



**MHDC FORM 1400**  
**Environmental Review Guide**

# TABLE OF CONTENTS

|  |               |
|--|---------------|
| <b>TABLE OF CONTENTS</b> .....   | <b>- 1 -</b>  |
| <b>I. INTRODUCTION</b> .....   | <b>- 3 -</b>  |
| <b>II. DEFINITIONS</b> .....   | <b>- 4 -</b>  |
| <b>III. MHDC ENVIRONMENTAL REVIEW REQUIREMENTS</b> .....                       | <b>- 6 -</b>  |
| A. NON-FEDERALLY FUNDED DEVELOPMENTS .....                                     | - 6 -         |
| B. FEDERALLY FUNDED DEVELOPMENTS: NATIONAL HOUSING TRUST FUND.....             | - 9 -         |
| C. FEDERALLY FUNDED DEVELOPMENTS: HOME AND HOME-ARP.....                       | - 13 -        |
| D. ENVIRONMENTAL REVIEW DIFFERENCES BETWEEN HTF AND 24 CFR PART 58 & 50 .....  | - 18 -        |
| E. ENVIRONMENTAL REVIEW SIMILARITIES BETWEEN HTF AND 24 CFR PART 50 & 58 ..... | - 19 -        |
| <b>IV. RESPONSIBLE ENTITY</b> .....  | <b>- 20 -</b> |
| A. RESPONSIBLE ENTITY .....  | - 20 -        |
| B. WHAT IS NOT CONSIDERED A RESPONSIBLE ENTITY (RE)? .....                     | - 20 -        |
| C. MHDC AS RESPONSIBLE ENTITY .....  | - 20 -        |
| D. DEFINITION OF A CERTIFYING OFFICER.....                                     | - 20 -        |
| E. MHDC ENVIRONMENTAL REVIEWER .....   | - 21 -        |
| <b>V. 24 CFR PART 58 AND PART 50</b> .....                                     | <b>- 22 -</b> |
| A. 24 CFR PART 58 .....  | - 22 -        |
| B. 24 CFR PART 50 .....  | - 22 -        |
| <b>VI. REVIEW TIMING (CHOICE LIMITING ACTIONS)</b> .....                       | <b>- 23 -</b> |
| A. OPTION AGREEMENT AND CONDITIONAL CONTRACTS .....                            | - 23 -        |
| <b>VII. PROJECT ERR RECORD</b> .....   | <b>- 24 -</b> |
| A. DEVELOP THE PROJECT DESCRIPTION AND CREATE A RECORD .....                   | - 24 -        |
| B. CREATING A PAPER RECORD.....  | - 24 -        |
| C. SOURCE DOCUMENTATION .....  | - 25 -        |
| <b>VIII. LEVEL OF REVIEW</b> .....   | <b>- 26 -</b> |
| A. DETERMINING LEVEL OF REVIEW REQUIRED .....                                  | - 26 -        |
| B. AGGREGATION.....  | - 26 -        |
| C. FIVE TYPES OF ENVIRONMENTAL REVIEWS: .....                                  | - 26 -        |
| <b>IX. ENVIRONMENTAL ANALYSIS (24 CFR PART 58)</b> .....                       | <b>- 28 -</b> |
| <b>X. ENVIRONMENTAL ANALYSIS (24 CFR PART 50)</b> .....                        | <b>- 30 -</b> |
| <b>XI. RECEIVING THE REVIEW DETERMINATION</b> .....                            | <b>- 31 -</b> |
| A. PROCEDURES FOR DETERMINED LEVEL OF ENVIRONMENTAL REVIEW .....               | - 31 -        |
| B. LEVEL OF DETERMINATION .....  | - 32 -        |
| C. TECHNICAL ASSISTANCE AND RESPONSIBILITIES .....                             | - 36 -        |
| D. PUBLICATIONS/NOTICES.....   | - 36 -        |
| <b>XII. CONDITIONS FOR APPROVAL</b> .....                                      | <b>- 38 -</b> |
| A. MONITORING AND ENFORCEMENT ACTIONS.....                                     | - 38 -        |
| B. ACCESS TO AND RETENTION OF RECORDS.....                                     | - 38 -        |
| <b>XIII. ENVIRONMENTAL REVIEW CHECKLISTS</b> .....                             | <b>- 39 -</b> |

|             |   |               |
|-------------|---|---------------|
| A.          | COMPLETING THE ERR CHECKLISTS.....  | - 39 -        |
| B.          | STATUTORY CHECKLIST.....  | - 39 -        |
| C.          | ENVIRONMENTAL PROJECT INFORMATION .....                                     | - 40 -        |
| D.          | HISTORIC PROPERTIES REQUIREMENTS.....                                       | - 40 -        |
| E.          | FLOODPLAIN MANAGEMENT/FLOODPLAIN OR WETLAND FINDINGS REQUIREMENTS .....     | - 42 -        |
| F.          | WETLAND PROTECTION.....   | - 46 -        |
| G.          | COASTAL ZONE MANAGEMENT REQUIREMENTS.....                                   | - 46 -        |
| H.          | SOLE SOURCE AQUIFER REQUIREMENTS .....                                      | - 46 -        |
| I.          | ENDANGERED SPECIES REQUIREMENTS.....  | - 47 -        |
| J.          | WILD AND SCENIC RIVERS REQUIREMENTS.....                                    | - 47 -        |
| K.          | AIR QUALITY MANAGEMENT REQUIREMENTS.....                                    | - 48 -        |
| L.          | FARMLAND PROTECTION REQUIREMENTS .....                                      | - 48 -        |
| M.          | MANMADE HAZARDS.....  | - 49 -        |
| N.          | AIRPORT HAZARDS (24 CFR PART 51 D).....                                     | - 51 -        |
| O.          | ENVIRONMENTAL JUSTICE.....  | - 51 -        |
| P.          | NOISE ABATEMENT AND CONTROL REQUIREMENTS .....                              | - 52 -        |
| Q.          | LEAD-BASED PAINT/LEAD IN SOILS (24 CFR PART 35) .....                       | - 53 -        |
| R.          | ASBESTOS (24 CFR PART 50.3) .....   | - 53 -        |
| S.          | RADON .....   | - 54 -        |
| T.          | ENVIRONMENTAL ASSESSMENT FACTORS AND ANALYSIS THAT MUST BE CONSIDERED. .... | - 54 -        |
| <b>XIV.</b> | <b>PHASE I &amp; II ENVIRONMENTAL SITE ASSESSMENTS .....</b>                | <b>- 56 -</b> |
| A.          | PHASE I ENVIRONMENTAL SITE ASSESSMENT (ESA).....                            | - 56 -        |
| B.          | PHASE II ENVIRONMENTAL SITE ASSESSMENT (ESA).....                           | - 56 -        |
| <b>XV.</b>  | <b>CONTACT WITH AGENCIES .....</b>  | <b>- 58 -</b> |
| <b>XVI.</b> | <b>HUD HEROS.....</b>   | <b>- 59 -</b> |
| A.          | HEROS AVAILABILITY .....  | - 59 -        |

## I. Introduction

The primary objectives of this document are to provide guidance to assist the developer in understanding the requirements for an environmental review by Missouri Housing Development Commission (MHDC). All developments requesting and receiving approval for low-income housing tax credits, fund balance loans, HOME funds, Risk Share Insurance, National Housing Trust Fund (HTF) and TCAP Income are required to pass an environmental review as a condition of financing. (Both non-Federally funded and HTF funded project guidelines will be addressed at the end of this guide.)

*NOTE: This guide is not be considered all inclusive. Please visit HUD's website at: <http://www.hudexchange.info/programs/environmental-review>. HUD regulations and guidelines should always be followed and will take precedence over state regulations.*

There are four (4) objectives of the Environmental Review Record (ERR) Process:

1. To comply with legal requirements
2. To assist in project planning and development
3. To determine if the proposed project will have an impact on the environment
4. To determine whether the environment will have an impact on the proposed project

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it complies with the National Environmental Policy Act (NEPA) and the regulations at 24 CFR part 58 and may also be subject to 24 CFR part 50 in certain cases. The "Steps" in this Guide breakdown the overall review into more manageable segments. National Housing Trust Fund is addressed in Section 12.

**Developments funded with federal funds** from MHDC will be subject to the following provisions noted in this guide. The environmental analysis includes both how the project can affect the environment and how the environment can affect the project, site, staff, and residents.

**NOTE: An environmental review *must* be performed and completed before any funds, regardless of source, are committed to a project.**

## II. Definitions

**Activities** – An action a grantee or developer puts forth as part of an assisted project regardless if the cost is borne by the use of HUD assistance or not. In other words you may not designate certain project activities for the use of federal funds and other activities as not.

**Certifying Officer** – Represent the responsible entity (RE) for environmental review matters and be subject to the jurisdiction of the Federal courts if the RE becomes involved in environmental litigation. Make sure all environmental procedural and record requirements are fully and properly satisfied. Ensure all necessary coordination functions required for environmental reviews are performed.

**Categorically Excluded (CE)** – Categorical exclusion are types of determinations which refer to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see 24 CFR part 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable federal environmental laws and authorities listed in 24 CFR part 58.5 is required for any categorical exclusion listed in paragraph (a) of section 24 CFR part 58.35.

- (Categorically Excluded Not Subject To) – (24 CFR part 58.35(B ((6) (b))
- (Categorically Excluded Subject To) - (24 CFR part 58.35(a)

### Code of Federal Regulations (CFR)

#### Department of Housing and Urban Development (HUD)

**Determination** – Level of review (Exempt, Categorical Exclusions, Environmental Assessment (EA), and Environmental Impact Statement (EIS))

**Environmental Assessment (EA)** – A type of determination and concise public document that serves to:

- Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS, a finding of significant impact (FOSI) or a finding of no significant impact (FONSI).
- Identify and discuss alternatives considered.
- Identify and discuss mitigation when relevant.
- Identify agencies and persons consulted and document their comments and concerns.

**Environmental Impact** – Any alteration of existing environmental conditions, or creation of a new set of environmental conditions either adverse or beneficial, caused in whole or in part, directly or indirectly, by a proposed project.

**Environmental Impact Statement (EIS)** – A much more complex determination that is beyond the EA. *MHDC does not conduct nor participate in any EIS.*

**Environmental Review Record (ERR)** –The documentation of the environmental review process including all assessments, published, published notices, notifications and correspondence relating to a specific project or group of projects. This must be properly documented and in the correct format.

**Exempt Activities** – A type of determination where activities for the documentation of compliance must be provided in the proper form and format.

**Finding of Significant Impact (FOSI)** – A result of a determination by the RE based on the EA that the activity is an action that will result in a significant impact on the quality of the human environment.

**Finding of No Significant Impact (FONSI)** – A result of a determination by the RE based on the EA that the activity is not an action that will result in a significant impact on the quality of the human environment.

**Mitigation / Modification** – Avoiding the impact by not taking certain actions; limiting the magnitude of an action; rectifying the impact by rehabilitating or restoring; reducing or eliminating the impact over time by preservation and maintenance operations; compensating for the impact by replacement or substitute resources.

**Project** – An activity, or a group of integrally related activities, designated by the recipient to accomplish, in whole or in part, a specific objective. The project as a whole shall be subject to a single environmental review in accordance with 24 CFR part 58 and 50.

**Responsible Entity (RE)** – MHDC is considered a non-recipient of the federal monies and in coordination with the developer conducts the environmental review, maintains an ERR, provides for public comment period, complies with all environmental laws, and provides environmental certification and funding requests.

**National Environmental Policy Act (NEPA)** – A United States environmental law that promotes the enhancement of the environment and establishes the President’s Council on Environmental Quality (CEQ). The law was enacted on January 1, 1970. Using the effects of their proposed actions, agencies also provide opportunities for public review and comment on those evaluations.

**Statutory Checklist** – A list of compliance requirements for Categorical Exclusion determinations.

### III. MHDC Environmental Review Requirements

#### A. Non-Federally Funded Developments

MHDC is responsible for the environmental reviews, including completing letters and forms for non-federally funded developments. The *Exhibit B* will be distributed to the developer. *A less intensive environmental review based on 24 CFR part 58 - 50 will be conducted on developments with no federal funding.* In those situations, state and local laws and regulation must also be followed similar documentation procedures will be used and the same determination and form usage will apply. The environmental review will not be subject to the Consultant review nor be entered into HEROS.

- Lead-based paint soils, asbestos, radon, vapor encroachment will all be tested for and addressed in the same manner as federally funded developments.
- Noise will be evaluated per the HUD DNL tool. No noise studies will be allowed by MHDC.
- 106 Historical Review is not a requirement and will not be addressed.
- Missouri does **not** require an environmental review comparable nor as comprehensive as NEPA. The environmental regulations are located in the Code of State Regulations, 10 CSR 20-4.050. Some of the issues covered are for example, lead based paint, asbestos, air quality, and wells.

#### Environmental Items for Submission to MHDC

As documented in the Exhibit B: Environmental Requirements Memo, the following items are required to be completed and submitted to MHDC. MHDC will compile the submitted information and conduct the environmental review in office. Developer's Analyst is not required to submit determination forms, partner worksheets, form or exhibits.

#### Reports

##### Phase I Environmental Site Assessment (ESA)

The Phase I ESA makes an initial determination as to the presence of hazardous substances as defined by CERCLA, and of petroleum and petroleum products. See Section XIV: Phase I & II Environmental Site Assessments for further details.

##### **The Phase I ESA must reflect the following:**

- The Phase I ESA must be prepared in accordance with the requirements of the current version of ASTM E 1527 "Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process." Use the format as specified in Appendix X4. Must incorporate a vapor encroachment screen performed in accordance with the current version of ASTM E 2600.
- Reliance Section - Must clearly indicate that MHDC is an authorized user of the report.

##### **Timing:**

- The Phase I ESA must be conducted (meaning the earliest of the **date of the site visit**, or records review, or interviews) within one year of its submission to MHDC. The report expires one year from the **[site visit]** date.
- No update or new report is required unless the scope of work changes.
- A Phase I ESA prepared prior to the MHDC application submission date is not acceptable.

### Phase II ESA (if applicable)

- The Phase II ESA is prepared to ascertain whether the recognized environmental conditions (RECs) have resulted in the presence of hazardous substances as defined by CERCLA, and / or petroleum and petroleum products at a level that would exceed local, state, tribal, and federal (LSTF) unrestricted criteria de minimis levels.
- **The Phase II ESA must reflect the following:**
- Must be prepared in accordance with the most current version of ASTM E 1903 “Environmental Site Assessments: Phase II Environmental Site Assessment Process” and / or other appropriate ASTM assessments.
- It need not be a complete site characterization (total nature and distribution) of contamination, but must proceed to a point where it indicates the location of greatest concentration of risk, taken into consideration all of the RECs identified in the Phase I ESA.
- Must clearly indicate that MHDC is an authorized users of the report and can rely on the report.

#### **Timing:**

- Submit the Phase II after the application has been approved.

### Lead Based Paint (LBP)

(24 CFR part 35)

*This is general guidance, please refer to the HUD website for compliance details and analysis.*

The Residential Lead-Based Paint Hazard Reduction Act of 1992 requires the Secretary of HUD to “establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage or housing assistance payments under a program administered by the Secretary of HUD.” HUD interpreted the phrase housing and applied the requirement to virtually all HUD programs. In 24 CFR part 35, the requirements relating to inspection, assessment, and abatement are addressed. Lead based paint and lead in soils investigation per HUD regulations.

- **A Risk Assessment is required for the property.** Soils testing is part of a risk assessment. This is based on the online HUD Lead-Based Paint Compliance Advisor analysis. (<https://portalapps.hud.gov/CORVID/corvidsr>) This investigation must align with federal (HUD) and state regulations with documentation.
- Lead based paint investigations are **required for structures built prior to Jan. 1, 1978.**
- All investigations and work including, mitigation / abatement, inspections, risk assessments, clearance inspections, certificates, and licenses must be HUD compliant and documentation provided. These certifications/licenses must be issued from the state the testing and/or mitigation is being done, if the state has this requirement.
- All tenants or owner occupants shall be provided with the lead hazard information pamphlet. (as applicable)
- Rehabilitation projects that do not disturb a painted surfaces and those projects that are certified as being previously abated or certified as being lead-based paint free; may be considered exempt from testing. Complete supporting documentation of these activities must accompany the certification.



- Must clearly indicate that MHDC is an authorized user of the report and can rely on the report.

### Asbestos

(24 CFR part 50.3)

*This is general guidance, refer to the HUD website for specific compliance details and analysis.*

- All investigations and work including, mitigation / abatement, inspections, clearance inspections, certificates, and licenses must be HUD compliant and complete documentation provided. These certifications/licenses must be issued from the state the testing and/or mitigation is being done, if the state has this requirement.
- Asbestos investigations are **required regardless of the original construction date.**
- Asbestos investigations are required **for ALL structures that will be demolished.** Regardless of the age of the structure.
  - For any structures on the site which are to be demolished, a comprehensive building asbestos survey by a qualified asbestos inspector is required. It must be performed pursuant to the “pre-construction survey” requirements of the most current version of ASTM E 2356, “Standard Practice for Comprehensive Building Asbestos Surveys.”
- In cases where suspect asbestos is found, it will be assumed to be asbestos or testing performed to confirm the presence of asbestos.
- All asbestos abatement shall be done in accordance with the EPA requirements for air pollution prevention pursuant to 40 CFR, subpart M especially, 40 CFR part 61.145 and OSHA requirements for Worker Protection, pursuant to 29 CFR part 1926.1101, and any LSTF asbestos abatement and worker protection rules.
- Must clearly indicate that MHDC is an authorized user of the report and can rely on the report.

### Radon

MAP Guide 9.5.C. (January 2016) – **Radon**

MAP Guide 9.5.C (January 2016) is update periodically without the entire MAP Guide being updated. **Make sure the current version of the MAP Guide is being used. Including the most current versions of the embedded referenced documents within the MAP Guide.**

### SWPPP (Storm Water Pollution and Prevention Plan)

- Storm Water Pollution Prevention Plan (SWPPP) – Any site disturbing more than one acre of ground must obtain a Land Disturbance Permit [LDP] from the Missouri Department of Natural Resources (MDNR).
- The contractor working with the owner to insure that the construction site, its activities and impact on the site will be kept to a minimum. That such activity will not penetrate the boundaries of the development site or alter the natural state of surrounding properties. The owner agrees to insure the contractor’s assignment to install, monitor and maintain assemblies including silt fences, detention ponds, temporary trenches and ravines to fully direct and/or clarify all storm water runoff, and insure the isolation and control of all machine base fluids, construction fluids, wastes and solids minimally associated with construction activities. Special attention shall be given to the release of surface rain water runoff during periods of heavy storms.

### Floodplain

MHDC may consider proposals to construct, restore or renovate affordable housing in 100-year and 500-year floodplains. (Excluding Floodways) Such proposals shall include flood mitigation components, including but not limited to:

- Whenever possible the design should place all building improvements, ingress and egress outside of the floodplain.
- Construction design flood mitigation features.
- Flood Insurance
- An emergency plan to evacuate and re-locate residents, including a proposal to fund such evacuation and re-location.
- Prior to lease signing, written and acknowledged notice to prospective residents that the development is in a floodplain.

## **B. Federally Funded Developments: National Housing Trust Fund**

### **National Housing Trust Fund (NHTF)**

The Developers Environmental Analyst will be responsible for providing the MHDC Environmental Consultant and MHDC Environmental Reviewer with the environmental review for developments with HTF monies in the MHDC funded portion. HUD regulations and guidelines must be applied. Consult the HUD website, <http://www.hudexchange.info/programs/environmental-review>.

HTF alone cannot be entered into the HEROS System or developments with a combination of HTF and other federal monies. However, MHDC is responsible for pursuing the HUD Release of Funds if HOME and /or Risk Share Insurance is also part of the MHDC funding.

- Environmental evaluations are similar to 24 CFR part 58 and 50 but differ in significant ways.
- The environmental review for HTF mixed with other federal funding (HOME, Risk Share Insurance) in the MHDC funded portion have restrictions. MHDC is responsible for the non-federal environmental review for a development with, for example, HTF and Tax Credits. The Analyst is responsible for the HTF portion of the review.
- HTF environmental regulations takes precedence over the other federal funding in the MHDC funded portion.
- *If there are federal monies in the MHDC funded portion that require HUD Authority to Grant Funds (HUD Release of Funds) then that must be obtained by MHDC.*
- MHDC will not be using HTF monies in rehabilitation developments.

### **Environmental Items for Submission to MHDC**

As documented in the Exhibit B: Environmental Requirements Memo, the following items are required to be completed and submitted to MHDC. Please use the current version of (24 CFR part 93.301(f)(1), 24 CFR part 93.301(f)(2), HUD Notice CPD-16-14) HTF Worksheets. If the project requires an environmental assessment the Developer's Analyst will be responsible for the NEPA issues. MHDC will complete the Additional Issues.

## HTF NEPA Issues

See Section XIII: Environmental Review Checklists for further details.

### Airport Zones

- 24 CFR Part 51 subpart D
- Suggested exhibit: AirNav.com

### Historic Preservation

- National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800
- MHDC will do the Informal Consultation. Forward the response to the Analyst.
- The 106 application must be completed by the Analyst with MHDC as the **contact**. MHDC will review and mail the application to SHPO. The SHPO response will be forwarded to the Analyst by MHDC.
- Indian Lands – MHDC will do the Informal Consultation. Forward the response to the Analyst. MHDC will contact the appropriate Indian tribes. Contact the tribes and forward letters and responses to the Analyst.

### Farmland Protection Policy Act

- Farmland Protection Policy Act of 1981, particularly sections 1504(B) and 1541; 7 CFR Part 658
- MHDC will do the Informal Consultation and forward the response to the Analyst.
- Suggested exhibit: U.S. Census Bureau / TIGERweb map. Choose the current census (as of this writing it is the 2010 census). Under Urban Areas choose Urbanized Areas only.

### Floodplains

- Executive Order 11988, particularly section 2(a); 24 CFR Part 55
- Suggested exhibit: Current FEMA Map

### Wetland

- Executive Order 11990, particularly sections 2 and 5
- U.S. Fish and Wildlife Wetland Mapper

### Contamination

- A Phase I ESA is required. Phase II (if applicable)

### Endangered Species

- Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402
- MHDC will do the Informal Consultation and forward the response to the Analyst.

### Wild and Scenic Rivers

- Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)

- MHDC will do the Informal Consultation and forward the response to the Analyst.

### Explosive and Flammable Operations

- 24 CFR Part 51 subpart C
- HUD Regulations have been updated as of 2020. HUD document: Addressing the Acceptable Separation Distance for Residential Propane Tanks Final Rule in HEROS.
- The HUD Acceptable Separation Distance must be calculated if applicable using the HUD online tool.

### Environmental Justice

- Executive Order 12898

## Reports

### Phase I Environmental Site Assessment (ESA)

The Phase I ESA makes an initial determination as to the presence of hazardous substances as defined by CERCLA, and of petroleum and petroleum products. See Section XIV: Phase I & II Environmental Site Assessments for further details.

#### **The Phase I ESA must reflect the following:**

- The Phase I ESA must be prepared in accordance with the requirements of the current version of ASTM E 1527 “Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process.” Use the format as specified in Appendix X4. Must incorporate a vapor encroachment screen performed in accordance with the current version of ASTM E 2600.
- Reliance Section - Must clearly indicate that MHDC is an authorized user of the report.

#### **Timing:**

- The Phase I ESA must be conducted (meaning the earliest of the **date of the site visit**, or records review, or interviews) within one year of its submission to MHDC. The report expires one year from the **[site visit]** date.
- No update or new report is required unless the scope of work changes.
- A Phase I ESA prepared prior to the MHDC application submission date is not acceptable.

### Phase II ESA (if applicable)

- The Phase II ESA is prepared to ascertain whether the recognized environmental conditions (RECs) have resulted in the presence of hazardous substances as defined by CERCLA, and / or petroleum and petroleum products at a level that would exceed local, state, tribal, and federal (LSTF) unrestricted criteria de minimis levels.
- **The Phase II ESA must reflect the following:**
- Must be prepared in accordance with the most current version of ASTM E 1903 “Environmental Site Assessments: Phase II Environmental Site Assessment Process” and / or other appropriate ASTM assessments.

- It need not be a complete site characterization (total nature and distribution) of contamination, but must proceed to a point where it indicates the location of greatest concentration of risk, taken into consideration all of the RECs identified in the Phase I ESA.
- Must clearly indicate that MHDC is an authorized users of the report and can rely on the report.

**Timing:**

- Submit the Phase II after the application has been approved.

**Lead Based Paint (LBP)**

(24 CFR part 35)

*This is general guidance, please refer to the HUD website for compliance details and analysis.*

The Residential Lead-Based Paint Hazard Reduction Act of 1992 requires the Secretary of HUD to “establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage or housing assistance payments under a program administered by the Secretary of HUD.” HUD interpreted the phrase housing and applied the requirement to virtually all HUD programs. In 24 CFR part 35, the requirements relating to inspection, assessment, and abatement are addressed. Lead based paint and lead in soils investigation per HUD regulations.

- **A Risk Assessment is required for the property.** Soils testing is part of a risk assessment. This is based on the online HUD Lead-Based Paint Compliance Advisor analysis. (<https://portalapps.hud.gov/CORVID/corvidsr>) This investigation must align with federal (HUD) and state regulations with documentation.
- Lead based paint investigations are **required for structures built prior to Jan. 1, 1978.**
- All investigations and work including, mitigation / abatement, inspections, risk assessments, clearance inspections, certificates, and licenses must be HUD compliant and documentation provided. These certifications/licenses must be issued from the state the testing and/or mitigation is being done, if the state has this requirement.
- All tenants or owner occupants shall be provided with the lead hazard information pamphlet. (as applicable)
- Rehabilitation projects that do not disturb a painted surfaces and those projects that are certified as being previously abated or certified as being lead-based paint free; may be considered exempt from testing. Complete supporting documentation of these activities must accompany the certification.
- Must clearly indicate that MHDC is an authorized user of the report and can rely on the report.

**Asbestos**

(24 CFR part 50.3)

*This is general guidance, refer to the HUD website for specific compliance details and analysis.*

- All investigations and work including, mitigation / abatement, inspections, clearance inspections, certificates, and licenses must be HUD compliant and complete documentation provided. These certifications/licenses must be issued from the state the testing and/or mitigation is being done, if the state has this requirement.

- Asbestos investigations are **required regardless of the original construction date.**
- Asbestos investigations are required **for ALL structures that will be demolished.** Regardless of the age of the structure.
  - For any structures on the site which are to be demolished, a comprehensive building asbestos survey by a qualified asbestos inspector is required. It must be performed pursuant to the “pre-construction survey” requirements of the most current version of ASTM E 2356, “Standard Practice for Comprehensive Building Asbestos Surveys.”
- In cases where suspect asbestos is found, it will be assumed to be asbestos or testing performed to confirm the presence of asbestos.
- All asbestos abatement shall be done in accordance with the EPA requirements for air pollution prevention pursuant to 40 CFR, subpart M especially, 40 CFR part 61.145 and OSHA requirements for Worker Protection, pursuant to 29 CFR part 1926.1101, and any LSTF asbestos abatement and worker protection rules.
- Must clearly indicate that MHDC is an authorized user of the report and can rely on the report.

### Radon

MAP Guide 9.5.C. (January 2016) – **Radon**

MAP Guide 9.5.C (January 2016) is update periodically without the entire MAP Guide being updated. **Make sure the current version of the MAP Guide is being used. Including the most current versions of the embedded referenced documents within the MAP Guide.**

### SWPPP (Storm Water Pollution and Prevention Plan)

- Storm Water Pollution Prevention Plan (SWPPP) – Any site disturbing more than one acre of ground must obtain a Land Disturbance Permit [LDP] from the Missouri Department of Natural Resources (MDNR).
- The contractor working with the owner to insure that the construction site, its activities and impact on the site will be kept to a minimum. That such activity will not penetrate the boundaries of the development site or alter the natural state of surrounding properties. The owner agrees to insure the contractor’s assignment to install, monitor and maintain assemblies including silt fences, detention ponds, temporary trenches and ravines to fully direct and/or clarify all storm water runoff, and insure the isolation and control of all machine base fluids, construction fluids, wastes and solids minimally associated with construction activities. Special attention shall be given to the release of surface rain water runoff during periods of heavy storms.

## **C. Federally Funded Developments: HOME and HOME-ARP**

### **Environmental Items for Submission to MHDC**

As documented in the Exhibit B: Environmental Requirements Memo, the following items are required to be completed and submitted to MHDC. Please use the current version of the HUD Partner Worksheets for the determination indicated on the Exhibit B. Submission of documents must include the write up and appropriate exhibits from state and/or federal sources.

## 24 CFR Part 58 Issues

See Section XIII: Environmental Review Checklists for further details.

### Airport Hazards

- 24 CFR Part 51 subpart D
- Suggested exhibit: AirNav.com

### Flood Insurance

- Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994) [42 USC 4001-4128 and 42 USC 5154a]
- Suggested exhibit: Current FEMA Map.

### Clean Air Act

- Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93
- Suggested exhibit: EPA Missouri Nonattainment / Maintenance Status for Each County By Year For All Criteria Pollutants

### Contamination and Toxic Substances

- 24 CFR Part 50.3(i) & 58.5(i)(2))
- A Phase I ESA is required, Phase II (if applicable)

### Endangered Species

- Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402)
- MHDC will do the Informal Consultation and forward the response to the Analyst.

### Environmental Justice

- Executive Order 12898

### Explosive and Flammable Operations

- 24 CFR Part 51 subpart C
- HUD Regulations have been updated as of 2020. HUD document: Addressing the Acceptable Separation Distance for Residential Propane Tanks Final Rule in HEROS.
- The HUD Acceptable Separation Distance must be calculated if applicable using the HUD online tool.

### Farmland Protection Policy Act

- Farmland Protection Policy Act of 1981, particularly sections 1504(B) and 1541; 7 CFR Part 658
- MHDC will do the Informal Consultation. Forward the response to the Analyst.
- Suggested exhibit: U.S. Census Bureau / TIGERweb map. Choose the current census (as of this writing it is the 2010 census). Under Urban Areas choose Urbanized Areas only.

### Floodplain Management

- Executive Order 11988, particularly section 2(a); 24 CFR Part 55
- Suggested exhibit: Current FEMA Map.
- As applicable, MHDC will complete the HUD 8 Step Process for floodplains and wetlands.

### Historic Preservation

- National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800
- MHDC will do the Informal Consultation. Forward the response to the Analyst.
- The 106 application must be completed by the Analyst with MHDC as the **contact**. MHDC will review and mail the application to SHPO. The SHPO response will be forwarded to the Analyst by MHDC.
- Indian Lands – MHDC will do the Informal Consultation. Forward the response to the Analyst. MHDC will contact the appropriate Indian tribes. Contact the tribes and forward letters and responses to the Analyst.

### Noise Abatement and Control HUD Environmental Standards

- Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 subpart B
- MHDC will evaluate the noise level and forward the information to the Analyst. HUD does not allow noise studies.

### Wetland Protection

- Executive Order 11990, particularly sections 2 and 5
- U.S. Fish and Wildlife Wetland Mapper
- If a wetland survey is requested by MHDC use the following: Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (version 2.0) / Aug. / 2010. (Please use the most current version)
- As applicable, MHDC will complete the HUD 8 Step Process for floodplains and wetlands. This is required for federal funding for jurisdictional and non-jurisdictional wetlands.

### Wild and Scenic Rivers

- Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)
- MHDC will do the Informal Consultation and forward the response to the Analyst.

## Reports

### Phase I Environmental Site Assessment (ESA)

The Phase I ESA makes an initial determination as to the presence of hazardous substances as defined by CERCLA, and of petroleum and petroleum products. See Section XIV: Phase I & II Environmental Site Assessments for further details.

#### **The Phase I ESA must reflect the following:**

- The Phase I ESA must be prepared in accordance with the requirements of the current version of ASTM E 1527 “Standard Practice for Environmental Site Assessments, Phase I



Environmental Site Assessment Process.” Use the format as specified in Appendix X4. Must incorporate a vapor encroachment screen performed in accordance with the current version of ASTM E 2600.

- Reliance Section - Must clearly indicate that MHDC is an authorized user of the report.

**Timing:**

- The Phase I ESA must be conducted (meaning the earliest of the **date of the site visit**, or records review, or interviews) within one year of its submission to MHDC. The report expires one year from the **[site visit]** date.
- No update or new report is required unless the scope of work changes.
- A Phase I ESA prepared prior to the MHDC application submission date is not acceptable.

Phase II ESA (if applicable)

- The Phase II ESA is prepared to ascertain whether the recognized environmental conditions (RECs) have resulted in the presence of hazardous substances as defined by CERCLA, and / or petroleum and petroleum products at a level that would exceed local, state, tribal, and federal (LSTF) unrestricted criteria de minimis levels.
- **The Phase II ESA must reflect the following:**
- Must be prepared in accordance with the most current version of ASTM E 1903 “Environmental Site Assessments: Phase II Environmental Site Assessment Process” and / or other appropriate ASTM assessments.
- It need not be a complete site characterization (total nature and distribution) of contamination, but must proceed to a point where it indicates the location of greatest concentration of risk, taken into consideration all of the RECs identified in the Phase I ESA.
- Must clearly indicate that MHDC is an authorized users of the report and can rely on the report.

**Timing:**

- Submit the Phase II after the application has been approved.

Lead Based Paint (LBP)

(24 CFR part 35)

*This is general guidance, please refer to the HUD website for compliance details and analysis.*

The Residential Lead-Based Paint Hazard Reduction Act of 1992 requires the Secretary of HUD to “establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage or housing assistance payments under a program administered by the Secretary of HUD. HUD interpreted the phrase housing and applied the requirement to virtually all HUD programs. In 24 CFR part 35, the requirements relating to inspection, assessment, and abatement are addressed. Lead based paint and lead in soils investigation per HUD regulations.

- **A Risk Assessment is required for the property.** Soils testing is part of a risk assessment. This is based on the online HUD Lead-Based Paint Compliance Advisor analysis. (<https://portalapps.hud.gov/CORVID/corvidsr>) This investigation must align with federal (HUD) and state regulations with documentation.

- Lead based paint investigations are **required for structures built prior to Jan. 1, 1978.**
- All investigations and work including, mitigation / abatement, inspections, risk assessments, clearance inspections, certificates, and licenses must be HUD compliant and documentation provided. These certifications/licenses must be issued from the state the testing and/or mitigation is being done, if the state has this requirement.
- All tenants or owner occupants shall be provided with the lead hazard information pamphlet. (as applicable)
- Rehabilitation projects that do not disturb a painted surfaces and those projects that are certified as being previously abated or certified as being lead-based paint free; may be considered exempt from testing. Complete supporting documentation of these activities must accompany the certification.
- Must clearly indicate that MHDC is an authorized user of the report and can rely on the report.

### Asbestos

(24 CFR part 50.3)

*This is general guidance, refer to the HUD website for specific compliance details and analysis.*

- All investigations and work including, mitigation / abatement, inspections, clearance inspections, certificates, and licenses must be HUD compliant and complete documentation provided. These certifications/licenses must be issued from the state the testing and/or mitigation is being done, if the state has this requirement.
- Asbestos investigations are **required regardless of the original construction date.**
- Asbestos investigations are required **for ALL structures that will be demolished.** Regardless of the age of the structure.
  - For any structures on the site which are to be demolished, a comprehensive building asbestos survey by a qualified asbestos inspector is required. It must be performed pursuant to the “pre-construction survey” requirements of the most current version of ASTM E 2356, “Standard Practice for Comprehensive Building Asbestos Surveys.”
- In cases where suspect asbestos is found, it will be assumed to be asbestos or testing performed to confirm the presence of asbestos.
- All asbestos abatement shall be done in accordance with the EPA requirements for air pollution prevention pursuant to 40 CFR, subpart M especially, 40 CFR part 61.145 and OSHA requirements for Worker Protection, pursuant to 29 CFR part 1926.1101, and any LSTF asbestos abatement and worker protection rules.
- Must clearly indicate that MHDC is an authorized user of the report and can rely on the report.

### Radon

MAP Guide 9.5.C. (January 2016) – **Radon**

MAP Guide 9.5.C (January 2016) is update periodically without the entire MAP Guide being updated. **Make sure the current version of the MAP Guide is being used. Including the most current versions of the embedded referenced documents within the MAP Guide.**

### SWPPP (Storm Water Pollution and Prevention Plan)

- Storm Water Pollution Prevention Plan (SWPPP) – Any site disturbing more than one acre of

ground must obtain a Land Disturbance Permit [LDP] from the Missouri Department of Natural Resources (MDNR).

- The contractor working with the owner to insure that the construction site, its activities and impact on the site will be kept to a minimum. That such activity will not penetrate the boundaries of the development site or alter the natural state of surrounding properties. The owner agrees to insure the contractor's assignment to install, monitor and maintain assemblies including silt fences, detention ponds, temporary trenches and ravines to fully direct and/or clarify all storm water runoff, and insure the isolation and control of all machine base fluids, construction fluids, wastes and solids minimally associated with construction activities. Special attention shall be given to the release of surface rain water runoff during periods of heavy storms.

## D. Environmental Review DIFFERENCES between HTF and 24 CFR Part 58 & 50

This is a general summary of HTF (HUD Notice CPD-16-14). HTF does not require consultations. HUD approved procedure and documentation is required. Consult the HUD website at the following link: (<http://www.hudexchange.info/programs/environmental-review>).

- **Historic Preservation** – The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing on the National Register of Historic Places, unless the project activities meet the Secretary of the Interior's Standards for rehabilitation, either as certified through the Federal and / or State historic tax credit programs or as verified by someone that meets the relevant Secretary of the Interior's Professional Qualification Standards. This must be documented.
  - This means an **official finding** of "No Adverse Effect" is required.
- **Farmlands** – Project activities must not result in the conversion of unique, prime, or statewide or locally significant agricultural properties to urban uses.
  - No remediation is allowed.
- **Airport Zones** – Developments are not permitted within the runway protection zones of civilian airports, or the clear zones or accident potential zones of military airfields.
  - No remediation is allowed.
- **Floodplains** – No HTF assistance may be approved with respect to the following.
  - Any action, other than a functionally dependent use (Housing is not a functionally dependent use.) located in a floodway.
  - Any new construction critical action, located in a coastal high hazard area, or 100 and / or 500 (critical action) year floodplain.
  - Any non-critical action new construction action in a coastal high hazard area, unless the action is reconstruction following destruction caused by a disaster.
  - HUD 8 Step Process is **not** allowed.
- **Wetland** – (A) No draining, dredging, channelizing, filling diking, impounding, or related grading activities are to be performed in wetlands. No activities, structures, or facilities funded under this program are to adversely impact a wetland. (B) A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland

areas separated from their natural supply of water as a result of activities, such as the construction of structural flood protection methods or solid-fill road beds, or mineral extraction and navigation improvements. This definition is independent of the definition of jurisdictional wetland used by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Please refer to the HUD website.

- HUD 8 Step Process is **not** allowed.
- **Contamination** – All proposed multi-family (more than 4 housing units) HTF-funded developments require a Phase I ESA and any required follow-up. The report must be per HUD standards using the current version of ASTM E 1527.
  - HTF-funded developments must avoid sites located within 0.25 miles of a Superfund or CERCLIS site or other contaminated site reported to federal, state, or local authorities without a statement in writing from the EPA or the appropriate state agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended use of the property. This informal consultation can be developed by the Analyst, but the MHDC Environmental Reviewer must send the letters and exhibits and receive the responses.
- **Noise** – All activities will be developed to ensure an interior noise level of no more than 45 dB. Exterior noise levels must not exceed 65 dB.
  - Noise must be evaluated and remediated if required. (noise walls, appropriate construction materials, site planning, etc. per HUD regulations and guidelines)
  - The HUD web-based Noise Calculator (DNL) and HUD Noise Guidebook must be used. No outside noise studies are allowed per HUD regulations.
  - Use of an acoustical engineer familiar with HUD regulations is highly encouraged.
  - Locations with noise levels of 75 dB or greater may not have noise sensitive outdoor uses.
- **Safe Drinking Water** – Developments with a potable water system must use only lead-free pipes, solder, and flux.

## E. Environmental Review SIMILARITIES between HTF and 24 CFR Part 50 & 58

The following are the remaining NEPA issues to be evaluated under HTF. These issues are reviewed and dealt with in the same manner as 24 CFR part 58 – 50 reviews.

- Explosive and Hazards
- Endangered Species
- Wild and Scenic Rivers
- Coastal Barrier Resources System
- Coastal Zone Management
- Sole Source Aquifer

## IV. Responsible Entity

### A. Responsible Entity

The Responsible Entity (MHDC) must document that their projects and activities are in compliance with HUD and all other environmental requirements explained in this general guide. Under 24 CFR part 58.2(a) (7); the responsible entity includes the following:

- A grant recipient of federal funding including HOME funds,
- A state, unit of local or county government, Indian tribe,
- Non-recipient responsible entities are defined as:
  - Qualified Housing Finance Agency;
  - The State (MHDC);
  - Unit of general local government;
  - Indian tribe whose jurisdiction contains the project site;
  - For public housing agencies, the unit of general local government within which the project is located that exercises land-use responsibility

### B. What is not considered a Responsible Entity (RE)?

Governmental entities with special or limited purposes powers such as public housing agencies, Indian housing agencies, qualified housing finance agencies, non-profit organizations, redevelopment authorities, and other entities cannot serve as “responsible entities” assuming HUD’s environmental review responsibilities under 24 CFR part 58 and 50.

### C. MHDC as Responsible Entity

For qualifying proposals, MHDC shall undertake and assume the following environmental responsibilities for federally funded developments as identified in 24 CFR part 58.18:

- HEROS entry
- Monitor and enforce programs for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.
- Submit the Request for Release of Funds (RROFs) and obtain Certification (ROFs) from HUD pursuant to 24 CFR part 58.70 and 58.71 and perform other related review and approval responsibilities regarding release of federal funds from HUD.
- Ensure that the time period set for the receipt and disposition of comments, objections, and appeals (if any) on development is followed.
- After MHDC has satisfied all of the environmental review requirements including the required comment period and has submitted their environmental review package to HUD and after the Release of Funds is received by MHDC, the Firm Commitment will then be forwarded to the Developer who may commence the closing process for the approved project working in conjunction with the MHDC underwriter.

### D. Definition of a Certifying Officer

The Environmental Review forms and notices must be reviewed and completed by the funded agency’s designated Certifying Officer. This should be a staff person with expertise to complete

these documents and will be responsible for ensuring environmental compliance with the project. These forms will be generated through the HEROS System after information is uploaded by the MHDC Environmental Consultant and MHDC Environmental Reviewer.

Under the terms of the certification required by 24 CFR part 58.71, a responsible entity's certifying officer is the "responsible federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in 24 CFR part 58.1(b).

The Certifying Officer will:

- Be responsible for all the requirements of sections 102 of NEPA and the related provisions in 40 CFR parts 1500 - 1508, and 24 CFR part 58, including the related federal authorities listed in 24 CFR part 58.5.
- Represent the responsible entity and be subject to the jurisdiction of the federal courts. The Certifying Officer will not be represented by the Department of Justice in court
- Ensure that the responsible entity reviews and comments on all Environmental Impact Statements (EIS) prepared for federally-funded developments that may have an impact on MHDC's programs. (**MHDC does not become involved with EIS.**)

## E. MHDC Environmental Reviewer

Required responsibilities of an MHDC designated "Environmental Reviewer" include the review of all environmental documents submitted from developers seeking to receive federal funding for proposed developments. These documents, as appropriate to the project, include but may not be limited to:

- Statutory Checklist with all Required Attachments
- Requirements listed at 24 CFR part 58.6 with all Required Attachments
- Environmental Assessment with all Required Attachments

Environmental Reviewers for MHDC – Contact Information:

Karen Justice  
920 Main St, Suite 1400  
Kansas City, MO 64105  
Ph.# (816) 759-6842  
[kjustice@mhdc.com](mailto:kjustice@mhdc.com)

Jason Cline  
920 Main St, Suite 1400  
Kansas City, MO 64105  
Ph.# (816) 759-2888  
[jason.cline@mhdc.com](mailto:jason.cline@mhdc.com)

## V. 24 CFR Part 58 and Part 50

When beginning the environmental review process, a determination must first be made as to whether the HUD assistance falls under a 24 CFR part 58 or part 50 environmental review. This is usually specified in the Notice of Funding Availability, program regulations, or legislation. Part 58 and part 50 are the sections of HUD regulations that implement that National Environmental Policy Act (NEPA).

### A. 24 CFR Part 58

HUD regulations at 24 CFR part 58 allow the assumption of authority to perform the environmental reviews by responsible entities. The responsible entity is responsible for the scope and content of the review and determining the finding. The certifying officer of the responsible entity signs the review and takes legal responsibility for the review.

HUD responsibilities under 24 CFR part 58 are limited. HUD will receive the Request for Release of Funds and Certification (HUD form 7015.15) from the responsible entity and will also periodically conduct in-depth audit of responsible entities' environmental review records. *Please be aware that the HEROS database allows HUD, and other agencies, to review, monitor and audit environmental reviews at any time.*

Section 58.30 – The Environmental Review Procedures – consist of all actions that a responsible entity must take to determine compliance with this part and will be reflected throughout this guide. As this guide is not all inclusive, for additional guidance, please refer to 24 CFR part 58 at [www.hud.gov](http://www.hud.gov).

### B. 24 CFR Part 50

#### **Part 50 applies to programs where HUD performs the environmental reviews.**

HUD regulations at 24 CFR part 50 applies when program legislation does not delegate the authority to assume responsibility to the local government. Part 50 may also apply when local government was not a direct recipient of the funds and refuses to accept responsibility or when HUD determines the local government does not have capacity to act as responsible entity.

Public Housing Authorities are not units of local government and can't assume environmental responsibility under 24 CFR part 58. PHA's can work with their unit of local government to complete reviews under part 58, or directly with HUD to complete reviews under part 50.

## VI. Review Timing (Choice Limiting Actions)

HUD's regulations at 24 CFR part 58.22 prohibit developers and their partners from committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review once a project has become "federal." This is known as "choice-limiting actions" which prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions.

However, when the proposal is to receive **federal funding** the developer will need to cease further choice-limiting actions on the project, beginning when application is made to MHDC and up until the point of MHDC obtaining the HUD Release of Funds. However, MHDC and HUD would prefer choice limiting actions to cease prior to submission of the application. These choice limiting actions including acquiring, leasing, repairing, rehabilitating, converting, or demolishing properties or undertaking any construction or pre-construction activities prior to environmental clearance. Federal and non-federal monies must not be committed to the project.

### Exceptions

Certain activities are allowable without the HUD Authority to Use Grant Funds (AUGF). These include:

- Environmental and other studies, resource identification, and the development of plans and strategies.
- Information and financial services.
- Administrative and management activities.

### A. Option Agreement and Conditional Contracts

Option Agreements and Conditional Contracts for grantees to obtain site control while allowing time to complete the environmental review. (24 CFR 58.22)

- **Option Agreements** – These have a broader use than conditional contracts and obligates the seller only. These are usually used for new construction, rehabilitation, and / or demolition of existing structures.
- **Conditional Contracts** – Are not allowed by HUD regardless of the terms.



## VII. Project ERR Record

### A. Develop the Project Description and Create a Record

A complete and clear project description is the foundation of the environmental review process. Developers must carefully define the project as it is critical in determining the level of environmental review required.

The project description should capture the maximum anticipated scope of the proposal, not just a single activity that the money is going toward. It should include all contemplated actions that are a composite part of the project. This includes environmental issues associated with the site.

*For example: A proposal consists of 8 single story row buildings with 36 one bedroom, and 12-2 bedroom units for a total of 48 affordable units for seniors. Before construction commences, a single family home must be demolished. (The project activities must include not only new construction of those units, but also include the demolition of the existing single family home and documentation to this effect.)*

In the above example, the inclusion of demolition as an activity helps ensure proper evaluation for violations such as the National Historic Preservation Act, contamination review related to asbestos and lead materials, public awareness, etc. that may have been missed otherwise.

Activities should be aggregated according to the regulations at 24 CFR part 58.32, which says that a responsible entity must group together and evaluate as a single project all individual activities which are related either on the geographical or functional basis, or both, or are logical parts of a composite of contemplated actions (see Section 6 of this guide).

**The project description in whole or in part should remain identical on all forms and correspondence.**

At a **minimum**, the project description should contain the following:

- ALL proposed project activities by all funding sources, described in detail.
- Entire project scope and all phases of the project from beginning to end.
- Exact project location(s) / area(s), supported by a location map with site(s) boundaries outlined.
- Color photographs, site plans, project plans, renderings and maps (e.g. topographic, aerial)
- Total project costs by all funding sources. Each funding source, type of funding and amount must be listed separately.
- Existing environment on and around the project site and how it is expected to change as a result of the project (one example is traffic flow).
- Temporary impacts anticipated by construction activities and a timeline for construction.
- Other information as recommended by HUD, environmental agencies, and project professionals.
- Keep the description write up as brief and concise as possible.

### B. Creating a Paper Record

The HEROS System will generate a paper record. This record along with all reports, exhibits, etc. that MHDC will attach to the file make up the Environmental Review Record (ERR) that will be kept on file at MHDC. The ERR must document the impact of the entire project, not just the portion funded by MHDC.

## C. Source Documentation

Each Environmental Review Record must contain HUD approved source documentation for all determinations made. Below are some examples of acceptable types of source documentation. Each must be traceable and must establish a factual basis for the determination.

- **On-Site or Field Observation**

An on-site visit may involve any testing or measurements. Persons making observations of field conditions must have expertise in the area in which they are commenting. The date of the visit, the name, and qualifications of the person making the visit must be documented.

- **Personal Contact**

This is useful when the person contacted is an acceptable authority on the subject. Contact can be made by email, letter, telephone, or personal visit. Documentation must include: the date of the contact; the person making the contact; the name, title and telephone number of the person contacted; an explanation as to why the person is an authority if such is not obvious (city engineer, professor of archeology, etc.); and a summary of the questions and responses.

- **Resource Materials**

Detailed information can be found in comprehensive land use plans, maps, statistical surveys and studies. The materials must be current and have followed acceptable regulations and methodologies. If the actual materials are not included in the ERR, the citation should include enough information so that anyone reviewing the ERR can determine the relationship of the material to the project. The actual materials must be available for review upon request. A special study may be conducted for an individual factor (such as an archeological survey) and must be performed by a qualified person using acceptable methodologies and familiar with HUD regulations. If a copy of the study is not included in the ERR, its location must be stated in the ERR and it must be made available upon request.

- **Agency Review**

Replies from letters sent to agencies are excellent source documentation. Public agencies are charged with specific responsibility to provide the very review that is necessary to assess impact. If the source is cited, the person's qualifications must be included along with the name, position, and date the review was made.

NOTE: Please be aware for the NEPA portion of a review, all state, federal and non-federal agency contact must remain between MHDC and the agency. (24 CFR part 58.14)

*For Example:* 106 Historical. The Developer's Environmental Analyst completes the 106 Historical application, letters, and so forth but the contact information must be the MHDC Environmental Reviewer. The completed application is sent to MHDC that will send it to the SHPO.

If issues arise during informal consultations with state, federal, and non-federal agencies and formal consultations are required this must first be approved by MHDC. **No formal consultations prior to MHDC's approval**

## VIII. Level of Review

### A. Determining Level of Review Required

Once the project is approved for funding, the MHDC Environmental Reviewer will provide the developer with *Exhibit B – Environmental General Requirements Memo* which will be part of their pre-conditional documentation requirements. This memo will enable the developer to begin working on their environmental package for submission to the MHDC Environmental Reviewer and MHDC Environmental Consultant. It is preferred the package be submitted in its entirety and not in a piece at a time fashion. Please refer to 24 CFR part 58 for specifics.

### B. Aggregation

At this time, project aggregation is also determined. The purpose of aggregation is to adequately address and analyze, in a single environmental review, the separate and combined impacts of, alternatives to, and mitigation measures for activities that are similar such as a multi-phase project. Types of aggregation:

- **Functional Aggregation:** When a specific type of activity is to take place in several separate locales or jurisdictions
- **Geographic Aggregation:** When a mix of dissimilar but related activities is to be concentrated in a fairly specific project area
- **Combination of Aggregation Approaches:** When the impacts arising from each functional activity and its interrelationship with other activities is considered for various project locations.

Depending on the project, there will be different levels of review that must be conducted. MHDC's Environmental Reviewer will note the project having to complete one of the five levels of determinations (level of review) depending on the review types.

### C. Five Types of Environmental Reviews:

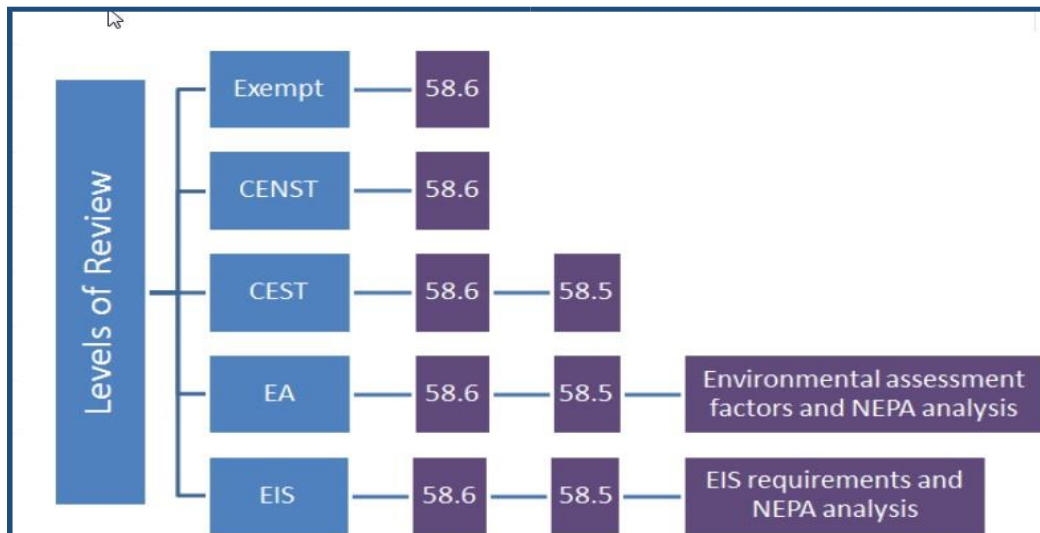
- **Exempt** – Not required to comply with 24 CFR part 58.34.
- **Categorically Excluded from NEPA** – **not subject to** the related laws and authorities at 24 CFR part 58.35
- **Categorically Excluded from NEPA** – **subject to** the related laws and authorities at 24 CFR part 58.35
- **Environmental Assessment (EA)** – all other projects (24 CFR part 58.36 and 50) that are not exempt or categorically excluded
- **Environmental Impact Statement (EIS)** – the highest level of review (24 CFR part 58.37)

#### **MHDC does NOT participate in nor conduct any EIS**

- Required when an environmental assessment concludes in a Finding of Significant Impact (FONSI).
- Applies when the complexity of the project exceeds the scope of an environmental assessment.
- Applies when extraordinary circumstances exist and elevate the level of review. Extraordinary circumstances are defined in HUD regulations at 24 CFR part 58.2(a)(3) as follows:
  - Actions that are unique or without precedent;

- Actions that are substantially similar to those that normally require an EIS;
- Actions that are likely to alter existing HUD policy or HUD mandates; or
- Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

## IX. Environmental Analysis (24 CFR Part 58)



Source: HUD Exchange

### 24 CFR part 58.6 lists the following requirements for compliance:

- Airport clear zones
- Coastal barrier resources
- Flood insurance

### 24 CFR part 58.5 includes the following additional laws and authorities for compliance:

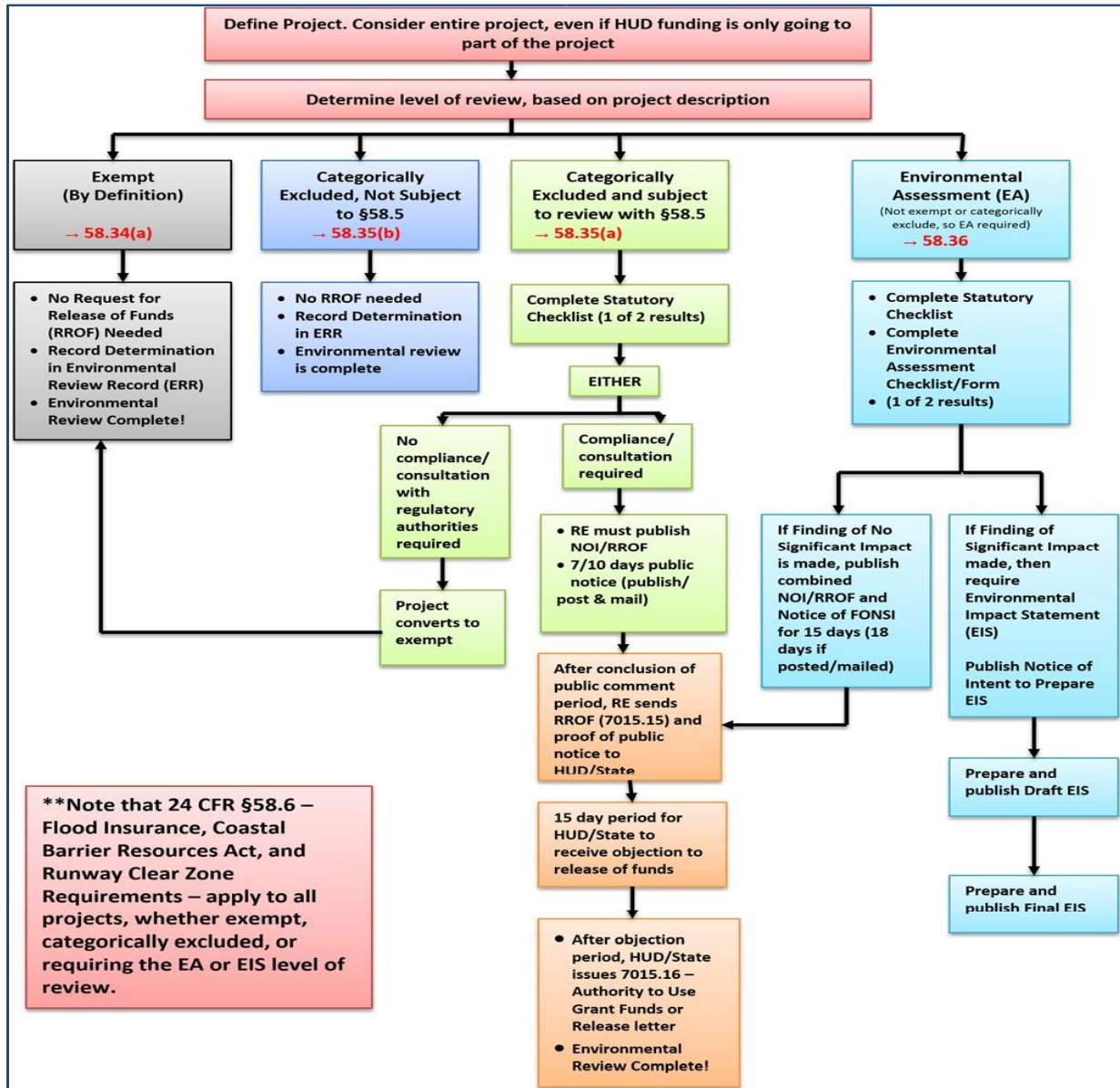
- Air quality
- Coastal zone management
- Endangered species
- Environmental justice
- Explosive and flammable facilities
- Farmland protection
- Floodplain management
- Historic preservation
- Noise abatement and control
- Site contamination
- Sole Source Aquifers
- Wild and Scenic Rivers

Environmental assessments require an additional set of components known as the Environmental Assessment and Analysis.

## Environmental Review Process: Part 58

To be conducted by RE in coordination with the developer

The following flowchart walks through the main steps for each level of environmental review under 24 CFR Part 58.

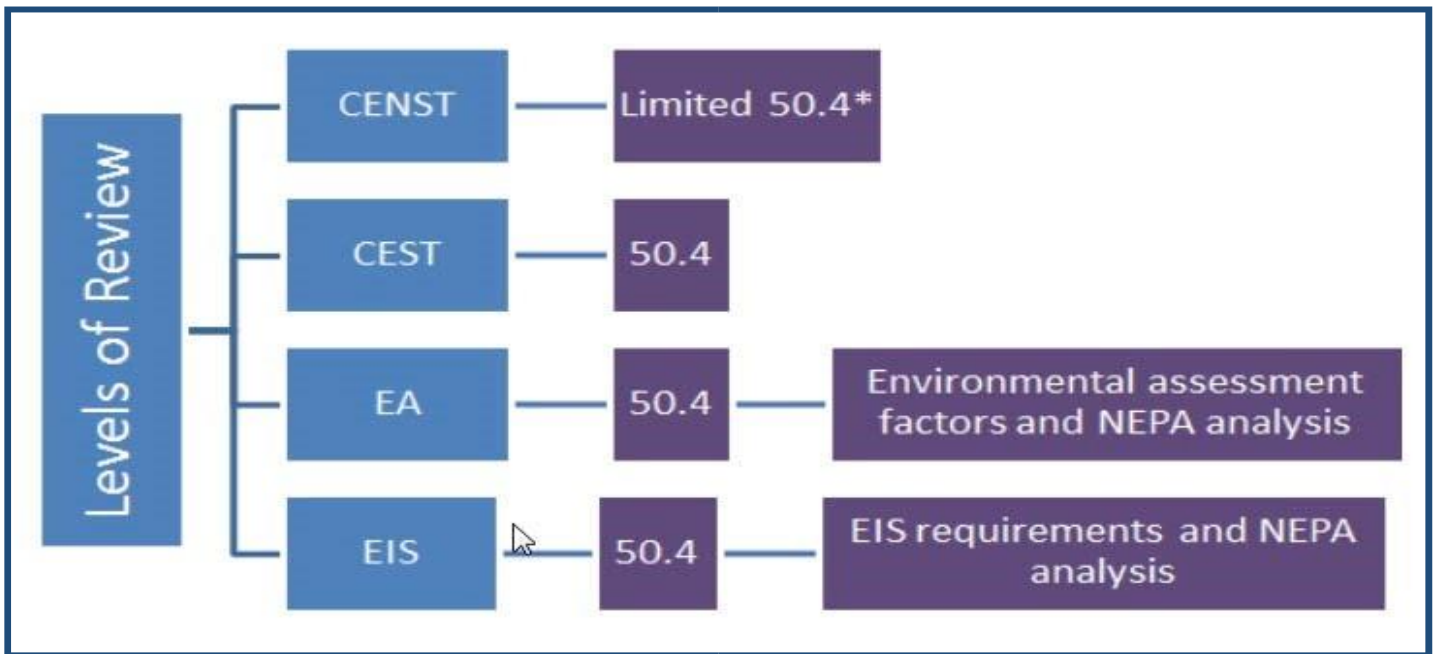


Source: HUD Exchange

## X. Environmental Analysis (24 CFR Part 50)

Part 50 reviews are less common and may be subject to the requirements of 24 CFR Part 50.4, Environmental Assessment factors, and the analysis under the National Environmental Policy Act. (24 CFR part 50.4 combines the laws and authorities listed in 24 CFR 58.5 and 58.6)

See the chart below for a breakdown of which components are required for each type of review.



Source: HUD Exchange

Most 24 CFR part 50 categorically excluded, not subject to 50.4 (CENST) reviews do not require compliance with any laws and authorities, with the following exceptions:

- Equipment purchase (50.19(b) (13) or 50.19(b) (14)) is subject to compliance with flood insurance requirements.
- HUD mortgage insurance and loan guarantees as described in 50.19(b) (17) and 50.19(b) (24) are subject to compliance with flood insurance, airport clear zones, and coastal barrier resources requirements.
- Refinancing of HUD-insured mortgages as specified under 50.19(b) (21) is subject to compliance with flood insurance requirements.

Environmental assessments require an additional set of components for analysis, including Environmental Assessment factors and NEPA analysis.

# XI. Receiving the Review Determination

## A. Procedures for Determined Level of Environmental Review

MHDC will determine the level of review required, and what items must be addressed. MHDC will then contact the developer with the determination and request for information specific to the development through the *Exhibit B – Environmental General Requirements Memo*.

### IMPORTANT ITEMS TO NOTE:

#### Developer’s Environmental Analyst

The Developer’s Environmental Analyst(s) is responsible for completing the appropriate HUD determination forms and approved HUD documentation. The Analyst must also complete the HUD Partner Worksheets and any other worksheets HUD may provide. Forms and worksheets are available on the HUD website, [www.HUD.com](http://www.HUD.com). These are required for review purposes prior to uploading information into HEROS. All environmental information must be complete and reviewed prior to any entries made in HEROS by the MHDC Reviewer and the Consultant.

All the information / documentation provided to the MHDC Environmental Reviewer must also be provided to the MHDC Environmental Consultant. The environmental package will be reviewed, if necessary comments will be provided by the Consultant and MHDC Reviewer. All deficiencies / corrections must be made by the Analyst before any entries are made in the HEROS System.

#### Informal and Formal Consultations for NEPA Issues

In the course of completing documentation for the required determinations informal and formal consultations must be addressed. Contact with state, federal, and non-federal agencies, regardless if it is a formal or informal consultation must remain between MHDC and the agency using the following steps:

- The Developer’s Analyst produces the letters, attachments and so forth for state and federal agencies and non-federal agencies. MHDC must be the sole and ongoing contact for these agencies / entities.
- The Analyst sends this material to MHDC. MHDC will sign the letter(s) and mail the package to the appropriate agency. Sometimes this may be in the form of an email.
- The agency will respond to MHDC who in turn will forward back to the Developer’s Analyst.

Should a developer use specialized consultants who may focus on certain areas such as 106 Historical Review, Indian tribes, endangered species, wild and scenic rivers, and so forth, the specialized consultant must be familiar with the HUD regulations. The three bullet points above apply.

#### **No formal consultations may take place prior to MHDC’s approval.**

The contact information given to the agency must be the MHDC Environmental Reviewer and address.

Karen Justice  
920 Main St, Suite 1400  
Kansas City, MO 64105  
Ph.# (816) 759-6842  
[kjustice@mhdc.com](mailto:kjustice@mhdc.com)

Jason Cline  
920 Main St, Suite 1400  
Kansas City, MO 64105  
Ph.# (816) 759-2888  
[jason.cline@mhdc.com](mailto:jason.cline@mhdc.com)



If at any time the project scope changes, if new circumstances and/or environmental conditions arise, or if alternatives not considered originally are selected, the impacts of the changes must be reassessed and the original finding reviewed for validity. In most cases, resubmissions to the state and federal agencies will be required. This applies to all communication with state, federal and non-federal agencies.

## B. Level of Determination

### Exempt Projects and/or Activities (24 CFR Part 58.34)

Exempt for the application requirements, the RE does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in the 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

- Environmental and other studies, resource identification, and the development of plans and strategies
- Information and financial services
- Administrative and management activities
- Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs
- Purchase of insurance
- Purchase of tools
- Engineering or design costs
- Technical assistance and training
- 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 the effects from disasters or imminent threats to public safety including those resulting from physical deterioration
- Payment of principal and interest on loans made or obligations guaranteed by HUD
- Any of the categorical exclusions listed in 24 CFR part 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in 24 CFR part 58.5.
- Circumstances requiring a NEPA review. If a responsible entity determines that an activity or project because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all requirements of this part.

MHDC does not have to submit a *Request for Release of Funds* (RROF) and certification and no further approval from HUD or the State is needed by MHDC for the drawdown of funds to carry out exempt activities and projects. However, the RE must document in writing its determinations that such activity or project is exempt and meets the conditions specified for each exemption under this section. The Analyst is responsible for submitting the required documentation.

### Action Required – for Exempt Activities

Document and describe activities and how it fits into the Exempt status per HUD regulations.

## **Categorically Excluded Activities – “Not” Subject to 24 CFR Part 58.5 (CENST)**

Categorical exclusion (Subject To and Not Subject To) generally refers to a category of activities for which no Environmental Impact Statement (EIS) or Environmental Assessment (EA) and finding of No Significant Impact (FONSI) under NEPA is required, except in extraordinary circumstances (see 24 CFR part 58.2(a)(3) in which a normally excluded activity may have a significant impact. Compliance with the other applicable federal environmental laws and authorities listed in 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

When the following kinds of activities are undertaken, the RE does not have to publish a Notice of Intent / Request of Release of Funds (RROF) or execute a certification and MHDC does not have to submit a RROF to HUD except in the circumstances described under “Circumstances requiring NEPA review” of this section. Following the award of the assistance, no further approval from HUD or the state will be needed with respect to environmental requirements, except under “Circumstances requiring NEPA review” of this section applies. MHDC will remain responsible for carrying out any applicable requirements under 58.6.

HUD has determined that the following Categorically Excluded Not Subject To activities would not alter any conditions that would require a review or compliance determination under the federal laws and authorities cited in 58.5:

- Tenant-based rental assistance
- 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
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, and recruitment and other incidental costs;
- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations
- 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
- Affordable housing pre-development costs including legal, consulting, developer, and other costs related to obtaining site options, project financing, administrative costs, and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same RE that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 58.47;
- Circumstances requiring NEPA review. If a RE determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

### **Action Required – for Categorically Excluded Not Subject to (CENST):**

This determination would virtually never apply to multi-family development applications submit to the MHDC Rental Production Department for approval.

## Categorically Excluded Activities – “Subject” to 24 CFR Part 58.5 (CEST)

The following activities are Categorically Excluded Subject To under NEPA, but may be subject to review under authorities listed in 58.5.

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly or handicapped persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
- *A building for residential use (with one to four units) –*
  - The density is not increased beyond four units, and the land use has not changed;
    - *Multifamily residential buildings –*
      - Unit density is not changed more than 20 percent;
      - The project does not involve changes in land use from residential to non-residential; and
      - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
    - *Non-residential structures, including commercial, industrial, and public buildings*
      - Facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
      - The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
    - *An individual action on up to four dwelling units where there is a maximum of four units on any one site*
      - The units can be four one-unit buildings or one four-unit building or any combination in between
      - An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart (in all directions) and there are not more than four housing units on any one site.
      - This subsection (*individual action on up to four dwelling units where there is a maximum of four units on any one site*) does not apply to rehabilitation.
- 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 acquired, financed, or disposed of will be retained for the same use.
- Combinations of the above activities.

### Action Required – for Categorically Excluded Subject TO (CENST):

- Complete **Statutory Checklist and 58.6 form** (See Section 14 (XIV) *Environmental Review Checklists*) when completing the statutory checklist, the Developer’s Environmental Analyst must consult the appropriate local, state and federal agencies that do or might have an environmental interest in the project or activities. Refer to Section 9 (XII) *Receiving the Review Determination / Informal and Informal Consultations for NEPA Issues*.
- The Developer’s Environmental Analyst must document through letters or other forms of written communication that consultation has occurred. All correspondence pertaining to the project will

become part of the ERR. Refer to Section 9 (XII) / Informal and Formal Consultations for NEPA Issues.

- If no compliance actions are required – the project converts to EXEMPT and documentation should be provided to complete the review.
- If compliance actions are required – provide documentation of compliance.

Once documentation of compliance has been provided MHDC will disseminate and publish or post Notice of Intent (NOI) to Request for Release of Funds (RROF). Prior to MHDC's submission of the Request for RROF, this NOI must allow for a public comment period of at least 7 calendar days if published or 10 calendar days if posted. All public comments must be considered and included in the ERR.

MHDC will submit the ERR and the RROF to HUD for review. A copy of the affidavit of publication for NOI/RROF must accompany this submission.

If no adverse public comments are received, an Authority to Use Grant Funds (HUD Release of Funds) will be issued to MHDC and the Firm Commitment Approval will be sent to the developer.

### **Environmental Assessment Level of Review (EA) (24 CFR Part 58.36)**

If a project is not exempt or categorically excluded under 58.34 and 58.35, the responsible entity must prepare an environmental assessment. If it is evident without preparing an EA that an EIS is required, the RE should proceed directly to an EIS. (MHDC does NOT conduct nor participate in any EIS.)

Any project that will involve new construction, conversion, or demolition and reconstruction must complete an Environmental Assessment prior to release of funds.

#### **Action Required – for Environmental Assessment (EA):**

- All sections of these documents must be completed according to the following procedures:
- **Complete the Environmental Assessment** (See Section 14 (XIV) *Environmental Review Checklists*) when completing the Environmental Assessment, the Developer's Environmental Analyst must consult the appropriate local, state and federal agencies that do or might have an environmental interest in the project or activities. Refer to Section 9 (XII) *Receiving the Review Determination / Informal and Informal Consultations for NEPA Issues*.
- If compliance actions are required – provide documentation of compliance
- The MHDC Consultant and MHDC will review the EA for accuracy and completeness.

The HUD Request for Release of Funds (RROF) and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. (24 CFR part 58.71) This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain a certification required under the applicable statute cited in 58.1(b). The RROF and certification must be in a form specified by HUD.

MHDC will submit the ERR and the RROF to HUD for review through HEROS. A copy of the affidavit of publication for NOI/RROF must accompany this submission.

- If no adverse public comments are received, an Authority to Use Grant Funds (AUGF) will be issued to MHDC and the Firm Commitment Approval will be sent to the developer.

- **A finding of *No Significant Impact (FONSI)*** – the project is not an action that will result in a significant impact on the quality of the human environment; (If MHDC determines that the result of the EA is a FONSI, then MHDC shall publish a notice to this effect and pursue the AUGF)
- **A *Finding of Significant Impact (FOSI)*** – the project is deemed to be an action which may significantly affect the quality of the human environment and will require an EIS. (MHDC does NOT conduct nor participate in any EIS.)

### **Review Determination for Non-Federal Funded Projects**

The MHDC Environmental Reviewer will perform a less intensive environmental review based on 24 CFR part 58. In those situations, state and local laws and regulations must be followed and the same documentation procedures and the same form usage will apply. The same process will be used for the review determination however the 106 Historical Review will not be required. Lead-Based Paint, Asbestos, Vapor Encroachment, and Radon shall be conducted and reviewed just like projects with federal funding. This includes, but is not limited to, permits, testing, brochures, remediation, clearance, and any future testing.

As with federal funded developments, the *Exhibit B – Environmental General Requirements Memo* will be part of the pre-conditional documentation requirements and will inform the developer as to what environmental due diligence items must be submitted for their particular level of review. The MHDC Consultant will not participate. The Analyst will not be responsible for the HUD Partner Worksheets or Environmental Assessment and Analysis, informal/formal consultations as would be required for federally-funded developments.

## **C. Technical Assistance and Responsibilities**

MHDC and the HUD website can provide technical assistance to recipients in completing the environmental review process.

## **D. Publications/Notices**

*It is the sole responsibility of MHDC to obtain Authority to Grant Funds (HUD Release of Funds).*

This includes Notice of Intent (NOI) for Request of Release of Funds (RROF), and any public comments received. MHDC is solely responsible for the comment period and publications associated with the HUD 8 Step Process for floodplains and wetlands. (See also Section 7 (X) *Environmental Review Process – 24 CFR part 58 Flow Chart*)

- The Analyst is responsible for completing the paperwork and write up for the HUD 8 Step Process.

### **The Publication Informs the General Public of the following:**

- A detailed description of the project scope. (i.e., number of units, etc.)
- The location or target area in which the project activities will be undertaken.
- Estimated funding amounts from all sources and identifies fiscal years for all projected funding.
- Notes that the ERR has been conducted by a RE and MHDC Environmental Consultant and it is available for review.
- Opens for comments that may be made to the Responsible Entity before a Request for Release of Funds is made to HUD.
- Statutory Checklist – Public Notice and Comment Period lasts 7 days.

- Environmental Assessment Checklist - Public Notice and Comment Period lasts 15 days normally but in rare circumstances can last up to 30 days.
- Objections may be made to MHDC or HUD regarding the AUGF.
- Comments must be taken into consideration by the RE prior to submitting a RROF and Certification to MHDC or HUD.
- Submission of the RROF and Certification begins the HUD comment period.
- Statutory Checklist – This period lasts 10 days.
- Environmental Assessment Checklist – This period lasts 15 to up to 30 days in rare circumstances.

## **XII. Conditions for Approval**

When reviewing project activities for potential adverse environmental impacts, it may be determined that certain conditions must be met to minimize impacts. Normally this does not occur prior to a project closing or if federal monies are involved, obtaining HUD Release of Funds.

Once the environmental review process is complete, including identification of any environmental conditions for approval and how they will be implemented, HUD will issue environmental approval HUD AUGF with the condition that certain measures or controls be included in design plans and construction contract documents. Evidence that conditions were addressed will be reviewed during the project closing process.

### **A. Monitoring and Enforcement Actions**

HUD requires MHDC to regularly monitor developers for compliance in all areas including the ERR process. This monitoring may include periodic review of the ERR file and an inspection of the project site to verify that ERR information is correct including enforcement actions.

MHDC will undertake enforcement actions if ERR violations are noted. These can include:

- Withholding funds until corrective actions are implemented
- Disallowance of costs
- Placement of restrictions on future grants
- HUD also can undertake enforcement actions including taking back federal funds.

### **B. Access to and Retention of Records**

Environmental reviews with certain federal funding are required to be completed on the HEROS website. The ERR is available by contacting HUD. MHDC also maintains a copy.

### XIII. Environmental Review Checklists

#### A. Completing the ERR Checklists

HUD provides two checklists (located at [www.hudexchange.info](http://www.hudexchange.info)) to assist in the environmental review assessment:

- **Statutory Checklist** (environmental review checklist for the Statutory Checklist) Please use “Partners” version.
- **Environmental Assessment Checklist** (environmental review checklist for the Environmental Assessment). “Additional factors” beyond the Statutory Checklist. Please use “Partners” version.

#### B. Statutory Checklist

The Statutory Checklist covers all statutes, regulations and Executive Orders, under NEPA, that are required for environmental review. This checklist addresses those requirements for developments that are categorically excluded under 24 CFR part 58.35 and for owner-occupied rehabilitation programs.

For each checklist category there may be more than one application law or regulation. Therefore it is important that the sub-grantee check all laws and regulations regarding that review area. Sub-grantees are reminded that they must certify that they have complied with the obligations and requirements of all other applicable laws and authorities.

Each compliance factor included on the Statutory Checklist is described as follows, along with guidance as to ensuring that all statutes, executive orders, and regulations are followed. **The following is an example of the Statutory Checklist:**

| Statutes, Executive Orders, and Regulations listed at 24 CFR part 58.5 | Status A/B | Compliance Documentation |
|--|------------|--------------------------|
| <b>Historic Preservation</b><br>[36 CFR part 800]                      |            |                          |
| <b>Floodplain Management</b><br>[24 CFR 55, Executive Order 11988]     |            |                          |
| <b>Wetland Protection</b><br>[Executive Order 11990]                   |            |                          |
| <b>Coastal Zone Management Act</b><br>[Sections 307(c), (d)]           |            |                          |
| <b>Sole Source Aquifers</b><br>[40 CFR 149]                            |            |                          |
| <b>Endangered Species Act</b><br>[50 CFR 402]                          |            |                          |
| <b>Wild and Scenic Rivers Act</b><br>[Sections 7(b), and (c)]          |            |                          |
| <b>Clean Air Act</b><br>[Sections 176(c), (d), and 40 CFR 6, 51, 93]   |            |                          |



|  |  |  |
|--|--|--|
| <b>Farmland Protection Policy Act</b><br>[7 CFR 658]                                     |  |  |
| <b>Environmental Justice</b><br>[Executive Order 12898]                                  |  |  |
| <b>Noise Abatement and Control</b><br><b>HUD ENVIRONMENTAL STANDARDS</b><br>[24 CFR 51B] |  |  |
| <b>Explosive and Flammable Operations</b><br>[24 CFR 51C]                                |  |  |
| <b>Toxic Chemicals and Radioactive Materials</b><br>[24 CFR part 58.5(i)(2)]             |  |  |
| <b>Airport Clear Zones and Accident Potential Zones</b><br>(24 CFR 51D)                  |  |  |

Source: HUD Exchange

## C. Environmental Project Information

This environmental review form above is a HUD Partners form that addresses basic project information such as name, applicant, consultant funding, project location, description for 24 CFR part 58 and 50.

### Action Required

- Complete the HUD Partner form. Please provide the MHDC Reviewer with for instance, requests for information such as informal and formal consultations with state and federal agencies and non-agencies. Also including other requirements needing RE participation. Reference Informal and Formal Consultation for NEPA Issues Section.
- Complete the HUD Partner Worksheets for each NEPA issue.
- The MHDC Environmental Reviewer and Consultant must also receive a copy of the Analyst work.

## D. Historic Properties Requirements

### Definition of Historic Property

Historic property is defined as: any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. It also includes artifacts, records, and remains that are related to and located within such properties. The term “eligible for inclusion” includes properties formally determined as such by the Secretary of Interior and all other properties that meet the National Register listing criteria.

### Historic Environmental Review Process

The environmental review process must determine if a subject property is included or eligible for inclusion on the National Register of Historic Places. This inclusion or eligibility for inclusion is determined by consultation with the State Historic Preservation Officer (SHPO). Section 106 of the National Historic Properties Act of 1966 (NHPA), as amended, mandates that Federal agencies with direct or indirect jurisdiction over a Federal, federally-assisted, or federally licensed activity afford the SHPO and National Advisory Council on Historic Preservation (only if requested by the SHPO), a reasonable opportunity for comment on the project’s impact on properties which have historic, archeological, and/or cultural significance. This includes all properties assisted with federal funds administered by MHDC. Its intent is to identify potential conflicts between historic preservation

needs and the developer's community development objectives. MHDC must consider the effects of the undertaking or project on properties included in or eligible for the National Register and consult with appropriate entities in making that decision.

Tribal Historic Preservation Officers (THPOs) and other tribal entities must be given an opportunity to comment on all proposed undertakings in areas to which they claim cultural affinity, which includes areas outside of tribal lands. The Advisory Council should be invited to join the consultation process only in instances in which the recipient and the SHPO fail to reach an agreement on ways to address the adverse effects of the proposed project.

The Section 106 Process does not require preservation in every case, nor does it give "veto" power over a Recipient's actions. MHDC and the Developer's final decision will take into consideration historic values and options available to protect historic properties and should balance the projected public benefit of the project against the public benefit of preservation. Please be aware that formal consultations have the potential to be expensive and very time consuming.

### **Correspondence:**

The initial consultation is developed by the Analyst. All correspondence including any Indian tribes must have the MHDC contact information on it. Correspondence must go through the MHDC Reviewer. MHDC approval is required **prior to beginning any formal consultation.**

### **Action Required**

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements.
- Developer's Analyst will complete the Missouri SHPO Review and Compliance Information Form, attachments, and submit to MHDC Reviewer.
  1. Review and Compliance Information Form found at the following link: <https://mostateparks.com/page/84261/section-106-review>
  2. Attachments should include project maps, photographs, scope of work, engineering/construction plans, etc.
- The MHDC Environmental Reviewer must be noted as the contact for SHPO
- MHDC will review the materials and forward the package to SHPO
- SHPO response letter(s) – always responds
- Response will be forwarded back to the Developer's Analyst by MHDC
- Letters must be presented to Tribal Historic Preservation Officers (THPOs) – Use the HUD Tribal Directory Tool to determine what tribes may (if any) have an interest in the county where the project is located. ([www.HUD.gov](http://www.HUD.gov))
- Indian Land letters are separate from the 106 Historical application.
- The Developer's Environmental Analyst will develop the letters and attachments. *In the case of Indian tribes, the MHDC Certifying Officer will be noted as the contact.*
- Submit this package to the MHDC Environmental Reviewer who will obtain the MHDC Certifying Officer's signature, see below. MHDC will mail the package to the tribes.
- MHDC's Certifying Officer will receive the responses.
- Tribal responses will be forwarded back to the Developer's Environmental Analyst by the MHDC Environmental Reviewer. (Not all tribes will respond but they must be notified.) Contact with tribes must remain between MHDC and the tribe.
- Cultural Resource Survey – maybe requested by tribes in certain cases

### **Formal Consultation (STOP - MHDC must approve all Formal Consultations)**

- When an **adverse effect** has been determined, a *Memorandum of Agreement* (MOA) will be executed between the Developer, MHDC, the SHPO and, if necessary, the Advisory Council and/or relevant tribe.
- SHPO/Tribal approval of MOA stipulations (if applicable)
- The MHDC Environmental Reviewer must always be the contact for SHPO, Advisory Council and all state and federal agencies. Note: *The MHDC Certifying Officer will be the contact for Indian Tribes.* MHDC must be a principal player in the decision making process.
- If the SHPO, THPO, relevant tribe, and MHDC do not agree on the National Register status, MHDC may seek a formal determination of eligibility from the Secretary of the Interior through the National Park Service. If the National Park Service determines there are no eligible properties, the review is complete. However, if the National Park Service determines there are eligible properties, then additional consultation is required.
- If the property is determined to be eligible, then there must be a determination as to the effect of the project. The following must be addressed:
  1. Will there be an effect?
  2. If yes, will it be an adverse effect?

In all instances, the SHPO, THPO, relevant tribes when appropriate, and the Advisory Council must be consulted and allowed adequate time to respond as specified in the regulations.

## **E. Floodplain Management/Floodplain or Wetland Findings Requirements**

The Flood Disaster Protection Act [24 CFR part 55] and Executive Order 11988 and 11990, "...assure that federal programs avoid adverse impacts on wetlands and floodplains; minimize destruction, loss or degradation of wetlands; preserve and enhance the natural and beneficial values of wetlands; reduce risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and to the extent possible, restore the natural and beneficial values served by floodplains."

### **The Water Resources Council implementation guidelines provide for:**

- Early information to the public if a project will be located in a floodplain or wetlands and/or will indirectly affect a floodplain or wetlands
- A clear decision making process to include a review of all practicable alternatives
- Notification to the public of the final decision regarding the project.

In addition, HUD's rule to implement E.O. 11988 on floodplain management allows for provision of direct or indirect federal assistance only when there is no practicable alternative to floodplain development or any action that would adversely affect a floodplain area. (Note: E.O. 11998 does not apply if the Federal Emergency Management Agency (FEMA) has issued either a "Letter of Map Amendment" (LOMA), or "Letter of Map Revision" (LOMR) for a project site located within a Special Flood Hazard Area.)

**Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by FEMA as having Special Flood Hazard Area (SFHA).**

## Floodplain Definitions

- **100 Year floodplain:** The floodplain of concern for HUD programs which is the area subject to a 1% or greater chance of flooding in any given year.
- **500 Year floodplain:** The minimum floodplain of concern for Critical Actions which is the area subject to inundation from a flood having a 0.2% chance of occurring in any given year.
- **Base Floodplain:** 100 – year floodplain
- **Critical Action:** Any activities 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. This includes persons insufficiently mobile who reside in multi-family housing.
- **Floodway:** 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.
- **High Hazard Area:** A floodway or a coastal high hazard area.
- **Wetland:** An area that meets the following *general* criteria. This is per the Corp of Engineers and is only for descriptive purposes for this guide. Wetland specialists must make wetland determinations. Note: HTF funds require a different wetland analysis not defined by the Corp. of Engineers.
  - Hydrophilic soils
  - Hydrophilic plants
  - Hydrology – Water at or above the surface of the soil for a sufficient period time to significantly influence soils and or plant types.

## Action Required

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- 500 year floodplains must be taken into consideration regarding HUD Critical Actions.
- The regulations make allowance for very small areas effected by a floodplain or wetland and/or ability to completely isolate these areas from the development. This must be clearly stated in the MHDC legal documents.
- MHDC’s Environmental Reviewer and Analyst will review this information specific to each situation and make a determination of the following:

- It must be determined if the proposed project is located in a floodplain. This is done by identifying the project on a FEMA Flood Map (indication must include color copy of Map, Panel Number, and map / panel date, legend).

### **Determination**

If the property **is** determined to be located within a 100 and/or 500 – year floodplain or a wetland, and there is no practical alternative to providing assistance, the Analyst must complete the HUD 8 Step Process for Floodplain and Wetland. **NOTE:** This Process does NOT guarantee the project can move forward. The project may have to be relocated.

### **Formal Consultations STOP – MHDC must approve all Formal Consultations -**

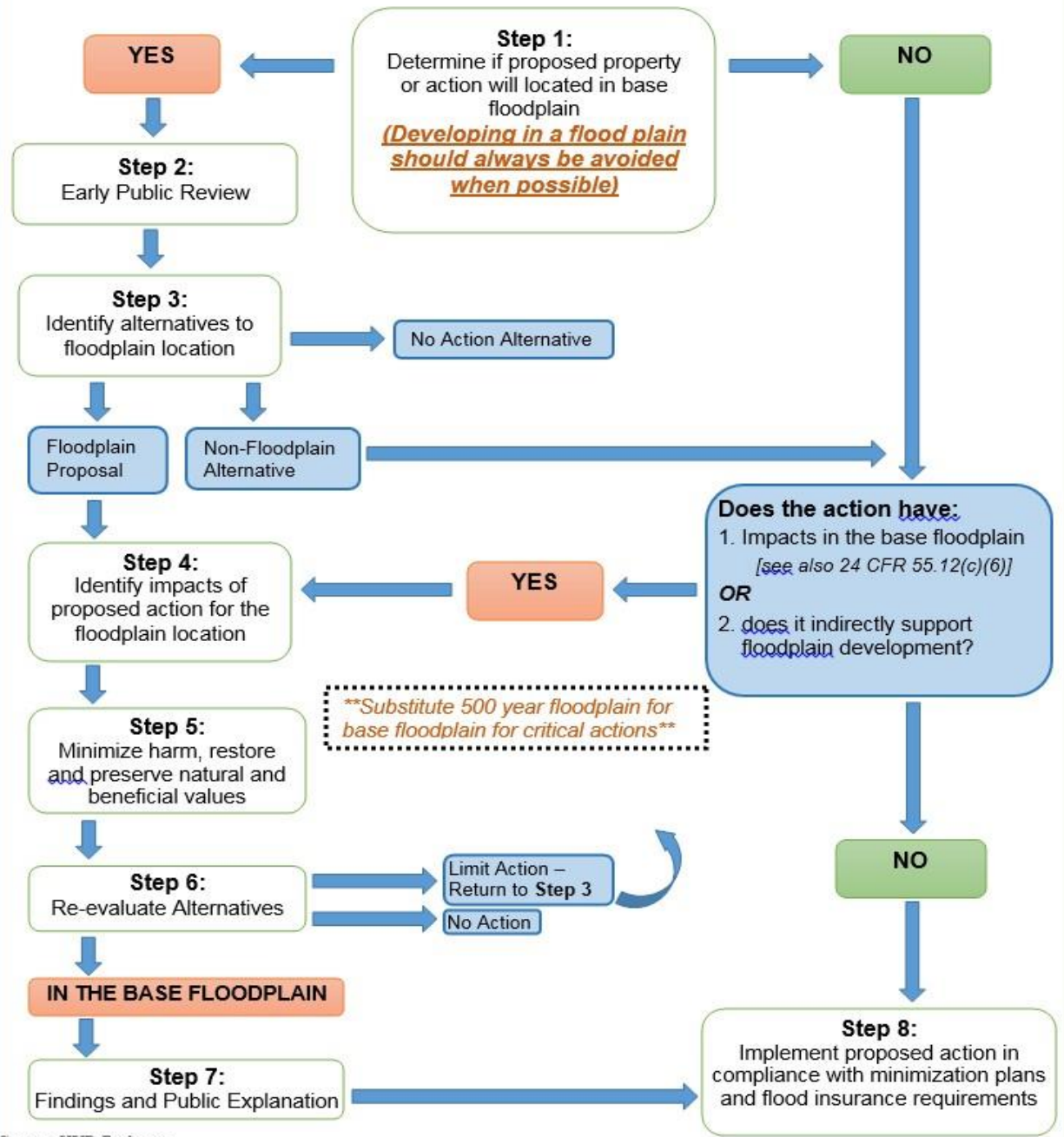
- If **in** a floodplain, HUD 8-Step Process is required (*See following HUD Eight-Step Process for Floodplain Flow Chart*). This is the responsibility of the Developer’s Analyst.
- MHDC is responsible for all Publications and Notices.

### **HUD Eight-Step Process for Floodplain Flow Chart -**

Steps 1 through 7 must be completed prior to MHDC publishing the Finding of No Significant Impact (FONSI) and /or Request for Release of Funds (RROF).

*See following page for flow chart.*

**8-Step Decision-Making Process for Executive Order 11988:**



Source: HUD Exchange

## F. Wetland Protection

Under Executive Order 11990, federally funded (*and non-federally funded*) activities must avoid adverse impacts to wetlands where practicable. MHDC must verify whether there are wetlands on the site using the U.S. Fish and Wildlife National Wetlands Inventory (Wetlands Mapper). The USDA/NRCS National Soils Survey maps and surveys are other tools that can be used.

Survey: HUD requires the use of the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (version 2.0)*. Please contact HUD for your specific project if a survey is requested.

*Per the Corp of Engineers - There are different Regional Supplements for different areas of Missouri. The above mentioned Regional Supplement is used for the Northwestern portion of Missouri. Currently, the Corps is using what is commonly referred to as the 2008 Rapanos Guidance to determine whether a wetland is jurisdictional or not. Both the regional supplements and the Rapanos Guidance can be found at the following web address: [http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/juris\\_info/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/juris_info/).*

### Action Required

The Developer / Analyst will provide the following to the MHDC Reviewer.

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.

### Formal Consultations STOP – MHDC must approve all Formal Consultations

- These formal consultations for wetlands apply to approve applications.
- If wetlands are suspected on a site a survey may be requested by MHDC.
- If a wetland (and/or floodplain) is identified, the HUD 8 Step Process is required to be performed by the Developer's Environmental Analyst.
- MHDC is responsible for all Publication Notices and Comment Periods.

## G. Coastal Zone Management Requirements

Under the Coastal Barrier Resource Act and 24 CFR part 58.6, HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System. There are no locations in the State of Missouri in the Coastal Barrier Resources System. The appropriate documentation must be provided.

- MHDC will complete the HUD Partner Worksheet and exhibits.

## H. Sole Source Aquifer Requirements

Under Section 1424€ of the Safe Drinking Water Act of 1974, 40 CFR 149, and 24 CFR part 58.5, no commitment of Federal financial assistance may be made for developments which the Administrator (of EPA) determines may contaminate an aquifer designated as the sole or principle source of drinking water for an area. There are currently no locations in the State of Missouri subject to this requirement. The appropriate documentation must be provided.



- MHDC will complete the HUD Partner Worksheet and exhibits.

## I. Endangered Species Requirements

Under procedures mandated in the Endangered Species Act of 1973, as amended MHDC must determine whether the proposed project is likely to affect endangered species or Critical Habitats listed periodically under Section 7(a) of the Act.

MHDC shall consult with the MO Department of Conservation then with the U.S. Department of the Interior to ensure that a proposed project is not likely to adversely affect the continued existence of an endangered or threatened species, nor to result in the destruction or adverse modification of critical habitats of plants and animal life. This informal consultation is initiated by a written notification and request for information from MHDC to the Regional Director of the U.S. Fish and Wildlife Service.

### Action Required

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements.
- MHDC Environmental Reviewer will complete the required process.
- Informal consultation with the MO Department of Conservation. This is a two-step process resulting in the Heritage Review Report.
- The MHDC Reviewer will complete the process at, (<https://naturalheritagereview.mdc.mo.gov>)
- The MHDC Reviewer will also complete consultation with the U.S. Fish and Wildlife Information, Planning, and Conservation (IPaC) system, to identify any threatened and Endangered Species within the project area.
- MHDC Reviewer will provide the results of the IPaC review to the Developer/Analyst.
- The Developer/Analyst will use the IPaC results to complete the U.S. Fish and Wildlife Service Project Evaluation Form, with attachments including site maps, site plan, and a project description. This form and attachments will then be submitted to MHDC Reviewer.
- MHDC reviewer will complete the informal consultation with U.S. Fish and Wildlife and response will be send it to the Analyst.

### Formal Consultations STOP – MHDC must approve all Formal Consultations

A formal consultation may require work on the part of the Developer’s Environmental Analyst.

## J. Wild and Scenic Rivers Requirements

Under the provisions of the Wild and Scenic Rivers Act of 1968 [Sections 7(b) and (c) federal actions cannot effect rivers designated under the Act or rivers proposed for designation (Wild and Scenic, Tributaries, Study, and National River Inventory).

The MHDC Environmental Reviewer will consult with the National Park Service Midwest Regional Office to ensure that the proposed project is not likely to adversely affect these rivers. This informal consultation is initiated by a written notification and request for information from the MHDC to the National Park Service. The MHDC Reviewer is responsible for contacting the National Park Service. The Developer’s Environmental Analyst will be responsible for providing the color map with



measurements, if applicable.

Contact information for the National Park Service:

National Park Service  
Midwest Regional Office  
Mr. Hector Santiago  
601 Riverside Dr.  
Omaha, NE 68102  
[Hector\\_santiago@ps.gov](mailto:Hector_santiago@ps.gov)

### Action Required

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- The MHDC Reviewer is responsible for contacting the National Park Service and forwarding the letter with maps and description to National Park Service.
- Informal consultation and response will be sent to the Developer's Analyst
- HUD also requires a color map with measurements from any wild and scenic river, tributary, study or NRI River noted in the U.S. Fish and Wildlife Service response to the project site. The Analyst must produce this as appropriate per the National Park Service Response.

### Formal Consultation STOP - MHDC must approve all Formal Consultations

- A formal consultation may require work on the part of the Analyst.

## K. Air Quality Management Requirements

Under the Clean Air Act of 1970, as amended in 1977, the U.S. Environmental Protection Agency (EPA) has established controls on HUD funded developments in urban areas that are in "non-attainment" status with National Ambient Air Quality Standards (NAAQS).

*For a listing of Missouri's State Implementation Plan (SIP) and boundary designations, visit <http://dnr.mo.gov/env/apcp/sips.htm>.*

### Action Required

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- A map of the EPA designated non-attainment areas from the EPA website must be submitted to MHDC
- Mo. SIP regulations must be followed. Please provide MHDC with the HUD and Missouri required documentation.

## L. Farmland Protection Requirements

The Farmland Protection Policy Act was enacted in an effort to assure that the direct or indirect actions of the Federal Government do not cause U.S. farmland to be irreversibly converted to nonagricultural uses.

### Action Required

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- The location of prime agricultural land must first be determined using maps available from the Natural Resources Conservation Service (NRCS), as well as U.S. Census Urbanized Area maps and USGS topographic maps.
- If the proposed project includes farmland, provide an evaluation of land type and resultant rating from NRCS using form *AD 1006* to document compliance. If the proposed site does not include prime or unique farmland, or if the site includes farmland but is in an area committed to urban development or water storage, provide a finding from the local planning agency that states these facts.

### Include

- The Developer's Environmental Analyst is responsible for the HUD approved maps and completing the *AD 1006 Form as appropriate*, and providing aerial photographs of the surrounding area. (MHDC Reviewer must be noted as the contact for USDA and planning agency and mail it.)
- Also, please provide the MHDC Reviewer with the cover letter to the local planning agency request letter.
- MHDC will send the responses to the Analyst.

### Formal Consultation - STOP - MHDC must approve all Formal Consultations

### M. Manmade Hazards

Due diligence must be made to note hazards by the project and/or project subjected to nearby hazards to ensure HUD requirements. This includes explosive and flammable operations.

Under [24 CFR part 51 subpart C], "Siting of HUD-Assisted Projects near Hazardous Operations Handling Petroleum Projects or Chemicals of an Explosive or Flammable Nature," HUD establishes standards for the location of proposed HUD assisted projects near certain hazardous facilities. The purpose of the standards is to minimize the possible loss of life and property damage and loss from such hazards.

The Developer's Environmental Analyst should determine by sight and map survey any potential hazards within the vicinity of the proposed project. The Analyst should determine if the proposed site meets the following:

- 1 mile of storage tanks containing petroleum products or chemicals of an explosive nature
- Within 300 feet of either an operating or abandoned oil or gas well
- Within 600 feet of an underground pipeline
- Was the project site ever impacted by any toxic or radioactive materials from a hazardous waste site?

Potential hazards also include, but are not limited to, the following:

- Pressurized and unpressurized petroleum product storage tanks
- Natural gas holders with floating tops,
- Tank trucks and railroad tank cars.

### Action Required

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- If a potential hazard exists, the Analyst should consult the guidebook **Siting of HUD-Assisted Projects Near Hazardous Facilities (HUD-1060-CPD)** to calculate the Acceptable Separation Distance (ASD) and determine if the potential hazard is within that distance.
- If the Analyst determines that the proposed project site is not within the ASD, the Analyst may proceed without further regard to this requirement. If the Analyst determines that the proposed project site is within the ASD, they must contact the MHDC's Environmental Reviewer to determine if mitigation measures are acceptable and feasible.

### Siting of Projects on or near Properties Containing Toxic Chemicals, Radioactive Materials, or other Hazardous Materials

It is HUD policy, as described in 24 CFR part 50.3(i), that "(1)...all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. (2) HUD environmental review of multifamily and non-residential properties shall include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are adversely affected by the hazards..."

Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include but are not limited to those:

- Listed on an **EPA Superfund National Priorities or CERCLA List**, or equivalent State list. (*The Superfund Enterprise Management System (SEMS) should take precedence as the CERCLA List is being phased out.*)
- Located near toxic or solid waste landfill site
- Sites that have an underground storage tank
- Much of this is covered in the Phase I Environmental Site Assessment report (ESA)

The location of toxic sites may be found in the U.S. EPA's list sites declared toxic under CERCLA and RCFA. For other possible polluted sites, site inspections and building and use permit records as well as Sandborn Co. maps show previous land uses which could have left toxic residues.

Additional information on toxic hazards may be found at the EPA's Envirofacts Data Warehouse ([http://epa.gov/enviro/html/toxic\\_release.html](http://epa.gov/enviro/html/toxic_release.html)).

The location of explosive hazards and potential explosive impact zones may be found in a number of sources including land use maps, special surveys, aerial photos, local use permits, special local, state, and federal transport permits. Additional information can be found in HUD's guidebook on hazardous facilities (HUD-1060CPD).

The U.S. Geological Survey has announced several new products related to the USGS national seismic hazard maps. Many new features have been added to the maps website. For example, users can now look up the seismic hazard in any part of the continental U.S. by zip code, and the Survey has

added a custom mapping feature, through which the user can specify latitude and longitude bounds and produce customized hazard maps of the selected area. Additionally, large versions (24"x 36") of the national and western U.S. seismic hazard maps can be ordered using forms available from the website (<http://earthquake.usgs.gov/>).

### **Action Required**

- If there are potential explosive hazards, the Analyst should consult the guidebook **Siting of HUD-Assisted Projects Near Hazardous Facilities (HUD-1060-CPD)** to calculate the ASD and determine if the potential hazard is within that distance.
- If the Analyst determines that the proposed project site is not within the ASD, the Analyst may proceed without further regard to this requirement.
- If the Analyst determines that the proposed project site is within the ASD, the Analyst should contact MHDC's Environmental Reviewer prior to funding to determine if mitigation measures are an option for the development. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.

### **Include**

- Field visit checklist or other form of documented site visit
- Color photographs of project site and adjacent sites
- Measurements from the hazard to the project must be included
- HUD Acceptable Separation Distance calculations, if applicable
- Mitigation measures, if applicable

### **Formal Consultation STOP - MHDC must approve all Formal Consultations**

## **N. Airport Hazards (24 CFR part 51 D)**

Protection of project and project beneficiaries from airport accident areas according to HUD.

### **Include**

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- Maps indicating nearest airports in relation to the project area.
- If project proposed is within thresholds of airport accident areas, follow HUD regulations and document accordingly.

### **Formal Consultation STOP - MHDC must approve all Formal Consultations**

## **O. Environmental Justice**

Executive Order 12898 (enacted 1994) requires the following requirements:

- Federal agencies develop environmental justice strategies;
- Research on human health or the environment to include poor and minority communities;
- Guidelines relating to the subsistence consumption of fish and wildlife
- Opportunities for public participation and access to information.

As it applies to HUD programs; it must address environmental justice in minority populations and low-income populations. Specifically, it applies to the acquisition of housing, the acquisition of land for development, and new construction. Specific issues may include, but are not limited to, continued or historically disproportionate potential for high and adverse human health and environmental effects on minority or low-income populations.

The Developer's Environmental Analyst must determine if the project is disproportionately adversely impacted in terms of health and the overall environmental affects relative to the community at large. HUD provides several resources with regards to evaluating environmental justice issues at the following website: <http://www.hud.gov/offices/cpd/environment/review/justice.cfm>.

### **Action Required**

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- To document compliance with Environmental Justice requirements, the Developer's Environmental Analyst should either provide MHDC with a finding that the project is not likely to raise environmental justice issues, or propose mitigation or avoidance of adverse impacts from the project to the extent practicable if the project is determined likely to raise environmental justice issues.

## **P. Noise Abatement and Control Requirements**

According to HUD Environmental Standards (24 CFR part 51 b), MHDC developments that include federal funding must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise sensitive areas. The location of site and noise generators near sites which are noisy include major roads, railroads, industrial plants, etc.

### **Documentation and Guide**

Traffic maps and land use maps from highway departments, planning agencies, railroads, and airport authorities may document such noise generators. HUD provides a web-based Day/Night Noise Level (DNL) Calculator tool to help determine noise impacts as well as the **HUD Noise Guidebook**. The HUD Noise Guidebook assists in the analysis and determination of noise impact on a proposed project site. The specific procedures for determining the noise exposure level for a site are clearly spelled out in this publication. Additional assistance may be found at HUD's website: <http://www.hudexchange.info/programs/environmental-review> and HUD Noise Abatement and Control.

### **Noise Assessment**

MHDC will perform an initial Noise Assessment for all submitted applications. Per HUD, noise can be an issue if the following distances are met:

- 5 miles to a civil airport and 15 miles to a military airport;
- 1,000 feet of all significant roads (four lanes or greater); and/or
- 3,000 feet of all railroads

**The Analyst must evaluate for and provide a Noise Assessment and mitigate / abate noise (if**

**applicable) per the HUD guidelines.** If it is determined by the analysis that the noise level at the proposed site exceeds acceptable standards, then appropriate action must be taken to mitigate the level of noise.

**Include:**

- Completion of the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies. Also including other requirements needing RE participation. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- Color aerial photograph
- Color photos of project site and surrounding area.
- Color maps showing project in relation to noise sources or sensitive noise uses.
- Measurements must be included.
- HUD Noise Assessment, if applicable.
- Noise attenuation measures, as appropriate.
- Use of an acoustical engineer familiar with HUD Noise regulations is highly encouraged by HUD and MHDC.
- Noise studies are unacceptable per HUD and MHDC. Please consult the HUD website for specifics.
- Traffic counts are acceptable, if needed, per HUD guidelines.

**Q. Lead-Based Paint/Lead in Soils (24 CFR Part 35)**

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- Lead-based paint requirements are located at the following link: <https://www.hudexchange.info/programs/environmental-review/>
- Per HUD’s website – Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition).
- Please provide MHDC with the analysis to back up the type of lead-based paint investigation done for a project. Also provide, the reports, certifications, licenses, pamphlets and so forth per the HUD regulations.
- The above requirements apply to developments with federal and non-federal funding.

**R. Asbestos (24 CFR Part 50.3)**

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- Asbestos requirements are located at <http://www.hudexchange.info/programs/environmental-review>
- The HUD / EPA Information for Owners and Managers of Buildings that Contain Asbestos. Renovation and Demolition Requirements.

- The National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations under the Clean Air Act specify work practices for asbestos to be followed during demolitions and renovations of all structures, installations, and buildings (excluding residential buildings that have four or fewer dwelling units). The regulations require the owner of the building or the operator to notify the appropriate state agency before any demolition, or before any renovations of buildings that could contain a certain threshold amount of asbestos or asbestos-containing material. In addition, particular manufacturing and fabricating operations either cannot emit visible emissions into the outside air or must follow air cleaning procedures, as well as follow certain requirements when removing asbestos-containing waste.
- The Asbestos Hazard Emergency Response Act (AHERA) Model Accreditation Plan (MAP) requires that asbestos professionals (including any employee, contractor or supervisor, inspector, management planner, or project designer) working with asbestos-containing building materials in a school, public or commercial building be accredited under a training program at least as stringent as the EPA Model Accreditation Plan (MAP).
- In addition, state and local agencies may have more stringent standards than those required by the federal government.
- Please provide MHDC with the analysis to back up the type of asbestos investigation done for a project. Also, the reports, certifications, licenses, pamphlets and so forth per the HUD regulations.
- The above requirements apply to developments with federal and non-federal funding.

## S. Radon

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements. Refer to Section 9 / Informal and Formal Consultations for NEPA Issues.
- Radon requirements are located at <http://www.hudexchange.info/programs/environmental-review>
- HUD's Radon Fact Sheet – There is no minimum level of radon that has been determined completely safe; however, the EPA has developed an action level of radon of 4 picocuries per liter of air (pCi/L). A picocurie is a measure of radioactivity. If a building's indoor radon concentration is at or above 4 pCi/L, mitigation is recommended. If the concentration is between 2-4 pCi/L, mitigation should be considered.
- Please provide MHDC with the analysis to back up the radon investigation done for a project. Also, the reports, certifications, licenses, pamphlets and so forth per the HUD regulations.
- The above requirements apply to developments with federal and non-federal funding.

## T. Environmental Assessment Factors and Analysis that must be considered.

Consult the HUD website (<http://www.hudexchange.info/programs/environmental-review>)

### Land Development

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements.

- Existing land uses on and around project site
- Future land uses on and around project site
- Whether project will contribute to urban sprawl
- Whether project will increase or decrease employment opportunities
- Whether project will displace a business from a central business district
- Whether project will alter demographic characteristics
- Existing erosion or sedimentation (best if confirmed by an engineer or public works director)
- How erosion will be controlled and minimized
- Erosion control plan, if applicable
- Soil concerns related to use for project
- Geotechnical Report, soil borings, soil reports, if applicable
- Will project displace anyone? If so, all documentation regarding the Uniform Relocation Act.

### **Community Facilities and Services**

Impacts of project on services and services on project.

- Complete the HUD Partner Worksheet including exhibits. Please provide the MHDC Reviewer with for instance, requests for information such as informal consultations with state and federal agencies and non-agencies, and other HUD requirements.
- Emergency and Non-emergency Health Care Services
- Police Services
- Fire Protection Services
- Parks, Playgrounds, and Open Spaces
- Pedestrian and Bike Paths / Trails
- Streets / Roads, Parking Areas / Facilities and Traffic Control Measures
- Public Transportation (taxi cabs, bus, OATS, train, etc.)

### **Findings and Conclusions**

Complete the summary of findings and conclusions that follows the Environmental Assessment Checklist (EA). This summary should include short narratives or informational lists for the following topics:

- Alternatives and Project Modifications Considered
- No Action Alternative
- Mitigation Measures Recommended
- Additional Studies Performed
- List of Sources, Agencies and Persons Consulted



## XIV. Phase I & II Environmental Site Assessments

### A. Phase I Environmental Site Assessment (ESA)

The Phase I ESA makes an initial determination as to the presence of hazardous substances as defined by CERCLA, and of petroleum and petroleum products. Refer to the HUD website for specific compliance details.

#### The assessment must reflect the following:

- Phase I ESA documents must be compliant with HUD and reflect that the proposed property be free of hazardous materials, contamination, toxic chemicals gases, and radioactive substances, where a hazard could affect the health and safety of its occupants or conflict with the intended utilization of the property.
- The Phase I ESA must be prepared in accordance with the requirements of the current version of ASTM E1527 “Standard Practice for Environmental Site Assessments, Phase I ESA Process” use the format as specified in Appendix X4 and HUD requirements.
- Must incorporate a vapor encroachment screen performed in accordance with the current version of ASTM E 2600.
- Must clearly indicate that MHDC and HUD are the authorized user of the report and can rely on the report.

#### Timing

- The Phase I ESA must be conducted (meaning the earliest of the date of the site visit, records review, or interviews) within one year of its submission to MHDC.
- Any Phase I that was conducted more than 180 days prior to the date of the submission to MHDC, but within the allowable 1 year period, must be updated (pursuant to Sect. 4.6 of ASTM E 1527).
- A Phase I ESA prepared in excess of one year prior to the MHDC submission date, even if updated within 180 days, is not acceptable.
- MHDC and HUD may require updates or additional analysis in specific circumstances.

### B. Phase II Environmental Site Assessment (ESA)

The Phase II ESA is prepared to ascertain whether the recognized environmental conditions (RECs) have resulted in the presence of hazardous substances, as defined by CERCLA, and / or petroleum and petroleum products, at a level that would exceed LSTF unrestricted criteria de Minimis levels. HUD regulations and guidelines apply.

#### The Phase II ESA must reflect the following:

- Must be prepared in accordance with the most current version of ASTM E 1903 “Environmental Site Assessments: Phase II Environmental Site Assessment Process” and HUD.
- It need not be a complete site characterization (total nature and distribution) of contamination, but must proceed to a point where it indicates the location of greatest concentration of risk, taking into consideration all of the RECs identified in the Phase I ESA.

#### Timing

- Submit the Phase II after the application has been approved.
- It is recommended the developers consult with HUD before a Phase II ESA is prepared.

The information on the assessment forms must be fully addressed and written up for the purpose of review by the MHDC Reviewer and MHDC's Environmental Consultant. This review must take place and changes made as necessary prior to any entry into HEROS. The Developer's Environmental Analyst(s) is responsible for completing the following forms, as applicable to the project:

- Statutory Checklist
- Environmental Assessment Checklist (EA)
- 58.6
- Partner Worksheets
- Other forms as required

HUD website: <http://www.hudexchange.info/programs/environmental-review>

## **XV. Contact with Agencies**

24 CFR part 58.14 – A responsible entity shall consult with appropriate environmental agencies. State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in 24 CFR 58.5, 58.6.

It is important to note that any contact with state, federal and non-federal agencies (i.e. SHPO, National Park Service, NRCS, Indian tribes, U.S. Fish and Wildlife Service, etc.) Must remain between MHDC and that entity. The Developer's Analyst may be asked to prepare the letters, forms and other documents to send to the agency, but the contact information is the MHDC Reviewer. MHDC must send the letters, forms and documents to the agency and receive all responses. MHDC will forward the responses back to the Analyst. Because of the multiple parties involved, the MHDC project number (yy-000) should be on the Analyst documents as well as all other documentation, reports, and cover letters.

## XVI. HUD HEROS

All documentation pertaining to, for approved developments are required to be uploaded to the **Department of Housing and Urban Development Environmental Review Online System. (HEROS)**

HUD's Office of Environment and Energy has developed this online system for documenting and managing environmental reviews. It covers all levels of environmental reviews for both 24 CFR Part 58/50 developments and includes on-screen guidance for completing HUD environmental reviews.

### A. HEROS Availability

HEROS is currently available to Responsible Entities (RE) – REs in all regions and to a limited extent consultants. The MHDC Environmental Consultant will be provided access by MHDC to HEROS to complete portions of the environmental review. The amount of access HUD will allow Consultants has not been finalized.

The Developer's Environmental Analyst will be responsible for submitting requested documentation to MHDC Environmental Reviewer and the MHDC Environmental Consultant assigned to review the project. Ultimately, after all corrections and amendments have been made, the MHDC Reviewer and the Consultant will upload the environmental review into the HEROS System. The Consultant is responsible for review, comments, and HEROS upload only. The corrections and amendments are the responsibility of the Developer's Environmental Analyst prior to entering information into HEROS.

Environmental review details and certain submissions can be found at the following HUD website: <https://www.hudexchange.info/environmental-review/heros/>

The Partner Worksheets and Environmental Assessment Factors and Analysis must be used. HUD will be reviewing potentially all information and all documentation for completeness, accuracy, and compliance with appropriate regulations.