

## CHAPTER 3. Applicable Federal environmental laws and authorities

## 3-1 Qualified data sources and related matters

- A. HUD has determined that NEPA and the following Federal environmental laws and authorities set out in Sect 50.4 relate to its approval of specific properties for acquisition, rehabilitation, conversion, lease, repair or construction activities under the HOPWA Program. Upon review and acceptance of the documentation submitted by grantees, HUD will undertake any required processing, advise grantees in writing of HUD's determination of compliance with Federal environmental laws and authorities, and authorize property specific activities.
- B. Information provided by grantees must be from a qualified data source. One letter from a "qualified data source" can provide threshold information for several of the following Federal environmental laws and authorities. Definition: a "qualified data source" may include any Federal, State or local agency with expertise or experience in environmental protection (e.g., the local community development agency; the land planning agency; the State environmental protection agency; the State Historic Preservation Officer) or any other source qualified to provide reliable information on the particular subject.
- C. Grantees are encouraged to obtain outside information at the earliest possible stage. Grantees may use Appendix 2 or an equivalent format for providing HUD with information on the below listed Federal environmental laws and authorities that may apply to a grantee's project.

Lease activities generally are subject only to applicable authorities for properties located within coastal barrier resources, on contaminated sites, or for project-based lease activities in floodprone locations.

Acquisition activities are subject to the same authorities as the lease activities as well as generally to the applicable authorities for properties requiring flood insurance protection or located within clear or accident potential zones of airports/airfields.

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Repair and minor rehabilitation activities are subject to the same authorities as the lease and acquisition activities as well as generally to the applicable authority for properties that are historic or affect a historic property.

Major rehabilitation and substantial improvement activities (including: rehabilitation that increases unit density) are subject to the same authorities as the lease, acquisition, and repair activities as well as to applicable authorities covering significant impacts to the human environment, industrial hazards, noise-impact and coastal zone management.

New construction and conversion (including demolition) activities

are subject to all applicable authorities including protection of sole source aquifers and of endangered species.

3-2 Thresholds and Documentation

A. Format (see Appendix 2).

1. Coastal Barrier Resources:

Threshold: Grantees are prohibited by Federal law (cited below) from using Federal financial assistance for properties in their HOPWA programs, if the properties are located within designated coastal barriers of the Atlantic Ocean, Gulf of Mexico, and the Great Lakes. The Coastal Barrier Resources Act, as amended, 16 U.S.C. 3501, is cited in Sect 574.645 of the HOPWA Program Regulations.

Documentation: Grantees are to select either A or B for the condition that best describes their project and report the option selected on the format under Coastal Barrier Resources Site (see Appendix 2).

- A. The grantee states that its program operates in a community that does not contain any shores along the Atlantic Ocean, the Gulf of Mexico, or the Great Lakes.
- B. For the grantee whose program operates in a community that does contain shores along the Atlantic Ocean, the Gulf of Mexico, or the Great Lakes, the grantee provides HUD with a finding made by a qualified data source (see Paragraph III. above) stating that the grantee's proposed property is not located within a designated

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coastal barrier by citing the map panel number of the official maps issued by the Department of the Interior on the basis of which the finding was made.

2. Sites contaminated with toxic chemicals and radioactive materials:

Threshold: Under HUD policy, as described in HUD Notice 79-33 (Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials), HUD will not approve the provision of financial assistance to residential properties located on contaminated sites. Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include but are not limited to sites: (i) listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list; (ii) located within 3,000 feet of a toxic or solid waste landfill site; or (iii) with an underground storage tank (which is not a residential fuel tank).

Documentation: Grantees are to select either A or B for the condition that best describes their project and report the option selected on the format under Contaminated Site (see Appendix 2).

- A. The grantee provides HUD with a finding made by a qualified data source stating that the property proposed for use in the HOPWA program and any directly adjacent properties do not contain any

sites known or suspected to be contaminated with toxic chemicals and radioactive materials.

B. The grantee provides any site contamination data in its letter to the Field Office for HUD's evaluation of contamination and/or suspicion of any contamination of a property proposed for use in the grantee's HOPWA program.

3. Locations in flood hazard areas or a designated wetland:

Threshold: Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands:

Assisted new construction located within a designated wetland is subject to HUD's decisionmaking process under E.O. 11990.

Assisted new construction, property acquisition, project-based

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lease, rehabilitation, conversion, or repair located within a floodplain are subject to HUD's decisionmaking process under E.O. 11988. The Order does not apply to existing single-family properties proposed for acquisition or lease with non-substantial or no improvement as long as the existing property is not located within a floodway or coastal high hazard area.

Under these Orders HUD must avoid, where practicable, financial support for proposed property acquisition, rehabilitation, conversion, project-based lease, repair, or construction of any floodprone property, or financial support for new construction on wetland property. For proposed financial assistance for such activities, including "substantial improvement" (see definition below) of existing single-family properties, HUD will require 30 to 60 days in most cases to perform the required processing.

Definition: "substantial improvement" for flood hazard purposes means any rehabilitation (including conversion) which (a) equals or exceeds 50 percent of the market-value of the property before rehabilitation, but excluding the costs for correcting health, sanitary, and safety code violations, or (b) increases the unit density of the property. Floodplain properties covered under E.O. 11988 are properties located within a Special Flood Hazard Area (SFHA) or, for critical actions, properties within the 500-year floodplain. The critical action standard applies to the proposed use of HOPWA financial assistance to structures or facilities located within the 500-year floodplain, when the structures or facilities are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events (see 24 CFR part 55).

Documentation: Grantees are to select A, B, or C for the condition that best describes their project and report the option selected on the format under Floodprone Or Wetland Site (see Appendix 2).

A. The grantee provides HUD with a finding made by a qualified data source stating that the property is not located within any of the

following:

- (i) the Special Flood Hazard Area (SFHA), or
- (ii) within the 500-year floodplain, which applies only to proposed critical actions, or
- (iii) within a designated wetland, which applies only to property where new construction is proposed.

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B. The grantee provides HUD with a finding made by a qualified data source that the property is located within one or more of the following:

- (i) the Special Flood Hazard Area (SFHA) and as to whether the property is located within a floodway or coastal high hazard area; or
- (ii) within the 500-year floodplain, which applies only to proposed critical actions; and/or
- (iii) within a designated wetland, which applies only to property where new construction is proposed.

The finding for A and B must provide HUD with the flood map panel number obtained either from the official maps issued by the Federal Emergency Management Agency (FEMA) or from the property appraisal report used to make the finding. Only for new construction, the finding must provide HUD with the wetland panel number obtained from official maps issued by the Department of Interior (DOI) or on the basis of which the finding was made, or where DOI has not mapped the area; a letter or other documentation from the Army Corps of Engineers or other Federal agency.

For proposed rehabilitation of properties that are located within a SFHA (or 500-year floodplain for proposed critical actions), grantees must provide HUD with estimates of: (i) the property value before rehabilitation, and (ii) the cost of the proposed rehabilitation. The estimates are to be provided in item E of the first page of the format (see Appendix 2).

If the property is found to be located within a SFHA, proceed to the next section on flood insurance protection and document the requisite insurance amount and period of coverage (except where lease without repair or rehabilitation is involved).

4. Locations requiring flood insurance protection:

Threshold: Flood Disaster Protection Act of 1973 (cited in Sect 574.640 of the HOPWA Program Regulations) requires owners of HUD-assisted SFHA properties to purchase and maintain flood insurance protection as a condition of approval of any HUD financial assistance for proposed acquisition, rehabilitation, conversion, repair or construction. The statutorily-prescribed period and dollar amount of flood insurance

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is discussed below and is more stringent for grant than loan types of assistance. Localities cannot be self-insurers under the National Flood Insurance Program. Leasing activities are not subject to this requirement, except where repairs and rehabilitation are assisted.

**Duration of Flood Insurance Coverage.** The statutory period for flood insurance coverage may extend beyond project completion. For loans, loan insurance or guaranty, flood insurance coverage must be continued for the term of the loan. For grants and other non-loan forms of financial assistance, flood insurance coverage must be continued for the full anticipated economic or useful life of the project. Such anticipated economic or useful life of the project may vary with the nature of the assisted activity. For example, construction of a new or substantially-improved building requires flood insurance coverage for the life of the building, while for minor rehabilitation such as repairing, weatherizing, or roofing of a building, the grantee may require flood insurance coverage ranging from 5 to 15 years as deemed feasible. HUD will accept any period within that range that appears reasonable.

**Dollar Amount of Flood Insurance Coverage.** For loans, loan insurance or guaranty, the amount of flood insurance coverage need not exceed the outstanding principal balance of the loan. For grants and other non-loan forms of financial assistance, the amount of flood insurance coverage must be at least equal to the development or project cost (less estimated land cost) or to the maximum limit of coverage made available by the Act with respect to the particular type of building involved (i.e., Single Family, Other Residential, Non-Residential, or Small Business), whichever is less. The development or project cost is the total cost for acquiring, constructing, reconstructing, repairing or improving the building. This cost covers both the Federally-assisted and the non-Federally assisted portion of the cost, including any machinery, equipment, fixtures, and furnishing. If the Federal assistance includes any portion of the cost of any machinery, equipment, fixtures or furnishing, the total cost of that item must also be covered by flood insurance.

**Proof of Purchase of Flood Insurance Protection.** Once HUD has approved a specific SFHA property, the grantee's file for any SFHA property shall contain "proof of purchase" of flood insurance protection. The standard documentation for compliance is the Policy Declarations form issued by the National Flood Insurance Program (NFIP) or issued by any property insurance company offering coverage

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under NFIP. The insured has its insurer automatically forward to the grantee, in the same manner as to the insured, an information copy of the Policy Declarations form, which is used to verify compliance. The grantee's responsibility ceases in cases where a mortgage loan is approved requiring flood insurance as condition of loan approval by a lender (other than the grantee), whose responsibility is to assure

flood insurance coverage for the loan.

Documentation: Grantees are to estimate the amount and period of flood insurance coverage that is to be made a condition of approval of the SFHA building and report these on the format under Flood Insurance Protection (see Appendix 2).

5. Locations in the vicinity of airports and airfields:

Threshold: HUD policy as described in 24 CFR 51, Subpart D applies to assisted properties located within clear zones and in the case of new construction or major rehabilitation (see definition below), properties located within accident potential zones. Construction or major rehabilitation of any property located on a clear zone site is prohibited.

Definition: Rehabilitation (including conversion) is "major" or "substantial" when the estimated cost of the work is 75 percent or more of the property value after rehabilitation or, in the case of property in an Accident Potential Zone, when the work changes the use of the facility to a use that is not generally consistent with the recommendations in the Department of Defense "Land Use Compatibility Guidelines for Accident Potential Zones," or significantly increases the density or number of people at the site (24 CFR 51.302(b) (1) and (2)).

HUD financial assistance in a clear zone is allowed for properties proposed for acquisition or lease (24 CFR 51.302(a)) with or without minor rehabilitation or repair. Upon HUD approval for acquisition of a property in a clear zone, (a) HUD will give advance written notice to the prospective property buyer in accord with 24 CFR 51.303(a) (3); and (b) a copy of the HUD notice signed by the prospective property buyer will be placed in the property file (for a sample notice, see Appendix 3). The written notice informs the prospective property buyer of: (i) the potential hazards from airplane accidents which studies have shown more likely to occur within clear zones than in other areas around the airport/airfield; and (ii) the potential

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acquisition by airport or airfield operators, who may wish to purchase the property at some point in the future as part of a clear zone acquisition program.

For properties located within the accident potential zone (APZ) , HUD shall determine whether the use of the property is generally consistent with Department of Defense "Land Use Compatibility Guidelines for Accident Potential Zones."

Documentation: Grantees are to select either A or B for the condition that best describes their project and report the option selected on the format under Clear Or Accident Potential Zone Site (see Appendix 2).

A. The grantee states that the property is not located within 3,000 feet of a civil airport or military airfield.

B. For properties located within 3,000 feet of a civil airport or military airfield, the grantee provides HUD with "a finding from the airport operator stating whether or not the property" is located within a runway clear zone at a civil airport, or a clear zone or accident potential zone at a military airfield. For properties that are located within a runway clear zone or a clear zone or accident potential zone, grantees who propose to rehabilitate such a property are to provide HUD with estimates of: (i) the cost of the proposed rehabilitation, and (ii) the property value after completion of the rehabilitation. The estimates are to be provided in item E of the first page of the format (see of Appendix 2).

6. The National Register of Historic Places:

Threshold: Only if a property is proposed for repair (see definition below), rehabilitation, conversion, or construction must HUD in consultation with the State Historic Preservation Officer (SHPO), and following the Department of the Interior's Standards and Guidelines for Evaluation, make a determination whether the property is:

(a) listed on or eligible for listing on the National Register of Historic Places;

(b) located within or directly adjacent to an historic district; or

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(c) a property whose area of potential effects includes an historic district or property.

Historic properties and districts are subject by law to special protection and historic preservation processing which HUD must perform to comply with the regulations of the Advisory Council on Historic Preservation (36 CFR part 800). Grantees seeking information from the SHPO need to allow sufficient time to obtain the information from the SHPO. Grantees may wish to make special arrangements with the SHPO for rapid review of the grantee's proposed property where this is practicable. For properties determined to be historic properties, HUD will require 30 to 90 days in most cases to perform the required processing. In-kind replacement or incidental maintenance of external and internal building features is not subject to this requirement.

Documentation: Grantees are to select one of the following options that best describes the condition of their project and report the option selected on the format under Historic Property Site (see Appendix 2).

A. The grantee proposes financial assistance for rehabilitation, conversion, or construction of the property and provides HUD with a SHPO's finding that the proposed rehabilitation, conversion, or construction:

1. Will have no effect on historic properties; or

2. Will have an effect on historic properties not considered

adverse.

B. The grantee proposes financial assistance for rehabilitation, conversion, or construction of the property and provides HUD with a SHPO's finding that the proposed rehabilitation, conversion, or construction will have an adverse effect on historic properties.

C. The grantee provides HUD with a copy of a letter from the SHPO stating any reasons for not being able to provide the grantee with the requested information and finding.

7. Significant impact to the human environment:

Threshold: For proposed new construction or major rehabilitation of structures, an environmental assessment is required for compliance with the National Environmental Policy Act (NEPA) and the implementing regulations of the Council on Environmental Quality. It is the policy

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of the Department to reject proposals which have significant adverse environmental impacts and to encourage the modification of projects in order to enhance environmental quality and minimize environmental harm.

Documentation: Grantees are to provide information on any adverse environmental impacts that affect the project or that the project would create. Grantees are to identify any adverse impacts in terms of physical site suitability, soil stability and erodibility, natural hazards, man-made hazards and nuisances, air quality, displacement, energy conservation, infrastructure (e.g. water supply, waste water, storm water, and solid waste), compatibility with surrounding development, site accessibility, public services (i.e. fire; police, health care, social services, schools, parks) and transportation. Identify any significant impacts to the human environment. Grantees are to report this data needed for the environmental assessment on separate sheets and submit them as an attachment to the format in Appendix 2.

8. Locations near hazardous industrial operations handling explosive or flammable fuels or chemicals:

Threshold: Properties that are located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature are subject to HUD safety standards (24 CFR 51, Subpart C) However, under the HOPWA program, these standards would apply only if grantees propose: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making a uninhabitable building habitable; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units. In the case of tanks containing common liquid fuels, the requirement for an acceptable separation distance (ASD) calculation only applies to storage tanks that have a capacity of more than 100 gallons.

Documentation: Grantees are to select one of the following options

that best describe the condition of the project, and report the option selected on the format under Industrial Hazards Site (see Appendix 2).

- A. The proposed project does not include: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; or (iii) rehabilitation that increases the density of

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a residential structure by increasing the number of dwelling or rooming units.

- B. The proposed project includes: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; and the grantee provides HUD a finding by a qualified data source that the grantee's proposed property is not located within the immediate vicinity of hazardous industrial operations handling fuel or chemicals of an explosive or flammable nature by citing data used and the maps used.

- C. The grantee proposes: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; and the grantee provides HUD a finding made by a qualified data source stating: (i) that the proposed property is located within the immediate vicinity of hazardous industrial operations handling fuel or chemicals of an explosive or flammable nature; (ii) the type and scale of such hazardous industrial operations; (iii) the distance of such operations from the proposed property; (iv) a preliminary calculation of the acceptable separation distance (ASD) between such operations and the proposed property; and (v) a recommendation as to whether it is safe to use the property in accord with 24 CFR 51, Subpart C.

9. Noise-impacted sites:

Threshold: For new construction which is to occur in high noise areas (i.e. exceeding 65 decibels), grantees shall incorporate noise attenuation features to the extent required by HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR part 51. Approvals in a Normally unacceptable noise zone require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels.

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Above 75 decibels is unacceptable and the noise attenuation measures

require the approval of the Assistant Secretary for Community Planning and Development.

For major rehabilitation projects in the Normally Unacceptable and Unacceptable noise zones, HUD actively seeks to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level of exterior noise exposure. In Unacceptable noise zones, HUD strongly encourages conversion of noise-exposed sites to land uses compatible with the high noise levels.

Documentation: Grantees are to select A or B for the condition that best describes their project and, report the option selected on the format under Noise-Impacted Site (see Appendix 2).

A. The grantee provides HUD with a finding made by a qualified data source stating that the Property proposed by the grantee for new construction, major rehabilitation, or conversion activity in its HOPWA program is not located within: (i) 1,000 feet of a major "noise source, road, or highway; (ii) 3,000 feet of a railroad; or (iii) 1 mile of a civil or 5 miles of a military airfield.

B. The grantee provides HUD with a finding made by a qualified data source: (i) stating that the plans for the property proposed by the grantee for new construction or conversion activity in its HOPWA program incorporate noise attenuation features in accord with HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR part 51; (ii) stating whether the property is located within a "Normally Unacceptable" or "Unacceptable" noise zone; and (iii) providing HUD plans and a statement of the anticipated interior noise levels.

10. Coastal Zone Management:

Threshold: Only for new construction, conversion, major rehabilitation, and substantial improvement activities does the Coastal Zone Management (CZM) authority apply. Projects which can affect the coastal zone must be carried out in a manner consistent with the approved State coastal zone management program under Sec. 307 of the Coastal Zone Management Act of 1972, as amended.

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Documentation: Grantees are to select either A or B for the condition that best describes their project and report the option selected on the format under CZM Site (see Appendix 2).

A. The grantee states that its project is not located within a coastal zone, as defined by the State's Coastal Zone Management Plan.

B. For grantees whose project is located within a coastal zone, the grantee provides HUD with a finding made by the State CZM agency that the project proposed by the grantee is consistent with the approved State coastal zone management program.

11. Sole Source Aquifer:

Threshold: Only for new construction and conversion activities does the Sole Source Aquifer (SSA) authority apply. Projects which can affect aquifers designated by EPA must be reviewed for impact on such designated aquifer sources. The Safe Drinking Water Act of 1974 requires protection of drinking water systems which are the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health.

Documentation: Grantees are to select either A or B for the condition that best describes their project and report the option selected on the format under Aquifer Site (see Appendix 2).

A. The grantee provides HUD with a finding made by a qualified data source stating that the grantee's proposed property is not located on nor does it affect a sole source aquifer designated by EPA.

B. For the grantee whose project proposes new construction or conversion activities that are located on or may affect any sole source aquifer designated by the EPA, the grantee identifies the aquifer and provides HUD with an explanation of the effect on the aquifer from a qualified data source, and/or a copy of any comments on the proposed project that the grantee has received from the EPA Regional Office as well as from any State or local agency with jurisdiction for protecting the drinking water system.

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12. Endangered Species protection:

Threshold: Only for new construction and conversion activities does the Endangered Species Protection (ESP) authority apply. Projects which can affect listed or proposed endangered or threatened species or critical habitats require consultation with the Department of the Interior in compliance with the procedure of Section 7 of the Endangered Species Act of 1973, as amended.

Documentation: Grantees are to select either A or B for the condition that best describes their project and report the option selected on the format under ESP Site (see Appendix 2).

A. For the grantee whose project proposes new construction or conversion activities, the grantee provides HUD with a finding made by a qualified data source that the project is not likely to affect any listed or proposed endangered or threatened species or critical habitat. The finding shall indicate whether the project is located within a critical habitat, and if so, explain why the project' is not likely to affect the species or habitat.

B. For the grantee whose project proposes new construction or conversion activities that are likely to affect listed or proposed endangered or threatened species or critical habitat, the grantee provides HUD with a statement from a qualified data source explaining the likely affect, and/or a finding made by the Fish and Wildlife Service of the Department of the Interior stating as acceptable the proposed mitigation that the grantee will provide to protect any

affected endangered or threatened species or critical habitat.

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