmland.
 - Farmland of statewide or local importance.
-

Types of Farmland

Prime farmland is land that has the best combination of physical and chemical characteristics for producing crops.

Unique farmland is land that is used to produce high-value crops. These might include:

- Citrus
- Tree nuts
- Olives
- Fruits

Farmland of statewide or local importance is land that has been identified by State or local agencies because of its significance.

Complying With the FPPA

The FPPA requires Federal agencies to examine the potential adverse effects before approving any activity outside zoned city limits that would convert farmland to other uses.

In consultation with the Natural Resources Conservation Service (NRCS), Federal agencies must conduct an assessment of the affected farmland, and complete a Farmland Conversion Impact Rating form.

Depending on the outcome of this assessment, the Federal agency may either:

- Conduct the activity without further evaluation, or
- Propose alternatives that will reduce impact.

Responsibilities Under the FPPA

The following table summarizes the responsibilities of FEMA and the applicant under the Farmland Protection Policy Act.

Party	Responsibilities
FEMA	<ul style="list-style-type: none"> ▪ Determine if an action will affect farmland either by evaluating its location and nature, or by consulting with the Natural Resources Conservation Service (NRCS). ▪ If it has the potential to affect prime or unique farmland, submit documentation to the NRCS for review. ▪ Identify alternatives or appropriate mitigation measures. ▪ Address adverse impacts, such as loss of farmland, in an Environmental Assessment (EA).
Applicant	<ul style="list-style-type: none"> ▪ Implement any mitigation measures that result.

Executive Order 12898 for Environmental Justice

Implemented in 1994, EO 12898 for Environmental Justice requires each Federal agency to make achieving environmental justice part of its mission.

To accomplish this, an agency must identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

Complying With the Environmental Justice EO

To comply with this Executive order and include environmental justice as part of their mission, Federal agencies should:

- Ensure that their actions do not have **disproportionately high** and **adverse** human health or environmental effects on **minority** or **low-income** populations.
 - Conduct their programs, policies, and activities such that they do not have the effect of excluding or denying equal access to benefits to minority populations.
-

Disproportionate Adverse Effects

In its disaster recovery efforts, FEMA must address its actions to avoid disproportionately high and adverse effects on minority and low-income populations.

In its activities, FEMA must determine:

- If minority or low-income populations are within the areas of effect of these actions; and
- If the effects are adverse; and
- If the adverse effects are disproportionately high on the minority or low-income portions of the population.

When these three conditions exist, FEMA must consider mitigation measures to avoid or minimize the adverse effect and take extra care to ensure adequate public participation.

Responsibilities Under EO 12898 for Environmental Justice

The following table summarizes the responsibilities of FEMA and the applicant under Executive Order 12898 for Environmental Justice.

Party	Responsibilities
FEMA	<ul style="list-style-type: none">▪ Evaluate actions for disproportionately high and adverse effects on minority or low-income populations.▪ Avoid or minimize disproportionate adverse impacts whenever possible.
Applicant	<ul style="list-style-type: none">▪ Provide data to help FEMA evaluate possible adverse impacts on minority or low-income populations.▪ Comply with any mitigation needed to avoid or minimize disproportionate adverse impact.

Lesson Summary

You have now completed the seventh lesson in the Environmental Review section of this course. You should be able to:

- Describe the key components of:
 - The Farmland Protection Policy Act (FPPA).
 - EO 12898 for Environmental Justice.
 - Describe the responsibilities of FEMA and the applicant under this law and EO.
-

Lesson Overview

This lesson describes different laws concerning coastal areas and how they affect FEMA's work.

Lesson Objectives

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

- Describe the key components of:
 - The Coastal Zone Management Act.
 - The Coastal Barrier Resources Act.
 - Describe the responsibilities of FEMA and the applicant under these acts.
-

Laws and Executive Orders: Coastal Areas

This lesson will introduce key two laws designed to protect the Nation's coastal areas.

Key Points

- Congress passed the Coastal Zone Management Act of 1972 to:
 - Provide uniformity in the management of coastal areas.
 - Ensure that Federal activities in the coastal zone are consistent with States' management plans.
 - Congress enacted the Coastal Barrier Resources Act in 1982 to:
 - Discourage further development on barrier islands on the Atlantic Coast, Great Lakes, and Gulf of Mexico.
 - Prohibit new Federal expenditures and financial assistance for development in the Coastal Barrier Resources System.
-

Coastal Zone Management Act

Passed by Congress in 1972, the Coastal Zone Management Act (CZMA) is administered by each coastal State.

The coastal zone is comprised of counties bordering on coastal waters, including:

- Beaches.
 - Transitional and intertidal areas.
 - Salt marshes.
 - Other coastal areas, such as along the Great Lakes.
-

CZMA Goals

The CZMA is intended to reduce uncontrolled coastal development. One aspect of the act is to ensure that Federal activities in the coastal zone are consistent with each State's CZMA plan.

CZMA Implementation

At the Federal level, the National Oceanic and Atmospheric Administration (NOAA) oversees State implementation of the CZMA.

FEMA consults with State agencies or commissions, which are responsible for implementing the CZMA.

Complying With the CZMA

To comply with the CZMA, Federal agencies must identify their activities that would affect the coastal zone, including development projects.

If a Federal activity would affect the coastal zone, the Federal agency must:

- Review the State and local management plans to determine whether the activity is consistent with the plans.
- Notify the State of its determination.

CZMA Consistency Determination

For any disaster activity requiring a consistency determination, FEMA will:

- Prepare a detailed description of the action, its associative facilities, and coastal zone effects;
- Prepare a brief statement on how the activity would be consistent with the State coastal zone management plan;
- Obtain data to support this consistency determination; and
- Coordinate with the State permitting/concurrence and approval process.

Responsibilities Under the CZMA

The following table summarizes the responsibilities of FEMA and the applicant under the Coastal Zone Management Act.

Party	Responsibilities
FEMA	<ul style="list-style-type: none"> ▪ Determine if a proposed action will be in a coastal zone. ▪ If so, review the State CZMA plan for project consistency. ▪ Provide written consistency determination to the State agency. ▪ Obtain State response to consistency determination and coordinate with State permitting/concurrence process.
Applicant	<ul style="list-style-type: none"> ▪ Comply with State CZMA laws and regulations. ▪ Comply with the results of the consistency determination and State permitting process. ▪ Notify FEMA of any changes to the proposed action or alternatives.

Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA) also governs actions on the coast. Enacted in 1982 and amended in 1990, the CBRA protects ecologically sensitive and geologically vulnerable barrier islands along the east coast, Gulf coast, and Great Lakes of the United States. These areas are called Coastal Barrier Resource System (CBRS) units and otherwise protected areas.

The CBRA is administered by the Department of the Interior through the Fish and Wildlife Service (FWS).

CBRA Goals

The CBRA established requirements to:

- Protect barrier islands.
 - Establish the CBRS units and other Protected Areas.
 - Limit Federal actions and programs in the identified areas.
 - Prohibit Federal expenditures and financial assistance for structures in the CBRS except for those built:
 - Before October 1983 for Coastal Barrier Resource System units.
 - Before November 1991 for otherwise protected areas.
-

Scope of CBRA

This act applies to the east coast, the Gulf of Mexico, and the Great Lakes and affects FEMA Regions I through VI.

Although west coast States have laws addressing these issues, CBRA does not currently apply to these areas.

CBRA and FEMA

Any area that is designated as being part of the Coastal Barrier Resources System is:

- Disqualified for Federal flood insurance and disaster assistance, except for certain aspects of individual and emergency assistance, such as rental assistance and debris removal.
- Prohibited from receiving any new Federal funding, including financial assistance for redevelopment, except, in some cases, as defined earlier for grandfathered structures.

For this reason, FEMA is generally not involved in providing recovery assistance in areas that are regulated under CBRA. One exception is the repair to pre-disaster conditions of "essential links" located within a CBRA unit that service populations outside the unit (e.g., a road or water supply).

Responsibilities Under the CBRA

The following table summarizes the responsibilities of FEMA and the applicant under the Coastal Barrier Resources Act.

Party	Responsibilities
FEMA	<ul style="list-style-type: none">▪ Determine if the proposed action is located within a CBRS unit or otherwise protected area.▪ Consult with the FWS as soon as possible after providing funding for emergency actions.▪ Consult with the FWS prior to denying or providing funding to non-emergency action.
Applicant	<ul style="list-style-type: none">▪ Know the physical boundaries of the CBRS in the project area.▪ Comply with FEMA/FWS findings/determinations.

Lesson Summary

You have now completed the eighth lesson in the Environmental Review section of this course. You should be able to:

- Describe the key components of:
 - The Coastal Zone Management Act.
 - The Coastal Barrier Resources Act.
- Describe the responsibilities of FEMA and the applicant under these laws.

Lesson Overview

This lesson describes the main components of the National Historic Preservation Act, another law that must be addressed as part of FEMA's programs and activities.

Lesson Objectives

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

- Trace the historical roots of the preservation movement in the United States.
 - Define the goals and purposes of the National Historic Preservation Act.
-

Evolution of Historic Preservation Efforts

Let's begin by tracing the roots of historic preservation efforts in the United States.

Key Points

- After the Civil War, private parties and local organizations became interested in preserving historic structures, particularly battlefields.
 - Government, on the whole, was not involved until 1906, when Congress passed the Antiquities Act to bring under control the excavation and destruction of Federal monuments.
 - The Historic Sites Act of 1935 authorized the National Park Service to document, acquire, and manage places important in the Nation's history.
 - Historic preservation efforts were set back when city centers were razed in the 1950s and 1960s.
 - The National Historic Preservation Act was passed in 1966.
-

The National Historic Preservation Act

The National Historic Preservation Act (NHPA) is the primary law governing historic preservation programs nationally. This Act is important to FEMA because it outlines historic preservation responsibilities for Federal agencies. Specifically, the law:

- Creates an official listing of historic places.
 - Provides for the creation of State/Tribal Historic Preservation Offices and outlines their duties.
 - Makes the Federal Government responsible for its actions with respect to historic preservation.
 - Creates the need for qualified historic preservation professionals to conduct these activities.
-

Other Historic Preservation Laws

Although NHPA is the primary law governing historic preservation programs nationally, other preservation laws may need to be addressed in certain situations.

While a discussion of these laws is beyond the scope of this course, you should keep the following in mind:

- These laws provide additional protection, especially for archaeological and Native American sites.
 - Federal preservation laws may be augmented by Tribal/State/local historic preservation laws.
 - The other laws may work in conjunction with NHPA, but are not substitutes for NHPA requirements.
-

What Is a Historic Property?

According to NHPA, a historic property is:

- A building, site, structure, object, or historic district.
- At least 50 years old (with exceptions).
- Significant within its historical context.
- Able to retain its integrity and convey its significance.

The term also includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization.

The next screens include additional information on these criteria.

Historic Property: Building

A historic building shelters human activity. Examples of historic buildings include:

- City Hall
 - School
 - Mill
 - Courthouse
 - Library
 - Train Station
-

Historic Property: Vernacular Building

Although not distinguished by unique architectural features, vernacular buildings can be classified as historic. This type of building is common for its time and place, and is associated with the everyday lives of people.

Examples of vernacular buildings include:

- Row houses
 - Tract housing
 - Barns or other farm buildings
 - Outhouses
-

Historic Property: Site

A site is a location of a significant event, occupation, or activity, where the location itself passes historic value, regardless of the value of any existing structure.

Archaeological sites and historic landscapes can be the most difficult to identify. If a project may affect a site, it is critical to consult with the State/Tribal Historic Preservation Office early in the review process.

Examples of historic sites include:

- Battlefields
 - Campsites
 - Designed landscapes
 - Ruins of a building or structure
-

Historic Property: Structure

A structure is a functional construction usually made for purposes other than sheltering human activity. Structures include:

- Aircraft
 - Dams
 - Boats and ships
 - Bridges
 - Canals
 - Highways
 - Windmills
-

Historic Property: Object

An object is primarily artistic in nature or is relatively small in scale and simply constructed. Although it may be movable, an object is associated with a specific setting or environment.

Small objects not designed for a specific location are normally not eligible. Such works include transportable sculpture, furniture, and other decorative arts that, unlike a fixed outdoor sculpture, do not possess association with a specific place.

Objects should be in a setting appropriate to their significant historic use, role, or character. Objects relocated to a museum are inappropriate for listing in the National Register.

Examples of objects include:

- Boundary markers
 - Monuments
 - Fountains
 - Sculptures
 - Mileposts
 - Statuaries
-

Historic Property: District

A historic district derives its importance from being a unified entity, although it is often composed of a wide variety of resources. A district usually consists of both contributing and non-contributing historic properties; that is, those that contribute to and those that do not contribute to the significance of the historic district.

Examples include:

- Business districts
 - Canal systems
 - College campuses
 - Estates and farms
 - Residential areas
-

Historic Properties — Summary

This table summarizes the different types of historic properties described in the National Historic Preservation Act.

Type	Description	Example
Building	<ul style="list-style-type: none"> ▪ Shelter for human activity. ▪ Includes vernacular buildings, those associated with everyday lives of people and representative of a way of life. 	<ul style="list-style-type: none"> ▪ City hall ▪ School ▪ Train station ▪ Library ▪ Courthouse ▪ Mill
Site	<ul style="list-style-type: none"> ▪ Location of a significant event. 	<ul style="list-style-type: none"> ▪ Battlefield ▪ Archaeological site ▪ Designed landscape ▪ Habitation site ▪ Natural feature having cultural significance ▪ Petroglyph ▪ Shipwreck
Structure	<ul style="list-style-type: none"> ▪ Functional construction. 	<ul style="list-style-type: none"> ▪ Aircraft ▪ Bridge ▪ Silo ▪ Canal
Object	<ul style="list-style-type: none"> ▪ Artistic in nature. ▪ Usually small in size. 	<ul style="list-style-type: none"> ▪ Boundary marker ▪ Monument ▪ Fountain ▪ Sculpture ▪ Milepost ▪ Statuary
Historic District	<ul style="list-style-type: none"> ▪ Concentration of sites, structures, buildings, or objects. ▪ Derives its importance from being a unified entity, although it is often composed of a wide variety of resources. ▪ Usually composed of both historic properties that contribute to and those that do not contribute to the significance of the historic district. 	<ul style="list-style-type: none"> ▪ Business districts ▪ Canal systems ▪ Groups of habitation sites ▪ College campuses ▪ Estates and farms ▪ Industrial complexes ▪ Irrigation systems ▪ Residential areas ▪ Rural villages ▪ Transportation networks

Historic Property: Other Criteria

In addition to being one of the types of properties listed in the previous section, a property must also have the characteristics shown below to be considered historic under NHPA:

- At least 50 years old (with exceptions).
- Significant within its historical context.
- Able to retain its integrity and convey its significance.

The following screens describe these criteria in greater detail.

Criteria for Historic Property: Age

In general, a property must be at least 50-years-old before it is considered historic. The "50-years-old" guideline is a general estimate of the time needed to develop historical perspective.

In special cases, properties less than 50-years-old may be designated as historic properties if they are of exceptional significance. For example, Cape Canaveral Air Force Station in Florida was designated a historic property only 35 years after it was established, due to its critical role in the development of the space program.

Criteria for Historic Property: Significance

In order for a property to be considered historic under NHPA, it also must meet at least one of four criteria for significance within its historic context.

Criterion A: Associated with an important event. (Example: Civil War battlefield)

Criterion B: Associated with an important person. (Example: Studio of a significant artist)

Criterion C: Notable physical design or construction, including architecture, landscape architecture, engineering, or artwork. (Example: House representing a significant style of architecture)

Criterion D: Has or may yield information important in prehistory or history. (Example: Archaeological site that may yield data relevant to a research question)

Criteria for Historic Property: Integrity

A historic property must also have integrity. Integrity is the ability of a historic property to convey its significance.

The property must possess several of the following seven qualities that define integrity:

- Location
- Workmanship
- Design
- Materials
- Setting
- Feeling
- Association

After a disaster, damaged properties may no longer retain their integrity. If a historic property (as defined by NHPA) loses its integrity, it may no longer qualify as a historic property.

Levels of Recognition

Historic properties can be designated for their significance at the local, State, Tribal, and/or Federal level.

National Register of Historic Places

NHPA established the National Register of Historic Places as the official listing of significant historic properties in the United States. Properties listed on the National Register may be significant at the local, State, Tribal, or Federal level.

Maintained by the Keeper of the National Register with the National Park Service, the list contains over 73,000 buildings, sites, structures, objects, and districts.

National Historic Landmarks

The Secretary of the Interior designates properties as National Historic Landmarks. These landmarks possess exceptional national significance and constitute only a small percentage of those properties listed on the National Register of Historic Places.

Secretary of the Interior's Standards

NHPA authorized the Secretary of the Interior to establish standards for:

- **Preservation and treatment of historic properties.** FEMA uses these as guidelines for the repair and restoration of historic properties.
- **Professional qualifications.** Federal agencies are responsible for ensuring that those individuals who conduct historic preservation activities meet certain professional qualifications standards.

For FEMA-funded activities, the FEMA Federal Preservation Officer (FPO) determines whether an individual meets these professional standards.

FEMA permits individuals who have not met these qualifications to conduct only selected historic preservation activities.

Advisory Council on Historic Preservation

The National Historic Preservation Act established the Advisory Council on Historic Preservation (ACHP) as an independent Federal agency. The ACHP:

- Serves as the major policy advisor to the Government in the field of historic preservation.
- Governs the implementation of the historic review process (Section 106 of NHPA) through 36 CFR Part 800.

FEMA consults with the ACHP periodically. The FEMA Regional Environmental Officer or Federal Preservation Officer is responsible for contacting the ACHP.

State or Tribal Historic Preservation Officer

The primary function of the State Historic Preservation Officer (SHPO) under Federal law is to coordinate historic preservation activities supported by Federal grant funds in his or her State.

The Tribal Historic Preservation Officer (THPO) is a Tribal government's equivalent of the SHPO on Tribal lands. Not all federally recognized Tribes have a THPO, and the THPO's responsibilities vary according to the interests and capabilities of the Tribe.

The office of the SHPO or THPO is FEMA's primary contact during the historic review process and must participate in various steps of the review process. It is FEMA's responsibility to identify the appropriate SHPO and/or THPO for the historic review process, based on the project circumstances. These positions will be referred to as SHPO/THPO throughout this Module.

SHPO/THPO Responsibilities (Screen 1 of 2)

The SHPO or THPO is primarily responsible for:

- Locating and recording historic properties.
 - Reviewing all Federal projects for impact on historic properties under NHPA and the regulations of the ACHP.
 - Providing technical assistance on restoration and other preservation activities to Federal agencies; Tribal, State, and local governments; and the private sector.
-

SHPO/THPO Responsibilities (Screen 2 of 2)

Additional SHPO/THPO responsibilities include:

- Nominating significant historic properties to the National Register.
 - Fostering historic preservation programs within the Tribe/State.
 - Providing matching funds for preservation projects. (SHPO only.)
 - Commenting on preservation projects under consideration for the Federal rehabilitation tax credit.
-

SHPO/THPO and FEMA

The SHPO is the representative of the State's interests in historic preservation, and the THPO is the representative of the Tribal government's interests in historic preservation. The SHPO or THPO:

- Is NOT responsible for doing the Federal agency's work.
- Consults with the agency and assists the agency, but does not direct the agency's historic review responsibilities.

FEMA typically designates one person in a Disaster Field Office (DFO) to act as the FEMA point-of-contact with the SHPO or THPO to simplify and expedite the coordination process.

Lesson Summary

You have now completed the first lesson in the Historic Preservation section of this course.

You should be able to:

- Trace the historical roots of the preservation movement in the United States.
 - Define the major components of the National Historic Preservation Act.
-

Lesson Overview

This lesson describes the main components of Sections 106 and 110 of the National Historic Preservation Act (NHPA).

Lesson Objectives

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

- Explain the Section 106 process.
 - Define FEMA's responsibilities under Section 106.
 - Identify FEMA requirements under Section 110.
 - Apply the requirements of Sections 106 and 110 to a case study.
-

National Historic Preservation Act: Sections 106 & 110

Let's begin by introducing the basic requirements of Sections 106 and 110.

Key Points

- Two sections in NHPA, Sections 106 and 110, outline Federal agency requirements for historic preservation.
 - To comply with Section 106, FEMA must enter a four-step review process to consider the effects of any FEMA-funded actions on historic properties.
 - To comply with Section 110, FEMA must fully integrate historic preservation into its agency mission and programs.
-

National Historic Preservation Act: Section 106

Section 106 of NHPA states that Federal agencies must . . .

". . . prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."

Considerations Required by Section 106

As a Federal agency, FEMA must:

- Take into account the effects of undertakings on historic properties. An undertaking is defined as any project, activity, or program funded in whole or in part with Federal money or under the direct or indirect jurisdiction of a Federal agency.
 - Afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on FEMA actions prior to the approval of the expenditure of any Federal funds.
-

Section 106 Regulations

Regulations issued by the ACHP guide Section 106 review and specify actions Federal agencies must take to meet their legal obligations.

The Section 106 regulations are published in the Code of Federal Regulations (36 CFR Part 800).

The Section 106 process encourages, but does not mandate, preservation. This process ensures that preservation values are factored into Federal agency planning and decisions.

Section 106 Undertakings

The following are examples of projects, programs, or activities that are considered Section 106 undertakings, with the potential to affect historic properties:

- Construction of new facilities
 - Rehabilitation and repair of existing facilities
 - Demolition of residences
 - Licenses and permits
 - Loans and loan guarantees
 - Grants
 - Federal property transfers
-

Section 106 Review Triggers

FEMA funds various programs that may trigger Section 106 review. These disaster assistance programs encompass:

Response & Recovery

- Public Assistance Program. Most projects funded under the PA program are triggers.
- Individuals and Households Program. Although Section 106 does not apply to most assistance provided to individuals and households, it does apply to ground-disturbing activities associated with temporary or permanent housing.

Mitigation Programs

- Hazard Mitigation Grant Program
 - Flood Mitigation Assistance Program
 - Pre-Disaster Mitigation Programs
 - Supplemental Assistance
-

Standard Section 106 Process

36 CFR Part 800 establishes a standard review process. The standard Section 106 review encompasses:

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.

These review steps will be discussed in depth in the following lessons.

Programmatic Agreements

Normally, Section 106 review is carried out on a project-by-project basis. As an alternative to the standard Section 106 process, agencies may execute reviews on a programmatic basis, eliminating the need for case-by-case review.

The Programmatic Agreement is the primary tool used by FEMA to:

- Integrate Section 106 responsibilities into its mission and programs.
 - Allow for programmatic reviews.
 - Expedite the standard review process and completely substitute for Section 106 review in the States where it is executed.
-

The Agreement

The Programmatic Agreement may be executed among FEMA, the ACHP, the State, the Tribe, and the SHPO/THPO. This agreement:

- Establishes a coordination and scoping process at the beginning of the disaster response.
- Excludes routine activities from SHPO/THPO review.
- Shortens timeframes for review by the SHPO/THPO.
- Should be executed prior to a disaster, but disaster events may dictate otherwise.
- May address State/Tribe-specific needs and resources.

Regardless of whether the review is conducted using the standard process or under a Programmatic Agreement, FEMA may use expedited procedures to accelerate historic review when emergency situations arise.

National Historic Preservation Act: Section 110

Section 110 is another key provision of the National Historic Preservation Act. Section 110 sets out broad historic preservation responsibilities for Federal agencies and is intended to ensure that historic preservation is fully integrated into the ongoing programs of all Federal agencies.

Section 110 Requirements

Section 110 requires that FEMA:

- Designate a Federal Preservation Officer.
 - Establish a historic preservation program.
 - Locate, inventory, and nominate all historic properties under its control, and document properties to be altered or demolished.
 - Minimize, to the extent possible, any harm to National Historic Landmarks.
 - Deny funding to applicants if they intentionally avoid compliance with Section 106.
-

Program Goal

FEMA's Historic Preservation and Cultural Resources Program considers how disasters affect historic properties and cultural resources. The goal of FEMA's program is:

"To address the needs of communities in preparing for, mitigating, responding to, and recovering from the devastating effects disasters may have on historic properties and cultural resources while meeting FEMA's primary mission of reducing the loss of life and property to all types of hazards."

Program Activities

To achieve this goal, the program works with other Federal agencies, Tribal entities, and regional and national organizations to:

- Integrate historic preservation considerations into FEMA's programs.
 - Provide streamlined review for FEMA's programs and activities.
 - Provide timely and expert assistance to owners of historic properties to protect against the effects of disasters.
 - Help communities protect their historic and cultural resources.
-

Lesson Summary

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

- Explain the Section 106 process.
 - Define FEMA's responsibilities under Section 106.
 - Identify FEMA requirements under Section 110.
 - Apply the requirements of Sections 106 and 110 to a case study.
-

Lesson Overview

This lesson describes Step 1 of the historic preservation review process, as outlined in Section 106 of the National Historic Preservation Act (NHPA).

Lesson Objectives

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

- Determine if an undertaking exists.
 - Identify the appropriate consulting parties.
 - Establish the review process.
 - Determine if an emergency situation exists.
 - Apply the historic preservation review process to a case study.
-

Step 1: Initiate the Process

Let's begin with an overview of Step 1 of the process.

Key Points

- Step 1 of the Section 106 process includes:
 - Determining if an undertaking exists.
 - Identifying the appropriate consulting parties.
 - Establishing the review process.
 - Determining if an emergency situation exists.
 - Step 1 ends with a determination that either:
 - There is no undertaking, or there is no potential to cause effects on historic properties; or
 - The undertaking is the type that might affect historic properties.
-

Determine If an Undertaking Exists

To begin the Section 106 process, the reviewer determines if the project, program, or activity is an undertaking.

If the project meets the definition of an undertaking, then the reviewer decides whether the project is the type of activity with the potential to cause effects to historic properties.

Determine the Review Process

After FEMA determines that an undertaking has the potential to affect historic properties, then a historic preservation specialist becomes involved. The historic preservation specialist:

- Assists in completing the historic preservation review process.
- Determines which review process will be used.

The review process will follow the standard review process established in 36 CFR Part 800, unless the Tribe/State and FEMA have executed a Programmatic Agreement.

Programmatic Agreement

A Programmatic Agreement completely replaces the standard Section 106 process. It excludes review of routine activities by the SHPO/THPO and shortens timeframes for review.

A Programmatic Agreement is executed between:

- FEMA.
- The SHPO.
- The THPO, as appropriate.
- The State Emergency Management Agency.
- The Tribal government, if grantee.
- The Advisory Council on Historic Preservation (ACHP), if participating.

To find out if a Programmatic Agreement has been executed, ask the Regional Environmental Officer.

Emergency Undertakings

The historic preservation review process, under both Section 106 and a Programmatic Agreement, includes provisions for emergency undertakings.

Immediate rescue and salvage operations to protect life and property are the only emergency undertakings completely excluded from Section 106 review.

Examples of Emergency Actions

Other emergency actions, as defined by Section 102(1) of the Stafford Act, require an expedited review by the SHPO/THPO and the ACHP.

These emergency actions may occur before or after a disaster declaration.

Examples of emergency actions include:

- Sandbagging.
 - Temporary shoring of damaged buildings.
 - Installation of temporary housing.
-

Emergency Undertakings: Review Periods

The review periods for the SHPO/THPO and the ACHP, if participating, to comment on emergency actions are as follows:

- Under the standard Section 106 process, the review period for emergency actions is 7 days.
 - Under a Programmatic Agreement, the review period for emergency actions is usually 3 days.
-

Emergency Undertakings: Expedited Review Process

To assist in expediting the review of an emergency undertaking, FEMA should:

- Call the SHPO/THPO and the ACHP, if participating, to discuss the nature of the emergency and the need for an expedited review. A call will, in most cases, result in much more timely comments than written correspondence.
 - Collect the required documentation about the project. If possible, obtain digital photographs and electronic documentation that can easily be forwarded by e-mail.
 - Follow up with the SHPO/THPO or ACHP, if participating, when comments are not received within the designated review period.
-

Initiate Consultation

Early in the process, FEMA should:

- Identify the appropriate SHPO/THPO.
- Establish contact with a SHPO/THPO staff member.
- Identify those who may have interest in the undertaking. The SHPO/THPO may be particularly helpful in this regard.

The next screen describes the process for involving the public.

Involving the Public

FEMA should also begin to develop a plan to involve the public in the review process. In developing this plan, FEMA may consult with:

- The SHPO/THPO.
- Tribal/State emergency management agencies.
- Federally-recognized Tribal governments, if appropriate.
- Applicants.
- Local governments.
- Local historical societies or other similar organizations.
- The ACHP, if appropriate.

The next screen explains the process for involving the ACHP.

ACHP's Role

FEMA should involve the ACHP early in the process if the project may:

- Have significant public controversy;
- Affect a National Historic Landmark; or
- Be of concern to Native American Tribes.

In this case, FEMA should:

- Invite the ACHP to be a consulting party.
 - Explain why the project may warrant their participation.
 - Provide the ACHP with appropriate project documentation as specified in 36 CFR 800.11.
-

Moving to Step 2

Before moving to Step 2, the following steps should have been completed:

- FEMA determined that an undertaking exists.
 - FEMA determined that the undertaking is the type of activity that has the potential to cause effects to historic properties.
 - FEMA established the appropriate review process.
 - FEMA determined whether an emergency situation exists.
 - FEMA initiated consultation with the appropriate parties including the SHPO/THPO, the public, and (if necessary) the ACHP.
-

Lesson Summary

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

- Determine if an undertaking exists.
 - Identify the appropriate consulting parties.
 - Establish the review process.
 - Determine if an emergency situation exists.
 - Apply the historic preservation review process to a case study.
-

Lesson Overview

This lesson describes Step 2 of the historic preservation review process as outlined by Section 106 of NHPA.

Lesson Objectives

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

- Define the area of potential effects (APE).
 - Describe the requirements for identifying and evaluating historic properties.
 - Apply the historic review process to a case study.
-

Step 2: Identify and Evaluate Historic Properties

First, let's get acquainted with the process involved in Step 2.

Key Points

- Step 2 of the Section 106 process requires FEMA to identify historic properties in a project area and evaluate whether they are on or eligible for the National Register of Historic Places.
 - FEMA makes a finding that either no historic properties will be affected or that historic properties exist and will be affected.
 - Step 2 concludes after FEMA allows the SHPO/THPO to concur or non-concur with its finding.
-

Initiating the Process

The previous lesson discussed the first step of the Section 106 review process: initiating the process.

Step 1 involved:

- Determining if an undertaking exists and has the potential to cause effects.
- Establishing the appropriate review process and determining if an emergency situation exists.
- Initiating consultation.

If an undertaking has the potential to affect historic properties, the review process continues with Step 2: Identifying and Evaluating Historic Properties.

Area of Potential Effects

FEMA must consult with the SHPO/THPO to determine and document the area of potential effects (APE).

The APE is the geographic area within which the character or use of historic properties may be changed as a result of the project.

- Example: The APE for the repair of the exterior of a historic building may be the building itself.
 - Example: The APE for the exterior repair of a historic building in a historic district may be the entire historic district.
-

Determining the Scope of Effects

At the beginning stages of the identification process, FEMA consults with the SHPO/THPO to:

- Determine and document the APE.
 - Review existing information about historic properties in the APE.
 - Consult with parties likely to have knowledge of or concerns about historic properties in the APE.
 - Gather information from Native American Tribes and organizations about properties with religious or cultural significance that may be located in the APE.
-

Identifying Historic Properties

After the APE is established, FEMA must make a good-faith effort to identify properties that are listed on or potentially eligible for the National Register of Historic Places.

FEMA may use the following methods when identifying historic properties:

- Background research including local, State, and/or Tribal historic designations.
 - Consultation with the SHPO/THPO, any consulting parties, and the public.
 - Oral history interviews.
 - Sample field investigations.
 - Field surveys.
-

Historic Property Clues

During field surveys, the FEMA team looks for visual clues that a property is historic, including:

- Plaques or markers that describe the historic status of a property or the property's significance.
 - Dates on buildings.
 - Unusual architectural styles or design features.
 - Whether the project is on previously undisturbed land, which may contain an archeological site.
 - Surrounding environment.
-

Evaluating Historic Significance

FEMA uses the National Park Service's published criteria to evaluate whether a historic property is eligible for the National Register. As you learned in Lesson 1, the property must meet at least one of four criteria:

Criterion A: Associated with an important event.

Criterion B: Associated with an important person.

Criterion C: Notable physical design or construction.

Criterion D: Has or may yield information important in prehistory or history.

FEMA often assumes that properties that have received local, State, or Tribal historic designation are also potentially eligible for the National Register.

Ultimately FEMA, not the SHPO/THPO, determines if a historic property in the APE is eligible for the National Register.

Who Conducts Identification and Evaluation?

Only qualified individuals can identify and evaluate historic properties as part of the Section 106 review.

Qualifications are based on the Secretary of the Interior's Professional Qualifications Standards for Historic Preservation and/or Archeology and other related disciplines.

For FEMA staff, the FEMA Federal Preservation Officer determines whether an individual meets these qualifications.

Activities Not Requiring Professional Qualified Individuals

Individuals who do not meet these qualifications can conduct some FEMA historic preservation activities.

Examples of these activities include:

- Collecting information from the SHPO/THPO.
- Initiating consultation.
- Coordinating the review activities.

Remember, only qualified individuals can identify and evaluate historic properties.

Sources of Expertise

When identifying and evaluating historic properties, FEMA may utilize the following sources of qualified historic preservation expertise:

- FEMA.
 - Contractors.
 - Federal agencies.
 - State agencies.
 - Native American Tribes.
-

If No Historic Properties Are Affected

FEMA can make a finding of "no historic properties affected" if FEMA determines that there are no historic properties in the APE, or if there **are** historic properties present but the undertaking does not have the potential to affect or alter their qualifying characteristics.

When FEMA makes the determination that no historic properties are affected, the Agency notifies the SHPO/THPO and other consulting parties of this decision and provides them with the accompanying project documentation.

- If the SHPO/THPO concurs with this decision, then FEMA documents the decision in the project file. The historic preservation review process is then complete.
- If the SHPO/THPO, within 30 days of receiving FEMA project documentation, objects to FEMA's determination, then FEMA must try to resolve the dispute. If this is unsuccessful, then FEMA shall refer the determination of eligibility to the Keeper of the National Register.

The next screen reviews the steps taken if historic properties are identified.

If Historic Properties Will Be Affected

If FEMA makes the determination that historic properties will be affected, then:

- FEMA notifies the SHPO/THPO and other consulting parties and provides project documentation to support this decision.
 - The Advisory Council on Historic Preservation (ACHP) should be notified and invited to participate as a consulting party if any of the identified properties are National Historic Landmarks.
 - The review continues with Step 3: Assessing Adverse Effects.
-

Moving to Step 3

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

- Used qualified professionals.
- Determined the APE.
- Identified historic properties in the APE that are listed on or are potentially eligible for the National Register.
- Consulted with the SHPO/THPO and received their concurrence.
- Notified consulting parties of findings.

Once these steps have been completed, Step 3 of the review can begin.

Lesson Summary

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

- Define the area of potential effects (APE).
 - Describe the requirements for identifying and evaluating historic properties.
 - Apply the historic review process to a case study.
-

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.
-

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.
-

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.

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.
-

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.
-

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.
-

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.
-

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.

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.

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.

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.
-

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.
-

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.
-

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.
-

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.

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.
-

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.
-

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.
-

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.

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.

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.
-

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.

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.
-

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.

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.

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.

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.

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.

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.
-

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.
-

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.
-

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.
-

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).
-

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.
-

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.

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.

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.
-

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.
-