Section 202: Environmental Review and Site Selection

October 20, 2022

Introductions

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Environmental Review

Kara Williams-Kief

Environmental Review

Site Approval Process Has Changed Dramatically

- HUD No Longer Approves the Site at Application
- Instead, HUD Does an Initial Environmental Review of the Environmental Report and Other Items You Submit
 - More Work and Expense On Your Part
- This Resembles the MAP Process Used for FHA Insured Loans
 - Using Engineers and Environmental Professionals Familiar with the MAP Process is Key

Two Environmental Reviews

- Initial Review done when your application is submitted
 - This is a broad overview only it is neither final nor complete
- Full Review is done after your application has been selected
 - It will likely take many 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 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

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 <u>forever</u> 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 <u>rare</u> and the resolution must be both easy and obvious
 - Generally, HUD staff are not environmental professionals and will want to rely on the opinion of a professional in the specific field in question

HEROS Consultants

- Your environmental submission will be via HUD Environmental Review Online System (HEROS)
- It is <u>critical</u> that you have an experienced and capable HEROS Consultant to do this for you
- There are only two types that I have seen be successful here
 - Cities/Counties with frequent HUD interactions and have a dedicated staff member deal with HEROS
 - 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 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 "I will have to get back to you as we do several each month"
- Are you familiar with the delegation memo allowing Authorized Representatives to Initiate Section 106 Consultation?
 - Only experienced consultants will even understand this (and the correct answer is "yes")

Laws & Authorities for Environmental Review

** May Impact Both

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**

Environmental Impact

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

What Are the Most 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

Environmental Justice Framework

- Two Aspects of Environmental Justice
 - One is an issue specifically addressed in HUD's Environmental Review process
 - The demographics of the area surrounding the site and the racial/ethnic makeup thereof
 - Another is a philosophical guide to how HUD thinks about <u>every</u> site that serves low, 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
- First and 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 other agencies who oversee environmental 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 <u>lot</u> 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 extra staff & consultant time (\$) to meet all HUD requirements
- Pick the cleanest and least problematic site that you can

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 <u>fully</u> resolved?
- Can you mitigate (correct) any problems in just a few months?
 - If not, remember, Time is your enemy . . .

Sites to Avoid

- Existing/Former Gas Stations
- Former Dry Cleaners
- Heavy Industry
- Powerline Transmission Facilities
- Pipelines or Oil & Gas Operations
- These sites, <u>and sites near them</u>, often have expensive and time-consuming environmental problems

The Phase I & Phase I Preparer

- The Phase I examines the likelihood of contamination at the site
- It is a central feature of the HEROS process
- The Phase I must be prepared according to 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 <u>expanded</u> and includes:
 - Vapor Encroachment Screening
 - Extra items such as Asbestos, Lead-Based Paint
 - Extra documentation on other points
 - HUD must be an authorized user of the report
- HUD will post the HEROS environmental review online including the Phase I

Superfund Sites

- Sites that are on or near a Superfund Site require <u>extensive</u> additional analysis by the HEROS Consultant and lengthy consultation with the EPA by HUD
- In all cases (no matter the cleanup stage of the site) HUD will require written documentation from the EPA that the site is **suitable for residential use**
- This will significantly increase the time and cost of the HEROS Consultant's work
- It will certainly delay the project and may prohibit it altogether (at least as far as any HUD involvement)
- Avoiding such sites is always best

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
 - Notify public of the project
 - Public invited 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

500 Year Floodplain

- 500-year floodplain = a 0.2% chance of flooding in a given year
- If the property is in the 500-year floodplain it can be acceptable <u>as long as the use is</u> <u>not a Critical Action</u>
 - 811s are Critical Actions and <u>cannot</u> be developed in the 500-year floodplain (period)
 - 202s are not Critical Actions and may be developed in the 500-year floodplain
 - If you do, all building mechanicals (HVAC, cogeneration, hot water heating, and other systems) and all residential units must be at a height no less than the greater of the 500-year floodplain or two feet above the 100-year floodplain
 - Despite these allowances, you are well advised to avoid floodplains altogether

100 Year Floodplain & Floodways

- 100-year floodplain = 1% chance of flooding in a given year
- Only an "incidental portion" of the site (<u>no improvements</u>) can be in the 100-year floodplain
 - Buildings, parking, and other structures are <u>never</u> incidental landscaping can be
- Floodways or Coastal High Hazard Areas = moving water
- Housing <u>cannot</u> 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

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 <u>very</u> 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



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
 - <u>https://www.epa.gov/radon/state-maps-radon-zones</u> (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

Environmental Review

Jake Levine

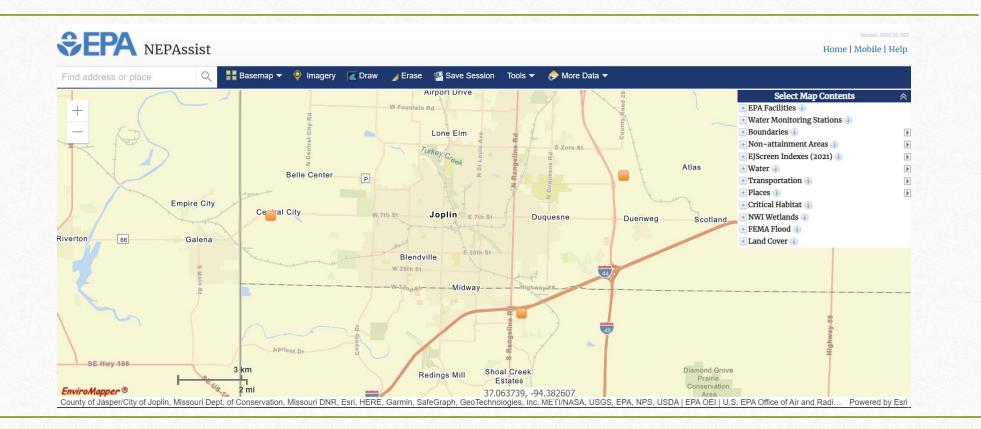
Site Selection Overview

- Remember, less expensive but environmentally risky sites can cost you time and money in the end!
- Some environmental issues will just add time and money to the review, some will make your site ineligible altogether
- There are several online tools that can help in selecting a viable site, and a site visit is crucial as well

Site Selection Tools and Resources

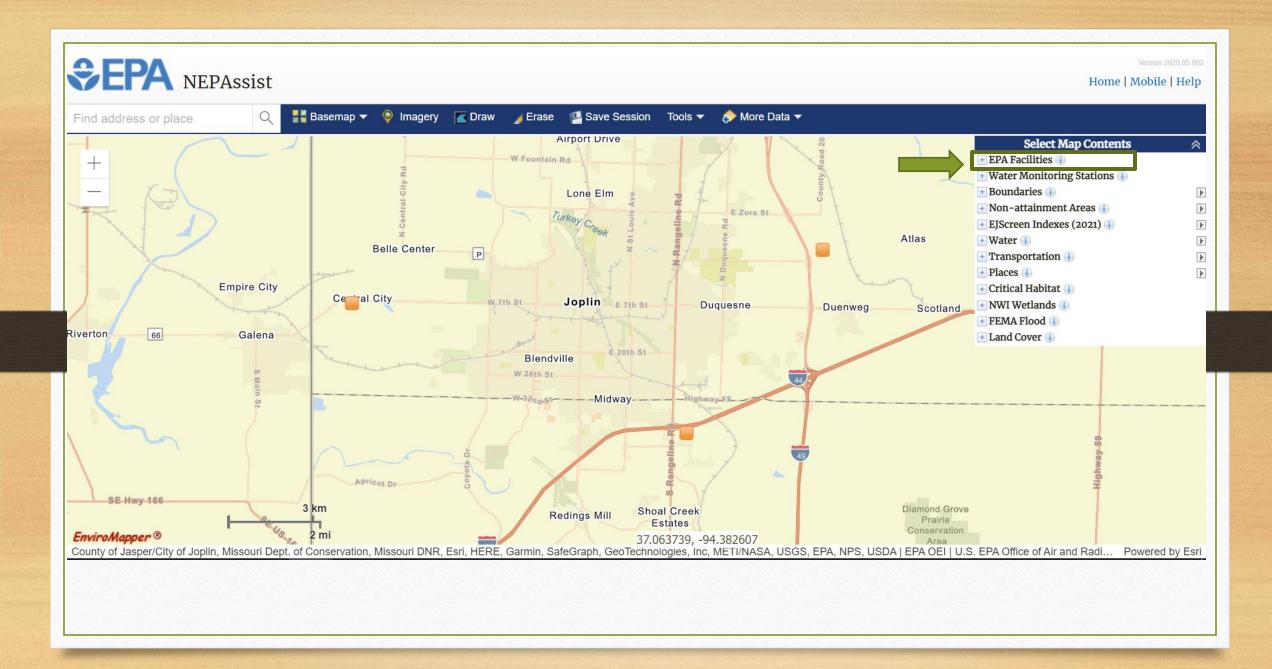
- NEPAssist: <u>https://nepassisttool.epa.gov/nepassist/nepamap.aspx</u>
 - To screen for potential contamination issues
- FEMA Map Service Center: <u>https://msc.fema.gov/portal/home</u>
 - To screen for floodplains and floodways
- State DOTs and FRA Crossing Inventory: <u>https://safetydata.fra.dot.gov/OfficeofSafety/PublicSite/Crossing/Xingqryloc.aspx</u>
 - To screen for noise sources

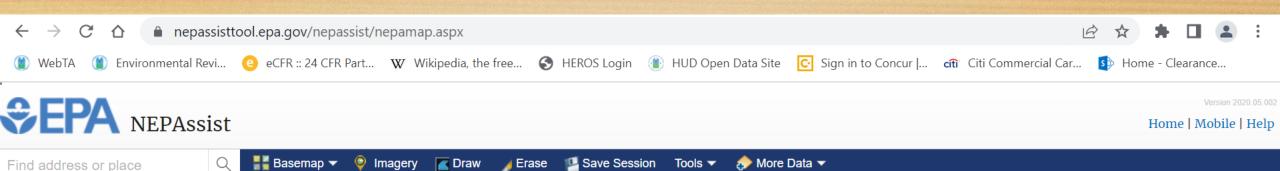
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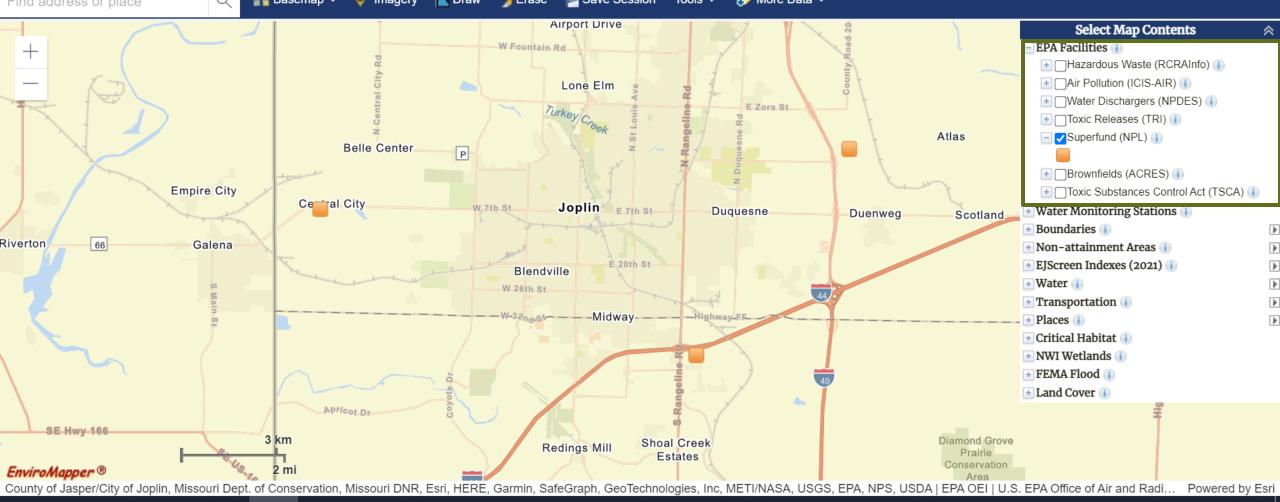


Site Contamination Reminders

- Avoid sites on former dry cleaners, gas stations, service stations, heavy industry
- Avoid hazardous wastes and toxic releases
- Must consider items outside normal Phase I scope- asbestos, lead-based paint and radon (sometimes indicated as TSCA sites in NEPAssist)
- Superfund sites require a comfort letter from EPA indicating suitability for residential use

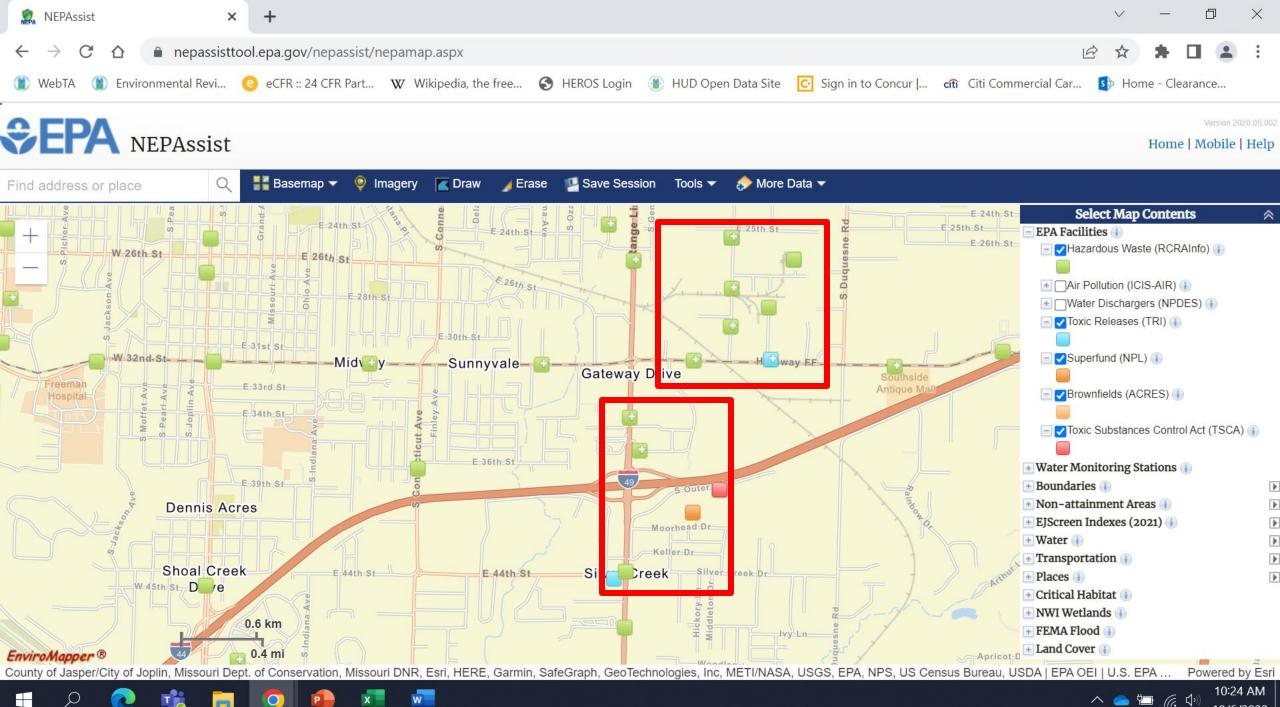






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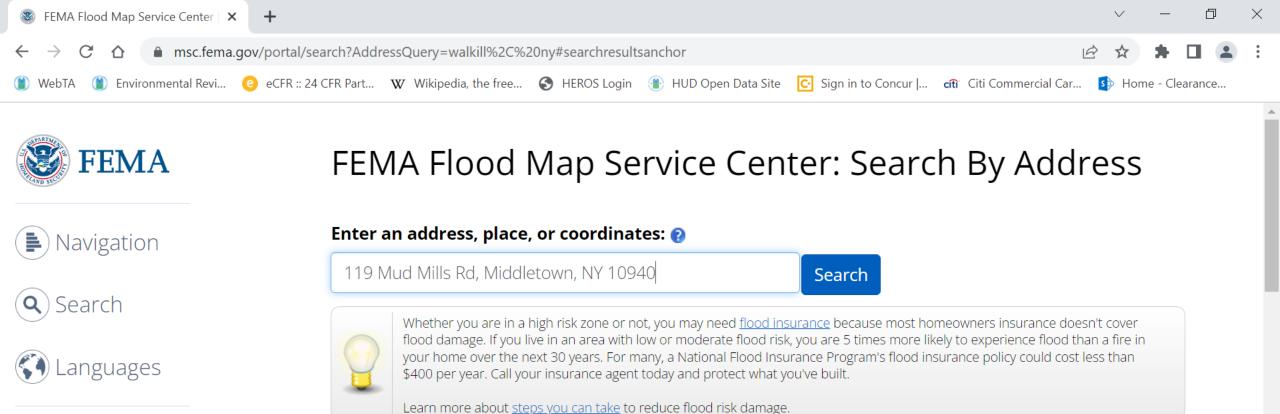
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FEMA Map Service Center



Floodplain Reminder

- 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
 - Notify public of the project
 - Public invited to comment and provide information
 - New construction required to elevate two feet above Base Flood Elevation
 - HUD is Required to Examine All Options –Including Rejecting the Site
- An "incidental portion" of the site (<u>no improvements</u>) can be in the 100-year floodplain
- Always best to choose a site outside of the floodplain and without wetlands



MSC Home

- MSC Search by Address
- MSC Search All Products
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Product Availability

MSC Frequently Asked Questions (FAQs)

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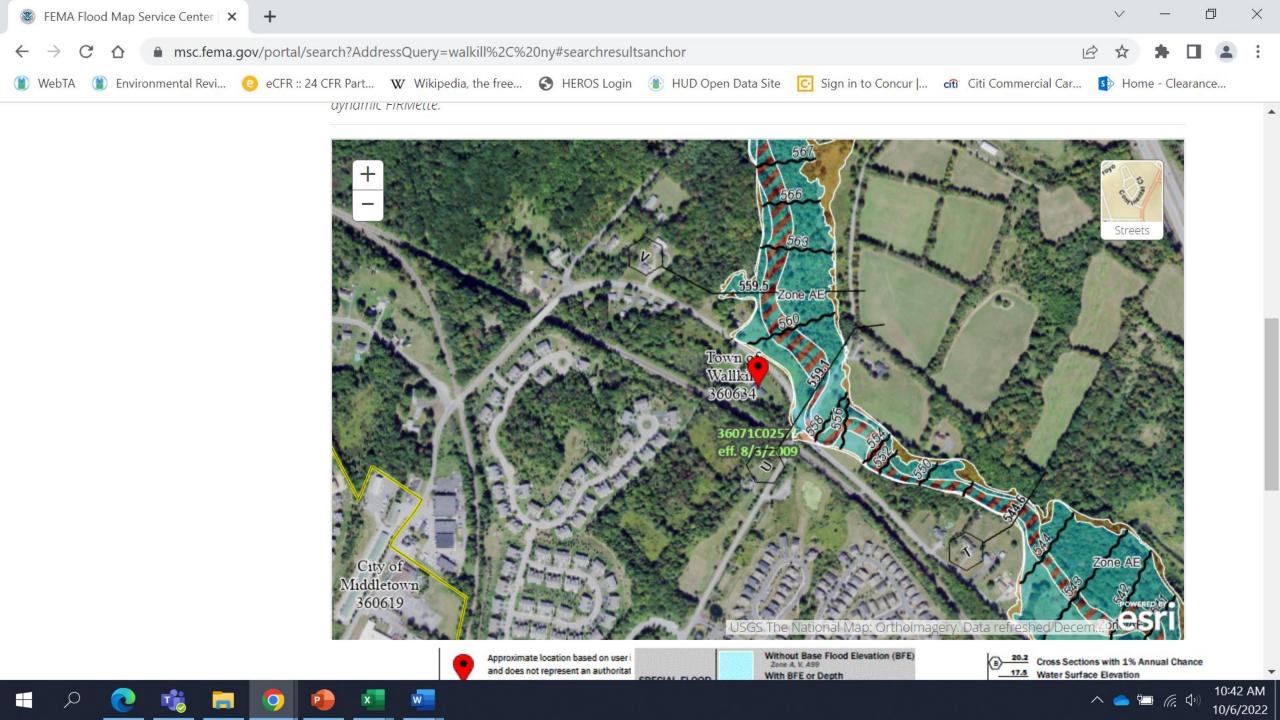
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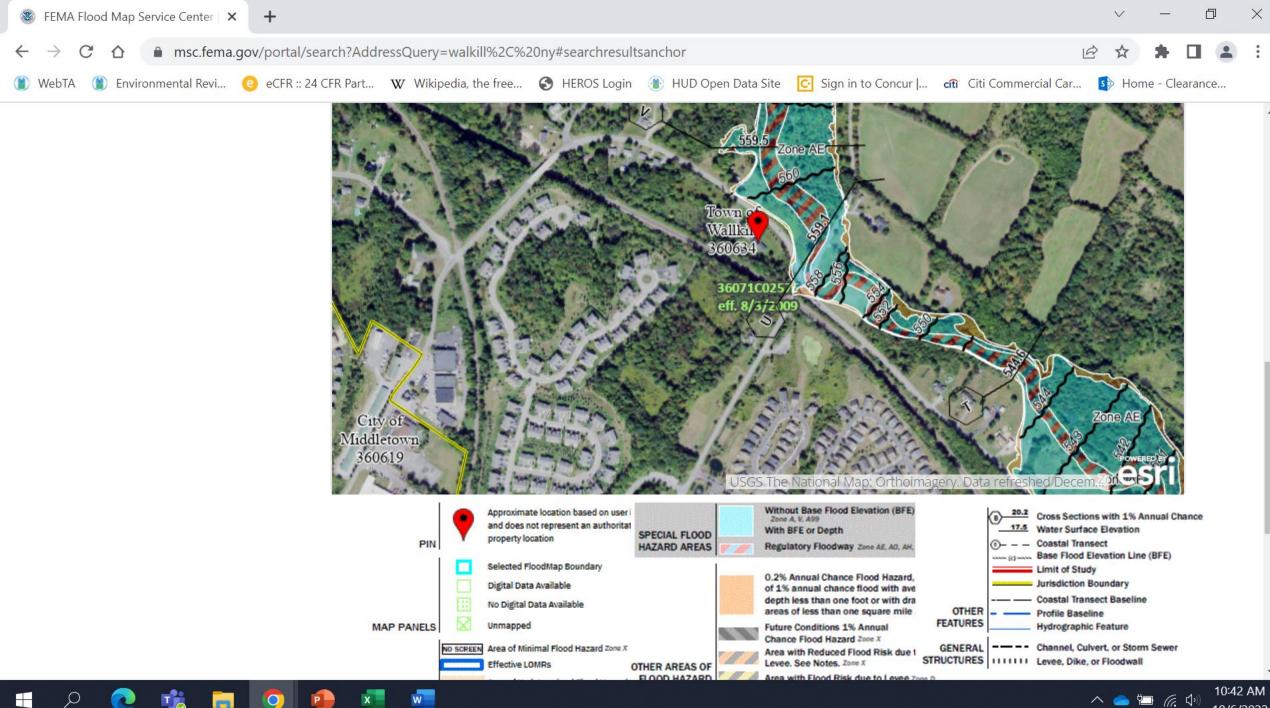


DYNAMIC MAP

Changes to this FIRM ② Revisions (0) Amendments (0)

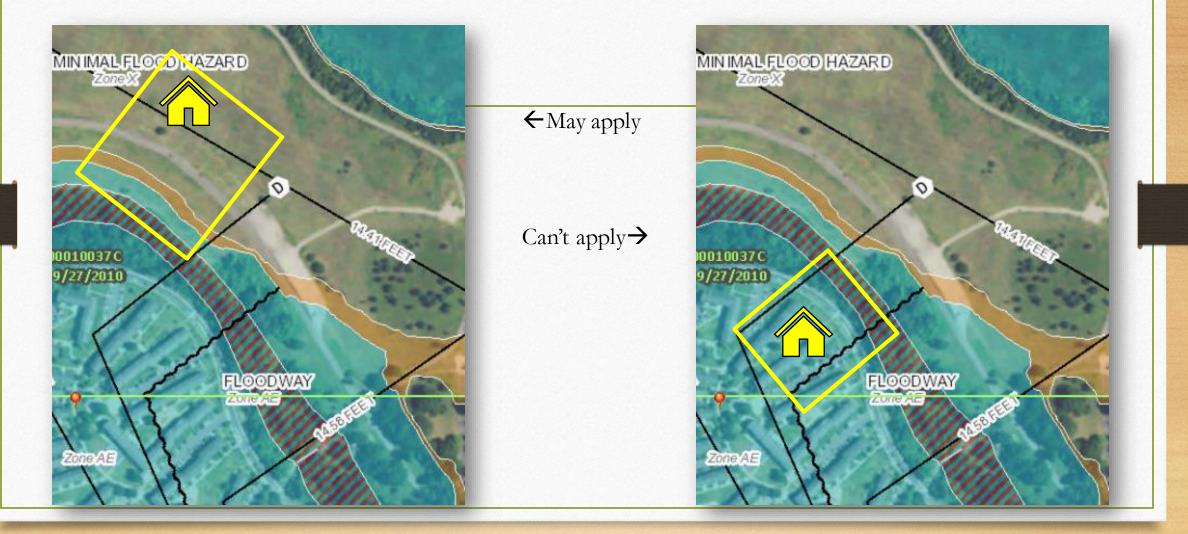
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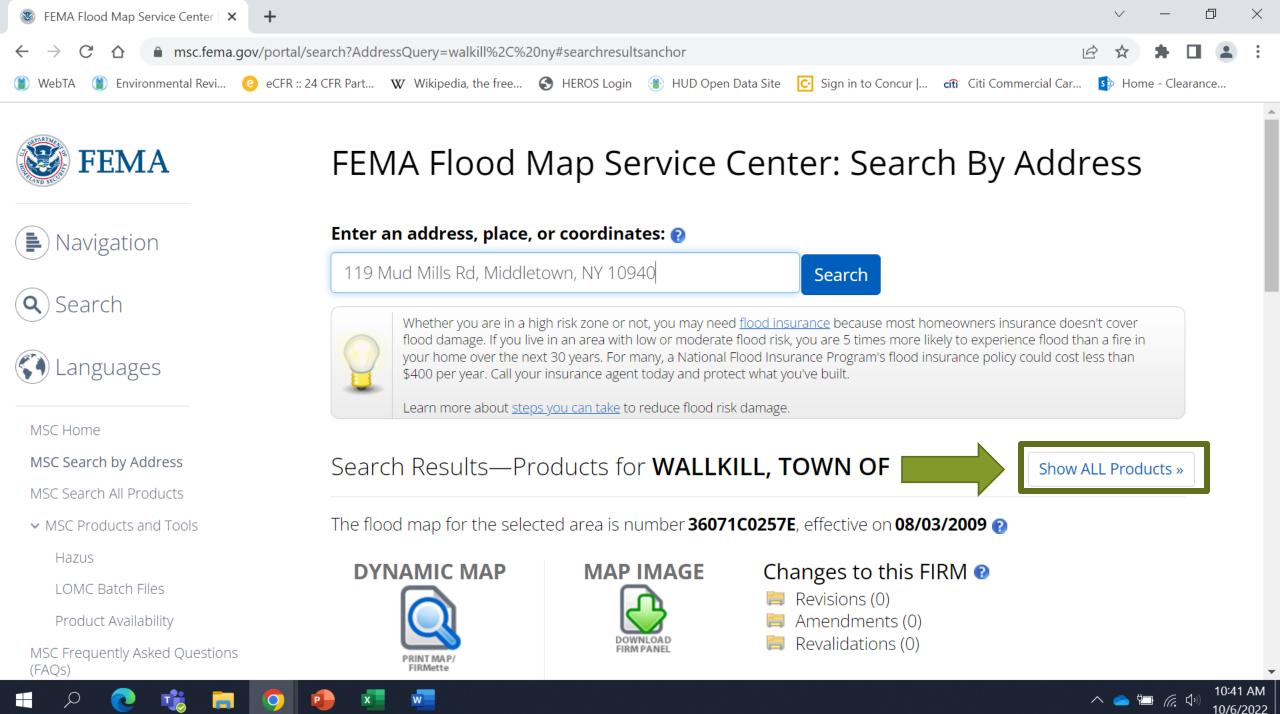


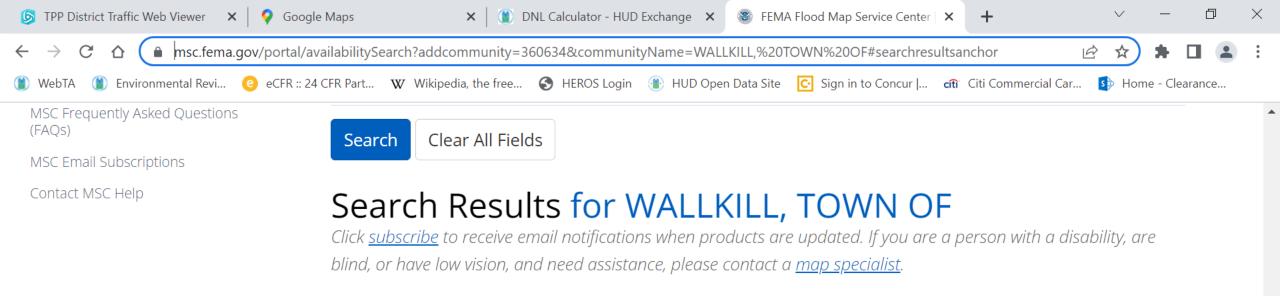


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Incidental Floodplain examples







Please Note: Searching All Products by county displays all products for all communities within the county. You can refine your search results by specifying your specific jurisdiction location using the drop-down menus above.

Effective Products (48) (2)
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 Flood Risk Products (0) (2)

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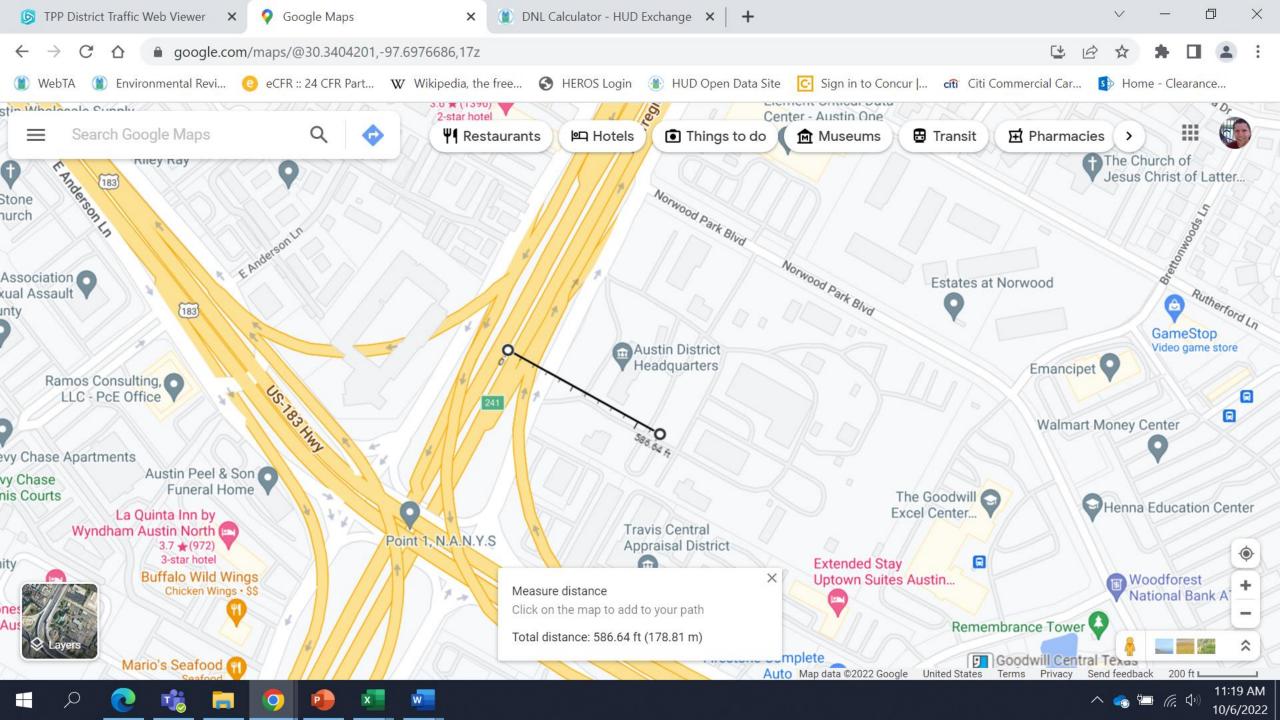
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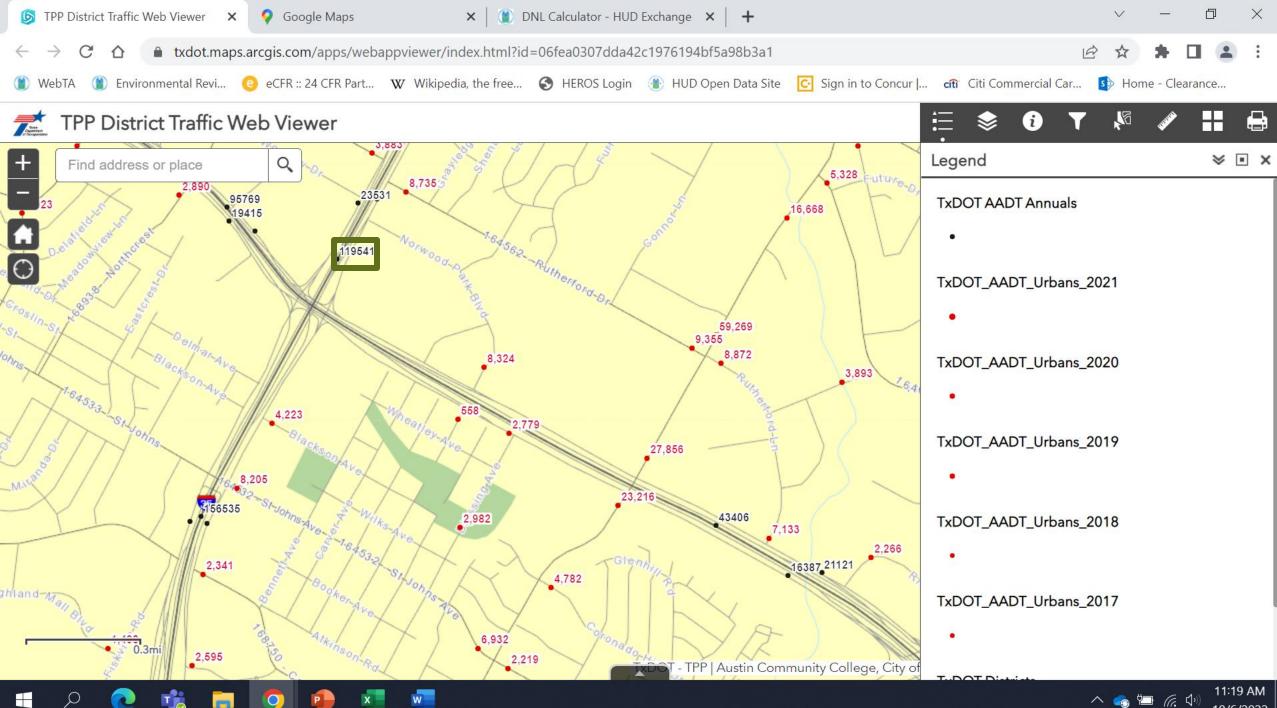
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Noise Estimation

- State DOTs and FRA Crossing Inventory
- HUD's Noise Calculator: <u>https://www.hudexchange.info/programs/environmental-review/dnl-calculator/</u>



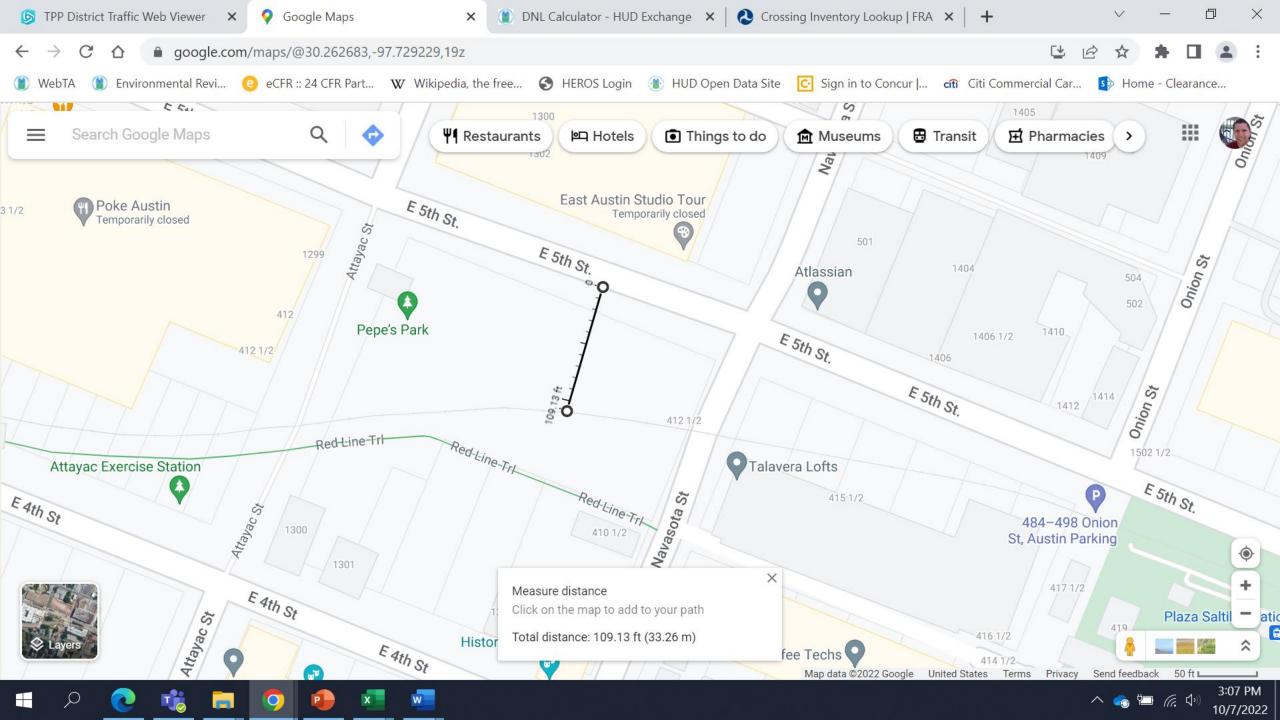


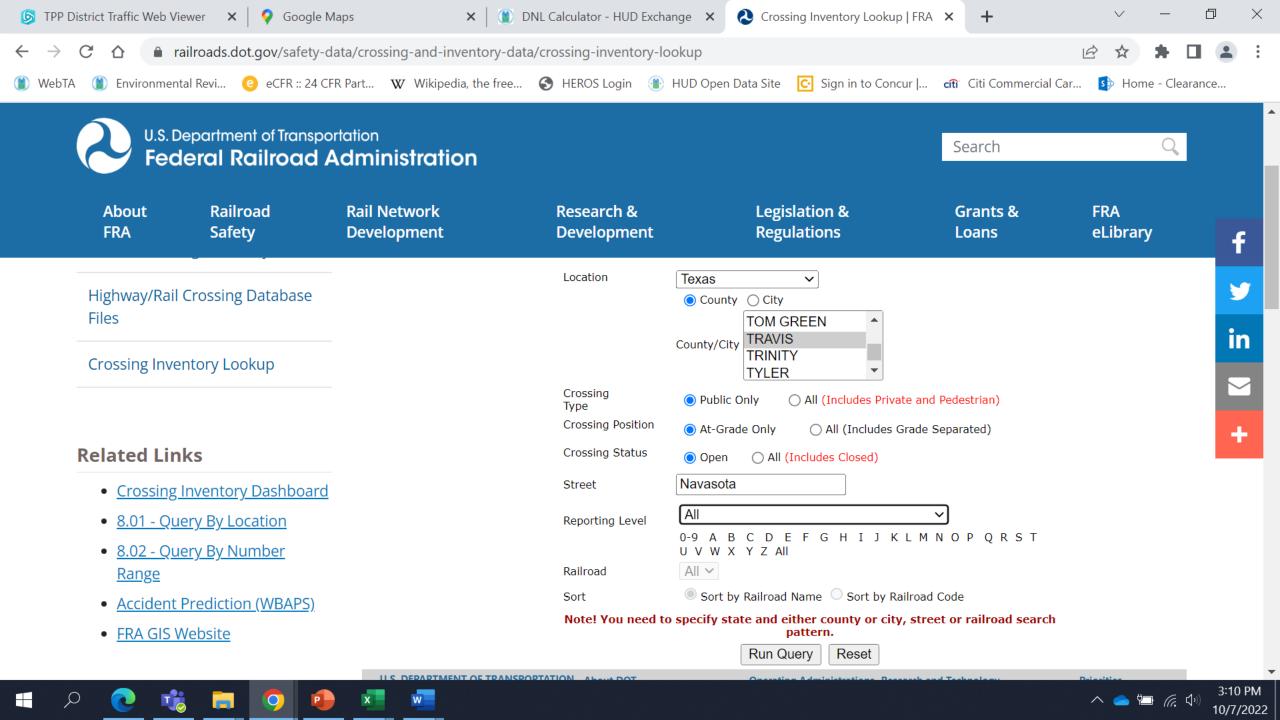
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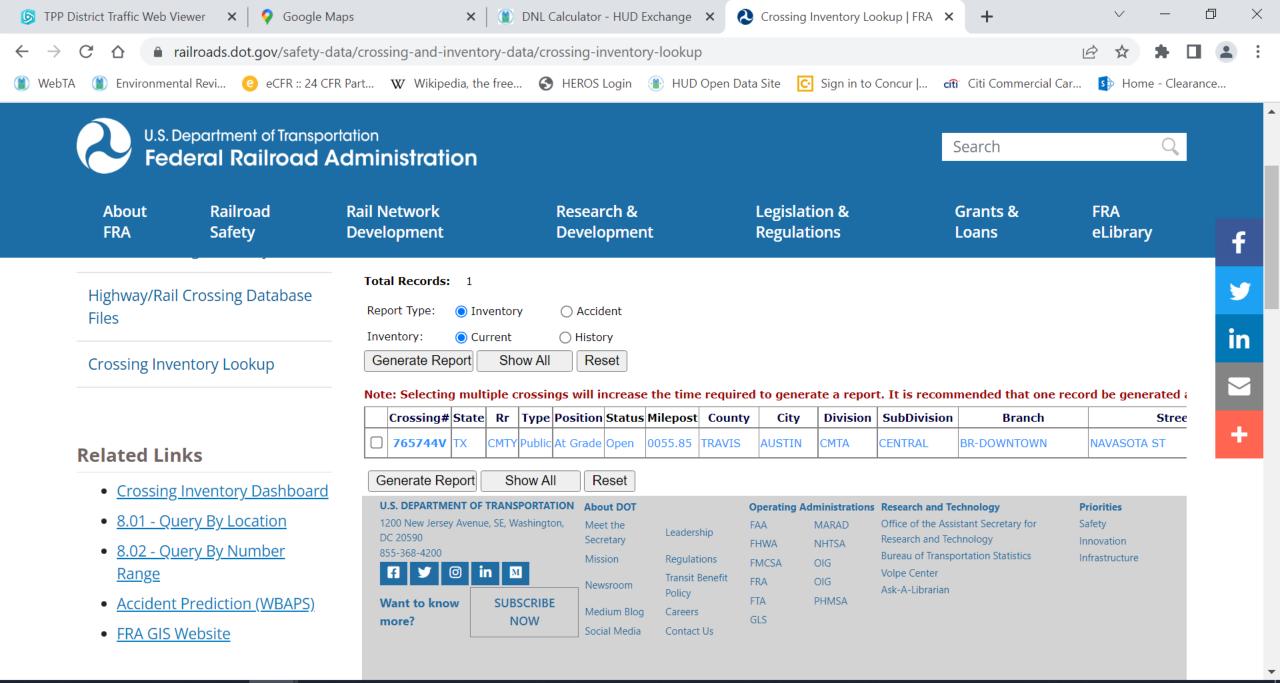
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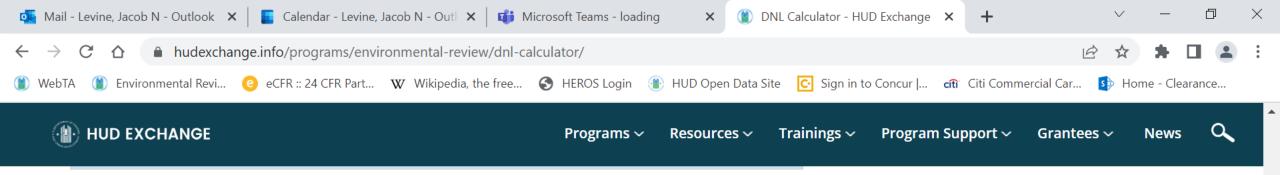


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Bolted Tracks?	Yes: No:	Yes: 🗆 No: 🗹		
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A Site Visit is Essential

- HUD staff will conduct a site visit as part of the full environmental review
- Your site visit is essential in avoiding the issues that may delay or negate a project proposal
- Gives context to map-based 'desk review' and can uncover potential issues missed by mapping resources

Site Visit

• DISTRESSED VEGETATION

This could be an indication of soil contamination.

• VENT OR FILL PIPES

This could be a sign of current or previous existence of underground storage tanks.

• STORAGE/OIL TANKS OR QUESTIONABLE CONTAINERS

These are most often used to store heating fuels, chemicals, and petroleum products.

• PITS, PONDS OR LAGOONS

These have the potential for holding liquids or sludge containing hazardous substances or petroleum products.

Site Visit

• STAINED SOIL OR PAVEMENT

This could mean that the soil is contaminated and could be a sign of current or previous leakage of piping and liquid storage containers.

• PUNGENT, FOUL OR NOXIOUS ODORS

This could indicate leaks of hazardous substances or petroleum products or contaminants.

• DUMPED MATERIAL OR SOIL, MOUNDS OF DIRT, RUBBLE FILL, et cetera.