

# ENVIRONMENTAL CHANGES TO THE 2020 MAP GUIDE



# Introducing

- **Susan Monaco** – Managing Director/FHA Chief Underwriter, Dwight Capital
- **Roy Williams** - Managing Director/FHA Chief Underwriter, Wells Fargo Multifamily Capital
- **Sara Jensen** – Housing Program Environmental Clearance Officer
- **Ramona McConney** - Regional Environmental Officer (REO), HUD Region IV
- **Kathleen McNulty** - Environmental Protection Specialist/Policy Analyst, HUD
- **Nancy Boone** - Federal Preservation Officer, HUD
- **Hannah Pearl** - NEPA Compliance Manager, Dominion Due Diligence Group
- **Angelique Crews** - Principal, Technical Director, Partner Engineering & Science, Inc.

# Training and Webinars



## 2020 FHA Environmental Webinars

<https://www.hudexchange.info/programs/environmental-review/housing/#training>

- Floodplain Management
- Noise
- Section 106
- HEROS

## 2021 MAP Webinars

<https://www.hudexchange.info/news/map-guide-briefing-webinar-series/>

- Chapter 9 Updates
- Radon
- Section 106 Delegation for Lenders

# Choice Limiting Actions (9.2.1.C)



## **Change:**

- Moves the federal nexus for Choice Limiting Actions from 'initial contact' to the application date (or pre-application, if lenders use 2-step process)

## **Explanation:**

- Defines what is and is not a choice limiting action; has new language defining end of federal nexus
- States no construction activities can occur on site after concept meeting

# 223(f) and Choice Limiting Actions (9.2.1.C.2)



## **Change:**

- New language clarifies that existing multifamily residential properties may continue normal operations during the FHA application process

## **Explanation:**

- Leasing, work related to unit turnover, regularly scheduled or emergency repairs allowed.
- FHA application: Life Safety Critical Repairs; other repairs under maintenance threshold may proceed. No other repairs until HEROS review complete.
- 223(f)s always been included in Choice Limiting Action restrictions

## Section 9.2.1.C.6



### Change:

- MAP Guide still prohibits modification of the site after a concept meeting

### Explanation:

- Cannot enter into new commitment to modify the site after concept meeting (lender or developer)
- Certain scenarios allowed. **Caution**—potential risk to application, particularly with respect to Historic Preservation.

# Example 1



## **Example 1:**

- Choice Neighborhood Project. PHA to demolish several blocks of public housing, including at the site planned for FHA project. Environmental Review for PHA action complete Under Part 58.

## **Explanation:**

- 2016 MAP Guide required a MAP waiver if demolition took place after initial contact with HUD.
- 2020 updates eliminate barriers to PHA's approved action.
- Highlight and discuss at concept. Include HUD's AUGF for Part 58.

## Example 2



### **Example 2:**

- Planned Urban Development. Horizontal improvements are required by a legal agreement entered into prior to Concept Meeting and would include the FHA site.

### **Explanation:**

- Best option is to delay the improvements on the FHA parcel (and aggregated areas) until HUD completes HEROS review.
- If not possible as per legal agreement, this would not be a choice-limiting action but would be done at applicants' risk.





## Site Contamination Overview

24 CFR 50.3(i) & 50.4(i)

2020 MAP Guide, Section 9.4

Kathy McNulty, Subject Matter Expert, HUD Headquarters

Ramona McConney, Regional Environmental Officer, HUD Region IV

HUD Regional and Field Environmental Officers contact link:

<https://www.hudexchange.info/programs/environmental-review/hud-environmental-staff-contacts/#region-i-regional-and-field-environmental-officers>

# HUD Standard

...all property proposed for use in HUD programs be free  
of hazardous substances ...  
that could affect the health and safety of occupants.  
(24 CFR 50.3(i)(1))

HUD's site contamination standards apply to ALL HUD  
assisted properties, proposed project sites and existing  
HUD properties.



# Due Diligence

Current techniques employed by qualified professionals to undertake investigations determined necessary. §50.3(i)(4)

Includes CERCLA, RCRA, petroleum products, vapor intrusion

- ASTM Standards
  - E1527 Environmental Site Assessments: Phase I
  - E1903-19 Environmental Site Assessments: Phase II
  - E2600 -15 Vapor Encroachment Screening
- Lead-based paint: MAP 9.6.1.1, 24 CFR Part 35
- Asbestos: MAP 9.6.1.2, 40 CFR Part 61, Subpart M
- Radon: MAP 9.6.1.3, ANSI-AARST

# ASTM E1527

## Phase I Environmental Site Assessment (ESA)

- identifies Recognized Environmental Conditions (RECs) and potential contamination pathways
- contact HUD Office of Multifamily to confirm next steps



Past remediation:

- document No Further Action (NFA) or similar approval &
- clean up meets current standards for residential use
- MAP Guide

# Ongoing remediation

Ongoing remediation (MAP 9.4.1.A.14):

- Phase I describes remediation & monitoring and
- conduct Phase II unless

Exception pursuant to 9.4.2.M:

- Phase I states remediation will resolve REC & Phase II requirements are met.
- Must submit NFA or similar from oversight agency

Superfund sites – coordinate with EPA



# Off site contamination

Off site contamination (MAP Guide) 9.4.2.J

Phase II

- no known or perceived off-site contamination in the vicinity of the proposed site, it is unlikely that any known or perceived off-site contamination will migrate on to the site, or
- likely that known or perceived off-site contamination will migrate on to the site
  - document from oversight agency RBCA ongoing and meets 9.4.3 and 9.4.5

# ASTM E1903 Phase II ESA

- Consult Office of Multifamily
- Involves sampling and testing
- Circumstances that support focused sampling
- Site wide characterization
- Vapor Intrusion (MAP 9.4.2.H):
  - Phase II with E2600 Tier 2 or
  - VIA in accordance with local, state, tribal, federal (LSTF) requirements



# Remediation Process

Remediation typically involves:

- Coordinate with LSTF oversight agency, HUD, follow MAP Guide
- May involve additional testing and sampling
- Drafting clean up plan
- Oversight agency approval of the clean up plan
- After clean up complete – obtain NFA/similar from oversight agency





# Resources

[HUD Exchange site contamination](#)

[MAP Guide link](#)

[Using a Phase I Environmental Site Assessment to Document Compliance with HUD Environmental Standards at 24 CFR 58.5\(i\)\(2\) or 50.3\(i\)](#)

## Case Study – Contamination Resolution in 223(f) Transactions



➤ **223(f) transaction challenges:**

- Current residents potentially exposed to contamination
- May involve a refinance of a current HUD loan that was issued under previous regulations
- Only noncritical repairs may be deferred until after endorsement
- Sponsor is required to obtain regulatory closure prior to Final Closing/Promissory Note

## Case Study – Contamination Resolution in 223(f) Transactions

- **223(f) Refinance in Richmond, Virginia with an on-site Underground Storage Tank (UST)**
- **Original plan: remove the UST after endorsement as a non-critical repair**
- **Phase II Investigation revealed significant soil and groundwater contamination and the presence of free-product**
- **Tank removal, clean-up, and additional Site Characterization, Soil & Groundwater Management Plan was required in order to get the DEQ to issue a No Further Action Letter (required for HUD endorsement)**
- **Approximately 5-6 months to address the issue and obtain closure**



## Delegation to FHA - Lenders to Initiate Section 106 Consultation With State Historic Preservation Officers

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# Delegation of Authority to Initiate Consultation



- HUD Office of Environment and Energy (OEE) issued a Delegation Memo that authorizes Lenders and their authorized representatives to initiate and conduct Section 106 consultation with SHPO in certain circumstances
- Effective March 18, 2021  
<https://www.hud.gov/sites/dfiles/OCHCO/documents/HousingSection106.pdf>
- Lenders must include a copy of the Delegation Memo with the consultation request and provide contact information for Lender and consultant, and reference the FHA program
- HUD remains responsible for consultation with Indian Tribes and Native Hawaiian Organizations

# Delegation Memo



- Applies to MAP and OHP-approved Lenders and their Authorized Representatives
- Applies to Section 106 review carried out under 24 CFR Part 50
- Applies to FHA programs in Housing and Healthcare listed in Delegation Memo
  - NOT to FHA Risk Share Program
  - NOT to other Office of Housing Programs unless combined with FHA (RAD, Asset Management)
  - NOT to other Program Areas at HUD (Public Housing, CPD, etc.)
- Proposed repairs, rehabilitation and demolition must be reviewed as part of the project

# Delegation Memo for FHA



- Will allow consultation to begin when HUD issues FHA number
- Will require a Qualified Historic Preservation Professional when a project includes:
  - Demolition of a building over 45 years old
  - New construction in or adjacent to a listed or eligible historic district
  - Substantial ground disturbance
  - Exterior rehabilitation of a building over 45 years old
- ONLY HUD CAN CONDUCT TRIBAL CONSULTATION

# Historic Preservation Professional



- Section 106 findings must meet professional preservation standards
- Consultant who meets academic and experience requirements in the [Secretary of the Interior's Professional Qualifications Standards](#)
  - Archeology, Architectural History, History, Architecture, Historic Architecture
- Expertise in identifying historic properties, evaluating effects, and preparing Section 106 agreement documents like MOAs
- Qualified Professionals recommended in certain cases even when projects not using the Delegation Memo



# Delegation Memo for FHA



- HUD must enter consultation when:
  - Project may have an adverse effect
  - There is disagreement with SHPO/THPO
  - Tribes, consulting parties or the public object to Lender determinations
  - There is possible foreclosure or anticipatory demolition
  - HUD deems the consultation record inadequate

HUD OFFICE OF HOUSING IS LEGALLY RESPONSIBLE FOR ALL FINDINGS

# Requirements for all 106 Submissions



Applicant must:

- Assemble complete project description
- Assemble information for the Section 106 review
  - Compile all info required in Section 106 Regs and MAP Guide (9.6.4)
  - May include initial contact with SHPO to identify historic properties or seek technical assistance
- Obtain studies, historic property surveys, etc. as necessary
- Alert the Agency Official regarding potential adverse effects of the project
- Prevent actions prior to completion of Section 106

# Documentation for all Section 106 Submissions



- Documentation:
  - project narrative,
  - map with site location and APE,
  - list of consulting parties,
  - description of historic properties (listed and eligible),
  - clear digital photos of buildings and setting,
  - description of the proposed project activities,
  - description of direct or indirect effects on the historic properties,
  - and a proposed determination of effect
- Follow SHPO submission format and procedures

# Outreach to Consulting Parties



- Section 106 requires consultation with parties that may have an interest in the project due to their legal or economic relation to the undertaking or their concern for effects of the project on historic properties
- Varies with the complexity of the project, public interest, the possibility for adverse effects, and the controversial nature of a project
- Identify and invite parties to consult
- Tribes, local governments, local historic preservation organizations or commissions, neighborhood groups, organizations with demonstrated interest, and the general public

# Tribal Consultation



- Tribal consultation process does not change
  - The delegation does not extend to consultation with Tribes or NHOs.
  - HUD must initiate and conduct consultation with Indian Tribes or NHOs when a project contains activities that may affect properties of religious and cultural significance to Tribes or NHOs – When to Consult With Tribes Checklist (Appendix A of the Tribal Consultation Notice)
  - Draft supplied by Lender or consultant
  - HUD reviews and sends letter or email to Tribes or NHOs
  - Follow HUD Notice on Tribal Consultation CPD-12-006 and Supplemental Memo
  - Lenders must coordinate with HUD and consider comments received from Tribes or NHOs before submitting a finding of effect to SHPO for concurrence

# Timing of Tribal Consultation



## Healthcare

- HUD will initiate Tribal consultation after FHA number assigned when requested via [LeanThinking@hud.gov](mailto:LeanThinking@hud.gov)

## Multifamily Housing

- Standard MAP Guide: HUD will initiate Tribal consultation when application enters queue
- LIHTC Section 221(d)(4) Pilot: HUD will initiate tribal consultation within 5 days of Concept Meeting Encouragement Letter (Notice H 2019-03)

# HEROS-Documenting Delegation Memo



The Phrase “Delegation Memo” **must** be listed in text box.

\*Describe the process of selecting consulting parties and initiating consultation here:

Delegation Memo

[Lender and Authorized Representative] have followed the section 106 Delegation Memo. A copy of the delegation memo and all related correspondence is upload to the screen summary.

[Add specific details about selecting consulting parties and initiating consultation]

# Delegation Memo



- Lenders choose whether to use the Delegation Memo for each application
- If Lender does not use the Delegation Memo, HUD staff will initiate consultation with the SHPO
- If Lender uses the Delegation Memo, they must ensure compliance with all Section 106 regulations and guidance
- In all cases, only HUD may conduct consultation with tribes



## Case Study – Section 106 and Project Timeline Impacts



## Case Study – Section 106 and Project Timeline Impacts

- New Construction project in North Carolina
- Preliminary SHPO review → Finding of Adverse Effect (demolition of historic structure prior to new construction)
- Required consultation between a Historic Preservation Specialist, the SHPO, HUD, the Tribal Historic Preservation Officers, The Advisory Council on Historic Preservation, the County Historical Society, and the property owner to resolve the Adverse Effects and generate a Memorandum of Agreement (MOA)
- Project involved wetland impacts → USACE Permitting and 8-Step Process
- Publication of Final Notice required issuance of USACE Permit; USACE Permit required MOA
- Resolution of Section 106 drove the project completion process and nearly pushed the project past HUD's review timeline

# Wetlands and Flood Plains



Floodplain	2016 Policy	2020 Policy
High coastal hazard areas/ floodways	No FHA insurance permitted	No FHA insurance permitted
LiMWA	HUD staff review conservatively under the 8-step process.	<p><u>NC/SR</u>: prohibited</p> <p><u>Refi of uninsured or refi of currently insured with level 2 repairs or above</u>: strongly discouraged unless it meets construction requirements for high coastal hazard areas</p> <p><u>Refi of currently insured or assisted with level 1 repairs or below</u>: considered case by case</p>
100-year floodplain	<p><u>NC</u>: strongly discouraged. To qualify, lowest floor must be 1 foot above base flood elevation (BFE)</p> <p><u>SR</u>: strongly discouraged</p> <p><u>Refi/Ac</u>: discouraged if lowest floor, ingress, egress or life safety system is more than 1 foot below BFE</p>	<p><u>NC</u>: strongly discouraged. To qualify, lowest floor must be 2 feet above base flood elevation (BFE)</p> <p><u>SR</u>: strongly discouraged</p> <p><u>Refi/Ac</u>: discouraged if lowest floor, egress, ingress or life safety system is any distance below BFE</p>

Flood Insurance	2016 Policy	2020 Policy
When Required	Buildings in the Special Flood Hazard Area (100-year floodplain)	<p>Buildings in the Special Flood Hazard Area (100-year floodplain)</p> <p>Buildings where a preliminary flood map or Advisory Base Flood Elevation shows buildings in the Special Flood Hazard Area (SFHA)</p> <p>At Production Director's Discretion:</p> <ul style="list-style-type: none"> <li>• Buildings in the moderate flood hazard zone (500-year flood plain)</li> <li>• Parcel includes a SFHA (including an incidental portion)</li> <li>• Buildings in a coastal area subject to storm surge</li> <li>• Where topography or past flooding create a high risk for flood events.</li> </ul>
How much coverage	Flood insurance is required during construction when the property becomes insurable, and upon completion, in the amount required by the Flood Disaster Protection Act of 1973.	<p>Flood insurance is required during construction when the property becomes insurable, and upon completion in an amount at least equal to the greater of:</p> <ol style="list-style-type: none"> <li>The maximum flood insurance available for that type of property under the NFIP or</li> <li>An amount equal to the replacement cost of the bottom two stories above grade, as determined by form HUD-92329 or equivalent.</li> </ol>



# Changes to Wetlands Protections (2020 MAP Guide, Section 9.6.7)

NWI Map and Site  
Observations



Well maintained Manmade  
retention/detention ponds

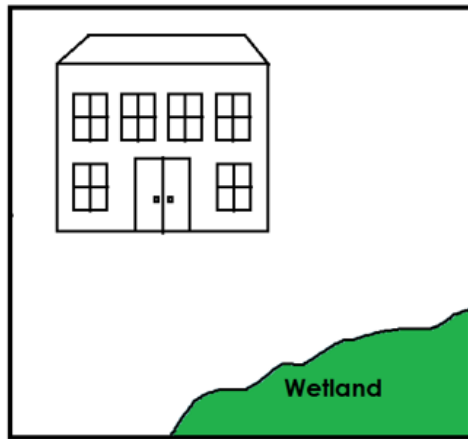


Manmade  
retention/detention ponds  
with wetland characteristics



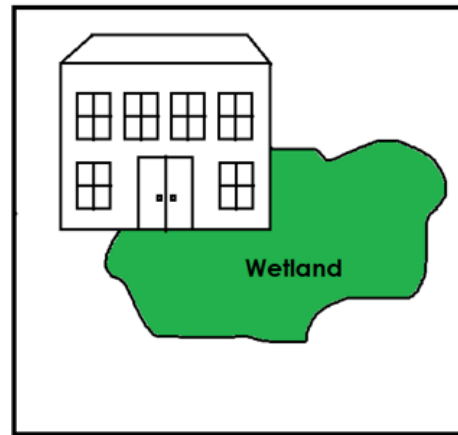
# Wetlands Protection

## No - Ground Disturbance Activities:

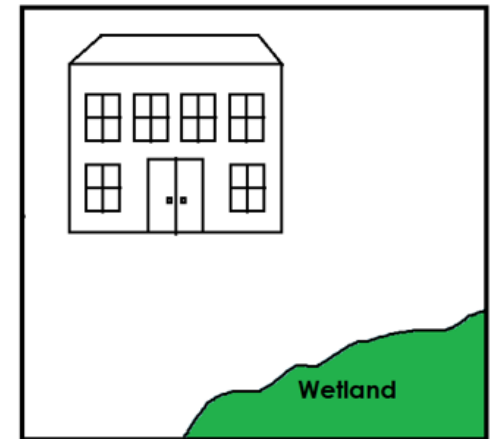


- ✓ Restrictive Covenant

## Yes - Ground Disturbance Activities:



- ✓ **Wetland Survey**
- ✓ 8-Step



- ✓ **Wetland Survey**
- ✓ Restrictive Covenant
- ✓ 8-Step if indirect impact

# Floodplain Management



if certain requirements are met.

For definitions, regulations, and more information, go to

<https://www.hudexchange.info/programs/environmental-review/floodplain-management/>

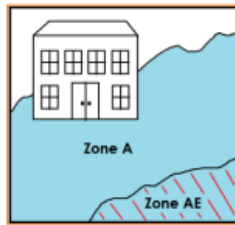
Basic scenario: A substantial rehabilitation project is proposed on a site that contains a floodplain



**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



**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.



**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

Incidental exception does not apply to sites that plan to bring in fill for a LOMR.

**Fill modifies the floodplain**



# Floodplain Management - 8-Step Process



HUD will  
require  
information  
prior to issuing  
1<sup>st</sup> public notice



No change to  
the  
CLOMA/CLOMR  
requirements



Residential  
Structures:  
2 Feet of  
Freeboard



Non-Residential /  
Mixed-Use  
Structures:  
Floodproofed,  
2 Feet above BFE



3 Alternatives  
to be  
considered



**PARTNER**





# Site Aggregation

## Example 1

Ground Floor, 1<sup>st</sup> Floor and 2<sup>nd</sup> Floor: Commercial areas, **Owner A**

Floors 3 – 10: Multifamily residential areas, **Owner B**

**Floors 3 – 10 are the only portions of property to be HUD insured**

Entire building is a single project for the environmental review for:

- ✓ ASTM Phase I ESA
- ✓ Radon testing
- ✓ Section 106 consultation
- ✓ Site contamination
- ✓ Remaining HEROS laws/authorities



## Example 2

### Proposed FHA Multifamily Project

Includes buildings, roads and utilities

Mixed-Use Development includes single-family residential area, main access road, utilities and new stormwater management pond

#### Aggregated area

- ✓ FHA Multifamily Project
- ✓ New Utilities
- ✓ New Road
- ✓ New Offsite Stormwater Management Pond



KEY:  
Subject Property

Environmental review conducted on the FHA collateral **and** the offsite stormwater pond (8-step, wetland survey, biological evaluation, etc.)

QUESTIONS??

