



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of
All Multifamily Hub Directors
All Program Center Directors
All Operations Officers
All Directors of Project Management
All Housing Project Managers

Notice H 2012-13

Issued: July 12, 2012

Expires: This notice remains in effect until
amended, revoked, or superseded

Cross References:
Handbooks - 4571.2, 4571.3 REV-1,
4571.4 and 4571.5
Notice - H96-102, H2011-18

SUBJECT: Environmental Processing Notice for Fiscal Year 2010/2011 Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities Award Recipients

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PART A: GENERAL

I. Purpose

This notice gives directions for both sponsors and HUD regarding the policies and Part A procedures that must be followed to meet environmental responsibilities. This Introduction section covers general requirements. Part B covers Initial Environmental Processing for sponsors. Part C covers Continuing Environmental Processing for sponsors. Part D covers directions for HUD staff.

II. Applicability

This notice outlines the complete environmental processing requirements for FY 2010 and 2011 Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities applicants that have received Agreement Letters from HUD notifying them that they have been selected to receive Section 202 or Section 811 fund reservations (henceforth called sponsors in this notice).

III. Legal Authorities, General Environmental Requirements, Handbooks and Forms

A. National Environmental Policy Act of 1969.

All Federal agencies are required to comply with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) (NEPA), and the implementing procedures issued by the Council on Environmental Quality at 40 CFR Parts 1500-1508. HUD regulations implementing NEPA are contained in 24 CFR Part 50, "Protection and Enhancement of Environmental Quality". Related Federal laws and authorities are listed in 24 CFR §§ 50.4 and 50.3(i). HUD may not delegate its environmental responsibilities to others; it is required to prepare the environmental assessment and make the appropriate environmental finding. (See 24 CFR §50.11.)

B. Notice of Funding Availability (NOFA) Environmental Requirements.

Applicant Environmental Requirements as stated in both the Section 202 and 811 NOFAs:

1. "You must be in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321) and applicable related environmental authorities at 24 CFR § 50.3(i) and 24 CFR § 50.4, HUD's programmatic implementing regulations at 24 CFR Part 50 and 24 CFR § 891.155(b), especially, but not limited to, the provision of information to HUD at 24 CFR §50.31(b), and you were required to comply with any environmental "conditions and safeguards" at 24 CFR § 50.3(c)."

2. Your signature on the application constitutes an assurance that the applicant agrees to assist HUD with The Department's compliance with environmental review regulations in 24 CFR Part 50 and that [you] will:
 - a. Supply HUD with all available and relevant information necessary for The Department's to perform, for each property, any environmental review required by 24 CFR Part 50;
 - b. Carry out mitigating measures required by HUD; and
 - c. Not acquire, rehabilitate, demolish, convert, enter into or close a leasehold agreement (you can continue to perform obligations to sustain an existing leasehold or option to lease agreement), repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property, from the time the application is submitted until HUD approval of the site is received.

C. Further Environmental Requirements.

1. As stated in the Section 202 NOFA and in the subsequent "Agreement Letter": "A Section 202 Fund Reservation award does not constitute an approval of the site, which may occur only upon completion of HUD's environmental review; and that if The Department finds the site acceptable but only with mitigation and you cannot meet the mitigation requirements, or if HUD determines that even with mitigation, the site is unacceptable, the Section 202 Fund Reservation award will be terminated."
2. As stated in the Section 811 NOFA and in the subsequent "Agreement Letter": "A Section 811 fund reservation award constitutes preliminary approval of an application; that an award does not constitute an approval of the site, which may occur only upon completion of HUD's environmental review; and that if The Department finds the site acceptable but only with mitigation and you cannot meet the mitigation requirements, or if HUD determines that even with mitigation, the site is unacceptable, the Section 811 fund reservation award will be terminated unless an alternate property is proposed and HUD finds the alternate property environmentally acceptable."

D. Handbooks. HUD has issued two handbooks covering environmental issues: Handbook 1390.2 "Environmental Assessment Guide for Housing Projects" and Handbook 1390.4 "Guide to HUD Environmental Criteria and Standards contained in 24 CFR Part 51". Informal guidebooks issued by HUD on environmental issues are cited in this chapter. Also, HUD has also issued two general guides specifically for the Section 202 and 811 programs: the Guide, "Choosing an Environmentally Safe Site", and "Supplemental Guidance, Environmental Information", which are available on the HUD website at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

- E. Forms.** HUD has issued an environmental form HUD-4128 “Environmental Assessment and Compliance Finding for Related Laws and Sample Field Notes Checklist” (SFNC) -- that documents compliance with NEPA, other environmental Federal laws, authorities, and Executive Orders, and HUD standards which may be retrieved electronically from <http://www.hud.gov/offices/adm/hudclips/forms/files/4128.pdf>. It is important to note that the Environmental Site Assessment (ESA), which is performed as part of contamination analysis in Part B, Section III below, must be cited as source documentation in Part A, Item 23 of the HUD-4128 and must be attached.
- F. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).** HUD’s requirements in this notice may exceed those of many state agencies. One reason for this is that, if a non-profit owner defaults on the terms of an agreement, HUD may become the project owner. Under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Federal agencies that own properties are required to take “all remedial action necessary to protect human health and the environment” with respect to known hazardous substances upon disposition of the property. This requirement is beyond any liability releases under state or federal law and any due diligence requirements under CERCLA.
- G. State, Local, or Tribal Laws.**
1. In cases where state, local, or tribal laws, ordinances, codes or regulations are more restrictive than federal requirements, the non-profit owner also will be responsible for compliance with the stricter local or state standard unless federal law states otherwise. An application for Firm Commitment for mortgage insurance does not relieve an owner of responsibility for compliance with state or local requirements.
 2. HUD will not assume any responsibility with respect to inspection, enforcement, interpretation or determination of compliance with such state or local requirements.
 3. Where the project is located on a Native American reservation, the tribal authority may have the responsibilities of the state or local environmental protection agencies. In the Contamination analysis of this notice the acronym STF refers to “state, tribal or federal”.
 4. This notice is not a substitute for the requirements in the laws, regulations, and Executive Orders regarding environmental analyses.

PART B: INITIAL ENVIRONMENTAL PROCESSING

I. Applicability

This Part discusses “Initial Environmental Processing.” Initial Environmental Processing takes place in two separate tracks and at two separate points in time on which of the following two scenarios apply.

- A. For Section 202 sponsors and for those Section 811 sponsors with HUD approval based on Site Control criteria, the Initial Environmental Processing as discussed in this Part has already taken place during application processing and prior to grant award. Unless your grant award letter is conditioned on receipt of the Environmental Report, the Applicant prepared User Questionnaire per ASTM E 1527-05, appendix X-3, and/or Tier I Vapor Encroachment Screen pursuant to ASTM E 2600-10, HUD has deemed the Initial Environmental Processing Submissions that these sponsors have made and that are discussed in this part to be acceptable regarding the site for which the grant award notification has been made. Therefore, for these sponsors **except for the following caveat for Section 202 sponsors as provided for in the Application Processing Notice H-2011-26**, the following requirements are deemed to have been met and are included for informational purposes only and these sponsors shall proceed directly to Part C of this Notice. **If a Section 202 non-profit owner or a Section 811 non-profit owner with HUD approval based on Site Control criteria receives a condition on its agreement letter that HUD must receive the Environmental Report, the User Questionnaire, and updated Phase I ESA (see Part B, Section III.A, below); the Tier 1 VES and updated Phase I ESA (see Part B, Section III.A, below); and/or the Environmental Report (see Part B, Section V, below) within 30 days of the notification of a Fund Reservation, such document(s) must be received by The Department for HUD to work with such sponsors to finish Initial Environmental Processing.**
- B. However, for those Section 811 sponsors with HUD approval based on Site Identified criteria; for Section 811 sponsors with The Department’s approval based on Site Control when the original site is no longer deemed acceptable, the application indicated your willingness to seek an alternate site, and a changed site from that for which the grant award was made has been made; and for Section 202 sponsors with a changed site for reasons other than the original sites being deemed environmentally unacceptable, the following Part B Initial Environmental Processing submissions must be included with the Request for Firm Commitment.

II. Historic Preservation

You are required to send a letter to the State/Tribal Historic Preservation Officer (SHPO/THPO) that attempts to initiate consultation with them and requests their review of your determinations and findings with respect to the historical significance of the proposed project. A sample letter to the SHPO/THPO that may be adapted for your use, if

you so choose, is available on the hud.gov website at <http://archives.hud.gov/funding/2008/sampleltr.doc>. You are required to include a copy of the letter to the SHPO/THPO in your submittal to HUD or a statement that you have not received a response letter(s) from the SHPO/THPO within 30 days of their anticipated receipt date, or a copy of the response letter(s) that you have received from the SHPO/THPO.

III. Contamination

You are required to assist the Department in its determination as to whether a proposed site contains contamination, such as hazardous waste or petroleum products, and, if so, HUD has to be satisfied that it either will be eliminated or will be mitigated to the extent necessary to meet federal, state or local risk-based corrective action standards. This assistance to HUD consists of the following:

A. Phase I Environmental Site Assessment (ESA).

1. You have to undertake and submit a Phase I ESA. It has to be prepared by an Environmental Professional (EP), in accordance with the ASTM Standard E 1527-05, using the table of contents and report format specified at Appendix X4 thereto (available at <http://www.astm.org/Standards/E1527.htm>). The Phase I ESA has to be amended by including a “Tier 1” “vapor encroachment screen” (VES) pursuant to ASTM E 2600-10 (available at <http://www.astm.org/Standards/E2600.htm>). **Analyses regarding the VES must be integrated within the body of the various sections of the Phase I ESA rather than be analyzed solely as a supplement.** In addition, you are required to:
 - a. Fill out the User Questionnaire as per Appendix X3 of ASTM E 1527-05 and provide it to the EP so as to be included in the Phase I ESA, and
 - b. Inform the EP as to all of the above reasons and requirements for the Phase I ESA.
2. The EP preparing the Phase I ESA has to meet all of the qualification requirements of Appendix X2 of ASTM E 1527-05. Specifically, the EP has to meet the license/certification, educational, and experiential requirements of Section X.2.1.1(2)(i), (ii), or (iii), of Appendix X2 of ASTM E 1527-05 and has to provide supporting documentation to this effect in the Phase I ESA.
3. The Findings, Opinions, and Conclusions sections of the Phase I ESA have to be based on ASTM 1527-05, Sections 12.5, 12.6, and 12.8, respectively. The Findings section has to list and discuss, **or indicate the lack thereof**, of any and all recognized environmental conditions (REC), suspect RECs, historical RECs (HREC) (i.e., a hazard has been remedied and an STF Authority has issued a No Further Action (NFA) letter or similar approval) and/ or de minimis conditions

(with all such terms as described in ASTM E 1527-05), as well as vapor encroachment conditions (VEC), suspected VECs, or instances where VECs cannot be ruled out (pursuant to ASTM E 2600-10). The opinions section has to discuss each of these conditions as to whether each one is deemed to be or deemed not to be a REC and/or a VEC. The Conclusions section has to list all RECs and VECs. You are cautioned that even if the EP who prepares the Phase I ESA determines that there are no RECs and no VECs, suspected VECs, or instances where VECs cannot be ruled out, and you therefore decide not to prepare a Phase II ESA (*see* Phase II ESA discussion, below), HUD may nevertheless determine that a Phase II ESA is necessary. Also, if the Phase I ESA indicates that there is a HREC, HUD may either deem the NFA as completion of the associated remediation or it may require a Phase II ESA and/or further remediation.

4. The Phase I ESA that you submit must have been prepared within one year of HUD receipt of the Request for Firm Commitment. Any Phase I ESA prepared within the one year but more than 180 days prior to the application deadline date must have been updated pursuant to Section 4.6 of ASTM Standard E 1527-05. (**NOTE:** For Section 202 sponsors and for those Section 811 sponsors with HUD approval based on Site Control criteria, the preparation dates refer back to the Application Due Date.) Even if updated, a Phase I prepared more than one year prior to your Request for Firm Commitment is not acceptable. The Phase I ESA preparation date is deemed to be the earliest of either the date of the site visit, the records review, or the interviews.

B. Phase II ESA. If the Phase I ESA concludes that there were RECs or VECs and you choose to continue with the site being proposed for the project, or if HUD so directs you, you have to undertake a detailed Phase II ESA by an appropriate professional. The Phase II ESA has to address all of the RECs and VECs identified in the Phase I ESA and/or all of the RECs and VECs identified by HUD. The testing and sampling design must be based on scientific methodology and must proceed to the point that a reasonable determination could be made regarding each of the RECs and VECs/ suspected VECs/ instances where VECs cannot be ruled out.

1. For on-site RECs, VECs, suspected VECs, or instances where VECs cannot be ruled out, the determination has to be made that either:
 - a. Hazardous waste, petroleum products, and/or VECs exist on the site; or
 - b. Hazardous waste, petroleum products, and/or VECs cannot be detected on the site.
2. For off-site RECs, VECs, suspected VECs, or instances where VECs cannot be ruled out, the determination has to be made that:
 - a. Hazardous waste, petroleum products, and/or VECs have migrated on to the

site or are likely to do so in the foreseeable future; or

- b. Hazardous waste, petroleum products, and/or VECs have not migrated on to the site and are not likely to migrate on to the site in the foreseeable future.
3. Any Phase II ESAs that have not been prepared as of the effective date of this notice must meet the following requirements:
 - a. For RECs, the Phase II must be performed pursuant to ASTM E 1903-11 “Environmental Site Assessments: Phase II Environmental Site Assessment Process” (available at <http://www.astm.org/Standards/E1903.htm>); and
 - b. For VECs, suspect VECs and where VECs cannot be ruled out, a Phase II must be performed pursuant to:
 - i. Tier 2 non-invasive VEC/ Invasive VEC pursuant to ASTM E 2600-10, Section 9; or
 - ii. Vapor Intrusion Assessment (VIA) as discussed in ASTM E 2600-10, Appendix X7.1 pursuant to State rules, plus compliance with any resulting requirements under State law; or
 - iii. Vapor mitigation as discussed in ASTM E 2600-10, Appendix X7.2, with such controls that shall, where feasible, consist of a poured-on vapor barrier to be used in conjunction with active and passive venting systems.
 4. The Phase II ESA must be performed pursuant to the logic model of ASTM E 1903-11, Section 7, such as developing the conceptual model and validation.
 5. Report Format. The Phase II ESA must be prepared using the table of contents and report format specified in Appendix X3.2 as amended by X3.3 in ASTM E 1903-11. Some of the steps that a Phase II assessor might perform may be intuitive in nature, but they nevertheless must be included in the report so as to ensure its scientific validity.

C. Clean-up. (NOTE: The following wording may be slightly different than the wording in the 202 and 811 NOFAs, but the same levels of analyses are required and the same results will be achieved.) You are required to submit a preliminary detailed clean-up plan if your Phase II ESA makes the conclusions in Part B, Section III.B.1.a and/or Part B, Section III.B.2.a. Even if you have determined that a clean-up plan is not necessary, HUD, after reviewing your Phase I or Phase II ESA, may determine that a clean-up plan is necessary.

1. For VEC scenarios the following two options apply:
 - a. Perform a VIA as discussed in ASTM E 2600-10, Appendix X7.1, pursuant to State rules, and comply with any resulting requirements under State law;

or

- b. Perform vapor mitigation as discussed in ASTM E 2600-10, Appendix X7.2, with such controls that shall, where feasible, consisting of a poured-on vapor barrier to be used in conjunction with active and passive venting systems.
2. Other than for VEC scenarios, the detailed clean-up plan, though preliminary, has to be prepared by an appropriate professional to either:
 - a. Completely clean up the site to statewide, non site specific federal or state standards, with no active or passive remediation still taking place after either final closing or initial occupancy, whichever would come first, no capping over of any contamination, and no monitoring wells; or
 - b. Clean up the site to federal or state risk-based corrective action (RBCA) levels. The RBCA must have allowed for no active remediation (such as flushing wells or digging up and/or hauling away of contamination) to take place after either final closing or initial occupancy, whichever would come first.
 3. The preliminary clean-up plan must be detailed in nature and must include:
 - a. An estimate of clean-up costs;
 - b. Either an approval letter of the clean-up plan from the relevant federal or state authority or a discussion of the feasibility of securing necessary approvals prior to HUD issuance of a Firm Commitment; and
 - c. A discussion of the feasibility of completing necessary work prior to final closing or initial occupancy, whichever comes first.

NOTE: The Fiscal Year (FY) 2010 NOFAs for both the Section 202 and 811 programs state that before issuance of the Firm Commitment, you will be required to submit a final clean-up plan, the requirements of which will be discussed in a separate processing notice. This notice is that referenced processing notice and the associated requirements for the Final clean-up plan are discussed in Part C of this notice.

IV. Asbestos

Asbestos is a hazardous substance which was commonly used in building products until the late 1970s. Therefore, you are required to submit one of the following:

- A. Except for structures that you plan to demolish, if there are no pre-1978 structures on the site, or if there are pre-1978 structures that most recently consisted of solely four or fewer units of single-family housing including appurtenant structures thereto, a statement to that effect; or

- B. Except for any structures that you plan to demolish, and if there are pre-1978 structures on the site, other than for a site that most recently consisted of solely four or fewer units of single-family housing including appurtenant structures thereto, a comprehensive building asbestos survey that is based on a thorough inspection to identify the location and condition of asbestos throughout any structures. The building asbestos survey must be performed pursuant to the “baseline survey” requirements of ASTM E 2356-10 “Standard Practice for Comprehensive Building Asbestos Surveys” (available at <http://www.astm.org/Standards/E2356.htm>). In those cases where suspect asbestos is identified, you may either:
 - 1. Assume it to be asbestos; or
 - 2. Obtain confirmatory testing.
- C. For any structures on the site that you plan to demolish, a comprehensive building asbestos survey must be performed that is based on a thorough inspection to identify the location and condition of asbestos throughout any structures and that is performed pursuant to the “Pre-Construction Survey” requirements of ASTM E 2356-10 “Standard Practice for Comprehensive Building Asbestos Surveys”.

V. Environmental Report

Pursuant to National Environmental Policy Act and Related Laws, and 24 CFR Part 50, HUD has the responsibility for conducting the environmental reviews. To enable HUD to complete its environmental review in a timely manner, you are to provide HUD with an Environmental Report with your Application for Firm Commitment. The Environmental Report can be separate from the Phase I ESA (required per Part B, Section III.A). It should cover the relevant topics in the Sample Field Notes Checklist (SFNC) from form HUD 4128 and should focus on those environmental issues that might affect the acceptability of the project, including any compliance issues with state environmental laws as well as the following:

- A. Historic Preservation (Item 18 in the SFNC), which is in addition to the requirement to attempt to obtain comments from the State/Tribal Historic Preservation Officer per Part B, Section II.
- B. Floodplain Management (Item 17 in the SFNC)
- C. Wetlands Protection (Item 22 in the SFNC)
- D. Endangered Species (Item 24.a in the SFNC)
- E. Noise Analysis (Item 19 in the SFNC)
- F. Explosive/Flammable Hazards (Item 20 in the SFNC)

- G.** Coastal Barrier Resources (Item 16 in the SFNC)
- H.** Coastal Zone Management (Item 10 in the SFNC)
- I.** Sole Source Aquifers (Item 24.b in the SFNC)
- J.** Airport/Runway Clear Zones (Item 21 of the SFNC)
- K.** Flood insurance (Item 24.d of the SFNC)
- L.** Water Quality (Item 24 of the SFNC)
- M.** Wild and Scenic Rivers (Item 24 of the SFNC)
- N.** Air Quality (Item 24 of the SFNC)
- O.** Farmlands Protection (Item 24.c of the SFNC)
- P.** Environmental Justice (Item 24.e of the SFNC)

NOTE: As the Contamination requirements covered under Item 23 in the SFNC are discussed in Part B, Section III, above, it is not necessary to duplicate it in the Environmental Report.

PART C: CONTINUING ENVIRONMENTAL PROCESSING

I. Applicability

- A. The requirements of this Part apply to:
1. A Section 202 non-profit owner or a Section 811 non-profit owner approved with site control and all requirements equivalent to Part B have been met;
 2. A Section 811 non-profit owner approved with site control, but with a changed site after Part B has been completed;
 3. A Section 811 non-profit owner approved as Site identified, after Part B has been completed; or
 4. A Section 202 non-profit owner with a changed site for reasons other than the original site being deemed environmentally unacceptable after Part B has been completed.

NOTE: If HUD finds a Section 202 site environmentally unacceptable, the Section 202 Fund Reservation award will be terminated and there will be no option for finding a changed site.

NOTE: A Section 811 fund reservation award constitutes preliminary approval of an application. An award does not constitute an approval of the site, which may occur only upon completion of HUD's environmental review. If HUD finds the site acceptable but only with mitigation and you cannot meet the mitigation requirements, or if HUD determines that even with mitigation, the site is unacceptable, the Section 811 fund reservation award will be terminated unless an alternate property is proposed and HUD finds the alternate property environmentally acceptable.

- B. The requirements of this Part must be completed before HUD will issue a Firm Commitment. If a non-profit owner feels comfortable, it may provide these Part C submissions with their application for Firm Commitment, but in most cases HUD would expect the non-profit owner to have prior discussions with the local field office. Note that HUD may determine that no submissions are necessary under this Part if HUD can complete its environmental review without requesting additional submissions.

II. Historic Preservation

If HUD determines that the proposed activities at your selected site have an effect on Historic Properties as defined at 36 CFR Part 800, you will be required to assist HUD in meeting its compliance thereto. This may include being a party to a Memorandum of Agreement (MOA) with the SHPO/THPO and/or the Advisory Council on Historic Preservation (ACHP) and meeting any obligations there from. This Historic Preservation

process must be completed, including the signing of the MOA if applicable, prior to HUD issuance of the Firm Commitment.

III. Contamination

A. Applicability. This section only applies to those situations in which:

1. For Section 202 sponsors and for Section 811 sponsors approved with Site Control, a detailed clean-up plan was submitted with the application;
2. When detailed preliminary clean-up plan has been prepared per Part B, Section III.C for:
 - a. Section 811 sponsors with HUD approval based on Site Identified criteria;
 - b. Section 811 sponsors with HUD approval based on Site Control where the original site was deemed no longer acceptable, with a changed site; and
 - c. Section 202 sponsors with a changed site, when the original site has been rejected for other than Environmental reasons.

B. General Requirements for all Final Clean-up Plans.

1. Complete site characterization.
 - a. A complete site characterization (sometimes known as a special site assessment report, a detailed Phase II ESA, or a Phase III ESA) must be prepared **if not already in the clean-up plan submitted with the application.**
 - b. It shall be based on any Phase I or Phase II ESA identified contamination (or contamination exposure pathways), as well as additional contamination, identified in the draft detailed clean-up plan. The site characterization shall include all forms of contamination above de minimis levels, including vapor (gas) and liquid, solid, dissolved, or non-aqueous phase liquid (NAPL).
 - c. It must determine the total horizontal and vertical extent of such contamination, exposure pathways, and potential receptors (a.k.a., conceptual site model). However, if the remediation plan preparer determined that the Phase II ESA preparer has already determined the total horizontal and vertical extent of such contamination, exposure pathways, and potential receptors, then such determination shall be so indicated and the Phase II ESA shall be made a part of the remediation plan.
 - d. It must be based on the appropriate combination of the following ASTM Practices and Guides, as amended, and for a lead contaminated site, the listed EPA Handbook, as determined by the remediator's environmental

investigator. Lesser degrees of site assessments or non-conformance are not acceptable.

- i. D 6235-04, "Practice for Expedited Site Characterization of Vadose Zone and Ground Water Contamination at Hazardous Waste Contaminated Sites" (available at <http://www.astm.org/Standards/D6235.htm>)
 - ii. E 1689-95, "Standard Guide for Developing Conceptual Site Models for Contaminated Sites" (available at <http://www.astm.org/Standards/E1689.htm>)
 - iii. E 1903-11, "Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process"
 - iv. E 1912-98, "Guide for Accelerated Site Characterization for Confirmed or Suspected Petroleum Releases" (available at <http://www.astm.org/Standards/E1912.htm>)
 - v. EPA, Superfund Lead-Contaminated Residential Sites Handbook, 2003 (available at <http://www.epa.gov/superfund/lead/products/handbook.pdf>)
- e. It must discuss how it meets the appropriate Practices or Guides, and EPA Handbook listed here, and/or the appropriate STF procedures that may be followed in lieu of the ASTM Guides and Practices, as amended, and EPA Handbook, when the remediator's environmental investigator determines and describes their equivalence or greater stringency.
 - f. It must indicate how it meets the requirements of any applicable STF regulatory procedures.
 - g. The requirements of Part C, Sections III.B.2 and III.B.3 must be met.
2. Any remediation studies and plans must be in the form of a report which includes a detailed, common language summary and discusses how it meets the listed Practices or Guides and/or the appropriate STF procedures.
 3. The remediation plan preparer's qualifications must be discussed in any remediation reports.
 4. The remediation plan must cover all relevant contaminant phases: vapor (gas), liquid, solid, dissolved, and NAPL.
 5. The remediation plan must require either the complete removal of contamination (bringing the contamination to de minimis levels) pursuant to Part C, Section III.C, or incomplete removal of contamination in the form of a Risk-Based Corrective Action pursuant to Part C, Section III.D.

6. If HUD determines that it is uncertain whether implementation of the remediation plan will meet the requirements of either Part C, Sections III.B.2 or III.B.3, the remedial work must be completed, including clearance testing, and the remediation itself must be approved, including issuance of any clearance and closure documents, by the STF authority prior to issuance of the Firm Commitment.
7. If the extent and cost of removing the contamination can be definitively determined, and the cost of removing that contamination can be specified pursuant to a contract for remediation HUD may allow a remediation plan that has been approved by the STF authority that:
 - a. Permits the remediation, including site testing, any clearance and closure documents, and the approval by the STF, prior to Initial Endorsement, or
 - b. If the non-profit owner can show why it would be impractical to complete remediation prior to Initial Endorsement, permit the remediation, including site testing, any clearance and closure documents, and the approval by the STF, prior to Final Endorsement and initial occupancy.
8. All residents living regularly and construction workers working regularly on site while remediation is taking place shall be informed of the remediation activities and protected from any potential contamination. Such informing shall include the taking of "appropriate steps to ensure effective communication" with persons with vision or hearing impairments pursuant to 24 CFR § 8.6. Such informing shall also give deference to any limited English proficiency residents utilizing HUD's guidance on serving persons with limited English proficiency, "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732)." This requirement must be a part of the remediation plan.
9. Remediation timing. Clean-up must be completed prior to final closing or initial occupancy, whichever comes first.
10. Remediation contract. The final clean-up plan must include a remediation contract that specifies all clean-up costs and timelines for clean-up to ensure that it will be completed prior to final closing or initial occupancy, whichever comes first.
11. Remediation contract insurance. Unless HUD determines otherwise, the remediation contract shall require cost cap and reopener insurance coverages, copies of which are to be included in the remediation plan.
12. Clean-up approval. Clean-up is not completed until sign-off by the STF.
13. Clean-up costs. Clean-up costs are an allowable expenditure out of capital advance funds. However, HUD will not cover any cost that exceeds the maximum development cost limits. To the extent that the actual cost of the

proposed clean-up activities exceed the capital advance amount provided, the non-profit owner must identify funding sources other than the capital advance funds to cover any excess clean-up costs.

C. Clean-up Plans – Complete Removal of Contamination.

1. General Requirements. Except for those situations where Part C, Section III.D (Remediation Plans Allowing for Incomplete Removal of Site Contamination) applies, the non-profit owner must submit a remediation plan designed to bring the contamination identified by the complete site characterization per Part C, Section III.B.1 to de minimis levels, eliminated to the extent necessary to meet the non site-specific STF authority standards, with no active or passive remediation still taking place. There also must not be a need for engineering controls, institutional controls, or monitoring wells.
2. All of the requirements for Part C, Section III.B must be met.
3. A remediation plan that involves control of off-site contamination per Part C, Section III.F and/or Tier 4 vapor encroachment/ intrusion mitigation per Part C, Section III.D.3.a.viii is not permitted under this Section but may be allowed under Part C, Section III.D.

D. Clean-up Plans – Incomplete Removal of Contamination.

1. If the costs are deemed to be exorbitant and/or the feasibility deemed impractical for remediation of on-site contamination to de minimis levels, or if there is known or expected off-site contamination that poses a risk to the project site, the remediation plan may allow for incomplete removal, as described below. Justification for such incomplete removal must be submitted along with the remediation plan and must include documentation that shows that the cost of the incomplete removal of contamination, including any life cycle costs for Operation and Maintenance and any applicable enforcement requirements of STF authorities, are sufficiently below the costs of complete contamination removal, per Part C, Section III.C, above.
2. All of the requirements for Part C, Section III.B.1.a must be met.
3. The corrective action must be a Risk Based Corrective Action (RBCA) based on the appropriate combination of:
 - a. The following ASTM Guides and Practices, as determined by the remediator's environmental investigator (for lead contaminated sites, refer to the listed EPA Handbook):
 - i. E 1689-95, "Standard Guide for developing Conceptual site models for Contaminated Sites"

- ii. E 1739-95, “Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites” (available at <http://www.astm.org/Standards/E1739.htm>)
 - iii. E 1943-98, “Standard Guide for Remediation of Ground Water by Natural Attenuation at Petroleum Release Sites” (available at <http://www.astm.org/Standards/E1943.htm>)
 - iv. E 2081-00, “Standard Guide for Risk-Based Corrective Action” (available at <http://www.astm.org/Standards/E2081.htm>)
 - v. E 2091-11 “Standard Guide for Use of Activity and Use Limitations, Including Institutional and Engineering Controls” (available at <http://www.astm.org/Standards/E2091.htm>)
 - vi. E 2435-05, “Standard Guide for Application of Engineering Controls to Facilitate Use or Redevelopment of Chemical-Affected Properties” (available at <http://www.astm.org/Standards/E2435.htm>)
 - vii. WK16004, “Draft Standard Guide for Risk-Based Remedy Selection” (when issued)
 - viii. E 2600–10, “Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions”
 - ix. For Lead Contaminated Sites: EPA, Superfund Lead-Contaminated Residential Sites Handbook, 2003
- b. And/or STF regulatory procedures that may be followed in lieu of the ASTM Guides and Practices, as amended, and for a lead contaminated site, the EPA Handbook as listed in Part C, Section III.D.3.a.ix, above, when the remediator’s environmental investigator determines and describes their equivalence or greater stringency.
4. STF requirements. The RBCA must always meet the requirements instituted by any applicable STF regulatory authority and must discuss how these STF requirements have been followed.
5. The RBCA report(s) must:
- a. Meet all of the requirements of Part C, Section III.B;
 - b. Discuss how the remediation plan complies with the applicable ASTM Guides and Practices and/or STF regulatory procedures as discussed in Part C, Sections III.D.3 and III.D.4 above;
 - c. Discuss how it meets or will meet all of the requirements of Part C, Section III.D.6; and

- d. Discuss how it meets or will meet all of the requirements of Part C, Sections III.E through III.I.
6. The corrective action must be RBCA supported by the applicable combination of:
- a. Engineering and Institutional Controls (EC/IC).
 - i. An appropriate mix of engineering controls such as capping and slurry walls, and institutional controls such as protective covenants and access restrictions, is usually required for all RBCAs and shall follow the guidance in ASTM E 2435-05 and ASTM E 2091-05. The RBCA must indicate how it met these Guides. STF regulatory provisions may be followed in lieu of these ASTM Guides, as amended, when the remediator's environmental professional determines their equivalence.
 - ii. Operations and Maintenance Plan (O&M) Plan. Any time there is an EC/IC there must be an O&M plan which itself is an IC. The O&M plan must be approved by the STF authority, and must discuss any associated enforcement required by STF authorities. An O&M plan must be in place for management of all contamination remaining on the site and any controls thereof. If HUD determines that the mortgagor does not have sufficient capacity to manage the O&M plan, the mortgagor must contract an appropriate servicer to do so.
 - iii. Hard/Soft Cap Engineering Control.
 - A. A hard cap EC, such as concrete, generally is required if any contamination will remain on the site after Final Endorsement. Unless the applicant can justify why a lower depth to contamination would be protective of the health and safety of occupants, the depth of any remaining contamination should be greater than:
 - 1. The depth of the foundations of any existing or proposed structures including sumps;
 - 2. The depth of any existing or proposed utilities on site; and
 - 3. Five feet below the surface.
 - B. In certain situations, HUD may allow for a soft cap (e.g. dirt) if other engineering controls such as an impenetrable geotextile fabric are included. Even if EC are not required for such RBCAs, IC is still required.

- iv. Slurry Wall or Equivalent Engineering Control. A slurry wall or equivalent type EC may be required to prevent offsite contamination from migrating onsite or to prevent onsite contamination from migrating onsite or offsite. If the Phase I and/or Phase II ESA determines that the likely existence of off-site contamination presents a risk to the site, such a slurry wall or equivalent type EC will be required.
 - v. Monitored Natural Attenuation and Enhanced Passive Remediation (MNA/EPR). MNA/EPR, such as by bio-augmentation where no additional active input is required, and passive engineering controls such as a slurry wall, may be allowed as part of the RBCA. In such cases, the STF authority must issue a conditional No Further Action Letter or similar approval. Monitoring wells pursuant to the above RBCAs and meeting the requirements of Part C, Section III.E will be required to monitor the progress of the remediation. When MNA/EPR is part of the RBCA, the remediation may continue beyond Initial Endorsement provided that the STF authority has determined in writing that such undertakings would present no threat to health, safety or the environment.
 - vi. Vapor Encroachment/Vapor Intrusion Mitigation. If a VEC is present, a VEC is likely present, or a VEC cannot be ruled out, then mitigation as discussed in ASTM E 2600-10, Section 7.2 is required, unless a VIA has been performed pursuant to STF policy and/or procedure and in accordance with ASTM E 2600-10, Appendix X7.1 and has determined that it is in compliance with such policy or would be in compliance after instituting mitigation. When remediation goes directly from a Tier 1 screen or a Tier 2 screen, such controls shall, where feasible, consist of a poured-on vapor barrier to be used in conjunction with active and passive venting systems.
 - vii. IC regarding groundwater contamination, if applicable, must be put in place.
- b. No Further Action Letter (NFA). The STF authority must issue an NFA, or similar approval, except that a conditional NFA may be allowed pursuant to MNA/EPR and must be issued pursuant to the time lines required by Part C, Section III.B.9, above. Additionally, the STF authority must indicate that the remediation that has taken place or will take place is protective of health, safety and the environment.
 - c. Groundwater Requirement. A site is or will be otherwise acceptable if contamination exists in the groundwater after completion of remediation if:

- i. IC regarding the groundwater is/will be put in place, along with an O&M plan, approval by the STF authority, and any applicable enforcement requirements of STF authorities. The ICs must prohibit any and all uses of the groundwater;
 - ii. The highest anticipated levels of groundwater based on high groundwater and/or 100 year flooding events are below the levels of any construction or potentially anticipated utility work unless it can be shown how such high groundwater levels will not modify the nature and distribution of contamination to such a degree that it could affect the health and safety of residents and workers; and
 - iii. Any vapors from groundwater and/or soils are shown not to present a significant risk pursuant Tier 1 vapor encroachment assessment, Tier 2 vapor encroachment assessment, VIA, or mitigation.
- d. Safety of and Disclosure to Residents and Workers. Any time contamination above de minimis levels is allowed to remain on site after initial occupancy and final closing, all maintenance workers who might perform activities that could compromise the EC/IC, construction workers, and building residents, etc., are to be informed of the general nature and distribution of contamination and the protective measures that have been taken. Such informing shall include the taking of "appropriate steps to ensure effective communication" with persons with vision or hearing impairments pursuant to 24 CFR § 8.6. Such informing shall also give deference to any limited English proficiency residents utilizing HUD's guidance on serving persons with limited English proficiency, "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (72 FR 2732). A copy of this information shall also be posted on building(s) exterior doors or in other visible common areas within the building(s).
- e. Hazardous Substance Quantification. If any RBCA remediation plan identifies hazardous substances (listed in 40 CFR § 302.4) that will remain on the property after Final Endorsement, such plan shall determine the quantity of such hazardous substances and whether it exceeds the levels indicated at 40 CFR § 373.2(b). (This is a requirement under CERCLA that would apply to HUD at any time that HUD might own the property or take over its management.)

E. Monitoring Wells, Flushing Wells, or Testing Wells.

- 1. General Requirements. The presence of a testing or monitoring well on the property does not bar the property from consideration for mortgage insurance. If a monitoring well is required to confirm that contaminants have been removed to intended levels or that an MNA/EPR is working properly, EC/IC

will be required until such time as contaminants are reduced to de minimis levels and a Final NFA letter is issued by the STF.

2. **Monitoring Well Protocols.** Monitoring protocols must be specified in the RBCA and monitoring must proceed until contaminants have been removed to intended levels or passive MNA/EPR is working properly
 3. **Off-site Contamination – Acceptability.** If a monitoring well is required to determine if existing or assumed off-site contamination has migrated or might migrate on-site, the site is generally not acceptable unless associated EC/IC are put in place pursuant to a RBCA, or unless the STF authority provides a statement that such off-site contamination would not present a risk to the health of the project’s occupants if it were to migrate on-site.
 4. **Flushing Wells – Unacceptable.** In no case may Final Endorsement/initial occupancy take place when a flushing well is in operation or will be required.
 5. **Testing or Monitoring Wells Ordered by STF.** A testing or monitoring well may also be placed on the property by order of the STF to test or monitor contamination on the site or from a neighboring site. If a monitoring well would be required or exists solely to monitor the general health of an aquifer used as a water supply or potential water supply, but not in relation to an existing or potential hazardous condition, this is not a bar to environmental approval. However, the non-profit owner must notify HUD if there is any current or intended placement of a monitoring or testing well.
 6. **Non-operating Wells.** Non-operating wells are not a bar to environmental approval, but must be capped over and closed out pursuant to the appropriate STF authority.
- F. Off-site Contamination.** If the Phase I and/or Phase II ESA determine that the existence of off-site contamination presents a risk to the site or the residents of the project and the sponsor has no control over the off-site locations of the contamination, the site is not acceptable unless such off-site contamination is subject to a RBCA meeting all of the requirements of Part C, Sections III.B and III.D.
- G. Escrow.** An escrow account must be set up for the maintenance of any monitoring wells and engineering controls, such as caps or slurry walls.
- H. STF Approvals and Reviews.** Any approvals by an STF authority must be given directly by that authority and may not be given by a third party approved by that authority to act in lieu of the authority itself. Approvals by local authorities are only acceptable when such authority is acting under delegation from the State.
- I. Unacceptable Sites.** A site over a former solid waste landfill/dump and/or Superfund (National Priorities List (NPL)) site generally is not acceptable for

development unless the hazardous substances, petroleum, and/or petroleum products are completely removed, the site is delisted, or for an NPL site only, the Federal Agency with management authority over the site gives approval of the site for residential usage.

PART D: HUD STAFF ENVIRONMENTAL PROCESSING

I. Environmental Conditions on Approval Letter

Applicable to a Section 202 non-profit owner, or a Section 811 non-profit owner with HUD approval based on Site Control criteria, that received a condition on the agreement letter that HUD must receive within 30 days of the Notification of a Fund Reservation:

- A Phase I ESA amended by a User Questionnaire and/or a Tier 1 VES, and/or
- An Environmental Report

A. Were all of the required documents received within 30 days of Notification of a Fund Reservation?

Yes ___ No ___

B. Was the Phase I ESA, if required by the Agreement letter, amended by an applicant prepared "User Questionnaire" per Appendix X3 of ASTM E 1527-05?

Yes ___ No ___, Not applicable ___

C. Was the Phase I ESA, if required by the Agreement letter, amended by a "Tier 1" "vapor encroachment screen" (VES) prepared pursuant to ASTM E 2600-10?

Yes ___ No ___ Not applicable ____

If no to Steps A, B, or C, above, the award must be rejected.

If yes to Steps A, B, and C, above, go to Step D, below if applicable, or, if not applicable, go to Part D, Section III.

D. If an amended Phase I ESA was submitted in accordance with Steps B and/or C, above, does HUD recommend further study, or does the amended Phase I ESA conclude that there were either RECs or VECs -- on-site and/or off-site -- that were not identified in the original Phase I ESA?

Yes ___ No ___

If no, go to Part D, Section III.

If yes, go to Step E, below.

E. If yes to Step D, above, did the application include a Phase II ESA that analyzed the RECs or VECs that were not identified in the original Phase I ESA?

Yes ___ No ___

If no to Step E, the grant must be rejected.

If yes to Step E, go to Part D, Section III for projects that have not had a Preliminary Environmental Review, below.

II. Preliminary Environmental Review Requirements for Specific Sponsors

- A. This Section applies to the following non-profit owner sites:
1. Section 202 non-profit owner with a changed site for reasons other than the original sites being deemed environmentally unacceptable;
 2. Section 811 non-profit owner sites with HUD approval based on Site Identified criteria;
 3. Section 811 non-profit owner with HUD approval based on Site Control for a changed site when the original site is no longer deemed acceptable and when the application indicated the willingness to seek an alternate site.

NOTE: The following submissions always are required for these sponsors. You should receive these documents with the Firm application. If not received, you must obtain them from the non-profit owner.

- B. Asbestos.** Either a statement submitted that the project does not involve a pre-1978 structure on the site or that the site most recently consisted of solely four or fewer units of single family housing including appurtenant structures, or a statement that a comprehensive building asbestos survey was submitted that was a **thorough inspection** that identified the location and condition of asbestos throughout any structures and performed pursuant to the “baseline survey” requirements of ASTM E 2356-10 “Standard Practice for Comprehensive Building Asbestos Surveys”, or, for any structures that would be demolished, pursuant to the “pre-construction survey” requirements of ASTM E 2356-10.
- C. Historic Preservation.** A letter to the State/Tribal Historic Preservation Officer (SHPO/THPO) and either a statement that SHPO/THPO failed to respond to the applicant, or a copy of the response letter received from SHPO/THPO.
- D. Phase I ESA.**
1. It must be for the entire site that would be covered by the capital advance.
 2. It must be prepared in conformance with ASTM Standard E 1527-05, as amended, using the table of contents and report format specified at Appendix X4.
 3. The Findings, Opinions, and Conclusions sections must be based on ASTM 1527-05, Sections 12.5, 12.6, and 12.8, respectively. (Note that the Environmental Professional (EP) who prepares the Phase I ESA is not required to recommend whether or not either a Phase II ESA or site remediation was necessary.)

4. It must be amended by including a “Tier 1” “vapor encroachment screen” (VES) pursuant to ASTM E 2600-10, the results of which were incorporated, as appropriate into the Findings, Opinions, and Conclusions sections of the Phase I ESA.
5. The EP must definitively state that either (1) there are no Recognized Environmental Conditions (REC) and no Vapor Encroachment Conditions (VEC) or (2) there are RECs or VECs which are so listed.
6. The EP preparer must provide supporting documentation in the Phase I ESA that she/he meets the qualification requirements as specified in either Section X.2.1.1(2)(i), (ii), or (iii) of Appendix X2 of ASTM E 1527-05.
7. It must be prepared within one year of the Firm Application date and if more than 180 days before, but within one-year of the Firm Application date, must be properly updated as specified at Section 4.6 of ASTM E 1527-05. (The preparation date of the Phase I ESA is the earliest of the date of either the site visit, the records review, or the interviews, rather than the date that the EP completes the Phase I.)
8. It must include the applicant prepared User Questionnaire per Appendix X3 of ASTM E 1527-05.

E. Environmental Report.

The Environmental Report submitted pursuant to either the NOFA or to Part B, Section V, shall be reviewed by HUD. Any information from the Environmental Report determined to be appropriate and accurate, shall be incorporated within the Environmental Review which is described in Part D, Section IV.

F. Phase II ESA.

1. If the Phase I ESA concludes that there are RECS, VECs, suspect VECs, and/or VECs that cannot be ruled out, the Phase II ESA must be prepared pursuant to Part B, Section III.B.
2. However, rather than preparing a Phase II ESA regarding a Phase I ESA conclusion that there are VECs, suspect VECs, and/or VECs that cannot be ruled out, vapor mitigation may be followed as discussed in ASTM E 2600-10, Appendix X7.2, with such controls, where feasible, to consist of a poured-on vapor barrier to be used in conjunction with active and passive venting systems.
3. Conclusions of Phase II ESA. The conclusion of the Phase II ESA must be that either hazardous waste, petroleum products, and/or VECs exist on the site, or

hazardous waste, petroleum products, and/or VECs cannot be detected on the site.

G. Contamination Clean-up.

1. If the conclusions of the Phase II ESA are that hazardous waste, petroleum products, and/or VECs exist on the site, a clean-up plan is required.
2. HUD may require a clean-up plan even if the Phase II ESA concludes that hazardous waste, petroleum products, and/or VECs cannot be detected on the site.
3. The preliminary clean-up plan must be prepared pursuant to Part B, Section III.C.

III. Preliminary Environmental Processing for All Sponsors

Some of the following questions may have been asked during Application processing, but may now be more fully answered with the availability of more information provided by the non-profit owner.

- A.** Is the site located in a floodway, Coastal High Hazard Area, and/or within the designated Coastal Barrier Resources System (Coastal Barrier Resources Act, as amended), or is the site located in the FEMA identified 100-year floodplain where the community has been suspended or does not participate in the Flood Insurance Program?

Yes _____ No _____

If No, proceed to Step B, below

Section 202: If Yes, the grant must be rejected.

Section 811: If Yes, the site must be rejected unless the application indicated a willingness to seek an alternate site, then Section I of this Part must be followed for that changed site.

- B.** Will the site for a new construction or conversion project (See Part D, Section IV.G) be located in the unacceptable noise zone (as defined in 24 CFR part 51, Subpart B) taking into account that the site, including outside sensitive activities (such as passive recreation), may be removed from the Unacceptable Noise zone by installation of an effective noise barrier?

Yes _____ No _____.

If No, proceed to Step C, below

Section 202: If Yes, the grant must be rejected.

Section 811: If Yes, the site must be rejected and Part D, Section I must be followed.

- C. Airport Clear Zones. Is the site located in a Runway Protection Zone at a Civil Airport or either a Clear Zone or Accident Potential Zone at a Military Airfield?

Yes _____ No _____.

If No, proceed to Step D, below.

Section 202: If Yes, the grant must be rejected.

Section 811: If Yes, the site must be rejected and Part D, Section I must be followed.

- D. Historic Preservation. Did the SHPO/THPO respond to the applicant/non-profit owner that no historic Properties will be affected by the proposed action?

Yes _____ No _____

If Yes and if HUD agrees, the historic preservation part of the Environmental review is completed and the environmental review must be started or continued per Part D, Section IV, below.

If No or if Yes, but HUD disagrees, HUD staff must commence the historic preservation process by contacting the SHPO/THPO and continue with historic preservation processing as part of the Environmental Review process per Part D, Section IV, below.

IV. Environmental Review

A. General.

1. Pursuant to 24 CFR § 50.3(f), HUD staff shall continue the environmental review, in the case of a preliminary environmental review, or shall commence the environmental review when there has been no preliminary environmental review, as soon as practicable.
2. The environmental review required pursuant to 24 CFR Part 50 shall be documented on the latest version of the form HUD 4128 and Sample Field Notes Checklist (henceforth the 4128).
3. The 4128 shall be maintained in the project binder.
4. In accordance with 24 CFR § 50.32, HUD, not the non-profit owner, is responsible for preparing the form HUD-4128 and SFNC and determining that there are no environmental factors that are prohibited by law, Executive Order, or regulation, or which would endanger health or safety, or would put FHA mortgage insurance or the U.S. Government at financial risk or liability.
5. HUD staff must review any submission by the non-profit owner and may require additional submissions as appropriate.

6. HUD staff must make a site visit, if not already performed as part of a “Preliminary Environmental Review.”
7. Pursuant to 24 CFR § 50.32, the Field Office Environmental Officer (FEO) must provide comments on the 4128 for any NEPA Environmental Assessment in which the project has more than 200 apartment units or 200 beds. The FEO must also be given the opportunity to review and comment on any 4128 environmental assessments in which the project is in the normally unacceptable or the unacceptable noise zone. The FEO should also be given the opportunity to review and comment on projects which require special analysis.
8. Any requirements that affect project design must be fully detailed. The non-profit owner must assure that any requirements affecting project design are conveyed to the design architect for incorporation into the contract drawings and specifications.
9. HUD staff shall promptly notify the non-profit owner that it will take appropriate action to ensure that the objectives and procedures of HUD environmental policy are achieved if it becomes aware that a choice limiting action or commitment as discussed at Part A, Section III.B.2 has taken place or may be about to take place.

B. Historic Preservation (Form HUD-4128, Part A, No. 18).

If the SHPO/THPO and/or HUD determine that the proposed project will have an effect on historic properties, the remaining steps of the process as discussed in Part C, Section II must be followed. This will require significant input from the non-profit owner.

C. Floodplain Management and Flood Insurance (Form HUD-4128, Part A, No. 17).

1. HUD must conduct an 8-step decision making process which includes publishing two public notices and taking into account any comments thus received, as listed in 24 CFR § 55.20 for any actions in the applicable floodplain – mapped 100-year floodplains for Section 202 grants and mapped 500 year floodplains for 811 grants.
 - a. The applicable floodplain shall be identified pursuant to FEMA Flood Insurance Rate Map, Advisory Base Flood Elevation Map, Preliminary FIRM, or any of their official FEMA digitized equivalents.
 - b. The 8-step process is not required if prior to the non-profit owner’s submission of the Application for Firm Commitment, a Conditional Letter of Map Amendment (CLOMA), Final Letter of Map Amendment (FLOMA), Conditional Letter of Map Revision (CLOMR), or Final

Letter of MAP Revision (FLOMR) has been obtained removing the property from applicable floodplain.

- c. Repair, rehabilitation, modernization or improvement actions in which the lowest floor and/or the life support facilities or egress and ingress of the existing building are more than 12 inches below the 100-year floodplain and new construction, or conversion actions in the applicable floodplain are strongly discouraged. If HUD nevertheless wants to consider such actions, it must determine through all steps of the 8-step process that there are no practicable alternatives to siting the project in the applicable floodplain.
 - d. HUD must develop and provide for the costs of publication of the two notices. The eight-step process shall be completed before issuance of the Firm Commitment.
 - e. In order for HUD to perform the 8-step process the non-profit owner will need to provide HUD with detailed information with the Application for Firm Commitment regarding exactly how the property will be altered and improvements designed. Also, this information shall include the elevation of the property, the elevation of the floodplain, and location of life support systems.
 - f. Except in circumstances where it would not be practicable and in order to minimize adverse impacts on new construction actions in which the 8-step process is required, mitigation measures for new construction will generally require a CLOMA or CLOMR removing the property from the applicable floodplain to be issued by FEMA prior to issuance of the FIRM Commitment.
 - g. All leases (new and renewal) must contain acknowledgements signed by tenants indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property. This applies to properties within the 100-year floodplain and to critical actions within the 500-year floodplain.
 - h. Whenever a CLOMA or CLOMA has been issued, a FLOMA or FLOMR must be issued prior to Final Closing.
 - i. The 8-step process requires that Section 811 actions must comply with the requirements of 24 CFR § 55.20(e) for critical actions.
2. Any building, both during construction and after the completion of construction, that is located within a FEMA mapped special flood hazard area, other than one for which a FLOMA/FLOMR has been issued, is required to carry flood insurance under the National Flood Insurance Program in the amount of the

development or project cost, less the estimated land cost, subject to available maximum coverage. At the time of Application for Firm Commitment, the non-profit owner is required to submit a completed Standard Flood Hazard Determination Form, and proof that the non-profit owner has a commitment for flood insurance at the time of acquisition.

3. Where a site does not appear to be located in the floodplain on official FEMA maps, but shows evidence of flooding, HUD is not precluded from qualitatively evaluating the acceptability of the site. Sponsors will be required to provide extensive data to aid HUD in evaluating floodplain sites.

D. Wetlands Protection (Form HUD-4128, Part A, No. 22).

1. Applications for FIRM Commitment for new construction are subject to Executive Order (EO) 11990 "Protection of Wetlands". In general, the EO prohibits the development or disturbance of wetlands unless there is no practicable alternative and the proposed action includes all practicable measures to minimize harm to the wetland. Proposals impacting wetlands must be reviewed by HUD to determine consistency with HUD wetland protection policy.
2. Wetlands are those identified on the National Wetland Inventory maintained by the U.S. Fish and Wildlife Service. Projects on land listed in the inventory will be considered only after HUD conducts an eight-step decision-making process which is the same as the one used for the flood plains process (*See Part D, Section IV.C.1.b*). It includes consultation, issuing two public notices and taking public comment. Wetlands under local or state jurisdiction are subject to state or local review as appropriate. The eight-step process is not applicable to state or local requirements.
3. Only in rare cases will rehabilitation, purchase and refinancing proposals involve wetlands impacts.
4. The non-profit owner will be required to provide extensive data to aid HUD in evaluating wetland impacts. The non-profit owner should consult early with the Field Office on any Application for FIRM Commitment with a site impacting wetlands.

E. Final Clean-up Plan. If clean-up is required, the requirements of Part C, Section III must be followed including any submissions, approvals, and timing.

F. Endangered Species (Form HUD-4128, Part A, No. 24). Under Section 7 of the Endangered Species Act, HUD must consult with the U.S. Fish and Wildlife Service, or where applicable with the National Oceanic and Atmospheric Administration, whenever a proposal may affect an endangered or threatened

species or its habitat. A required consultation should be assumed for any site within the critical habitat (as defined in 50 CFR Part 226) of a listed species. In areas where impacts on endangered or threatened species are a concern, all appropriate information regarding possible impacts of the project should be provided to HUD as early as possible. Consultation under Section 7 may result in more stringent conservation measures than would otherwise be imposed.

G. Noise (Form HUD-4128, Part A, No. 19).

1. HUD standards regarding the acceptability of noise impacts on residential property are found at 24 CFR Part 51, Subpart B. For new construction and conversion from nonresidential to residential projects, these standards must be met. Where threshold criteria are met or exceeded, a noise analysis utilizing the methodology in the most current version of HUD's Noise Guidebook will be performed by HUD as part of HUD's NEPA environmental assessment. The HUD field office should be consulted prior to attempting to design mitigation measures.
2. For rehabilitation and refinancing, noise exposure by itself will not result in the rejection of existing properties for insurance, but will be considered as a marketability factor. For rehabilitation projects, HUD will encourage appropriate noise attenuation measures for inclusion in the alteration.

H. Explosive/Flammable Hazards (Form HUD-4128, Part A, No. 20). HUD will not insure a property where structures and residents will be exposed to unacceptable risks posed by proximity to explosive or flammable hazards. This means that for new construction projects, and rehabilitation projects where unit density is increased or where there is a conversion from non-residential to residential or where a vacant building is made habitable, there must be an Acceptable Separation Distance (ASD) away from aboveground storage facilities with explosive or flammable material contents and similar industrial facilities. HUD standards regarding proximity to explosive or flammable hazards are found at 24 CFR Part 51, Subpart C. Analysis of sites near or in the vicinity of these types of facilities must be performed by HUD as part of the NEPA environmental assessment in accordance with the most recent version of HUD's guidebook, "Siting of HUD Assisted Projects Near Hazardous Facilities". If a plan is agreed upon with HUD before the invitation letter, these hazards may be mitigated during the construction period, if the work can be done on the subject property. For projects to be refinanced, purchased, and with minor rehabilitation, HUD will substantively evaluate the risks associated with proximity to hazardous facilities.

I. Coastal Zone Management (Form HUD-4128, No. 10, Planning and Findings). Projects located within a state's coastal management zone must be found consistent with the approved state Coastal Zone Management program. In many states, HUD will require a letter from the State Coastal Zone Management Agency confirming consistency with the approved program. Mortgagees should be aware of the extent

of coastal management zones in coastal states and contact the field office early when examining a proposal in a coastal zone.

- J. Sole Source Aquifers** (Form HUD-4128, Part A, No. 24). Projects utilizing municipal water and sewer and with appropriate local drainage and runoff approval require no review for sole source aquifers. For other projects, new construction and some rehabilitation projects located within the boundaries of the recharge area of a designated sole source aquifer, review by EPA for their effect on the sole source aquifer must take place. An aquifer is an underground body of water usually kept in place by rock, gravel, or sand. HUD offices will identify the local, state or Federal agency with maps of sole source aquifers.
- K. Environmental Justice** (Form HUD-4128, Part A, No.24). HUD will determine whether EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, is applicable to the project. This EO requires that federal actions not result in disproportionately high and adverse health or environmental effects on minority or low-income populations. When a project impacts a minority or low-income population, or when siting of a project raises questions of discrimination, HUD will perform the necessary analysis before determining the acceptability of the project. A project that will receive a Low Income Housing Tax Credit is a clear example of when environmental justice concerns should be evaluated. HUD will advise the sponsors of any environmental justice concerns including recommendations on their resolution. In most cases the preferred resolution would be to modify the project to eliminate or at least reduce the adverse effects, when feasible.
- L. Commonly found or observed additional nuisances and hazards** (Form HUD-4128, Part B No. 27 and 28).
1. Pipelines. All parts of any structure must be at least 10 feet from the outer boundary of the easement for any high pressure gas or liquid petroleum transportation pipeline.
 2. Towers. No structure shall be located within the easement of any overhead high voltage transmission line. In addition, all structures shall be located outside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, cellular towers, etc. This does not apply to local service electric lines and poles.
 3. Oil or gas wells, sour gas wells and slush pits.
 - a. Operating or planned drilling site: No residential structures may be within 300 feet from the boundary of the drilling site.
 - b. Operating well: No residential structures may be within 75 feet of an operating well unless the following mitigating measures are taken:

- i. Maintenance of nuisance controls;
 - ii. Noise level controls caused by pumping; and
 - iii. Controls to reduce risk of contamination.
 - c. Abandoned wells.
 - i. Confirmation by the State government that the well is safely and permanently abandoned and no residential structures are within 10 feet must be obtained.
 - ii. If there is no confirmation letter, no residential structures may be within 300 feet of an abandoned well.
 - d. Sour gas (hydrogen sulfide bi-product) wells: Separation distance must be determined by a petroleum engineer, with concurrence by State government.
 - e. Slush pits (used for drilling mud mixes for well lubrication). If on-site, hazards analysis is required to be performed pursuant to Phase II ESA and clean-up plans as discussed above. Mitigation must include, but not necessarily be limited to, removal of all drilling mud from the site and backfilling with clean compacted material.
- 4. Fill ground. If any part of a site appears to be developed on filled ground, HUD may require that all grading be properly controlled to prevent differential earth movement, sliding, erosion, and/or other occurrences which might damage dwellings, streets or other improvements.

V. Asbestos

If any asbestos has been identified per Part B, Section IV above, the FIRM must be conditioned as follows:

- A. Removed or Affected.** Any asbestos to be removed or otherwise affected as part of a demolition or Renovation Action must be conditioned on meeting worker protection requirements and compliance with the Federal or State NESHAP requirements for asbestos in the construction industry.
- B. Friable.** Any friable asbestos must be removed or otherwise abated.
- C. Remaining.** Any asbestos to remain must be made a part of an O&M plan based on the EPA Manual “Managing Asbestos In Place”.

If you have questions regarding this Notice, please contact your local HUD field office or contact Eric Axelrod at 202-708-1104 extension 2275.

Date: _____

Carol J. Galante
Acting Assistant Secretary for Housing–
Federal Housing Commissioner

