

Environmental Overview
Chapter 9 MAP Guide:
Proposed & Current

EASTERN LENDERS ASSOCIATION
ANNUAL CONFERENCE

MARCH 11, 2020

HUD's Take On Key Chapter 9 Proposed Updates



- HEROS
- Lead Based Paint
- Radon
- Asbestos

Proposed Radon Updates

- Zone 3 Testing Exemption Removed
- 25% Testing Deviation from AARST Removed
- Radon Mitigation system in place
 - If an existing radon mitigation system is in place, it must be inspected by a radon professional.
 - Radon O&M not required until mitigation system has been installed
- For New construction/Sub Rehab with Radon Mitigation
 - Radon Mitigation System must be certified by Radon Professional, not an AIA

Proposed Asbestos Updates

- Asbestos Sampling Cut-off date **Removed!**
 - This will lead to more costs for refinancing projects with a lot more baseline surveys and O&M plans.
 - Asbestos levels of inspection include:
 1. Baseline Asbestos Survey
 2. Pre-Construction Survey (required for projects with rehab, e.g. 221d4 SR or heavy 223f)
 3. Project Design Survey (used in development of asbestos abatement specifications)
- Added Language about response actions for identified and suspected asbestos at a facility similar to LEAN's approach (*e.g. Removal, Limited Removal, Encapsulation, Enclosure and O&M*)

HUD's Take On Key Chapter 9 Proposed Updates



- Levels of Review
- Flood Insurance/
- Floodplains
- Contamination

Proposed
Environmental
Levels of
Review:
Categories per
24 CFR Part 50

- **CENST** – Categorically Excluded Not Subject to Laws and Authorities*
- **CEST** - Categorically Excluded Subject to Laws and Authorities*
- **EA** – Environmental Assessment
- **EIS** - Environmental Impact Statement

**Subject to laws and authorities refer to those found at 24 CFR 50.4. See also Sections 9.4-9.6 of MAP Guide*

Variables to determine level of review:

- Which HUD Program is it insured under?
- What are the proposed activities?
- Are the projects over 2500 units?



Thresholds of physical activities

CENST:

- “**Maintenance**” - an activity that slows or halts deterioration of a building and does not materially add value or adapt it to new uses – **CPD Notice 16-02:**

<https://www.hudexchange.info/resource/3197/guidance-categorizing-activity-as-maintenance-environmental-regulations-24-cfr-parts-50-and-58/>

**EXAMPLES OF MAINTENANCE ACTIVITIES vs. REHABILITATION ACTIVITIES
FOR ENVIRONMENTAL REVIEW PURPOSES**

| Feature or System | Maintenance Activities ⁴ | Rehabilitation Activities ⁵ |
|------------------------------------|--|---|
| Site | <ul style="list-style-type: none"> • lawn care (litter pickup, mowing, raking), trimming trees and shrubs • snow/ice removal • neighborhood cleanup • application of pavement sealants, parking lot restriping, directional signage or marking for handicapped accessibility • repair of cracked or broken sidewalks | <ul style="list-style-type: none"> • new landscaping throughout an area • construction of new walkways, driveways or parking areas, or replacement thereof |
| Building Exterior | <ul style="list-style-type: none"> • cleaning and fixing gutters and downspouts • repainting previously painted surfaces (including limited wet scraping and low-pressure washing) • replacing deteriorated section of siding • removal of graffiti | <ul style="list-style-type: none"> • cleaning masonry or stripping painted surfaces by sandblasting, acid wash, or high pressure washing • applying new exterior siding |
| Roof | <ul style="list-style-type: none"> • fixing leaks • application of waterproof coating to a flat roof • replacement of deteriorated flashing • in-kind replacement of loose or missing shingles or tiles | <ul style="list-style-type: none"> • complete replacement of roof with new shingles, tiles, roll roofing, membrane, or new metal roof • installation of solar panels |
| Windows and Doors | <ul style="list-style-type: none"> • washing windows • caulking, weather stripping, re-glazing windows and doors • fixing broken windowpane(s), storm window(s) or damaged entry door • replacing broken door lock • replacing a vandalized entry door to restore security of a building or unit • replacing a single severely damaged window to match • annual switch out of storm and screen panels | <ul style="list-style-type: none"> • replacement of windows • replacement of exterior doors • adding storm windows or storm doors |
| Interior Walls and Ceilings | <ul style="list-style-type: none"> • patching or mending cracked plaster • patching or fixing holes or cracks in drywall • replacing stained ceiling tiles • painting or wallpapering | <ul style="list-style-type: none"> • installation of new drywall or paneling • installation of new acoustical ceiling • installation of dropped ceilings |
| Flooring | <ul style="list-style-type: none"> • cleaning floors • stripping wooden floors and resealing • installation or replacement of carpeting or vinyl flooring* | <ul style="list-style-type: none"> • installation of new wood floor |

* These maintenance items may require purchase of flood insurance if they occur in a Special Flood Hazard Area (SFHA), and costs exceed the standard deductible for the specific type of structure or unit under the National Flood Insurance Program (NFIP).

| Feature or System | Maintenance Activities ⁴ | Rehabilitation Activities ⁵ |
|----------------------------|---|---|
| Circulation | <ul style="list-style-type: none"> • in-kind replacement of broken stair treads or balusters • inspection and servicing of elevators | <ul style="list-style-type: none"> • rebuilding stair or constructing new stair • installation of new access ramp • elevator replacement |
| Kitchen | <ul style="list-style-type: none"> • replacement of stoves, refrigerators, and microwaves* • replacing cabinet hardware* | <ul style="list-style-type: none"> • complete or substantial kitchen remodel |
| Bathroom/Laundry | <ul style="list-style-type: none"> • unclogging sink or toilet • replacing deteriorated toilet in an occupied housing unit* • replacing broken medicine cabinet* • replacing washing machines and dryers* • installation of grab bars | <ul style="list-style-type: none"> • complete or substantial bathroom remodel |
| HVAC | <ul style="list-style-type: none"> • servicing and maintenance of mechanical systems • changing air filters • cleaning air ducts • installing or replacing a window air conditioner • replacing a malfunctioning part of a HVAC system like a thermostat * | <ul style="list-style-type: none"> • installation of new furnace or heat distribution system • installation of central air conditioning |
| Electrical/Lighting | <ul style="list-style-type: none"> • changing light bulbs • replacing malfunctioning light fixture, electrical switch or outlet* | <ul style="list-style-type: none"> • major rewiring of building • installation of new electrical service • replacing or moving electrical panels |
| Plumbing | <ul style="list-style-type: none"> • fixing plumbing leaks* • repairing damage from frozen pipes* • repairing water or sewer connection within existing utility trench alignment • replacing malfunctioning water heater* | <ul style="list-style-type: none"> • installation of new plumbing system • new water or sewer connection |
| Security | <ul style="list-style-type: none"> • repair of security alarm systems • boarding up a vacant building with protective plywood • installation of temporary security fencing • installation of security devices needed for an individual health facility patient | <ul style="list-style-type: none"> • installation of permanent security bollards • installation of new security alarm system |
| Life Safety | <ul style="list-style-type: none"> • servicing smoke, fire and CO detectors • installation of smoke, fire and CO detectors | <ul style="list-style-type: none"> • making substantial physical changes to a building to comply with fire and life safety codes • installing fire suppression system |
| Pest Infestation | <ul style="list-style-type: none"> • pest inspection/treatment | |

⁴ Categorically Excluded from NEPA and not subject to the related authorities listed in 24 CFR 50.4 and 58.5, unless Extraordinary Circumstances apply pursuant to 24 CFR 50.19(a) or 58.35(c).

⁵ Generally Categorically Excluded from NEPA and generally require review under related authorities listed in 24 CFR 50.4 and 58.5, but an RE or HUD reviewer may make a determination that an Environmental Assessment or Environmental Impact Statement is required due to individual project circumstances.

Examples of Maintenance vs. Rehab

Examples of Maintenance vs. Rehab

Issue:

Leaky Window



Maintenance?

Replace Windows



No!

Examples of Maintenance vs. Rehab

Issue:

Peeling Paint



Maintenance?

Sandblast to
remove paint

No!



Examples of Maintenance vs. Rehab

Issue:

Non Functional Kitchen



Maintenance?

Kitchen Remodel



No!

Examples of Maintenance vs. Rehab

Issue:

Tree falls on a Home



Maintenance?

Remove tree and patch the roof



Yes!

Thresholds of physical activities

CEST:

- **“Substantial Rehabilitation”** –if unit density will not change more than 20%, use will not change from residential to non-residential and the estimated cost of rehab is less than 75% of total estimated replacement cost after rehab.
(24 CFR 50.20(a)(2)(ii))

Program and Activities

HUD Program: 223(a)(7)

- **CENST:**

- Compliance with Flood Insurance Requirements in 24 CFR 50.4 (b)(1)
- Compliance with Radon Requirements Encouraged
- Routine Maintenance...



Program and Activities

HUD Program: 223(f)

- **CENST:** existing insured project and limited to “maintenance repairs”
- **CEST:** newly insured project and/or repairs exceed “maintenance” threshold**

***if any new construction of accessory buildings or ancillary improvements triggering ground disturbance. HEROS review required, as per new construction.*

***substantial rehabilitation analysis for heavy 223(f)*

Program and Activities

HUD Program: 221(d)(4), 220, 231, 241(a)

- **If New Construction – EA is required**
- **If Substantial rehabilitation-** what is the threshold :
 - **CEST** threshold or below – CEST environmental review but with additional requirements in sections 9.3.A and 9.6.S of MAP Guide
 - Exceeds CEST threshold - **EA is required**

Important Tips

- To be considered for a lower threshold of environmental review, you must specifically document thresholds in project summary in HEROS
- Default review for substantial rehabilitation is EA
- Check Table on CPD Notice 16-02!

Flood Insurance/Flood Plains



Proposed MAP update to require flood insurance for projects where a preliminary flood map or Advisory Base Flood Elevation (ABFE) indicates it will be in a Special Flood Hazard Area.



Additionally proposed MAP update to allow Housing Approval Officials the option to require flood insurance for buildings located:

Moderate Flood Hazard Area (FEMA Zone B or shaded X),

On a parcel that includes a SFHA

In a coastal area subject to storm surge, and

Where topo or past flooding create a high risk for flood events

Flood Plains

- **Proposed** MAP update requires new construction in 100-year floodplain to elevate 2 feet above base flood elevation – instead of 1 foot for both new construction and substantial rehab
- **Currently**, MAP Guide discourages purchase or refi if the lowest floor or ingress/egress are more than 12 inches below the 100-yr floodplain line – eliminating the 12-inch qualifier.

Flood Plains

Incidental Floodplain Exception

- 24 CFR 55.1 prohibits any HUD action other than a functionally dependent use in a floodway unless an exception in 24 CFR 55.12(c) applies.
- 24 CFR 55.12(c)(7) permits projects to proceed without complying with the requirements in Part 55 (8-step process) if certain requirements are met.

Flood Insurance/Flood Plains/Wetlands

Example Scenario 1: Building is not in a floodplain, but there is a floodway on the site:



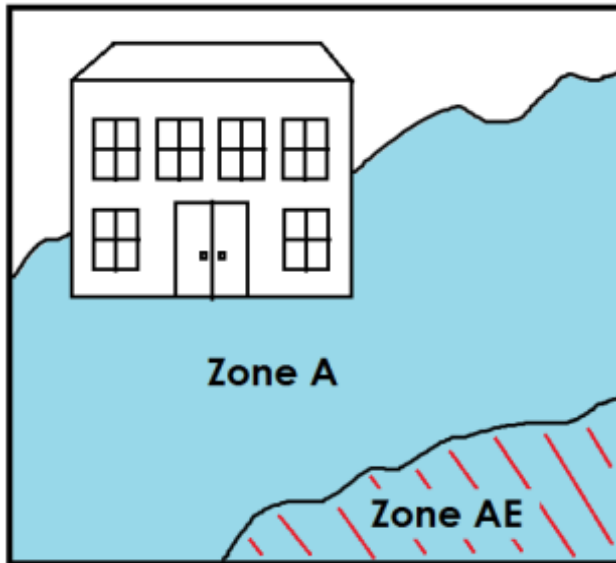
55.12(c)(7) may permit this project if all conditions are met:

1. The floodplain is incidental, meaning that it takes up a small portion of the site, and there is no existing construction or improvements in the floodplain,
2. There is no new construction or landscaping proposed in the floodplain,
3. Appropriate provisions are made for site drainage, and
4. A permanent covenant or comparable restriction is put on the site to ensure the continued preservation of the floodplain.

Project **may be able** to proceed.

Flood Insurance/Flood Plains/Wetlands

Example Scenario 2: Building is in the 100-year floodplain, and there is a floodway on the site:

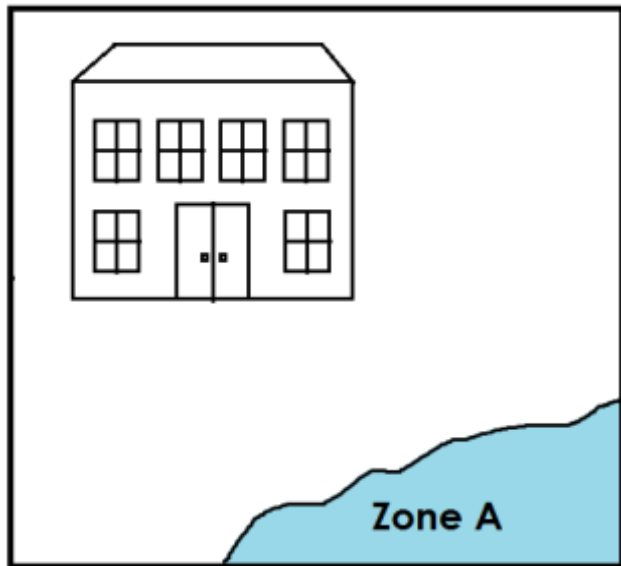


This project may not proceed using HUD assistance. The incidental floodplain exception does not apply because there is existing construction in the floodplain.

Project **must** be rejected.

Flood Insurance/Flood Plains/Wetlands

Example Scenario 3: Building is not in a floodplain, but there is a 100-year floodplain on the site:



Option 1: This project may proceed without completing the 5-Step or 8-Step Process if it meets all conditions in the incidental floodplain exception (see Scenario 1 for details).

Option 2: This project may proceed after completing either the 5-Step or 8-Step Process, depending on whether the rehabilitation meets the definition of substantial improvement.

Project may proceed.

Contamination:

Question:

Where a Phase II ESA has identified contamination to a property that is above the LSTF residential/unrestricted criteria, what are the HUD Map Guide requirements to meet the environmental responsibilities?

Remediation Plans

- Remediation Plans are required when a Phase II ESA has identified contamination on the property, or may potentially migrate to the property, that is above the Local/State/Tribal/Federal) LSTF authority's residential/ unrestricted criteria.
- The HUD MAP Guide requires the following:
 - Site Characterization
 - Plan for complete or incomplete (Risk-Based Corrective Action or other accepted cleanup program) remediation of the contamination.
 - Submittal of LSTF authority-approved Remediation Plan to HUD and receipt of a No Further Action (NFA) letter from the LSTF authority.

Remediation Plans – Proposed Revision

- If contamination is identified above the residential/unrestricted criteria and/or offsite contamination will migrate to the site, the Phase II ESA must be submitted to the LSTF authority to determine if a remedial response may be necessary.

Site Characterization

- Must determine the **total** nature and distribution of the contamination, exposure pathways, and potential receptors
- Must evaluate vapor (gas), liquid, solid, dissolved, or non-aqueous phase liquid (NAPL)
- Must be based on LSTF authority requirements or the appropriate combination of ASTM Practices and Guides

Plan for Complete Removal of Contamination

The proposed remedial activities must bring the identified contamination to LSTF authority's residential/unrestricted criteria levels with no ongoing active or passive remediation, and no need for engineering controls institutional controls, or monitoring wells.

Plan for Incomplete Removal of Contamination

- If remediation to LSTF authority's residential/ unrestricted criteria levels is infeasible, HUD may accept a Risk-Based Corrective Action (RBCA) or other accepted remediation plan approved by the LSTF authority.
- The Plan must be supported by Engineering and Institutional Controls (EC/IC). HUD may require ICs beyond LSTF authority requirements in order to support the ECs and ensure protection of the residents.
- Must include an LSTF-approved Operation & Maintenance (O&M) plan is to be implemented to manage any remaining onsite contamination.

Submittals to HUD

- HUD *may* require the project to implement the Remediation Plan, including clearance testing and obtaining No Further Action (NFA) letters from the LSTF prior to issuing the Firm Commitment.
- If the receipt of an NFA letter is not practical prior to the Firm Commitment, HUD *may* allow an LSTF-approved Remediation Plan if the extent and cost of removing the contamination can be definitively determined.

Questions?



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THANK-YOU TO OUR PANELISTS!

