

Environmental Hot Topics Questions...

1. To be clear, projects 150-feet or closer to shoreline, not 100, correct?

Answer: Both the OR and WA Programmatic Agreements (PA) include criteria that all project activities be located at least **150** feet away from the aquatic resource. An aquatic resource, under the Biological Opinion which governs both PA's, includes: streams, rivers, ponds, lakes, wetlands, estuaries, bays, or other tidally influenced marine areas. If a project is within the 150 foot buffer, the project's affects would prohibit a *No Effect* determination for ESA and each PA has a different course of action to consider for projects within the 150 foot aquatic resources buffer. In WA, the project would be prohibited from inclusion under the PA and must seek individual consultation. In OR, the project could possibly be considered under the PA on a case by case basis. NMFS makes the final decision on what projects are accepted under the PA.

2. Is there a distance regarding creeks/streams?

Answer: The simple answer is that it is 150 feet. As noted above, NMFS includes both "creeks" and "streams" in its definition of *aquatic resource*. All project activities must be located at least 150 feet from aquatic resources.

3. We are finding that certain SHPOs throughout the country have significantly increased the information that they are requesting as part of the Section 106 process over the last few months. These information requests include inventory forms for a very broadly-defined Area of Potential Effect, and they are adding significant costs to these transaction. In some cases, the costs exceed \$50,000. It seems that it is an attempt by SHPOs to use this process as an opportunity to collect information for their files at the cost of the Borrower. What, if anything, is HUD doing to ensure that the Section 106 process does not result in significant overreach and abuse?

Answer: The Section 106 regulations at 36 CFR 800.4 describe the process for identifying historic properties. Many SHPOs request information in a specific format so that the new data can be easily integrated into their historic property inventory, digital or paper. Building that inventory helps future reviewers who do not need to replicate the previous identification work when future projects involve similar locations.

The regulations at 800.4(b)(1) require a "reasonable and good faith effort" to identify historic properties in the Section 106 process. The regulations do not require that all properties in an APE be inventoried. The Advisory Council on Historic Preservation has issued [guidance](#) on meeting the "reasonable and good faith" identification standard. It includes factors to consider such as "*information on past work in the area, scope of federal involvement in the undertaking,*

and the undertaking's magnitude and anticipated effects on any historic properties that might exist in the APE." Cost can also inform what is reasonable.

If you feel that the scope of a requested identification effort is not reasonable, we recommend that you discuss it with the Regional or Field Environmental Officer and with SHPO. If not resolved at the state level, the Advisory Council can also assist in interpreting the standard in specific instances.

4. I'm confused about the timing for the precon vs. HEROS submittals. Precons are not scheduled by HUD until the closing is imminent. HEROS must be completed at Preapp or if needed Firm.

Answer: Assuming that the 'precon' is the Pre-Construction Meeting that takes place at initial endorsement, HEROS will always be approved prior to this meeting.

5. With respect to incidental exception and infrastructure, does a stormwater outfall meet this exception--it passes below the floodplain. Does the flow of water from the outfall impact or does not impact the floodplain?

Answer: HUD's approach on infrastructure is based on defining the floodplain as the area between the ground/river bed and the base flood elevation. If the outfall is not in this zone it could be considered incidental.

6. What are the specific radon testing requirements for existing 221(d)(4) new construction projects which have already installed passive mitigation during construction and completed post-construction radon testing?

Answer: Assuming this question is asking about a future 223(f) application, HUD would generally require a new radon test in this scenario. This contrasts with the scenario discussed during the training where a project has an active radon system under an OM+M plan. In that second scenario, HUD would consider an exception request submitted by a radon professional.

7. For clarification - an action that may not qualify as routine maintenance but is part of normal operations (not a repair required by the CNA and not mortgaged) - would that be allowed to proceed prior to environmental clearance? Example: owner is putting in a small gazebo for resident benefit that isn't a required repair and isn't mortgaged but likely wouldn't qualify under the CPD memo as routine maintenance.

Answer: In general, as long as the action is not part of the FHA application/mortgageable expense, it could proceed prior to HUD's environmental review.

8. Will the allowable infrastructure information (regarding floodplains) be outlined in a memo for future reference?

Answer: Yes, this is a good idea. When finished we can post to the Housing Environmental Website: <https://www.hudexchange.info/programs/environmental-review/housing>

9. Sorry, lastly regarding infrastructure in a floodplain, is the riprap that is above and below the floodplain considered to be an improvement or no, it meets the incidental exception. Thank you

Answer: HUD's approach on infrastructure is based on defining the floodplain as the area between the ground/river bed and the base flood elevation. Riprap would generally fall in that zone, and so would not be considered incidental.

10. For the Sara Jensen presentation, can she give us the slides plus the answers to the sample circumstances?

Answer: For answers to specific case studies, please review the recorded panel session, which is made available to all participants.