



*Foundations in Environmental Review:  
National Environmental Policy Act and 24 CFR Part 58  
Environmental Review Procedures for Entities Assuming HUD  
Environmental Responsibilities*



# HUD Region VI Environmental Officers

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### **Nation-wide Environmental Contacts:**

<https://www.onecpd.info/environmental-review/hud-environmental-staff-contacts/>

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## Course Resources

- Training Materials with Slide Presentations
- Region VI Handbook of Regulations for HUD Environmental Compliance



# HUD Online Resources

- **HUD Environmental Weblinks**

- Office of Environment and Energy/Headquarters:

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

- Training webinars (pre-recorded):

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

- Add LMS information



# HUD Environmental Guidebooks

Order at Order HUD books/publications at 800-767-7468 or  
202-708-3151

- **HUD Noise Guide Book**
  - <https://www.onecpd.info/resource/313/hud-noise-guidebook/>
- **Acceptable Separation Distance Guidebook**
  - <https://www.onecpd.info/resource/2762/acceptable-separation-distance-guidebook/>
- **Barrier Design Guidance for HUD Assisted Project Near Hazardous Facilities**
  - <https://www.onecpd.info/resource/2762/acceptable-separation-distance-guidebook/>
- **Choosing an Environmental Safe Site**
  - <https://www.onecpd.info/resource/83/choosing-an-environmentally-safe-site/>



# Additional Resources

- **HUD Environmental Review Guide for CDBG Programs**
  - [http://portal.hud.gov/hudportal/documents/huddoc?id=env\\_review\\_guide.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=env_review_guide.pdf)
- **HUD Multifamily Accelerated Processing Guide**
  - <https://www.onecpd.info/resource/3226/multifamily-accelerated-processing-guide/>
- **HUD Valuation Analysis for Home Mortgage Insurance (Handbook 4150.1)**
  - <http://www.hud.gov/offices/adm/hudclips/handbooks/hsgH/4150.1/41501c4HSGH.pdf>
- **HUD Environmental Justice Strategy:**
  - <http://portal.hud.gov/hudportal/documents/huddoc?id=envjustice.pdf>
- **EPA NEPAassist**
  - <http://nepassisttool.epa.gov/nepassist/entry.aspx>

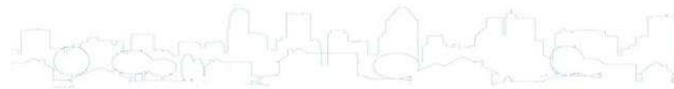


# Tools Necessary for HUD Environmental Reviews

- Adobe Acrobat or Nuance Pdf Converter:
  - Allows you to fill out HUD Forms and save contents
  - Free nuance download at <https://nct.digitalriver.com/fulfill/0246.003>
- Google Earth--Free Download:  
<http://www.google.com/earth/download/ge/agree.html>

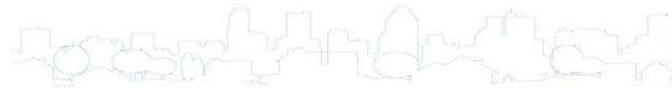


# General Requirements National Environmental Policy Act of 1969



# General Requirements Session Outline

- National Environmental Policy (NEPA) Overview
- 24 CFR Part 50



# National Environmental Policy Act of 1969

- National charter for environmental protection
- Established Council on Environmental Quality (CEQ)
- Requires all Federal agencies to adopt a systematic interdisciplinary approach to decision-making to ensure environmental values are considered



# National Environmental Policy Act of 1969

- Requires Federal agencies to develop procedures for implementing NEPA, designed for their specific programs
- HUD NEPA procedures found at
  - 24 CFR Part 50
  - 24 CFR Part 58



# Agency Procedures Must Specify Criteria for Actions that:

- Normally require an EIS
- Normally require an Environmental Assessment (EA) (Part A & B of HUD-4128)
- Normally do not require an EA or an EIS – Categorical Exclusions (Part A only of HUD 4128)



# CEQ's Regulations Require Federal Agencies to:

- Make decisions based on understanding of environmental consequences **BEFORE** final decision are made
- Ensure environmental information is made available to public officials and citizens **BEFORE** decisions are made and **BEFORE** actions are taken
- Consider reasonable alternatives
- Avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.
- Integrate NEPA requirements with other planning and environmental review
- Take actions that protect, restore, and enhance the environment.



## “Federal Agency” [CEQ 40 CFR 1508.12]

- Federal Agency means all agencies of the Federal Government
- Pursuant to section 104(h) of the Housing and Community Development Act of 1974 and HUD’s 24 CFR Part 58 NEPA implementing procedures, this definition also includes:
  - States
  - Indian tribes
  - Units of general local government that assume HUD’s NEPA responsibilities



## NEPA is the Umbrella

- For compliance with other Federal laws and authorities
- A wide range of environmental factors must be considered – these are the spokes of the umbrella...



# NEPA Is the Overarching Federal Process For:

- Considering all federal environmental laws and executive orders, including those that affect:
  - Historic Properties
  - Fish and Wildlife
  - Human Health
  - Land
  - Water
  - Air



# Environmental Assessment

- Concise public document that serves to
  - Briefly provide sufficient evidence and analysis for determining whether
    - An EIS is necessary, or
    - There is no significant impact
- When an EIS is necessary, facilitates preparation of an EIS
- Aids agency compliance when an EIS is not necessary



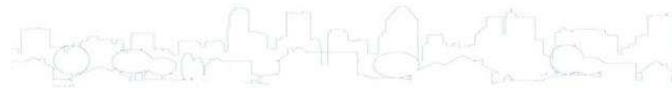
## EA's Can Result in A “Finding of No Significant Impact” [Section 1508.13]

- Federal agency document presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and why an EIS will not be prepared
- Shall include the EA or EA summary and note other environmental documents related to it.



# Categorical Exclusions

- Classes of actions that:
  - Do not individually or cumulatively have a significant effect on the human environment
  - Barring extraordinary circumstances



# Limitations on Actions During NEPA Process [Section 1506.1]

- Until the Agency has issued a decision, no action shall be taken that will:
  - Have an adverse environmental impact, or
  - Limit the choice of reasonable alternatives



# Value of Environmental Review

- Required by law
- Secures the value of public investment
- Results in higher quality projects
- Avoids or mitigates environmental impacts that harm:
  - Our beneficiaries
  - Our projects
  - The surrounding environment
- Helps avoid litigation that could stop project
- Grantees avoid monitoring findings and sanctions

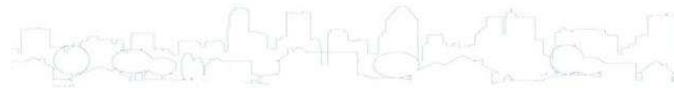


## NEPA Documents Should Be Clear, Concise and Meaningful to the Public [40 CFR Part 1500.1(b)&(c)]

- NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.
- NEPA documents must concentrate on the issues that are truly significant to the action, rather than amassing needless detail.
- Ultimately, it is not better documents, but better decisions that count.



# **General Requirements of 24 CFR Part 58-- Procedures for Entities Assuming HUD's Environmental Review Responsibilities**



# NEPA Implementation is Important for Meeting HUD's Mission

- Two regulations provide for HUD's implementation of NEPA and related authorities
- 24 CFR Part 50 – applies to HUD itself  
“Protection and Enhancement of Environmental Quality”
- 24 CFR Part 58 – applies to States, Counties, Cities, Tribes  
“Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities”



# HUD Programs that 24 CFR Part 58 Applies To [§ 58.1(b)]

- CPD Programs:
  - CDBG
  - Homeless programs of Title IV McKinney-Vento Homeless Assistance Act
  - Supportive Housing program
  - Shelter Plus Care
  - HOME Investment Partnership
  - SHP
  - Lead-based paint abatement programs
  - EDI
  - HOPWA
  - CoC
- Multifamily Housing
  - FHA 542(c) Risk Sharing
- Public Housing Programs
  - Capital Fund
  - HOPE VI
  - Public Housing Agency administered Section 8
  - Replacement Factor Housing
- Indian Housing Programs
  - ICDBG
  - NAHASDA
- Others with Part 58 included in appropriation legislation



# NEPA Assumption Authority under Part 58 [§58.4]

- Responsible Entities (REs) assume HUD's NEPA responsibilities
- Serve as the Federal Agency on behalf of HUD
- RE assumes responsibility for:
  - Environmental **review**
  - Environmental **decision-making**
  - Environmental **action** that would apply to HUD under NEPA and related laws



## Only the Following Can Serve as Responsible Entities

- Units of General Local Government (UGLGs)--  
Section 5302(a) Housing and Community Development Act of 1974] defines UGLGs as:
  - » County, parish, city, town, township, village or other general purpose political subdivision of a State
  - » Have power to levy taxes and expend Federal, State, and local funds and exercise governmental powers
- States or Indian tribes that do not distribute HUD assistance to a unit of general local government.



# Responsible Entities Receiving HUD Funds (§ 58.4)

**UGLGs Must be the RE**

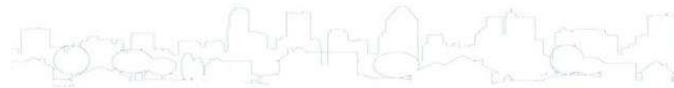
**States Must Be the RE for Projects that  
are State Undertakings**

**Tribes have the option of serving as the  
RE for a Tribal Undertakings**



## UGLGs that Receive the Following HUD Grants Must Serve as the Responsible Entity [§ 58.2(a)(7)]

- CDBG
- Title IV McKinney-Vento Homeless Assistance Act
- HOME Investment Partnership
- Lead-based Paint Abatement Programs



## Other Recipients of HUD Assistance that Cannot Function as a Responsible Entity [§58.2(a)(5)]

- Organizations that have a grant agreement with HUD, including:
  - Tribal housing authorities
  - Public housing authorities
  - Councils of Government
  - Planning Agencies
  - Other quasi-governmental organizations
  - Non-profit organizations
  - For-profit entities



## Responsible Entities Must Perform RE Functions for Recipients that cannot be REs [§ 58.2(a)(7)(ii)]

### UGLGs are the RE for:

- Housing Finance Agencies
- Public Housing Agencies
- Non-Profits
- For Profits

### Indian tribes are the RE for:

- Housing Finance Agencies
- Indian Housing Agencies
- Non-Profits
- For Profits

### States are the RE for Projects that are State undertakings by:

- Housing Finance Agencies
- Non-Profits
- For-Profits

## RE's Basic Environmental Responsibility [§58.10]

- RE must assume HUD's environmental responsibilities
- Must comply with:
  - NEPA
  - CEQ regulations of 40 CFR parts 1500 through 1508
  - Requirements of Part 58



## When the RE Prepares Environmental Reviews on Behalf of Non-RE Recipients [§58.71]

- The RE must:
  - Independently evaluate environmental information Recipient provides
  - Prepare environmental review
  - Provide the Recipient with the Certification Form (e.g. 7015.15)
  - Provide description of environmental conditions that must be adhered to in carrying out the project
    - Recommend this be included in Project Description Section of 7015.15



# RE's Must Interact with Other Entities in Preparing Environmental Reviews [§58.14]



- Consult with appropriate federal agencies
  - *This consultation process cannot be delegated to third parties, including contractors*
- Cooperate with other agencies to reduce duplication
- May participate in a jointly prepared environmental review:
  - Lead Federal Agency
  - Cooperating Agency



# Certifying Officer

## [ §58.13]

- The RE's Certifying Officer is the “**Responsible Federal Official**” as that term is used in section 102 of NEPA
- Generally the UGLG's, State's, or Tribe's **highest-ranking elected** official
- **Written delegation** necessary if:
  - Role is delegated below Governor, Mayor, City Manager, County Judge
  - Can generally be delegated to person who signs grant agreements
- **Responsible for all the requirements** of:
  - NEPA section 102
  - Related provisions in 40 CFR parts 1500 through 1508
  - 24 CFR part 58, including the related Federal authorities
- Ensures that the RE reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.
- Responds to the **jurisdiction of the federal courts**
- Has the **authority to enter into binding commitment** in response to court judgments



# Role of Non-RE Recipients in Environmental Review

## [\u00a758.71]

- **Provide the RE with all available project and environmental information**
- Refrain from undertaking any physical activities or choice limiting actions until HUD/State/Tribe issue authorization to use grant funds
- Submit certification form it received from RE to HUD/State/Tribe
- Abide by special conditions, procedures and requirements of the environmental review
- Advise the RE of proposed changes in the scope of the project or change in environmental conditions



## States and Tribes Can Administer Programs on Behalf of HUD (Section 58.18)

- The State or Tribal agencies must designate, in writing, the agency responsible for administering Subpart H, Release of Funds
- The designated agencies must:
  - Accept Request for Release of Funds
  - Receive objections and appeals
  - Issue authorization to use grant funds
  - Develop and conduct monitoring and enforcement program



## Request for Release of Funds—The RE's Certification that it has Met its NEPA and Related Responsibilities[§58.2(a)(6)]

- Request for Release of Funds (RROF)—HUD Form 7015.15
  - Signed only after environmental review is finalized and the public comment periods have closed.
- Release of funds—HUD Form 7015.16
  - HUD issuance of a firm approval letter, and environmental clearance



## Limitation on Activities Prior to Clearance - §58.22(a)



- Prior to Receiving Environmental Clearance a Recipient Must Not Commit:
  - HUD Funds, or
  - Non-HUD funds if the activity would:
    - have an adverse environmental impact, or
    - limit the choice of reasonable alternatives
- This limitation is rooted in all NEPA related authorities
  - *Don't take action until compliance is achieved !*



## Section 58.22 Limitation on Third Parties



Part 58.22 extends this prohibition to third parties, including:

- Recipients, *and*
- Participants in the development process
  - Public or Private Nonprofit
  - For Profit Entities
  - Contractors



# What are Choice-Limiting Actions?

- Real property acquisition
- Leasing
- Disposition
- Demolition
- Rehabilitation
- Repair
- Construction
- Site improvements



## Consequences of Violating §58.22

- Regulatory violation:
  - Commitment of Non-HUD Funds
  - Can result in loss of all HUD assistance for the project
- Statutory Violation:
  - Commitment of HUD Funds
  - Can affect funding for entire program under which violation occur



## Exceptions to 58.22 Limits (§58.22 c, d)

- Options for land acquisition are allowed if:
  - They are subject to final outcome of the environmental review; and
  - The cost of the option is nominal
- Land Acquisition Under the SHOP Program
  - Can advance non-HUD funds for Land Acquisition
  - At grantee's own risk—reimbursement depends on the outcome of the environmental review
- Relocation funds
  - Provided that 24 CFR Part 42 requires the relocation assistance



# Steps of the 24 CFR Part 58 Environmental Review Process

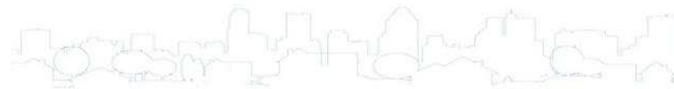


# Steps of the Environmental Review Process

Step 1: Develop a meaningful project description

Step 2: Determine the level of environmental review

Step 3: Conduct the environmental review



# **STEP 1: DEVELOP A MEANINGFUL PROJECT DESCRIPTION**



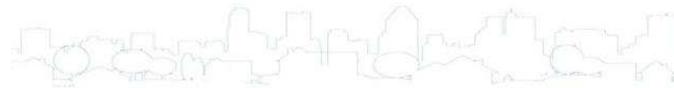
# Why Worry About the Project Description?

- It is the Point of Departure for the Environmental review
  - Basis for determining the level of environmental review
  - Basis for informing the public about the action
- Basis for monitoring compliance
  - If funds are used for something not included in the Project Description, it could be a violation



# What Can Poor Project Descriptions Lead to?

- Failure to inform the public
- Incorrect environmental review determinations leading to violations and sanctions
- Project activities being left out of review, requiring additional environmental review
- Monitoring findings



# Activities and Projects

## [§ 58.2]

- **Project:**
  - an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.
- **Activity:**
  - An action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.



# Two Types of Project Descriptions

- Location Based—geographically aggregated or aggregated based on a set of contemplated actions to evaluate a range of activities occurring at a single location
  - Rehabilitation of a single family home
  - New construction of an affordable housing apartment complex
  - Three phase development of a regional sewer system
- Activity Based—functionally aggregated based on a discreet set of activities
  - Homeowner occupied rehab at scattered sites throughout the City limits
  - Street repaving at various locations within the City limits



## Funding Source Itself Is NOT a Basis for Aggregation, Project Descriptions or Tiering

- Examples of using program funding as a basis for project aggregation
  - Public Housing Agency five year plan
  - HOME/CDBG funding for an annual action plan
- Greatest cause of violations that we see in Region VI
  - Activities can be overlooked
  - Can result in inappropriate levels of environmental review



# Meaningful Project Descriptions Include:

- **HUD's Action** – providing insurance, grant, loan
- **Amount of HUD Funds**
- **Location**—describe so the public can locate (e.g. street address or map coordinates)
- **Purpose and Need**—describe what is being done and why it is necessary.
- **Project Beneficiaries** (i.e. affordable housing project, mixed use housing project, market rate housing project)
- **Activity Description**—provide complete details about what will be done
  - Type of project (e.g. new construction of multifamily housing )
  - Details of aggregated project
  - Timeframe for implementation
  - Size of the project (area coverage, disturbance footprint, number of units, population served)
- **Area Setting:**
  - Character
  - Features
  - Resources
  - Trends likely in the absence of the project
- **All other funding sources**
- **All development partners**



## Pop Quiz: Adequate Project Description? Y/N

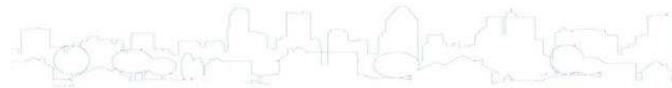
The Housing Authority will utilize an estimated \$5,000,000 in Capital Funds from 2015 -2019 to rehabilitate the 70 apartment units at the Memorial apartment complex owned by the Housing Authority. The 70 units are in 18 single story buildings on 15 acres, located at 800 New Street, City of Texas, Texas.

Rehabilitation of the residential units will involve new roofs, replacement of doors and windows, HVAC units, siding, electrical systems, plumbing systems, flooring cabinets and appliances. Common amenity upgrades will include perimeter fencing, controlled access gates, fitness center, business center, community room, as well as resurfaced parking areas and covered and uncovered parking.

The total estimated project cost is \$9 million and the estimated replacement cost after rehabilitation is \$12.5 million.



# Step 2: Determine the Level of Environmental Review



# Determining the Level of Environmental Review

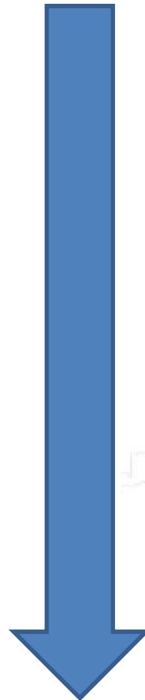
- Level of environmental review is based on the project description.
- There are five different levels of environmental review each with different requirements
  - Exempt
  - Categorical Exclusions Not Subject to §58.5
  - Categorical Exclusions Subject to §58.5
  - Environmental Assessment
  - Environmental Impact Statement
- Complete appropriate environmental review determination form

***Missing Determination is a Basis for Objection***



# Typical Timelines for Completing the Different Levels of Environmental Review...

Complexity Increases



- Exempt – less than an hour (NEPA Regulations)



- Categorical Exclusions Not Subject (CENST) to §58.5 – less than an hour



- Categorical Exclusion Subject To §58.5 (CEST) – 30 to 75 days (more or less) depending on consultations required



- EA – 45 to 100 days to complete depending on consultations required



- EIS – 1 to 2 years to complete



# Exempt [§58.34]

1. Environmental studies, plans & strategies
2. Information & financial services
3. Administrative & management expenses
4. Public services that **will not** result in physical changes: employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, welfare, recreational needs
5. Inspections & testing properties for hazards & defects
6. Purchase of insurance



## Exempt (cont.)

7. Purchase of tools
8. Engineering or design costs
9. Technical assistance & training
10. Payment of principal and interest on HUD loans
11. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent **threats to public safety** including those resulting from physical deterioration;
12. Any of the CEST activities at §58.35(a) if Federal laws and authorities at §58.5 are not triggered



# Procedural Requirements for Exempt Projects

- Determination of Exemption must be made in writing and the documentation must be maintained in the ERR.
- *See new Checklist for Exempt and CENST projects:*  
<https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/>
- Compliance with §58.6 **required**
- Compliance §58.5 **NOT** required.
- Publication of a Notice of Intent to Request Release of Funds (NOI/RROF) **NOT** required.
- Submission of a certified RROF to HUD **NOT** required.



# Categorical Exclusions **Not** Subject to §58.5 (CENST) [§58.35(b)]

1. Tenant-based rental assistance
2. Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
3. Operating costs including ***maintenance***, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs



# CENST (cont.)

Maintenance Activities include:

- Cleaning activities
- Protective or preventive measures to keep a building, its systems and its grounds in working order
- Replacement of appliances or objects that are **NOT** fixtures or part of the building.
  - A fixture is an object that is physically attached to the building and cannot be removed without damage to the building, and includes systems designed for occupant comfort and safety such as HVAC, electrical or mechanical systems, sanitation, fire suppression and plumbing. Fixtures also include, not are not limited to, kitchen cabinets, built in shelves, toilets, light fixtures, staircases, crown molding, sinks and bathtubs.



# Examples of Maintenance Activities

| Cleaning Activities                        | Protective Measures  | Replacing existing appliances or objects that are NOT fixtures or part of the building |
|--|--|--|
| Cleaning gutters and down spouts           | Fixing gutters or floors   | Stoves, refrigerators, etc.  |
| Cleaning floors                            | Mending cracked plaster  | Light bulbs  |
| Lawn Care (litter pickup, mowing, raking)  | Fixing broken windowpane(s) or door locks                              | Carpet or vinyl flooring   |
| Cleaning interior or exterior of building* | Fix roof or plumbing leaks   | Washer and dryers  |
| Washing windows                            | Caulking, weather stripping, re-glazing                                | Air filters  |
| Trash collections                          | Reapplication of protective coating                                    | HVAC window unit   |
| Trim trees and shrubs                      | Installation of protective plywood, alarm systems or temporary fencing |  |
| Snow/ice removal                           | Repainting previously painted surface (including limited scraping)*    |  |
| Unclog sink or toilet                      | Waterproofing (sealant)  |  |
| Neighborhood cleanup                       | Service and maintenance of mechanical systems                          | *Non-destructive methods only (e.g. no sandblasting or high pressure spraying)         |



# Examples of Maintenance Activities

**Issue:**  
Damaged Carpet



**Maintenance**  
Patch Carpet



# Examples of Maintenance Activities

**Issue:**  
Leaky Window



**Maintenance**  
Replace  
Windows



# Examples of Maintenance Activities

**Issue:**  
**Tree falls  
on a home**



**Maintenance**

Remove tree and  
patch the roof



## CENST (cont.)

4. Economic development activities not associated with construction or expansion of existing operations
5. Activities to assist homebuyers to **purchase existing dwelling units** or **dwelling units under construction**, including closing costs and down payment assistance, interest buy-downs, and similar activities that result in the transfer of title. (If new construction, then CEST)
6. Affordable housing pre-development costs (e.g. legal, and consulting costs, related to obtaining site options, other related activities with no environmental impact).
7. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47.



# Procedural Requirements for CENST Projects

- Determination of CENST must be made in writing and the documentation must be maintained in the ERR.
- *See new Checklist for Exempt and CENST projects:*  
<https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/>
- Compliance with §58.6 **required**
- Compliance §58.5 **NOT** required.
- Publication NOI/RROF **NOT** required.
- Submission of a certified RROF to HUD **NOT** required.



# Categorical Exclusions Subject to §58.5 (CEST) [58.35(a)]

1. Acquisition, repair, improvement, reconstruction or rehabilitation of public facilities and improvements when (other than buildings):
  - Facilities and improvements are in place
  - No more than 20% change in size or capacity
  - No change in land use
2. Removal of architectural barriers that restrict accessibility



## CEST (cont.)

3. Rehabilitation of buildings and improvements:
  - i. Residential Structures of 1 – 4 units: no more than 4 units; no change in land use;
  - ii. Multifamily Residential Structures: unit density does not change more than 20%; no change in land use; cost of rehab is less than 75% of replacement cost after rehab
  - iii. Commercial, Industrial and Public Buildings: size and capacity does not increase by more than 20%; no change in land use



## CEST (cont.)

4. Individual action on up to four dwelling units (One 4-unit structure or four 1-unit structures or any combination in between) or an individual action on a project of five or more housing units when sites are more than 2,000 feet apart and no more than four units on any one site.



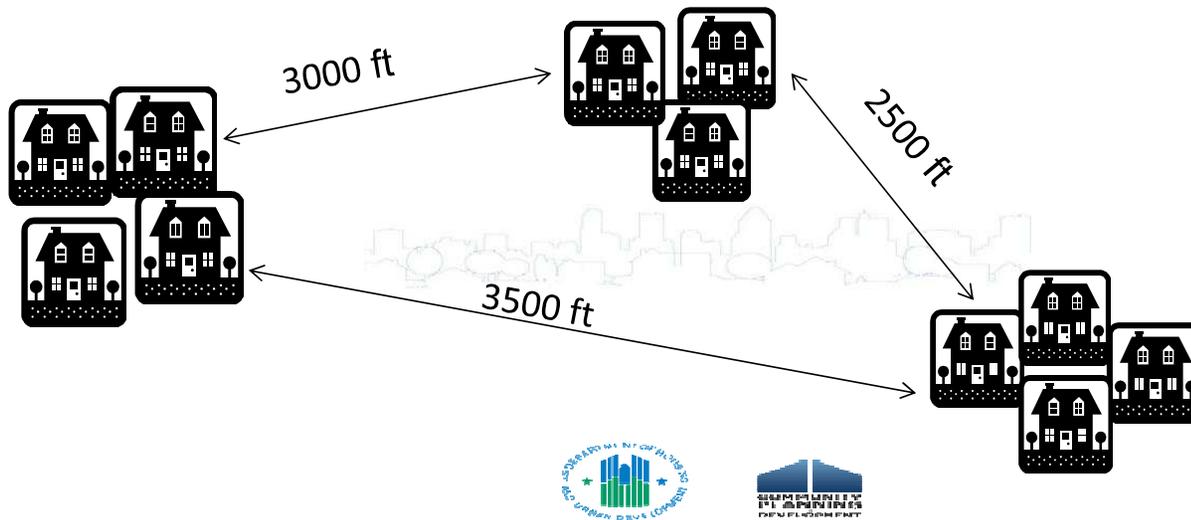
# Example: Individual Action

*Scattered Sites:*

**PROJECT = 11 SF Houses**

**Maximum of 1-4 dwellings on any single site **AND****

**Each site min. 2000+ ft. apart from any other site**



# CEST (cont.)

5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land will be retained for the same use.
6. Combination of any of the above activities.



# Procedural Requirements for CEST

- Determination of CEST must be made in writing and the documentation must be maintained in the ERR.
- ***See new Checklist for CEST projects:***  
<https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/>
- Compliance with §58.6 **required**
- Compliance §58.5 **required**
- **Can convert to exempt** if activities are found not to require compliance with any authority under §58.5 (such as mitigation measures, additional studies, conditions, further consultation, permits).
- Publication of NOI/RROF **required**, unless project converts to exempt.
- Submission of a certified RROF to HUD **required**, unless project converts to exempt.



# Environmental Assessments (EA) [§58.36]

- If a project is not exempt or categorically excluded as described above, then an **Environmental Assessment** (EA) must be prepared. Example: New construction of a public facility.

– *See new EA Checklist:*

<https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/>

– Compliance with §58.6 **required**

– Compliance §58.5 **required**



# Procedural Requirements for EAs

- Assessment of EA factors **required**
- EA reaches a Finding of No Significant Impact (FONSI) or a conclusion that an Environmental Impact Statement must be prepared.
- Publication of NOI/RROF **required**
- Publication of FONSI notice **required**
- Submission of a certified RROF and evidence of notices to HUD **required**

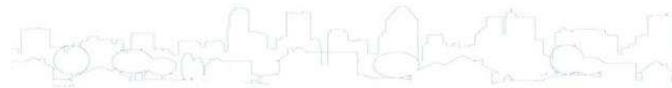


## EIS Required When:

- A project has a significant impact on the human environment as judged by:
    - Context
    - Intensity
- OR
- A project exceeds HUD's thresholds for an EIS



## Step 3: Conduct the Environmental Review



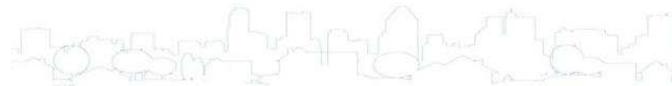
# Environmental Review Forms

- Exempt and CENST:  
<https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/>
- CEST:  
<https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/>
- EA:  
<https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/>



# Environmental Review Worksheets

- Follows HEROS format for individual Resources:  
<https://www.hudexchange.info/resource/4707/environmental-review-record-related-federal-laws-and-authorities-worksheets/>
- Environmental Assessment Factors:  
<https://www.hudexchange.info/resource/3306/environmental-assessment-factors-guidance/>





**Airport  
Hazards—24  
CFR Part 51  
Subpart D**

**Part 58.5(i)(1) &  
50.4(k)**

## HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/airport-hazards>
- Airport Hazard Worksheet:  
<https://www.hudexchange.info/resources/documents/Airport-Hazards-Worksheet.docx>

# HUD Requirements

- Part 58.5(i)(1) & 50.4(k) require compliance with HUD's Environmental Criteria and Standards of 24 CFR Part 51
- Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones, Clear Zones and Accident Prevention Zones
- Purpose: To prevent incompatible development around civil airports and military airfields

## **HUD Policy [24 CFR Part 51.303]**

- It is HUD's policy not to provide any assistance, subsidy, or insurance for projects located in:
  - Civilian Airport Runway Clear Zones
  - Military Airfield Clear Zones
  - Military Airfield Accident Potential Zones

## **Types of Activities Covered under Part 51- Subpart D**

- For HUD assisted projects including:
  - Construction
  - Land development
  - Community development
  - Redevelopment
  - Facilities or services to make land available for construction
  - Substantial rehabilitation

## **Activities Partially Covered or to Which Part 51-Subpart D Does Not Apply**

- Only 51.202(b) Buyer Notification Requirements apply to activities involving:
  - Purchase, sale or rental of an existing property which does not prolong the physical or economic life of the property
- Subpart D does not apply to:
  - Research or demonstration projects that do not involve construction or rehab
  - Interstate land sales registration
  - Actions or emergency assistance provided to save lives, protect property, protect public health and safety
  - Debris and wreckage removal

# **CIVILIAN AIRPORT HAZARDS**



## Civilian Airports Defined As

- Existing commercial service airports
- Designated in the Federal Airport Administrations National Plan of Integrated Airport Systems (NPIAS)  
[http://www.faa.gov/airports/planning\\_capacity/npias/reports/](http://www.faa.gov/airports/planning_capacity/npias/reports/)

# Evaluating Civilian Airport Hazards

## 58.5(i)(1) & 50.4(k)

- Must Determine Whether the Project is within a Runway Clear Zone (RCZ):
  - Area immediately beyond the end of a runway
  - Now termed Runway Protection Zones (RPZ)
- Determine whether the project is within 2,500 feet of the end of a runway.
- If the project is more than 2,500 feet but still in close proximity to the end of the runway, check to see if airport expansion will place project within 2,500 feet of the expanded runway
- If the project is not within 2,500 feet of the end of an existing or future runway, then:
  - Compliance is complete
  - Include map documenting proximity of airport to project site in the ERR

## **If the Project is Located within 2,500 Feet of the End of a Civilian Airport Runway**

- Obtain written finding from Airport Operator as to:
  - Whether the project is in an RCZ/RPZ
  - Whether there are airport expansion plans over the next 10 years that would affect the RCZ/RPZ
- If the finding confirms the project is not or will not within 10 years be located within a RCZ/RPZ, compliance is complete
  - Include written finding in ERR

## **If the Project is Located in a RCZ/RPZ or if it May Be in 10 Years**

- But, it will not be frequently occupied or used by people
  - Obtain written documentation from the Airport Operator that there are no plans to purchase the property as part of a RCZ/RCA land acquisition program
- If the project will frequently be used or occupied by people, ***HUD assistance cannot be used.***

# **MILITARY AIRFIELD HAZARDS**

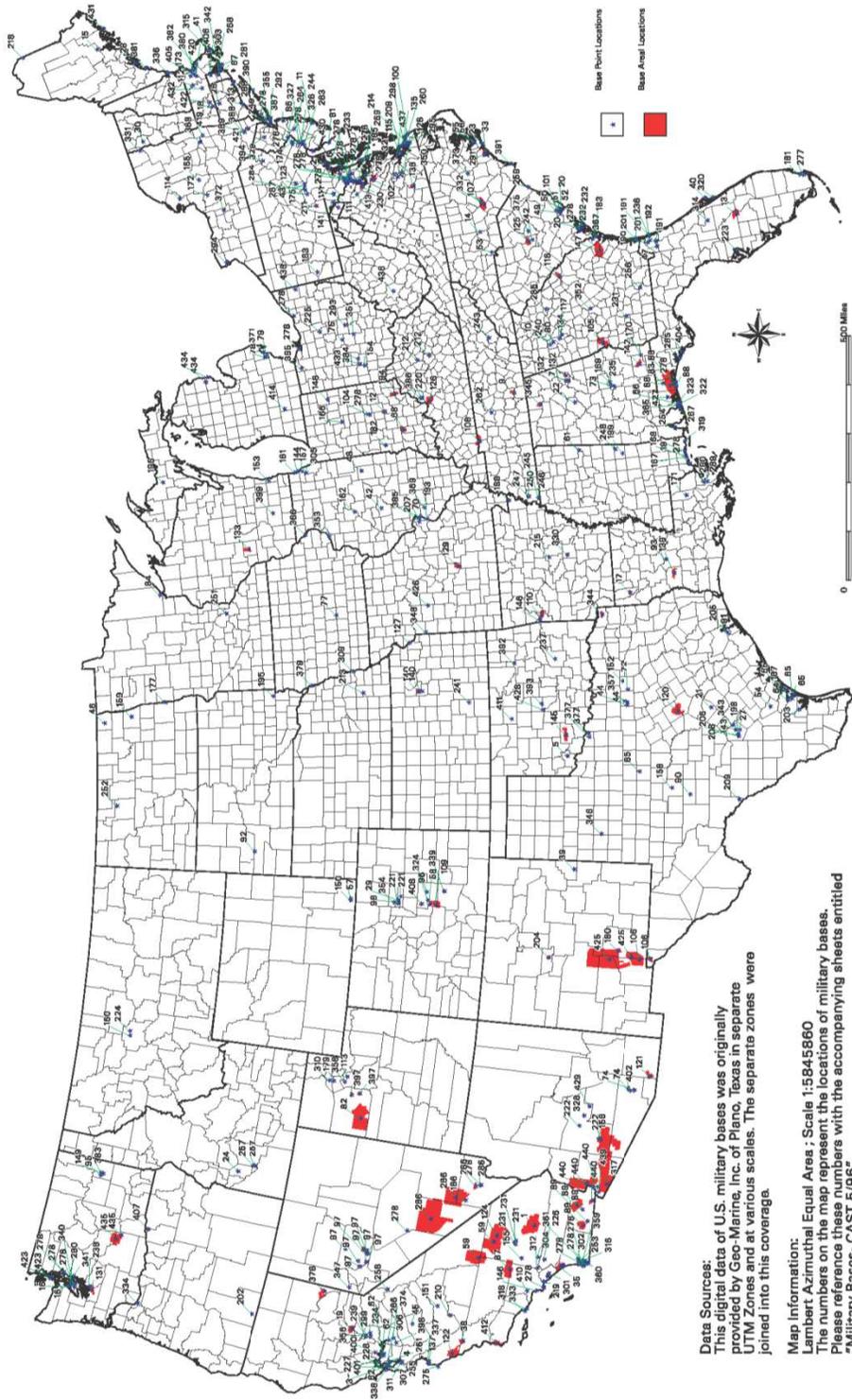


## Military Airfields

- **Must Determine whether Project is located in a Clear Zone or Accident Potential Zone**
- **Clear Zones (CZ)**—high potential for accidents, and have traditionally been acquired by the Government to protect people on the ground.
- **Accident Potential Zone I (APZ I)**--is the area beyond the clear zone which possesses a significant potential for accidents.
- **Accident Potential Zone II (APZ II)**--area beyond APZ I having a measurable potential for accidents.

Source: 32 CFR § 256.3 (c)

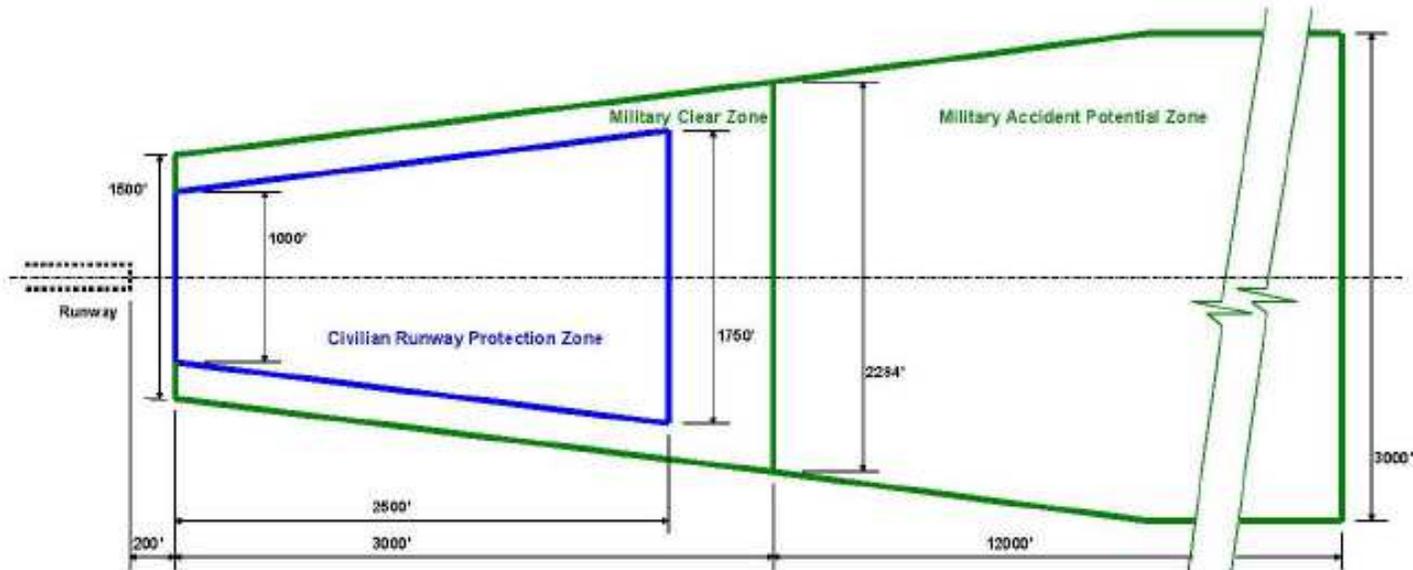
# Military Bases in the Continental United States



**Data Sources:**  
This digital data of U.S. military bases was originally provided by Geo-Marine, Inc. of Plano, Texas in separate UTM Zones and at various scales. The separate zones were joined into this coverage.

**Map Information:**  
Lambert Azimuthal Equal Area ; Scale 1:5645860  
The numbers on the map represent the locations of military bases. Please reference these numbers with the accompanying sheets entitled "Military Bases - CAST 5/96".

Figure RPZ1—Significant Dimensions and Comparison of Civilian to Military Zones



| Airport Type | Runway Protection Zone/Clear Zone Length | Runway Protection Zone/Clear Zone Inner Width | Runway Protection Zone/Clear Zone Outer Width | Accident Potential Zone Length | Accident Potential Zone Inner Width | Accident Potential Zone Outer Width |
|--------------|--|---|---|--------------------------------|-------------------------------------|-------------------------------------|
| Civilian     | 2,500'                                   | 1,000'  | 1,750'  | NA                             | NA                                  | NA                                  |
| Military     | 3000'                                    | 1,500'  | 2,284'  | 12,000'                        | 2,284'                              | 3,000'                              |
|              |  |   |   |                                |                                     |                                     |

SOURCE: Fact Sheet D#1 Siting HUD Assisted Projects in Accident Potential Zones

## Evaluating Military Airfield Hazards

- Determine whether your project is within 15,000 feet of a military airfield
  - <http://www.globalsecurity.org/military/facility/conus.htm>
- If it is not, compliance is complete
  - Include a map showing the project's proximity to the military airfield in the ERR

# If the Project is Within 15,000 feet of a Military Airfield

- Obtain a written finding from the Airport Operator as to:
  - Whether the project is located in a CZ or APZ
  - Whether there are expansion plans that may change the CZ/APZ
- Compliance is complete if the Airport Operator confirms:
  - Project is neither in a CZ or APZ
  - Ten year expansion plans will not expand CZ or APZ into project area
  - Include written finding in ERR

## If the Project is Located in an CZ

- But will not be frequently used or occupied by people
  - Obtain written documentation from the Airport Operator that there are no plans to purchase the property as part of a CZ/APZ land acquisition program
- If the project will be frequently used or occupied by people, *HUD assistance cannot be used*

## **If the Project is Located in an APZ**

- It is HUD's policy to discourage HUD assistance in APZs
- To be approved, the project must be consistent with Land Use Compatibility Guidelines for Accident Potential Zones chart of Department of Defense Instruction 4165.57, 32 CFR Part 256.

<http://www.dtic.mil/whs/directives/corres/pdf/416557p.pdf>



**Buyer Notification Requirements for Runway  
Clear Zones and Clear Zones of 24 CFR Part  
51.303(a)(3)**

# Runway Clear Zone and Clear Zone Buyer Notification Requirements

- Applies to all HUD Projects
- Requirements apply to HUD assistance, subsidy, insurance or sale of an existing property located:
  - Civilian Runway Clear Zone: 2,500 feet of the end of a runway
  - Military Clear Zone: 15,000 feet of the end of an airfield runway
- RE must advise buyers:
  - When property is in these types of zones
  - What the implications are
  - That the property may be acquired by the airport operator at a later date
- Buyers must sign a statement acknowledging receipt of this information

**NOTICE TO PROSPECTIVE BUYERS OF PROPERTIES LOCATED  
IN RUNWAY CLEAR ZONES AND CLEAR ZONES**

In accordance with [24 CFR 51.303\(a\)\(3\)](#), this Notice must be given to anyone interested in using HUD assistance, subsidy or insurance to buy an existing property which is located in either a runway Clear Zone<sup>1</sup> at a civil airport or a Clear Zone at a military installation. The original signed copy of the Notice to Prospective Buyers must be maintained as part of the project file on this action. [Instruction: fill out the area shown in parentheses below.]

The property that you are interested in purchasing at (Insert: street address, city, state, zip code) is located in the Runway Clear Zone/Clear Zone for (Insert: the name of the airport/airfield, city, state).

Studies have shown that if an aircraft accident were to occur, it is more likely to occur within the Runway Clear Zone/Clear Zone than in other areas around the airport /airfield. Please note that we are not discussing the chances that an accident will occur, only where one is most likely to occur.

You should also be aware that the airport/airfield operator may wish to purchase the property at some point in the future as part of a clear zone acquisition program. Such programs have been underway for many years at airports and airfield across the country. We cannot predict if or when this might happen since it is a function of many factors, particularly the availability of funds but it is a possibility.

We want to bring this information to your attention. Your signature on the space below indicates that you are now aware that the property you are interested in purchasing is located in a Runway Clear Zone/Clear Zone.

\_\_\_\_\_  
Signature of prospective buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or printed name of prospective buyer

<sup>1</sup> Also referred to as runway protection zone.



## **Documentation for the ERR**

**Must contain one of the following...**

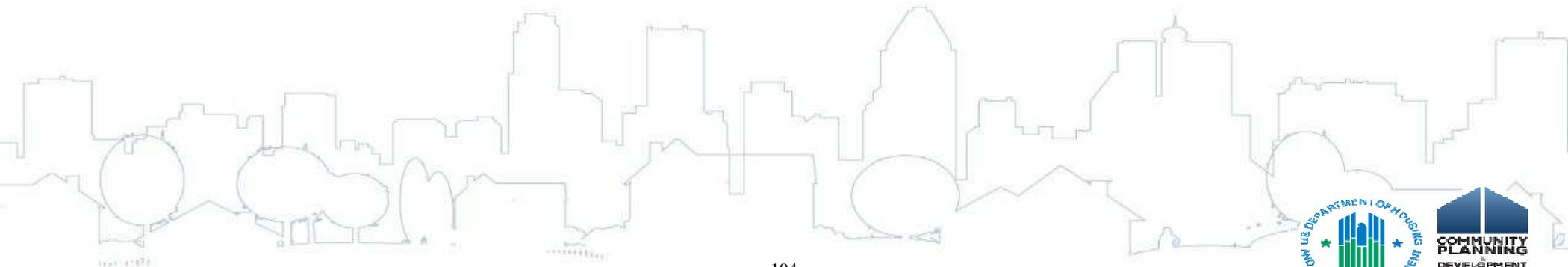
- Map with project location showing proximity to civilian airport runway and military airfield runway
- Written documentation from the Airport Operator.
- If project is located within RCZ/CZ, copy of buyer notification

# Coastal Barrier Resources Act

## §50.4(c)(1) & §58.6(c)

# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/coastal-barrier-resources>
- Coast Barrier Resources Worksheet:  
<https://www.hudexchange.info/resources/documents/Coastal-Barrier-Resources-Worksheet.docx>



# Coastal Barrier Resources Act

- The Coastal Barrier Resources Act (CBRA) of 1982 designated relatively undeveloped coastal barriers along the Atlantic and Gulf coasts as part of the John H. Chafee Coastal Barrier Resources System (CBRS) and made these areas ineligible for most new Federal expenditures and financial assistance.
- The Coastal Barrier Improvement Act (CBIA) of 1990 reauthorized the CBRA and expanded the CBRS to include undeveloped coastal barriers along the Florida Keys, Great Lakes, Puerto Rico, and U.S. Virgin Islands.
- There are a total of 585 system units, encompassing approximately 1.3 million acres of land and associated aquatic habitat. The system units are generally comprised of private lands that were relatively undeveloped at the time of their designation within the CBRS. The boundaries of these units are generally intended to follow geomorphic, development, or cultural features.
- The law encourages the conservation of hurricane-prone, biologically rich coastal barriers by restricting Federal expenditures that encourage development. HUD financial assistance may not be used for most activities in CBRS units.

# LOCATION OF CBRS UNITS

ALABAMA

CONNECTICUT

DELAWARE

FLORIDA

GEORGIA

**LOUISIANA**

MAINE

MARYLAND

MASSACHUSETTS

MICHIGAN

MISSISSIPPI

MINNESOTA

NEW JERSEY

NEW YORK

NORTH CAROLINA

OHIO

PUERTO RICO

RHODE ISLAND

SOUTH CAROLINA

**TEXAS**

U.S. VIRGIN ISLANDS

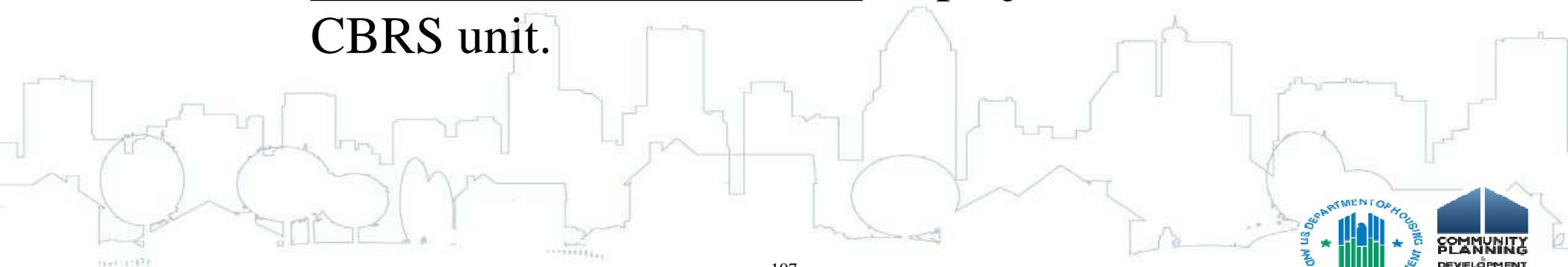
VIRGINIA

WISCONSIN



# 24 CFR 58.6 (c) Coastal Barrier Resource System Requirements

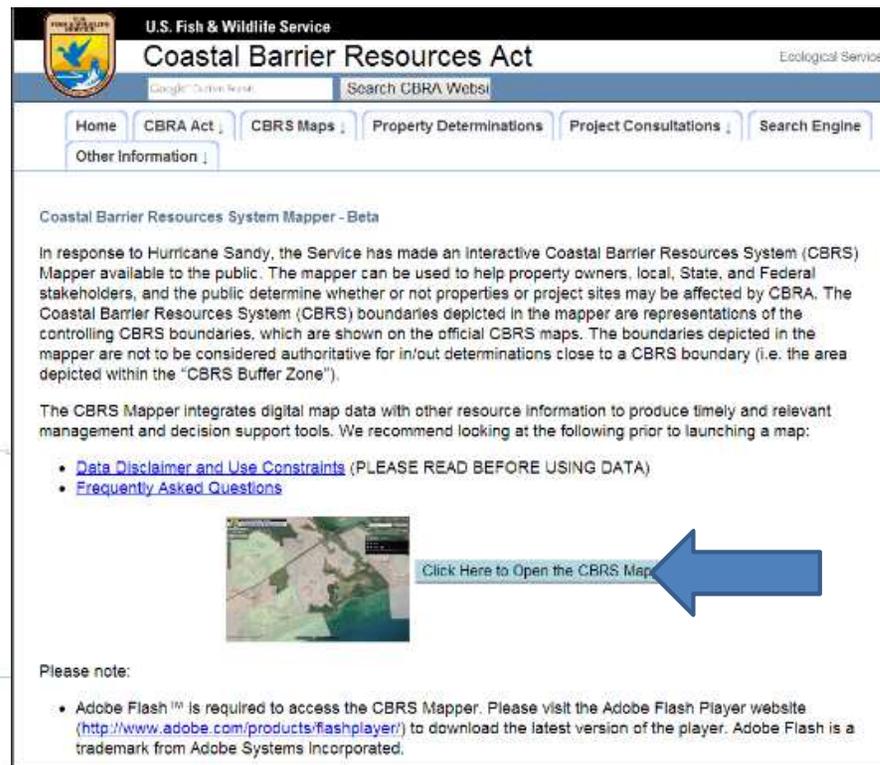
- Areas within the Coastal Barrier Resources System are mapped and described as CBRS units
- With very limited exceptions, **federal assistance is not allowed** for projects in a CBRS unit.



# How to Determine if your Project is in a Coastal Barrier Resource System (CBRS)

<http://www.fws.gov/CBRA/Maps/Mapper.html>

- Not applicable to projects that are not in a coastal area
- For projects in a Coastal Area, use the U.S. Fish and Wildlife Services' Coastal Barrier Resources Act Mapper



U.S. Fish & Wildlife Service  
Coastal Barrier Resources Act

Home | CBRA Act | CBRS Maps | Property Determinations | Project Consultations | Search Engine | Other Information

### Coastal Barrier Resources System Mapper - Beta

In response to Hurricane Sandy, the Service has made an interactive Coastal Barrier Resources System (CBRS) Mapper available to the public. The mapper can be used to help property owners, local, State, and Federal stakeholders, and the public determine whether or not properties or project sites may be affected by CBRA. The Coastal Barrier Resources System (CBRS) boundaries depicted in the mapper are representations of the controlling CBRS boundaries, which are shown on the official CBRS maps. The boundaries depicted in the mapper are not to be considered authoritative for in/out determinations close to a CBRS boundary (i.e. the area depicted within the "CBRS Buffer Zone").

The CBRS Mapper integrates digital map data with other resource information to produce timely and relevant management and decision support tools. We recommend looking at the following prior to launching a map:

- [Data Disclaimer and Use Constraints](#) (PLEASE READ BEFORE USING DATA)
- [Frequently Asked Questions](#)

[Click Here to Open the CBRS Mapper](#)

Please note:

- Adobe Flash™ is required to access the CBRS Mapper. Please visit the Adobe Flash Player website (<http://www.adobe.com/products/flashplayer/>) to download the latest version of the player. Adobe Flash is a trademark from Adobe Systems Incorporated.

# Accept the Mapper's Terms and Conditions

U.S. Fish and Wildlife Service  
Coastal Barrier Resources System Mapper - Beta

Copies of the official CBRS maps are available for viewing at the Service Headquarters office and are also available for download on the CBRS Mapper and at the [Maps](#) web page. For information on obtaining an official determination of whether or not an area or specific property is located within the CBRS, please visit the [Determinations](#) web page. For information on project consultations, please visit the [Consultations](#) web page. For general questions regarding the CBRS, you may contact [CBRA@fws.gov](mailto:CBRA@fws.gov). For information on the horizontal accuracy of this digital data set, please read the [metadata](#).

Base cartographic information used as part of this Wetlands Mapper has been provided through third party products. The FWS does not maintain, and is not responsible for the accuracy or completeness of the base cartographic information.

This application may not be fully accessible to people with disabilities. If you need assistance accessing this mapper or wetlands data email us at: [wetlands\\_tenn@fws.gov](mailto:wetlands_tenn@fws.gov).

**I accept the terms and conditions.**

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
COMMUNITY PLANNING DEVELOPMENT  
109

# Enter the Project Address

Coastal Barrier Resources System Mapper - Beta

U.S. Fish and Wildlife Service

www.fws.gov/CBRS/Maps/Mapper.html

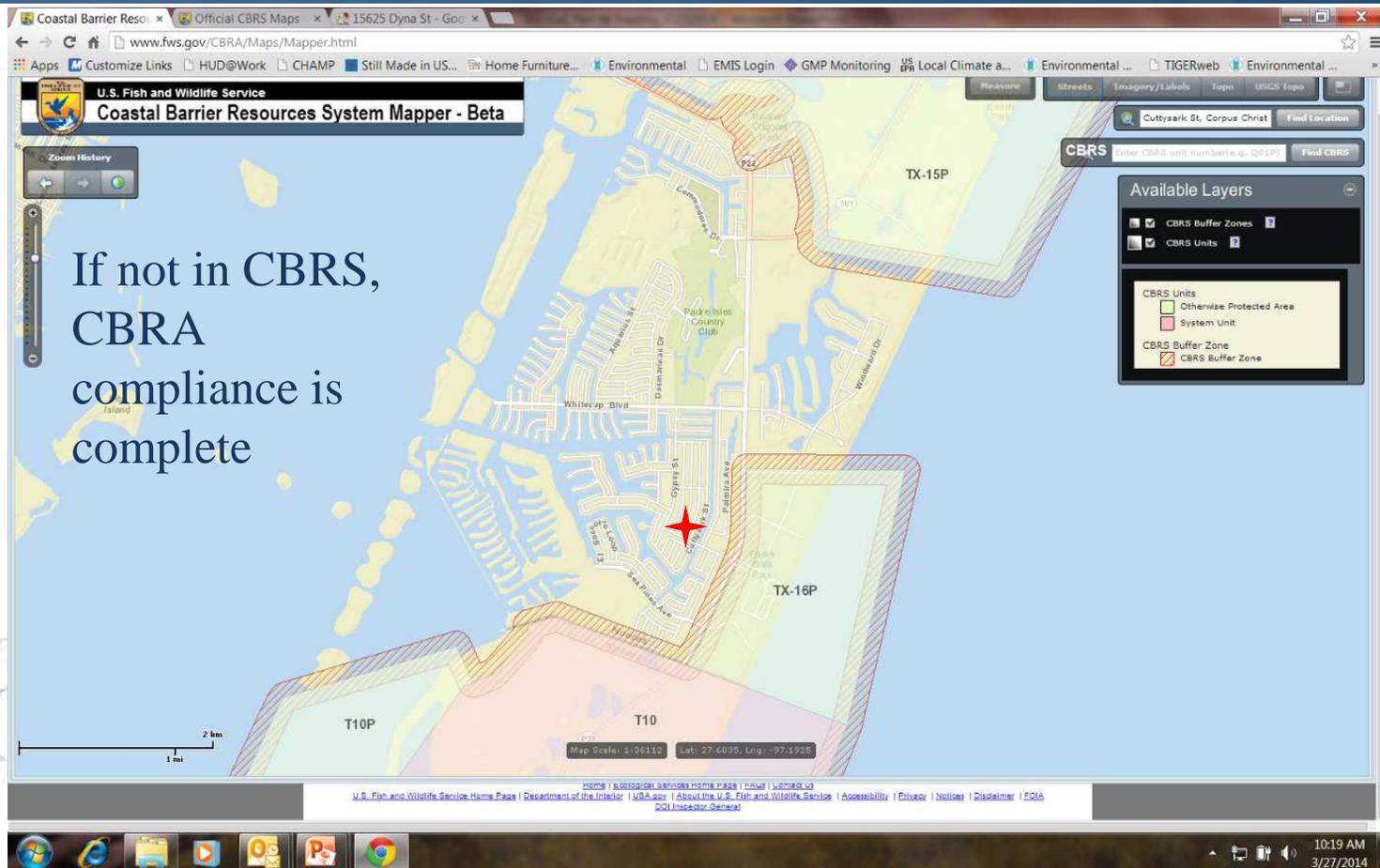
Enter Address or ZIP Code

Available Layers

CBRS Units

10:14 AM  
3/27/2014

# Results Showing Project Outside of the CBRS



# Documentation for the ERR

## Must contain one of the following...

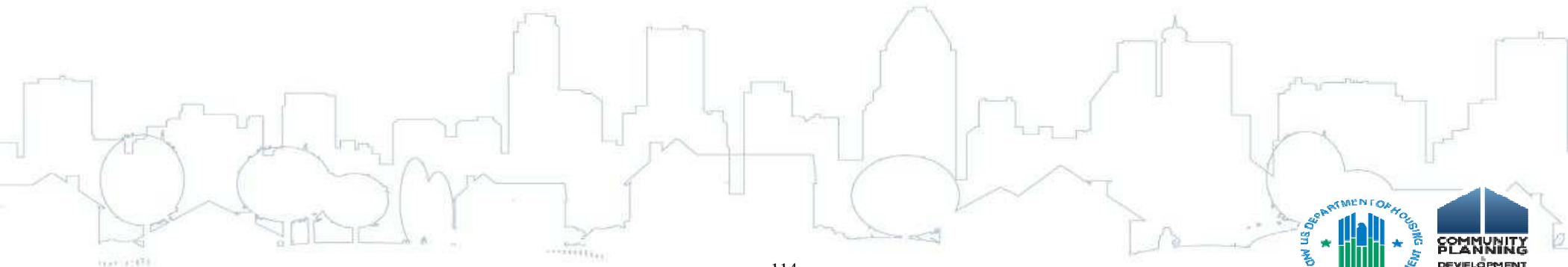
- A general location map establishing there are no Coastal Barrier Resource System units in the city or county
- A map issued by the FWS (or from their website) showing that the proposed project is not located within a designated Coastal Barrier Resources System Unit.
- Approval of the project from the FWS, including all prior correspondence

# **Flood Insurance**

## **§58.6(a)&(b) & §50.4(b)(1)**

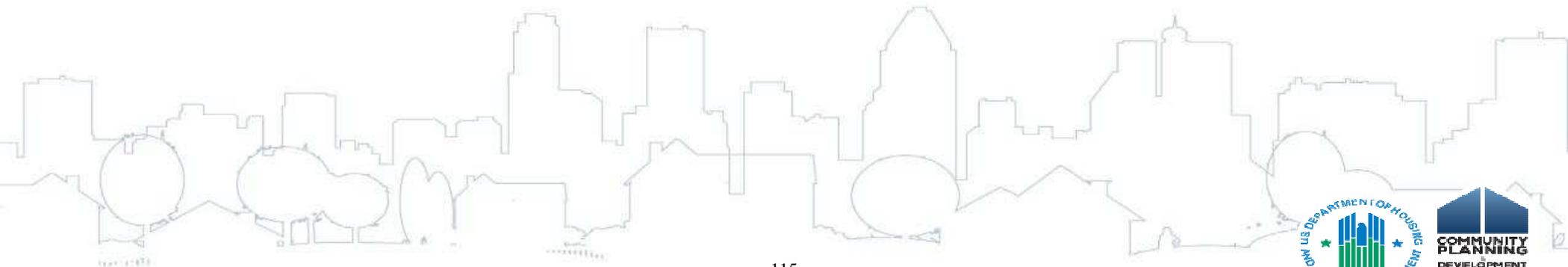
# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/flood-insurance>
- Flood Insurance Worksheet:  
<https://www.hudexchange.info/resources/documents/Flood-Insurance-Worksheet.docx>



# FLOOD INSURANCE

- Flood Disaster Protection Act of 1968
- Flood Insurance Program (NFIP)
- HUD Flood Insurance Requirements  
§58.6(a) & (b) & §50.4(b)(1)



# Legal and Regulatory Basis for Flood Insurance Requirements

- Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) requires that projects receiving federal assistance and located in an area identified by the Federal Emergency Management Agency (FEMA) as being within a Special Flood Hazard Areas (SFHA) be covered by flood insurance under the National Flood Insurance Program (NFIP).
- In order to be able to purchase flood insurance, the community must be participating in the NFIP.
- If the community is not participating in the NFIP, federal assistance cannot be used in those areas.



# Does your project involve...

- Financial assistance for
  - Construction
  - Rehabilitation
  - acquisition of a mobile home, building, or insurable personal property
  - purchase of machinery, equipment, fixtures, or furnishings that are insurable under NFIP?
- HUD-assisted projects described above that are located within Special Flood Hazard Areas, must have flood insurance protection as a condition of approval
- Insurance is required on the building (not land) and machinery, equipment, fixtures, and furnishings contained within the building.
- RE's are responsible for ensuring flood insurance is obtained and maintained.

# Exceptions

- Formula grants made to states
- State-owned property
- Loans or Grants (\$5,000 or less)
- Assisted leasing that is not used for repairs, improvements, or acquisition
- Improvements or repairs costing below the NFIP deductible (standard deductible \$5,000)



# Flood Insurance Coverage for Loans

- For loans, loan insurance or guarantees, the amount of flood insurance coverage must at least equal ...
  - the outstanding principal balance of the loan,
  - or the maximum limit of coverage made available under the National Flood Insurance Program
  - whichever is less.



# Flood Insurance Coverage for Grants

- For grants and other non-loan forms of financial assistance, flood insurance coverage must
  - be continued for the life of the building irrespective of the transfer of ownership.
  - be at least equal the total project cost or the maximum coverage limit of the National Flood Insurance Program, whichever is less.



# National Flood Insurance Program

- NFIP is a voluntary program, based on mutual agreement between the Federal government and the local community.
- In exchange for adopting and enforcing a Floodplain Management (FPM) ordinance, Federally backed flood insurance is made available to property owners throughout the community.
- If the community is not participating, or if its participation has been suspended, **federal assistance may not be used** for projects in the Special Flood Hazard Area.



*Lubbock, TX*

# HUD Disaster Assistance

- Section 582 of the National Flood Insurance Reform Act of 1994 prohibits HUD disaster assistance in a special flood hazard area for payments for repair, replacement or restoration for flood damage to residential or commercial property if:
  - The person previously received disaster assistance and did not maintain required flood insurance

# Documentation for the ERR

## Must contain one of the following...

- Documentation supporting the determination that the project does not require flood insurance or is excepted from flood insurance
- A FEMA Flood Insurance Rate Map (FIRM) showing that the project is not located in a Special Flood Hazard Area
- A FEMA Flood Insurance Rate Map (FIRM) showing that the project is located in a Special Flood Hazard Area along with a copy of the flood insurance policy declaration or a paid receipt for the current annual flood insurance premium and a copy of the application for flood insurance



A dramatic sky with a large white cloud, a lightning bolt, and two smokestacks in the foreground. The sky is a mix of blue, purple, and red, suggesting a sunset or sunrise. The cloud is large and billowing, with a lightning bolt striking down from it. Two smokestacks are visible in the lower left corner, emitting a faint plume of smoke.

**Air Quality**  
**58.5(g) & 50.4(h)**

# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/air-quality>
- Air Quality Worksheet:  
<https://www.hudexchange.info/resources/documents/Air-Quality-Worksheet.docx>

# Clean Air Act (CAA) of 1970—Criteria Pollutants

- CAA is a comprehensive Federal law that regulates air emissions
- It's provisions cover:
  - Ambient Air Quality for stationary and mobile sources
  - Air Toxics
  - Acid rain
  - Ground-level ozone
  - Stratospheric ozone depletion

# Compliance with Ambient Air Standards

- Generally concerned only with projects that require an EA or EIS level of review
- Types of activities that would not likely contribute to non-attainment of the NAAQS
  - Single family housing projects 5 or fewer dwelling units
  - Housing Rehabilitation
  - Play ground improvements
- Focus on projects that either
  - Increase traffic, OR
  - Increase power generation

## Compliance with Ambient Air Standards

- Federal projects must conform to Clean Air Act requirements if they may constitute a significant new source of air pollution.
- If your project does not involve new construction or conversion of land use, it can be assumed that its emissions are below de minimis levels and the project is in compliance with the Act.

# National Ambient Air Quality Standards (NAAQS)

- National ambient air quality standards set for criteria pollutants which include:
  - ground-level ozone (smog)
  - particulate matter
  - carbon monoxide
  - lead
  - nitrogen dioxide
  - sulfur dioxide

- Based on Averaged Concentrations Applied to the General Population within a Geographic Area
- Major sources:  
Industrial Plants and  
Automobile Traffic

## **STEP 1. Determine Whether the Project is Located in a NAAQS Non-Attainment or Maintenance Area**

- **For new construction projects or changes in land use.**
- **Currently Designated Nonattainment Areas for All Criteria Pollutants (EPA, March 2012)**  
<http://www.epa.gov/oaqps001/greenbk/>
- **If not in a non-attainment area, the project is in compliance with the Clean Air Act and compliance is complete.**

## **STEP 2. If the Project is Located in a Non-Attainment Area**

- Obtain a letter of consistency with the State Implementation Plan from the State oversight agency and include in the ERR; or,
- Permitting and compliance actions (e.g., air modeling) may be required in order to conform with the SIP

## State Implementation Plans for Non-Attainment Areas

- NAAQS permitting program is generally delegated to states
  - Hold hearings on permit applications by power companies, chemical companies, etc.
  - Involve the public, through hearings and opportunities to comment
  - Fine companies for violating air pollution limits
- State Implementation Plans (SIP)
  - States that have designated Non-Attainment areas must submit a SIP to EPA for approval
  - Explains how the State will comply with NAAQS

# Projects Must Conform to State Implementation Plans

- **Statutory Test for Conformance** [CAA Sec. 7506(c)(1)(B)(i)-(iii)] -- The Project Will Not:
  - **Contribute** to any new violation of any standards in any area
  - **Increase** the frequency or severity of any existing violation of any standard in any area; or
  - **Delay** timely attainment of any standard or any required interim emission reductions or other milestones in any area”

## STEP 3. Mitigate Impacts

- Mitigation is required to bring project into compliance if emissions exceed:
  - De minimus emissions levels for pollutants in Non-attainment
  - Maintenance levels necessary to avoid Non-attainment
  - State NAAQS screening levels
- If emissions cannot be mitigated, then, federal funds may not be used
- Conditions that are required for conformance must be included in Environmental Review as a Project Condition
- Must be noted in the Mitigation section of EA checklist

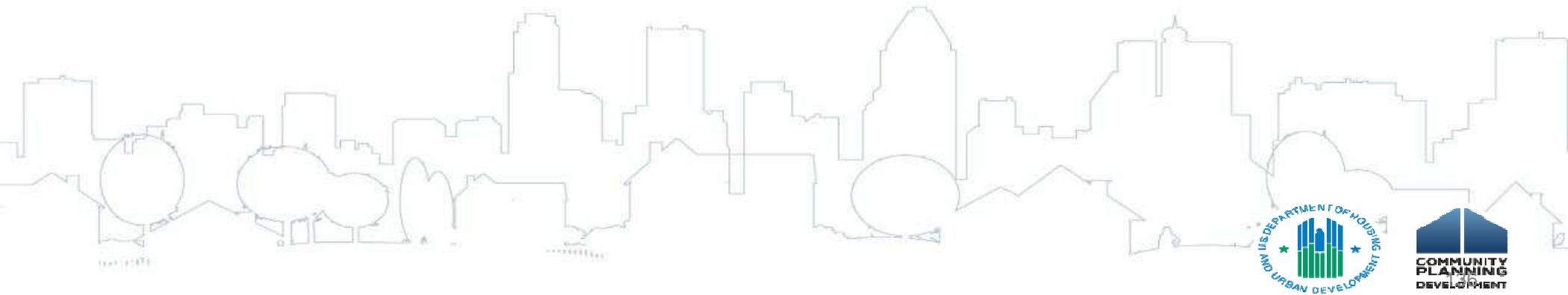
# **Coastal Zone Management Act of 1972 (as amended)**

**24 CFR Part 58.5 (c) &  
Part 50.4 (c)(2)**



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/coastal-zone-management>
- Coastal Zone Management Worksheet:  
<https://www.hudexchange.info/resources/documents/Coastal-Zone-Management-Worksheet.docx>



# Background

- The U.S. Congress recognized the importance of meeting the challenge of continued growth in the coastal zone by passing the Coastal Zone Management Act (CZMA) in 1972. The Act, administered by the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resources Management, provides for management of the Nation's coastal economic development with environmental conservation.
- The overall program objective of CZMA remain balanced to preserve, protect, develop and where possible to restore or enhance the resources of the nation's coastal zone.



# What is a Coastal Zone?

The coastal zone includes:

- coastal salt waters and adjacent shore lands,
- intertidal areas,
- barriers and other islands,
- estuaries, and
- land whose use would have a significant impact on coastal waters.



# Why is Development in a Coastal Zone a Problem?

Development in a Coastal Zone can have a severe Ecological Impact and impact public safety. Some of these impacts include:

- Habitat loss
- Air and Water Pollution
- Hurricanes and severe storms
- Erosion and Land Subsidence
- Flood Hazards
- Hampered Navigation
- Loss of public access to coastal areas
- Interference with Natural Processes, and
- Increases in Damage to Coastal Areas



# Coastal Zone Management Act Requirements

## **Federal Level (section 307)**

- All Federal actions which directly affect a coastal zone must be consistent with approved State Coastal Zone Management Plans
- The Federal agency must provide a consistency determination to the relevant State agency as early as possible, but no later than 90 days before final approval of the Federal activity



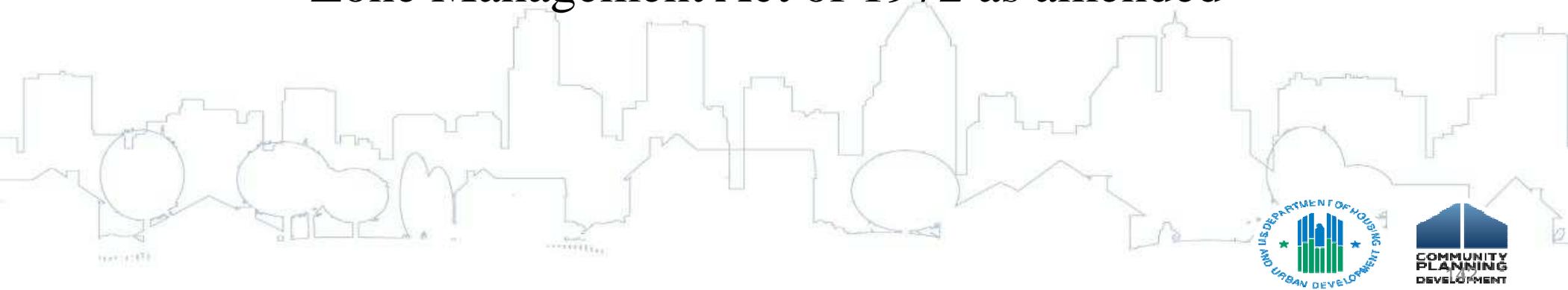
# Four types of Federal Actions under the CZMA

- **Federal agency activities** – an activity proposed to be conducted by, or on behalf of, a federal agency (15 C.F.R. part 930, subpart C);
- **Federal license or permit activities** – an activity proposed by a non-federal entity applying for a required federal authorization (15 C.F.R. part 930, subpart D);
- **Outer Continental Shelf (OCS) Oil and Gas Plans** – a plan for the exploration or development and production of oil or gas in federal waters under the Outer Continental Shelf Lands Act (OCSLA) (15 C.F.R. part 930, subpart E); and
- **Federal financial assistance activities** – an application by a state agency or local government for federal financial assistance (15 C.F.R. part 930, subpart F).



# CZMA and HUD

All HUD projects subject to “Related Federal laws and authorities” (24CFR50.4 or 24CFR58.5) must comply with the Coastal Zone Management Act of 1972 as amended



# Which States Have Coastal Zone Management Programs?

If your project is in one of the highlighted states or territories, consultation with the local State Coastal Management Program Office may be necessary



# How Can You Know if Your Proposed Action is in a Coastal Zone?

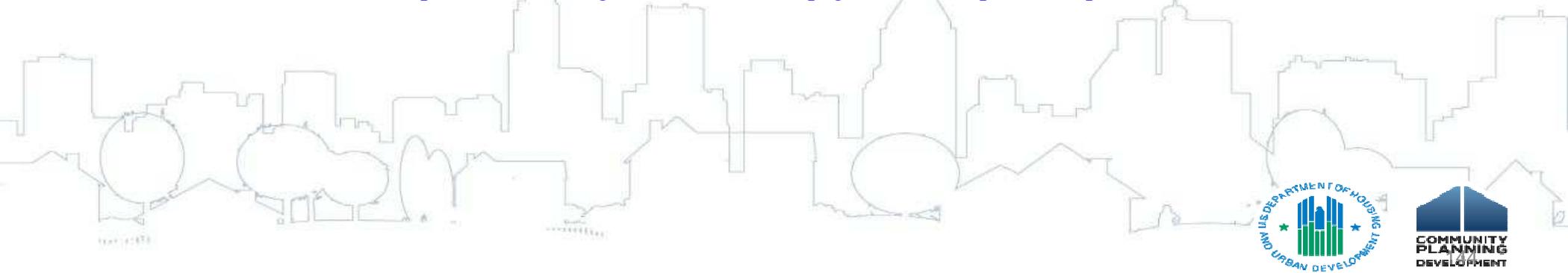
## Find the coastal zone boundaries for your State Management Program

<http://coastalmanagement.noaa.gov/mystate/docs/StateCZBoundaries.pdf>

Texas - <http://www.glo.texas.gov/what-we-do/caring-for-the-coast/documents/landing-page-folder/CoastalBoundaryMap.pdf>

Louisiana - [http://dnr.louisiana.gov/assets/OCM/CoastalZoneBoundary/CZB2012/maps/Outreach\\_Map.pdf](http://dnr.louisiana.gov/assets/OCM/CoastalZoneBoundary/CZB2012/maps/Outreach_Map.pdf)

Louisiana - <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=928>





# How Do I Comply With CZMA ?

RE must determine if Coastal Zone Management Act applies to their project

- Compliance is Not Required if:
  - Project is not located within a Coastal Zone Management Program Area
  - Project does not consist of new construction, land conversion, major rehabilitation or substantial improvements
- If your project is located within a Coastal Management Zone, coordination with your State's Coastal Management Program is required if your project consist of new construction, land use conversion, Major rehabilitation or Substantial improvements



# ERR Documentation

- If the project is **not within an area of concern** for the coastal zone
  - Include the appropriate state Coastal Zone Map with the project location indicated on the map showing it is outside the area of concern
- If the project is **within an area of concern for the coastal zone but not the type of project** that will adversely affect coastal zone document this with a memo to the file
- If the project is **within the area of concerns for coastal zone and requires the State review**, include:
  - Request for State review
  - State review or permit
  - Project mitigation measures and project conditions must be included as a condition of commitment



# **Contamination and Toxic Substances**

**Section 50.3(i), Section 50.4(i), Section 58.5(i)(2)**



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/site-contamination>
- Site Contamination Worksheet (Single Family):  
<https://www.hudexchange.info/resources/documents/Site-Contamination-Single-Family-Worksheet.docx>
- Site Contamination Worksheet (Multifamily):  
<https://www.hudexchange.info/resources/documents/Site-Contamination-Multi-Family-Worksheet.docx>

# Why is Considering Contamination Important?

- **Public Health Implications**
  - Cancer, birth defects, and other illnesses of property occupants
- **Financial Implications**
  - Contamination affects property values
  - Affects ability of borrower to repay loan
  - Foreclosure complications for lender
  - Tenant losses, breaking lease, stigmatization of property
  - Remediation Costs often Far Exceed Value of Property
- **Liability Considerations**
  - Clean Up Liability
  - Tort Liability

# Love Canal Example (1976)

- Development built on a buried canal containing more than 21,000 tons of toxic waste generated from Hooker Chemical Corporation.
- The site was contaminated with polychlorinated biphenols (PCBs), Dioxins and Furans, and Benzene
- Contamination was discovered with the emergence of an abnormally high occurrence of cancers, birth defects and other health problems.

- HUD supported the relocation of more than 900 households
- Remedy: Onsite incineration
- **Cost:** \$400 million
- Time: 21 years to complete
- Occidental Chemical Corporation paid \$129 million to cover the costs



# Times Beach Missouri Example (1982)

- St. Louis County road dust control project contaminated the town of Times Beach with dioxin
- The area was flooded and was further contaminated
- EPA closed the small town of 2,200 people.
- Remedy—onsite incineration at a cost of **\$110 million.**
- Relocation cost of **\$ 30 million.**



Bill Pierce/Time & Life Pictures/Getty Images

<http://www.npr.org/2010/12/28/132368362/a-chemical-conundrum-how-dangerous-is-dioxin>



# Sources of Contamination

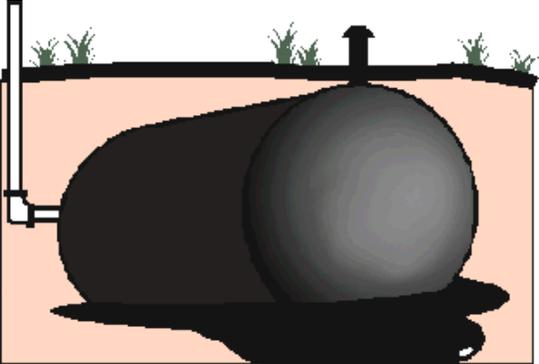


Landfills

Unexplained dirt piles / mine tailings

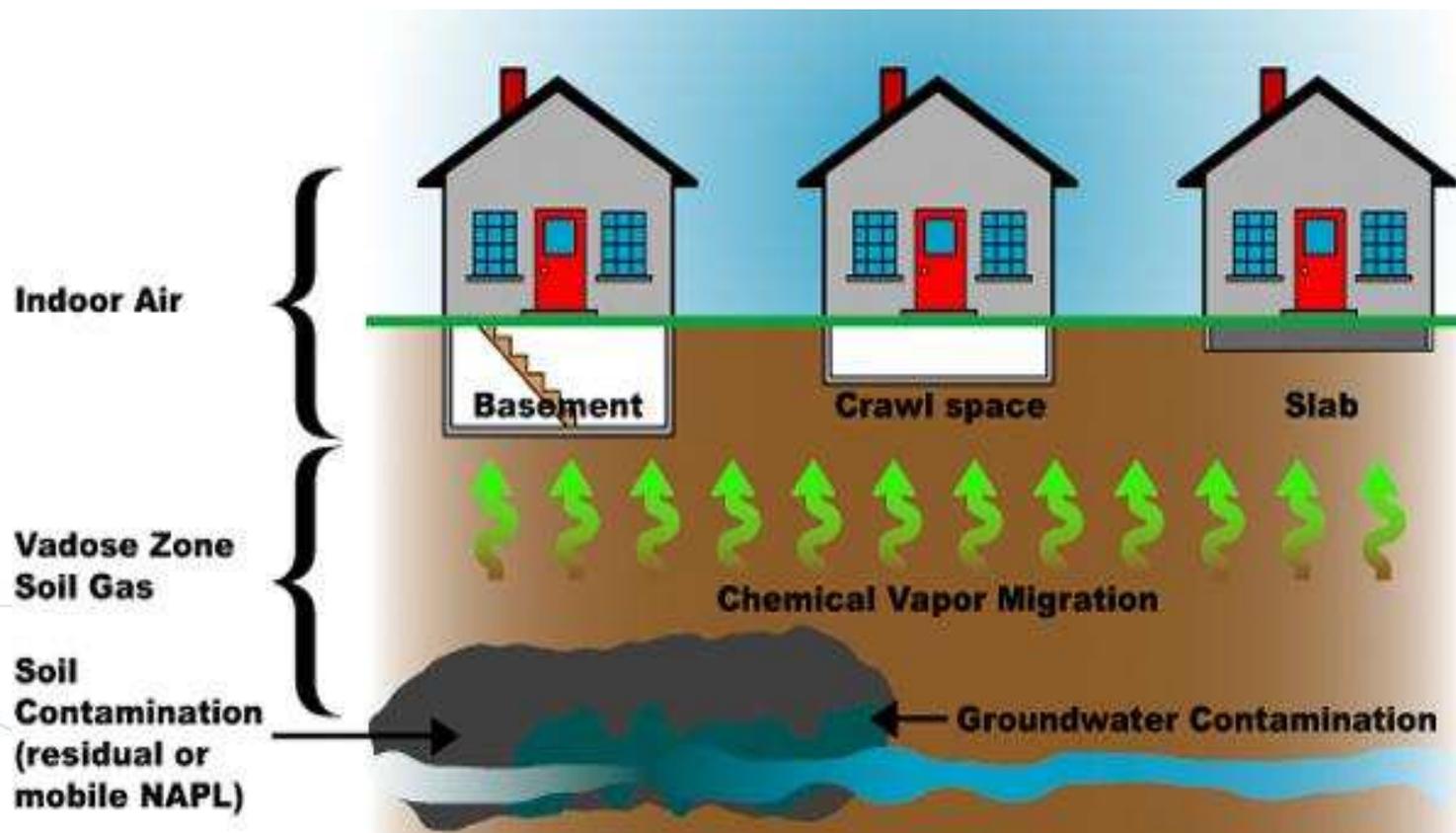


Buried Waste



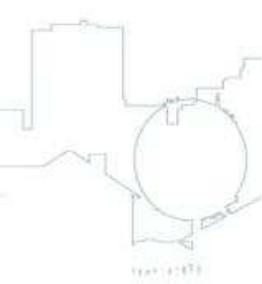
Underground Tanks

# Vapor Encroachment



## Site Contamination Concerns

| Source                           | Exposure Method                                   | Associated Pollutant  | Potential Health Effects   |
|----------------------------------|---|---|--|
| Petroleum Storage Tanks          | Vapor Intrusion                                   | Benzene and other solvents  | Leukemia, other cancers  |
| Dry Cleaning                     | Vapor Intrusion, Air, Water                       | <ul style="list-style-type: none"> <li>• Perchloroethylene</li> <li>• Tetracholorethylene</li> </ul>  | Central Nervous System Effects, Cancer   |
| Agricultural Industries          | Vapor Intrusion, Soil, Food, Air, Water           | Various Pesticides and Herbicides   | Range of effects including acute and chronic neurological effects, cancer, birth defects   |
| Industrial Production Facilities | Vapor Intrusion, Soil, Food, Air, Water           | Range of toxic chemicals depending on production process  | Range of effects including cancer, birth defects, chronic effects, acute neurological  |
| Meth Labs                        | Vapor Intrusion, Soil, Surfaces, Food, Air, Water | <ul style="list-style-type: none"> <li>• Acetone</li> <li>• Lithium</li> <li>• Toluene</li> <li>• Sulfuric Acid</li> <li>• Pseudoephedrine</li> </ul> | Fire and explosion hazard, acute and chronic CNS effects, cardiac arrest, lung damage, renal failure, stroke death, developmental toxicity |



# HUD Contamination Standard and Environmental Policy [Part 50.4 (i) and Part 58.5(i)(2)]

“All property proposed for HUD program assistance shall be free of hazardous materials, contamination, toxic chemicals, gases and radioactive substances where the hazard could affect the health and safety of occupants or conflict with the intended utilization of the property”

# Requirements for Site Evaluation

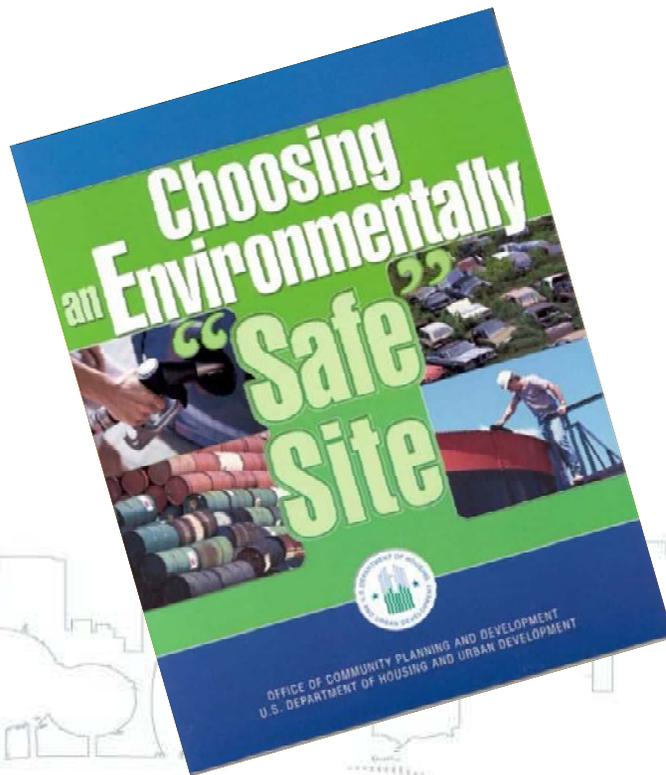
[Part 50.4 (i) & Part 58.5(i)(2) Cont.]

(2) For multifamily housing or non-residential projects environmental reviews must evaluate previous uses and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected.

(3) Particular attention should be given to any proposed site on or in the general proximity of dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(4) HUD/RE must use current techniques conducted by qualified professionals to undertake investigations as determined necessary.

# Useful Resource: Choosing an Environmentally Safe Site



Guidance designed to assist sponsors or owners participating in the Multifamily Housing Section 202 and Section 811 programs, as well as other HUD program participants, grant recipients, and Responsible Entities considering sites that may have environmental risks.

<https://www.hudexchange.info/resource/83/choosing-an-environmentally-safe-site/>



# LIMITED DUE DILIGENCE FOR SINGLE FAMILY HOUSING PROJECTS

# 3 Steps to Limited Due Diligence for Single Family Housing (SFH) Projects



**1. Government  
Records  
Search**

**2. Evaluate  
Historic Uses, if  
possible**



**3. Site Visit**



**Evaluate Findings**



# Guidance and Evaluation Tools for Limited Due Diligence for Single Family Housing Projects

- Best Option: ASTM # E1528-06--  
Standard Practice for Limited  
Environmental Due Diligence:  
Transaction Screen Process:

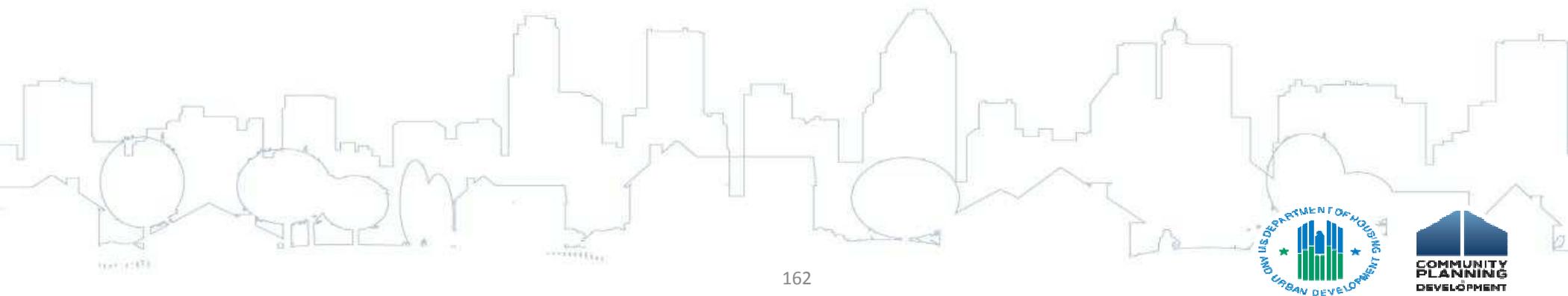
<http://webstore.ansi.org/SdoInfo.aspx?sdoid=41&Acro=ASTM&DpName=ASTM%20International&source=google&keyword=astm%20international&gclid=CJ2hhYTS6r0CFe07OgodKz0AGA>



## Step 1: Government Records Search

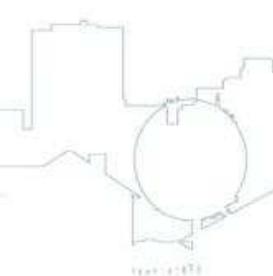
- Can use online tool like NEPAssist Tool for the Government Records Search found at:

<http://nepassisttool.epa.gov/NEPAssist/entry.aspx>



# What are you looking for? Sites within the ASTM Minimum Search Distance from the Property

| Standard Environmental Record Sources                                 | ASTM/AAI Minimum Search Distance (mi) |
|---|---------------------------------------|
| Federal NPL Site List   | 1                                     |
| Federal RCRA CORRACTS Facilities List                                 | 1                                     |
| State- and Tribal-Equivalent NPL                                      | 1                                     |
| Federal CERCLIS NFRAP Site List                                       | 0.5                                   |
| Federal RCRA Non-CORRACTS TSD Facilities List                         | 0.5                                   |
| State- and Tribal-Equivalent CERCLIS                                  | 0.5                                   |
| State and Tribal Landfill and/or Solid Waste Disposal Site Lists      | 0.5                                   |
| State and Tribal Leaking Storage Tank Lists                           | 0.5                                   |
| State and Tribal Voluntary Cleanup Sites                              | 0.5                                   |
| State and Tribal Brownfield Sites                                     | 0.5                                   |
| Federal Institutional Control/Engineering Control Registries          | Property Only                         |
| Federal Emergency Response Notification System (ERNS) List            | Property Only                         |
| State and Tribal Institutional Control/Engineering Control Registries | Property Only                         |
| Federal RCRA Generators List  | Property/Adjoining Properties         |
| State and Tribal Registered Storage Tank Lists                        | Property/Adjoining Properties         |



## Search Distance Acronyms

- **National Priorities List (NPL)** —Superfund most hazardous sites in the nation
- **RCRA CORRACTs** —RCRA Corrective Action--Most hazardous cleanup sites
- **Comprehensive Emergency Response Compensation and Liability Information System (CERCLIS)**—46,000 contaminated sites not on the NPL that are undergoing clean-up
- **CERCLIS NFRAP**--No Further Remedial Action Planned
- **RCRA Non-CORRACT TSD Facilities**—RCRA Transport, Storage and Disposal Facilities
- **RCRA Generator**--A hazardous waste generator is any person or site whose processes and actions create hazardous waste

## Search Distance Acronyms (cont.)

- **ERNS--Federal Emergency Response Notification System**--national database on releases of oil and hazardous substances. Notifications made to the federal government:
  - ✓ Superfund
  - ✓ RCRA
  - ✓ Clean Water Act (CWA)
  - ✓ Hazardous Material Transportation Act
- **Engineering Controls**—Technology imposed as a continuing obligation required to ensure continued remediation
- **Institutional Controls** —Legal or regulatory restriction as a continuing obligation to ensure continued remediation
- **Non-Federal Sites:**
  - ✓ **Voluntary Clean Up Sites**—State/Tribal Clean Up Program
  - ✓ **Brownfields**—Contaminated Sites regulated by States/Tribes
  - ✓ **Storage Tanks**—Registered Petroleum Storage Tanks/Leaking Underground Storage Tanks
  - ✓ **Landfills/Solid Waste Disposal**

# Why look 1 miles from a RCRA CORRACTs Site? Example Dow Chemical—Midland Michigan Dioxin Contamination of Saginaw Bay Watershed

## Tittabawasse River Study Areas



## Summary: Government Records Search Evaluation

- Site of Concern within Minimum Search Distance—Further evaluate.
- Release of Permit Violations-Contact regulatory oversight agency for additional information.
- If unable to rule out concern for site, then:
  - Hire a qualified environmental professional to further evaluate site, or
  - Reject the project
- If government records search identifies multiple sites of concern
  - Consider another SFH Site
  - Cost of ruling out contamination may be costly vis a vis level of HUD assistance



## Step 2. Evaluate Historic Uses

- Aerial Photographs – Google Earth
- Fire Insurance Maps – Local Library
- Recorded Land Title Records—Title Search
- Property Tax Files
- USG Topographical Maps
- Local Street Directories
- Building Department Records
- Zoning/Land Use Records
- Other: Maps, newspaper archives, internet cites, local libraries, etc.

# Historic Uses of Concerns

- Gas Stations
- Car Dealership
- Depot
- Industrial or commercial
- Photo development laboratory
- Junkyard or landfill
- Tannery
- Auto Repair Shop
- Auto Garage
- Commercial Printing Facility
- Dry Cleaners
- Hospital
- Livestock Operation
- Meth Lab

**Recommended, but not Required for SFH projects**



## If Historic Uses of Concern Are Identified

- Must demonstrate use has not resulted in site contamination
- Further evaluate using the services of a qualified environmental professional to rule out contamination, OR,
- Deny the project.



## Step 3: Site Visit

- Can identify potential sources of contamination not included in government records search data bases
- Examples:
  - Unpermitted industrial facilities
  - Mounds, distress vegetation, empty chemical containers

## Does the Site Visit Indicate Any of the following Signs of Contamination...?

- Vents, pipes
- Underground storage tank (other than residential fuel tank)
- Distressed Vegetation
- Oil storage tanks



- Questionable containers
- Pits, ponds or lagoons
- Stained soil or pavement
- Pungent, Foul or Noxious Odors
- Dumped Material or Soil, Mounds of Dirt, Rubble, Fill, etc.



## Compliance is Complete if:

- **Government Records Search:**
  - No sites of concerns within minimum search distances, or
  - Compliance history for identified shows no permit violations or releases, or
  - Regulatory oversight agency provides written documentation that sites are not of concern, and
- There are no historic uses of concern
- Site visit does not indicate potential site contamination

# If Limited Due Diligence Does not Rule Out Potential Site Contamination

- Retain specialized expertise:
  - Obtain further written documentation based on expertise
  - Complete an ASTM Phase I Environmental Site Assessment
  - Complete ASTM Phase II Environmental Site Assessment, if necessary
- If site is contaminated, ERR must include:
  - Remediation plan approved by regulatory oversight agency
  - Firm cost estimate
  - Documentation of a secured source of funding
  - Project condition for site closure letter from regulatory oversight agency prior to initiating rehabilitation or construction

# When to Consider Rejecting a SFH Site

- Multiple NEPAassist hits within minimum search distance from the property
- Gas stations and dry cleaners (including historic dry cleaners), on, adjacent to or near the property
- Industry or commercial operations on, adjacent to or near the site (e.g. a refinery or fertilizer plant nearby)
- Past Use that could have contaminated site
- Cost of further evaluating site contamination could be high relative to value of HUD assistance for an individual SFH



## Include the following in the ERR to Document Compliance, as applicable

- Documentation of Historic Uses
- Field Site Visit Report
- NEPAassist Map with sites (or equivalent)
- NEPAassist report (or equivalent)
- Enforcement and compliance reports that rule out site contamination
- Written correspondence with regulatory oversight agency
- Written documentation from qualified environmental professional
- ASTM Phase I and Phase II ESA
- Remediation Plan with written approval of regulatory oversight agency
- Firm Cost Estimate
- Documentation of Secured Source of Funding for Remediation



# FULL DUE DILIGENCE FOR EVALUATING SITE CONTAMINATION

# Full Site Contamination Due Diligence Recommended for:

- Land Acquisition for any purpose
- New Construction/Substantial Rehabilitation
- Residential Housing > 4 dwelling units (Multifamily Housing, Concentrated Subdivision Development)
- Commercial Sites
- Industrial Sites
- Agricultural Sites
- Public Facilities

# Steps in Addressing Site Contamination

## Site Contamination Evaluations:

**Step 1.** Full Due Diligence—Determine Potential for Contamination

**Step 2.** Confirm Presence of or Rule Out Site contamination

## Addressing Contaminated Sites (Will not be addressed in this course):

**Step 1.** Site Contamination Characterization/Remedial Investigation

**Step 2.** Remediation Plan

**Step 3.** Remedial Action

**Step 4.** Maintain Continuing Obligations

**Step 5.** Site Closure—No Further Action Required

## Step 1. Full Due Diligence—Determine Potential for Contamination

The American Society of Testing Materials (ASTM):

Standards for evaluating site contamination define good commercial and customary practice for evaluating and addressing site contamination.

# ASTM Environmental Site Assessments

- **ASTM E 1527-13 Standard Practice for Environmental Site assessment: Phase I Environmental Site Assessment Process (Phase I ESA):**
  - Determines whether there has been a release or threat of release of hazardous substances or petroleum products, in, on or at a property.
  - Identifies Recognized Environmental Conditions (REC) as the presence or likely presence of a hazardous substance or petroleum product.
- **ASTM E 1903-11 Standard Practice for Environmental Site Assessments: Phase II Environmental Site assessment Process (Phase II ESA):**
  - Environmental sampling to confirm the presence or likely presence of hazardous substances, pollutants, contaminants, petroleum products and controlled substances.
  - Phase II ESAs can range from limited studies to complete initial screening to confirm contamination to full site characterization of the nature and extent of contamination.

# Use of Phase I ESA's for Site Contamination Evaluation

- Focus on:
  - Evaluating public health impacts
  - Business risk from site contamination
- Not focused on:
  - Superfund Landowner Liability Protections
    - Could be added benefit to developer/property owner
  - Recognized Environmental Conditions (RECs)
- Upside of Phase I:
  - Good tool for site contamination screening
- Downside to Using Phase I:
  - Incentive not to identify site contamination concerns that could void landowner liability protections

## Qualified Environmental Professional Definition

- Professional Engineer or Geologist with 3 Years of Relevant Fulltime Experience; or,
- Licensed or certified to perform AAI and three years of fulltime relevant experience; or,
- Engineering or science Baccalaureate degree or higher and 3 years of fulltime relevant experience; or
- Ten years of fulltime relevant experience— (HUD's MAP Guide, 9.2.D.1, does not recognize this experience qualification as sufficient)

# Non-Scope Items

- A Phase I ESA is NOT a Part 50 NEPA Environmental Assessment
  - It ONLY evaluates site contamination of Section 50.3 and 50.4(i)
  - Should be an ATTACHMENT 4128
- Include all Non-Scope Items in a Separate Environmental Report:
  - Lead
  - Asbestos
  - 50.4 and NEPA factors
- Request contractor provide you with an unencrypted copy of the Phase I and Environmental Report for Non-Scope Items

## Phase I's Must Include:

- Reviews of Federal, State, Tribal and Local Government Records
- Reviews of historical sources of information
- Interviews with past and present owners, operators and occupants of the property
- Site Reconnaissance -- Visual Inspections of the Facility and Adjoining Properties

## Government Record Search Services

- Approved as sources of government records
- Applies Minimum Search Distances
- Generate searches and maps for state, tribal and federal sites
- Information must be current (within 90 days of agency release date)
- Records sources are documented.

## Evaluation of Historic Uses

- Aerial photographs
- Fire insurance maps
- Building Department Records
- Chain of Title documents
- Land Use Records Searches for Recorded Environmental Cleanup Liens

# Site Reconnaissance

- Structure
- Exterior
  - View from all adjacent public thoroughfares
  - Roads/paths with no outlet must be determined
- Interior
  - common areas
  - maintenance and repair areas
  - representative sample of occupant spaces
- Site Photographs should be included

# What is the QEP Looking For?

- Hazardous substances
- Storage Tanks
- Pools of Liquid
- Drums
- Containers
- PCBs
- Heating and Cooling
- Stains or Corrosion
- Drains and Sumps
- Pit, Ponds, Lagoons
- Stressed Vegetation
- Solid Waste
- Waste Water
- Wells
- Septic Systems



# Interviews

- Past Owners
- Present Owners
- Key Site Manager
- Non-residential occupants
- Residential Occupants

# Phase I Evaluation and Documentation

- **Environmental professional must:**
  - Gather Required Information
  - Review and evaluate the thoroughness and reliability of the information
- **Written Report Must:**
  - Identify data gaps and their significance with respect to the ability to identify releases or threatened releases
  - Identify conditions indicative of releases and threatened releases of pollutants, contaminants, petroleum or petroleum products, and controlled substances
  - Environmental Professional's declaration
- **Phase I does not require quantification of releases**

## Vapor Encroachment Screen is also Recommended (Required in Housing) as Add on to Phase I

- ASTM Standard Practice for Assessment of Vapor Intrusion into Structures on Property Involved in Real Estate Transactions—E 2600-08
- Volatile chemicals in contaminated soil or groundwater that “off-gas” and migrate into the indoor air of structure
- Long-term exposure could result in cancer and other health effects
- Mitigation during construction is much less costly than mitigation after construction
- HUD’ Multifamily Housing Program routinely requires Vapor Encroachment Screen in addition to a Phase I

## Phase I Shelf-life

- Phase Is must be conducted within one year of the date of property acquisition
- If Phase I is more than 180 days old and less than one year old, the following information must be updated:
  - Interviews
  - Government records searches
  - Visual inspections
  - Environmental professional's declaration

# HUD Must Independently Evaluate Phase I

- It is important to read, evaluate and understand 3<sup>rd</sup> party reports – don't judge the report by its cover
- Ensure the Phase I meets ASTM standards:
  - Obtain and use copy of the ASTM E 1527-13 standard
  - Require due diligence be fully performed per ASTM Phase I ESA - Standard E 1527-13
  - Use a checklist to determine completeness of Phase I

## Phase I Evaluation Tips

- Ensure the Phase I addresses all sites of concern within the minimum search distances are address
- Look at Google Earth to ensure nothing was left out
  - Where is the series of auto dealerships .14 mile from the property mentioned in the Phase I?
- Use NEPAassist to verify sites of concern, if necessary
- If a site is present, ensure that reason for ruling out concern is logical
  - Is the site really down gradient from the property?
  - Does it matter?
    - If contaminant is a solvent, doesn't necessarily move with the ground water
    - If contamination is airborne or in the soil, the direction of groundwater movement is irrelevant

## Raise Questions when the Phase I

- Doesn't Include:
  - Include interviews; or,
  - Identify data gaps
- Makes incongruent statements such as:
  - “Site does not meet any of the environmental criteria listed under the National Environmental Protection Act (NEPA) therefore no additional Environmental Assessment is required”
  - Report is “in conformity with Code of Professional Ethics of the Environmental Assessment Association”
  - Performance of Phase I...”exceeds the scope of ASTM E 1527-00...no recognized environmental conditions”



## Question Findings When They Are Undocumented

- 10 LUST sites within search area “do not adversely impact the subject site” **Ask Why? Up or down-gradient? How far? Basis for opinion?... And, now, what about vapor intrusion?**
- The subject property is located near and adjacent to an area with six recognized environmental conditions. No further investigation is recommended at this time. **Are there REC’s associated with the property?**

## If You are Not Satisfied with the Information, Analysis and Conclusions

- You have a right to question
- Go back to environmental professional or applicant for more information or clarification
- Don't concur if you believe that a potential source of contamination is not addressed
- Require a Phase II to rule out contamination if warranted.

# Compliance is Complete if Phase I Shows:

- Government records search show there are **no hazardous facilities within the recommended search distances, or**
- If there are facilities within the recommended search distance
  - Compliance history shows no permit violations or releases; or
  - A written finding from the facility's government oversight official that:
    - There are no releases or threatened releases that will affect the project site or
    - That the property is not known or suspected to be contaminated by toxic chemicals or radioactive materials.

**And**

- Historic records search and other records **did not identify prior uses that could result in site contamination**
- The **site visit did not identify signs of contamination**

## Step 2. Confirm Presence of or Rule Out Site Contamination

- Environmental Sampling Required when Phase I cannot rule out potential for a release or threat of release
- Standard Practice for Environmental Site Assessments: Phase II  
Environmental Site Assessment Process, E 1903-11

## Conducting an ASTM Phase II ESA is Prudent When:

- A Phase I ESA cannot reach definite conclusion regarding the presence of a REC,
- A Phase I ESA determines there is Recognized Environmental Condition is (REC) present and corrective action is potentially feasible;
- A Phase I ESA determines that it is likely that known or perceived off-site contamination will migrate on to the site;
- The RE's independent evaluation of the Phase I ESA identifies the potential for site contamination that could adversely affect the occupants or the intended use of the property, irrespective of whether the Phase I identified a REC.
- If a Tier 2 VES screen determined that there was a Vapor Encroachment Condition (VEC), a likely VEC, or that a VEC could not be ruled out, either a vapor intrusion assessment (VIA) pursuant to LSFT policy and/or procedure should be completed;
- If a Phase I ESA identifies a REC or if a prior Phase II ESA determines that there is a potential for vapors to occur in the subsurface below existing and/or proposed on-site structures, a new Phase II should include either a Tier 2 vapor encroachment screen, a vapor intrusion assessment (VIA)

## What is a Phase II?

- Scientific Method for characterizing property conditions
  - Objective
  - Representative
  - Reproducible
  - Defensible
- Includes qualifications requirements for a Phase II Assessor
- Objectives and Scope must be clearly defined
- Requires Sampling and Analysis Plan
- Requires Validation of a Conceptual Model
- Estimated Cost Range (\$5,000-\$40,000)

## Phase II Results

- If Phase II conducted in accordance with ASTM E 1903-11 shows no site contamination
  - Compliance is complete
  - Include Report in ERR
- If Phase II shows site contamination above established background levels and below regulatory oversight agency action levels:
  - Obtain No Further Action Required (NFAR) Letter from appropriate oversight agency
  - With NFAR, compliance is complete. Include in ERR

# Endangered Species

## §58.5(e) & §50.4(e)

Interior Least Tern  
*Sterna antillarum*  
Status: Endangered  
TX, LA, NM, OK, AR

- Section 7 of ESA
- Region VI Listed Species
- ESA Section 7  
Consultation Process
- Statutory Checklist



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/endangered-species>
- Endangered Species Worksheet:  
<https://www.hudexchange.info/resources/documents/Endangered-Species-Worksheet.docx>

# Section 7 of Endangered Species Act

West Indian Manatee  
*Trichechus manatus*  
Status: Endangered  
TX, LA



- Congress passed Endangered Species Act of 1973.
- Section 7 of ESA outlines Federal agency responsibilities
- Section 7 requires Federal agencies to use their authorities to further the conservation of listed species
- Responsible Entity compliance required by 24 CFR Part 58.5(e)
- HUD compliance required by 24 CFR Part 50.4(e)

# Federal Agency Consultation Requirements

- Section 7 requires Federal agencies (Responsible Entities) to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.
  - U.S. Fish and Wildlife Service – terrestrial species
  - NOAA National Marine Fisheries Service – marine species
  - Collectively called “Services”



Loggerhead Sea Turtle  
*Caretta caretta*  
Status: Endangered  
TX, LA

# Region VI Listed Species

- Includes Threatened and Endangered Species as of 9/22/2015
- Texas – 69 animals (up from 63 in 2014); 31 plants (up 1 from 2014)
- New Mexico – 41 animals (up 9); 13 plants
- Oklahoma – 22 animals (up 3); 3 plant (up 2)
- Arkansas – 31 animals (up 7); 5 plants
- Louisiana – 24 animals (up 4); 3 plants



Mexican Spotted Owl  
*Strix occidentalis lucida*  
Status: Endangered  
TX, NM

<http://www.fws.gov/endangered/species/index.html>

# ESA Section 7 Consultation Protocol

**Step 1: Determine whether project is the type that could affect listed species or critical habitat, if present**

**Step 2: Determine potential presence of listed species**

**Step 3: Determine potential for adverse impacts**

**Step 4: “Is Not Likely to Adversely Affect” determination**

**Step 5: “Is Likely to Adversely Affect” determination**



Houston Toad  
*Bufo Houstonensis*  
Status: Endangered  
TX

## Step 1: Determine whether project is the type could affect listed species or critical habitat, if present

Types of activities likely to have “No Effect” on listed species or critical habitat...



Lesser Prairie Chicken  
*Tympanuchus pallidicinctus*  
Status: Threatened as of 5/12/2014  
TX, NM, OK

- Demolition and construction or placement of a single family residence within a developed lot
- Rehabilitation or renovation activities associated with existing structures (e.g., houses, buildings), including additional structures attached to or associated with the primary structure

# Types of activities likely to have “No Effect” on listed species or critical habitat (cont.)

- Acquisition of existing structures (*e.g.*, houses, buildings), including additional structures attached to or associated with the primary structure
- Purchase and placement of playground equipment within existing parks
- Resurfacing, repairing, or maintaining existing streets, sidewalks, curbs, trails, parking lots and/or any other existing paved surfaces where additional ground disturbance, outside of the existing surface is not necessary



Attwater's Greater Prairie Chicken  
*Tympanuchus cupido attwateri*  
Status: Endangered  
TX

## Is this the type of project or action that could realistically have an impact on T&E species?



Southwest Willow Flycatcher  
*Empidonax traillii extimus*  
Status: Endangered  
TX, NM

- If no, then the project is likely to have “**No Effect**” on federally protected species and critical habitat.
- Informal consultation with the Services is not necessary.
- ERR must include documentation supporting of the finding of “**No Effect**”.

## Step 2: Determine potential presence of listed species

Are there listed species or critical habitat near my project site?



Ozark Big-eared Bat  
*Corynorhinus townsendii ingens*  
Status: Endangered  
OK, AR

- Define the action area.
  - For purposes of the ESA, the “action area” includes all areas that your project will affect either directly, indirectly, and/or cumulatively, and is not merely the immediate area involved in the project.
- Obtain list of species from the Services (FWS & NMFS)

# Species Lists from the Services

Are there listed species or critical habitat near my project site?



Arkansas River Shiner  
*Notropis girardi*  
Status: Threatened  
TX, NM, OK, AR

- FWS IPAC Website: <https://ecos.fws.gov/ipac/>
- IPAC will provide information about sensitive resources within the vicinity of a proposed project
- Use species list at FWS and NMFS websites:
  - <http://www.fws.gov/endangered/species/index.html>
  - <http://www.nmfs.noaa.gov/pr/species/esa/>
- And FWS and NMFS critical habitat websites:
  - <http://criticalhabitat.fws.gov/crithab/>
  - <http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>

# No Effect Determination Based on Finding that No Species Are Present

- If no listed species or critical habitat is identified in the project area, then the project is likely to have “No Effect” on federally protected species and critical habitat.
- Informal consultation with the Services is not necessary.
- The ERR should include all documents used to make this determination, including species lists from the Services’ websites, surveys and/or other documents and analysis showing that there are no species in the action area.



Black-capped Vireo  
*Vireo atricapilla*  
Status: Endangered  
TX, OK

# No Effect Determination Based on Habitat Assessment and Specifics of Project

- RE may make a finding of “No Effect” if you determine, based on any listed species in the area and the specifics of your project, that there are no potential impacts.
- However, this finding must be based on technically valid information.
- For example, if there are species present, and a habitat assessment shows that there is no suitable habitat in the project area, then an “No Effect” finding can be made based on habitat assessment.



Louisiana Black Bear  
*Ursus americanus luteolus*  
Status: Threatened  
TX, LA

# Step 3: Determine potential for adverse impacts

When species are present and project is type to impact species...



Gulf Coast Jaguarundi  
*Herpailurus yagouaroundi cacomitli*  
Status: Endangered  
TX

- A special study is conducted by a qualified professional to determine the effects of the project on each species and critical habitat.
- Contact resource experts for assistance– USFWS or NMFS
- Prepare biological assessment for “major construction activities” that would normally require the preparation of an EIS.
- Possible outcomes of findings:
  - May affect, but “**is not likely to adversely affect**” federally protected species or critical habitat
  - May affect, and “**is likely to adversely affect**” federally protected species or critical habitat.

# Consulting with the Services



Golden-cheeked Warbler  
*Dendroica chrysoparia* Status:  
Status: Endangered  
TX

- HUD/RE is responsible for interacting with the Services.
- It is the responsibility of HUD/RE to make the determination and conduct all consultations.
- It is not appropriate for a consultant to consult directly with the Services, although they may provide information to HUD/RE for it to make its determination.

## Step 4: “Is Not Likely to Adversely Affect” determination

- Effects are expected to be discountable, insignificant, or completely beneficial.
- Discountable effects are extremely unlikely to occur.
- Insignificant effects relate to the size of the impact and should never involve “take.”
- Beneficial effects are contemporaneous positive effects without any adverse effects.
- RE submits findings, determination and all documentation to Services with request for informal consultation.
- Services must concur with “**Not Likely to Adversely Affect**” determination.



Kemp's Ridley Sea Turtle  
*Lepidochelys kempii*  
Status: Endangered  
TX, LA

## Step 5: “Is Likely to Adversely Affect” determination

- For any adverse effects to listed species
- If incidental take is anticipated to occur as a result of the proposed action
- An "is likely to adversely affect" determination requires RE to initiate formal Section 7 consultation.
- Biological Assessment/Evaluation is submitted to Services with request for formal consultation.



Texas Prairie Dawn  
*Hymenoxys texana*  
Status: Endangered  
TX

# Formal Consultation



Red Cockaded Woodpecker  
*Picoides borealis*  
Status: Endangered  
TX, LA, OK, AR

- Formal consultation will result in a Biological Opinion from the Services
  - Services will determine whether an action is likely to jeopardize a listed species or adversely modify their critical habitats.
  - Provides reasonable and prudent measures to minimize impacts.
  - May provide reasonable and prudent alternatives to the proposed project.
  - Makes exceptions for “incidental take” of listed species (otherwise illegal).

# Project Options Resulting from Formal Consultation

- HUD/RE's decision completes formal consultation process:
  - Adopt reasonable and prudent measures or reasonable and prudent alternatives as recommended by Services.
  - Not undertake project
  - Modify proposed action or develop a new alternative and continue formal consultation with Services
  - HUD/RE must notify Services of final decision.



Neches River Rose-mallow  
*Hibiscus dasycalyx*  
Status: Threatened  
Cherokee, Houston, & Trinity Counties, TX

# ERR Documentation



Texas Poppy-mallow  
*Callirhoe scabriuscula*  
Status: Endangered  
TX

- The environmental review record should contain one of the following determinations and supporting documentation:
  - **No Effect**, include a determination that the project does not involve any activities that have a potential to affect species or habitats, evidence that there are no federally listed species in the area, or other analysis supporting a No Effect finding
  - **May Affect, Not Likely to Adversely Affect**, include all correspondence with Services, including concurrence with finding.
  - **Likely to Adversely Affect**, include all correspondence with the Services, including the Biological Opinion and HUD/RE final decision.

Gopher Tortoise  
*Gopherus polyphemus*  
Status: Threatened  
LA



Whooping Crane  
*Grus americana*  
Status: Endangered  
TX, OK



Chiricahua Leopard Frog  
*Rana chiricahuensis*  
Status: Threatened  
NM



American Burying Beetle  
*Nicrophorus americanus*  
Status: Endangered  
TX, OK, AR

# Explosive & Flammable Operations 24 CFR Part 58.5(i)(1) & 50.4(k)





## *Training Topics:*

- Authority & Purpose
- Applicability
- Hazard Definition
- Calculating the ASD
- Determining Compliance
- ERR Documentation



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/explosive-and-flammable-facilities>
- Explosives and Flammables Worksheet:  
<https://www.hudexchange.info/resources/documents/Explosive-and-Flammable-Facilities-Worksheet.docx>



# “Tank explodes Near Low Income Housing”



# 24 CFR Part 51 - Subpart C

- “Siting of HUD-Assisted Projects Near Hazardous Facilities”
- HUD describes a Hazard Facility as Explosive / Flammable Operations – which included stationary commercial/industrial facilities which handle chemicals or petrochemicals of explosive or flammable nature – **above ground storage tanks (ASTs) with a capacity of 100 gallons or more.**



## § 51.201 Defines Hazardous Substance As:

Petroleum products and chemicals that can produce blast overpressure or thermal radiation levels in excess of the safety standards.

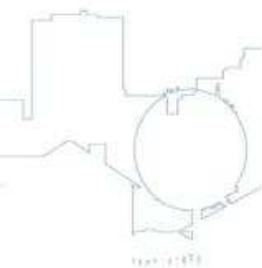
HUD's Safety Standards:

- **Fire:** Thermal Radiation
  - Structures – 10,000 BTU /Ft. sq Hr.
  - People - 450 BTU/Ft. sq Hr.
- **Explosion:** Blast Overpressure
  - Blast Overpressure (explosion) – 0.5 PSI

# Hazardous Substances: Hazardous Liquids

## Appendix I Subpart C

|                  |                       |                  |                       |                 |
|------------------|-----------------------|------------------|-----------------------|-----------------|
| Acetic Acid      | Butyl Alcohol         | Ethyl Acetate    | Isobutyl Acetate      | Naptha          |
| Acetic Anhydride | Carbon Bisulfide      | Ethyl Acrylate   | Isobutyl Alcohol      | Pentane         |
| Acetone          | Carbon Disulfide      | Ethyl Alcohol    | Isopropyl Acetate     | Propylene Oxide |
| Acrolonitrile    | Cellosolve            | Ethyl Benzene    | Isopropyl Alcohol     | Toluene         |
| Amyl Acetate     | Cresols               | Ethyl Dichloride | Jet Fuel and Kerosene | Vinyl Acetate   |
| Amyl Alcohol     | Crude Oil (Petroleum) | Ethyl Ester      | Methyl Alcohol        | Xylene          |
| Benzene          | Cumene                | Gasoline         | Methyl Amyl Alcohol   |                 |
| Butyl Acetate    | Cyclohexane           | Heptane          | Methyl Cellosolve     |                 |
| Butyl Acrylate   | No. 2 Diesel Fuel     | Hexane 231       | Methyl Ethyl Ketone   |                 |



# Hazardous Substances: Hazardous Gases

## Appendix I Subpart C

|                |                               |
|----------------|-------------------------------|
| Acetaldehyde   | Hydrogen                      |
| Butadiene      | Liquefied Natural Gas (LNG)   |
| Butane         | Liquefied Petroleum Gas (LPG) |
| Ethene         | Propane                       |
| Ethylene       | Propylene                     |
| Ethylene Oxide | Vinyl Chloride                |

# Thermal Radiation Hazard



- <http://youtu.be/PZ1PpM4DAGQ>

# What types of Projects Does this Regulation Apply to?

- Projects involving residential, institutional, commercial, recreational, industrial uses for the following activities:
  - Development
  - Construction
  - Rehabilitation
  - Modernization
  - Conversion
- Rehabilitation and modernization mean activities that would:
  - Increase residential densities
  - Converting a building from non-residential to residential
  - Make a vacant building habitable
- HUD-assisted hazardous facilities

## The Regulation Does Not Apply to the Following:

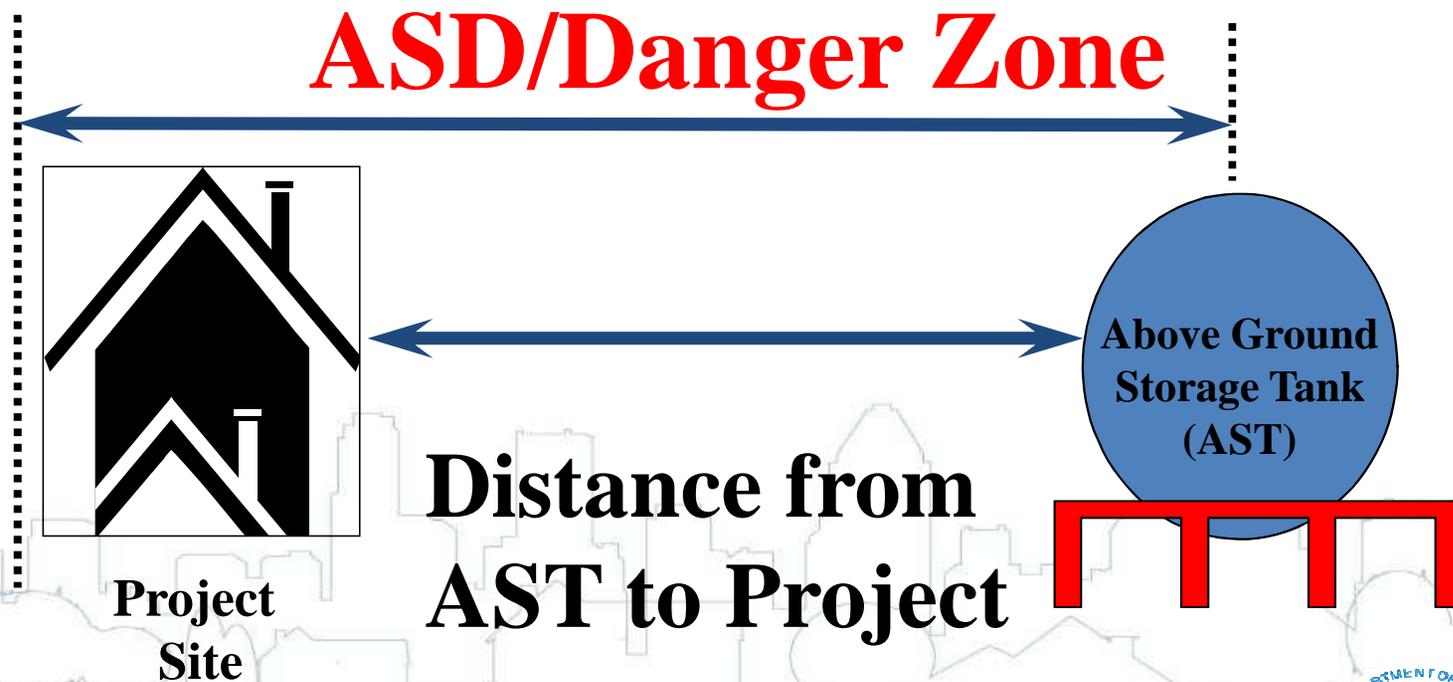
- Pipelines that transmit hazardous substances if:
  - Located underground, or
  - Comply with applicable Federal, state, local safety standards
- Containers containing common liquid industrial fuels with a capacity of less than 100 gallons or less
  - E.g. gasoline, fuel oil, kerosene and crude oil
- Facilities that do not pose a risk to HUD-assisted properties because topographic features provide an effective mitigating barrier
- Sewer, water lines, treatment plants

## What is Acceptable Separation Distance (ASD)?

- The distance beyond which the explosion or combustion of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal radiation flux levels in excess of the safety standards of Section 51.203
- **Danger Zone:** Land area within the ASD of a given hazard.

# Acceptable Separation Distance (ASD)

A project within the Danger Zone is in harm's way



## Determine if there are ASTs Containing Hazardous Substances within 1 mile of site, using:

- Aerial Maps (e.g., Google Earth)
- Topographic maps
- Site Visit and photos of surrounding area
- Local gov't (e.g., fire marshal)
- State storage tank databases

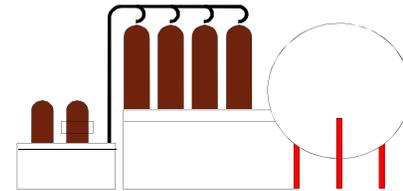


# Determine Distance from AST to Project Site



## If AST's are Present, Collect the Following Data:

- Size of the tanks
- Contents
- Whether liquid or gas
- Whether under pressure or not
- Whether diked or undiked
- If diked, dike dimensions



# Data sources

- Site Manager/Owner
- Fire Dept/Haz-Mat
- Planning Dept
- Phase I



## *Clues from Site Visit*



# Pressurized vs. Unpressurized Containers

- Most hazardous substances are stored in pressurized containers and generally, the ASD for explosion is greater than the ASD for fire
- Unpressurized tanks do not emit blast overpressure of dangerous levels when ignited, so only the thermal radiation standard applies

# Example Dike

Perimeter  
barrier to  
prevent liquid  
flow



# Determine the ASD

## Acceptable Separation Distance (ASD) Electronic Assessment Tool

The Environmental Planning Division (EPD) has developed an electronic-based assessment tool that calculates the Acceptable Separation Distance (ASD) from stationary hazards. The ASD is the distance from above ground stationary containerized hazards of an explosive or fire prone nature, to where a HUD assisted project can be located. The ASD is consistent with the Department's standards of blast overpressure (0.5 psi-buildings) and thermal radiation (450 BTU/ft<sup>2</sup> - hr - people and 10,000 BTU/ft<sup>2</sup> - hr - buildings). Calculation of the ASD is the first step to assess site suitability for proposed HUD-assisted projects near stationary hazards. Additional guidance on ASDs is available in the Department's guidebook "Siting of HUD-Assisted Projects Near Hazardous Facilities" and the regulation 24 CFR Part 51, Subpart C, Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature.

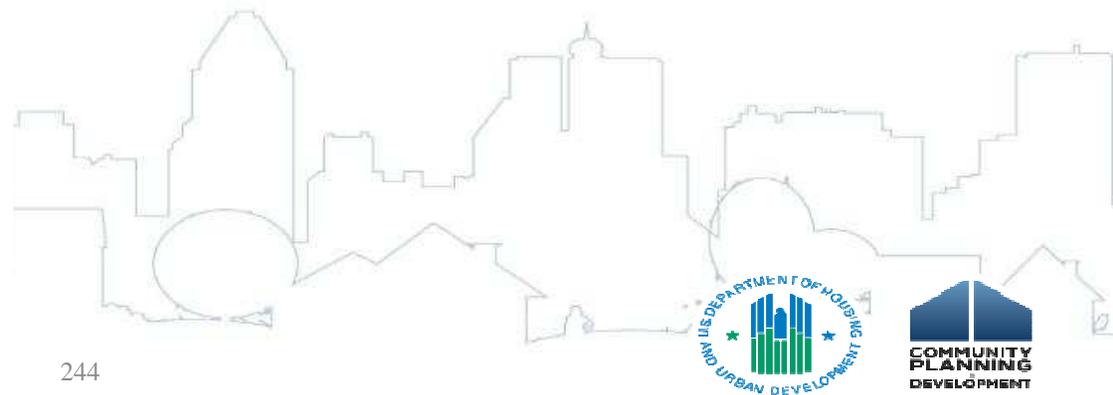
**Note:** Tool tips, containing field specific information, have been added in this tool and may be accessed by hovering over the ASD result fields with the mouse.

### Acceptable Separation Distance Assessment Tool

|   |  |
|---|--|
| Is the container above ground?  | Yes: <input type="checkbox"/> No: <input type="checkbox"/> |
| Is the container under pressure?  | Yes: <input type="checkbox"/> No: <input type="checkbox"/> |
| Does the container hold a cryogenic liquified gas?                      | Yes: <input type="checkbox"/> No: <input type="checkbox"/> |
| Is the container diked?   | Yes: <input type="checkbox"/> No: <input type="checkbox"/> |
| What is the volume (gal) of the container?                              | <input type="text"/>                                       |
| What is the Diked Area Length (ft)?                                     | <input type="text"/>                                       |
| What is the Diked Area Width (ft)?                                      | <input type="text"/>                                       |
| <input type="button" value="Calculate Acceptable Separation Distance"/> |  |
| Diked Area (sqft)   | <input type="text"/>                                       |
| ASD for Blast Over Pressure (ASDBOP)                                    | <input type="text"/>                                       |
| ASD for Thermal Radiation for People (ASDPPU)                           | <input type="text"/>                                       |
| ASD for Thermal Radiation for Buildings (ASDBPU)                        | <input type="text"/>                                       |
| ASD for Thermal Radiation for People (ASDPNPD)                          | <input type="text"/>                                       |
| ASD for Thermal Radiation for Buildings (ASDBNPD)                       | <input type="text"/>                                       |

- Calculate using HUD's ASD Calculator:

<https://www.hudexchange.info/programs/environmental-review/asd-calculator/>

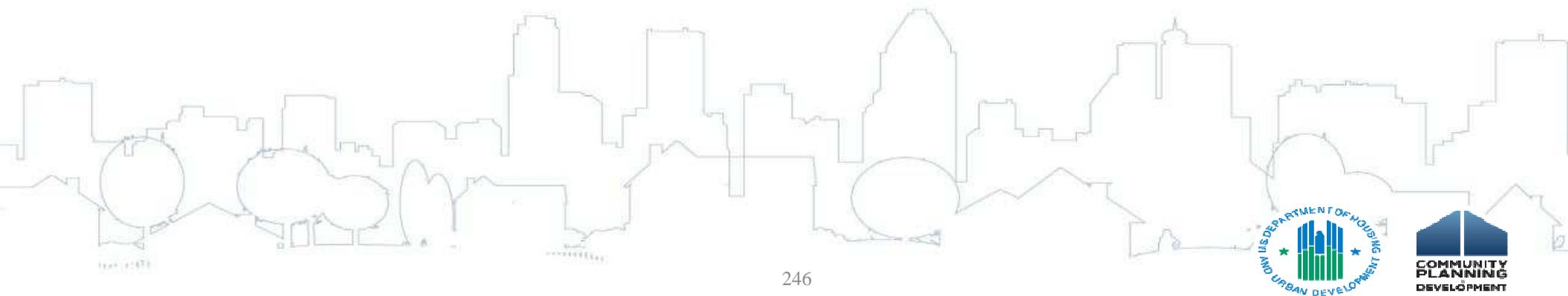


# Application of the ASD

- ASD is based on level topography with no intervening objects
- The hazard (explosion or thermal) having the greatest distance determines the ASD for the proposal
- If the calculated ASD is less than the distance from the AST to the project perimeter, then the project is in compliance.

## Determine Compliance

If the distance to the project is less than the ASD, then the project is in the Danger Zone and is not in compliance



## HUD Limitations on Projects within the Danger Zone for Explosive and Flammable Hazards

- HUD will not approve assistance for projects that are in the Danger Zone (i.e. located less than the acceptable separation distance from a hazard) without appropriate mitigation measures.
- HUD will not approve a project located in area with a development plan for locating hazards less than the acceptable separation distance without appropriate mitigation measures.

# Mitigation is Required if Project is in the Danger Zone

- Option 1: Choose an alternative site
- Option 2: Engineered Mitigations
  - Shield by topography, existing structures, or barriers
  - Design project to withstand blast over-pressure and thermal radiation
  - Bury tanks
  - Move tanks away from people

# Documentation for ERR

- Document **presence/absence** of tanks within 1 mile of project
- **Include ASD** Calculation
- Include Data Used for Calculation
- **Map** the container(s) in relation to project
- Engineering Report for Mitigation Measures
- Include required mitigation measures on the HUD-4128.

# HUD Guidebook “Siting of HUD Assisted Projects Near Hazardous Facilities”

- Guidebook is used to calculate acceptable separation distance (ASD) for blast overpressure (**explosion**) and thermal radiation (**fire**):  
<https://www.hudexchange.info/resource/2762/acceptable-separation-distance-guidebook/>
- Flowchart of decision process, see Appendix A of guidebook:  
<https://www.hudexchange.info/resources/documents/Acceptable-Separation-Distance-Guidebook-Appendix-A.pdf>

# **Farmland Protection**

## **24 CFR Part 58.5(h) & 50.4(j)**

- **Background**
- **Applicable Projects**
- **Farmland Evaluation**
- **ERR Documentation**



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/farmlands-protection>
- Farmlands Worksheet:  
<https://www.hudexchange.info/resources/documents/Farmlands-Protection-Worksheet.docx>

# Background

National Agricultural Land Study of 1980-81 found that millions of acres of farmland were being converted in the United States each year. The 1981 Congressional report, *“Compact Cities: Energy-Saving Strategies for the Eighties”*, identified the need for Congress to implement programs and policies to protect farmland and combat urban sprawl and the waste of energy and resources that accompanies sprawling development.

# Farmland Protection Policy Act (FPPA)

The Compact Cities report indicated that much of the sprawl was the result of programs funded by the Federal Government. With this in mind, Congress passed the Agriculture and Food Act of 1981 (Public Law 97-98) containing the **Farmland Protection Policy Act (FPPA)** — Subtitle I of Title XV, Section 1539-1549

FPPA was intended to minimize the impact federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses.

# Important Farmland

Only special categories of farmland qualify for FPPA protection

For the purpose of FPPA, “**Important Farmland**” includes:

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

Farmland subject to FPPA requirements can be cropland, pastureland or forest land – but not water or urbanized land.

## Applicability to HUD Projects

It is the responsibility of the RE to decide if important farmland will be converted to non-agricultural uses. If no conversion of farmland to non-agricultural uses will take place, **do not initiate this process.**

Activities **not** subject to FPPA include:

- Renovation of existing structures
- Projects on land already in urban development or used for water storage
- Construction of on-farm structures needed for farm operations
- Projects where restoration to agricultural use is planned
- Construction of new minor secondary structures such as a garage or storage shed.
- Projects on land already zoned non-agricultural***

# Zoning Requirements

Land that has been recently rezoned from agricultural to residential **may not be exempt!**

If the land is not an urban area on the Census Bureau mapping system, then it cannot be exempted based on zoning.

Check the Census Bureau mapping website:  
<http://tigerweb.geo.census.gov/TIGERweb2010/>

## Consultation with NRCS

If your project site is considered “important farmland” protected by FPPA and regulated by NRCS, RE initiates intergovernmental evaluation of the property.

Submission to NRCS includes...

- Form AD-1006, “*Farmland Conversation Impact Rating*”, with Parts I and III filled out (Project description and # of acres to be converted).  
<http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>
- Maps showing the project area.
  - USGS 7.5 minute quadrangle topographic maps with the project area that will be converted accurately delineated to scale. Or GIS data exported to ArcGIS shape file format.
  - Dimensions of the area to be converted.
  - Quad name, township, range, section – location description
- Cover letter with as many specifics of the project.
  - Include dimensions.
  - Include directions.
  - List the county or counties where the project is located.

# Farmland Evaluation

Form AD-1006 Itemized Breakdown...

|  |  |
|--|--|
| <input type="checkbox"/> <b>Part I</b><br><input type="checkbox"/> Project description<br><input type="checkbox"/> Completed by RE   |  |
| <input type="checkbox"/> <b>Part II</b><br><input type="checkbox"/> Agricultural acreage & production description<br><input type="checkbox"/> Completed by NRCS  |  |
| <input type="checkbox"/> <b>Part III</b><br><input type="checkbox"/> Project acreage conversion summary<br><input type="checkbox"/> Completed by RE  |  |
| <input type="checkbox"/> <b>Part IV</b><br><input type="checkbox"/> Agricultural evaluation<br><input type="checkbox"/> Completed by NRCS  |  |
| <input type="checkbox"/> <b>Part V</b><br><input type="checkbox"/> Agricultural production numerical scoring<br><input type="checkbox"/> Completed by NRCS (up to 100 points)  |  |
| <input type="checkbox"/> <b>Parts VI &amp; VII</b><br><input type="checkbox"/> Relative value of farmland numerical scoring<br><input type="checkbox"/> Completed by RE (up to 160 points) + NRCS (up to 100 points) |  |



## When NRCS receives RE's submission...

- NRCS office completes **Parts II, IV, & V** (within **45 calendar days**), scoring the land's agricultural importance (Land Evaluation) and returns evaluation to RE
- Parts II, IV, & V:**
  - Is Prime, Unique, or State/Locally Important Farmland present?      Yes or No
  - # of acres of Important Farmland present
  - Relative value of the Important Farmland (0-100 points)

# RE Completes Scoring and Makes Determination Based on NRCS Input

When RE receives the Land Evaluation from NRCS, RE completes Parts VI and VII, then evaluates the final points scoring:

## Part VI:

- Site Assessment Criteria (0 – 160 points):
  - Perimeter in non-urban use
  - % of site being farmed
  - 10 other items of consideration

## Part VII:

- Total score = NRCS LE (0 – 100) + RE/HUD SA (0 – 160)  
= 0 – 260 points **If over 160, consider other sites**

# ERR Documentation

## For projects not applicable to FPPA...

- Document why project isn't applicable
  - Inapplicable activity (i.e. building rehab)
  - Inapplicable site (i.e. zoned for urban use)

## For projects applicable to FPPA...

- Site description
- Direct impacts
- Indirect impacts
- Site already committed to urban use?
- Local planning & zoning
- LESA Form AD-1006 numerical rating
- Consideration of alternative site(s)

# Floodplain Management

**24 CFR PART  
58.5(b)(1)  
& PART 50.4  
(b)(2)**

- Background
- Regulations
- 8-Step Decision Making Process
- ERR Documentation



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/floodplain-management>
- Floodplain Management Worksheet:  
<https://www.hudexchange.info/resources/documents/Floodplain-Management-Worksheet.docx>

# Background

## Evolution of Federal Flood Hazard Control

Federal flood hazard control was historically reactive

Pre-1966 - Structural flood control measures



# Evolution of Flood Laws

## Evolution of Federal Flood Hazard Control

### 1966 - Executive Order 11296, “Flood Hazard Evaluation”

- Recognition that structural flood control measures alone are inadequate
- Established the concept of a national flood insurance program

### National Flood Insurance Act of 1968 (NFIP)

- Established the National Flood Insurance Program (NFIP)

### Flood Disaster Protection Act of 1973

- Expanded the limits of NFIP coverage available
- Established “Participating Communities”

### Executive Order 11988, “*Floodplain Management*,” of 1977 Established:

- The “no practicable alternative” test of avoidance
- The “8-Step” analysis process

# Regulations

## HUD Regulations

- 24 CFR Part 55 “Floodplain Management and Wetland Protection”
- Updated in 2013 to include protection of wetlands
- Update also includes changes to floodplain management
- Implements Executive Order 11988 for Floodplain Management
- Implements Executive Order 11990 for Protection of Wetlands



Hurricane Ike  
Gilcrest, Texas  
September 2008

# Purpose

## Doctrine of avoidance:

- *Avoid* adverse impacts associated with the occupancy and modification of floodplains
- *Avoid* support of floodplain development whenever there are practicable alternatives

## What is practicable?

- “Capable of being done within existing constraints.”
- (U.S. Water Resource Council 43 FR 6030, 2/10/78)



La Union, NM  
September 16, 2013

# Terminology

- FEMA Designations (Special Flood Hazard Areas)
  - 100-year floodplain
  - 500-year floodplain
  - Floodway
  - Coastal High Hazard Area
- High Hazard Area
- Critical Action
- Functionally Dependent Uses
- Substantial Improvement
- New Construction



Hurricane Ike  
Galveston, Texas  
September 2008  
135 deaths  
\$30 Billion in damages



# FEMA Designations

- These areas are designated on a Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) under FEMA regulations. FIRMs and FISs are relied upon for the designation of “100-year floodplains” (§ 55.2(b)(9)), “500-year floodplains” (§ 55.2(b)(4)), “floodways” (§ 55.2(b)(5)) and “coastal high hazard areas” (§ 55.2(b)(1)) .
- When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources.
- If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as “best available information” in accordance with Executive Order 11988. However, a base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM and FIS.

# 100-Year Floodplain

- **100-year floodplain** (§ 55.2(b)(9)) - is the area subject to inundation from a flood having a one percent chance of occurring in any given year.
  - FEMA designated as **Zone A\***
  - \* Any Zone with an A (A, AE, A1-A30, AO, AR, A99)
  - Areas with a 1% annual chance of flooding (1% X 100 years = 100%)



Hurricane Katrina  
New Orleans, Louisiana  
August 2005  
1,836 deaths  
\$80-\$100 Billion in damages

# 500-Year Floodplain

- **500-year floodplain** (§ 55.2(b)(4)) - minimum floodplain of concern for “Critical Actions” and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year.
  - FEMA designated as **Zone B** or **Zone X (shaded)**
  - Areas with 0.2% annual chance of flooding (0.2% X 500 years = 100%)



Tropical Storm Allison  
Houston, Texas  
June 2001  
41 deaths  
\$5 Billion in damages



# Floodway

- **Floodway** (§ 55.2(b)(5)) - that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term “**floodway**” as used here is consistent with “regulatory floodways” as identified by FEMA.
  - FEMA designated as **Zone AE (hatched)**
  - **STOP** - Critical Actions not allowed
  - No HUD assistance may be approved for use in a floodway, except for a functionally dependent use, or a floodplain function restoration activity

# Coastal High Hazard Area

- **Coastal High Hazard Area** (§ 55.2(b)(1)) - the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis.
  - FEMA designated as **Zone V**
  - **STOP** - Critical Actions not allowed
  - Actions allowed include:
    - a functionally dependent use;
    - existing construction (including improvements),
    - reconstruction following destruction caused by a disaster
  - If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area under §55.1(c)(3).
- **High Hazard Area** (§ 55.2(b)(7)) -a floodway or a coastal high hazard area



# Critical Action

- **Critical Action** (§ 55.2(b)(3)) - any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:
  - Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials
  - Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events, e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas
  - Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.
- Critical actions shall not be approved in floodways or coastal high hazard areas.

# Functionally Dependent

- **Functionally dependent uses** (§ 55.2(b)(6)) - a land use that must necessarily be conducted in close proximity to water
  - a dam, marina, port facility, water-front park, and many types of bridges
  - Floodplain function restoration activities



Spring Storm  
Pocahontas, Arkansas  
April 2011

# Substantial Improvement

- **Substantial Improvement** (§ 55.2(b)(10))
- Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
  - Before the improvement or repair is started; or
  - If the structure has been damaged, and is being restored, before the damage occurred; or
- Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.
- Substantial improvement may not be defined to include either:
  - Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or
  - Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.
- Structural repairs, reconstruction, or improvements not meeting this definition are considered “minor improvements”

# New Construction

- **New Construction** (§ 55.2(b)(8)) – includes:
  - Draining
  - Dredging
  - Channelizing
  - Filling
  - Diking
  - Impounding
  - Related activities
  - Construction of any structures or facilities begun after the effective date of the Executive Order



Austin, TX  
15 inches of rain  
October 31, 2013

# Responsibilities - HUD

## §55.3(b) Assignment of Responsibilities – HUD

- Ensure compliance with this Part.
- Ensure actions approved by HUD or RE are monitored and mitigation implemented.
- Ensure offices under their jurisdiction have the technical resources to implement the requirements of this Part
- Incorporate departmental regulations, handbooks, project and site standard and procedures necessary to comply with the requirements of this Part



Oklahoma City, OK  
Tornadoes and flash flood  
June 1, 2013

# Responsibilities - RE

## §55.3(c) Assignment of Responsibilities – Responsible Entity Certifying Officer

- Certifying Officers of responsible entities administering or reviewing activities subject to 24 CFR part 58 shall comply with this part in carrying out HUD-assisted programs.
- Certifying Officers of responsible entities subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented.



Oklahoma City, OK  
Tornadoes and flash flood  
June 1, 2013

# Responsibilities - Recipient

## §55.3(d) Assignment of Responsibilities – Recipient

- Recipients subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented.
- Recipients shall:
  - Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available, relevant information necessary for HUD (or the responsible entity) to perform the compliance required by this part; and
  - Implement mitigating measures required by HUD (or the responsible entity authorized by 24 CFR part 58) under this part or select alternate eligible property.



Crowley, LA  
Tornadoes and flash flood  
January 10, 2013

# Applicability – §55.11(c)

| Type of proposed action<br>(new reviewable action<br>or an amendment) | Type of proposed action   |   |  |  |
|---|---|---|--|--|
|   | Floodways   | Coastal high hazard areas   | 100-year floodplain<br>outside high hazard<br>areas                                    | Outside the 100-year<br>floodplain and within<br>the 500-year floodplain               |
| Critical actions as defined<br>in §55.2(b)(2)                         | Critical actions not allowed.   | Critical actions not allowed.   | Allowed if the proposed<br>critical action is<br>processed under §55.20 <sup>2</sup> . | Allowed if the proposed<br>critical action is<br>processed under §55.20 <sup>2</sup> . |
| Non-critical actions not<br>excluded under §55.12<br>(b) or (c)       | Allowed only if the proposed<br>non-critical action is a<br>functionally dependent use<br>and processed under §55.20 <sup>2</sup> . | Allowed only if the proposed<br>noncritical action is processed under<br>§55.20 <sup>2</sup> and is (1) a functionally<br>dependent use, (2) existing<br>construction (including<br>improvements), or (3) reconstruction<br>following destruction caused by a<br>disaster. If the action is not a<br>functionally dependent use, the<br>action must be designed for location<br>in a Coastal High Hazard Area under<br>§55.1(c)(3). | Allowed if the proposed<br>action is processed under<br>§55.20 <sup>2</sup>            | Any non-critical action<br>is allowed without<br>processing under this<br>part.        |

# Inapplicability - §55.12

- §55.12(a) – Steps 2, 3 and 7 of the 8-step decision making process outlined in §55.20 do not apply to these types of actions. (**Modified 5-step process**)
- §55.12(b) – the entire 8-step decision making process outlined in §55.20 does not apply to these types of actions. However, the remaining portions of Part 55 do apply.
- §55.12(c) – All of Part 55 does not apply to these types of actions.



Stalled Front  
Little Rock, Arkansas  
November 2011

# Inapplicability - §55.12(a)

§55.12(a) – Steps 2, 3 and 7 of the 8-step decision making process outlined in §55.20 do not apply to the following types of actions. (Modified 5-step process)

- HUD's or Recipient's disposition activities of multifamily housing projects that are subject to review under Part 58.
- HUD's actions under the National Housing Act for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, etc. in communities that are in good standing under the NFIP
- HUD's or Recipient's action under any HUD program for the repair, rehabilitation, modernization, weatherization, or improvement of existing MFH, hospitals, nursing homes, assisted living facilities, board and care facilities, intermediate care facilities as long as:
  - Community participates in and is in good standing with NFIP
  - Number of units does not increase by more than 20%
  - No conversion from nonresidential to residential land use
  - Does not meet the thresholds for "substantial improvement"
  - Footprint of structure is not significantly increased

# Inapplicability - §55.12(a)

§55.12(a) – Modified 5-Step Process, continued

- HUD’s or Recipient’s action under any HUD program for the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, as long as:
  - Community participates in and is in good standing with NFIP
  - Does not meet the thresholds for “substantial improvement”
  - Footprint of structure and paved areas are not significantly increased



Scott County, AR  
Flash Flood  
May 31, 2013

# Inapplicability - §55.12(b)

§55.12(b) – the entire 8-step decision making process outlined in §55.20 does not apply to the following types of actions:

- HUD’s mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one to four family properties in communities that are in good standing under the NFIP, and when the action is not critical or located in a floodway or coastal high hazard.
- Financial assistance for minor repairs or improvements on SFH that do not meet the thresholds for “substantial improvement.”
- HUD’s or Recipient’s actions involving the disposition of individual HUD-acquired, SFH

# Inapplicability - §55.12(b)

§55.12(b) – the entire 8-step decision making process outlined in §55.20 does not apply to the following types of actions:

- The approval of financial assistance to lease an existing structure located within the floodplain, but only if:
  - Not located in floodway or coastal high hazard area
  - Community participates in and is in good standing with NFIP
  - Project is not a critical action
  - The entire structure is or will be fully insured to the maximum under NFIP for at least the term of lease

# Inapplicability - §55.12(c)

San Antonio, TX  
Flash flood  
May 25, 2013



§55.12(c) – All of Part 55 does not apply to the following types of actions:

- HUD-assisted exempt activities described at §58.34, §58.35(b), and §50.19 unless otherwise indicated
- The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition, but only if:
  - Property is cleared of all existing structures and related improvements
  - Property is dedicated for permanent use for flood control, wetland protection, park land or open space
  - A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development

# Inapplicability - §55.12(c)

§55.12(c), continued – All of Part 55 does not apply to the following types of actions:

- An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage or other HUD assistance
- A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland
- Approval of a project site in which an incidental portion is situated in an adjacent floodplain, floodway, coastal high hazard area or wetland, but only if:
  - The proposed construction and landscaping activities do not occupy or modify the floodplain, floodway, coastal high hazard area or wetland;
  - Appropriate provision is made for site drainage that would not have an adverse effect on the wetland;
  - A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland.

# Inapplicability - §55.12(c)

§55.12(c), continued – All of Part 55 does not apply to the following types of actions:

- Approval of financial assistance for a project on any nonwetland site in a floodplain for which FEMA has issued:
  - A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location, or
  - A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR
- Issuance or use of Housing Vouchers, Certificates under the Section 8 existing housing program, or other forms of rental subsidies that are not project-based (i.e., do not involve site-specific subsidies).

# Inapplicability - §55.12(c)

§55.12(c), continued – All of Part 55 does not apply to the following types of actions:

- Special projects directed to the removal of material or architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities
- Financial assistance for acquisition, leasing, construction, rehabilitation, repair, maintenance, or operation of ships and other waterborne vessels that will be used for transportation or cruises and will not be permanently moored

San Antonio, TX  
Flash flood  
May 25, 2013

# Project Options



Flash Flood  
Farmington, New Mexico  
August 2010

**For an applicable project in a Special Flood Hazard Area, there are three options:**

- **Reject** project site – Avoid the flood hazard
- Apply to FEMA for letter of **map amendment or map revision** (LOMA or LOMR) – Remove the project from the flood hazard
- Begin the **8-step process** – Hard look at alternative sites, minimize flood hazards, restore beneficial values of the floodplain

# Overview of 8-Step Process

## 8-Step Process:

- **Step 1.** Determine whether the proposed action is located in 100-year floodplain (or 500-yr for critical action)
- **Step 2.** Publish “[Early Public Notice](#)” of the proposal to consider an action in the floodplain (15 day minimum comment period)
- **Step 3.** Evaluate practicable alternatives to locating the proposed action in a floodplain
- **Step 4.** Identify the potential impacts associated with occupancy and modification of the floodplain



Hurricane Ike  
Winnie, TX  
September 2008

# Overview of 8-Step Process



Summer Storm  
Miami, Oklahoma  
July 2007

## 8-Step Process:

- **Step 5.** Design or modify the action to minimize adverse impacts and preserve the beneficial values of the floodplain
- **Step 6.** Reevaluate whether proposed action is practicable
- **Step 7.** Publish “**Final Public Notice**” of decision to identify why there is “no practicable alternative,” and the alternatives and mitigation measures adopted (7 day minimum comment period)
- **Step 8.** Implement proposed action with mitigation measures



# Step 1 – Floodplain Determination

## Step 1: Is my project in a floodplain?

- Use **FEMA maps** to determine if project is in flood hazard area. Check for FEMA flood maps on-line or hard copy.
- FEMA Map Service Center:
- <https://msc.fema.gov/>
- Photocopy FEMA map, create FIRMETTE, or obtain flood information from other source
- Mark the site on the map
- Use to document the ERR

# Step 1 – Floodplain Determination

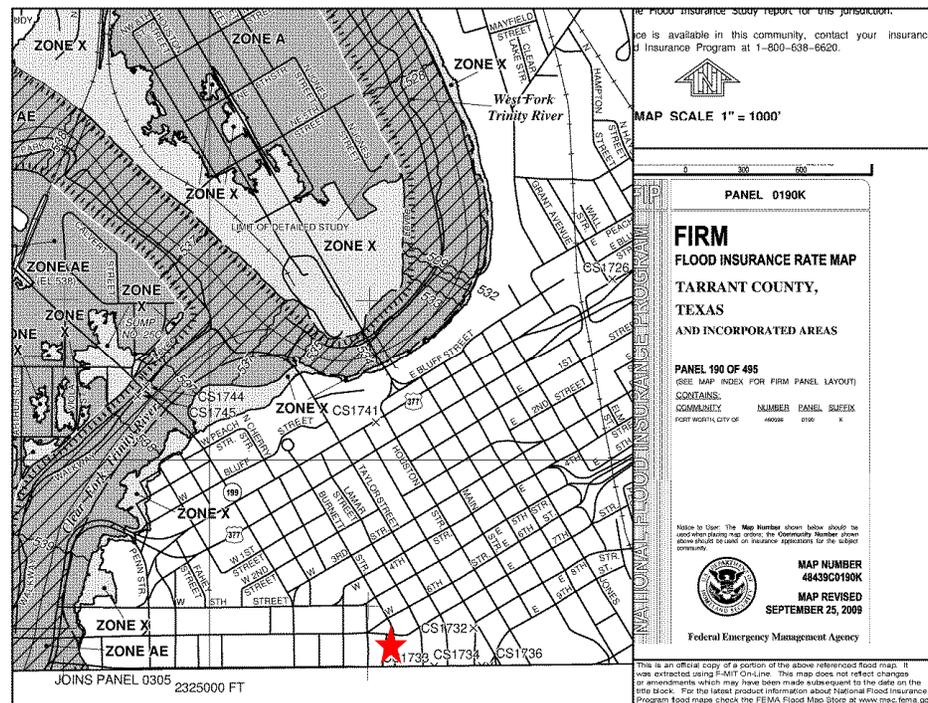
## Step 1: Is my project in a floodplain?

- **Not in a floodplain**
  - FEMA designated as **Zone C** or **Zone X (unshaded)**
- **100-Year Floodplain**
  - FEMA designated as **Zone A\***
  - \* Any Zone with an A (A, AE, A1-A30, AO, AR, A99)
- **500-Year Floodplain**
  - FEMA designated as **Zone B** or **Zone X (shaded)**
- **Floodway**
  - FEMA designated as **Zone AE (hatched)**
- **Coastal High Hazard Area**
  - FEMA designated as **Zone V**

# Step 1 – Floodplain Determination

## Step 1: Is my project in a floodplain?

FEMA Map Service Center:  
<http://www.store.msc.fema.gov>



# Step 1 – Floodplain Determination

## Step 1: Is my project in a floodplain?

If project area is **unmapped** by FEMA, utilize “*best available information*”:

- FEMA Community Status Book  
<https://msc.fema.gov/>
- U.S. Corps of Engineers
- Community Flood Administrators
- U.S. Geological Survey maps
- Soils maps (e.g., alluvial soils) -  
USDA Natural Resources
- Conservation Service
- State departments of water resources
- County public works
- Local flood control or levee districts
- Contract survey or study by licensed consulting engineer
- Supplement above with aerial photos, topographic maps, site visit

# Step 2 – Early Public Notice

## Step 2: Early Public Review



Summer Storm  
Hatch, New Mexico  
August 2006

- Notify public at earliest possible time of consideration of a proposal in 100-year floodplain (or 500-year floodplain for critical actions).
- Must be published in local printed news medium
- Must be sent to agencies and individuals with interest in the proposed action
- 15 day minimum comment period
- State name, location, project description, acres in floodplain and RE contact information
- Sample notices:  
<https://www.hudexchange.info/resource/3191/early-notice-and-public-review-of-a-proposed-activity-floodplain/>

# Step 3 - Alternatives

## Step 3: Identify and Evaluate Practicable Alternatives

- Alternative sites (outside floodplain)
- Alternative methods that achieve the same project objective/purpose
- “No Project” Alternative
- *Practicable*: measured by general concept of site feasibility – natural, social, economic, legal factors.
- RE shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts when reviewing practicable alternatives.



Spring Storm  
Austin, Texas  
April 1935

# Step 4 - Impacts

## Step 4: Identify Potential Direct and Indirect Impacts

- Two areas of concern:
  - Impacts to Lives and Property
  - Impacts to Floodplain
- Three types of impact:
  - Positive & Negative
  - Concentrated & Dispersed
  - Short- and Long-Term
- Does project encourage future Floodplain development?



Flood of 1949  
Fort Worth, Texas  
Cultural District  
Corner of 7<sup>th</sup> Street and University Drive



# Step 5 - Mitigation

## Step 5: Minimize, Restore, Preserve

- **Minimize** – rigorous, demanding standard – “reduce harm to smallest possible degree.” Far beyond mitigate or alleviate
- **Restore** – re-establish environment in which the natural & beneficial floodplain values can operate
- **Preserve** – prevent modification to natural floodplain or maintain as closely as possible to its natural state

Hurricane Beulah  
September 1967  
Brownsville, Texas

# Step 5 - Mitigation

## Step 5: Minimize, Restore, Preserve

### Examples:

- Minimize fill in floodplain
- Minimize grading; restore natural contours
- Acquire/relocate non-conforming structures
- Preserve natural drainage
- Maintain/restore wetlands and riparian buffers
- Control urban runoff & storm water discharge
- Minimize tree cutting
- Elevate and floodproof structures
- Scale back size/scope of project
- Deed restrictions/covenants

Great Mississippi River Flood of 1927  
Dermott, Arkansas



# Step 6 – Re-evaluation

## Step 6: Re-evaluate Proposal and Alternatives



Great Mississippi River Flood of 1927  
New Iberia, Louisiana

- Is project still feasible considering:
  - Impacts to floodplain (Step 4)
  - Minimization actions and opportunities to restore & preserve floodplain values (Step 5)
- If not, and in light of Steps 4 & 5, do alternatives rejected in Step 3 appear feasible? Prepare table to compare adverse impacts of alternatives
- If neither proposed project nor alternatives are acceptable, the alternative is no action

# Step 7 – Final Notice

## Step 7: Public Explanation

- If no practicable alternative, inform the public. Publish in newspaper. 7 day minimum comment period.
- Notice must include:
  1. Reasons why project must be located in floodplain
  2. List of alternatives considered
  3. All mitigation measures to be taken and actions to restore and preserve natural and beneficial values
- Sample notices:

<https://www.hudexchange.info/resource/3191/early-notice-and-public-review-of-a-proposed-activity-floodplain/>



Spring Storm  
Silver City, New Mexico  
April 1935

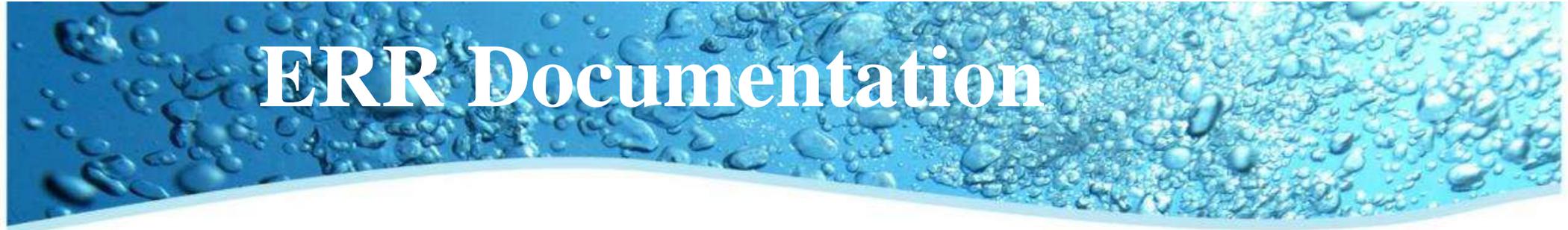
# Step 8 - Implementation

## Step 8: Implement Project

- RE has **continuing responsibility** to ensure that measures in Step 7 are implemented.
- Documentation (§55.27) must show:
  - Actual sites were identified for consideration as practicable alternatives outside of floodplain
  - Reason for non-selection of above sites as practicable alternatives
  - Minimization measures have been applied to the project design
- Sample 8-step process:  
<https://www.hudexchange.info/resource/3190/floodplain-management-8-step-decision-making-process/>



Flood of 1923  
South Robinson Avenue  
Oklahoma City, Oklahoma



# ERR Documentation

- ***Identification of Floodplain*** - Document mapping or identification source:
  - FEMA FIRMette Maps
  - Include project location on map
- ***Evaluation of Impacts*** –
  - **8-Step Analysis** (24 CFR Part 55.20)
  - Early Notice
  - Final Notice
- ***Incorporation of Mitigation & Conditions into Project***
  - FONSI Notice
  - Certified RROF
  - Contracts

# Historic Preservation

**24 CFR  
Part 58.5(a)**



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/historic-preservation>
- Historic Preservation Worksheet:  
<https://www.hudexchange.info/resources/documents/Historic-Preservation-Worksheet.docx>



# National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470 et seq.)

- Enacted in 1966
- Congressional response to urban renewal & federal highway construction in 1950s & 1960s
- To ensure federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties.



# NHPA Section 106

- Requires federal agencies to take into account the effect of their undertakings on any district, site, building structure, or object that is
  - **Included** in or
  - **Eligible for** includes in the National Register of Historic Places.
- The law applies to:
  - Federal assistance
  - Federal licenses or permits
- Requires that the National Advisory Council on Historic Preservation be afforded an opportunity to comment with respect to such undertakings.



# Federal Agency Section 106 Responsibilities

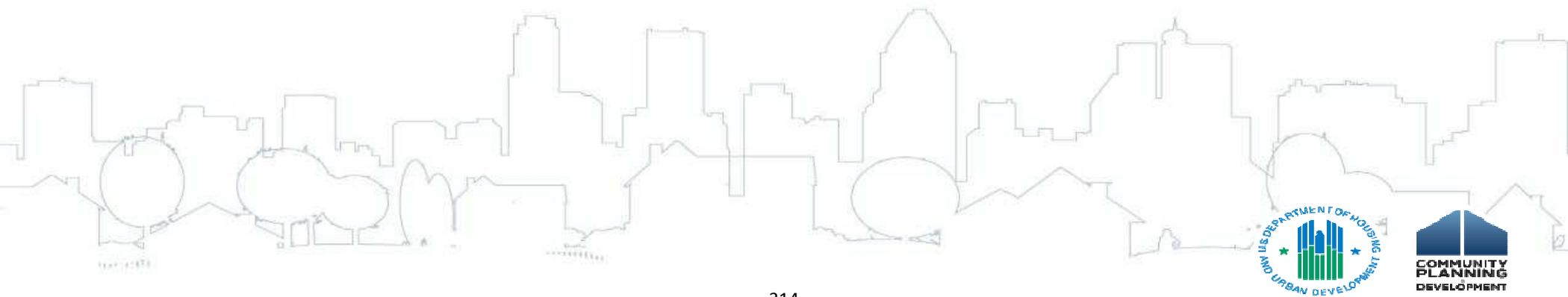
- Responsible Entity (RE) assumes Section 106 Federal Agency responsibilities on behalf of HUD
- Agency Official
  - Has approval authority for the undertaking
  - Can commit the Federal Agency to take appropriate action
  - Can commit the Federal agency obligation to a program alternative

# Timing

- Agency officials must complete the Section 106 process prior to:
  - The approval of the expenditure of Federal funds
  - Issuance of any license
- Project planning activities may process prior to completing compliance with Section 106.
- Agencies must begin process early in planning for the undertaking to ensure a broad range of alternatives can be considered in the decision-making *process—provided that such actions do not restrict subsequent consideration of alternatives to avoid, minimize or mitigate adverse effects.*

# Consulting Parties

- Agency officials shall involve consulting parties in the Section 106 process
- Plan consultation appropriate to the scale of the undertaking and the degree of Federal involvement



# Basic Steps in the Section 106 Consultation Process



- **Step 1**: Initiate the process
- **Step 2**: Identify historic properties
- **Step 3**: Assess adverse effects
- **Step 4**: Resolve any adverse effects



# STEP 1: INITIATE THE SECTION 106 PROCESS



# Define the Undertaking

## “Undertaking”...

A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval



# Screen for the Potential to Cause Adverse Effects

- Determine whether the undertaking is a “type of activity that has **potential to cause effects** on historic properties”?
- If so, must proceed w/ Section 106



§800.3(a)(1) – no potential to cause effect

# RE's Must Determine if Section 106 Review is Required

- Not required if:
  - Activities are Exempt pursuant to 24 CFR Part 58.34(a)(1-11)
  - If a Section 106 Programmatic Agreement covers the activity and does not require a review
  - If the project is covered under a NEPA process coordinated by another lead federal agency



# Does the Undertaking Have the Potential for Adverse Effects?

- If yes, initiate the consultation process
- Initiate consultation with State Historic Preservation Officer
- Initiate consultation with Tribes or Tribal Historic Preservation Officers (THPO):
  - That have an interest in the area where the project is located
  - Of if the project is located on tribal lands

## Role of the SHPO

- Reflects the interest of the State and its citizens in the preservation of their cultural heritage
- SHPO advises and assists Federal agencies in carrying out their Section 106 responsibilities
- Cooperates with agencies, local governments and organizations and individuals
- Ensures that historic properties are taken into account at all levels of planning and development



# Historic Properties of Religious and Cultural Significance to Indian Tribes

- Federal agencies must consult tribes as part of the Section 106 process
- Historic properties of religious and cultural significance can be located on ancestral, aboriginal or ceded tribal lands
- Location may only be known to tribes and agencies are *obliged to keep confidential information confidential.*



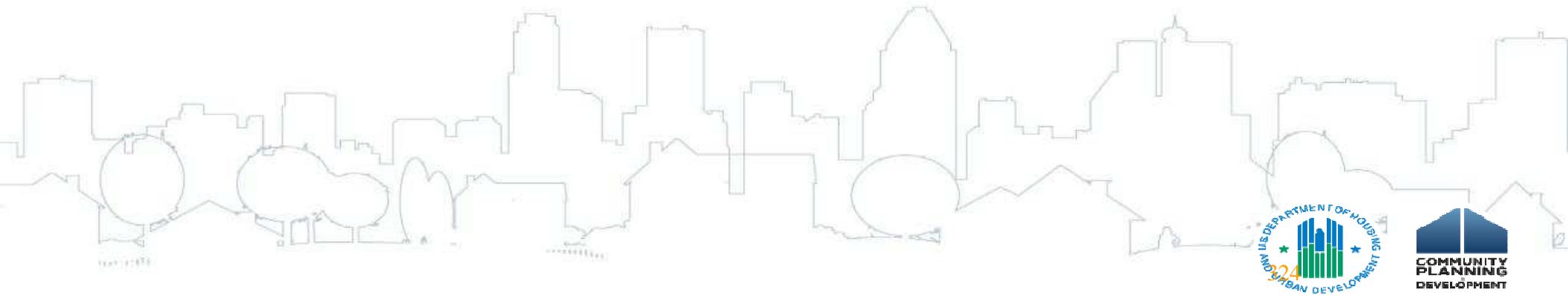
## Consulting Tribes is Required for Projects Involving:

- Ground disturbance (digging)
- New construction in undeveloped natural areas
- Introduction of incongruent visual, audible, or atmospheric changes
- Work on a building or structure with significant tribal association
- Transfer, lease or sale of historic properties of religious and cultural significance.
- When to consult with tribes checklist:  
[www.onecpd.info/resources/documents/When-to-Consult-with-Tribes-Under-Section-106-Checklist.pdf](http://www.onecpd.info/resources/documents/When-to-Consult-with-Tribes-Under-Section-106-Checklist.pdf)
- If the project will not have an affect, include checklist as documentation in ERR and mark Box A on the Statutory checklists



# Historic Properties of Religious and Cultural Significance

- Can be located on tribal lands
- Can be located outside of tribal lands



# RE's Must Determine if Project is in an Area With Tribal Interests

- Determine if there are tribes with interest in the project area
  - HUD's Tribal Directory Assessment Tool (<http://egis.hud.gov/tDat/Tribal.aspx> )
- If there are no recognized tribes with interest in your project area include documentation in the ERR and mark Box A on the Statutory Checklist.



# Government to Government Relationship with Indian Tribes

- US Constitution, treaties, statutes and court decisions sets forth the unique relationship between the Federal government and Indian Tribes.
- Consultation with Tribes shall be conducted in a sensitive manner respectful of tribal sovereignty.
- Consultation with Tribes must recognize a Government-to-Government relationship sensitive to the concerns and needs of the Tribe.



**PROJECT AREA  
OF POTENTIAL  
EFFECT IS IN AN  
AREA WHERE  
TRIBES HAVE AN  
INTEREST**



**PROJECT IS OF  
THE TYPE THAT  
COULD HAVE AN  
ADVERSE EFFECT**



- Must make a “reasonable and good faith effort” to identify federally recognized tribes that might attach religious and cultural significance to the location of your project and you must invite them to be consulting parties.
- Consult with the relevant tribe(s) to identify any such properties in the project’s Area of Potential Effect



# Failure to Consult with Tribes

- If HUD makes a finding of non-compliance with 36 CFR Part 800, it can initiate:
  - Corrective Actions
  - Sanctions
  - Terminate grants
  - Require repayment of HUD funds



# Role of the THPO

- Indian Tribes can assume the functions of the SHPO for undertakings on Tribal Lands
- THPOs are appointed or designated by Tribes assuming SHPO responsibility
- Is the official representative for purposes of Section 106
- Federal agencies must consult with the THPO in lieu of the SHPO



# Tribes that Have Not Assumed SHPO Functions

- RE's must consult with a representative designated by the Tribe in addition to the SHPO for undertakings occurring on or affecting historic properties on tribal lands, regardless of location
- Tribes have the same rights of consultation and concurrence as the THPOs are given.
- However consultations are in addition to and have the same basis as consultation with the SHPO

# A CHP Involvement in the Section 106 Consultation Process

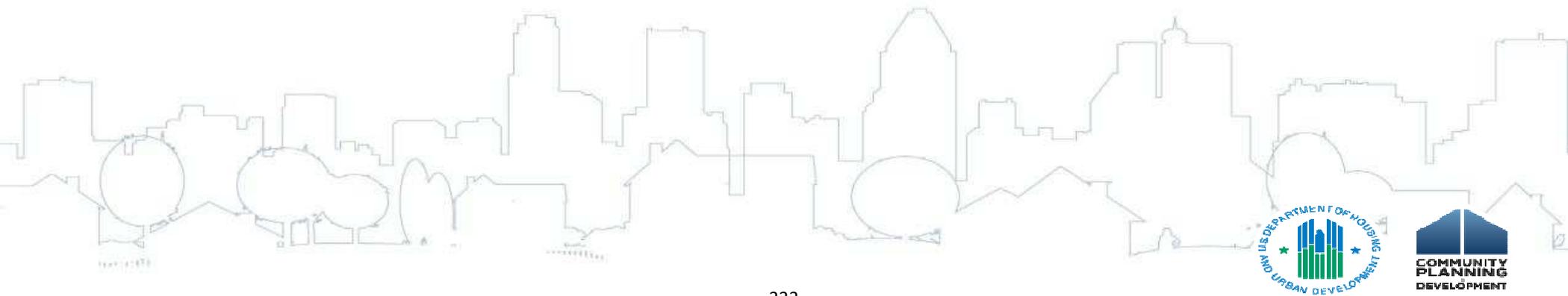
- When the undertaking has a substantial impact on important historic properties
- Presents important question of policy or interpretation
- Has the potential for presenting procedural problems
- Presents issues of concern to Indian tribes or Native Hawaiian organizations.

# Working with the SHPO/THPO

- SHPO/THPO does not approve your project
- Provides comments and advice
- If someone on your team says that SHPO “stopped” the project, that’s simply not true
- If SHPO/THPO says properties in the APE are eligible, they’re likely right

# Participants of the Section 106 Process

- Local governments
- Applicants
- Other interested parties

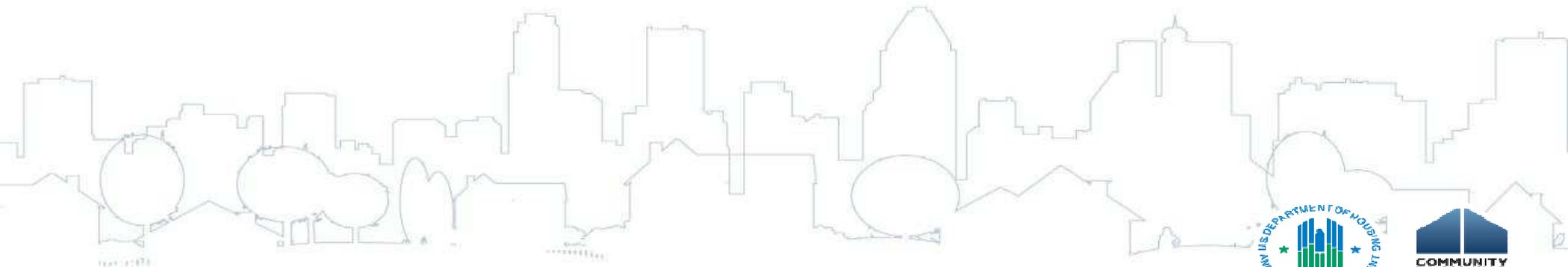


# Requirement for Public Participation

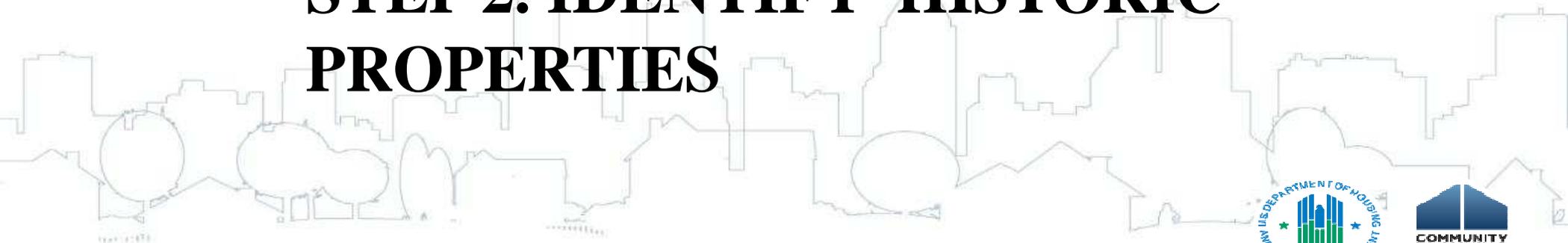
- Views of the public are essential to informed decision-making
- Agency official shall seek and consider the views of the public
- Must honor the confidentiality concerns of private individuals and businesses
- Provide information to the public and seek public input, while protecting confidentiality
- May use NEPA procedures if they provide adequate opportunities for public involvement.

# In Consultation with the SHPO/THPO:

- Plan to involve the public in consultation
- Identify other consulting parties
- Involve Indian tribes
- Determine other interested parties



# STEP 2. IDENTIFY HISTORIC PROPERTIES

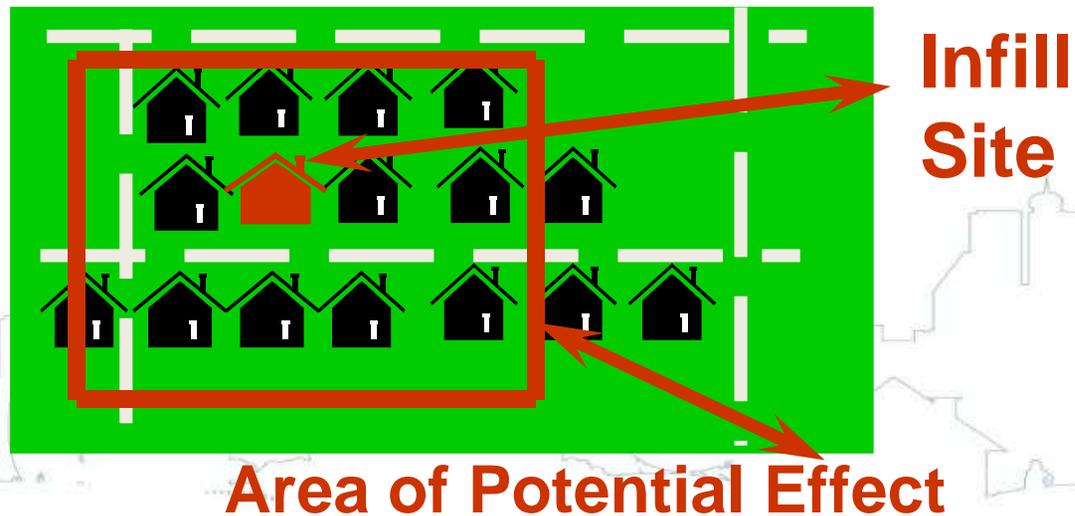


## Define Area of Potential Effects (APE)

- Geographic area (or areas) within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist
- APE is influenced by the **scale and nature** of an undertaking and may be different for different kinds of effects caused by the undertaking

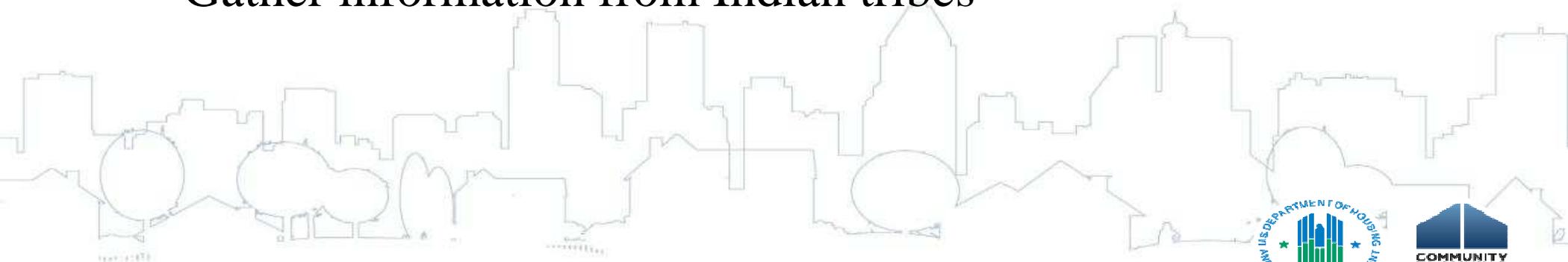
# “Area of Potential Effects” (APE)

- APE is defined before identification begins
- Consult with SHPO/THPO, as appropriate

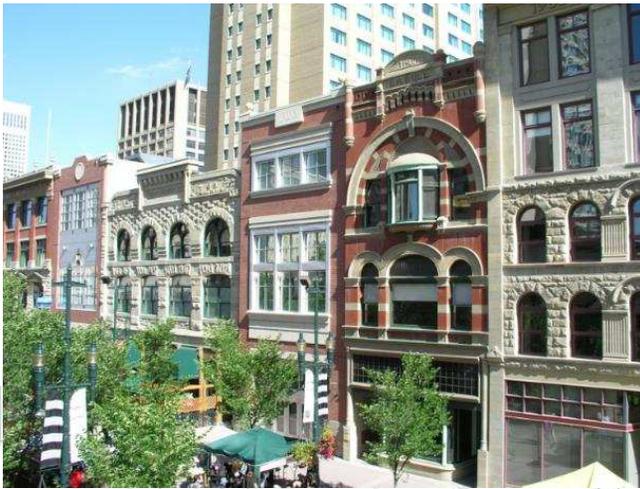


# Review Existing Information

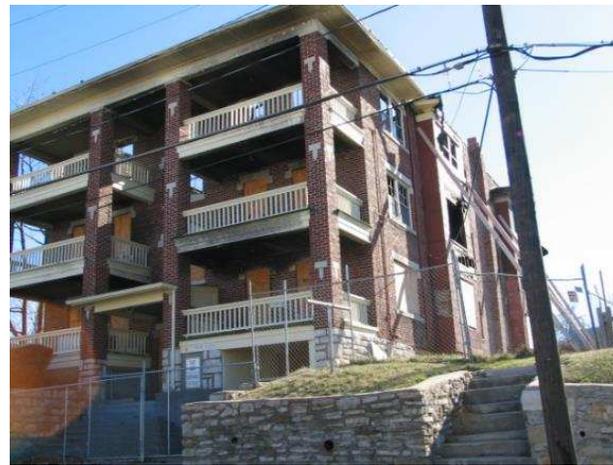
- Gather data on known or potential historic properties
  - Surveys and research
  - Oral histories
  - City directories and historic maps
- Seek information from other consulting parties
- Gather information from Indian tribes



# Historic Property Types can be:



Districts



Buildings

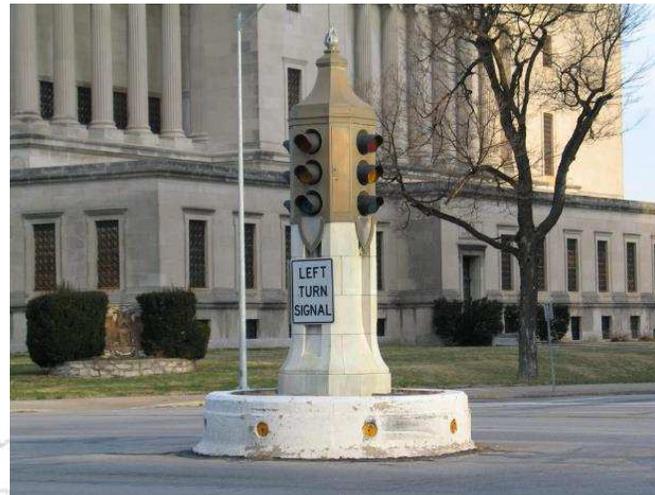
# Historic Sites



# Structures and Objects



*Structures*



*Objects*

# Evaluate Historic Significance

- Apply National Register criteria:
  - Tribes possess special expertise in assessing eligibility of properties that may possess religious and cultural significance to them.
  - Apply Secretary's standards and guidelines for evaluation



Edmund Pettis Bridge

# National Register Criteria [36 CFR Part 60.4]

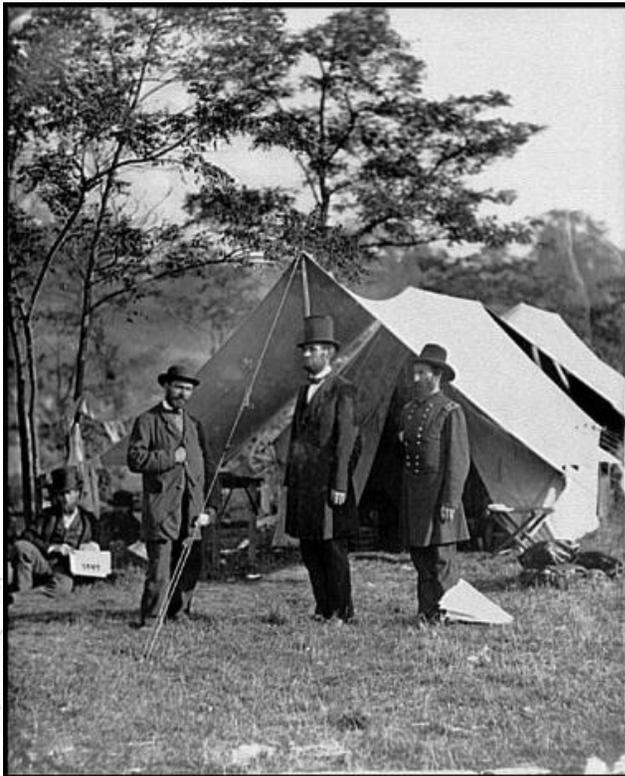
- Criterion A: Event
- Criterion B: Person
- Criterion C: Construction  
(design/architecture)
- Criterion D: Information Potential – pertains  
to most Archeological Sites

Determination Normally Requires Specialized  
Expertise, e.g.

- Evaluation of Criterion
- Archeological Survey

# Criterion A: Association with Event

Battle site, invention; pattern (western migration, transportation)



Civil war – Civil rights



# Criterion B: Association with a Person



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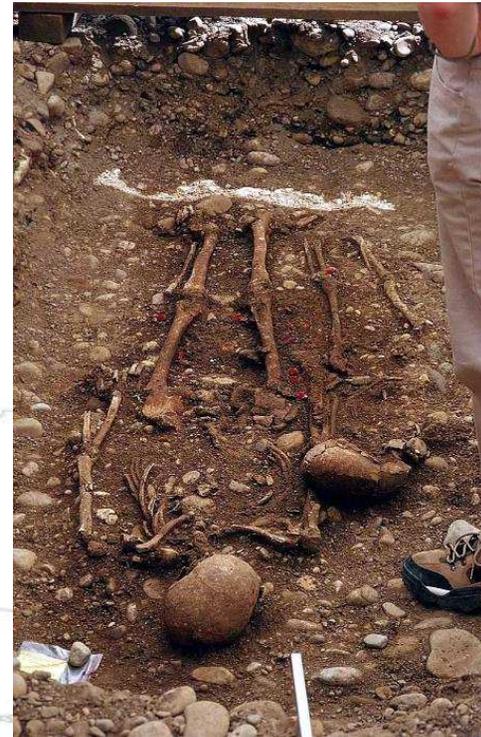


# Criterion C: Association with Construction

*architecture*  
*engineering*  
*design*



# Criterion D: Information Potential



# Authority to Withhold Information

- The RE can withhold information about the location, character or ownership when disclosure may:
  - Cause a significant invasion of privacy
  - Risk harm to the historic property
  - Impede the use of traditional religious site by practitioners
- Usually applies to:
  - Archaeology to avoid potential looting
  - For security reasons
  - Privacy
  - Traditional religious practices

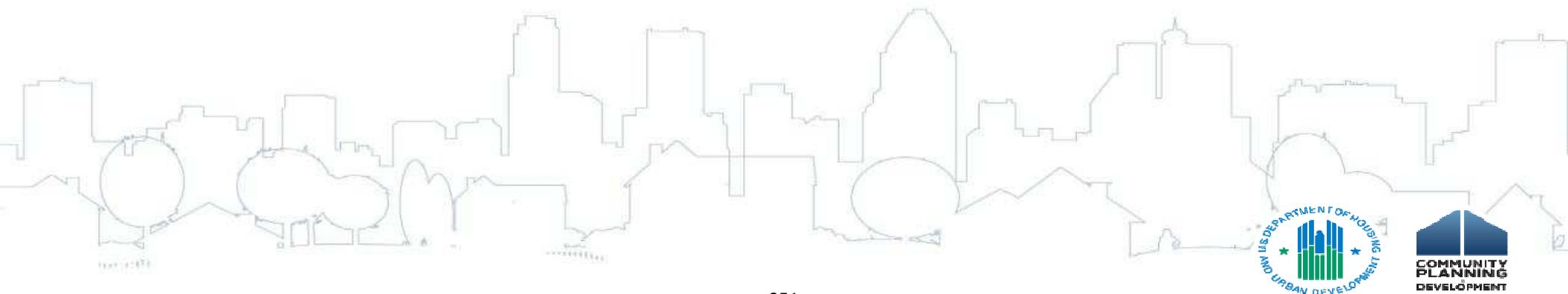
# Evaluating Integrity

- Does property still convey any or some of the listed characteristics?
- Does a “preservable” entity exist?
- Could the group that values it still recognize it and/or use it today?
- For more on integrity, see:
  - *National Register Bulletin #15*



# Key Points

- Define APE at the beginning
- “Historic property” means:
  - Listed in the National Register (NR) OR
  - Eligible for listing in the NR



# RE Makes Determination

- **Determination options:**
  - No historic properties present  
§800.4(d)(1), *or*
  - Historic properties present  
§800.4(d)(2)
- **SHPO/THPO responds, either:**
  - Agrees (“consensus determination”) - Done! OR
  - Disagrees
- **SHPO/THPO has 30 days to respond to agency’s finding.**



# STEP 3: ASSESS ADVERSE EFFECTS

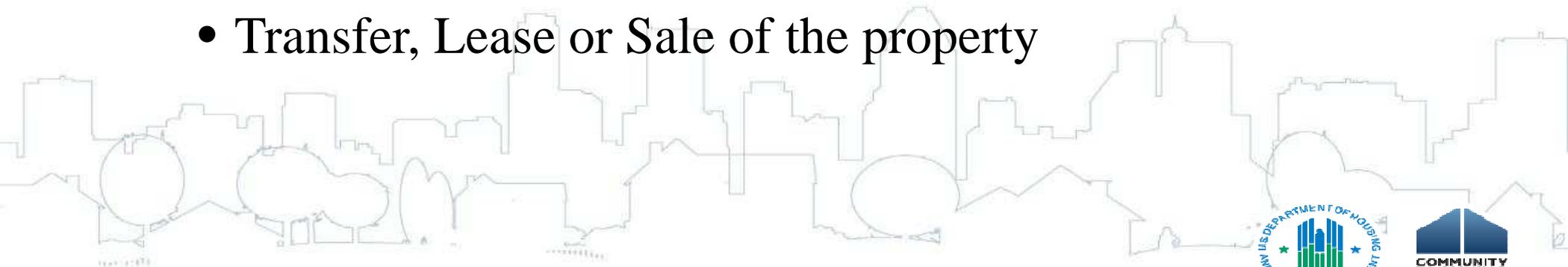


# Criteria of Adverse Effect

- Undertaking may directly or indirectly alter characteristics of a historic property that qualify it for inclusion in the National Register in a manner that would:
  - Diminish the integrity of the property's location
  - Design
  - Setting
  - Materials
  - Workmanship
  - Feeling
  - Association
- May include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

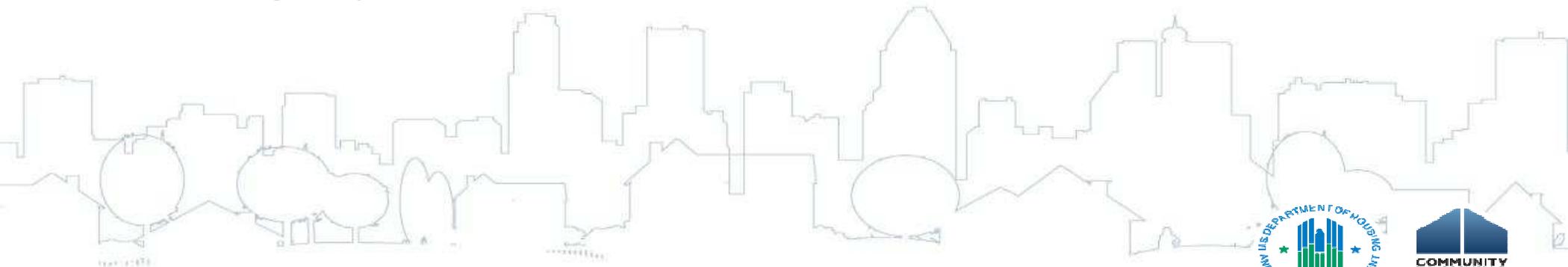
## Examples of Adverse Effect:

- Destruction, Damage, or Neglect of the property
- Rehabilitation not consistent with *Standards*
- Isolation or Alteration of Setting
- Introduction of Visual, Audible, or Atmospheric elements
- Transfer, Lease or Sale of the property



# Effects Assessment Outcomes

- No Adverse Effect
  - Implementation of finding fulfills agency Section 106 responsibility
- Adverse Effect
  - Agency shall consult further to resolve adverse effects



# Finding of No Adverse Effect

- Agency in consultation with SHPO/THPO can propose a finding of no adverse effect when the Undertakings effects:
  - Do not meet criteria
  - Or undertaking is modified to avoid adverse effects



# Consulting Party Review

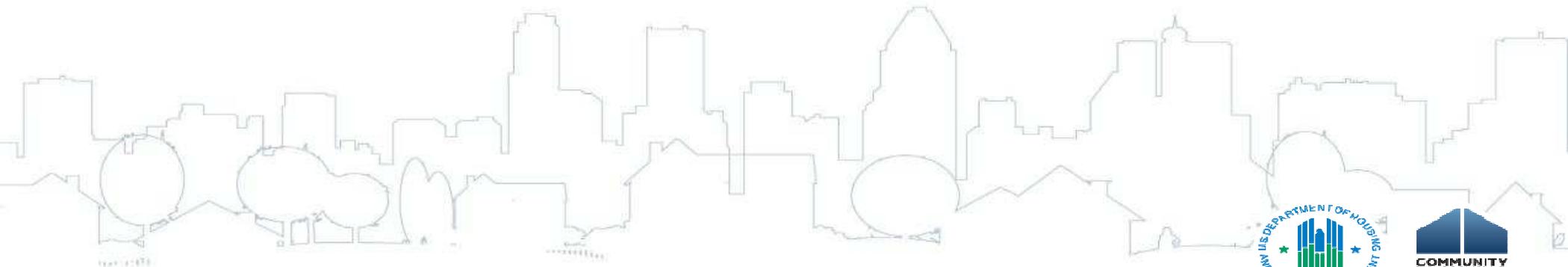
- Agency notifies all consulting parties of finding of no adverse effect and provide documentation
- SHPO/THPO have 30 days to review
- Agency may proceed if SHPO/THPO agree and ACHP is not involved in consultation.
- If SHPO/THPO do not respond with 30 days from receipt of the finding shall be considered in agreement

# STEP 4. RESOLVE ADVERSE EFFECTS



# Continue Process

- Involve additional consulting parties as necessary
- Provide documentation
- Involve the public



# Council Review of Adverse Effects Finding

- If RE identifies adverse effects on historic properties, it must notify the ACHP
- Within 15 days, ACHP will review and notify agency of its determination of whether adverse effects criteria have been met.
- Agency shall proceed in accordance with ACHP's determination.
- If ACHP does not respond with 15 days, agency can assume concurrence.

# Disagreement with Adverse Effects Finding

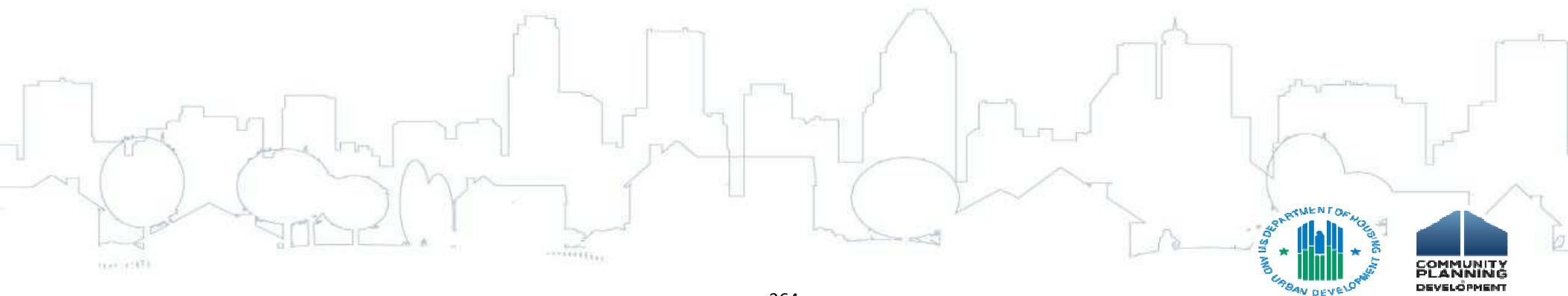
- Consulting party must respond within 30 days
- Must specify reasons for disagreeing
- Agency must
  - Consult with party to resolve disagreement,  
OR
  - Request ACHP review
- ACHP can request a review of the finding with the 30 day response period.

# Resolve Adverse Effects through Further Consultation

- Develop and evaluate alternatives or modifications that could avoid, minimize or mitigate adverse effects
- Notify ACHP and determine its participation
- Invite ACHP participation when:
  - Agency official want its participation
  - Involves adverse effects on a National Historic Landmark
  - Programmatic Agreement will be developed
- Indian tribe or other consulting party may also request ACPH participation.

# Resolve Adverse Effects

- Think creatively about mitigation measures – No pre-defined outcomes
- Negotiate openly with other parties – Be flexible



# Example Mitigation Resolutions

- Demolition >> “recordation” (State or HABS Standards)
- Ground disturbance >> archaeological data recovery (excavation)
- New Construction or Rehab >> design review by SHPO and/or others
- Disposition >> Deed restrictions

# Example Mitigation Resolutions (cont)

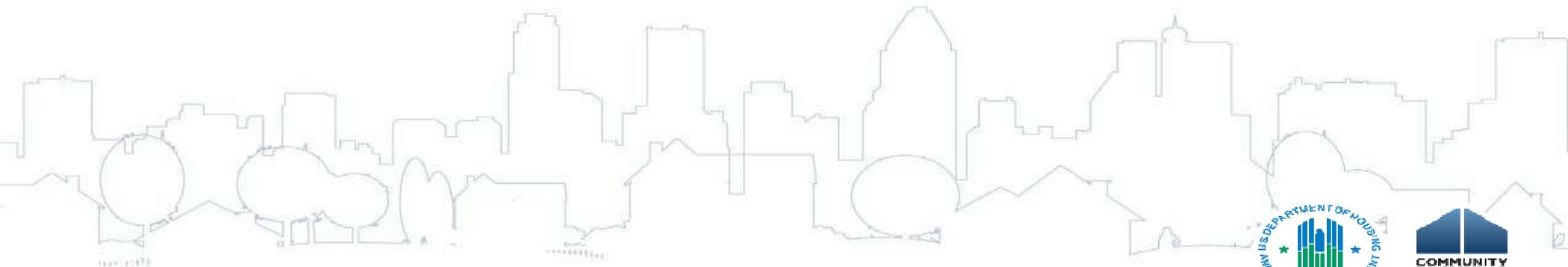
- Interpretive elements – signage, plaques, design
- Posting historical information on-line, developing info for local archives or library, publish pamphlet
- Conduct oral history of local residents, transcribe for posterity
- Exhibit artifacts at local museum or store front (permanent or temporary)
- Implement local design guidelines
- Screening visual intrusions with landscaping or other material

# When Parties Agree How to Resolve Adverse Effects

- Execute a Memorandum of Agreement (MOA)
  - Used to resolve project-specific adverse effects
  - Evidences the agency's compliance with 106
  - Legally binding agreement
- Signatories have sole authority to execute amend or terminate the agreement
  - Agency official
  - SHPO/THPO
  - ACPH

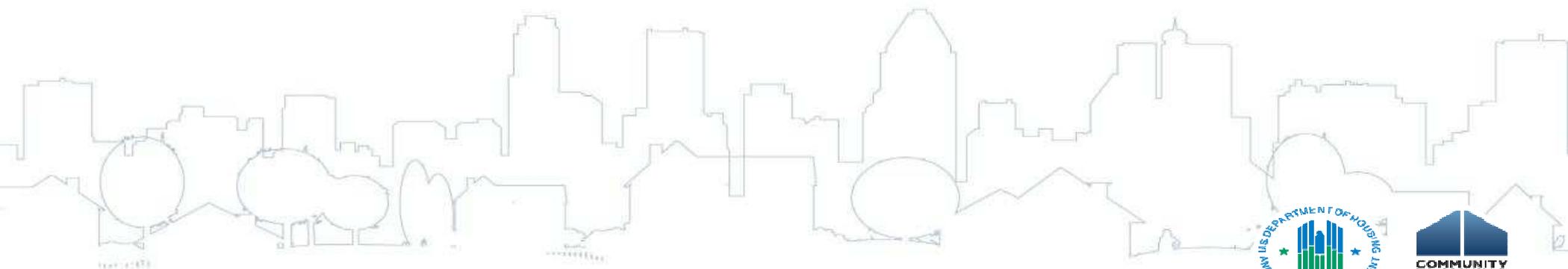
# Additional Signatories

- RE may invite additional signatories, particularly if they have responsibilities, but refusal will not invalidate the MOA
- RE must submit MOU to ACHP prior to approving the undertaking.





# POST-REVIEW DISCOVERIES



# Discoveries of Historic Properties Without Prior Planning

- If after Section 106 process is completed:
  - Historic properties are discovered
  - Unanticipated effects on historic properties are found
- Agency official must avoid, minimize or mitigate adverse effects, and,
  - Resolve adverse effects if the undertaking has not commenced, or
  - May comply with the Archeological and Historic Preservation Act in lieu of 24 CFR Part 800

# Discovery of Historic Properties After Construction Has Commenced

- Determine actions that can be taken to resolve adverse effects
- Notify SHPO, THPO, a tribe which attaches religious and cultural significance to the property, and ACHP within 48 hours
  - Describe assessment of National Register eligibility
  - Proposed actions to resolve adverse effects
- The SHPO, THPO, the Tribe, and ACHP must respond within 48 hours of notification.
- The agency official shall take into account response of SHPO, THPO, Tribe, and ACPH regarding National Register eligibility and proposed actions, and must report back to them on actions taken when they are completed.

# Inadvertent Discoveries a High Priority for Tribes

- Inadvertent discoveries to which a Tribe may attach religious and cultural significance must be immediately addressed.
- Individual tribes may develop complex plans addressing inadvertent discoveries.
- Tribes may also develop a specific inadvertent discovery clauses depending on the nature of the properties and tribal customs.
- It is important to address the approach for inadvertent discoveries of these properties as part of the Section 106 consultation process.

# Inadvertent Discovery Clause

- When a “No Historic Properties Affected” finding is made, but the project is in an area of concern, language to address post-review discoveries can be included in project conditions, contract awards, Memorandum of Agreement, or Programmatic Agreements.
- Example of Inadvertent Discovery Clause:

“In the advent that ground-disturbing work uncovers significant archaeological materials, such as stone arrowheads, ceramics, or early building foundations, or if work uncovers human burials or human remains, ground disturbing activities will immediately be stopped within a 300 foot radius and the materials protected. The State Historic Preservation Officer and the Tribal Historic Preservation Officer will be contacted as soon as possible, and given an opportunity to provide input before construction resumes.”

# Documentation for the ERR

- THPO/Tribal letters confirming that no properties of religious or cultural significance to tribes are present in the project area
- Emails, notes, letters
- Reports and archeological surveys
- Memorandum of Agreement
- Written documentation of compliance with agreements, conditions, mitigation measures



# 36 CFR § 800.14 PROGRAM ALTERNATIVES



# Programmatic Agreements (PA)

- Govern programs, complex project situations, multiple undertakings
- Used when...
  - Effects are similar or repetitive
  - Broad project areas (even state- & nationwide)
  - Effects not fully determined prior to action
  - Nonfederal parties assume authority
  - Circumstances warrant modification from normal process
- Consultation on PAs very similar to MOAs (§800.6)
  - Time frame is open-ended
  - Notify ACHP, SHPO/THPO, & consulting parties
  - Involve the public

# PA Advantages

- Allows for modification of normal process
  - Eliminate need for case-by-case reviews
  - May shorten response times
  - May authorize agency official to make decisions without SHPO involvement
- Eliminates routine activities from review
  - Maintenance/repair or minor rehab work
- Increases efficiencies
  - Protocols for a variety of undertakings
  - Standard treatments measures for adverse effects

# PA Advantages

- Achieves economies of scale
  - e.g., Neighborhood Stabilization Program
- Gives predictability & peace of mind
  - Parties know what to expect
  - Positive impact on planning & contracting
    - What to tell your contractor
- Effective for several years
  - We encourage 5-8 year duration
  - Sync with your other planning requirements
- Involve local historic district commissions and/or professional staff/contractors
  - They may be assigned some authority or role



# POINTERS



# Working with the SHPO/THPO

- Make an appointment with the 106 staff
- Visit the archives/library
  - Get to know where the info is
- Checkout their [website](#)
- Develop a good working relationship & level of trust
- Open lines of communication
- Visit project site with SHPO/THPO



# Working with the SHPO/THPO

- Documentation standards at §800.11
- Send good documentation
  - Photos, site data, project description, map, past alterations or disturbances
- If couriered, get & follow tracking number
- SHPO/THPO on the **30-day clock** when they receive it
  - It's calendar days, not business days
- Follow up with a friendly phone call or email



# Working with the SHPO/THPO



**DO:** Submit clear black and white or color photographs that are at least 3" X 5". High quality digital photographs acceptable, but a paper copy must be provided and the print must be at least 600 *dpi*

# Working with the SHPO/THPO

**Don't:** submit a streetscape that only shows the street



# Working with the SHPO/THPO

**Don't:** take photos from your car



# Working with the SHPO/THPO



**Don't:** submit photos where the building and its defining architectural details are blocked

# Working with the SHPO/THPO

**Do:** submit photographs where the building and the defining architectural features are clearly visible



# Managing Section 106

- Consider doing historic property surveys/archeology surveys/cultural resource surveys upfront, as part of your community's planning process
- Gets you a step ahead in the process
  - Know what you have in your community
- SHPO/THPO assistance is available – TA, grants
- CDBG funding can be used for surveys
  - §570.205 Historic Preservation studies

# Managing Section 106

- If your project meets the adverse effect criteria...
  - Don't dispute it unless you have really good reasons & evidence
- Modify the project to avoid the adverse effect
- Trying to convince SHPO/THPO of no adverse effect will cause delay, may create tension for later consultation

# Managing Section 106



- Stems from §800.5(b):
  - “...undertaking is modified or conditions are imposed, such as subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the... Standards..., to avoid adverse effects.”
  - Standards = [Secretary’s Standards for the Treatment of Historic Properties](#) (36 CFR Part 68)



# Keep Good Documentation

- Proper documentation is your best friend
- The administrative record
- Since 106 is *procedural*, think about what you will show the judge
  - If sued, court will review the project file
- Should contain all 106 project records
  - Correspondence both to and from SHPO/THPO & consulting parties
  - Meeting minutes, emails, phone logs, public hearings

# Archeological Surveys HP Fact Sheet #6

- Appropriate where HUD/RE is *persuaded* by authoritative sources that there is “**likely**” (§800.4(b)(1)) presence of NR/NR-eligible resources *and* project may affect them
  - Example: Project may impact area immediately adjacent to known NR/NR-eligible resources
  - Probability is based on substantiated evidence – previous surveys , predictive models or tribal input
- ACHP: “archo. investigations should be avoided for affordable housing projects limited to rehab & requiring minimal ground disturbance”

# ACHP Top Ten Tips for Consultation

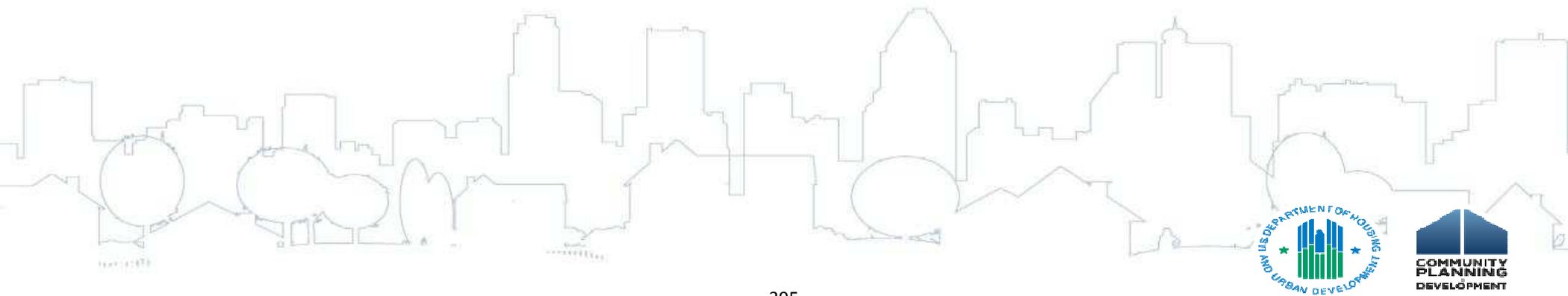
1. Approach consultation in good faith with an open mind
2. Do not assume the other parties in the process are adversaries; they are people who represent different interests & needs
3. Make your interests clear
4. Acknowledge the interests of others as legitimate
5. Seek to understand the interests of others

# ACHP Top Ten Tips for Consultation

6. Identify shared interests
7. Develop & fairly consider a wide range of options
8. Look for options that allow for mutual gain
9. Try to identify solutions that will leave all parties satisfied
10. Be flexible & creative

# ACHP Section 106 Review Training

- Section 106 Essentials:  
<http://www.achp.gov/106essentials.html#forms>
- Advanced Section 106 Seminar:  
<http://www.achp.gov/106advanced.html>



**24 CFR 58.5(a) & 50.4(a)**  
**Historic Properties of Religious and  
Cultural Significance to Indian  
Tribes and Native Hawaiian  
Organizations**





## HUD Resources

- HUD Guidance on Historic Preservation:  
<https://www.hudexchange.info/programs/environmental-review/historic-preservation>
- HUD Guidance on Tribal Consultation:  
<https://www.hudexchange.info/environmental-review/historic-preservation/tribal-consultation/>
- Historic Preservation Worksheet:  
<https://www.hudexchange.info/resources/documents/Historic-Preservation-Worksheet.docx>



## **Tribal Consultation Requirements of the National Historic Preservation Act of 1966**

- Statute: Section 106 of the *National Historic Preservation Act of 1966* (16 U.S.C. 470 et seq.)
- Executive Order 13175 (Effective Nov 6, 2000) “Consultation and Coordination with Indian Tribal Government” – requires Federal agencies to take into account the effects of their undertakings on historic properties of religious and cultural significance to tribes
- Implementing Regulation: 36 CFR Part 800 (Effective Aug 5, 2004) “Protection of Historic Properties”



## 24 CFR 800 Requires:

- “Agency Officials” to ensure Tribes have a reasonable opportunity to:
  - Identify its concerns about historic properties, including those of traditional religious and cultural importance
  - Articulate its views on the on the undertaking’s effects on such properties
  - Participate in the resolution of adverse effects
- Make a reasonable and good faith effort to identify Tribes that should be consulted, and invite them to consult.
- ***If Tribes request to be a consulting party, they shall be one.***



## **Government to Government Relationship**

- US Constitution, treaties, statutes and court decisions sets forth the unique relationship between the Federal government and Indian Tribes.
- Consultation with Tribes shall be conducted in a sensitive manner respectful of tribal sovereignty.
- Consultation with Tribes must recognize Government-to-Government relationship sensitive to the concerns and needs of the Tribe.



## Historic Properties of Religious and Cultural Significance Off Tribal Lands

- Federal agencies must consult tribes as part of the Section 106 process
- Historic properties of religious and cultural significance can be located on ancestral, aboriginal or ceded tribal lands
- Historic properties of religious and cultural significance can be locations outside of tribal lands and may only be known to tribes. Agencies are *obliged to keep confidential information confidential.*



## Must Determine if Section 106 Review is Required

- Not required if:
  - Activities are Categorically Excluded Not Subject to 50.4 pursuant to 24 CFR Part 50.19, unless otherwise indicated
  - If a Section 106 Programmatic Agreement covers the activity and does not require a review
  - If the project NEPA process is coordinated by another lead federal agency, may defer to that agency's findings.



## **Must Determine if Activity Has the Potential to Affect Historic Properties of Religious and Cultural Significant to Tribes**

- Ground disturbance (digging)
- New construction in undeveloped natural areas
- Introduction of incongruent visual, audible, or atmospheric changes
- Work on a building or structure with significant tribal association
- Transfer, lease or sale of historic properties of religious and cultural significance.
- When to consult with tribes checklist:
  - <https://www.hudexchange.info/resource/2448/notice-cpd-12-006-tribal-consultation-under-24-cfr-part-58/>
- If the project will not have an affect, include checklist in ERR



## **Must Determine if Project is in an Area With Tribal Interests**

- Determine if there are tribes with interest in the project area
  - HUD's Tribal Directory Assessment Tool  
(<http://egis.hud.gov/tdat/Tribal.aspx>)
- If there are no recognized tribes with interest in your project area include documentation in the ERR.



## WHEN:

PROJECT AREA OF  
POTENTIAL  
EFFECT IS IN AN  
AREA WHERE  
TRIBES HAVE AN  
INTEREST



PROJECT IS OF THE  
TYPE THAT COULD  
HAVE AN  
ADVERSE EFFECT

- Must make a “reasonable and good faith effort” to identify federally recognized tribes that might attach religious and cultural significance to the location of your project and you must invite them to be consulting parties.
- Consult with the relevant tribe(s) to identify any such properties in the project’s Area of Potential Effect



## Section 106 Tribal Consultation Process

- **Step 1: Initiate Consultation**
  - Coordinate with tribe to determine if the project could potentially affect properties with religious or cultural significance
  - Determine if tribes want to be a consulting party
- **Step 2. Consult with the tribe(s) to identify and evaluate historic properties of religious and cultural significance**
  - Consultation Meeting(s)
  - Evaluation of Historic Properties for the National Register of Historic Places
  - Surveys to Identify Additional Historic Properties  
(<https://www.hudexchange.info/resource/287/hp-fact-sheet-6-guidance-on-archeological-investigations-in-hud-projects/>)
  - Ensure Confidentiality of Information



## **Step 3. Consult with the tribe(s) to evaluate the effects of the project on identified and potential historic resources**

- **Apply Criteria of Adverse Effect** in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization
- **Make Finding:**
  - No Historic Properties Affected Finding
  - No Adverse Effect Finding
  - Adverse Effect Finding
- **Seek concurrence of Indian Tribe**
- **If Tribe doesn't concur, may request ACHP review**
- **Tribes have 30 days to respond to Finding**



## **Step 4: Consult to Resolve Adverse Effects**

- Notify Advisory Council on Historic Preservation
- Consider Alternatives
- Consider Mitigation Measures
- Resolve objections received from tribes
- Prepare and Execute Memorandum of Agreement (MOA)
  - Legally binding document
  - Signatories include HUD, Tribe, THPO and SHPO
  - Must be completed before commitment of funds
  - Must be submitted to HUD Field Environmental Officer



## Section 106 Agreements

- Agency and Tribe can enter into agreements governing the Section 106 consultation process provided it does not affect the role of other consulting parties
- May grant additional rights to participate
- May grant additional rights to concur
- May include provisions for protecting confidential information



## Documentation for the ERR

- THPO/Tribal letters confirming that no properties of religious or cultural significance to tribes are present in the project area
- Emails, notes, letters
- Reports and archeological surveys
- Memorandum of Agreement
- Written documentation of compliance with agreements, conditions, mitigation measures



## Failure to Consult with Tribes

- If HUD makes a finding of non-compliance with 36 CFR Part 800, it can initiate:
  - Corrective Actions
  - Sanctions
  - Terminate grants
  - Require repayment of HUD funds



## **HUD Has Introduced New Policies and Tools**

- **Guidance on Historic Preservation and Tribal Consultation**
  - <https://www.hudexchange.info/programs/environmental-review/historic-preservation>
- **Section 106 Agreements Database:**
  - <https://www.hudexchange.info/environmental-review/historic-preservation/section-106-agreements/>

# **Noise Abatement and Control**

## **– §58.5(i)(1) & §50.4(k)**

- **Background**
- **HUD Noise Standards**
- **Conducting Noise Assessment**
- **Requirements for Noise in the Normally Unacceptable and Unacceptable Range**
- **Statutory Checklist**

# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control>
- Noise Worksheet (for CEST projects):  
<https://www.hudexchange.info/resources/documents/Noise-Abatement-and-Control-CEST-Worksheet.docx>
- Noise Worksheet (for EA projects):  
<https://www.hudexchange.info/resources/documents/Noise-Abatement-and-Control-EA-Worksheet.docx>

# Background

- Congress passed Noise Control Act of 1972, as amended by Quiet Communities Act of 1978
- Implemented for HUD projects through regulations 24 CFR Part 51 Subpart B
- Included in 24 CFR Part 58.5 & 50.4, Related Federal Laws and Authorities

# Background

Noise affects the quality of housing and its economic value...

- Comply with the *Housing Act of 1949* by creating and enforcing a standard for “**a decent home in a suitable living environment**”
- Comply with the *HUD Act of 1965* mandate “to **determine feasible methods of reducing the economic loss** and hardships suffered by homeowners...**following the construction of airports...**”
- Comply with *Compatible Land Uses at Federal Airfields* to **not promote incompatible land uses** within the influence of military and other federal air installations

# Background

Noise is detrimental for many reasons...

- **Noise affects people's ability to:**
  - Talk to one another
  - Hear threats around them
  - Enjoy recreational pursuits
  - Learn and concentrate
- **Noise causes harm** – hearing loss, stress, and threats to mental and social wellbeing.
- **Noise reduces property values and resale potentials.**

# Background

## Common Audible Sounds

- **Rustle of leaves in wind:** 10 dB
- **Average whisper:** 20 dB
- **Soft radio music in house:** 40 dB
- **Range of speech:** 48 – 72 dB
- **Noisy urban street:** 90 dB
- **Loud horn at 10 feet:** 100 dB

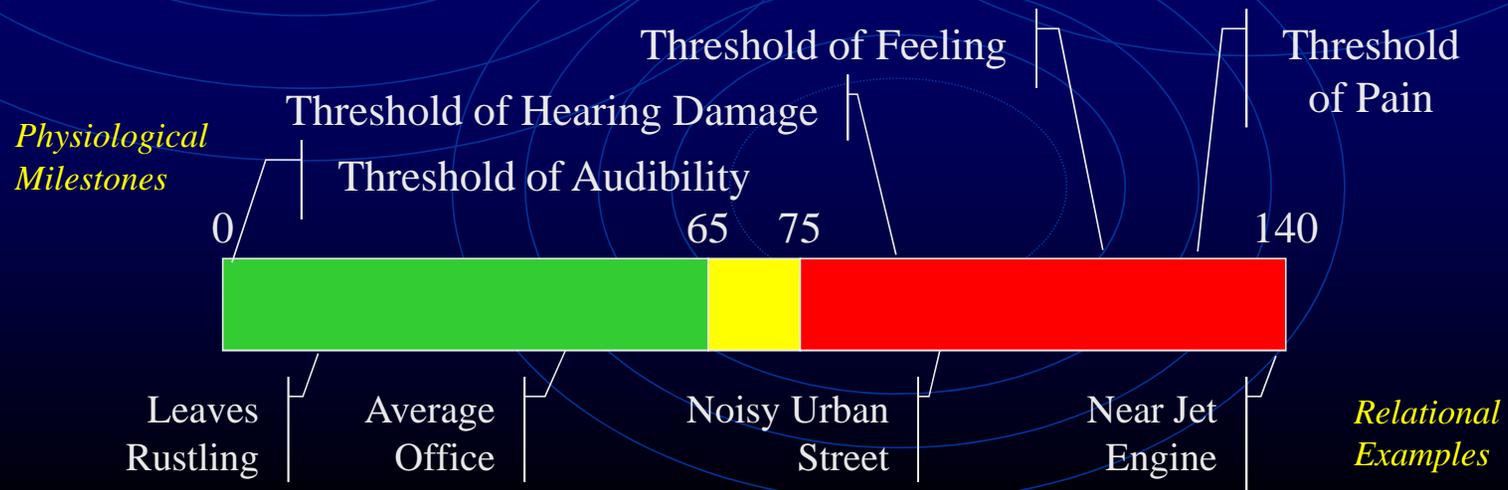
# Background

Addressing outdoor noise is critical

- **Outdoor recreation is degraded or negated**
- **Community cohesion is affected**
- **Direct causal relationship to interior noise levels –**  
if outdoor noise level is 65 dB or less, then indoor noise level will be 45 dB or less with typical construction

# HUD Noise Standard

- Outdoor Standards (24CFR51.103):
  - Acceptable Range:  $\leq 65$  dB
  - Normally Unacceptable Range:  $> 65$  dB  $\leq 75$  dB
  - Unacceptable Range:  $> 75$  dB
- Indoor Standard (24CFR51.101(a)(9)): 45 dB Max.



# HUD Noise Standard

## HUD policy for projects with noise sensitive uses...

- **New Construction – Prohibit** (generally) HUD support for new construction of noise sensitive uses on sites having unacceptable noise exposure [24 CFR 51.101(a)(3)]
- **Rehabilitation – Encourage**, or strongly encourage, noise attenuation features or convert to a land use compatible with high noise levels [24 CFR 51.101(a)(5)]
- **Land Use – Encourage** land use patterns for housing and other noise sensitive urban needs that provide a suitable separation between them and major noise sources [24 CFR 51.100(a)(3)]

# HUD Noise Standard

## How is noise evaluated?

HUD uses **Day-Night Level (DNL)** noise descriptor

- **Accumulates noise data from major noise generators of concern:**
  - airports
  - roadways
  - railroads
  - military and industrial facilities
- **Averaged over a 24 hour period**
- **Weighted 10 dB for nighttime**
- **Estimates noise level for 10-years in future**

# Conducting Noise Assessment

## Overview of process...

1. Determine whether project is a noise sensitive use
2. Determine whether project is within proximity to major noise source
3. Gather data needed for analysis
4. Calculate noise level
5. Based on calculated DNL, make finding:
  - **Approve** projects as proposed
  - Require noise **attenuation or mitigation**
  - **Reject** project/seek alternative site(s)

# Conducting Noise Assessment

## 1. Determine whether project is a noise sensitive use

### ■ What is a noise sensitive use?

- Residential Structures
- Hospitals
- Nursing homes
- Schools
- Libraries

# Conducting Noise Assessment

## 1. Determine whether project is a noise sensitive use

- Does this project involve a noise sensitive use?
  - New sidewalk construction
  - Street repairs
  - Construction of a domestic violence shelter
  - Rehabilitation of a single family home
- If project does not involve a noise sensitive use, a noise assessment is **not** required.

# Conducting Noise Assessment

## 2. Determine whether project is within proximity to a major noise source or sources

### ■ Is project within...

- 15 miles of a civil or military airport?
- 1000 feet of a major roadway?
- 3000 feet of a railroad?
- If project is not within threshold distances, a noise assessment is **not** required.

# Conducting Noise Assessment

## 3. Gather data needed for analysis

### Gather information about the project and area

- **Maps of the site and surroundings**
  - Site plan and vicinity map
  - Aerial photograph – e.g. Google Earth
  - Planimetric map – shows roads, building footprint, railroads, etc.
  - Topographic map – shows elevation contours
- **Local land use plans (future, proposed) and zoning**
- **Is outdoor use a component of the project? (balconies, patios, decks)**
- **Visit site if possible**

# Conducting Noise Assessment

## 3. Gather data needed for analysis

### Gather information about the noise sources

#### ■ Airports

- Contact airport manager or Federal Aviation Administration (FAA).  
<http://www.airnav.com/airports/>
- Obtain noise contour map or data on # flights per day, both daytime and at night.
- Most airports have noise plan that includes Noise Contours - Nearly all installations that make noise have a plan for managing it.
- At Military Installations, ask for their “Air Installation Compatible Use Zone” Plan – It is intended to be shared with local planners and developers.

# Conducting Noise Assessment

## 3. Gather data needed for analysis

### Gather information about the noise sources

- **Roadways** - Contact State DOT, city/county transportation agency or regional planning agency
  - Average Daily Traffic (ADT)
  - Percentage Breakdown of automobiles and medium and heavy trucks
  - Traffic projections needed for minimum 10 years into future
  - Percentage Nighttime Use

# Conducting Noise Assessment

## 3. Gather data needed for analysis

### Gather information about the noise sources

- **Railroads** - Obtaining data: try Federal Railroad Administration (FRA) at-grade crossing inventory database:
  - [safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/xi ngqryloc.aspx](http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/xi ngqryloc.aspx)
  - Take crossing # from bungalow or signal mast, or
  - Get street name at crossing
  - Perform search to get RR contact information and data on train numbers

# Conducting Noise Assessment

## 3. Gather data needed for analysis

Assumptions are **ALLOWABLE** when better data is not obtainable

### ■ Roadways

- Average speed = actual observed speed for cars and trucks, or maximum allowable speed for cars and trucks
- Night time traffic = 15% of ADT

### ■ Railroads

- 50 cars per diesel train
- 8 cars per electric train
- Night time traffic = 15% of ADT

# Conducting Noise Assessment

## 3. Gather data needed for analysis

### Gather information about the noise sources

- **Industrial Facilities**
  - Identify factories, warehouses, heavy industrial uses within proximity of project site
  - Hours of operation
  - Such facilities may generate loud impulsive sounds



# Conducting Noise Assessment

## 4. Calculate noise level

- Noise exposure is calculated for major noise sources typically encountered - aircraft, vehicles and trains
- Sound levels are combined for a total projected noise environment – (Sound levels are not added together, rather mathematical factors combine levels based on the difference between two levels being compared)
- Impact noises are handled separately – such as, sonic booms, stamping mills, metal fabrication, artillery and explosives training or testing

# Conducting Noise Assessment

## 4. Calculate noise level

- Select Noise Assessment Location – “NAL”
- Measure distance from NAL to noise source
- Input noise source data (variables) into on-line calculator
- Calculate combined DNL
- Re-calculate DNL accounting for barriers & mitigation, as appropriate

<https://www.hudexchange.info/programs/environmental-review/dnl-calculator>

# Conducting Noise Assessment

## 4. Calculate noise level

### **NAL – Noise Assessment Location**

- NAL is located 6.5 feet (2 meters) in front of the façade of the proposed building at the point that is closest to the noise source
- If more than one building, use building nearest to noise source
- May have more than one NAL for a large site or site with more than one major noise source

<https://www.hudexchange.info/programs/environmental-review/dnl-calculator>

# Conducting Noise Assessment

## 4. Calculate noise level

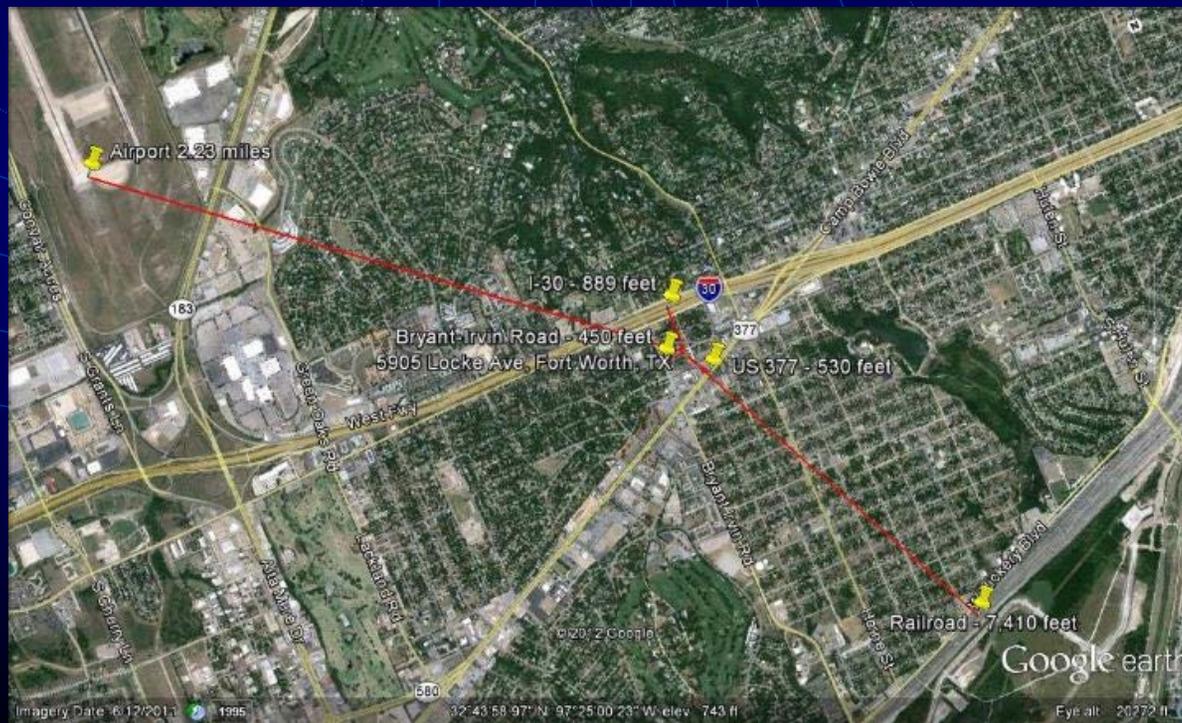
**Measure the distance from NAL to centerline of noise source – use scaled site map (Google Earth)**

- **Roadways**
  - If symmetrical roadways, simply measure to centerline
  - If more than one building, use building nearest to noise source
  - If unsymmetrical measure to near edge of nearest lane, far edge of farthest lane, add and divide by 2
- **Railroads**
  - Measure to center of single track
  - Multiple tracks – measure to middle of set
  - Non-adjacent tracks – calculate each track as separate source

# Conducting Noise Assessment

## 4. Calculate noise level

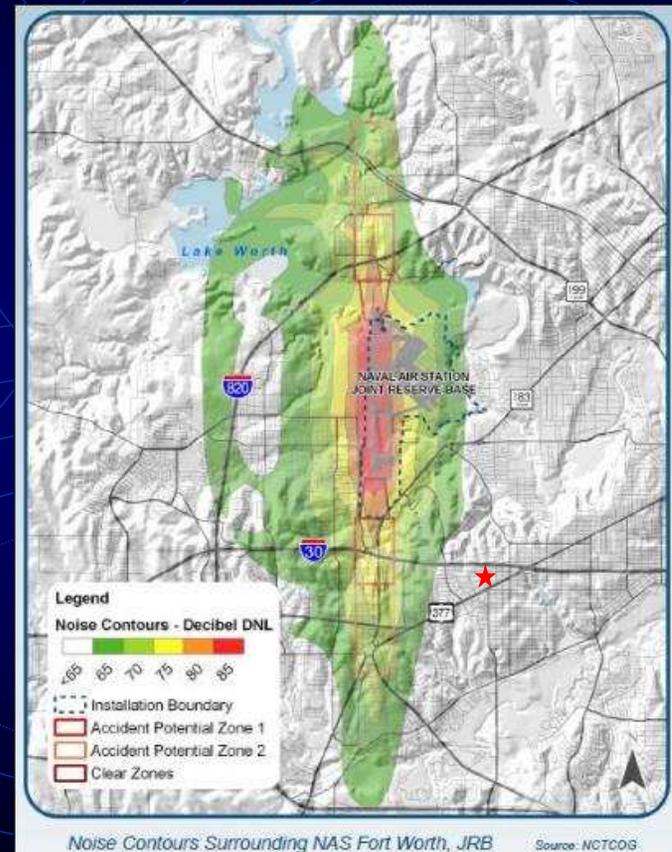
5905 Locke, Fort Worth, TX



# Conducting Noise Assessment

## 4. Calculate noise level

- Project location is outside of noise contours
- Not used in noise calculation



# Conducting Noise Assessment

## 4. Calculate noise level

### 5905 Locke, Fort Worth, TX

- Roadways – I-30 distance from site = 889 feet; (100,000 total) 86,270 light vehicles per day at 60 mph; 13,730 trucks per day at 55 mph; 15% of ADT is at night.
- Roadways – US 377 distance from site = 530 feet; (19,800 total) 18,583 light vehicles per day at 45 mph; 1287 trucks per day at 45 mph; 15% of ADT is at night.
- Roadways – Bryant-Irvin Rd distance from site = 450feet; 14,310 light vehicles per day at 40 mph; 15% of ADT is at night.
- Airport noise contour shows DNL for site is < 65 dB
- No loud impulsive sounds

*Due to the imprecision of noise assessments, HUD allows 1 dB tolerance on findings.*

# Conducting Noise Assessment

## 4. Calculate noise level

- Go to DNL Calculator website

- <https://www.hudexchange.info/programs/environmental-review/dnl-calculator>

THURSDAY, APRIL 17, 2014

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**Site DNL Calculator** [Print Friendly Version](#) [SHARE](#) [f](#) [t](#) [e](#)

For more information on using the noise calculator, to access the user guidebook, or send comments, please visit the following page:  
[Day/Night Noise Level Electronic Assessment Tool](#)

Guidelines:

- To display the Road and/or Rail DNL calculator(s), click on the "Add Road Source" and/or "Add Rail Source" button(s) below.
- All Road and Rail input values must be positive non-decimal numbers.
- All Road and/or Rail DNL value(s) must be calculated separately before calculating the Site DNL.
- All checkboxes that apply must be checked for vehicles and trains in the tables' headers.
- **Note #1:** Tooltips, containing field specific information, have been added in this tool and may be accessed by hovering over all the respective data fields (site identification, roadway and railway assessment, DNL calculation results, roadway and railway input variables) with the mouse.
- **Note #2:** DNL Calculator assumes roadway data is always entered.

Site ID:

Record Date:

Users Name:

Airport Noise Level:

Loud Impulse Sounds?  Yes  No

Combined DNL for all Road and Rail sources:

Combined DNL including Airport:

Site DNL with Loud Impulse Sound:

# Conducting Noise Assessment

## 4. Calculate noise level

- Add site information
- Click on “Add Road Source”

**Site DNL Calculator**

For more information on using the noise calculator, to access the user guidebook, or send comments, please visit the following page:  
[Day/Night Noise Level Electronic Assessment Tool](#)

Guidelines:

- To display the Road and/or Rail DNL calculator(s), click on the "Add Road Source" and/or "Add Rail Source" button(s) below.
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- **Note #2:** DNL Calculator assumes roadway data is always entered.

Site ID:

Record Date:

Users Name:



Airport Noise Level:

Loud Impulse Sounds?  Yes  No

Combined DNL for all Road and Rail sources:

Combined DNL including Airport:

Site DNL with Loud Impulse Sound:

# Conducting Noise Assessment

## 4. Calculate noise level

- Add road data
- Click on “Calculate Road #1 DNL”

**Site DNL Calculator**

For more information on using the noise calculator, to access the user guidebook, or send comments, please visit the following page:  
[Day/Night Noise Level Electronic Assessment Tool](#)

Guidelines:

- To display the Road and/or Rail DNL calculator(s), click on the "Add Road Source" and/or "Add Rail Source" button(s) below.
- All Road and Rail input values must be positive non-decimal numbers.
- All Road and/or Rail DNL value(s) must be calculated separately before calculating the Site DNL.
- All checkboxes that apply must be checked for vehicles and trains in the tables' headers.
- **Note #1:** Tooltips, containing field specific information, have been added in this tool and may be accessed by hovering over all the respective data fields (site identification, roadway and railway assessment, DNL calculation results, roadway and railway input variables) with the mouse.
- **Note #2:** DNL Calculator assumes roadway data is always entered.

Site ID:

Record Date:

User's Name:

Road # 1 Name:

| Vehicle Type              | Cars <input checked="" type="checkbox"/> | Medium Trucks <input type="checkbox"/> | Heavy Trucks <input checked="" type="checkbox"/> |
|---------------------------|--|--|--|
| Effective Distance        | <input type="text" value="889"/>         | <input type="text"/>                   | <input type="text" value="889"/>                 |
| Distance to Stop Sign     | <input type="text"/>                     | <input type="text"/>                   | <input type="text"/>                             |
| Average Speed             | <input type="text" value="60"/>          | <input type="text"/>                   | <input type="text" value="55"/>                  |
| Average Daily Trips (ADT) | <input type="text" value="86270"/>       | <input type="text"/>                   | <input type="text" value="13730"/>               |
| Night Fraction of ADT     | <input type="text" value="15"/>          | <input type="text"/>                   | <input type="text" value="15"/>                  |
| Road Gradient (%)         | <input type="text"/>                     | <input type="text"/>                   | <input type="text" value="2"/>                   |
| Vehicle DNL               | <input type="text"/>                     | <input type="text"/>                   | <input type="text"/>                             |

Calculate Road #1 DNL:

Add Road Source    Add Rail Source

Airport Noise Level:

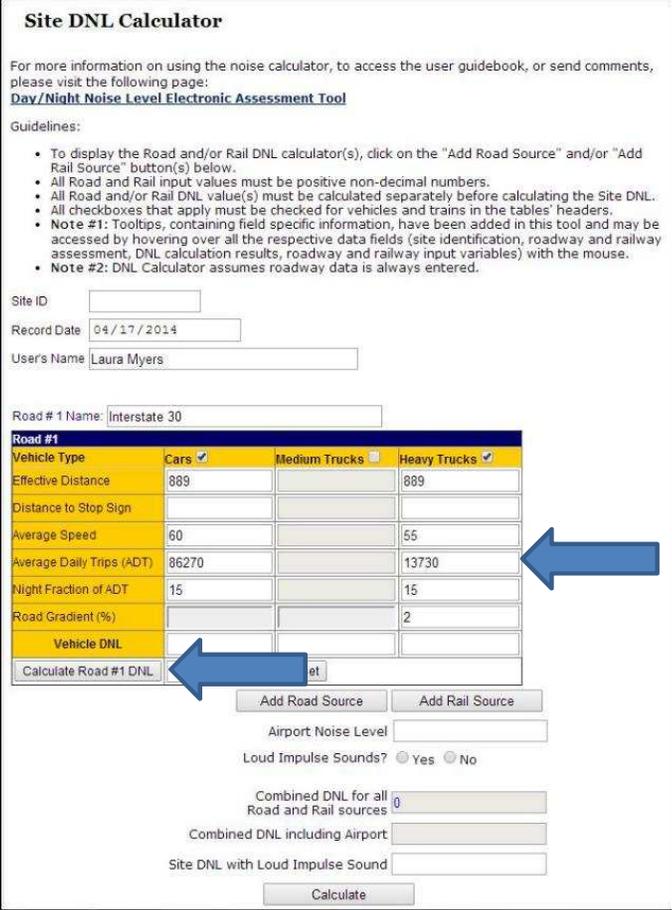
Loud Impulse Sounds?  Yes  No

Combined DNL for all Road and Rail sources:

Combined DNL including Airport:

Site DNL with Loud Impulse Sound:

Calculate



# Conducting Noise Assessment

## 4. Calculate noise level

- DNL for Road #1
- Click on “Add Road Source”

**Site DNL Calculator**

For more information on using the noise calculator, to access the user guidebook, or send comments, please visit the following page:  
[Day/Night Noise Level Electronic Assessment Tool](#)

Guidelines:

- To display the Road and/or Rail DNL calculator(s), click on the “Add Road Source” and/or “Add Rail Source” button(s) below.
- All Road and Rail input values must be positive non-decimal numbers.
- All Road and/or Rail DNL value(s) must be calculated separately before calculating the Site DNL.
- All checkboxes that apply must be checked for vehicles and trains in the tables' headers.
- **Note #1:** Tooltips, containing field specific information, have been added in this tool and may be accessed by hovering over all the respective data fields (site identification, roadway and railway assessment, DNL calculation results, roadway and railway input variables) with the mouse.
- **Note #2:** DNL Calculator assumes roadway data is always entered.

Site ID:

Record Date:

User's Name:

Road #1 Name:

| Vehicle Type              | Cars <input checked="" type="checkbox"/> | Medium Trucks <input type="checkbox"/> | Heavy Trucks <input checked="" type="checkbox"/> |
|---------------------------|--|--|--|
| Effective Distance        | <input type="text" value="889"/>         | <input type="text"/>                   | <input type="text" value="889"/>                 |
| Distance to Stop Sign     | <input type="text"/>                     | <input type="text"/>                   | <input type="text"/>                             |
| Average Speed             | <input type="text" value="60"/>          | <input type="text"/>                   | <input type="text" value="55"/>                  |
| Average Daily Trips (ADT) | <input type="text" value="86270"/>       | <input type="text"/>                   | <input type="text" value="13730"/>               |
| Night Fraction of ADT     | <input type="text" value="15"/>          | <input type="text"/>                   | <input type="text" value="15"/>                  |
| Road Gradient (%)         | <input type="text"/>                     | <input type="text"/>                   | <input type="text" value="2"/>                   |
| Vehicle DNL               | <input type="text" value="59.5988"/>     | <input type="text"/>                   | <input type="text" value="68.1715"/>             |
| Calculate Road #1 DNL     | <input type="text" value="68.7142"/>     |  |  |

Airport Noise Level:

Loud Impulse Sounds?  Yes  No

Combined DNL for all Road and Rail sources:

Combined DNL including Airport:

Site DNL with Loud Impulse Sound:

# Conducting Noise Assessment

## 4. Calculate noise level

- Repeat steps for all roads

Road # 1 Name: Interstate 30

| Road #1                   |  |  |  |
|---------------------------|--|--|--|
| Vehicle Type              | Cars <input checked="" type="checkbox"/> | Medium Trucks <input type="checkbox"/> | Heavy Trucks <input checked="" type="checkbox"/> |
| Effective Distance        | 889                                      |  | 889  |
| Distance to Stop Sign     |  |  |  |
| Average Speed             | 60                                       |  | 55   |
| Average Daily Trips (ADT) | 86270                                    |  | 13730  |
| Night Fraction of ADT     | 15                                       |  | 15   |
| Road Gradient (%)         |  |  | 2  |
| Vehicle DNL               | 59.5988                                  |  | 68.1715  |
| Calculate Road #1 DNL     | 68.7142                                  | Reset                                  |  |

Road # 2 Name: US 377

| Road #2                   |  |  |  |
|---------------------------|--|--|--|
| Vehicle Type              | Cars <input checked="" type="checkbox"/> | Medium Trucks <input type="checkbox"/> | Heavy Trucks <input checked="" type="checkbox"/> |
| Effective Distance        | 530                                      |  | 530  |
| Distance to Stop Sign     |  |  |  |
| Average Speed             | 45                                       |  | 45   |
| Average Daily Trips (ADT) | 18583                                    |  | 1287   |
| Night Fraction of ADT     | 15                                       |  | 15   |
| Road Gradient (%)         |  |  | 2  |
| Vehicle DNL               | 53.8019                                  |  | 60.4515  |
| Calculate Road #2 DNL     | 61.3216                                  | Reset                                  |  |

Road # 3 Name: Bryant-Ivin Road

| Road #3                   |  |  |                                       |
|---------------------------|--|--|---------------------------------------|
| Vehicle Type              | Cars <input checked="" type="checkbox"/> | Medium Trucks <input type="checkbox"/> | Heavy Trucks <input type="checkbox"/> |
| Effective Distance        | 450                                      |  |                                       |
| Distance to Stop Sign     |  |  |                                       |
| Average Speed             | 40                                       |  |                                       |
| Average Daily Trips (ADT) | 14310                                    |  |                                       |
| Night Fraction of ADT     | 15                                       |  |                                       |
| Road Gradient (%)         |  |  |                                       |
| Vehicle DNL               | 52.7101                                  |  |                                       |
| Calculate Road #3 DNL     | 52.7101                                  | Reset                                  |                                       |

Add Road Source    Add Rail Source

Airport Noise Level

# Conducting Noise Assessment

## 4. Calculate noise level

- No railroad noise
- No airport noise
- No loud impulse sounds
- Calculate DNL for all sources
- **DNL= 69.4 dB**
- *Due to the imprecision of noise assessments, HUD allows 1 dB tolerance on findings.*
- Do we have an issue?

|                           |         |       |         |
|---------------------------|---------|-------|---------|
| Average Daily Trips (ADT) | 86270   |       | 13730   |
| Night Fraction of ADT     | 15      |       | 15      |
| Road Gradient (%)         |         |       | 2       |
| Vehicle DNL               | 59.5988 |       | 68.1715 |
| Calculate Road #1 DNL     | 68.7142 | Reset |         |

Road # 2 Name: US 377

| Vehicle Type              | Cars <input checked="" type="checkbox"/> | Medium Trucks <input type="checkbox"/> | Heavy Trucks <input checked="" type="checkbox"/> |
|---------------------------|--|--|--|
| Effective Distance        | 530                                      |  | 530  |
| Distance to Stop Sign     |  |  |  |
| Average Speed             | 45                                       |  | 45   |
| Average Daily Trips (ADT) | 18583                                    |  | 1287   |
| Night Fraction of ADT     | 15                                       |  | 15   |
| Road Gradient (%)         |  |  | 2  |
| Vehicle DNL               | 53.8019                                  |  | 60.4515  |
| Calculate Road #2 DNL     | 61.3216                                  | Reset                                  |  |

Road # 3 Name: Bryant-Irvin Road

| Vehicle Type              | Cars <input checked="" type="checkbox"/> | Medium Trucks <input type="checkbox"/> | Heavy Trucks <input type="checkbox"/> |
|---------------------------|--|--|---------------------------------------|
| Effective Distance        | 450                                      |  |                                       |
| Distance to Stop Sign     |  |  |                                       |
| Average Speed             | 40                                       |  |                                       |
| Average Daily Trips (ADT) | 14310                                    |  |                                       |
| Night Fraction of ADT     | 15                                       |  |                                       |
| Road Gradient (%)         |  |  |                                       |
| Vehicle DNL               | 52.7101                                  |  |                                       |
| Calculate Road #3 DNL     | 52.7101                                  | Reset                                  |                                       |

Add Road Source    Add Rail Source

Airport Noise Level

Loud Impulse Sounds?  Yes  No

Combined DNL for all Road and Rail sources **69.4357** ←

Combined DNL including Airport **N/A**

Site DNL with Loud Impulse Sound

Calculate

# Conducting Noise Assessment

## 5. Based on calculated DNL, make finding

- **Acceptable** Range:  $\leq 65$  dB
- **Normally Unacceptable** Range:  $65 \text{ dB} \leq 75 \text{ dB}$
- **Unacceptable** Range:  $> 75 \text{ dB}$

## RE makes decision based on DNL

- **Approve** projects as proposed
- Require noise **attenuation or mitigation**
- **Reject** project/seek alternative site(s)

## **For HUD Projects in the Normally Unacceptable or Unacceptable Noise Zones**

- HUD support for new construction of new noise sensitive uses is prohibited generally for projects with unacceptable noise exposures and discouraged for projects with normally unacceptable noise exposure [51.101(3)]
- HUD encourages noise mitigation for modernization projects in the normally unacceptable noise zone [51.101(5)]
- For substantial rehabilitation located in the normally unacceptable and unacceptable zones [51.101(5)]
  - HUD will actively seek to have project sponsors to incorporate noise attenuation features
- HUD strongly encourages conversion of noise exposed sites to land uses compatible with the high noise levels. [51.101(5)]

## Mitigation Requirements for Projects in the Normally Unacceptable Noise Zone

- Noise attenuation measures are those required **in addition** to attenuation provided by buildings as commonly constructed in the area.
  - A minimum of 5 dB **additional** sound attenuation DNL is greater than 65 dB but does not exceed 70 dB
  - A minimum of 10 dB of **additional** sound attenuation if the DNL is greater than 70 dB but does not exceed 75 dB.
  - Attenuation requirements apply to both indoor and outdoor noise sensitive uses.
- Attenuation measures beyond regular construction techniques must be described in detail in the mitigation section of the HUD-4128 and certified by a professional engineer or architect that the attenuation measures will reduce the noise level to acceptable.

# An EIS is Required for Noise Exposure in the Unacceptable Range [24 CFR 51.104(2)]

- **Projects in the unacceptable noise zone must be submitted to the Assistant Secretary for Community Planning and Development for approval**
- *An EIS is required* prior to the approval of projects with unacceptable noise exposure (> 75dB) conducted
- EIS's must be conducted in accordance with CEQ's NEPA regulations of 40 CFR Part 1500-1508
- Under Part 50 only the Assistant Secretary of **CPD** can grant an EIS waiver, if:
  - Noise is the only environmental issue: AND
  - No outdoor noise sensitive activity will take place on the site.
  - Estimate three months for this approval and waiver

# Noise Attenuation

## Three Options Available for Attenuating Noise...

- **Site Design** (Moving Noise-Sensitive Uses away from the Noise Source)
- **Barriers or Berms** (Constructing Physical Barricades to Noise)
- **Special Acoustical Construction in the Building** (Least Preferred because it does Nothing to Mitigate Exterior Noise)

# Noise Attenuation

## Site Design

- **Distance**
  - Doubling the Distance from a Sound Source can Reduce its Intensity by as much as 6 dB
  - This is an Important consideration for the Upper Levels of Multi-story Buildings too
- **Noise-compatible Land Uses as Buffers**
  - Parking, Maintenance Facilities, and Utility Structures
- **Buildings as Shields**
  - Structures with Noise-tolerant Uses (Offices, Retail, etc.) can Block the Sound Energy from More Sensitive Uses Behind Them
- **Building Orientation**
  - Windows can be Removed or Reinforced along the most Impacted Wall
  - Site Buildings to Use Topography (Hills and Depressions) as Barriers

# Noise Attenuation

## Barriers and Berms

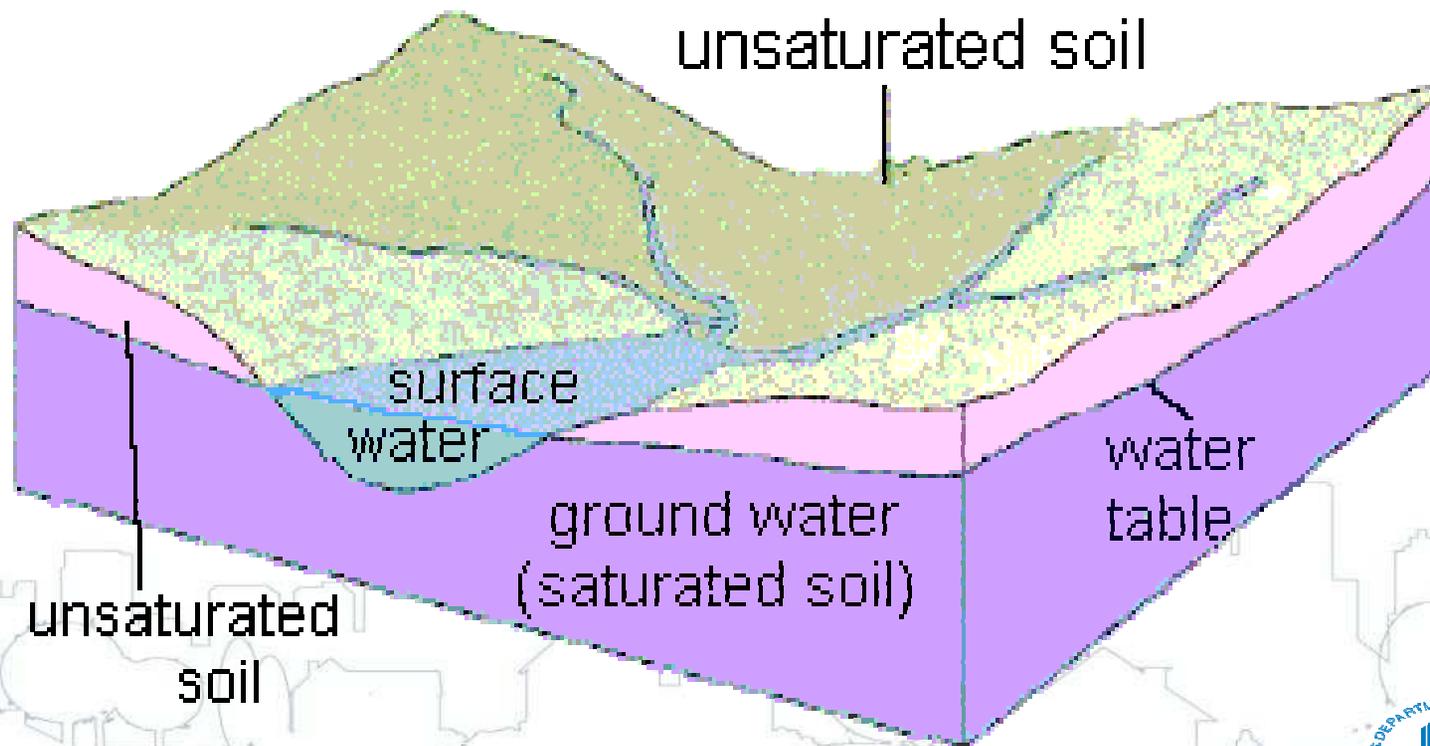
- Barriers block the sound energy that travels on a line-of-sight between the source and the receiver
- Generally Not Effective for Units Above the Second Floor
  - Can Still Improve Outdoor Recreation Areas
  - Upper Floors Benefit from Increased Distance from the Source
- Must prove the barrier design will work – Sound Transmission Classification Assessment Tool (STraCAT)
  - <https://www.hudexchange.info/programs/environmental-review/bpm-calculator/>
  - Reports the noise mitigation performance of wall systems.
  - Calculates a combined Sound Transmission Classification (STC) for a wall and other wall components (windows and doors) at the NAL.
  - The final result is the effective STC of the composite barrier.

# Noise Attenuation

## Accoustical Construction

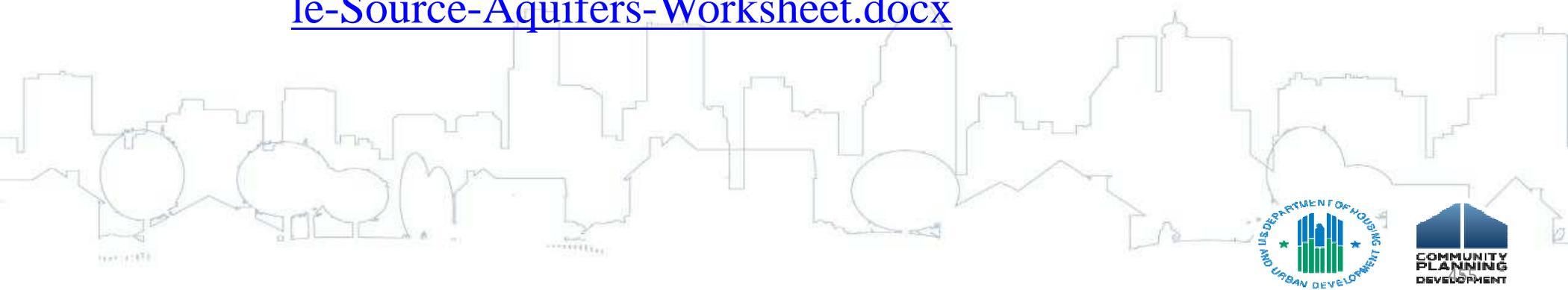
- Building Materials Transmit Sound at Different Rates
- Wall Systems can be Specially Constructed to Insulate Against Noise
  - Allowed by 24CFR51.104(a)(1)
  - Windows and Doors are Less Effective Components of the Wall
  - STC Ratings can Guide the Choice of Wall Materials and Construction
- Cost Effective Strategies for Improving Sound Insulation
  - Cavities Improve Wall Performance without Huge Cost Increases - A 6" Airspace Provides 5dB Additional Attenuation
  - Increase Spacing Between Studs - An Increase from 16" to 24" Yields 2-5dB Additional Attenuation
  - Stagger the Studs - Attaching Each Stud to Only One Wall Panel Provides Approximately 4dB Additional Attenuation
  - Use Resilient Materials and Fasteners - Fiberboard Sheathing and Resilient Clips can Provide 2-5dB Additional Attenuation

## Sole Source Aquifers §58.5(d) & §50.4(d)



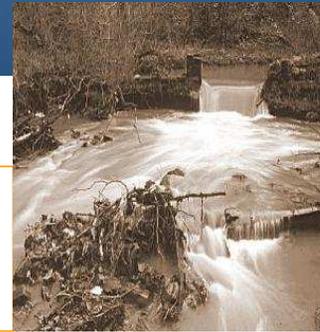
# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/sole-source-aquifers>
- SSA Worksheet:  
<https://www.hudexchange.info/resources/documents/Sole-Source-Aquifers-Worksheet.docx>



# What is Sole Source Aquifer?

## SDWA implemented a strategy for protecting Sole Source Aquifers (SSAs)

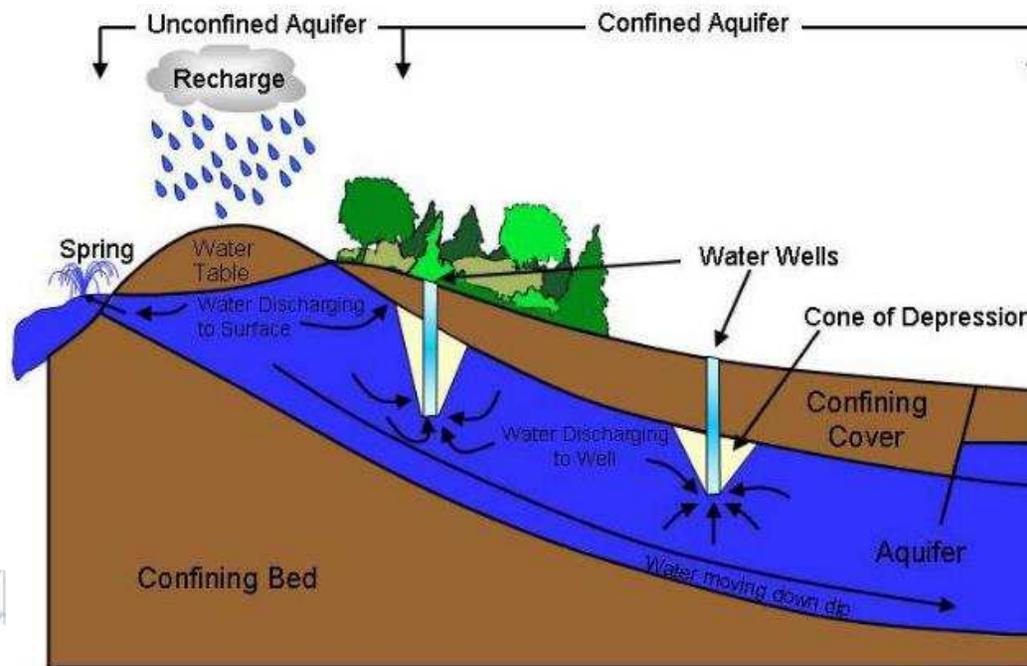


- SSA protection program authorized by Section 1424 of the SDWA determined that the Aquifers are sole or principal sources of drinking water
- A **Sole Source Aquifer** supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer
- No physically, legally, and economically-available alternative for drinking water source exists
- Federal assistance **prohibited** for projects that might contaminate an aquifer designated as SSA



# What is Sole Source Aquifer?

A single, confined aquifer serving a community..



- And the primary or only source of drinking water for that community

**Aquifer** = a geologic formation that contains water in quantities sufficient to support a well or spring



# SSA General Responsibilities

## Federal and state general responsibilities...



- SSA designation protects an area's ground water
- All proposed projects located in a SSA area that are receiving federal funds are subject to EPA review to ensure they do not endanger the water source
- EPA Region VI Sole Source Aquifer Contact:

Michael Bechdol

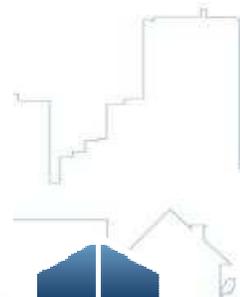
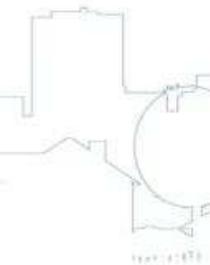
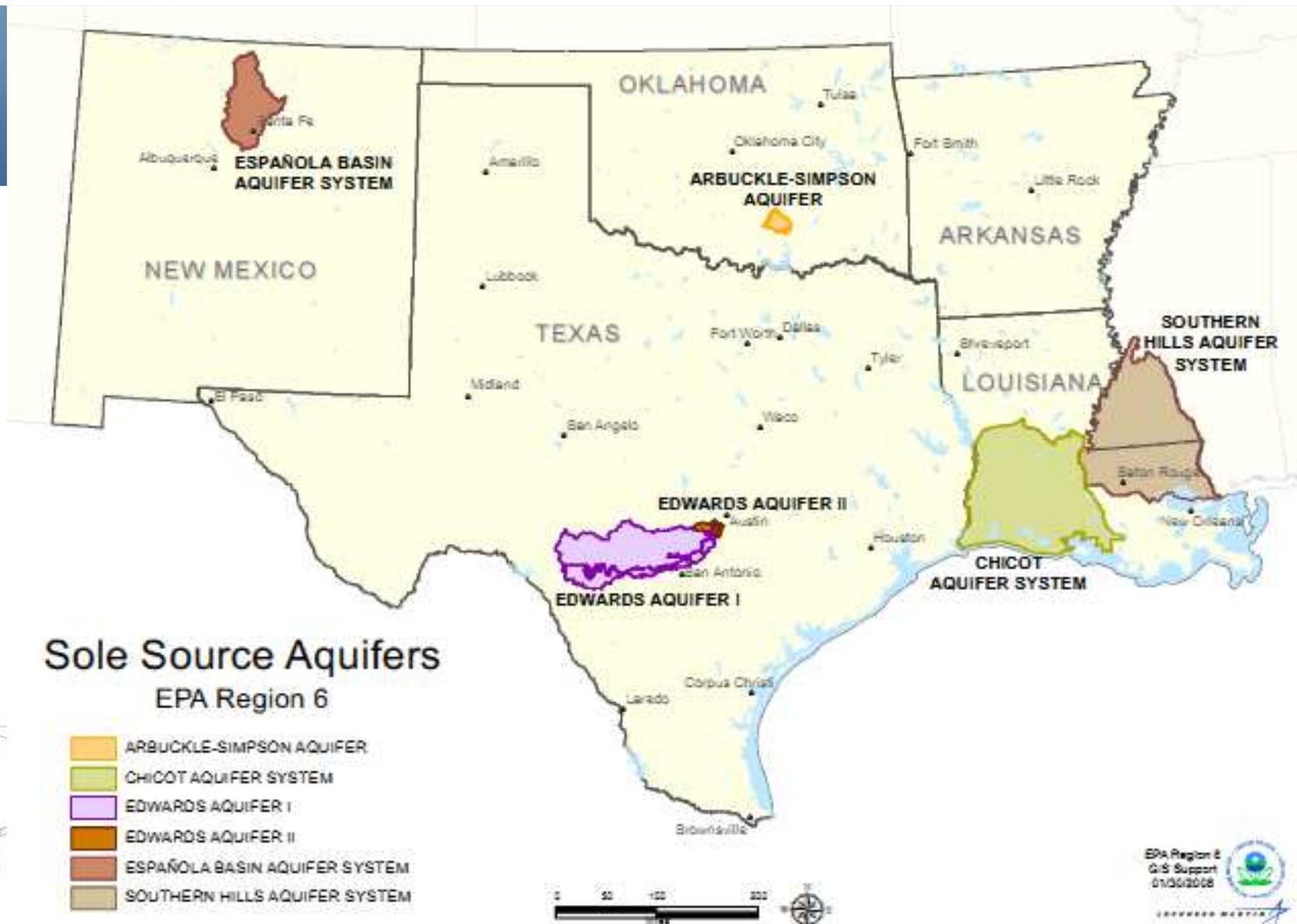
US EPA Region 6 (6WQ-SG)

1445 Ross Avenue

Dallas, TX 75202

214-665-7133 [bechdol.michael@epa.gov](mailto:bechdol.michael@epa.gov)





EPA Region 6  
GIS Support  
01/06/2008



COMMUNITY PLANNING DEVELOPMENT



COMMUNITY  
PLANNING  
DEVELOPMENT

# Types of Projects Not Likely to Affect Sole Source Aquifers

- Projects that are not located in a watershed or recharge zone of a designated sole source aquifer
- Single family housing (< 4 units) new construction or rehabilitation
- Projects involving the construction of or additions to:
  - Residential
  - Commercial
  - Industrial
  - Public facilities
  - Land development

***That are served by a municipal or publicly owned and operated sewage treatment plants:***

- operating within the capacity for which it was designed
- not subject to any local, State or EPA imposed moratorium

***That are served by a municipally or publicly owned sanitary sewer system operating in compliance with its authorized permit.***



# Types of Projects Not Likely to Affect Sole Source Aquifers (cont.)

- Projects involving rehabilitation or modernization of
  - residential structures,
  - commercial,
  - industrial
  - publicly owned buildings

***That are served by a municipal or publicly owned and operated sewage treatment plants:***

- operating within the capacity for which it was designed
- not subject to any local, State or EPA imposed moratorium

***That are served by a municipally or publicly owned sanitary sewer system operating in compliance with its authorized permit***



## Types of Projects Not Likely to Affect Sole Source Aquifers (cont.)

- Acquisition of or financial assistance including refinancing, provision of mortgage insurance, rental assistance on existing project properties, buildings or development where no alterations, additions or expansion is to take place and all expenses listed as operating cost in 24 CFR Part 58.35(b)(3) & Part 50.19(13).
- Funding of public services, planning activities, technical assistance, training, payment/repayment or reimbursement of either loans or interest.



# Types of Projects that Could Have and Adverse Effect on Sole Source Aquifers

- New construction and rehabilitation of which will involve individual disposal systems:
  - Cesspools
  - Septic Tanks with Leach Fields or Seepage Areas
  - Pit Toilets
  - Privately owned sewerage systems, including those of homeowner's association
- Projects that manufacture, store, transport, spreads or disposes of toxic, noxious or hazardous chemicals or radioactive materials, including insecticides, fungicides, and fertilizers



## Types of Projects that Could Have an Adverse Effect on Sole Source Aquifers (cont.)

- Projects involving acquisition, disposition, rehabilitation, new construction of:
  - Sanitary Landfills
  - Facility or operation which disposes of its waste water into dry wells, retention ponds, or methods other than a treatment plant.
  - *Parking facilities exceeding 200 automobiles*
  - Storm water drainage facilities
- Any project or activity involved in agricultural activities or production, raising, processing and marketing of crops or livestock.
- Any other project or activity which HUD determines might be a potential source of contamination to the aquifer.



## Example Mitigation Measures and Conditions for Projects with Identified SSA Impacts

- Design improvements
- Ground water monitoring
- Maintenance and educational activities
- Coordination of ground water protection activities among State and local environmental and public health protection agencies



# Documentation for the ERR

- If the project is **not within an area of concern** for SSA's
  - Include a Region 6 SSA Map with the project location indicated on the map showing it is outside the area of concern
- If the project is **within an area of concern for SSA's but not the type of project** that will adversely affect SSA's document this with a memo to the file
- If the project is **within the area of concerns for SSA's and requires EPA review**, include:
  - Request for EPA review
  - EPA review
  - All mitigation measures and project conditions must be included in the 4128



**Wetland Protection 24 CFR Part  
58.5(b)(2) &  
Part 50.4 (b)(3)**

# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/wetlands-protection>
- Endangered Species Worksheet:  
<https://www.hudexchange.info/resources/documents/Wetlands-Protection-Worksheet.docx>

# Protection of Wetlands

- What are wetlands?
- Value of wetlands
- Wetland Regulations
- Wetlands Identification
- ERR Documentation



# Wetlands Definition

"those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of **vegetation** typically adapted for life in saturated **soil** conditions. Wetlands generally include swamps, marshes, bogs and similar areas."

# Wetlands Require the Presence of Three Conditions:

Hydric **soils**



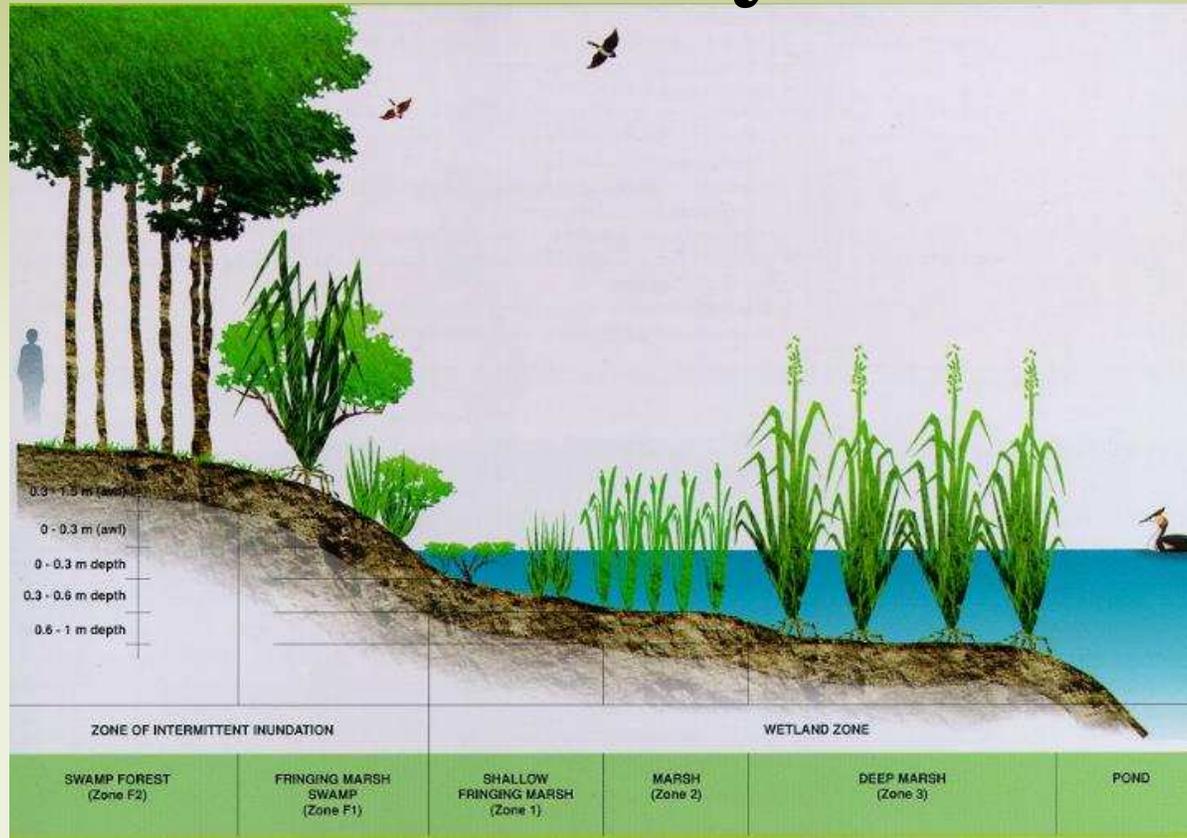
Hydrophilic **vegetation**



Year-round & seasonal **water**  
requirements



# Wetlands System

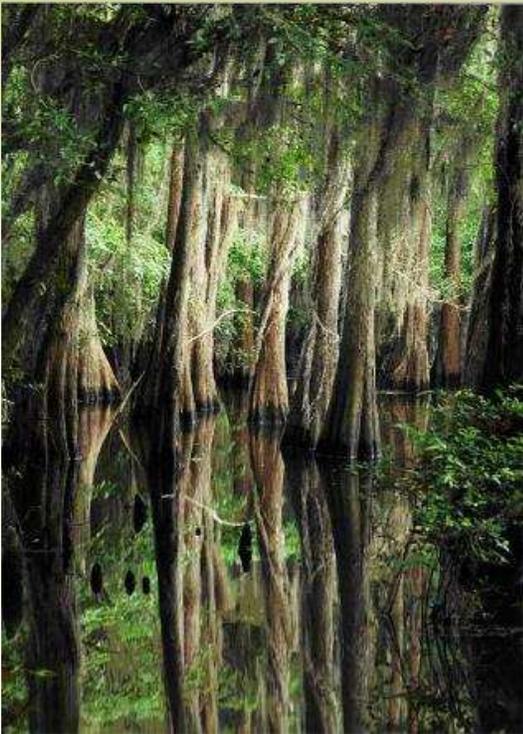


# Wetland Characteristics

- Wetlands may not be wet year-round and, in fact, **some of the most important wetlands are seasonally dry**
- Wetlands are often found in association with **floodplains**
- Wetlands may be “waters of the U.S” – and therefore subject to the jurisdiction of the Corps of Engineers, a.k.a., “**jurisdictional**” wetlands
  - But protection also extends to “**isolated**” wetlands – that is, “non-jurisdictional”



# Value of Wetlands



Wetlands are among the most valuable....

...but least understood of all natural resources

- Wetlands are the link between land and water, where the flow of water, the cycling of nutrients and the energy of the sun meet to produce **highly productive ecosystems**
- In this transition zone between land and water, they provide **flood control**, acting as reservoirs to absorb excess water

# Wetlands serve multiple beneficial purposes ...



- act as filters, **removing pollutants**, including metals, from waters
- **habitat** for great variety of plant and animal species, some endangered, that have evolved to live in the wetland's unique conditions
- provide for **aquifer recharging**
- shoreline **erosion control**
- **recreation and aesthetics**

# Wetland Regulations

Wetlands are primarily protected by **two** authorities that discourage activities in wetlands ...

## *Executive Order 11990, “Protection of Wetlands”(1977)*

“...**avoid** to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to **avoid** direct or indirect support of new construction in wetlands wherever there is a practicable alternative...”

## *Section 404 of the Clean Water Act (1977)*

Dredging or filling wetlands (“Waters of the US”) requires a Section 404 permit from the Army Corps of Engineers

# 24 CFR Part 55

- 24 CFR Part 55 Floodplain Management and Wetland Protection
  - Regulations for implementing E.O. 11990
  - Promulgated December 2013
- Purpose: Avoid to the extent possible
  - Long and short-term adverse impacts associated with destruction or modification of wetlands
  - Avoid support for new construction in wetlands when there is a practicable alternative
- Requires federal agencies to take action to:
  - Minimize destruction, loss or degradation of wetlands
  - Preserve and enhance natural and beneficial values of wetlands

# Terms

- New Construction:
  - Includes draining, dredging, channelizing, filling, diking, impounding and related activities
- Wetland
  - See previous discussion on What is a Wetland:
  - Includes both wetlands subject to and those not subject to Section 404 of CWA as well as constructed wetlands.

# Wetlands Determination

- HUD/RE makes determination whether action is new construction that is located in wetland – subject to §55.20 decision making process
- Primary screening – determine if project area is in proximity to wetlands identified on FWS National Wetlands Inventory (NWI)
  - If yes, must make reasonable attempt to consult with FWS
  - FWS staff must find no wetlands present in order to proceed without further processing
  - If FWS staff not available, appropriate wetland professional must find that no wetland is present in order for action to proceed – Use wetland delineation

# Wetlands Determination

- Secondary screening – used in conjunction with NWI maps, use NRCS National Soil Survey (NSS) and any state and local information concerning the location, boundaries, scale and classification of wetlands in the area.
- Challenges to wetlands determination must be made in writing to HUD/RE during comment period and must be substantiated with verifiable scientific information.

# Applicability (§55.11)

- Under E.O. 11990, the decision making process in §55.20 applies only to Federal assistance for New Construction in wetlands locations.

# Inapplicability (§55.12)

Part 55 does not apply to:

- §55.12(c)(3) – the approval of financial assistance for restoring and preserving the natural and beneficial values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, but only if
  - The property is cleared of all existing structures and related improvements
  - The property is dedicated for permanent use for flood control, wetland protection, park land or open space; and
  - A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

# Inapplicability (§55.12)

- §55.12(c)(6) – A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland.
- §55.12(c)(7) – Approval of a project site, an adjacent portion of which is situated in an adjacent...wetland, but only if:
  - The proposed construction and landscaping activities do not occupy the... wetland;
  - Appropriate provision is made for site drainage that would not have an adverse affect on the wetland; and
  - A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland.

# Individual Permits under Section 404 of CWA (§55.28)

- HUD/RE is not required to perform Steps 1-5 of 8-Step process at §55.20 upon adoption by HUD/RE of the terms and conditions of a Section 404 individual permit so long as:
  - Project involves new construction on a property located outside 100-year floodplain (or 500-year floodplain for critical actions)
  - The applicant has submitted to the RE an individual Section 404 permit (including approval conditions) issued by the USACOE (or State or tribe under Section 404(h) of CWA) for the proposed project; and
  - All wetlands adversely affected by the action are covered by the permit.
- Unless a project is excluded under §55.12, processing under all of §55.20 is required for new construction in wetlands that are not subject to Section 404 of the CWA and for new construction for with the USACE issues a general permit under Section 404 of CWA.

# New Construction in Wetlands

- Agencies are to avoid construction in wetlands unless they find:
  - No practicable alternative
  - Action includes all practicable measures to minimize harm to wetlands
- Factors that can be considered in making finding:
  - Economic
  - Environmental
  - Other pertinent factors
- Follow 8-Step decision-making process at §55.20

# WETLANDS IDENTIFICATION

# How Can I Determine if My Project Will the Project Will Affect a Wetland?

## *Primary Source – USFWS National Wetlands Inventory data mapping*

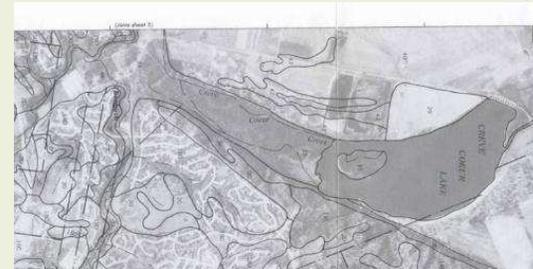
USFWS is the principal Federal agency that provides information to the public on the extent and status of the Nation's wetlands. The agency has developed a series of topical maps to show wetlands and deepwater habitats. Digital data can be viewed and downloads are at: <http://www.fws.gov/wetlands/Data/Mapper.html>  
Wetlands Code Interpreter: <http://www.fws.gov/wetlands/Data/Wetland-Codes.html>

## *Other Mapping Sources*

USGS Topo Map

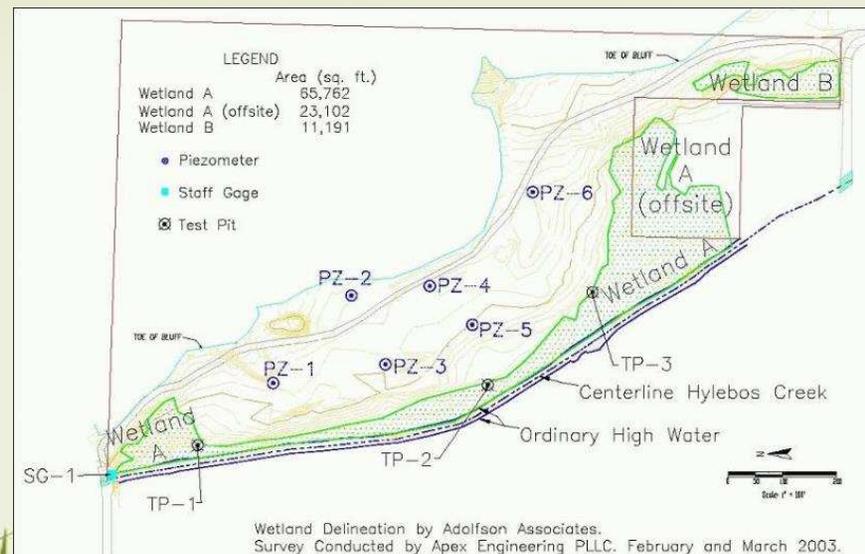


USDA Soil Survey



# Determining Project Impacts May Require Specialized Studies

Wetlands Delineation – establishes the boundary between uplands and wetlands, accomplished by a professional



# ERR Documentation

- **Identification of wetland** - Document mapping or identification source:
  - NWI Maps
  - USGS Topo Maps
  - USDA Soil Survey Maps
  - Include project location on all maps
  - Wetlands delineation studies
- **Evaluation of Impacts** –
  - **8-Step Analysis** (24 CFR Part 55.20)
  - Include Direct and Indirect impacts
  - Include Cumulative Effects
  - USACE Section 404 (Clean Water Act) individual permit
- **Incorporation of Mitigation & Conditions into Project**
  - USACE Section 404 (Clean Water Act) individual permit requirements
  - HUD-4128 Conditions and Requirements section
  - Contracts



**Wild and Scenic Rivers §58.5(f) & §50.4(f)**

# Contents

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Rio Grande  
Bosque del Apache NWR  
New Mexico

- Background
- Categories of Rivers
- Compliance Requirements
- ERR Documentation

# HUD Resources

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- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/wild-and-scenic-rivers>
- Wild and Scenic Rivers Worksheet:  
<https://www.hudexchange.info/resources/documents/Wild-and-Scenic-Rivers-Worksheet.docx>

# Congress Passed the Wild and Scenic Rivers Act of 1968

“...certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable **scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values**, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations...”

Rio Grande  
Big Bend National Park  
Texas



# National Wild and Scenic Rivers System



Big Piney Creek  
Ozark Mountains  
Arkansas

- The Act established the *National Wild and Scenic Rivers System* (NWSRS)
- Rivers - and segments of rivers - are *classified* as **wild, scenic, or recreational**
- Designation of a river into the NWSRS does not halt use of a river; instead, the goal is to preserve the character of a river
- Uses that are compatible with management goals are allowed

# Is your project within proximity of a NWSRS river as defined below?

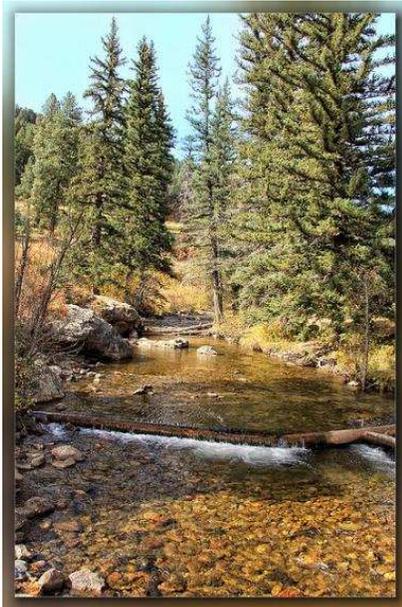
## Categories of Protected Rivers

- **Designated Rivers** – Rivers designated as a Wild and Scenic River and their tributaries are protected under Section 7(a) of the Act and included in the NWSRS: <http://www.rivers.gov/wildriverslist.htm>
- **Study Rivers** – potential additions to the NWSR and are protected under Section 7(a) of the Act: <http://www.rivers.gov/study.php>
- **Nationwide Rivers Inventory (NRI) list** – Rivers included on the inventory list are believed to possess one or more "outstandingly remarkable" natural or cultural values with more than local or regional significance are protected under Section 5 (d) of the Act: <http://www.nps.gov/ncrc/programs/rtca/nri/>



Saline Bayou  
Kisatchie National Forest  
Louisiana

# HUD Region VI Protected Rivers



Pecos River  
Sante Fe National Forest  
New Mexico

- New Mexico
    - Designated WSR – 4
    - Inventory - 10
  - Texas
    - Designated WSR – 1
    - Inventory – 19
  - Oklahoma
    - Inventory – 8
  - Arkansas
    - Designated WSR – 7
    - Inventory – 50
  - Louisiana
    - Designated WSR – 1
    - Inventory – 11
- \* No Study Rivers in Region VI

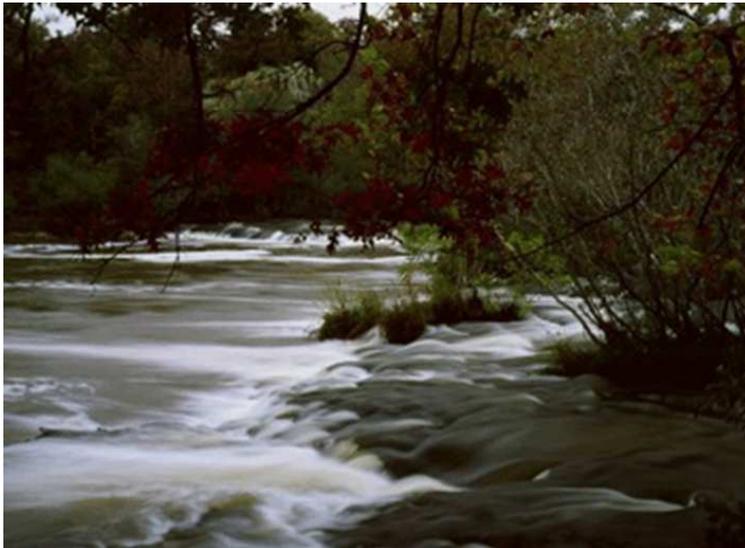
# If so, is your project a water resources project?

- A water resources project is a federally assisted project that could affect the free-flowing condition of a wild and scenic river.
- Examples include dams, water diversion projects, bridges, roadway construction or reconstruction, boat ramps, and activities that require a Section 404 permit from the Army Corps of Engineers.

Buffalo River  
Ozark Mountains  
Arkansas



## If so, could the project do any of the following?



Blue River  
Tishomingo, Oklahoma

- Have a direct and adverse effect within wild and scenic river boundaries
- Invade the area or unreasonably diminish the river outside wild and scenic river boundaries
- Have an adverse effect on the natural, cultural, and/or recreational values of an NRI segment

# Consultation Requirements

- Consultation with the appropriate federal, state, local, and/or tribal Managing Agency is required, pursuant to Section 7 of the Act, to determine if the proposed project may have an adverse effect on a wild and scenic river or a study river and, if so, to determine the appropriate avoidance or mitigation measures.
- The Managing Agency for a particular river segment generally is the National Park Service, the Bureau of Land Management, U.S. Forest Service, or U.S. Fish and Wildlife Service; for some river segments, a state agency, tribe, or a local government may also be a Managing Agency.
- For rivers listed in the NRI, the National Park Service (NPS) is the point of contact. Under Section 5 of the Act, the NPS can provide recommendations that the Responsible Entity must take into account in protecting the listed river segment.



Little Missouri River  
Ouachita National Forest  
Arkansas

# ERR Documentation

The environmental review record should contain one of the following:

- Evidence the proposed action is not within proximity to a designated Wild, Scenic, or Recreational River
  - **Map** showing proximity to nearest NWSR
- Documentation that contact was made with the Federal (or state) agency that has administrative responsibility for management of the river and that the proposed action will not affect river designation or is consistent with the management and land use plan for the designated river area

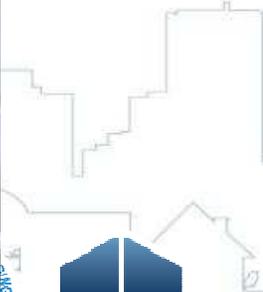
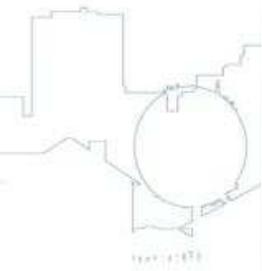
\*Summarize environmental concerns and incorporate mitigation in the Environmental Review Record (ERR)



Brazos River  
Granbury, Texas



**Environmental  
Justice  
24 CFR Part  
58.5(j) & 50.4(1)**



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/programs/environmental-review/environmental-justice>
- Environmental Justice Worksheet:  
<https://www.hudexchange.info/resources/documents/Environmental-Justice-Worksheet.docx>



# Executive Order 12898 on Environmental Justice (Feb 11, 1994)

- Federal agencies are to make achieving environmental justice part of their Mission
- Identify and address disproportionately high and adverse human health or environmental effects of their programs, and activities on minority and low income population
- Interagency Working Group on Environmental Justice
- Environmental Justice Strategies
- Research and Data Collection
- Subsistence Fishing



# President Clinton's Intentions

(EPA-175-N-94-001)

- Comply with Title VI of the Civil Rights Act of 1964
- Use the NEPA Process to:
  - Analyze the environmental effects on minority communities and low-income communities
  - Develop mitigation measures to address significant and adverse environmental effects of proposed Federal actions on minority communities and low-income communities
  - Involve the public



# Court Precedent: Title VI and Environmental Justice

- Chester Residents for Quality of Living file suit against the Pennsylvania Department of Environmental Protection for issuing a permit for a waste facility located in a predominantly African American community (1997)
  - Plaintiff's alleged that it violated Section 602 of Title VI of the Civil Rights Act
  - District Court Rule Against
  - Upheld in the Third Circuit Court of Appeals
- Established precedent for EJ litigation under Title VI



# HUD's EJ Strategy (April 2012)

- For HUD, Environmental Justice means:
  - Access to safe and healthy housing
  - Mitigating risk to communities in disaster prone areas
  - Access to housing free of hazards
  - Inclusive sustainable communities free of discrimination
- Recognizes that achieving healthy homes is related to:
  - Quality of environment within the home, and
  - Where the home is located



# HUD's Strategy to be Achieved Through

- HUD's Site and Neighborhood Standards tied to Title VI Implementation
- Ensure EJ considerations in Environmental Review Procedures
- Promote fairness, equity and non-discrimination and equal opportunity
- Ensure tribal consultation in HUD program implementation

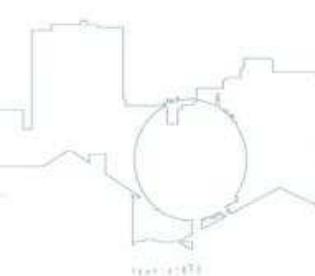
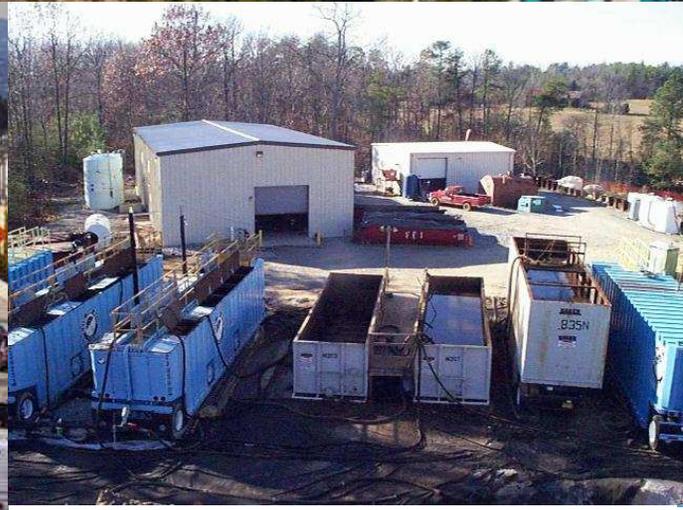


# HUD EJ Strategy: Incorporated Into Programs

- **NEPA Reviews**
- **Fair Housing**
- **Sustainable Communities**
- **CDBG/IDBG**
- **Choice Neighborhoods**
- **Healthy Homes**
  - Lead Hazard Control
  - Safe and Healthy Homes Investment Partnership
  - Green and Healthy Homes Initiative
  - Development of interagency website [healthyhomes.gov](http://healthyhomes.gov)

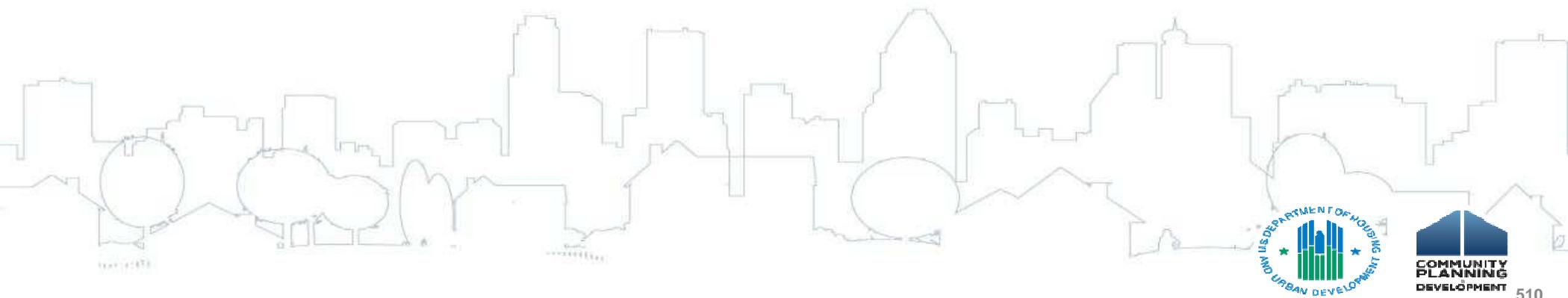


# Example Environmental Impacts Posed to EJ Communities



# Definition of Low Income and Minority

- 60% of Area Mean Income
- Appreciably Higher Percentage Minority than the Jurisdiction



# Two Scenarios for EJ Concerns

**Scenario 1: Siting a Project to Serve EJ Community Near Pollution Source (e.g. Affordable Housing)?**



**Scenario 2: Siting a Pollution Source in EJ Community?**



**OR**

**If “No” to both questions  
Compliance is Complete**



# Most Frequently Encounter First Scenario for HUD Projects

- If the Environmental Review identifies adverse health impacts:
  - Unacceptable Noise Exposure
  - Site Contamination
  - Within the danger zone for explosive and flammable hazards
  - Special Flood Hazard Area
- And, project involves an environmental justice community
  - Affordable Housing—by definition
  - Project siting in low income or minority neighborhood
- Then, an Environmental Justice Analysis is required



# Is the EJ Community is Disproportionately Adversely Affected?

- D
- D
- W

| <b>Facilities Emitting Criteria Air Pollutants<br/>(No. Facilities /Sq. Mi.) 76102 Zip Code</b> |                                 |              |
|---|---------------------------------|--------------|
|   | <b>Facilities/<br/>Sq. Mile</b> | <b>Ratio</b> |
| <b>People of Color</b>  | <b>1.8</b>                      | <b>1.89</b>  |
| <b>Whites</b>   | <b>.96</b>                      |              |
| <b>Kids Below Poverty Line</b>  | <b>1.8</b>                      | <b>1.84</b>  |
| <b>Kids Above Poverty Line</b>  | <b>.98</b>                      |              |

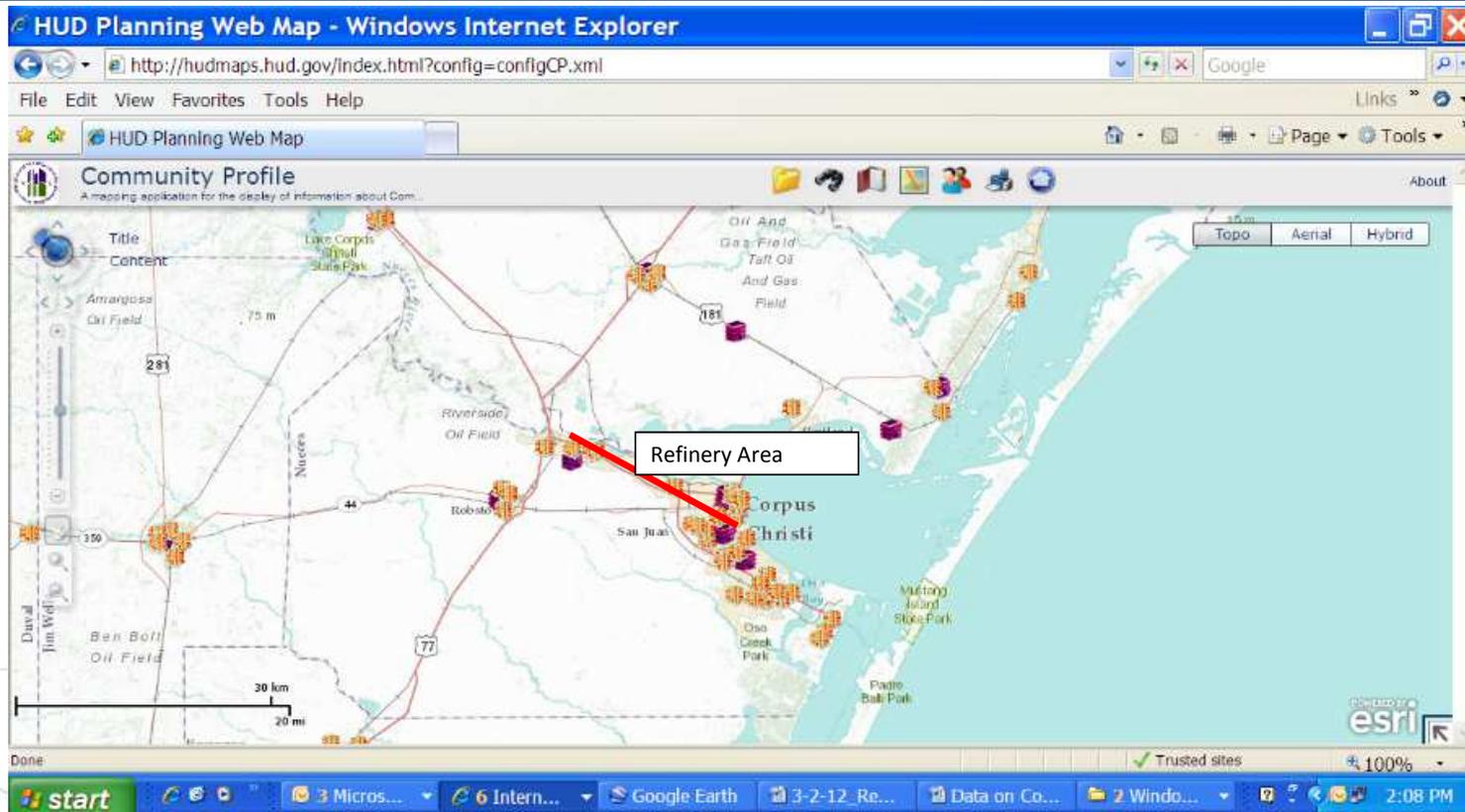


# Addressing EJ Concerns

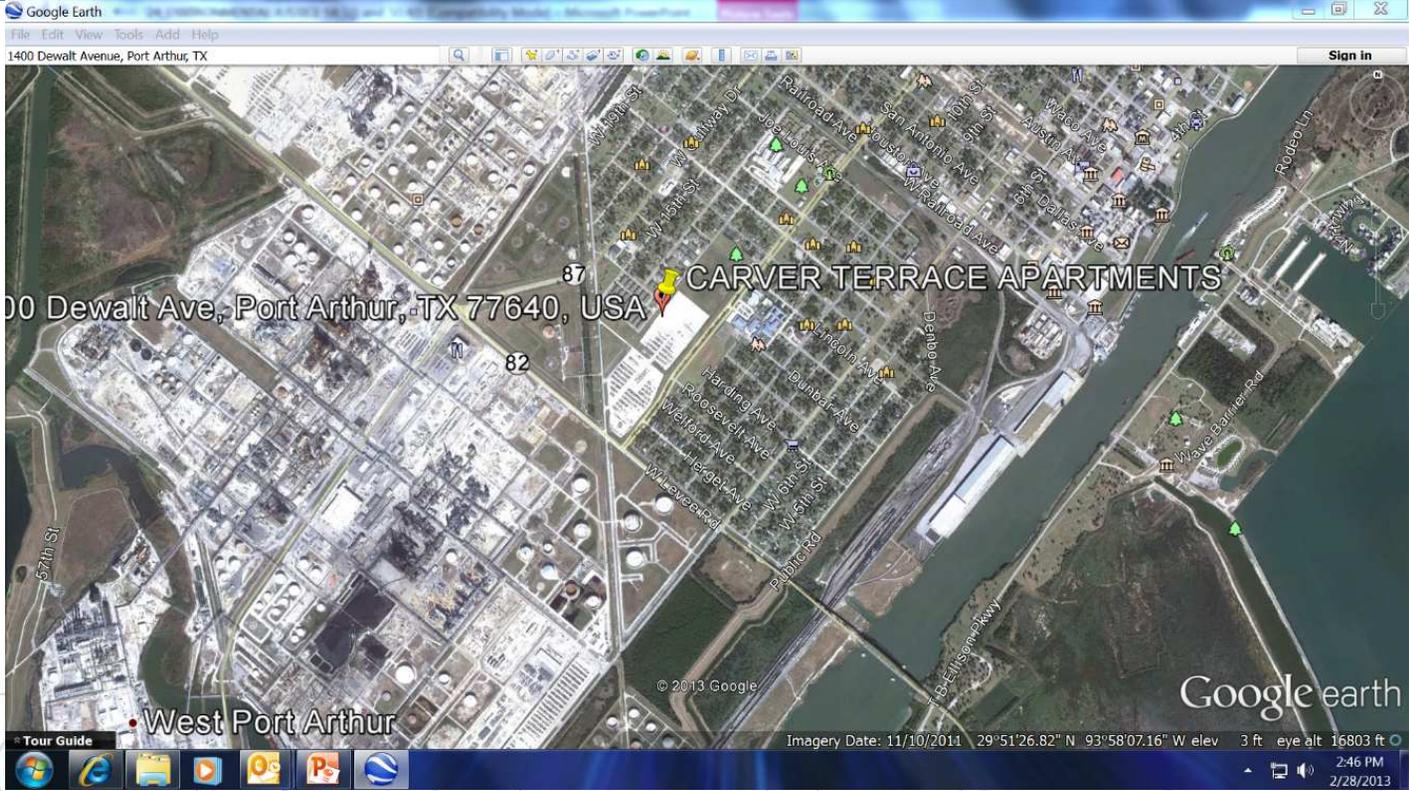
- Full EJ analysis is required to analyze risks and develop mitigation measures
- Options:
  - Avoid
  - Mitigate
- Public involvement and participation of affected community is required
- EJ mitigation Plan required
  - Approved by the affected community
  - Approved by the RE



# Example EJ Concern: Affordable Housing Refinery Row, Corpus Christi Texas



# Example EJ Concern: Port Arthur West Side



## Tools for Evaluating EJ Concerns

- Easy to use tools are available for determining:
  - Demographics of project locations
  - Potential environmental impact sources
  - Cumulative environmental impacts on specific communities
- Tools:
  - NEPAassist <http://nepassisttool.epa.gov/nepassist/entry.aspx>
  - EJ maps & analysis, by location:  
<http://www.scorecard.org/community/ej-index.tcl>
  - EPA’s “EJ View” Tool provides information relevant to EJ assessments: <http://epamap14.epa.gov/ejmap/entry.html>
  - Census data and maps also available at:  
<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>
  - Tract-level data on race & income:  
<https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx>

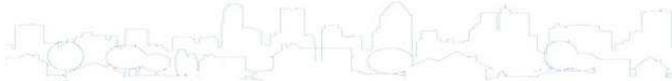


# Documentation for the ERR

- **Demographics Analysis**
  - Documents the presences or absence of low income or minority populations in the project area
- **Maps with project site clearly delineated with respect to source of pollution**
  - Documents no impact, or
  - Describes potential hazards sources
- **EJ Analysis**
- **EJ Mitigation Plan**
- **Public Participation Report**
- **Written approvals of EJ Mitigation Plan**
- **Mitigation measures must be included in the Project Description of HUD Form 7015.15**



# Finalize CEST Environmental Review



# CEST Environmental Review Forms

**Determination:**

- This categorically excluded activity/project converts to **EXEMPT** per Section 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license; **Funds may be committed and drawn down after certification of this part** for this (now) EXEMPT project; OR
- This categorically excluded activity/project cannot convert to Exempt status because one or more statutes or authorities listed at Section 58.5 requires formal consultation or mitigation. Complete consultation/mitigation protocol requirements, **publish NOI/RROF and obtain "Authority to Use Grant Funds"** (HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds; OR
- This project is not categorically excluded OR, if originally categorically excluded, is now subject to a full Environmental Assessment according to Part 58 Subpart E due to extraordinary circumstances (Section 58.35(c)).

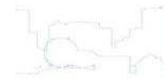
Preparer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name/Title/Organization: \_\_\_\_\_

Responsible Entity Agency Official Signature:

\_\_\_\_\_ Date: \_\_\_\_\_

Name/Title: \_\_\_\_\_



This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).



# Convert to “Exempt”

- Can convert to EXEMPT per Section 58.34(a)(12), if...
- It does not require any conditions or mitigation for compliance with any listed statutes or authorities
- It does not require any formal permit or license
- Funds may be committed and drawn down after completion and signature of this part for this (now) EXEMPT project
- No public notice required
- No RROF required
- Keep ERR in files



# Cannot Convert to ‘Exempt’

- Cannot convert to Exempt status because one or more statutes or authorities listed at Section 58.5 requires formal consultation or mitigation.
- Complete consultation/mitigation protocol requirements,
- Publish/Post NOI/RROF (7-day public comment period of published/10-day public comment period if posted)
- Template for NOI/RROF: <https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds>
- Submit certified RROF to HUD: <https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/>
- Obtain “Authority to Use Grant Funds” (HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds
- Will cover notices, certifications and approvals at end of course.



# ENVIRONMENTAL ASSESSMENT FACTORS



# HUD Resources

- HUD Guidance:  
<https://www.hudexchange.info/environmental-review/environmental-assessments>
- Environmental Assessment Factors  
Guidance:  
<https://www.hudexchange.info/resource/3306/environmental-assessment-factors-guidance/>



# Land Development

## Compatible Land Use

- Certain types of land uses may be incompatible with one another.
- For example, it may be incompatible to locate a new housing development in a newly industrialized area.

### Zoning ordinance

- the principal legal tool available for the implementation of its comprehensive plan and for the definition of the community's land use policies.
- Zoning regulates development patterns including construction, alteration, and use of buildings, structures, or land.
- HUD-funded projects must consider how the project will be adversely impacted by ill-suited land uses or, alternatively, how the project itself could impose or create adverse impacts.



# Land Development

## Compatible Land Use

- Economic viability of a city's central business district
- Induce sprawled development in undeveloped portions of a community resulting in environmental and social costs
- Managed growth through the efficient use of available and publically-funded infrastructure are consistent with federal sustainability objectives.
- HUD-funded infrastructure improvements made in the inner city may stimulate private investment and thereby help revitalize a lagging section of a community.



# Land Development

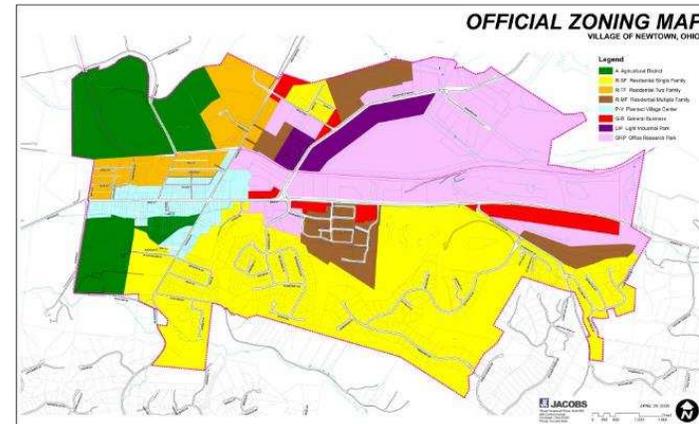
## Compatible Land Use

### Experts to Contact

- Local and Regional Planning Agency
- Zoning Review Officer or Administrator
- Planning Commission/Director
- State Planning Office

### Questions to Consider

- What is the current zoning classification of the project location?
- What is the existing land use at the project location?
- How does the project relate to the existing land uses of the adjacent and surrounding properties?



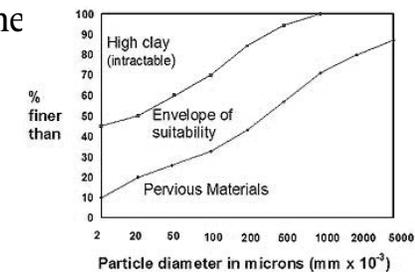
# Land Development

## Soil suitability

The physical capacity of a soil to support a particular land use.

Questions to Consider

- Is there evidence of ground subsidence, seismic activity, a high water table, or other unusual conditions on the site?
- Is there any visible evidence of soil problems (foundation cracking or settling, basement flooding, etc.) in the neighborhood of the site?
- Were structural borings or a dynamic soil analysis/geotechnical study needed and conducted? If so, what were the findings of the report?
- Are there visual indications of filled ground?
- Will the project site significantly affect or be affected by unsuitable soil conditions?



# Land Development

## Slope

Refers to changes in the physical features of the land: elevation, orientation, and topography.

Improper grading will often alter the surface water flow and may cause flooding for the site and the surrounding property owners.

### Questions to Consider

- Is the site on a slope? If so, is it: slight, moderate, severe, or very severe?
- Is there a history of slope failure in the project area?
- Is there visual indication of previous slides or slumps in the project area, such as cracked walls, tilted trees, or fences?
- Will the project site significantly affect or be affected by slope conditions? If so, does its design plan include measures to overcome potential slope stability problems?



# Land Development

## Erosion

Erosion, transport, and sedimentation are the processes by which the land surface is worn away, moved, and deposited in another location. In urbanized areas, erosion can cause structural damage in buildings by undermining foundation support. It can pollute surface waters with sediment and increase the possibility of flooding by filling river or stream channels and urban storm drains.

### Questions to Consider

- Is there evidence of erosion or sedimentation?
- If site clearance is required, does it include removal or vegetation, what are its effects, and how will erosion be managed and controlled?
- Is an erosion control plan included as part of construction and the construction contract?
- Will the project site significantly affect or be affected by erosion or sedimentation conditions? If so, does the design plan include measures to overcome potential erosion problems?



# Land Development

## Drainage/Stormwater Runoff

Stormwater management and its relationship to a proposed new development can be an essential determinant of whether a project is to be constructed. In assessing impacts to stormwater service facilities, two factors must be considered:

1. The proximity of the system to the site
2. The capacity of the system to accommodate the project.



# Land Development

## Drainage/Stormwater Runoff

### Questions to Consider



- Is there indication of cross-lot runoff, swales, or drainage flows on the property?
- Are there visual indications of filled ground, active rills, or gullies on site?
- Will existing or planned storm water disposal and treatment systems adequately service the proposed development? Will the proposed project be adversely affected by proximity to these facilities?
- If the public storm sewer is not available, how will storm water drainage be handled?
- Is state/regional/local permitting required to control stormwater run-off, e.g., a National Pollution Discharge Elimination System (NPDES) permit? If so, what conditions will be required by the permit?



# Land Development

## Hazards and Nuisances

Ensure that a project is located and designed in a manner which reduces any potential risk to the public or project users from both natural and man-made risks to people or property damage.

Experts to Contact if Potential Issue Occurs:

- Seismologist
- District officers of the Army Corps of Engineers
- District office of FEMA
- Local fire departments



# Land Development

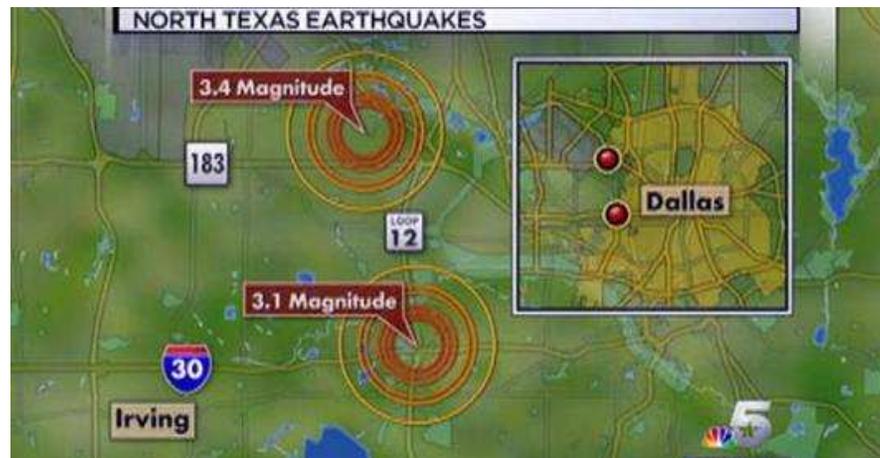
## Hazards and Nuisances

### Questions to Consider

- Will the project be affected by any of the following hazards?

Natural hazards, including, but not limited to:

- Earthquakes - faults, fracture
- Volcanoes
- Landslides
- Fire-prone areas
- Droughts
- Floods
- Cliffs, bluffs, crevices
- Wind / sand storm concerns
- Hazardous terrain
- Poisonous plants, insects, animals



# Land Development

## Energy Consumption

It has become increasingly important to both design and to locate new facilities in a way which minimizes energy usage.

Maximizing opportunities for energy efficiency can be incorporated in nearly all phases of project planning, location selection, site planning, and building design.



# Land Development

## Energy Consumption

### Questions to Consider

- Is the project being designed and constructed to meet the current version of the Energy Star performance standard?
- Have the architectural plans and building orientation taken full advantage of potential energy saving measures related to climate, sun and wind?
- Are Energy Star appliances, lighting heating, cooling and hot water systems to be installed?
- Does the project include programmable thermostats, occupancy sensors in common areas, water filters, insulated hot water pipes, and/or point-of-use/tankless hot water heaters?
- Is the location of the project in close proximity to transit, shopping, services and employment locations?
- Are state and federal rebates, tax incentives for energy efficiency strategies, and renewable energy components being considered?



# Land Development

## Energy Consumption

### Questions to Consider

- What is the estimated energy consumption of the proposal, and are the energy resources of the utility provider sufficient to support the proposal?
- Are renewable energy strategies being implemented in this project? If this is a rural project, was onsite energy generation considered (wind, fuel cell, or solar) in lieu of or in addition to a grid connection?
- What are the projected greenhouse gas (GHG) emissions of the project upon full occupancy? Are they significant?
- Does the estimated energy consumption of the proposal require a significant increase in energy production for the energy provider?



# Socioeconomic

## Employment and Income Patterns

Employment-related impacts of a project can be grouped into three broad categories: temporary jobs created in construction, permanent jobs created and the job requirements of new residents.

### Questions to Consider

- Will the project either significantly increase or decrease temporary and/or permanent employment opportunities?
- What is the profile of new jobs created by the project? What is the distribution across the skills and income scale? How do these relate to the skills and income profile of project area residents?
- Will the new jobs likely go to area residents, low-income, unemployed, and minority group members?
- If the jobs don't go to area residents, where are the new employees likely to come from (i.e., inner city, suburbs)?



# Socioeconomic

## Displacement

Displacement refers to the dislocation of people, businesses, institutions, or community facilities as a result of a project.

### Questions to Consider

- Will the project directly displace individuals or families? How many persons? Is the displacement covered by the Uniform Relocation Act and are funds available for payment?
- Will the project destroy or relocate existing jobs, community facilities, or any business establishments? Is the displacement covered by the Uniform Relocation Act, and are funds available for payments?
- Are replacement facilities or housing units available within the community or in a nearby neighborhood? What will be the effect of the relocation on these neighborhoods?
- Will the project result in probable indirect displacement? If so, have measures been planned to alleviate the hardship on those affected whose displacement is not covered under the Act?



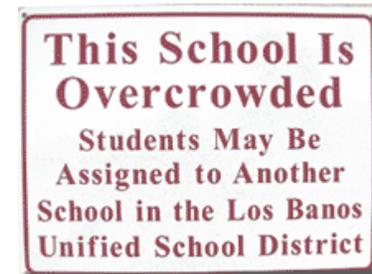
# Community Facilities and Services

## Educational and Cultural Facilities

There are two fundamental considerations regarding a HUD activity's relationship to and/or impact schools: adequate capacity for children in the school(s) and safe access.

### Questions to Consider

- What is the projected increase in student population to be created by the proposed development?
- Will the additional school age children exceed the capacity of the existing or planned school facilities? If so, what measures will be taken to resolve potential problems/conflicts?
- Does the potentially affected school(s) have adequate and safe access facilities (i.e. walking paths, bus routes, crosswalks and guards) given any calculations done for projected population increase? Are these adequate both in terms of safety and access?
- Will additional or alternative facilities have to be provided to ensure safety and suitable access?



# Community Facilities and Services

## Commercial Facilities

There are two key considerations in assessing commercial facilities.

- An evaluation of the adequacy of existing commercial facilities to service the development.
- The impact which a proposed development will likely have on surrounding commercial establishments.



# Community Facilities and Services

## Commercial Facilities

### Questions to Consider

- Do local retail services meet the needs of project occupants/users? Are they affordable, and is the range of services adequate?
- Is there adequate and convenient access to retail services? In the case of elderly, this means that shopping for essential items as food and medicine is within three blocks and banks and other convenience shopping are within walking distance.
- In areas not readily serviced by retail services, is public transportation that can carry commuters to retail services within one-half hour available? If public transportation is not available will readily available transportation services be provided?
- Will existing retail and commercial services be adversely impacted or displaced by the proposed project??



# Community Facilities and Services

## Health Care and Social Services

Social services can be defined as those services including but not limited to programs for drug addiction, alcoholism, and mental disorders; halfway houses and drop-in centers, family counseling centers, day care centers; services for senior citizens and the handicapped; nutrition centers, etc. Social services by definition must cater to, and be easily accessible to, those who need them.

### Questions to Consider

- Are the social services located onsite or within a convenient and reasonable distance to residents of the proposed project? Or, is adequate public transportation available from the project to these services?
- Will social services be overtaxed or negatively impacted by the proposed project?
- Will the provision of additional social services at this site create a concentration of the disadvantaged in violation of HUD site and neighborhood standards?



# Community Facilities and Services

## Solid Waste Disposal and Recycling

Solid waste disposal is regarded as an essential service in urban areas. Its availability for supporting a newly proposed development can be an essential determinant of whether a project can be constructed.

For proposed demolition projects, the ability of the solid waste centers to contain the demolition material should be considered. In some cases the material from the demolition activity may overwhelm the existing solid waste capacity and the need to obtain additional solid waste capacity may justify the cost of rehabilitating the structure, particularly if the structure serves as an important historic or cultural resources.

For all projects, proper disposal of hazardous material should be considered. This may include solid porous materials, such as cement, that may have absorbed hazardous materials.

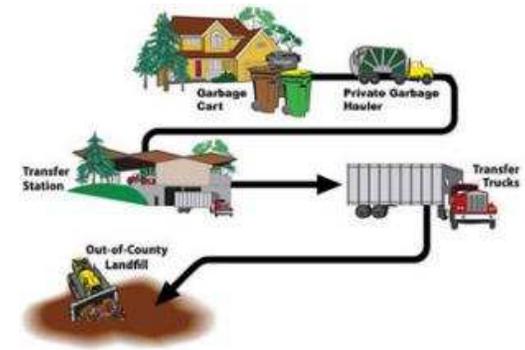


# Community Facilities and Services

## Solid Waste Disposal and Recycling

### Questions to Consider

- What types and amounts of waste are to be generated as construction debris?
- What solid waste disposal system or company will handle the construction debris? Does it have the capacity to handle the amount of debris?
- What types of solid waste (including hazardous waste, if any) will be generated by the completed project?
- What is the name of the solid waste servicing company or landfill and what is the distance from the proposed project site?
- What organization will handle garbage collection, composting, and recycling?
- Does this organization have the capacity to handle the garbage, composting and recycling, and is the service affordable?
- Will the waste from the proposal exceed the capacity of the waste system or landfill?



# Community Facilities and Services

## Waste Water and Sanitary Sewers

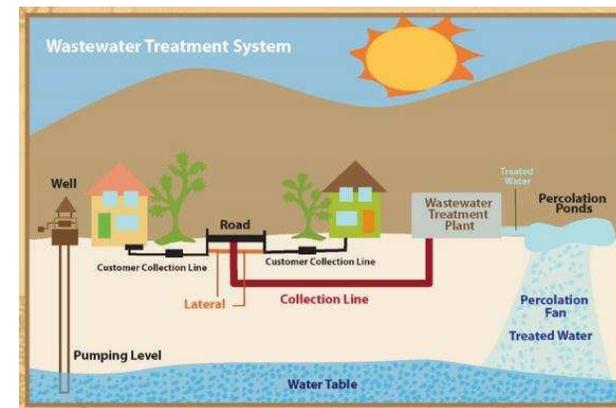
Wastewater treatment and disposal is an essential service for all new development. The availability of adequate wastewater disposal service can be a determinant of whether or not a project is constructed.

### Questions to Consider

- What kind of wastewater/sewer system will provide satisfactory service to the proposal?
- Does the existing or proposed sewer system have the capacity to adequately service the proposed development?

### On-site septic systems

- If the sanitary sewers and wastewater disposal systems are non-municipal, has an acceptable system been approved or permitted by appropriate authorities and agencies?
- Has a report of the soil conditions suitable for on-site septic systems been submitted?
- Are soil conditions suitable for on-site septic systems? Is there a large variance in the water table elevation? (A high seasonal water table can prevent proper functioning of septic tanks drain fields).



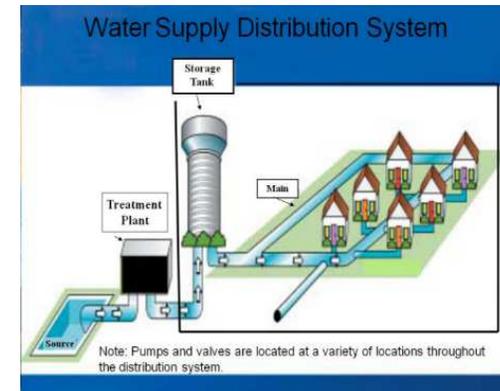
# Community Facilities and Services

## Water Supply

Adequate water supply refers to the delivery to a project site of sufficient quantities of potable water under adequate pressure at affordable cost. Approximately 100 gallons per day is the average urban domestic per capita water consumption rate.

### Questions to Consider

- What private company or public organization or system will provide sufficient quantity of clean water needed for the proposal?
- Will either the municipal or private water utility or on-site water supply be adequate to serve the proposed project?
- Is the water supply quality safe from a chemical and bacteriological standpoint?
- If the water supply is non-municipal, has an acceptable system been approved by appropriate authorities and agencies?
- Will the project water requirements of the proposal result in a significant consumption of the community's available water supply or result in a significant deterioration of water quality?



# Community Facilities and Services

## Emergency Services

Fire, police, and ambulance services are concerns that should be considered in terms of the adequacy of existing services for the project site.

### Questions to Consider

- What police services and fire fighting protection services are located within reasonable proximity to the proposed project? What is the approximate response time?
- Is the fire fighting protection service adequate and equipped to service the project?
- What emergency health care providers are located within reasonable proximity to the proposed project? What is the approximate response time?
- Will the project create a significant burden on police, fire or health care providers in terms of manpower and/or equipment?



# Community Facilities and Services

## Parks and Recreation

Recreation and open space resources include active recreation such as ball fields, passive recreation such as nature trails, and gardens.

Questions to Consider

- Are open space and recreational and cultural facilities within reasonable walking distance to the project area, or is adequate public transportation available from the project to these facilities?
- Are there special recreational/cultural needs of certain population groups to be satisfied, such as small children, the elderly, or the handicapped?
- If the development is family housing, has space for informal play for children been included on-site?
- Have areas for recreation for adults and elderly been provided including places for passive recreation?
- Will the proposed project overload existing open space, recreational or cultural facilities?



# Community Facilities and Services

## Transportation and Accessibility

Assessing transportation impacts involves analyzing four sub-elements of transportation:

- Access—The user must be able to reach a destination within reasonable limits of time, cost and convenience.
- Balance—A balanced transportation system offers and encourages choice of travel mode, namely, by automobile, bicycle, walking, public transit or combination thereof.
- Safety—System design plays a strong role in safety, particularly elements such as traffic signals, turning lanes, bicycle lanes and signage, and railroad grade crossings.
- Level of Service—LOS measures operational factors including speed, travel delay, freedom to maneuver, safety, and frequency/hours of operation.



# Community Facilities and Services

## Transportation and Accessibility

- Overall, will the existing and reasonably foreseeable transportation facilities and services be adequate to meet the needs of the project?
- Will the project itself cause a significant adverse impact on the local or regional transportation system (e.g., by reducing the level of service of roadways)?
- Are there any barriers to emergency vehicle access?
- Is the project accessible to the elderly and disabled (e.g., wheelchair ramps, traffic light timing, handicapped parking, shuttle services)?
- Are there special transportation issues (e.g., bridge clearances for trucks) which have not been adequately addressed?

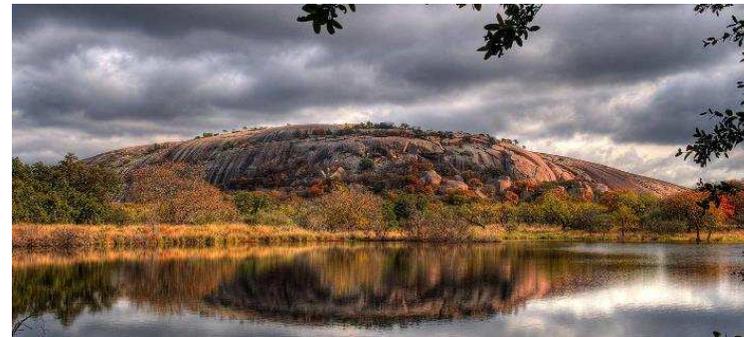


# Natural Features

## Unique Natural Features

Examples of unique natural features include:

- Sand dunes
- Waterfalls
- Unique rock outcroppings
- Caves with limestone or gypsum deposits
- Canyons
- Petrified forests
- Unique stands of trees, such as redwoods
- Unique colonies of animals, such as a prairie dog town.



# Natural Features

## Unique Natural Features

Experts to contact if there are potential issues:

- State and federal park service, naturalists and/or geologists
- State natural heritage programs
- State wildlife resource management agencies
- Local university natural scientists, geologists, and Sierra Club or Audubon Society
- Representatives
- State resource conservationist
- Natural Resources Conservation Service (NRCS) - USDA
- District conservationist, NRCS
- County planner, county planning department or conservation district



# Natural Features

## Unique Natural Features



Questions to consider:

- Will the project location, construction, or its users adversely impact unique or locally important natural features on or near the site (e.g., caves, cliffs, vistas/viewsheds, canyons, waterfalls, sand dunes, or tree stands)?
- Will the project destroy or isolate from public or scientific access the unique natural feature?



# FINDINGS DETERMINATION & APPROVALS



## Must Identify and List Conditions and Mitigation Measures Necessary for Approval

- Summarize all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the listed authorities and factors.
- These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents.
- The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.



# Environmental Finding

- Finding of No Significant Impact (FONSI) [24 CFR 58.40(g)(1); 40 CFR 1508.27] The project will not result in a significant impact on the quality of the human environment.
- Finding of Significant Impact [24 CFR 58.40(g)(2); 40 CFR 1508.27] The project may significantly affect the quality of the human environment.



# ERR Documentation

## Include the following, as applicable:

- All supporting documentation for each resources assessed.
- Additional Studies Performed (Phase 1 ESA)
- Field Inspection (Date and completed by)
- List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]
- List of Permits Obtained
- Public Outreach [24 CFR 50.23 & 58.43]
- Cumulative Impact Analysis [24 CFR 58.32]
- Alternatives [24 CFR 58.40(e); 40 CFR 1508.9]
- No Action Alternative [24 CFR 58.40(e)]
- Summary of Findings and Conclusions



# Signatures and Approvals

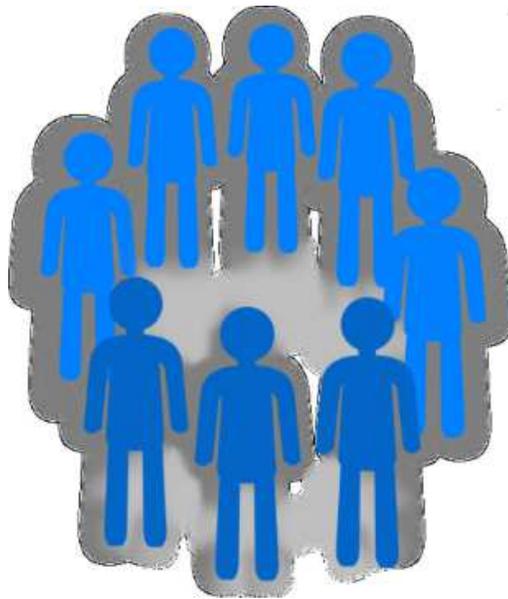
- Preparer signs and dates, once environmental review is complete.
- Certifying Officer signs and dates (Can be signed along with HUD-7015.15)
- The original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).



# Notification Requirements and Approvals



# Reasons for Public Participation



- It is a public right under NEPA
- Public input can improve project quality
- Can resolve differences that could stop or delay a project



# Part 58 Includes 3 Types of Public Notices

- “Notice of Intent to Request the Release of Funds” (NOI/RROF)
  - Required for projects that are CEST (that do not convert to exempt)
  - Required for projects that require an EA or EIS
  - 7 day public comment period if publishing
  - 10-day public comment period if posting
- Notice of “Finding of No Significant Impact” (FONSI)
  - Required for Environmental Assessments
  - 15 day public comment period if publishing
  - 18 day comment period if posting
- Combined NOI/RROF and FONSI notices
  - May be used for EA’s but not for projects that are CEST.
  - Template for combined notice: <https://www.hudexchange.info/resource/2755/sample-fonsi-and-rrof/>
  - 15 day public comment period if publishing
  - 18 day comment period if posting



## Notice of Intent to Request Release of Funds [§ 58.70]

- Notice of Intent to Request for Release of Funds (NOI/RROF) must be disseminated and/or published in the manner described in 58.45.
- The RE must not sign the certification of the Request for Release of Funds (RROF) before the close of required public comment periods.
- NOI/RROF must follow HUD recommended format or equivalent



## FONSI Notices [§ 58.43(b)]

- FONSI notices are intended to make the public aware of the findings and notify them of the right to review and comment on the ERR and EA
- Must follow HUD recommended FONSI notice format or equivalent
- Public comments must be considered and responded to before the RE submits the RROF



# FONSI Notices Must be Sent to Interested Groups [§58.43(a)]

- Local news media
- Appropriate tribal, local, state and federal agencies (i.e. if there are wetland or wildlife impacts, send to USFWS)
- Environmental groups with known interest in area
- Regulatory Oversight Agencies with Known Interest in Project Area
- Regional VI EPA:

Rhonda M. Smith

EPA Region 6 Main Office:

Chief, Office of Planning and Coordination, Region 6

Compliance Assurance and Enforcement Division

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202

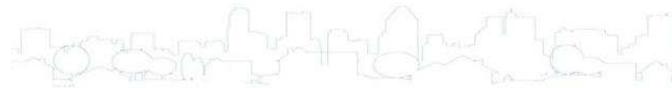
800-887-6063

***Failure to Notify is a Basis for Objection***



# Combined NOI/RROF and FONSI Notices

- FONSI notices can be combined with NOI/RROF, but notice must:
  - Indicate notice meets two separate procedural requirements
  - Advise public to specify which notice their comments address



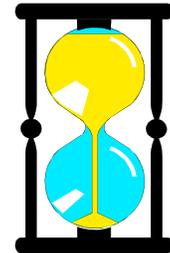
# Publication versus Posting

- Publish FONSI in a newspaper with general circulation in the affected community
- Postings must be prominently displayed in public buildings within the project area
- Publishing and Posting must be done in a manner consistent with REs "Citizen Participation" process



# Timing & Counting Days

- Counted in calendar days
- First day of the time period begins at 12:01 AM local time on the day following publication or posting. Time Periods (§ 58.21)
- RE starts counting the day **AFTER** publication
- If last day of comment period falls on Sat, Sun or Holiday, accept comments through the following business day
- RE may extend comment period for any reason
- **RE Signs** and submits RROF day **AFTER** last day of comment period



# Example: RE's 15-day Comment Period for Environmental Assessment



| S  | M  | T  | W       | T  | F         | S  |
|----|----|----|---------|----|-----------|----|
|    |    |    | 1 - Pub | 2  | 3         | 4  |
| 5  | 6  | 7  | 8       | 9  | 10        | 11 |
| 12 | 13 | 14 | 15      | 16 | 17 - RROF | 18 |
| 19 | 20 | 21 | 22      | 23 | 24        | 25 |
| 26 | 27 | 28 | 29      | 30 | 31        |    |



## Time Delays for Exceptional Circumstances [§58.46]

- FONSI must be available for comment for 30 days when:
  - Considerable public interest in the project
  - Project is controversial
  - Project is similar to other projects normally requiring an EIS
  - Project is unique and without precedent



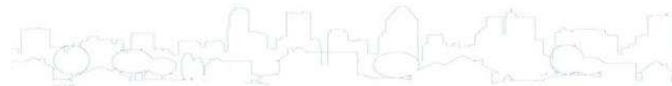
## Shortened Timeframes for Emergencies [§58.33]

- Taking an action that has a significant effect on the environment during an emergency, disaster or imminent threat – the RE must follow 40 CFR 1506.11 procedures
- For a declared emergency when there is a need for action to protect public safety
  - Notice of Intent to Request Release of Funds (NOI/RROF) and Finding of No Significant Impact (FONSI) Notice can be published simultaneously with submission of the RROF to HUD/State.
  - Notices must state that funds are needed for a declared emergency
  - Notice must state that comments can be sent to the RE and HUD



# Notice Documentation

- Publishing: Copy of publication and publisher's affidavit or tear sheet from newspaper
- Posting: Copy of posted notice and signed statement of distribution
- Mailing: Copy of letter and distribution list of Interested Parties



# Key Pointers for Public Notices

- Use HUD-recommended template for public notice. It contains the minimum content - you may add language, but do not subtract
- Triple check the dates before publishing/posting – including submission date to HUD/State
- Describe project fully and concisely including environmental issues and mitigation
- Use common language for project location – e.g., 123 Elm St, not “Parcel #0100-45095”
- Notice must provide RE’s address for receipt of comment (e.g., not housing authority or other grant Recipient)



# What is Environmental Clearance?

- After the RE has completed its environmental review, it certifies on the RROF (Form 7015.15) that it has complied with all of the requirements of NEPA and Part 58.
- It submits this certification to HUD/State/Tribe.
- HUD/State/Tribe issues an Authorization to Use Grant Funds (AUGF) Form 7015.16—This is “Environmental Clearance”
- The RE and the Recipient must refrain undertaking any action on the project or committing HUD or non-HUD funds for the project prior to receiving Environmental Clearance from HUD/State/Tribe



# RROF Form 7015.15

- RROF's for each program must be submitted (e.g. CPD, Public Housing, Multifamily Housing)
- Use HUD Form 7015.15  
<http://portal.hud.gov/hudportal/documents/huddoc?id=7015.15.pdf>
- This is a Federal Form and it should not be altered.
- Must be printed on a single page front and back.



# When Completing the RROF Make Sure To Include:

- Name of Recipient if different from the RE in Box 7.
- Location of the Project in Box 10. Do not put the RE's or the Recipient's Address
- Program Activity/Project Description of Box 11 with:
  - Complete Project Description
  - Schedule (e.g. will be developed over a 3 year period, from 2014 through 2017)
  - Total Estimated Project Cost
  - Include Estimated Funding Contribution from all Sources
  - Include required conditions and mitigation measures, particularly for mitigated FONSI



# Who Signs the RROF?

- Certifying Officer [§58.71(a)]
- The Recipient, if they are not the RE
- The RE must make a copy of the RROF available to the Recipient.

*Failure of the Certifying Officer to  
Certify the 7015.15 is a Basis for  
Objection*



# RROF's Certifying Officer's Environmental Certification

1. Fully carried out the review and decision-making and action pertaining to the project
2. Has complied and will continue to comply with:
  - NEPA
  - Environmental procedures
  - Permit requirements
  - Statutory obligations of 58.5, 58.6
  - Applicable State and local laws



# RROF's Certifying Officer's Environmental Certification

3. Based on consideration of adverse effects, has made a finding as to whether or not an EIS is required
4. Has issued a public notice as Section 58.70 requires:
  - Notice (s) was disseminated/published in accordance with Sections 58.43 and 58.55
  - Attached evidence of publishing, posting, and mailing



# RROF Certifying Officer's Environmental Certification

5. Has complied with dates for all statutory and regulatory time periods for:

- Review
- Comment
- Other Actions

Are in compliance with Part 58 Procedures and Requirements

6. Agrees that the RE will advise the Recipient of special environmental conditions that must be adhered to in carrying out the project in accordance with 58.71(b)



# RROF Certifying Officer's Environmental Certification

8. S/he is authorized and consents to serve as the Federal Official under NEPA on behalf of HUD
9. Submits to the jurisdiction of the Federal Courts for enforcement of all of the responsibilities



# Notice the Fine Print Below the RROF Signatures

***Warning: HUD will  
prosecute false  
claims and  
statements.  
Convictions may  
result in criminal  
and/or civil  
penalties.***



# Submitting RROF to HUD/State/Tribe

- Cover letter to program office
- RROF (HUD-7015.15)
  - Print on the front and back of page on a single sheet of paper (double-sided copy)
  - Signed and complete
- Attach Public Notice(s):
  - If Published: Copy of publication and affidavit or tear sheet
  - If Posted: Copy of posted notice and signed statement of distribution
  - Signed statement of mailed distribution
  - Floodplain notices (8-step), if applicable – and include affidavit of publication (no posting allowed)



# Send RROF to the Appropriate HUD Program Office

| Program Office   | Source of Funds  |
|--|--|
| Community Planning and Development, Field Office                         | CDBG<br>Homeless programs<br>Supportive Housing program<br>Shelter Plus Care<br>HOME Investment Partnership<br>SHP<br>Lead-based paint abatement programs<br>EDI<br>HOPWA<br>CoC<br>NSP<br>Section 108 |
| Community Planning and Development, Supplemental Disaster Assistance, HQ | CDBG Disaster Program Supplemental Assistance  |
| Office of Public Housing/Field Office                                    | Capital Fund<br>HOPE VI<br>Public Housing Agency administered Section 8<br>Replacement Factor Housing<br>Choice Neighborhoods  |
| Office of Native American Programs/Regional Office                       | ICDBG<br>NAHASDA   |
| Office of Multifamily Housing/FTW HUB                                    | 542 (c) Risk Sharing   |



# Trouble-Shooting RROF/Notices

- If problems, HUD/State/Tribe may ask for **re-publication** of notice and/or **re-submission** of RROF
- Reasons:
  - Notice period too short
  - Notice directed comments to Recipient, instead of RE
  - RROF signed before end of comment period
  - RROF incorrectly completed – e.g., no project location; project description vague, or “see attached” used
  - Long lapse between Notice and submission of RROF to HUD/State



# HUD Objection Period [§58.72]

- 15 day objection period HUD/State/Tribe's receipt of the RROF
- Objections must be received within 15 days from the time HUD/State/Tribe receive the RROF
- HUD/State/Tribe can deny the RROF if has knowledge that :
  - The RE or other participants in the development process have not complied with §58.75, Permissible Basis for Objections
  - The RROF and certification are inaccurate



# Objection Procedures [§58.76]

- Objecting party must submit objection in writing to HUD/State/Tribe
- Written objection must include:
  - Contact information of objecting party and signature of authorized official/person
  - Date of signature
  - Describe basis for objection including facts or legal authority supporting objection
  - State when a copy of objection was mailed to RE's Certifying Officer



## Permissible Basis for Objections [§58.75]

1. Certification was not executed by RE's Certifying Officer
2. RE failed to make a FONSI or FOSI determination
3. RE failed to make written determination required in §58.35 or §58.47 (re-evaluation)
4. RE omitted one or more steps in preparation, publication and completion of EA
5. RE omitted one or more steps in preparation, publication and completion of an EIS
6. RE and participants committed funds, incurred cost, or undertaken activities prior to environmental clearance
7. Another federal agency submits a written finding that the project is unsatisfactory from the standpoint of environmental quality.



# HUD's Evaluation of the Objection

- Once HUD/State/Tribe receives an objection the RE will be given an opportunity to respond to the objection
- HUD/State/Tribe will review the RE's Environmental Review Record
- Based on the Review it will make a decision about the RROF
- All decisions by HUD/State/Trib regarding the RROF and the certification shall be final.



## Authorization of the Use of Grant Funds [§58.77]

- HUD can authorize the use of grant funds on form 7015.16 if it receives no objections
- Approval of the RROF satisfies the Secretary of Housing and Urban Development's responsibilities under NEPA and related laws and authorities
- It is HUD's policy to refer all complaints to the RE
- The public and agencies seeking redress related to approved environmental reviews must deal with the RE and not with HUD



# Got the release? *Now* let us dig...



**Paisano Green Community, El Paso, Texas**

**Photographer: David Storms**

**Date: 4/20/2012**

