
HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

ENVIRONMENTAL CLEARANCE SALE!

GET YOUR HEROS HERE!



NAVIGATING ENVIRONMENTAL CHALLENGES IN UNDERWRITING

- Moderator: Alison Lemle, Chief Underwriter – VIUM Capital
- Panelist: Susan Gosselin, Deputy Director, Production – ORCF
- Panelist: Terry Bessette, Supervisory Appraiser, Program Environmental Specialist – ORCF
- Panelist: Angelique Crews, Principal, Technical Director – Partner Engineering and Science, Inc.
- Panelist: Staige Miller, Senior Vice President – AEI Consultants

SITE CONTAMINATION

Yikes, this doesn't look good....



SITE CONTAMINATION – WHAT DOES HUD WANT?

What does HUD require?

- ...all property proposed for use in HUD programs be free of hazardous substances ...that could affect the health and safety of occupants (24 CFR 50.3(i)(1))

What is HUD's timing?

- An Environmental Review Record will be certified/ signed by HUD staff once the site contamination evaluation has been completed and a determination the project is free from hazardous materials, contamination, toxic chemical substances and gases and radioactive substances has been made by HUD.
- Remediation must be completed prior to loan closing for a 223(f) and prior to final endorsement for 232 NC, 232 Sub-Rehab and 232/241(a) loans.



SITE CONTAMINATION – HOW TO ADDRESS?

- A Phase II is conducted to determine the extent of the contamination and the kind of contaminants that may be present on the site, to include soil, groundwater, vapor intrusion and/or vapor encroachment concerns.
- If contamination exceeds established federal and/or state thresholds, a clean up plan is warranted (based on site characterization results)
- Clean up, per ORCF guidelines, is either:
 - Complete Removal of Contamination or
 - Incomplete Removal of Contamination



SITE CONTAMINATION – WHAT IS ENOUGH?



COMPLETE REMOVAL

- Site contamination identified by the complete site characterization is at de minimis levels or eliminated with no active or passive remediation or engineering/institutional controls or monitoring wells.

(Section 232 Handbook, Ch. 7.3.D)



INCOMPLETE REMOVAL

- Risk Based Corrective Action warranted
- Engineering and/or Institutional Controls
- Monitored Natural Attenuation/Enhanced Passive Remediation (remediation may continue beyond Initial Endorsement with no concerns to the health and safety of residents or environment)

SITE CONTAMINATION – WHAT IS ENOUGH?

CHECK REGULATORY REQUIREMENTS



When No Further Action (NFA) letters are not provided by the State, demonstrate to HUD the extent of concern and implement the proper controls (IC/EC)

Contaminants below residential levels are warranted

Offsite concerns are acceptable with applicable controls to ensure the contamination is not a risk to the health and safety of occupants

1. Flushing wells are always unacceptable if in operation or required for site
2. Offsite concerns with no controls and present health and safety risk to occupants
3. Sites over former solid waste landfill/dump and/or Superfund site (not delisted) where contamination has not been removed/addressed.



UNACCEPTABLE

SITE CONTAMINATION – WHAT IS ENOUGH?

- HUD Field and Regional Environmental Officers are available to discuss prior to remediation. Be sure to include Program Type and FHA Number.
- Contact Information for HUD Environmental Officers: [HUD Environmental Contacts by Region and State](#)
- Map of HUD Regions: https://www.hud.gov/program_offices/field_policy_mgt/regions



8-STEP AND MODIFIED 8-STEP

FLOODS...

Are you Prepared?



YOUR PROJECT IS IN A FLOODPLAIN...NOW WHAT?

- New Construction:
 - HUD strongly discourages new construction projects in the 100-year and 500-year floodplains, and an application will not be considered unless the following actions are taken:
 - A Conditional Letter of Map Amendment (CLOMA) or Conditional Letter of Map Revision (CLOMR) removing the entire site from the floodplain (100-year and 500-year) has been obtained from FEMA prior to the initial submission or, in the absence of an initial submission, prior to submission of the application for Firm Commitment.
 - If a CLOMA / CLOMR cannot be obtained, HUD must determine if there may be extraordinary circumstances leading to the conclusion that there are no practicable alternatives to the project site being in the floodplain. In order to make this determination, HUD must conduct an 8-step decision-making process.
 - As required by 24 CFR 55.20(e), all critical actions in the 100-year or 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) according to FEMA's best available data or as otherwise required by current standards in 24 CFR part 55.
- Refinance:
 - HUD will evaluate the risk associated with existing buildings located in the 100-year and 500-year floodplains, but strongly discourages transactions where the lowest floor, life support facilities, or ingress/egress are at or below the 100-year BFE.
 - All projects in a 100-year and 500-year floodplain will need to completed the modified 8-step process that is submitted as part of the application for approval.

FLOODWAYS

- Mortgage insurance shall not be approved for a property located in a floodway unless it complies with the Floodway Exception.
- 24 CFR 55.12 Exception: Floodway prohibition does not apply to Section 232 projects if only an incidental portion of the project site is in the 100-year or 500-year floodplain, and the following conditions are met:
 1. All construction (including existing improvements) or landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) must not occupy or modify the relevant floodplain.
 2. Appropriate provision is made for site drainage; and
 3. In accordance with 24 CFR 55.12(c)(7)(iii), a protective covenant or comparable restriction must be placed on the property's continued use to preserve the 100-year or 500-year floodplain. The covenant or comparable restriction must run with the land to provide for permanent preservation of the floodplain and must not be dependent on the mortgage instrument.

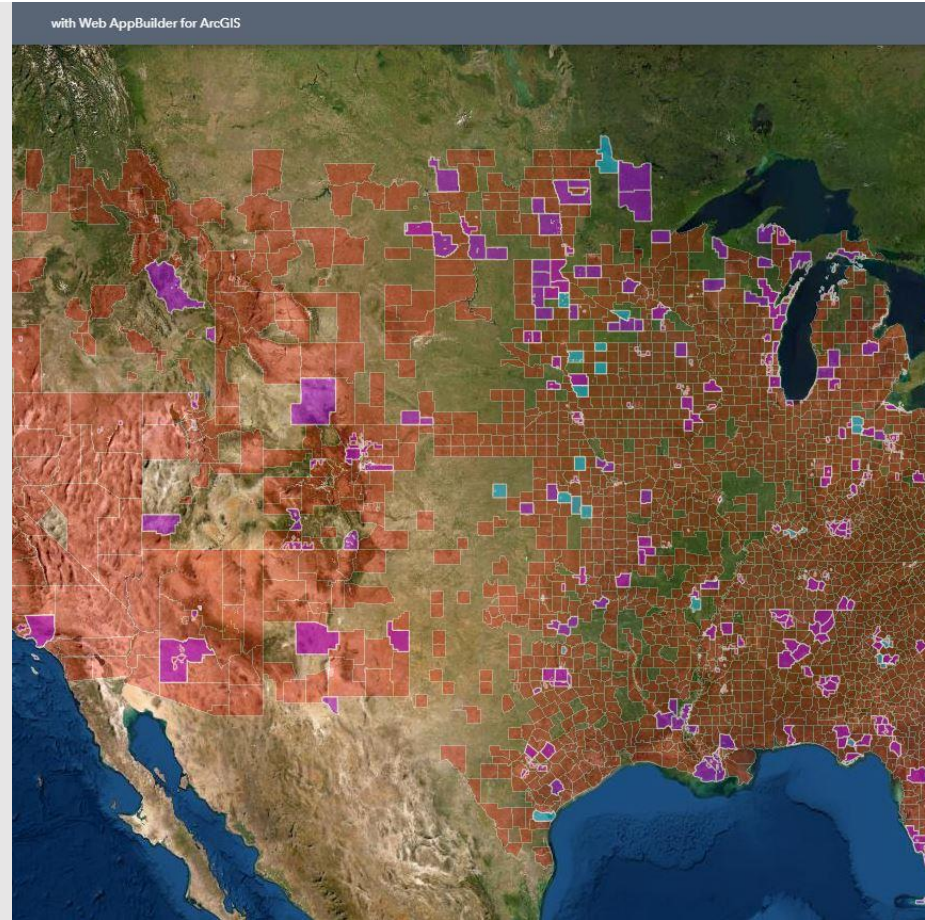


EFFECTIVE VS. PRELIMINARY FLOOD MAPS



EFFECTIVE MAPS

- The Lender must utilize the best available data to comply with Floodplain Management requirements.
- This is typically the Preliminary FEMA FIRM, as long as the Preliminary map does not indicate a lower Base Flood Elevation than the current FEMA FIRM.



PRELIMINARY MAPS

- Updates to flood maps are a collaboration between your community and FEMA.
- Every community that participates in the National Flood Insurance Program has a floodplain administrator who works with FEMA during the mapping process.
- Before your community decides to adopt the maps, you have 90 days to submit technical data to support an appeal to the map.
- After the appeal period, FEMA will evaluate the data in the appeals and comment and request additional data, if necessary. Once appeals are resolved, the map will become effective in 6 months.

8 STEP VS MODIFIED 8 STEP

8 STEP



- Used for New Construction (including a building addition) and “substantial improvement” projects.
- Required for proposed activities within the Special Flood Hazard Area and for critical actions located within the 500-year floodplain. All Section 232 projects are considered “critical actions.”
- Requires the publication of two (2) legal notices in the local newspaper, followed by a public comment period (15 days and 7 days, respectively)
- Analysis of alternatives including the action as proposed, project modifications and the “No-Action” alternative.
- Analysis and documentation regarding a project’s impacts, avoidance, mitigation and preservation methods.

- Used for the purchase or refinancing of existing projects in communities that are in good standing under the NFIP.
- Used for actions involving repair/rehabilitation provided that the number of units is not increased more than 20%, there is no conversion in land use and the action does not meet the thresholds for “Substantial improvement” and the footprint of the structure and paved areas is not significantly increased.
- Steps 2, 3 and 7 are not required. These include the 2 public notices and the identification and evaluation of alternatives.



MODIFIED 8 STEP

WISH LIST: MODIFIED 8 STEP

- FEMA's best available data
- Letter of Map Revisions or Letter of Map Amendments
- Community Status under the NFIP
- ALTA Survey depicting flood zones
- Base Flood Elevation
- Elevation Certificates
- Proof of Flood Insurance Coverage
- Any claims made to the Flood Policy/History of flooding
- Tenant Notification and Evacuation and Relocation Plan
- Participation in an Early Warning System
- Identification marks of past or estimated flood levels
- Any flood protection measures included in the design (ie. floodproofing, flood vents etc.)



STEP 5 DOCUMENTATION

- Preparation of and participation in an early warning system. Specific method(s) used to monitor weather conditions and flooding alerts? Provide documentation of method and the location it will be present within the facility.
- An emergency evacuation and relocation plan. Are signed agreements in place with offsite, like properties?
- Identification of evacuation route(s) out of the 500-year floodplain. Provide road maps and the flood zone designations of the relocation sites. Relocation facilities should be located outside the 500-year floodplain.
- Identification marks of past or estimated flood levels on all structures. Review the FEMA FIRM and the Flood Insurance Study (FIS).




EXAMPLES OF PERMANENT FLOOD LEVEL MARKERS



BASE FLOOD ELEVATION

- Looking for a 500-year floodplain elevation?
 - Contact the Local Floodplain Administrator
 - Review the FIRM and the Flood Insurance Study
 - Estimate by multiplying the BFE for the nearest 100-year flood level by a factor of 1.25 (coastal or low-lying areas)
 - Add 3 feet to the 100-year BFE

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION			
Community Number		B2. County Name Broward County	
B6. FIRM Index Date 08-18-2014	B7. FIRM Panel Effective/ Revised Date 08-18-2014	B8. Flood Zone(s) AH 	B9. 8.4

Base Flood Elevation (BFE) data or base flood depth entered in Item B9:

Community Determined Other/Source: _____

For BFE in Item B9: NGVD 1929 NAVD 1988 Other

Is the property in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)?

CBRS OPA

NEED HELP?

- Refer to the ORCF Environmental Checklist: Floodplain Management
- FEMA's Flood Map Changes Viewer shows what areas have increased in flood risk and which ones have decreased on the new preliminary flood map.
<https://fema.maps.arcgis.com/apps/webappviewer/index.html?id=e7a7dc3ebd7f4ad39bb8e485bb64ce44>
- FEMA Live Chat
https://www.floodmaps.fema.gov/fhm/fmx_main.html

Contact Us

- 1-877-336-2627
- Email: FEMA-FMIX@fema.dhs.gov
- Click to chat with a Specialist. Our



[live chat open](#)

STAY TUNED.....

- Potential Regulations Change: HUD is proposing to revise 24 CFR 55, floodplain and wetlands regulation. This is in process and the public comment period may happen sometime this summer.
- Climate Change and Underwriting: As many are aware, HUD released a Climate Action Plan as part of the Biden-Harris Administration's approach for confronting the climate crisis.
 - Currently HUD is working through guidance around this Action Plan and updates on this matter will be forthcoming.
 - At this time, any guidance around climate change will only be applicable to applications that require a full Environmental Assessment, which is not required for 232/223(f) transactions.



REPAIR COMPLETION

To Begin the Work or Not to Begin the Work?
That is the Question.



TIMING OF REPAIR COMPLETION

- HUD environmental policy requires that there be a limitation of certain actions or activities by any direct or indirect parties of the transaction, from the time of applications submission until HUD has completed the environmental review process which:
 1. Have an adverse environmental impact
 2. Limit the choice of reasonable alternatives
 3. Prejudice the ultimate decision on the proposal
- It is the Lender's responsibility to ensure no work is completed in advance of completion of the environmental review that could result in a choice limiting action.



CHOICE LIMITING ACTIONS



WHAT CAN'T YOU DO PRIOR TO ENVIRONMENTAL REVIEW?

- Demolition or Construction
- Rehabilitation or Repairs
- Asbestos Abatement
- Site Clearing or Tree Removal
- Any Ground Disturbance Activity



WHAT CAN YOU DO PRIOR TO ENVIRONMENTAL REVIEW?

- Develop Plans and Designs
- Perform Work Necessary to Support an Application for Permits
- Conduct Environmental Studies including Wetlands Delineations, Soils Borings, Site Testing, etc.
- Perform Inspections and Testing of Properties
- Incur Pre-Development Costs that do not have an Environmental Impact

TIMING OF REPAIR COMPLETION

- If any party is unsure as to whether an action would fall within the limitations discussed, Lean Thinking should be consulted at LeanThinking@HUD.gov to seek advice and/or approval.
- Failure to seek guidance in advance of start of work has the potential for significant implications including a possible rejection of an application.
- Resources:
 - Section 232 Handbook, Section II, Production Chapter 7.2
 - Notice CPD-16-02 ([16-02CPDN.PDF](#) (hud.gov))



TRIBAL CONSULTATION

Think Before you Dig!



TRIBAL CONSULTATION

- ORCF must complete the Tribal Notification process for activities that require Tribal consultation, including:
 - Ground Disturbance
 - New Construction in Undeveloped Areas
 - Introduction of Incongruent Visual, Audible or Atmospheric Changes
 - Work on a Building with Significant Tribal Association
 - Transfer, Lease or Sale of Historic Properties of Religious and Cultural Significance
- What Constitutes Ground Disturbance?
 - Examples of Ground Disturbance include but are not limited to digging, tree removal, burying a tank, new parking, increases in the building footprint, adding a new fence.
 - If you are unsure if the repair constitutes ground disturbance, speak to your environmental/PCNA consultant or reach out to Lean Thinking.



TRIBAL CONSULTATION – DOCUMENT DUE DILIGENCE

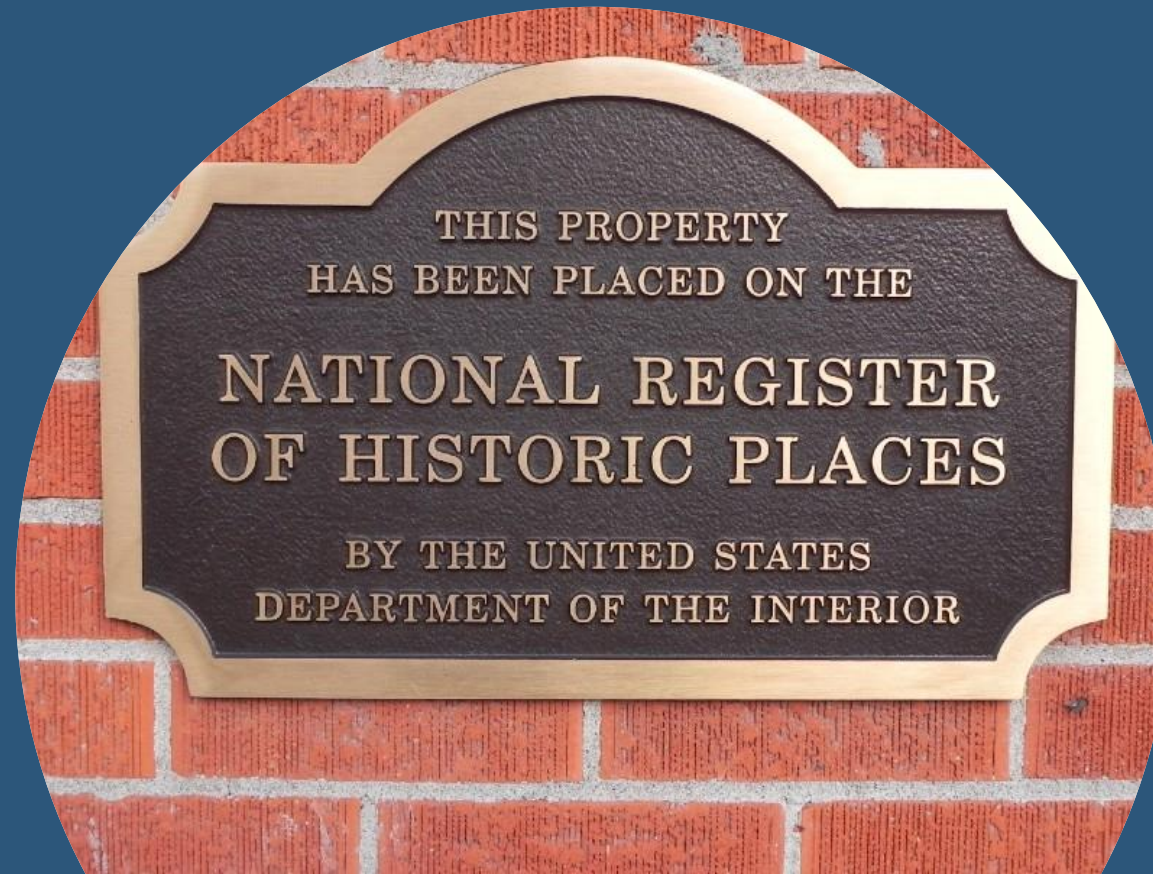
- **Lender Reminder:** Only ORCF can manage the Tribal Consultation process. As such, it is critical to submit the request for Tribal Consultation to LeanThinking@hud.gov in advance of application submission to avoid delays!
 - This process cannot start until an FHA project number has been received.
- Included in this request are the following items:
 - **Project Description:** Type of project, purpose of project, proposed activities/site work, current condition of the site (what is on the site now)
 - **Maps:** Location map, aerial view, site layout map, and topographical map
 - These documents should also be included in Section 2.6 of the application submission along with evidence of Lean Thinking submission
- When ORCF announced the Delegation Memo in its March 24, 2021 Lean Blast, the following guidance was included:
 - “Lenders must coordinate with ORCF by notifying LeanThinking.gov so that HUD may begin consultation with Tribes. Lenders must consider comments received from Tribes or NHOs within review timeframes ***before*** submitting a finding of effect to the SHPO for concurrence.”
- **Tribal Consultation Steps:**
 - **Step 1:** ORCF will initiate Tribal Consultation after FHA number is assigned and a request is submitted via Lean Thinking
 - **Step 2:** If the Lender has not received correspondence from ORCF regarding Tribal Consultation within 30-days, the Lender should follow up with Terry Bessette (terry.l.bessette@hud.gov) to determine if a response has been received. Include the ORCF staff member completing the tribal consultation if that individual is known.
 - **Step 3:** ORCF will respond confirming whether there has been a response from the Tribal Consultation process.
 - **Step 4:** The Environmental Consultant will submit SHPO Consultation upon response from ORCF and include this correspondence in the SHPO Consultation package with the HUD Delegation Memo.

TRIBAL CONSULTATION – RESOURCES

- Tribal Directory Assessment Tool (TDAT) – [TDAT \(hud.gov\)](https://www.hud.gov/tdat)
 - Developed by the Office of Environment and Energy (OEE) to help users identify tribes that may have an interest in the location of a HUD assisted project, and provide tribal contact information to assist users with initiating Section 106 consultation
- [Notice CPD-12-006: Process for Tribal Consultation in Projects that are Reviewed Under 24 CFR Part 58 - HUD Exchange](#)
- [When To Consult With Tribes Under Section 106 Checklist - HUD Exchange](#)
- [HUD Memo: Section 106 Tribal Consultation in Projects Reviewed Under 24 CFR Part 50 - HUD Exchange](#)
- [Section 106 Tribal Consultation Letter Templates - HUD Exchange](#)
- [MAP Guide Briefing Webinars - Webinar 5 - HUD Exchange](#)
 - Delegation to FHA Lenders to Initiate Section 106 Consultation with State Historic Preservation Officers (SHPOs) Under Certain Circumstances

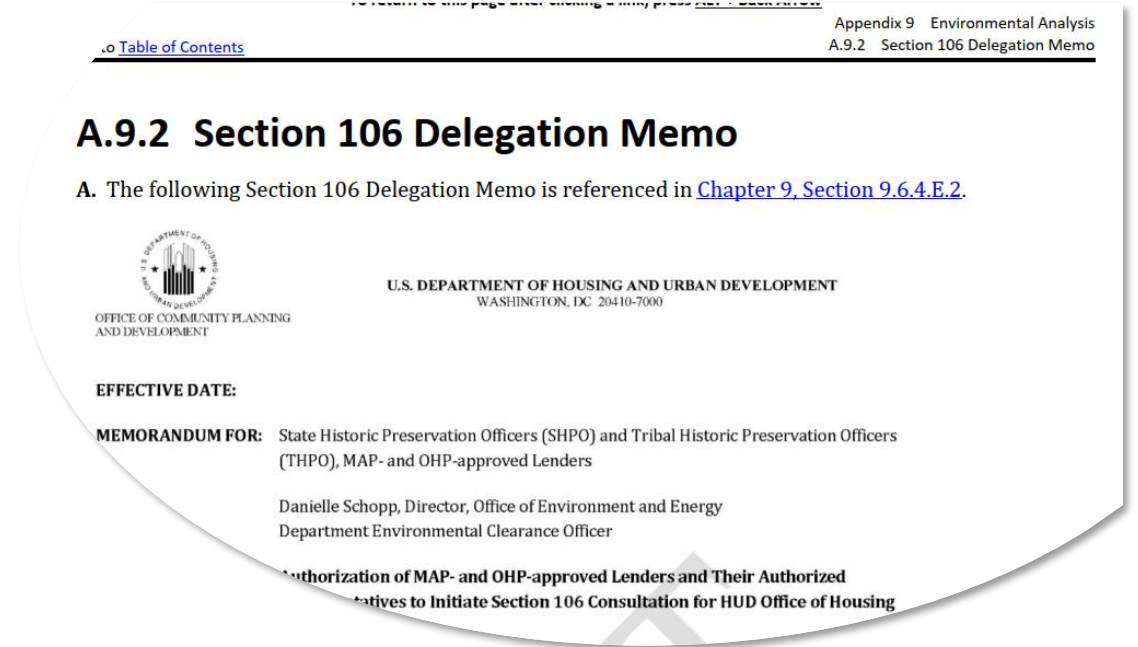
HUD DELEGATION MEMO FOR SECTION 106 SHPO CONSULTATION

Let's get this SHPO Started!



WHAT IS THE DELEGATION MEMO?

- Delegation Memo authorizes Lenders and their authorized representatives to initiate and conduct Section 106 consultation with SHPO in certain circumstances
- Effective from March 18, 2021 until December 31, 2022
- Lenders must include a copy of the Delegation Memo with the consultation request and provide contact information for Lender and consultant and reference the FHA program.



HOW DOES THE DELEGATION MEMO WORK?

An FHA Number must be provided in order for a 3rd party consultant to initiate consultation with SHPO. SHPO has a 30-day timeframe to respond with receipt of a complete submission.

If an FHA Number is not provided, a packet of historic information is compiled and uploaded in HEROS for HUD to initiate consultation with SHPO.

WHEN IS AN SOI QUALIFIED PROFESSIONAL INVOLVED?

Architectural Historian:

- Building(s) is >45 years old with demolition
- Building(s) is >45 years old with exterior rehabilitation

Archaeologist:

- New Construction in/adjacent to Historic District
- Substantial Ground Disturbance

****Reminder****

Results of HUD's Tribal Consultation MUST be submitted to SHPO with request for concurrence.

WHAT CAUSES SHPO DELAYS?

No FHA Number = No SHPO Submission

- Allotted 30-day review time starts when the SHPO receives a complete packet of information

No SOI Professional = Potential return of HEROS

- If an SOI qualified professional is warranted and not utilized, HUD may request a *new and complete* packet of information be submitted to SHPO

No clear scope of work = Potential 2nd SHPO submittal

- A packet of information is typically submitted to SHPO as soon as possible in the due diligence period.
- Scopes of work are generally listed in the PCA, which is generally ready near the end of the contracted due diligence period.
- If correct information isn't provided for the PCA (i.e. planned capital improvements), an incomplete submission to SHPO may occur, which requires a duplicate submission. The potential time frame could be +60 days for concurrence to an effect determination.



USING HEROS

Speed up Processing



A Guide for Using
HUD Environmental Review
Online System (HEROS)

HEROS 101

- Encourage third party consultant to use HEROS!
- **ORCF Guidance for Using HEROS as an FHA Partner** is available here: [HEROS ORCF Guidance.docx \(live.com\)](#)
(Note: An update is in the works and will be posted soon)
- HEROS assignment for Production projects should be **Wayne Harris** at the time of application submission where it is stored until an ORCF reviewer is assigned. Wayne Harris' name is only a placeholder – please do not contact him regarding HEROS.
- An email confirmation of submission should be included in Section 2 of the application under “Other” but noted as HEROS submission.
- HEROS assignments for Asset Management projects should be **Marie Mazwi** (replacement for Rita Dockery who recently retired).



TANK CONFORMANCE LETTERS

Don't stand too close!



TANK CONFORMANCE LETTERS

- For existing projects to be refinanced or purchased that do not involve an increase in residential density, HUD considers the potential danger presented by existing and proposed liquid fuel and gas storage tanks and may require mitigation.
- Whenever aboveground tanks (ASTs) exist on site, whether containing liquid fuel (over 100-gallons in size) or containing pressurized gas (stationary tanks of any size), a conformance letter from the governing Fire Department/District is required when the tank does not meet the Acceptable Separation Distance (ASD).
- The Tank Conformance Letter must specifically address the safety of the AST(s).
- If a Tank Conformance Letter is unable to be obtained, include the correspondence in the application to evidence the attempt.



TANK CONFORMANCE LETTERS

- On January 24, 2020, HUD published a final rule revising 24 CFR Part 51 Subpart C to exempt liquefied petroleum gas or propane containing up to 1,000 gallons that comply with industry standard, National Fire Protection Association (NFPA) Code 58.
- Mortgage insurance applications for projects involving propane ASTs that qualify for the exemption should include evidence of compliance with NFPA 58 in Section 2: Third Party Reports section of the application.
- Documentation of compliance with NFPA 58, including the NFPA separation distance requirements will satisfy the Handbook requirements for tank conformance letters and ASD calculations.
- Resources:
 - Final Rule [2020-00440.pdf \(govinfo.gov\)](#)
 - [Explosive and Flammable Facilities - HUD Exchange](#)



WATER QUALITY REPORTS

Have No Fear, the Water is Clear!



WATER QUALITY

Annual water quality reports (aka Consumer Confidence Report (CCR)):

- Required by public water suppliers that serve the same people year-round (community water systems)
 - [Consumer Confidence Reports \(CCR\) \(epa.gov\)](https://www.epa.gov/consumer/consumer-confidence-reports-ccr)
 - [Tap Water Quality | US drinking water quality data by zip code. \(mytapwater.org\)](https://mytapwater.org)

What does the CCR information mean to me?

- Check for listed violations
- Review lead/copper levels



2021 Annual Drinking Water Quality Report Charlotte Water

Water System Number: 01-60-010

We are pleased to present to you this year's Annual Drinking Water Quality Report. This report is a snapshot of last year's water quality. Included are details about your source(s) of water, what it contains, and how it compares to standards set by regulatory agencies. Our constant goal is to provide you with a safe and dependable supply of drinking water. We want you to understand the efforts we make to continually improve the water treatment process and protect our water resources. We are committed to ensuring the quality of your drinking water. **If you have any questions about this report or concerning your water, please call 311 or 704-36-7600. We want our valued customers to be informed about their water utility. You can also find information regarding water quality on our website <https://www.charlottenc.gov/Water/WaterQuality/Pages/WaterQuality.aspx>**

What You to Know

Drinking bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. For more information on contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's National Drinking Water Hotline (800-426-4791) or at <https://www.epa.gov/ahc>

WATER QUALITY



WHERE IS THE LEAD?

- Corrosion on lead pipes
 - “First Draw” sample: Testing is conducted from a faucet that hasn’t been used for the prior 8 hours.
 - “Second Draw” sample: Testing is conducted after water from faucet flows for 1 minute.



Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water



WHAT ARE THE STANDARDS?

- EPA action level is 15 ppb
- All public water supplies must abide by the National Primary Drinking Water Regulations.
- Elevated levels with “First Draw” sample = Lead
- Elevated levels with “Second Draw” sample = Lead in Water Supply System

WHAT TO DO WITH LEAD IN WATER?

WATER SUPPLY SYSTEM:

- Contact system operator
- Treatment/filtration devices may be warranted at connection point or faucets.
- Lead in Drinking Water Operations & Maintenance Plan may be warranted

PIPES/SOLDER JOINTS:

- Testing 10% of faucets within facility (recommended)
- Plumber may need to investigate for lead pipe(s) and solder joint(s)
- Treatment/filtration devices may be warranted at faucets.
- Lead in Drinking Water Operations & Maintenance Plan may be warranted

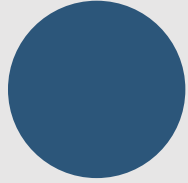


STILL UNSURE?

We Can Help!

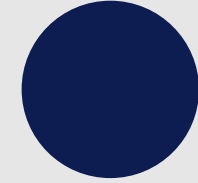


ADDITIONAL RESOURCES



OFFICE OF RESIDENTIAL CARE FACILITIES ENVIRONMENTAL RESOURCES PAGE

- [Environmental Resources | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)
- A comprehensive site providing useful website links related to the environmental review process.



LENDER'S ENVIRONMENTAL CHECKLIST

- [223F_ENVCHECKLIST.xlsx \(live.com\)](#)
- Helpful tool for Lender's to utilize in underwriting to aid in early identification of potential environmental concerns and how to best address/mitigate issues.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

THANK YOU!

