

Section 811: Environmental Review and Site Selection

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Introductions

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Environmental Review

Larry Ferguson

Environmental Review

Site Approval Process

- HUD No Longer Approves the Site at Application
- Instead, HUD undertakes an “Initial Screening” of the Phase I Environmental Report and Other Items Your Consultant Submits through HUD’s Environmental Online Review System (HEROS)
- This Aligns with the MAP Process Used for FHA Insured Loans
 - Using Engineers and Environmental Professionals Familiar with the MAP Process is Key and may lead to *significant* issues/problems if you disregard this advice

Two Stages of Environmental Review In Connection with the S. 811 Capital Advance Program

- Initial Screening Review undertaken when your NOFO application is submitted
 - This is a broad overview only – it is neither final, nor complete
 - Emphasizes NOFO-identified Threshold items and other issues such as SuperFund sites and Floodways/channels that will result in a rejection of your application
- Full HEROS Review is done after your application has been selected
 - It will likely take several months
 - You will likely have to respond to issues and may have to provide additional specialty reports
- **HUD can give permission to work on the site or buildings only once the full HEROS review is complete**
 - There are limited exceptions, but **express written permission is required**
- Our focus is on the Full Review and some best practices to keep your site out of trouble, but will identify KEY items in this NOFO that will lead to a Rejection of your application

Items that will result in a Rejection of your Application – A Friendly “Heads-up”

- Please refer to the S. 811 Capital Advance NOFO at III. F.14 (especially pages 42-46), the “Threshold Items”, and additional details at Rating Fact 5.e. on “adverse conditions”
- SuperFund (NPL) sites
- Sites within Floodways/Flood channels and High Coast Hazard Zones
- Not including ALL of the HEROS Worksheets
- Missing the correct level of environmental review for the project (e.g. New Construction requires the Environmental Assessment-level of review; CENST is never applicable)
- Phase I Report MUST be current (within 6 months of application due date)
- Missing Vapor Encroachment Screen and other Reports such as Phase II and III, if warranted, as more specifically described in the NOFO

Environmental Review

Dave Melanson

No Modification of Site or Buildings

- **Once you submit your application NO construction or modification of the site (e.g. grading, clearing, filling) is permitted**
 - Unless and until HUD has given you express written permission for same
- **NO buildings/structures on site should be removed or modified in any way**
 - Unless and until HUD has given you express written permission for same
- **Failure to abide by these restrictions could forever make your site ineligible for HUD funds (not in this round, not in any future round)**
- Only routine maintenance is allowed (see Section 9.1.3.C.2.a of the MAP Guide)

How Environmental Review Works

- Environmental review uses a series of investigations to “flag” potential problems
- Once a “flag” has been raised it can only be lowered in one of three ways:
 - The environmental consultant who raised the issue, can do additional research or testing to resolve it or hire a specialty consultant to do so
 - A state or federal agency with appropriate oversight of the issue can resolve it
 - HUD can resolve the issue internally
 - This is rare and the resolution must be both easy and obvious
 - Generally, HUD staff are not environmental professionals and will rely on the professional

HEROS Consultants

- Your environmental submission will be via HUD Environmental Review Online System (HEROS)
- **Critical you have an experienced and capable HEROS Consultant to do this for you**
- **May be your most important decision in getting through initial review process**
- There are only two types of HEROS Preparers that I have seen be successful:
 1. Cities/Counties with frequent HUD interactions & have dedicated staff who deal with HEROS
 2. Engineering Companies who do a LOT of work for FHA Multifamily Lenders
- **Asking a person on your staff or even your favorite Phase I preparer to learn HEROS on the fly is a bad strategy and will work against getting your project funded**
 - Please do not do this to your project

Vetting Potential HEROS Consultants

- From the list of potential HEROS Consultants that will be provided, I suggest interviewing some consultants and asking a few key questions:
 - Are you a registered HEROS user? “I think so” is not the answer you need
 - How many HEROS submissions have you completed in the past 12 months?
 - The right answer is “We do several each month”
- Go to <https://cpd.hud.gov/cpd-public/environmental-reviews>
- Search by Archived Projects & State (you can limit to City, but I advise searching broadly)
- Ignore anything that doesn't look like an apartment project (says repairs, etc.)
- Clicking on the Blue Project Name will Download the Record to your Downloads File

Looking at Recent HEROS Submissions

- Open the Downloaded Files
- Under Project Information (First 2-3 Pages)
- Point of Contact: Contact at the HEROS Contractor
- Consultant (if applicable): **This is the HEROS Contractor**
- Two Likely Determinations for Apartments
 - Level of Environmental Review Determination: Categorically Excluded per 24 CFR 50.20(a), and subject to laws and authorities at 50.4:50.20(a)(5) [this is for existing properties]
 - Determination: Finding of No Significant Impact [40 CFR 1508.13] The project will not result in a significant impact on the quality of human environment (or a Finding of Significant Impact) [Either of these are for new construction or substantial rehabilitation]

Focus of the HEROS Environmental Review

Resident Health & Safety

- Contamination and Toxic Substances
- Lead-Based Paint
- Asbestos
- Radon
- Noise Abatement and Control
- Explosive and Flammable Hazards
- Air Quality**
- Airport Hazards
- Floodplain Management**

*** May Impact Both*

Environmental Impact

- Historic Preservation
- Wetlands Protection
- Coastal Barrier Resource
- Coastal Zone Management
- Endangered Species
- Farmlands Protection
- Sole Source Aquifers**
- Wild and Scenic Rivers
- Environmental Justice**

Which of These Are Common Problems?

Common Concerns

- Contamination and Toxic Substances
- Historic Preservation (Site & Buildings)
- Floodplain Management
- Wetlands Protection
- Noise Abatement and Control
- Explosive and Flammable Hazards
- Radon
- Lead-Based Paint (Existing Buildings)
- Asbestos (Existing Buildings)
- Endangered Species

Less Common Concerns

- Air Quality
- Airport Hazards
- Coastal Barrier Resource
- Coastal Zone Management
- Farmlands Protection
- Wild and Scenic Rivers
- Sole Source Aquifers
- Environmental Justice
- Flood Insurance

Commonsense Ways to Look At Environmental Issues

- Do you think the site would provide a safe & pleasant setting for someone you care about?
- Would you want your parent, sibling, or child to live there?
 - If not, why not?
- Can all the site's issues be fully resolved?
- Can you mitigate (correct) any problems in just a few months?
 - If not, remember, Time is your enemy . . .

Environmental Justice Framework

- Environmental Justice – Executive Order 12898
 - *“...each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations...”*
- Specifically addressed in HUD’s Environmental Review process often focused on the demographics of the area surrounding the site and the racial/ethnic makeup thereof
- Also, a philosophical guide to how HUD thinks about every site that serves low-income, very low-income, or otherwise vulnerable residents
 - **HUD must not put vulnerable residents in at risk or in risk-prone circumstances**
 - Vulnerable residents should not be put in materially worse circumstances than what any resident would freely choose

Site Selection

- HUD has two primary issues when conducting an Environmental Review
- First & foremost is Resident Health and Safety
 - This is always HUD's primary and overarching concern and especially so for vulnerable populations who may have fewer housing choices
 - 202 & 811 residents so qualify
- Second is coordinating Environmental Impact with the “Laws and Authorities” and with agencies who oversee specific environmental issues
 - Jake will do a deeper dive into these issues

Choosing a Site

- Your enemy is not just Money . . . it is also Time
- Sites with difficult environmental issues may be cheap, but they require a lot of staff time for both you and for HUD
 - HUD Staff simply do not have the time to deal with multiple difficult issues on a site
 - It will take lots of time from your staff & your consultants (\$) to meet all HUD requirements
- Pick the cleanest and least problematic site that you can

Sites to Avoid

- Existing/Former Gas Stations
- Former Dry Cleaners
- Sites Near:
 - Heavy Industry
 - Powerline Transmission Facilities
 - Pipelines or Oil & Gas Operations
- These sites often have expensive and time-consuming environmental problems

Environmental Review

Jake Levine

The Phase I & Phase I Preparer

- The Phase I examines the likelihood of contamination at the site
- It is a central document of the HEROS submission/process
- The Phase I must conform with ASTM E1527-21 and the requirements of Chapter 9 of the MAP Guide
- If the Phase I preparer you have used in prior years has no familiarity with the MAP Guide, you may wish to consider selecting another preparer
- Nearly all third party HEROS Consultants can do a MAP compliant Phase I

The Phase I

- Unlike what Phase I preparers do for banks (or what they may have done for you in prior rounds), the Phase I required for HEROS is expanded and includes:
 - Vapor Encroachment Screening
 - Extra items such as Asbestos & Lead-Based Paint Screenings
 - Off-site contamination that may affect the project
 - HUD must be an authorized user of the report
- HUD will post the HEROS environmental review online – including the Phase I
- For FY 2024 NOFO, HUD will reject projects within boundaries of Superfund sites

Phase II

- If the Phase I identifies any Recognized Environmental Conditions or unacceptable risks, then a Phase II is required, and must be included in the application
- A Phase II entails sampling of soil, soil vapor, groundwater, or other potentially contaminated media
- The Phase II must conform with ASTM E1903-19, and Chapter 9.4 of the MAP Guide
- If any contaminants are present above unrestricted residential screening levels, then a remediation plan is required

Remediation Plan (Phase III)

- The remediation plan, if required, must either remove the contamination completely or use Risk Based Corrective Action with no active remediation occurring after final closing or initial occupancy. Must also comply with Chapter 9.4 of the MAP Guide.
- The application must include:
 - The cleanup plan
 - An estimate of cleanup costs
 - An approval letter from the Federal or State authority, or discussion of securing such before Firm Commitment
 - Discussion of feasibility of completing work before final closing or initial occupancy

Historic Preservation

- Historic Preservation applies to both sites and any existing buildings
- The State Historic Preservation Officers (SHPOs) represent the interests of the state and often coordinates with local governments
 - Most often, the SHPO is interested in buildings but there are exceptions
- The Tribal Historic Preservation Officers (THPOs) represent the interests of the specific tribe but often coordinates with other tribes
 - Most often, the THPO is interested in the site (archeology)

Consultation for Historic Preservation

- Your HEROS Consultant can lay a lot of the groundwork and provide background
- HUD will have to consult directly with the SHPO
- **Neither you nor your HEROS Consultant can consult with the THPOs**
- **Only HUD can consult with the THPOs**
- **This is non-negotiable**

Floodplains & Wetlands

- Building in or near floodplains or wetlands will require application of **The 8 Step Process** - The HEROS Consultant will help HUD with the 8 Step Process and You will have to:
 - Notify public of the project
 - Invite the Public to comment and provide information
- **HUD is Required to Examine All Options – Including Rejecting the Site**
- **Always best to choose a site outside of the floodplain and without wetlands**

100-Year and 500-Year Floodplain

- 100-year floodplain = a 1.0% chance of flooding in a given year
- 500-year floodplain = a 0.2% chance of flooding in a given year
- New construction and substantial rehab in either floodplain is acceptable if:
 - All residential units and building mechanicals are elevated to at least two feet above the Base Flood Elevation
 - Interior spaces are floodproofed up to two feet above Base Flood Elevation

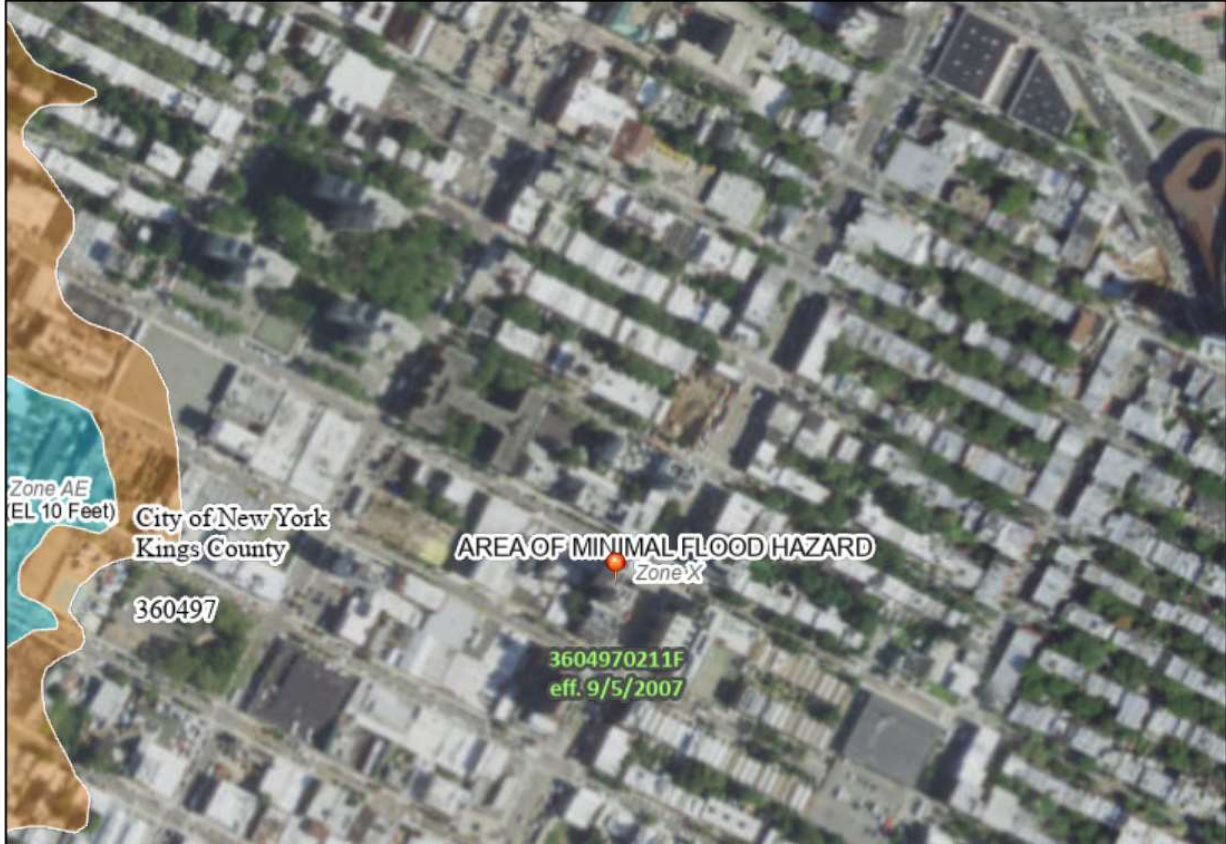
Floodways and Coastal High Hazards

- HUD may not provide assistance to sites containing the regulatory floodway or the coastal high hazard zone...
- ...except if they are in an “incidental portion” of the site
 - No improvements can be in the 100-year floodplain
 - Buildings, parking, and other structures are never incidental – landscaping can be
- Floodways or Coastal High Hazard Areas = moving water
- **Housing cannot be developed in a Floodway or a Coastal High Hazard Area**
 - This restriction is absolute as the risks to life and safety are simply too great

Floodplain Documents

- The application **MUST** include the Flood Insurance Rate Map (FIRM) for the project location, attached to the Floodplain Management HEROS screen
- A digital 'FIRMette' indicating the project location is acceptable, and can be generated here: <https://msc.fema.gov/portal/home>
- HUD will also check for any preliminary FIRMs, revisions, or amendments. Make sure to include these in the application.

73°59'11" W 40°41'3" N



SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

| | |
|------------------------------------|---|
| SPECIAL FLOOD HAZARD AREAS | <ul style="list-style-type: none"> Without Base Flood Elevation (BFE) <i>Zone A, V, A99</i> With BFE or Depth <i>Zone AE, AO, AH, VE, AR</i> Regulatory Floodway |
| OTHER AREAS OF FLOOD HAZARD | <ul style="list-style-type: none"> 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile <i>Zone X</i> Future Conditions 1% Annual Chance Flood Hazard <i>Zone X</i> Area with Reduced Flood Risk due to Levee. See Notes, <i>Zone X</i> Area with Flood Risk due to Levee <i>Zone D</i> |
| OTHER AREAS | <ul style="list-style-type: none"> NO SCREEN Area of Minimal Flood Hazard <i>Zone X</i> Effective LOMRs Area of Undetermined Flood Hazard <i>Zone D</i> |
| GENERAL STRUCTURES | <ul style="list-style-type: none"> Channel, Culvert, or Storm Sewer Levee, Dike, or Floodwall |
| OTHER FEATURES | <ul style="list-style-type: none"> 20.2 Cross Sections with 1% Annual Chance Water Surface Elevation 17.5 Coastal Transect Coastal Transect Base Flood Elevation Line (BFE) Limit of Study Jurisdiction Boundary Coastal Transect Baseline Profile Baseline Hydrographic Feature |
| MAP PANELS | <ul style="list-style-type: none"> Digital Data Available No Digital Data Available Unmapped |

The pin displayed on the map is an approximate

Noise

- The HEROS Consultant will provide the noise analysis and arrange for any required studies
- Noise levels will be projected over the next 10 years
- If the projected noise level is at or above 65 decibels (dB) but does not exceed 75 dB using HUD's Day Night Levels (DNL or Ldn) the Normally Unacceptable zone and will require design changes – This will likely add some cost to the project
- If the projected noise level is above 75 dB it is in the Unacceptable Zone
 - Though there are theoretical methods to approve such a site they are very time consuming and cannot be pursued within the available timeframes – Sites above 75 dB will not be processed by HUD staff
- The architect must design according to these studies and certify as to compliance of both the plans and then later for the property as built

Common Sources



Explosive & Flammable Hazards

- Aboveground Storage Tanks (ASTs) – Above ground storage of explosive or flammable materials require a risk analysis
- Risk is based on the site's Acceptable Separation Distance (ASD) from the explosive or flammable source
- The HEROS Consultant will provide the technical analysis
- But you should look around your site to see if there are any ASTs close by

Look Like This



Radon

- The HEROS Consultant will identify the appropriate Radon area
- No matter the location, the property will have to incorporate radon-resistant construction features
- The design must meet specific requirements (ANSI/AARST CC-1000)
- The architect will have to certify first to the compliance of the plans and then later to the property as built
 - <https://www.epa.gov/radon/state-maps-radon-zones> (this provides state radon maps)
- Over 75% of the projects I review in the West have radon issues at some level

Lead-Based Paint & Asbestos

- If there are existing buildings/structures on site, they must be evaluated for:
 - Lead-Based Paint (LBP) if the buildings are pre-1978
 - Asbestos Containing Materials (ACMs) if the buildings are pre-1989
- If the buildings/structures are to be retained:
 - Testing is required and removal of the LBP and ACMs are strongly recommended
 - Any remaining LBP or ACMs will be subject to an Operations & Maintenance (O&M) Plan
- If the buildings/structures are to be removed:
 - Demolition and disposal must meet all state, local, tribal, and federal guidelines
- HUD will need studies/proof of all of this including removal per applicable guidelines

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QUESTIONS?

Please contact: 811CAPAdvance@hud.gov