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Environmental Review and Clearance Overview

Applicability

All HOME, NSP, HOME-ARP, and HTF.

Description

IHFA is a Responsible Entity for HUD-CPD housing development programs in Idaho. As such IHFA is responsible for determining if a HUD-CPD funded project has adverse human health or environmental impact by completing an Environmental Review. If it is determined a project may have adverse human health or environmental impact, the project may be rejected or require mitigation.

Project description must include all contemplated actions which are either geographically or functionally part of the project. This includes actions that are not HUD-funded and before, during, or after IHFA's involvement. One example may be land acquisition under other funding, private or federal. Another example may be this is one phase of a larger project plan.

No funds can be committed to an activity before the completion of the Environmental Review Process and IHFA determines the project has Environmental Clearance. IHFA will notify the project sponsor when Environmental Clearance is obtained.

IHFA will not complete an Environmental Review in advance of an application, unless there is an exigent circumstance. A preliminary site review can be completed at any time, review Exhibit S for more information.

Increase in Funding Award or Change in the Scope of Work

Whenever funding (from any source) is increased, a new funding source is added, or the scope of work changes, the ER may require re-evaluation and the ER Specialist should be contacted.

The primary legislation determining the Environmental Review requirements is the National Environmental Policy Act (NEPA) of 1969, as amended. HUD regulations ([24 CFR Part 58](#)) require IHFA, the agency responsible for administering the State of Idaho's HUD funds, to follow specific procedures to conduct the Environmental Review Process. It is noted, different levels of review apply to different types of projects, i.e. acquisition, new construction, down-payment assistance, CHDO predevelopment, rehabilitation, etc.

Purpose

To determine if a federally funded activity will have an adverse human health or environmental impact.

If the environmental review determines there is an adverse impact, the ER then establishes whether the impact is "significant," and what, if any, measures must be taken to mitigate the impact. Note: Mitigating actions may be required even if the impact is not considered significant. If the environmental review requires conditions to mitigate any environmental impacts, then IHFA should enter into an agreement with the Purchaser to ensure the conditions will be undertaken.

IHFA follows [24 CFR Part 58](#) to document the criteria, standards and policies, regulations of the laws and authorities specified at [24 CFR §58.5](#) for all projects that are categorically excluded at 58.35(a) and for all projects that require environmental assessments. While a lender and city may conduct an environmental review with similar items; HUD requires the Part 58 Environmental Review ensure a project is not going to disproportionately impact an income eligible household based on its location and surrounding area. A lender and/or city are not evaluating the same authorities and laws that is required of HUD funds.

IHFA must meet the requirements listed at Section 58.6 and maintain documentation in the environmental review record for all activities/projects. This includes Exempt activities (Section 58.34) and Categorically Excluded activities (under Section 58.35(a) or (b)).

Choice-Limiting Activities

Any activity that adversely affects and/or limits the choice of “reasonable alternatives” for a project before the completion of the Environmental Review Process is considered a Choice-Limiting Activity. These choice-limiting actions prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions.

Purchase Option Agreement/Contract

A Purchase Option Agreement and a Conditional Contract (see definition below) must adhere to the following requirements: A **Purchase Option Agreement** is a legal agreement between the potential buyer of real property and the owner, giving the potential buyer the exclusive right to buy the property at a specific price, within a specific timeframe. A Purchase Option Agreement does not impose any obligation upon the potential buyer to purchase the property. The Purchase Option Agreement obligates the seller to sell at the specified price if the potential buyer exercises the option in the manner described in the contract.

- **A Purchase Option Agreement can be used for any HOME-assisted activity, including new construction and the purchase of existing units.**
- **A Conditional Contract** is a legal agreement between the potential buyer and the owner that includes conditions which must be met for the obligation to purchase to become binding.
- **A Conditional Contract can only be used for an existing single-family (1-4 unit) and multi-family units.**

NEPA case law has determined entering into Purchase and Sales agreement (either a Purchase Option agreement or a Conditional Contract) is a choice-limiting action. Therefore, if the agreement is entered into before the environmental review is complete, it is a violation of [24 CFR §58.22](#), unless the following additional requirements are met.

- 1) The agreement includes the following (or similar intent) Environmental Review Clearance Clause:
 - “This agreement is subject to a determination by IHFA on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58”
 - No transfer of title to the purchaser or removal of the environmental condition(s) in the purchase contract occurs unless and until IHFA determines, on the basis of the environmental review, the transfer to the buyer should go forward, and IHFA has obtained approval of a Request for Release of Funds and environmental certification, where applicable. IHFA shall use its best efforts to conclude the environmental review of the property expeditiously.”
- 2) **For existing multi-family rental structures only** - The structure(s) is not located within a Special Flood Hazard Area;
- 3) The cost of the option should be a reasonable nominal portion of the purchase price. For multi-family, if the option is non-refundable deposit, it cannot exceed 3% of purchase price or less.
- 4) The term or automatic renewal language is sufficient to provide assurance the agreement will not expire prior to loan closing.
- 5) For single-family, activities, a non-refundable deposit cannot exceed \$1,000.00

Once an application is submitted to IHFA the ER Process begins, and an owner, developer, or contractor can undertake no choice-limiting activity until a Request for Release of Funds (RROF) has been issued. This includes expending any public or private funds AND/OR executing an agreement to conduct any of the following activities regarding a specific site:

- a) Property acquisition
- b) Rehabilitation
- c) Conversion
- d) Leasing
- e) Renting
- f) Repair
- g) Construction
- h) Demolition

Engaging in any choice-limiting activity before the entire Environmental Review Process is complete may result in the denial of federal funds to the HOME Project.

Timing of Environmental Review Process and Related Restrictions

The Environmental Review Process begins with an application to IHFA. Although IHFA may issue a Conditional Reservation and/or an Award Agreement during the ER Process, the ER must be completed before any choice-limiting activities occur.

The estimated timeline for an environmental review is dependent on the level of review. Some activities may be “exempt” or “categorically excluded” from the Statutory Authorities Checklist (as defined at [24 CFR §58.35\(a\)](#)), however, only IHFA is responsible for making this determination. The ER Process for an Exempt review is 30 days, a Categorically Excluded review is 60-75 days, and an Environmental Assessment review is 120 days.

IHFA will send the Project Sponsor written notification when/if a project receives Environmental Clearance. The Project Sponsor will be notified of all required mitigation actions at this time.

Environmental Review Process Flow Chart Levels of Environmental Review

IHFA’s first step is to determine the level of review required, i.e., whether the project consists solely of exempt activities, categorically excluded activities, or if an environmental assessment is required to determine if there will be significant impacts on the environment, triggering preparation of an environmental impact statement. An Environmental Review Requirements manual has been prepared by IHFA for use in completing Environmental Reviews. This manual is available upon request from IHFA.

There are five possible levels. This section describes the review process for each of these five levels as they relate to HOME-assisted projects.

Exempt

If the federally funded portion of the project consists solely of the types of activities listed below, the project can be classified as an “exempt activity” ([24 CFR §58.34](#)). IHFA must review and place a dated “Exempt Certification” in the HUD project file. Exempt activities must still comply with the requirements in [24 CFR §58.6](#). Some examples of exempt activities are:

Environmental studies; development of plans and strategies, inspections and testing, engineering or design costs, technical assistance and training; temporary or permanent improvements that do not alter environments conditions and are limited to activities to protect, repair, or arrest the effects of disasters, imminent threats, or physical deterioration; payments of principal and interest on loans or obligations guaranteed by HUD.

Categorically Excluded Not Subject To 58.5

If the activity can be defined as categorically excluded ([24 CFR §58.35](#)), the project shall be reviewed for compliance with a variety of federal laws and authorities designed to protect the environment (listed in 58.5 and 58.6). If no laws and authorities are triggered, the project can be converted from categorically excluded to exempt under (58.34(a) (12)), when compliance with federal requirements are documented in the file the project may proceed. With respect to HOME- assisted projects, categorically excluded activities may include:

Tenant-based rental assistance; operating costs including maintenance, equipment, operation, supplies, utilities, staff training and recruitment; economic development, expenses not associated with construction or expansion; activities to assist homeownership of existing or new dwelling units not assisted with Federal funds, including closing costs and down payment assistance to homebuyers, interest buy downs or other actions resulting in transfer of title; pre-development costs: legal consulting, developer and other site-option costs, project financing administrative costs for loan commitments, zoning approval; other activities that don't have a physical impact.

Categorically Excluded Subject To ([24 CFR §58.35\(a\)](#)):

The following activities are defined as categorically excluded subject to 58.5 statutory authorities (Statutory Checklist):

Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and handicapped; single family housing rehabilitation if the unit density is not increased beyond 4 units, the project doesn't involve change in land use, cost of rehab is less than 75% of the estimated cost of replacement after rehab; multi-family housing rehab if the unit density change is not more than 20%, project doesn't involve change in land use, cost of rehab is less than 75% of the estimated cost of replacement after rehab; individual action(e.g., disposition, new construction, demolition, acquisition) on a 1 to 4 family dwelling; or individual action on five or more units scattered on sites more than 2,000 feet apart and no more than 4 units per site; acquisition (including leasing) or disposition of, or equity loans on an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use; combinations of these activities.

Environmental Assessment:

If the project cannot be classified as exempt or categorically excluded, an Environmental Assessment (EA) is required (as described in [24 CFR §58.36](#)). Some examples are: generally, new construction of five or more homes, and conversion from one type of land use to another.

The EA includes:

- a) An inspection of the project site to determine if any conditions exist that might, in the event the project is funded, create an impact on the environment;
- b) A review of the project's compliance with the laws and authorities listed in 58.5 and 58.6, as described in the previous section on categorically excluded activities;
- c) Solicitation of written responses or compliance documentation from a variety of local, state, and federal authorities as to the potential impact of the project on human health and the environment .

In the event, "*no significant impact*" is found:

- a) A Notice of Finding of No Significant Impact (FONSI) must be prepared and made available for public review and comment, along with the record of the EA, for a period of 15 days (per 58.43); and

- b) A Notice of Intent to Request a Release of Funds (NOI/RROF) must be prepared and made available for public review and comment, and the RROF must be submitted to HUD (except in the event the HUD funds have been awarded to a unit of local government, in which case the RROF is submitted to IHFA by the unit of local government). The comment period for the NOI/RROF ends approximately 15 days following the end of the comment period for the FONSI. See 58.45 for all public comment periods.

In the event that “*significant impact(s)*” is found, an Environmental Impact Statement is required.

Environmental Impact Statement:

In the event the EA reveals the project would have a potentially significant impact on human health or the environment, an Environmental Impact Statement (EIS) (24 CFR 58.52-66) must be prepared. The most stringent level of review is the EIS.

Any project that would significantly impact the quality of human health or the environment and therefore require an EIS under National Environmental Policy Act will be declared ineligible for HOME funds.

Compliance Areas

All project sponsors should be aware that all levels of environmental review are subject to [24 CFR §58.6](#). The following regulations are compliance requirements of [24 CFR §58.6](#):

The Flood Disaster Protection Act of 1973

Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128),

Funds may not be used with respect to a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR Parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards. Properties located within the 100-year floodplain will not be assisted with HOME funds unless the property owner obtains flood insurance.

The Coastal Barrier Resources Act

Coastal Zone Management Act of 1972, as amended in 1976, 1980, and 1996, particularly section 307 (c) and (d). This Act does not apply because there are no coastal zones in Idaho.

Airport Clear Zones (as applicable to [24 CFR §58.6](#))

[24 CFR §51.303\(a\)\(3\)](#) and [24 CFR §58.6\(d\)](#)

This regulation as it pertains to 58.6 requires notification for purchase or sale of an existing property in a Runway Protection Zone (RPZ) or Accident Potential Zone (APZ). If a property is in an RPZ or APZ the buyer must sign a statement acknowledging that the property is in the RPZ or APZ and be notified of the safety and other implications of the zone, and the realization that the airport operator may acquire the property in the future.

All project sponsors should be aware of the following environmental review requirements for activities that are Categorically Excluded and subject to 58.5 or that require an Environmental Assessment. The following regulations are compliance requirements for projects subject to [24 CFR §58.5](#). All consultations will be led by IHFA’s Environmental & Project Finance Specialist as the Responsible Entity. Consultation partners (SHPO, THPO, Fish and Game, etc.) are to work directly with the Responsible Entity only.

Historical Preservation

National Historic Preservation Act, 16 U.S.C. 470(f), section 106.

Section 106 of the Historic Preservation Act requires federal agencies to consider the effects of their undertaking on historic properties and resources.

When the project will alter environmental conditions (such as groundbreaking to develop vacant land) or has the likelihood to affect historic properties, a complete Section 106 review must be completed prior to committing funds.

Rehabilitation Activities involving properties 50 years old or older must obtain a statement from the Idaho Historical Society that the property:

- a) Is not listed on the National Register of Historic Places and not considered eligible for listing; or
- b) May be eligible but the use of the building and the changes proposed will not impact the qualities that make it eligible; or
- c) Is eligible and/or listed but the use of the building and the changes proposed would not impact the qualities that made it eligible. In this case, historic preservation requirements will be followed as set forth in 24 CFR 58.17.

Section 106 also has a specific requirement for the agency to make a reasonable and good faith effort to identify tribes that might attach religious and cultural significance to the properties in the area. IHFA will:

- a) Make a good faith effort to notify the Tribal Historic Preservation Officer under Section 106 they have the right to comment.
- b) If the tribe demonstrates interest, they must be invited to participate in a consultation.

Floodplain Management

Executive Order 11988, May 24 1977.

Floodplain Management is more restrictive than the Flood Disaster Protection Act. The purpose of floodplain management is to avoid adverse impacts of floodplains and to avoid development in a floodplain whenever there are practicable alternatives. If a project is located in a FEMA 100 year Special Flood Hazard Area, it is encouraged to choose an alternative site not located in a flood zone. The completion of an 8-Step Process is to determine there are no alternate, suitable sites available. If this can be demonstrated through the 8-step process, then the project must obtain a Conditional Letter of Map Revision (CLOMR), build the building pads above the Base Flood Elevation (BFE) and achieve a Letter of Map Revision (LOMR). Until a LOMR has been issued, the Sponsor must obtain and maintain flood insurance. Additionally, 500-year flood zones are restricted from critical actions such as nursing homes and childcare centers.

Wetlands

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 CFR 26961 et seq.); particularly section 2 and 5.

If a site is determined to be located in a wetland as defined by the Executive Order, an 8-Step Process is required to be completed to determine that there are no other suitable sites available. The exception to the 8-step process would be if any development activities were located outside of the wetland and would not impact the wetland area.

Sole Source Aquifer

The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended, particularly section 1424(e) (42 U.S.C. 300 h-303(e)).

Project developers must consider the applicability and feasibility of the Best Management Practices (BMPs) in reference to the nature of the storm water run-off. New construction located over a designated sole source aquifer shall incorporate BMPs or local government requirements into storm water run-off treatment. Storm water run-off systems are subject to the Environment Protection Agency's approval, as agreed to in a Memorandum of Understanding between IHFA, HUD, EPA, and Department of Commerce.

Endangered Species

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536).

IHFA must comply with the laws and authorities at 58.5, and is not limited to allowing the entities the opportunity to comment on a project. IHFA must obtain a species list relative to any specific project and then based on credible information make a determination if the project will affect the endangered species. If there is a “may affect, not likely to adversely affect” or “may adversely affect” determination, IHFA must consult with FWS and/or NOAA fisheries

Wild and Scenic Rivers

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended: particularly section 7 (b) and (c) (16 U.S.C. 1278 (b) and (c)).

Idaho has several rivers designated as wild and scenic. The Act safeguards the designated rivers to keep them free-flowing, unaltered, unpolluted and maintains cultural and natural values. If a project is located within one mile of a designated Wild and Scenic River, consultation with the National Park Service will help determine if the project will have an adverse effect.

Air Quality

The Clean Air Act (42 U.S.C. 7401 et seq.) as amended particularly section 176 (c) and (d) (42 U.S.C. 7506 (c) and (d)).

Projects must comply with the air rules (IDAPA 58.01.01) as applicable. If a project is located in an area that is designated as non-attainment or maintenance for any of the six criteria air pollutants, then the project must comply with the area specific maintenance plan within the Idaho Department of Environmental Quality State Implementation Plan.

Farmlands Protection

Farmland Protection Policy Act of 1981(7 U.S.C. 4201 et seq.) particularly section 1540(b) and 1541(7 U.S.C. 4201 and 4202).

If a project is located on prime or important farmland, consultation with the Natural Resources Conservation Service (NRCS) and completion of the Farmland Conversion Impact Rating form is required. The NRCS has 45 days to respond. “Zoning” does not exempt a project from compliance with the FPPA

Environmental Justice

Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority and Low-Income populations (3 CFR, 1994 Comp Pg 859). The purpose of considering environmental justice is to determine if a project places low-income people and/or minorities at a greater environmental risk than that of the general population. If it is determined that no adverse human health or environmental impacts result from the project, then environmental justice is not a concern. Mitigation of any potential adverse impacts may solve any environmental justice concerns.

Note: Environmental Justice as defined here as it relates to the Environmental Review process only; it does not pertain to Social Justice or the Fair Housing Act.

Noise Abatement and Control

Noise Control Act of 1972, The Quiet Communities Act of 1978 as amended, OMB Circular 75-2. New noise-sensitive use projects must be evaluated to ensure that the noise levels do not exceed HUD’s acceptable levels. New construction located within HUD’s Normally Unacceptable noise exposures are prohibited unless noise attenuation features reduce noise exposure to HUD acceptable levels. For major or substantial rehabilitation,

projects located within HUD's normally unacceptable noise levels the project developer shall seek to incorporate noise attenuation features as practical during rehabilitation activities. Mitigation can include specific construction materials, barrier walls and structure location placement.

Explosive and Flammable Operations

Sec.2 of the Housing and Urban Development Act of 1969 (42 U.S.C. 1441 (a)).

All applicable projects must be assessed to determine if any above-ground storage tanks that contain flammable or explosive materials are located at least the Acceptable Separation Distance (ASD) (as defined by HUD and calculated by the Responsible Entity (RE)) away from the project site. New Construction projects are prohibited if located less than the acceptable separation distance from a hazard, as defined in 51.201, unless appropriate mitigating measures are implemented, as defined in 51.205, or unless mitigating measures are already in place.

Aboveground LPG/propane tanks with a water capacity up to 1,000 gallons that comply with NFPA Code 58 (2017) are excluded from the definition of "hazard."

Toxic Chemicals and Radioactive Materials

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by Superfund Amendments and Reauthorization Act.

Any toxic or radioactive substances which could affect the health and safety of occupants or conflict with the intended use of the property must be mitigated or the project must be rejected. Particular attention should be given to nearby landfills, polluting industrial sites or other operations with hazardous wastes which could potentially impact the project site.

Airport Clear Zones (as applicable to [24 CFR §58.5](#))

[24 CFR 51, Subpart D](#)

This regulation as it pertains to 58.5 does not allow HUD funded new development in an RPZ or APZ unless the development will not frequently be used or occupied by people and the airport operator provides written assurances that there are no plans to purchase the project site.

Environmental Assessment Factors

Under [24 CFR §58.5](#), the review includes an analysis of the project's impacts on land development, socioeconomic factors, environmental justice, community facilities and services, and natural features, climate change impacts, and energy efficiency ([24 CFR §58.40](#))

Alternative Sites and Project Modifications Analysis

Assessment must include other reasonable courses of action that were considered, such as other sites, design modification, or other uses of the proposed site. Assessment must describe the benefits and adverse impacts to the human environment of each alternative site(s) and the reason(s) for rejecting it. [See Exhibit R of this Plan for a sample Analysis that must be submitted as part of the HOME/HTF application for funding (rental projects)]

Housing Trust Fund Environmental Provisions

Housing Trust Fund has a similar Environment Review process from other program's processes and those areas that have additional processes are listed below.

Historic Preservation

If a proposed project is listed or eligible to be listed on the National Register of Historic Places, individually or as part of an historic district, the proposed work may NOT include demolition and MUST meet the Secretary of

Interior's Standards for Rehabilitation – including the Standards related to new construction.

<https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>

Farmland

If a proposed project is not in an urbanized area, the project will NOT convert unique, prime or significant (state or local) farmland to an urban use.

Airport Zones

The project is NOT located within a Runway Protection Zone (RPZ) of a civilian airport or the clear zone or Accident Potential Zone (APZ) of a military airfield.

Floodplains

If the project site includes any portion within floodplains:

100-year floodplain

HTF & Other Funding: The 8-step Process and notifications are required. Any structure located within the 100-year floodplain must be elevated to at least the base flood elevation (“BFE”) or flood proofed to one foot above the BFE. Elevated and flood proofed buildings must adhere to National Flood Insurance Program standards, and the project must not be in a Critical Action.

HTF Funding Only: If there are no practicable alternatives to new construction or substantial Improvement, the structure can be elevated at least to the BFE or flood proofed to one foot above the BFE and the project will not be a Critical Action.

Floodway

The project is a functionally dependent use.

Wetlands

The project cannot adversely affect a wetland. The project will cannot drain, dredge, channelize, fill, dike, impound, or perform grading activities in wetlands.

Explosives and Hazards

The project will comply with the standards for acceptable separation distances, as set forth in [24 CFR part 51, subpart C](#).

Toxics

The project is free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended use of the property.

AND

The project is not located within 0.25 miles of a Superfund or CERCLIS (“Comprehensive Environmental Response, Compensation, and Liability Information System”) site OR OTHER contaminated site reported to Federal, State, or local authorities without a statement in writing from the U.S. Environmental Protection Agency (“EPA”) or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended use of the property.

Multifamily projects (more than 4 units)

A Phase I ESA–ASTM is required. The existing standard ASTM E1527-13 will be accepted until February 12, 2024, after which ASTM E1527-21 will be the only standard for conducting a Phase I ESA. A Phase I is valid for up to six (6) months. Certain sections may be updated after six (6) months, allowing it to be valid for up to one (1) year. Please consult with the Environmental Review specialist prior to any updates with an existing Phase I.

If the Phase I ESA identifies RECs, a Phase II ESA–ASTM will be required. If the Phase II indicates the presence of hazardous substances or petroleum products above applicable local, state, tribal or federal (“LSTF”) screening levels, coordination with the relevant LSTF oversight agency will be required to complete the remediation process and obtain a determination that no further action is required. Development of more than four single-family structures in the same location, such as subdivision development, should be evaluated as multifamily.

Single family projects (1-4 units)

In addition to the government records search, the screening process for single family does include a site visit. When the screening process raises concerns related to site contamination, it may be appropriate to contract with an environmental professional for preparation of a Phase I, testing and sampling, or other investigation.

Noise

If external noise level is between 65 dB and less than 75 dB, mitigation measures will result in an interior standard of 45 db.

If external noise level is 75 dB or greater, there will be no noise sensitive outdoor uses (e.g., picnic areas, tot lots, balconies, or patios) and mitigation measures to the building shall achieve the 45 dB interior standard.

Endangered Species

The project cannot affect endangered or threatened species or their habitat.

Wild and Scenic Rivers

If the project is located near a Wild and Scenic River, it will be consistent with the River’s Management Plan.

Sole Source Aquifer

The project cannot affect a Sole Source Aquifer.

Safe Drinking Water

The project must be constructed with lead-free pipes, solder, and flux. Any home built after 1986 will be exempt from lead pipe testing.

Phase 1 Environmental Site Assessment**Applicability**

The purpose of the Phase I Environmental Site Assessment (ESA) is to document compliance with [24 CFR 58.5\(i\)\(2\)\(i\)](#), HUD’s policy that requires all properties proposed for use in HUD-funded programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. This policy must be described in the “Purpose” subsection in the “Introduction” Section of the required Phase I ESA. To meet the “purpose”, in addition to the standard Phase I determination of whether Recognized Environmental Conditions

(RECs) have been identified in connection with the site, the Evaluation (section) discussion of Findings, Opinions, and Conclusions should clearly state if further investigation or corrective action is recommended to meet [24 CFR §58.5\(i\)\(2\)\(i\)](#).

The Phase 1 ESA will make an initial determination of the presence of “hazardous substances”, as defined by CERCLA, and of petroleum and petroleum products. The Phase I ESA should also make a determination of radon, lead-based paint, and asbestos when applicable.

Phase 1 ESA report is considered valid for 180 days. When IHFA begins the Environmental Review, Developers should request the report be updated, if over 180 days, to verify the conditions have not changed since the Phase 1 ESA was first issued. If the Phase I ESA was prepared more than one year prior to the completion of the HUD environmental review, a new Phase I ESA is required. However, the prior report can be used as reference for a portion of the necessary base data.

The Phase 1 ESA should **not** review all the Laws and Authorities; this is the responsibility of IHFA. Developers should clarify this with the company preparing the Phase 1 ESA. The firm needs to certify, in their professional analysis of the toxics in the area, there is not a concern with public health and safety regarding the future use of the site. If there are concerns, the firm should detail what mitigation is necessary to ensure safety.

More information on this at <https://www.hudexchange.info/resources/documents/Using-a-Phase-I-ESA-in-HUD-Environmental-Review.pdf>

A Phase I ESA is required for all multi-family new construction, single-family new construction in largely undeveloped areas, and projects changing an existing buildings use.

Previous Environmental Reviews

When additional federal funds are added to a previously approved federally assisted project, a second environmental review *may* not be necessary. If the scope of the project is unchanged, and an analysis of the original review indicates that environmental conditions have not changed and all relevant factors have been considered, IHFA may adopt the prior review with or without modifications. A FONSI and NOI/RROF may still need to be published and a Release of Funds would need to be obtained from HUD based on the reassessment of the original environmental review. (See [24 CFR §58.47\(b\)\(1\)](#)).

Public Notice Process

A Public Notice is required for all Environmental Assessment level reviews, and for those Categorical Exclusion projects that cannot convert to exempt. Public notices for Environmental Assessments can be a Finding, or No Significant Impact (FONSI), or a combined notice which includes the FONSI, and a Notice of Intent to Request Release of Funds (NOI-RROF). Public notices for non-exempted Categorical Exclusions include the NOI-RROF. IHFA must either publish in a newspaper of general circulation in the affected community or prominently display such notices in public buildings and within the project area. The Public Comment period for the NOI-RROF is 7 days when published and 10 days when posted. The Public Comment period for the FONSI or combined notice is 15 days when published, or 18 days when posted. When the comment period ends, IHFA submits a Request for Release of Funds (RROF) to HUD. Upon receipt of the RROF, HUD has an additional 15-day comment period. If there are no comments, or objections, HUD will issue to IHFA an Authority to Use Grant Funds, at which time the Environmental Review Process, which includes Environmental Clearance, is complete.

Environmental Approval

IHFA notifies the Project Sponsor if and how they may proceed. The Project Sponsor is required to certify and provide evidence of identified environmental Conditions.

If the scope of work changes or funding from any source increases after the completion of an Environmental Review, the ER may require re-evaluation.

