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# **Environmental Hot Topics, Including Choice-Limiting Actions and Endangered Species Act Compliance in the Northwest**

- Western Mortgagee Advisory Council
- 2021 Virtual Conference
- September 23, 2021

# QUEUE-Tip

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Before reaching out to HUD staff or formally submitting a question, always check the “Ask a Question” answers distributed monthly from the MBA, as many common concerns have previously been addressed.

# Environmental Hot Topics, Including Choice-Limiting Actions and Endangered Species Act Compliance in the Pacific Northwest

- Topics to cover:
  - Endangered Species Act Compliance in the Pacific Northwest
  - Historic Preservation/Delegation Memo
  - Changes in Floodplain Management Guidance
  - Addressing Radon Concerns
  - Choice-Limiting Action (CLA) Case Studies

# Environmental Hot Topics, Including Choice-Limiting Actions and Endangered Species Act Compliance in the Pacific Northwest

- Moderator: **Forty Semadeni**, SVP, NorthMarq
- Panelist: **Sara Jensen**, Program Environmental Clearance Officer, Office of Housing, HUD
- Panelist: **Nancy Boone**, Federal Preservation Officer, Office of Environment and Energy, HUD
- Panelist: **Brian Sturdivant**, Regional Environmental Officer, Region 10, HUD
- Panelist: **Ernest Benjamin**, CCO, Bravo Capital

# Endangered Species Act

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Question: When considering compliance with the Endangered Species Act for a 223(f), with improvements that will include adding new impervious surfaces (such as an ADA ramp or sidewalk), compliance with the Endangered Species Act:

- A) is not triggered due to the limited amount of work being proposed will have No Effect on either NMFS or USFWS (the Services) species or habitat.
- B) depends on the State where the project is being carried out, as each of the Services has specific requirements in each state that comprise HUD's Region X.
- C) requires the project to Prepare a full Biological Evaluation (BE) and possibly consult with one or more of the Services according to the findings of the BE.

# Office of Housing Environmental Review Resources

<https://www.hudexchange.info/programs/environmental-review/housing/#featured-topics>

community partners

NEED HOUSING

My HUD Exchange

Programs

Resources

Trainings

Home > Programs > Environmental Review > Office of Housing Environmental Review Resources

## Office of Housing Environmental Review Resources

Welcome to HUD's Office of Housing environmental review resources page. This page contains links to the Office of Housing's environmental review guidance and resources.

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted and insured Office of Housing projects to ensure that the proposed project does not negatively impact the surrounding environment, and that the property site itself will not have an adverse environmental or health effect on residents.

HUD's Office of Environment and Energy (OEE) manages the overall environmental review process for HUD. You will find an overview of HUD environmental requirements on the [Environmental Review page](#).

### Find By Topic

#### Featured Topics

[2019 202 NOFA Environmental Information](#)

[Housing Environmental Guidance](#)

[HEROS](#)

[Training](#)

[FAQ](#)

[Helpful Links](#)

### Featured Topics

[MAP Guide Standard Update: Environmental Clearance Officer Review in Normally Unacceptable Noise Zones](#)

Date Published: October 2019

[HEROS Guidance for 223\(a\)\(7\) and CENST 223\(f\) Projects](#)

Date Published: August 2019

[HEROS Guidance for Multifamily FHA Partners](#)

Date Published: August 2019



# HUD Exchange

<https://www.hudexchange.info/programs/environmental-review/>

Resources and assistance to support HUD's community partners

 **HUD EXCHANGE**

My HUD Exchange Programs Resources Trainings Program Support Grantees News

NEED HOUSING ASSISTANCE? Email Updates Hi Matthew!

Home > Programs > Environmental Review

## Environmental Review

Welcome to the official website for the Department of Housing and Urban Development's (HUD's) Office of Environment and Energy. The Office of Environment and Energy (OEE) manages the environmental review process for HUD.

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental review (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the [National Environmental Policy Act \(NEPA\)](#), and other related Federal and state environmental laws.

### Orientation to Environmental Reviews

Explore the components of an environmental review. The section contains information pertaining to both Part 50 and Part 58 reviews.

[Learn about the Environmental Review Process](#)

### Related Federal Environmental Laws and Authorities

Learn about the environmental requirements covered by related federal laws and authorities and referenced in HUD's regulations at 24 CFR 50.4, 58.5, and 58.6. Each environmental topic features a compilation of resources such as trainings, guidance, and useful websites. This section contains all of the content from the Assessment Tools for Environmental Compliance (ATEC).

[View Resources](#)

### Environmental Review News & Announcements

[Update on HEROS System](#)  
Date Posted: September 25, 2019

[Join a Mailing List](#)

[View Environmental Review FAQs](#)

[Ask a HEROS Question](#)

[Contact HUD Environmental Staff](#)

### Featured Topics

[Office of Housing Environmental Review Resources](#)

[Web-Based Instructional System for Environmental Review \(WISER\)](#)

[HEROS \(HUD Environmental Review Online System\)](#)

[HUD Environmental Regulations](#)

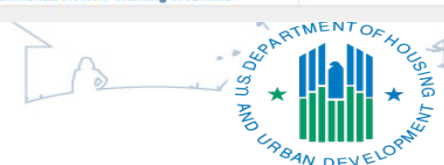
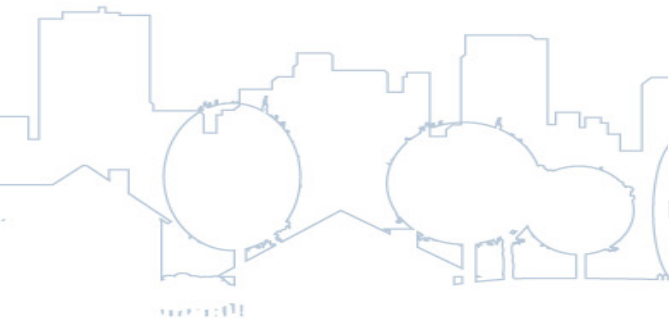
[Environmental Assessments](#)

[Environmental Review Requirements for Public Housing Agencies and Form HUD-53245](#)

[HTF Environmental Provisions](#)

[Disaster Recovery and Environment](#)

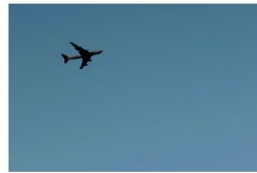
[Environmental Review Training Webinars](#)



# Endangered Species Act



Air Quality



Airport Hazards



Coastal Barrier Resources



Coastal Zone Management



Endangered Species



Environmental Justice



Explosive and Flammable Facilities



Farmlands Protection



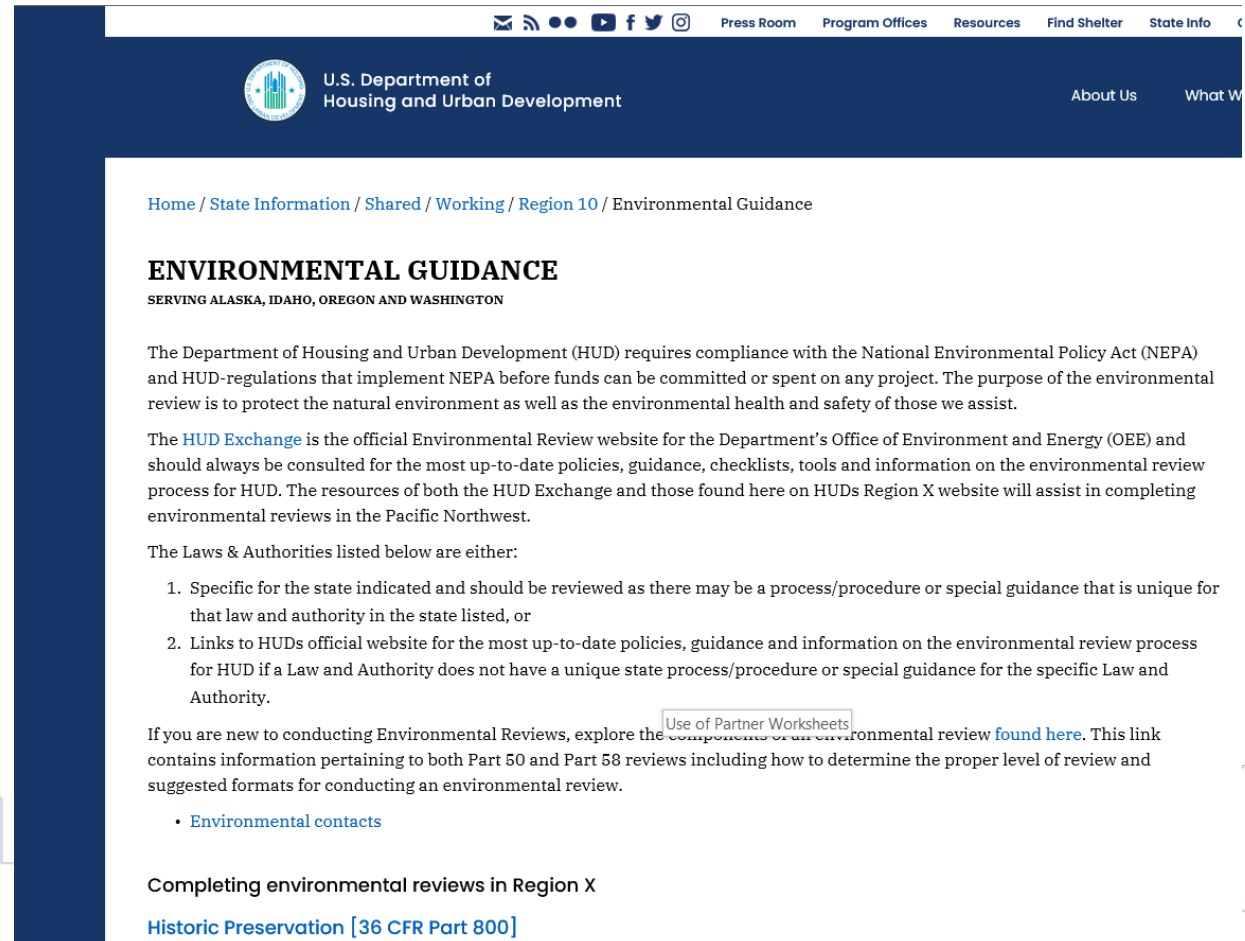
Flood Insurance





# Region X Website:

<https://www.hud.gov/states/shared/working/r10/environment>



The screenshot shows the HUD website page for Environmental Guidance in Region X. The page features a dark blue header with the HUD logo and navigation links. The main content area is white with a dark blue sidebar on the left. The page title is "ENVIRONMENTAL GUIDANCE" and it includes a breadcrumb trail: "Home / State Information / Shared / Working / Region 10 / Environmental Guidance". The text explains that HUD requires compliance with NEPA and HUD-regulations before funds can be committed. It also mentions the HUD Exchange as the official Environmental Review website. A list of laws and authorities is provided, and a link to "Use of Partner Worksheets" is highlighted. The page concludes with a section for "Completing environmental reviews in Region X" and a link to "Historic Preservation [36 CFR Part 800]".

U.S. Department of Housing and Urban Development

Home / State Information / Shared / Working / Region 10 / Environmental Guidance

## ENVIRONMENTAL GUIDANCE

SERVING ALASKA, IDAHO, OREGON AND WASHINGTON

The Department of Housing and Urban Development (HUD) requires compliance with the National Environmental Policy Act (NEPA) and HUD-regulations that implement NEPA before funds can be committed or spent on any project. The purpose of the environmental review is to protect the natural environment as well as the environmental health and safety of those we assist.

The [HUD Exchange](#) is the official Environmental Review website for the Department's Office of Environment and Energy (OEE) and should always be consulted for the most up-to-date policies, guidance, checklists, tools and information on the environmental review process for HUD. The resources of both the HUD Exchange and those found here on HUDs Region X website will assist in completing environmental reviews in the Pacific Northwest.

The Laws & Authorities listed below are either:

1. Specific for the state indicated and should be reviewed as there may be a process/procedure or special guidance that is unique for that law and authority in the state listed, or
2. Links to HUDs official website for the most up-to-date policies, guidance and information on the environmental review process for HUD if a Law and Authority does not have a unique state process/procedure or special guidance for the specific Law and Authority.

If you are new to conducting Environmental Reviews, explore the [Use of Partner Worksheets](#) component of an environmental review [found here](#). This link contains information pertaining to both Part 50 and Part 58 reviews including how to determine the proper level of review and suggested formats for conducting an environmental review.

- [Environmental contacts](#)

Completing environmental reviews in Region X

[Historic Preservation \[36 CFR Part 800\]](#)



# Region X Website:

<https://www.hud.gov/states/shared/working/r10/environment>

The screenshot shows a webpage with a dark blue header and a light blue background. The main content area is white. On the left, there is a dark blue vertical bar. On the right, there is another dark blue vertical bar. The main content area contains the following text:

Completing environmental reviews in Region X

[Historic Preservation \[36 CFR Part 800\]](#)

**ALASKA**

- [Alaska State Historic Preservation Office \(SHPO\) Request for Section 106 Review HUD](#) (click "request for Section 106 Review Housing Projects") and fill out the form and include latitude and longitude.
- [Alaska Programmatic Agreement \(PDF\)](#) - Note this agreement can only be used by Responsible Entities that are Parties to the agreement. To become a Party, complete attachment B and submit to SHPO.
- [Office of History and Archaeology - Alaska](#)
- [Historic Preservation checklist \(PDF\) \(Word\)](#)
- [Alaska Community Database Online](#)
- [Alaska Local contact for more information](#)

**IDAHO**

- [Idaho State Historic Preservation checklist \(PDF\) \(Word\)](#)
- [Idaho State Historic Preservation Office](#)
- <https://history.idaho.gov/section-106> (search "sample checklist for Section 106").

**OREGON**

- [Oregon State Historic Preservation checklist \(PDF\) \(Word\)](#)
- [Information on how to submit Section 106 consultation](#)
- [Oregon State Historic Preservation Office](#)

**WASHINGTON**

- [Washington State Historic Preservation checklist \(PDF\) \(Word\)](#)
- [Washington State Department of Archaeology and Historic Preservation](#)

[Floodplain Management \[24 CFR 55, Executive Order 11988\]](#)

[Wetland Protection \[24 CFR 55, Executive Order 11990\]](#)

- [More information for the state of Alaska](#)

On the right side of the page, there is a sidebar with the following text:

[Important Links and Resources](#)

[Potential Zones](#)

**Alaska Quick Links**

- [Alaska Local contacts for more information](#)

Four red arrows point from the left dark blue bar to the following sections: "Historic Preservation [36 CFR Part 800]", "ALASKA", "IDAHO", and "WASHINGTON". A red arrow also points to the "Historic Preservation [36 CFR Part 800]" link.



# Region X Website:

<https://www.hud.gov/states/shared/workin/g/r10/environment>

## WASHINGTON

The purpose of the following checklists are to assist HUD and HUD's responsible entities (REs) in meeting their obligations under the Endangered Species Act (ESA) for both Fish and Wildlife Service (FWS) and National Marine Fishery Services (NMFS), and the MSA with NMFS where necessary. The checklists are designed to help you determine whether a proposed project will have an effect on federally-listed species, designated critical habitat, or essential fish habitat, and the process to follow based on those effect determinations.

**Please NOTE:** ONLY HUD or a Responsible Entity may initiate consultation with USFWS & NMFS (known as "the Services"). All requests for consultation by parties other than HUD or the RE will be rejected by both of the Services.

- Washington Endangered Species Act Guidance (for use in WA State only)
- FWS ESA Guidance ([PDF](#)) ([Word](#))
- NMFS Checklist and Appendices ([PDF](#)) ([Word](#))

[Wild and Scenic Rivers Act \[Sections 7\(b\), and \(c\)\]](#)

[Clean Air Act \[Sections 176\(c\), \(d\) and 40 CFR 6, 51, 93\]](#)

[Farmland Protection Policy Act \[7 CFR 658\]](#)

[Environmental Justice \[Executive Order 12898\]](#)

## HUD's Environmental Standards

### Noise Abatement and Control [24 CFR 51B]

- Alaska State Department of Transportation
  - [Road and highway traffic counts](#)
- Idaho State Department of Transportation
  - [Road and highway traffic counts](#)
- Oregon State Department of Transportation
  - [Road and highway traffic counts](#)
- Washington State Department of Transportation
  - [Road and highway traffic counts](#)



# Region X Website:

<https://www.hud.gov/states/shared/working/r10/environment>

## Endangered Species Act [50 CFR 402]

### ALASKA

In the State of Alaska, use the *USFWS Alaska Programmatic* for compliance with habitat and species listed under USFWS. The RE/HUD must also consider possible impacts to species and habitat listed under NOAA Fisheries- National Marine Fisheries Service (NMFS). Use the *NMFS Alaska Section 7 Guidance* to determine potential impacts to NMFS listed habitat or species.

- USFWS Alaska Programmatic ([PDF](#))
- NMFS Alaska Section 7 Guidance ([PDF](#))

### IDAHO

- Idaho Endangered Species Act No Effect Guidance ([PDF](#)) ([Word](#))

### OREGON

- Oregon Endangered Species Act No Effect Guidance ([PDF](#)) ([Word](#))
- [USFWS Threatened and Endangered Species in Oregon](#)

### WASHINGTON

The purpose of the following checklists are to assist HUD and HUD's responsible entities (REs) in meeting their obligations under the Endangered Species Act (ESA) for both Fish and Wildlife Service (FWS) and National Marine Fishery Services (NMFS), and the MSA with NMFS where necessary. The checklists are designed to help you determine whether a proposed project will have an effect on federally-listed species, designated critical habitat, or essential fish habitat, and the process to follow based on those effect determinations.

**Please NOTE:** ONLY HUD or a Responsible Entity may initiate consultation with USFWS & NMFS (known as "the Services"). All requests for consultation by parties other than HUD or the RE will be rejected by both of the Services.

- Washington Endangered Species Act Guidance (for use in WA State only)
- FWS ESA Guidance ([PDF](#)) ([Word](#))
- NMFS Checklist and Appendices ([PDF](#)) ([Word](#))
- NMFS WA State Programmatic ([PDF](#))

## Wild and Scenic Rivers Act [Sections 7(b), and (c)]

## Clean Air Act [Sections 176(c), (d) and 40 CFR 6, 51, 93]

## Farmland Protection Policy Act [7 CFR 652]



# Why is Region X different?

## **NOAA: Authority over Marine Species, including:**

- Marine mammals, marine fish, mollusks, sea turtles
- 47 Species in Pacific Northwest, including 28 salmonids



## **FWS: Authority over Terrestrial Species, including:**

- Birds, mammals, reptiles, amphibians, plants, invertebrates & inland fish



# Region X ESA Guidance Documents

## Programmatic Agreements (PA)

- NMFS- OR, WA
- USFWS-OR, AK

## ESA Guidance (Checklists)

- NMFS- AK, ID
- USFWS-WA, ID



# WHERE TO START?

## **ESA Guidance for Each State** Checklist to determine an action's appropriate finding of effect under the ESA

- Updated version posted to the Region X Website
- Each State in the Region has Guidance, each State is DIFFERENT!
- Compliance in the Region is unique and only Region X has PA with the Services

### Endangered Species Act Guidance for Oregon

Prepared in collaboration with the US Fish and Wildlife Service and NOAA Fisheries Service  
Applies in Oregon only

General requirements	ESA Legislation	HUD Regulations
Section 7(a)(2) of the Endangered Species Act mandates that actions that are authorized, funded, or carried out by Federal agencies do not jeopardize the continued existence of plants and animals that are listed, or result in the adverse modification or destruction of designated critical habitat.	The Endangered Species Act of 1973; 16 U.S.C. 1531 et seq.	24 CFR 58.5(e) 24 CFR 50.4(e)

#### Purpose

The purpose of this guidance is to assist the U.S. Department and their designated responsible entities who have assumed compliance to meet their duty to consult with the US Fish and Wildlife Service and NOAA Fisheries (NOAA) Fisheries (7(a)(2) of the Endangered Species Act (ESA). Users will be projects are likely to have "no effect" on ESA-listed species any further coordination with, or approval from, the USFWS.

If you make a "no effect" decision for your project, please your decision in a memo to file for use if the decision is your action "may affect" an ESA-listed species or critical habitat runoff, then you must contact USFWS, NOAA Fisheries, or modified to eliminate the possibility of an adverse effect. I further consultation with USFWS and/or NOAA Fisheries will

This guidance also includes links to additional resources that practices, including many actions that HUD and responsible adverse impacts of post-construction runoff. HUD or a responsible individual consultation when warranted by project-specific

#### Definitions

- Action Area is all areas to be affected directly or indirectly immediate area involved in the action.
- Built environment means roofs and paved areas like sidewalks, streets, and amenities that prevent infiltration.
- Candidate Species are plant and animal taxa considered Endangered and Threatened Species. These are taxa for sufficient information on biological vulnerability and the list, but issuance of a proposed rule is currently precluded.
- Critical Habitat means those specific areas that have been (in a rule-making in the *Federal Register*) as essential to the survival and recovery of the species.
- Impervious area means artificial structures such as roofs, parking lots, roads, sidewalks, trails) that are covered by compacted soil, concrete, or stone.
- Listed Species means any species of fish, wildlife or plant endangered or threatened under section 4 of the Endangered Species Act.



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE  
Anchorage Fish and Wildlife Conservation Office  
4700 BLM Road  
Anchorage, Alaska 99507



In Reply Refer to:  
FWS/IR/IAFWCO

January 28, 2021

Mr. Brian Sturdivant  
Regional Environmental Officer  
909 First Ave, Suite 260  
Seattle, Washington 98104-1000

Subject: Endangered Species Act Section 7 Consultation for Housing and Urban Development community upgrades in Alaska. (07CAAN00-2021-1-0095 3020)

Dear Mr. Sturdivant:

Thank you for requesting consultation with the U.S. Fish and Wildlife Service (Service), pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq., as amended; ESA) by correspondence received January 10, 2021. The U.S. Department of Housing and Urban Development (HUD) assists with projects across the state of Alaska. This programmatic approach (programmatic) is to be used when making Endangered Species Act (ESA)-determinations for a broad suite of projects and their effects on federally threatened and endangered species and their designated critical habitats (Table 1, enclosed).

In Alaska, the Service has two Fish and Wildlife Conservation Offices (FWCO) responsible for section 7 consultations under the ESA (Figure 1, enclosed). The Fairbanks FWCO is responsible for the interior, northwestern, and far northern portions of Alaska. The Anchorage FWCO is responsible for the Aleutian Islands, south-western and south-central Alaska to the Yakutat forelands, and south-east Alaska and the protected waters thereof.

#### Species Protected Under ESA

A complete list of federally-listed threatened and endangered species and their designated critical habitats found in Alaska is provided in Table 2, enclosed.

#### Procedure for Section 7 Determination

Section 7(a) of the ESA directs all Federal agencies to conserve species listed as threatened or endangered. Those agencies, in consultation with the Service, must ensure that their actions will not jeopardize the continued existence of any ESA-listed species. Before starting an action, the Federal agency, or their non-Federal representative, obtains a list of threatened, endangered,

INTERIOR REGION 11 • ALASKA

<http://portal.hud.gov/hudportal/doc>

# Region X PA's & ESA Guidance



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
1201 NE Lloyd Boulevard, Suite 1100  
PORTLAND, OR 97232-1274

Refer to NMFS No:  
WCRO-2020-00512

October 23, 2020

Brian Sturdivant  
U.S. Department of Housing and Urban Development  
Oregon State Office  
1200 SW 3rd Avenue, Suite 400  
Portland, Oregon 97204

Re: Corrections for the Endangered Species Act Section 7 Formal Programmatic Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the U.S. Department of Housing Programs in Washington State

Dear Mr. Sturdivant:

We thank you for your pointing out three corrections that are need HUD Programmatic Biological Opinion. As you discussed with B author of that biological opinion, none of the corrections alter the conclusion, or outcomes of the opinion, but will ensure that Respe programmatic will have greater clarity in the applicability of the p use and compliance.

At this time we provide a corrected copy of the biological opinion

1. The corrected title of this biological opinion is: "Endanger Formal Programmatic Biological Opinion and Magnuson- and Management Act Essential Fish Habitat Consultation) Housing and Urban Development Housing Programs in W

2. In Appendix C, "NMFS Stormwater Criteria for HUD proj when site constraints prevent use of LID", the enumerated least 60-days" is revised to "at least 20 days".

A corresponding change from "60" to "20" is also found o in Appendix D.

3. We add at several locations in Appendix D, the electronic coverage under the programmatic in Eastern Washington: CRBO.ConsultationRequest.WCR@noaa.gov

This addition occurs in the first full paragraph of Appenix Notification Form", on the "Stormwater Information Form Completion Report Form".

WCRO-2020-00512

## APPENDIX A:

### ESA Guidance and No Effect Design Criteria

#### Consultation Guidance for Washington State

Prepared in collaboration with National Marine Fisheries Service.

For use in Washington State only

For Responsible Entities under 24 CFR Part 58, & 24 CFR Part 50

General requirements	Legislation	Responsible Agency
Section 7(a)(2) of the Endangered Species Act (ESA) mandates that actions that are authorized, funded, or carried out by Federal agencies do not jeopardize the continued existence of plants and animals that are listed, or result in the adverse modification or destruction of designated critical habitat.	The Endangered Species Act of 1973; 16 U.S.C. 1531 et seq.	NMFS and USFWS (the Services)
Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires Federal agencies to consult with NOAA Fisheries on any action that they authorize, fund, or undertake that may adversely affect essential fish habitats (EFH).	Magnuson-Stevens Fishery Conservation and Management Act	NMFS only

#### Purpose

The purpose of this checklist is to assist HUD and HUD's responsible entities (REs) in meeting their obligations under the Endangered Species Act (ESA) for both Services, and the MSA with NMFS where necessary. The checklist is designed to help you determine whether a proposed project will have an effect on federally-listed species, designated critical habitat, or essential fish habitat, and the process to follow based on those effect determinations.

Appendices page-1

## Endangered Species Act [50 CFR 402]

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- NMFS Alaska Section 7 Guidance ([PDF](#))

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- NMFS WA State Programmatic ([PDF](#))

## Wild and Scenic Rivers Act [Sections 7(b), and (c)]

## Clean Air Act [Sections 176(c), (d) and 40 CFR 6, 51, 93]





# Region X “Things to know”

- Stormwater/Impervious Surfaces require further analysis
  - Fully understand the Table A for each state’s guidance
  - Fully understand the type of activity to apply the tables correctly
- Projects that can submit under a PA don’t require a BE or BA
- Individual Consultations are still an option but have taken 6-9 months!
- Always attempt to fit your project into a PA if possible.
- **ONLY HUD** can make a Determination of Effect and seek consultation with NMFS or USFWS



# Region X “Things to know”

- **Stormwater/Impervious Surfaces**
  - Analysis needed for CONTAMINATION levels, not just flow
  - Meeting the Local Stormwater Management requirements isn't sufficient way to demonstrate to NMFS that contamination levels have been mitigated
  - Encourage projects to include Low Impact Development (LID) measures in as many aspects of development as possible.



# PA Terms and Conditions (Examples)

A) HUD shall provide the following criteria for roofing and gutters:

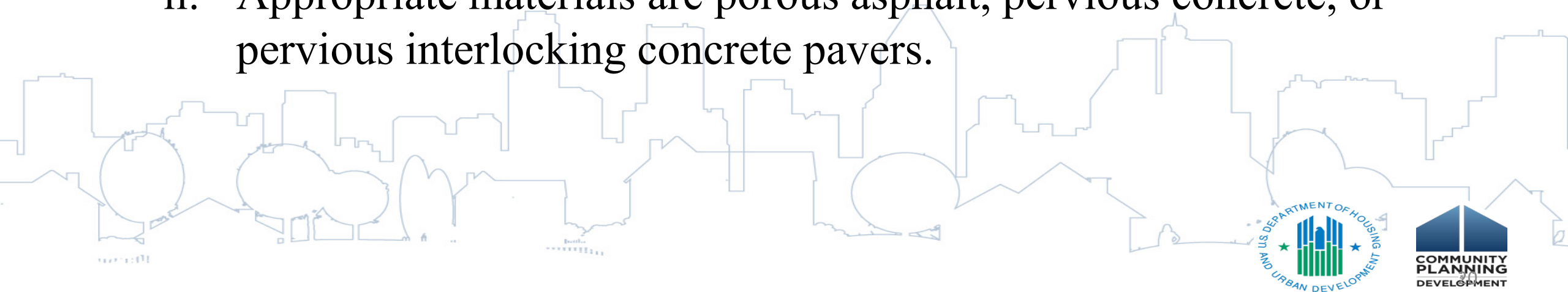
- i. No use of copper roofing or treated wood shingle roofing.
- ii. Galvanized metals in roofing or gutters must be painted to prevent rain from introducing zinc into the runoff. If paint begins to flake or peel, paint must be refreshed.
- iii. Composite (3-tab) roofing without moss inhibitor is preferred for Single Family and Duplexes.
- iv. Multifamily or commercial style buildings with rooftop HVAC equipment shall place such HVAC equipment under a roofed structure to prevent rain from introducing zinc into the runoff.



# PA Terms and Conditions (Examples)

B) HUD shall provide the following criteria for hardscape:

- i. Use pervious paving for sidewalks, patios, driveways and above ground parking areas.
- ii. Appropriate materials are porous asphalt, pervious concrete, or pervious interlocking concrete pavers.



# PA Terms and Conditions (Examples)

C) HUD shall provide the following criteria for onsite LID stormwater treatment:

- i. Use biofiltration methods prior to stormwater leaving the site as detailed in Appendix B of this document.
- ii. Use bio-augmented soils as necessary to maximize biofiltration per technical materials cited in PA.

\*LID-= Low Impact Development



# Region X “Things to know”

- The consultation process with “The Services” cannot be shortened or skipped
- Consultation must be completed before the ER can be finalized.
- Never contact “The Services” directly unless the federal agency specifically allows or asks for the contact directly
- The consultation is FEDERAL Agency to FEDERAL Agency
- HUD is called the “**Action Agency**” even though HUD is not actually carrying out the activity



# Region X “Things to know”

- Not all Projects will be allowed under PA
  - Projects 100 ft or closer to a shoreline.
  - Large infrastructure projects such as new roads, new or expansion of waste treatment facilities.
  - Floodplain fill of any kind or expansion into floodplains and impacts to wetlands deemed as critical habitat.
  - Projects that will impact (in anyway) riparian or aquatic habitats and will require entry into, or any disturbance of, riparian habitats.

Each States PA will spell out the types of projects which cannot be considered under the PA



# PA Requirements: Action Notification, Stormwater Information, Project Completion Forms

The Services may delay its review if:

- Action Notification Form,
- the Stormwater Information Form,
- or the PCSMP

is incomplete or unsatisfactory.

HUD may need to contact NMFS/USFWS early during the development phase of a project if TA is needed to determine how PA guidelines may affect your project.

Plan to attend Pre-consultation Guidance Meetings (if required)





# PA Requirements

## Quarterly ESA Pre- consultation guidance

- A. ESA Pre-consultation guidance will be offered by NMFS jointly with HUD quarterly, or as mutually agreed on, to
  - i. Provide technical assistance for HUD assisted projects covered by this opinion.
  - ii. Pre-consultation Guidance Meetings may be in-person or web based, as circumstances require.
- B. REs with projects that will remove 5 acres or more of mature vegetation must participate in Pre-consultation Guidance Meetings.
- C. RE's/HUD are encouraged to participate in in ESA Pre-consultation Guidance Meetings.
- D. HUD shall collaborate with NMFS to ensure the Pre-Consultation Guidance meetings will provide attendees with a clear understanding of:
  - i. The applicable HUD regulations for environmental review.
  - ii. The process to make an ESA effects determination.
  - iii. How to use NMFS' Stormwater Design Criteria (Appendix A, or the most recent version) to develop a postconstruction stormwater management plan (PCSMP).

# ESA Guidance

## If PA is not Available, Use ESA Guidance

- Every State in Region X has guidance: Either a PA or ESA Guidance or Both
- Each Service Sets guidance parameters that must be met to Reach a “No Effect”
  - Use of TABLE A and the type of Activity
  - Must meet ALL Parameters for Activity being carried out
- Lender must document how a determination was made
  - Supporting how each required parameter was met
  - Must be by qualified/credentialed professional
- No Effect means exactly that- **NO EFFECTS**
  - Partial or wholly beneficial impacts are effects, and the project cannot reach a No Effect determination.

# ESA Guidance

If PA is not  
Available, Use  
ESA Guidance

- Under ESA Guidance, when a project reaches anything other than No Effect
  - Consolation Under Section 7 of the ESA must occur
  - A BE or BA must be prepared that supports a determination of May affect, but not likely to adversely affect, or
    - Likely to likely to adversely affect
      - Informal vs formal consultation
      - = lengthy time delays!! Be aware!
      - Begin early contact with HUD



# Region X One Last “Thing to know” COASTAL ZONE MGT

## COASTAL ZONE MANAGEMENT ACT [SECTIONS 307(C), (D)]

[Wetland Protection \[24 CFR 55, Executive Order 11990\]](#)

[Wetland Protection \[24 CFR 55, Executive Order 11990\]](#)

- [More information for the state of Alaska](#)

[Coastal Zone Management Act \[Sections 307\(c\), \(d\)\]](#)

### ALASKA

- Currently the State of Alaska does not have a Coastal Zone Management Plan. Projects are not subject to this requirement.

### IDAHO

- There are no designated Coastal Zones in Idaho.

### OREGON

- Coastal Zone Management Checklist ([PDF](#)) ([Word](#))

### WASHINGTON

- As of July 22, 2020, Washington State Department of Ecology notified HUD of the following:

“Ecology has concluded that it is unnecessary for U.S. Department of Housing and Urban Development (HUD) to continue to send project information in order to receive Ecology’s concurrence that the funding phase of the project is consistent with Washington’s CZMP. Therefore, we are writing to inform you that HUD no longer needs to require applicants to send Ecology letters seeking our concurrence on projects for which HUD plans to release federal funding.”

Inclusion of the following statement in the Environmental Review Record is strongly encouraged to ensure projects are aware that CZM may still apply at the time of local and/or national permitting.

“Concurrence from Dept. of Ecology for Coastal Zone Management is no longer required under a Part 58 or Part 50 Environmental Review in Washington State. However, at the time of project development, the activity may trigger review if it falls under other parts of the CZMA regulations for federal agency activities (Title 15 CFR Part 930, subpart C), or consistency for activities requiring a federal license or permit (Title 15 CFR Part 930, Subpart D) and will be subject to all enforceable policies of the Coastal Zone Management Program. It is during the local permitting process that a project might be subject to CZM and further review by the Dept of Ecology.”

[Sole Source Aquifers \[40 CFR 149\]](#)

For use in **ALL STATES**:

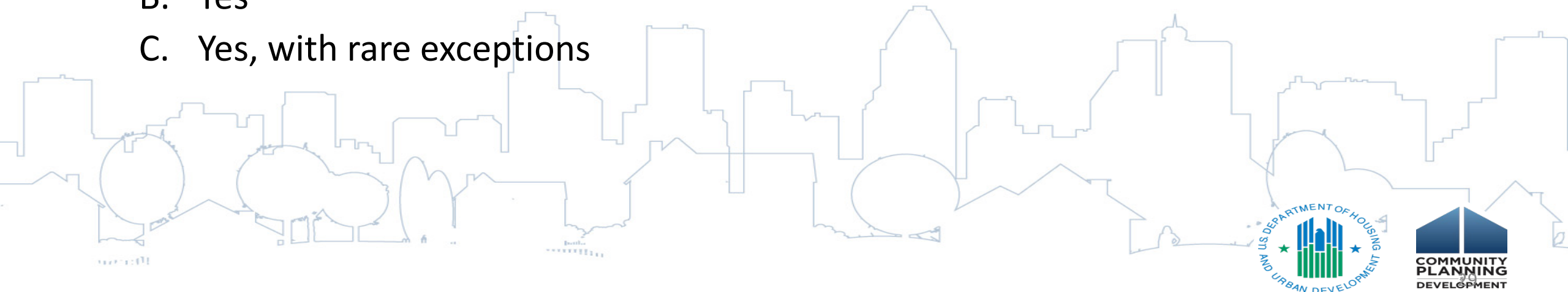
# Polling Question #1

## Historic Preservation – Section 106

### Polling Question

Does a HUD-financed rehab of a 30yr old building need a Section 106 review and concurrence by SHPO?

- A. No
- B. Yes
- C. Yes, with rare exceptions



# Historic Preservation – Section 106

**Answer:**

**C. YES, with rare exceptions**

**EXCEPTIONS:**

**No Potential to Cause Effects Memo applies**

- Define a category of activities in a program that have no physical impacts
- <https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/>
- Some 223(f), 223(a)(7), and RAD projects



# Historic Preservation – Section 106

## EXCEPTIONS:

### Exemption in a Programmatic Agreement (PA) applies

- <https://www.hudexchange.info/resource/3675/section-106-agreement-database/>
- PAs for Part 50 programs available in Kansas, California, Alaska, Minnesota, South Carolina
- Development of additional PAs that will cover Part 50 and Part 58 projects underway in New York, Minnesota, Virginia, Pennsylvania, and Idaho



# Mid-century Modern Historic Properties





# Section 106 Training and Resources

- HUD Historic Preservation web page  
<https://www.hudexchange.info/environmental-review/historic-preservation/>

Section 106 Webinar for FHA Programs (July 2020 – archived)

<https://www.hudexchange.info/trainings/courses/section-106-historic-preservation-for-multifamily-and-office-of-residential-care-fha-programs/>

- Region X Guidance on SHPO process by state
- <https://www.hud.gov/states/shared/working/r10/environment>

- Program guidance (MAP Guide and 232 Handbook)

- WISER online training modules

- Ongoing annual training



# Delegation Memo for FHA Lenders

- The Delegation Memo authorizes Lenders and their authorized representatives to initiate Section 106 consultation with SHPO in certain circumstances
- Effective dates: March 18, 2021 to 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
- HUD remains responsible for consultation with Indian Tribes and Native Hawaiian Organizations



# Delegation Memo for FHA Lenders

- Applies to MAP and OHP-approved Lenders and their Authorized Representatives
- Applies to Section 106 review carried out under 24 CFR Part 50
- Applies to FHA programs in Housing and Healthcare listed in Delegation Memo
  - NOT to FHA Risk Share Program
  - NOT to other Office of Housing Programs unless combined with FHA (RAD, Asset Management)
  - NOT to other Program Areas at HUD (Public Housing, CPD, etc.)



# Delegation Memo for FHA Lenders

- National Housing Act:
  - Sections 220, 221(d)(4), 231, 213, 241(a): New Construction or Substantial Rehab
  - 232: new construction or substantial rehabilitation of healthcare facilities
  - 242: new construction or substantial rehabilitation of hospitals
  - 207/223(f): purchase or refinancing of existing rental housing or healthcare facilities that may have been financed originally with conventional mortgages
  - 223(a)(7): streamlined refinancing of currently insured FHA loans
- Proposed repairs, rehabilitation and demolition must be reviewed as part of the project



# Delegation Memo for FHA Lenders

- Will allow consultation to begin when HUD issues FHA number
- Will require a Qualified Historic Preservation Professional when a project includes:
  - Demolition of a building over 45 years old
  - New construction in or adjacent to a listed or eligible historic district
  - Substantial ground disturbance
  - Exterior rehabilitation of a building over 45 years old
- **ONLY HUD CAN CONDUCT TRIBAL CONSULTATION**



# Historic Preservation Professional

- Section 106 findings must meet professional preservation standards
- Consultant who meets academic and experience requirements in the [Secretary of the Interior's Professional Qualifications Standards](#)
  - Archeology, Architectural History, History, Architecture, Historic Architecture
  - Verify with resume or curriculum vitae
- Expertise in identifying historic properties, evaluating effects, and preparing Section 106 agreement documents like MOAs
- Eligible project expense



# Delegation Memo for FHA Lenders

- HUD must enter consultation when:
  - Project may have an adverse effect
  - There is disagreement with SHPO/THPO
  - Tribes, consulting parties or the public object to Lender determinations
  - There is possible foreclosure or anticipatory demolition
  - HUD deems the consultation record inadequate

**HUD OFFICE OF HOUSING IS LEGALLY  
RESPONSIBLE FOR ALL FINDINGS**



# Consultation With Tribes and NHOs

Tribal consultation process does not change

- The delegation does not extend to consultation with Tribes or Native Hawaiian Organizations (NHOs).
- HUD must initiate and conduct consultation with Indian Tribes or NHOs when a project contains activities that may affect properties of religious and cultural significance to Tribes or NHOs – When to Consult With Tribes Checklist (Appendix A of the Tribal Consultation Notice)
- Draft supplied by Lender or consultant
- HUD reviews and sends letter or email to Tribes or NHOs
- Follow HUD Notice on Tribal Consultation CPD-12-006 and Supplemental Memo





# Consultation With Tribes and NHOs

- Lenders must coordinate with HUD on HUD's consultation with Indian Tribes
- Lenders must consider comments received from Tribes or NHOs within review timeframes before submitting a finding of effect to SHPO for concurrence



# Consultation With Tribes and NHOs

## Healthcare

- HUD will initiate Tribal consultation after FHA number assigned when requested via [LeanThinking@hud.gov](mailto:LeanThinking@hud.gov)

## Multifamily Housing

- Standard MAP Guide: HUD will initiate Tribal consultation when application enters queue (on request)
- LIHTC Section 221(d)(4) Pilot: HUD will initiate tribal consultation within 5 days of Concept Meeting Encouragement Letter (Notice H 2019-03)



# Delegation Memo for FHA Lenders

Lender or consultant enters information and documents in HEROS

HUD reviews material and findings and approves review in HEROS

- If inadequate, HUD enters consultation and completes review

When Section 106 and all other compliance reviews are complete, HUD issues Firm Commitment for project



# Lender Actions without the Delegation

Applicant may:

- Assemble complete project description
- Assemble information for the Section 106 review
  - May include initial technical assistance contact with SHPO to identify historic properties
- Obtain studies, historic property surveys, etc. as necessary
- Alert the Agency Official regarding potential adverse effects of the project
- Provide information to Agency Official
- Prevent actions prior to completion of Section 106



# 20% Federal Historic Tax Credit

- Listed/eligible for the National Register
- Income-producing property
- Substantial rehab that exceeds Adjusted Basis
- Work meets Secretary of the Interior's Standards (SOI) for Rehabilitation
- Can be combined with LIHTC
- OEE Webcast and online guidance on HTC
  - <https://www.hudexchange.info/programs/environmental-review/historic-preservation/tax-credit/>
- Piggyback state credits



# Comparison of 106 / HTC / Local Historic Reviews

Local historic or design review

Historic Tax Credit Review (HTC)

Section 106 Review

Standards	SHPO Consultation	Consultation with Tribes, interested parties, public	Timing	Substitution for Section 106
Vary	None	Review board meetings open to the public	Usually before Federal application	None
Must meet SOI Standards	SHPO approves	None	Often overlaps with Section 106	None
Should meet SOI standards	SHPO consults and concurs	Consultation with Tribes, interested parties, public	Begins at Federal Application	--



# Polling Question #2-Floodway

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Question: Which project *might* qualify to use HUD's incidental floodplain exception?

- A. Floodway crosses a pathway and parking lot
- B. Doesn't cross improvements; 100yr crosses a pathway & parking lot
- C. Doesn't cross improvements; no 100yr; one building in 500yr

# Incidental Floodplains

- Site contains floodway, 100-year floodplain, and 500-year floodplain
- **However, floodplain is incidental**
- Project may proceed IF all conditions in § 55.12(c)(7) are met:
  - No construction or improvements in the floodplain
  - Permanent covenant protects floodplain from future development
  - Adequate drainage in place for any wetlands





# Incidental Floodplains



- Site contains floodway and 100-year floodplain
- Floodplain is NOT incidental
- Project must be rejected

# Incidental Floodplains

- Site contains 100-year floodplain and 500-year floodplain
- Floodplain is incidental
- Project may proceed either:
  - By meeting conditions in § 55.12(c)(7), OR
  - By completing 8-Step Process



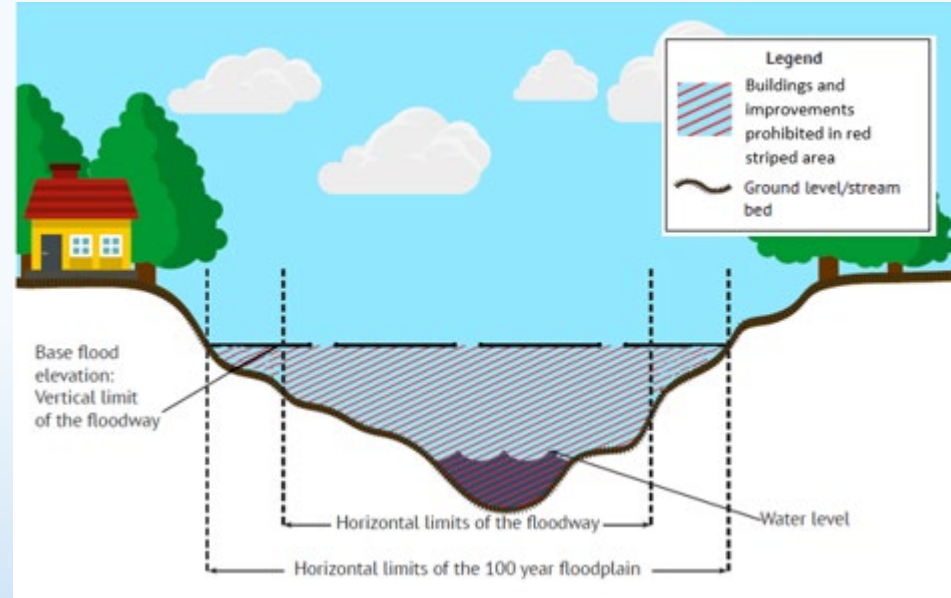
# Incidental Floodplains



- If site includes a parking lot in the floodplain, the incidental floodplain exception does not apply

# What about infrastructure?

- Vertically, HUD defines the floodplain as the area between ground/riverbed level and base flood elevation (BFE)
- New or existing infrastructure that will not modify the floodplain may pass below an incidental floodplain



# Case Study-Flood Zone

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- Existing Multifamily Property Refinance
- 100 Year Base Flood Elevation is 8” above the elevation of the first finished residential floor. Does this property qualify under Section 223f?
- What if only ingress/egress is below the BFE?



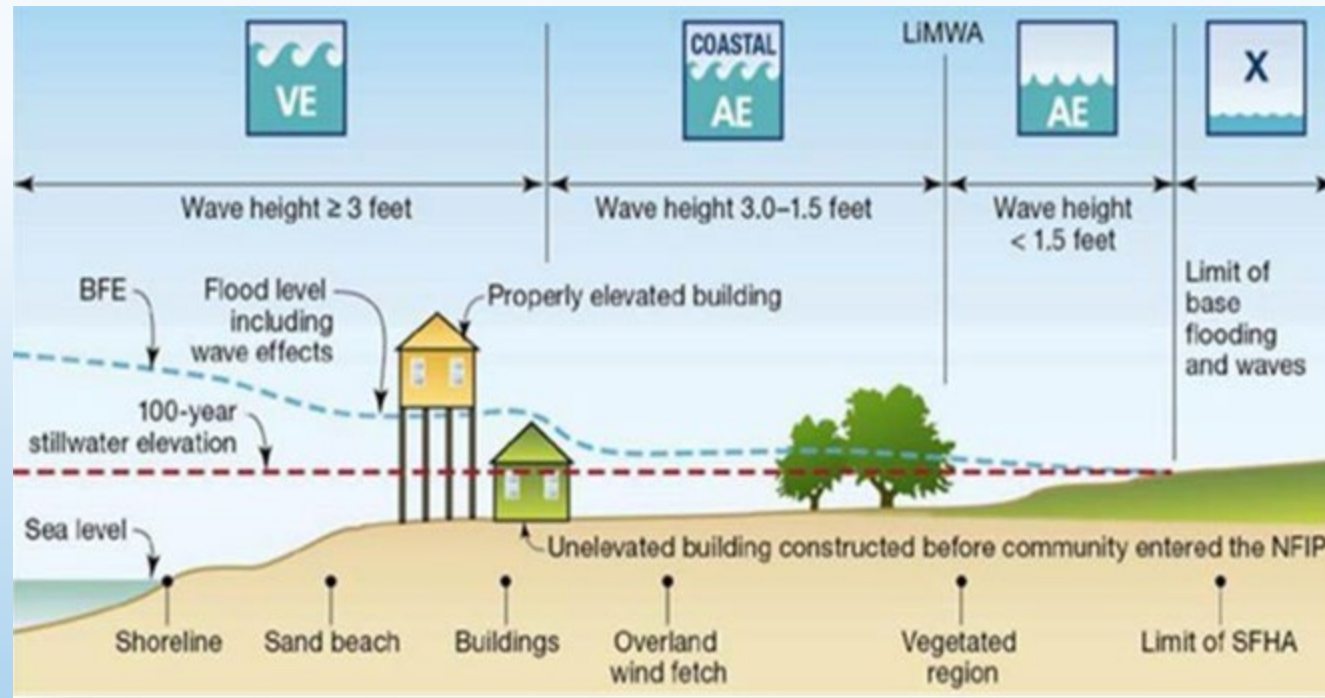
# Polling Question #3-Moderate Wave Action

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Question: What is the Limit of Moderate Wave Action (LiMWA) zone?

- A. A long-standing FEMA flood layer found in all states
- B. Newly-designated FEMA flood layer found on updated flood maps
- C. Zone between the Coastal High Hazard Area and the 100yr floodplain

# LIMWA



# Case Study-Moderate Wave Action

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- New Construction D4 is proposed within a Limit of Moderate Wave Action area. Can the project proceed?
- 223f Refinance is proposed within a Limit of Moderate Wave Action area. Can this refinance proceed?





Floodplain	2016 Policy	2020 Policy
High coastal hazard areas/ floodways	No FHA insurance permitted	No FHA insurance permitted
LiMWA	HUD staff review conservatively under the 8-step process.	<p><u>NC/SR</u>: prohibited</p> <p><u>Refi of uninsured or refi of currently insured with level 2 repairs or above</u>: strongly discouraged unless it meets construction requirements for high coastal hazard areas</p> <p><u>Refi of currently insured or assisted with level 1 repairs or below</u>: considered case by case</p>
100-year floodplain	<p><u>NC</u>: strongly discouraged. To qualify, lowest floor must be 1 foot above base flood elevation (BFE)</p> <p><u>SR</u>: strongly discouraged</p> <p><u>Refi/Ac</u>: discouraged if lowest floor, ingress, egress or life safety system is more than 1 foot below BFE</p>	<p><u>NC</u>: strongly discouraged. To qualify, lowest floor must be 2 feet above base flood elevation (BFE)</p> <p><u>SR</u>: strongly discouraged</p> <p><u>Refi/Ac</u>: discouraged if lowest floor, egress, ingress or life safety system is any distance below BFE</p>

# Polling Question #4-Choice Limiting Action

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Question: When does the clock start on choice-limiting action on a new construction deal?

- A. When the Lender first screens the transaction
- B. When the Lender submits a Concept package
- C. When the Concept Meeting takes place
- D. When the Pre-Application is submitted
- E. It depends

# Choice-Limiting Action

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- What is a Choice-Limiting Action and why is this now a ‘thing’ for 223(f)s?
- The 2020 MAP Guide has three exceptions to the Choice Limiting Prohibitions for existing properties.
  1. Existing multifamily properties may continue normal operations during the FHA application process. The key distinction is that these normal operations would not be part of the mortgageable expenses for the FHA transaction.
  2. Deficient conditions or needed replacements identified in the Capital Needs Assessment prepared as part of an application should be promptly repaired if the work is characterized as a Critical-Life Safety repair.
  3. Repairs that meet the definition of routine maintenance, as defined in CPD Notice 16-02, may proceed prior to the completion of the HEROS environmental review.

# Case Study-CLA-Commercial Space

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- Mixed-use property to refinance as 223f
- Contains commercial space to be finished out after Firm Application submission
- Can the tenant begin at will?



# Case Study-CLA-Radon

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- Existing property to do 223f Refinance
- Tested radon levels are elevated, and require mitigation
- Would normally be treated as a Non-Critical Repair
- Under what circumstances could mitigation begin prior to receiving environmental clearance?



# Case Study-CLA-Radon

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- Less than 2 year old 221d4 which had radon mitigation installed during construction
- Completed radon testing prior to final endorsement; Favorable testing results
- Now pursuing 223f with cash out



- Can this qualify for CENST with no further testing required?

CENST=Categorically Excluded *NOT* subject to Related Laws and Authorities

# Case Study-CLA-Paved Area Repairs

- Existing property to do 223f refinance
- Property requires sidewalk and parking area repairs due to trip hazards
- Repairs need to be completed soon due to upcoming seasonal cold weather
- Can repairs begin immediately?



# Case Study-CLA-Green

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- Existing property to do 223f refinance
- Property will qualify for reduced MIP for Green based upon identified Energy Audit repairs
- Owner would like to complete these repairs after Firm submission
- Can they begin at will?





# Case Study-CLA-Site Preparation

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- New Construction 221D4 prepping for a Concept Meeting
- Developer wants to do some light dirt movement
  
- Under what circumstances is this allowable?



# Case Study-CLA-Offsite Improvements

- New Construction D4 preparing for Pre-App
- HUD collateral is part of larger aggregated master development with grant funds that must be deployed for offsite infrastructure (streets/sewer) prior to receiving environmental clearance from HUD
- Under what circumstances is this allowable?



# Overall Choice-Limiting Action Tips

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- Best Practices for lenders and borrowers managing through potential CLA-triggering issues, particularly given the impact of the queue.



great  
stories  
start with  
bad  
choices

# Questions and Answers

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- Any unanswered questions will be addressed and distributed at a later date.