

Webinar on 24 CFR Part 55: Floodplain Management and Wetlands Protection Webinar 3/31/20

Questions and Answers

Note that in some cases, similar questions have been combined.

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I. Resources for more information

HUD Exchange Resources

- Floodplain Management: <https://www.hudexchange.info/programs/environmental-review/floodplain-management/>
- Wetlands Protection: <https://www.hudexchange.info/programs/environmental-review/wetlands-protection/>
- Flood Insurance: <https://www.hudexchange.info/programs/environmental-review/flood-insurance/>
- HUD Environmental Staff Contacts: <https://www.hudexchange.info/programs/environmental-review/hud-environmental-staff-contacts/>
- HUD’s primary Environmental Review page: <https://www.hudexchange.info/programs/environmental-review/>

Mapping Resources

- FEMA’s Map Service Center: <https://msc.fema.gov/portal/search>
- Flood Map Changes Viewer: <https://fema.maps.arcgis.com/apps/webappviewer/index.html?id=e7a7dc3ebd7f4ad39bb8e485bb64ce44>
- National Wetlands Inventory Wetlands Mapper: <https://www.fws.gov/wetlands/data/Mapper.html>

II. General requirements

Question: Is the 8-step required if you are demolishing a residential structure and returning it to green space?

The 8-Step Process is not required for this type of project if it meets all the requirements outlined in 24 CFR 55.12(c)(3):

- (i) The property is cleared of all existing structures and related improvements,
- (ii) The property is permanently dedicated for flood control, wetland protection, park land, or open space, and
- (iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

Question: For acquisition on an existing property located in the floodplain, other than ensuring the property has an up to date flood insurance policy and that a 8 step plan is completed, is there anything from the HUD standpoint that can be done to prevent the grantee from completing such acquisition, understanding that FEMA maps may change in the future.

When HUD completes the environmental review under Part 50, it is obligated to reject proposed projects if it finds that there are practicable alternatives to locating the project in a floodplain. HUD is also free to reject the use of HUD assistance for any project where it determines that there is an unacceptable amount of risk regardless of whether the project meets the minimum compliance requirements in Part 55.

For proposed projects where a Responsible Entity performs the environmental review under Part 58, HUD's authorities are more limited. However, the Responsible Entity has the same responsibility to reject projects where flood risks cannot be adequately mitigated.

Question: Should new construction affordable housing projects within public housing campuses, on the margin of the 500-year floodplains, be elevated to avoid noncompliance and flood risks in the future?

While not required, elevating structures that are near but not currently mapped in a floodplain would be a prudent choice to avoid future risk and expense. If these structures are later mapped into a floodplain, flood insurance will be significantly more affordable for structures that are elevated, and these savings alone could offset the up-front costs. The cost of elevation is also likely to lower at the time of construction than it would be at the time of substantial improvement.

Elevating now would also provide protection from flood damage in the event of a significant flood, even if the site is not officially designated as a floodplain. For example, FEMA has estimated that about 40% of structures that were flooded in Harris County, Texas during Hurricane Harvey were outside of the 500-year floodplain.

Question: Housing rehabilitation and demolitions are sometimes found in the floodplain. There are no alternatives to the project location. Is the 8-step process required?

Rehabilitation and demolition activities may or may not require the 8-Step Process, depending whether all activities involved in the project meet an exception in section 55.12. For example, rehabilitation of multifamily housing may require the 5-Step Process if it meets all the criteria in 55.12(a)(3), and the 8-Step Process is not required at all for rehabilitation of single-family housing if it meets the criteria in section 55.12(b)(2). Demolition actions are excluded from Part 55 if they meet all the criteria in section 55.12(c)(3), including that the land be permanently devoted to floodplain management and open space.

Question: We have been told that in our state, all housing is a critical activity and should be placed 1 foot above the 500-year flood plain. How can HUD approval be met if local standards such as elevation, dry land access, etc. are more restrictive?

State, local, and tribal governments that are participating in the NFIP must enforce certain minimum standards mandated by FEMA, but they are also encouraged to establish other requirements that go beyond these minimum requirements. Where these standards exceed HUD's floodplain management standards, HUD projects must also comply with all applicable state, local, and tribal standards.

Under FEMA's NFIP Community Rating System (<https://www.fema.gov/national-flood-insurance-program-community-rating-system>), participating communities receive community-wide discounts on flood insurance in exchange for implementing floodplain management ordinances that exceed minimum requirements. This is a helpful tool in many communities to increase resilience and make flood insurance more affordable.

Question: Does the 8-step process apply to RAD conversion multifamily rehabs? Does it depend if the rehab will exceed 50% cost of replacement?

HUD has found that the exception in 24 CFR 55.12(a)(2) applies to RAD conversions whether or not the project is also applying for FHA insurance, meaning that the modified 5-Step Process is sufficient to comply with Part 55 for RAD transactions without associated physical impacts beyond routine maintenance in communities that are in good standing under the NFIP.

Where the transaction also involves rehabilitation, the 5-Step will suffice only if all the criteria in 55.12(a)(3) are also met:

- The community is in good standing in the NFIP,
- The number of units is not increased more than 20 percent,
- The action does not involve a conversion from nonresidential to residential land use,
- The action does not meet the thresholds for "substantial improvement" under §55.2(b)(10), and
- The footprint of the structure and paved areas is not significantly increased.

The 8-Step Process is required for RAD transactions in the floodplain that do not meet the criteria above or any other exception in section 55.12.

Question: If the proposed project consists of upgrading existing storm drainage system to alleviate flooding in a neighborhood, why do we still have to document an alternative action in the 8-step process?

Where the 8-Step is required for infrastructure projects, consider alternative methods and technological alternatives to best serve the project objective, improve the functions and values of floodplains and wetlands, and minimize negative impacts.

III. Critical actions and 500-year floodplains

Question: Is the 8 step is required in the 500-year floodplain?

The 8-Step Process is required in the 500-year floodplain only for critical actions (such as nursing homes, hospitals, essential utilities, roads that provide the sole egress from flood-prone areas, and facilities that produce or store explosive, flammable, toxic, water-reactive, or volatile materials). Unlike most types of HUD projects, critical actions are required to complete the 8-Step Process when they are in the 100-year floodplain or 500-year floodplain. HUD's standards are higher for critical actions, because the risks and costs of flooding are much higher for critical actions.

Question: Are critical actions allowed in 100-year and 500-year floodplains?

Yes, HUD assistance may be used for critical actions in the 100-year and 500-year floodplain if there are no practicable alternatives (for example, the entire locality is located in the 500-year floodplain) and the mitigation measures required in 55.20(e)(3) are incorporated into the project.

Question: If a new construction or major rehabilitation project is located in a 500-year/0.2% floodplain, should it always be rejected because of environmental justice?

HUD's floodplain management and environmental justice standards would not require any project to be rejected in the 500-year/.2% floodplain. However, if your analysis indicates that environmental justice communities in the project area are disproportionately exposed to flood risk, it would be appropriate to consider that impact in the environmental review.

IV. Flood insurance

Question: Your slide stated that you need not be concerned about flood zones for EXEMPT or CENST projects. Yet they are subject to 58.6 which could include flood insurance.

Flood insurance requirements are triggered by the Flood Disaster Protection Act and the National Flood Insurance Program (NFIP), which are distinct from EO 11988 and Part 55. While Part 55 does not apply to exempt or CENST projects, NFIP requirements apply to all levels of review.

Question: If the purpose of Part 55 is to avoid direct or indirect support for floodplain development, why is it required that homeowners of a granted rehabilitation project in a flood zone required to maintain flood insurance for the life of the building? The home is already there, and it is not a substantial rehabilitation (i.e., no increase in units; simply rehabilitating what is already present).

Flood insurance requirements are triggered by the Flood Disaster Protection Act and the National Flood Insurance Program (NFIP), which are distinct from EO 11988 and Part 55. Unlike HUD's regulations in Part 55, the NFIP is managed by FEMA as well as state, local, and tribal governments. The purpose of the flood insurance mandate is to protect those who do occupy the floodplain from financial losses.

In addition, it is important to note that the purpose of EO 11988 and Part 55 is not just to avoid modifications to the floodplain, but also *occupancy* of the floodplain (see 24 CFR 55.1(a)(1)).

Question: If single family housing stock (owned and managed by a housing authority to rent to low-income tenants) gets remapped into a 100-year floodplain, will all future HUD assistance require flood insurance to be purchased? What about if the work is only maintenance <\$2,000 per unit per year?

Leasing activities that do not involve repairs, improvements, or acquisition are exempt from NFIP requirements (see <https://www.hudexchange.info/programs/environmental-review/flood-insurance/>). If HUD assistance is used to repair or rehabilitate one of these structures when it is within the floodplain on the current, effective FIRM, flood insurance would be required.

Question: Why is both flood insurance AND raising the BFE above floodplain required? It would seem that raising a building above the BFE would remove the flood insurance requirement?

Raising a building above BFE will significantly reduce flood insurance premiums, but it does not eliminate the requirement that federally assisted structures in a floodplain obtain and maintain flood insurance.

If the structure is elevated on fill (as opposed to adding height to the structure itself), FEMA may issue a LOMR-F that would eliminate the requirement to maintain flood insurance. However, HUD does not

recommend this option for several reasons, including the negative impact that fill can have on the surrounding area and the risk that the structure will flood without the benefit of flood insurance.

V. Floodways

Question: Can a non-structure be in a floodway? Such as a parking lot of a multi-family project?

No, HUD assistance could not be used for a parking lot or any other improvements in the floodway unless the project is a functionally dependent use. Under section 55.1(c)(1), HUD assistance cannot be used in the floodway except for functionally dependent uses, floodplain function restoration activities, and activities listed in section 55.12(c).

Question: Can a portion of a housing project be in a floodway - such as a parking lot or gazebo area if the rest of the house is outside the floodway?

No, housing projects are permitted on sites that contain a floodway only if the incidental floodplain exception in section 55.12(c)(7) applies. Under this exception, no structures or improvements, such as parking lots or gazebos, may occupy or modify the floodplain. This exception applies only where all new and existing construction is outside of the 100-year floodplain and floodway. For more information, see <https://www.hudexchange.info/resource/5650/incidental-floodplain-exception/>

Question: You mentioned an exception for historic projects on the national registry. Can HUD funding contribute to a historic restoration project in a floodway?

No, this exception does not extend to properties in the floodway. The definition of substantial improvement in 24 CFR 55.2(b)(10) includes an exception for structures listed on the National Register of Historical Places or on a State Inventory of Historic Places. This distinction may result in a historic project being excluded from some or all of the 8-Step Process under section 55.12(a) or (b). However, this distinction does not relate to the prohibition on projects located in a floodway. HUD assistance can be used in the floodway only for functionally dependent uses and activities that are excluded under section 55.12(c).

VI. Incidental floodplains

Question: If there is a parcel where a small portion is within a flood area, and the proposed activity will not occur within the portion of the parcel that is not in the flood area, is the activity permissible under the 8-step process?

The incidental floodplain exception in section 55.12(c)(7) may apply where the proposed project will be completed entirely in the non-floodplain portion of the site, meaning that the 8-Step Process would not be required. Under this exception, no structures or improvements, such as parking lots or gazebos, may occupy or modify the floodplain. This exception applies where all of the following conditions are met:

- i. The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, or other similar activities) do not occupy or modify the 100-year floodplain (or the 500-year floodplain for critical actions) or the wetland;
- ii. Appropriate provision is made for site drainage that would not have an adverse effect on the wetland; and
- iii. A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland.

For more information, see <https://www.hudexchange.info/resource/5650/incidental-floodplain-exception/>

Question: Lately I have been getting some push back from third parties when underwriting skilled nursing facilities/assisted living facilities that may have incidental portions in a SFHA (no improvements) stating that the Modified 8-Step is not necessary and citing 24 CFR 55.12(c)(7)(iii). As the underwriter I do still include the Modified 8-Step, am I misunderstanding? Can you advise?

The activities listed in section 55.12(c) are excluded from Part 55 as a whole, including the 8-Step Process. Where all conditions in the incidental floodplain exception in 55.12(c)(7) are met, the 8-Step Process is not required.

However, when performing environmental reviews, HUD or the RE should substantively evaluate the risks of approving a project located in close proximity to a floodplain even where the 8-Step is not specifically required. Some programs specifically require HUD to do so. For example, section 9.5.E.2.b of the MAP Guide and section 7.C.15 of the Section 232 Handbook both state, "In considering the safety of the residents, offsite floodways and other flood hazards will be evaluated in terms of separation distance, elevation differences, and the nature of the hazard in question. Unacceptable proximity to hazards may result in rejection of the application."

Question: If there is an incidental portion of a property that includes a SFHA (no improvements) and the 8-Step or Modified 8-Step is completed, is it still necessary to provide a Restrictive Covenant for Floodplains?

This may depend on the specifics of the project. For example, if the site contains only a 100-year floodplain, HUD or the RE may decide to either complete the 8-Step Process or rely on the exception in section 55.12(c)(7), including a restrictive covenant. In contrast, if the project site contains a floodway, the project may not be approved unless an exception in section 55.12(c) applies; in that case, it would be necessary to meet all the requirements in that exception, including obtaining a permanent covenant. Please work with your Field or Regional Environmental Officer to determine compliance requirements.

Question: Is process needed for all projects where a portion of a site contains wetlands or floodplains even if those wetlands and floodplains won't be disturbed?

In general, a project with an onsite floodplain or wetland can proceed without the 8-Step Process only if the project complies with the incidental portion exception in section 55.12(c)(7), including obtaining a permanent covenant to protect the floodplain and/or wetland from future development. However, the outcome will depend to some extent on the specifics of the project. Please work with your Field or Regional Environmental Officer to determine compliance requirements.

VII. Tribal authority

Question: Does the 8-step process vary for tribal entities that do not participate in the NFIP?

The primary difference will be in Step 1, determining whether the proposed project is in a floodplain. If FEMA has not mapped the area, then pursuant to 55.2(b)(1), HUD or the RE must use best available information, including any data maintained by the tribal entity, to determine whether the site is in a 100-year floodplain.

Question: How are Native American Tribes affected by local Flood Plain regulations. Generally they are sovereign with their own lands.

For purposes of Part 55, the biggest distinction will be that tribal lands are less likely to be mapped by FEMA than other areas. Because of this, HUD or the RE must use best available information, including any data maintained by the tribal entity, to determine whether the site is in a 100-year floodplain.

Under the National Flood Insurance Program managed by FEMA, the requirements will depend on whether FEMA has completed Flood Insurance Rate Maps (FIRMs) in the area. For more information, tribes may want to consult FEMA's Tribal Mitigation Planning Handbook at <https://www.fema.gov/media-library/assets/documents/179207>.

VIII. Maps

Question: What exact section and paragraph from part 55 says you must use the preliminary map if one exists?

This information is found in at 24 CFR 55.2(b)(1):

When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as "best available information" in accordance with Executive Order 11988. However, a base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM and FIS.

Question: where to find my city maps?

Consult <https://msc.fema.gov/portal/home> to find the latest maps. If FEMA maps are insufficiently detailed to identify whether project sites are in a floodplain, other Federal, state, or local data may be used as best available information.

Question: Can you discuss Part 55/Step recommendations for the reverse when the scenario is Effective=100-yr Zone, but the best available Prelim=Zone X?

Under section 55.2(b)(1), "a base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM and FIS." Therefore, if a preliminary map indicates that a project is outside of the floodplain while the current FIRM shows it as within the floodplain, HUD or the RE must rely on the current, effective FIRM.

Question: How should LOMR or LOMA be utilized if they occurred prior to recognized disasters (e.g., if the letter is dated 2015 and the area flood in 2016 is the document still valid) and how do they impact using the most currently available information?

Letters of Map Revision and Letters of Map Amendment should be treated as equivalent to the current effective FIRM until a newer data source (such as a preliminary map) is available. HUD or the RE should consider any history of flooding on a proposed project site regardless of whether it is a mapped floodplain.

Question: When will flood maps be updated? The current ones are from the late 90's and early 2000.

The mapping process is completed by FEMA. That agency works to keep floodplain maps up to date, but the workload is significant. For more information on the mapping process, see <https://www.fema.gov/flood-map-revision-processes>.

Question: I have never seen these newer maps. Is that just because they haven't been updated for our area? Many times I can't even find a location on the old maps!

Consult <https://msc.fema.gov/portal/home> to find the latest maps. If newer maps are not available, it is likely that FEMA has not yet updated the maps in your area. If FEMA maps are insufficiently detailed to

identify whether project sites are in a floodplain, other government data may be used as best available information.

For more information on the map revision process, see <https://www.fema.gov/flood-map-revision-processes>.

Question: When the state has more up to date maps than FEMA for specific area, can the state data be use for the purpose of completing a Part 50 environmental review?

Yes, HUD or the RE should consider state or local floodplain maps where available. However, non-FEMA sources cannot be used if they are less protective (e.g. they indicate a lower base flood elevation or flood zone) than the current FIRM. (See 24 CFR 55.2(b)(1))

Question: If a man-made floodway is located adjacent to a project area and the floodzone is contained within the boundaries of the floodway; however, there are cross-sections with a 1% annual chance indicated perpendicular to the floodway that encroaches onto the project-how do you read the map? Per the map, it is not located within the floodzone. Per the cross section, it is located within the 1% annual chance. What is the correct interpretation?

It is difficult to respond to this question without seeing the map. Please contact the Field or Regional Environmental Officer and share the FIRM for assistance.

IX. Notices

Question: does the 8-step process still requires public notice via newspaper public notice? or can a notice on RE website suffice?

Under section 55.20(b)(1), "all notices must be published in an appropriate local printed news medium," without an exception that would allow for online notice.

Question: If I understood correctly, the "Final Notice" cannot be included with the FONSI/RROF advertisement. Please let me know if this is correct.

OEE would like to correct the information provided during the webinar on this point. Under section 55.10(a), "compliance with this part shall be completed before the completion of an environmental assessment (EA), including a finding of no significant impact (FONSI)." However, OEE believes that it is appropriate to combine the Final Notice in step 7 with a FONSI notice if: steps 1-6 are completed before the RE makes a FONSI; the notice clearly indicates that it is combining the Final 8-Step Notice, FONSI notice, and (as appropriate) Notice of Intent to Request Release of Funds; and both the 8-Step Process and the FONSI are reconsidered in light of any comments received.

X. Substantial Improvement

Question: Are substantial improvements based on a single action or are they cumulative? (aka should they be tracking the funds they spend in rehab on a unit to determine if exceeds the 50% rule?)

For purposes of complying with Part 55, this may depend on the specific context of the project. Please work with the local Field or Regional Environmental Officer to determine how to proceed. Note, however, that other state, local, and federal agencies generally will consider improvements cumulatively.

Question: How does substantial improvement get applied in cases where the project involves road reconstruction? For such projects, there is no market value, per se, as it is public infrastructure.

HUD's definition of substantial improvement applies only to structures, and there should not be a need to apply it to non-structural improvements like roads and infrastructure.

Question: Are projects like repairs to sidewalks/roadways NOT considered substantial improvement and therefore do not require the 8-step?

Substantial improvement is only one consideration when determining if the 8-Step Process is required. The 8-Step Process is required for projects located in the floodplain unless an exception in section 55.12 applies, and none of these exceptions would apply to sidewalk or roadway repairs. When conducting sidewalk or roadway repairs in a floodplain, REs are encouraged to complete a combined 8-Step Process that evaluates all contemplated repair activities together.

XI. Wetlands

Question: Is there a technical reference or references to assist in determining what is and is not a wetland under the HUD definition?

HUD's wetland definition appears in section 55.2(b)(11). Section 55.2(b)(11)(ii)-(iv) includes a list of resources and experts that may be consulted for assistance with determining whether an area meets this definition. A wetlands delineation performed by a qualified professional may also be necessary to identify the boundaries, scale, and classification of any wetlands.

Question: Is the 8-step required if there is no ground disturbance in a wetland. This would include boring a wetland

In general, a project with an onsite wetland can proceed without the 8-Step Process only if the project complies with the "incidental floodplain exception" in section 55.12(c)(7), including obtaining a permanent covenant to protect the wetland from future development. However, the outcome will depend to some extent on the specifics of the project. Please work with your Field or Regional Environmental Officer to determine compliance requirements.

Question: Would the 8-step be required if there was going to be any ground disturbance in the wetland BUT the wetland happens to be WOTUS and a permit is required due to storm drainage discharge which is part of your project?

Under section 55.28, it may be possible to omit steps 1 through 5 of the 8-Step Process; however, steps 6, 7, and 8 would still be required. This exception applies only if all criteria in 55.28(a) are met:

- (1) The project site is outside of the floodplain,
- (2) The US Army Corps of Engineers has issued an individual (not general or nationwide) Section 404 permit for the project, and
- (3) All wetlands adversely affected by the action are covered by the permit.

Question: If there is a freshwater emergent wetland a few feet behind the property line of a proposed new development, but nothing on the site that connect to the wetland, should I be concerned of any potential impact

When conducting the environmental review, you should ensure that the work will not impact any on- or off-site wetlands. For example, consider whether stormwater runoff will flow into the offsite wetland and implement construction practices will protect the wetland (e.g. place buffers to prevent trucks from driving through and construction materials from being stored in the wetland).

Question: Under Part 58 a NWI map is not sufficient and a wetland delineation map should be done is that correct? Is there any time a NWI is sufficient to document absence or presence of wetlands?

This will depend on the site and the project. For example, if the NWI indicates that there is a wetland on the site, but it is clear that it is incorrect (e.g., the site has already been paved over or the mapped

“wetland” is an artificial detention pond without any characteristics of a wetland), a delineation would not be necessary. In contrast, if HUD or the RE believes that the NWI correctly indicates a wetland and it is able to work with the US Fish and Wildlife Service to identify its location, size, and boundaries, it may not be necessary to also acquire a separate delineation.

Question: For a wetland on a new construction project with no direct or indirect impacts is a restrictive covenant all that is warranted?

In general, a project with an onsite wetland can proceed without the 8-Step Process only if the project complies with the “incidental floodplain exception” in section 55.12(c)(7). This exception applies where all of the following conditions are met:

- i. The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, or other similar activities) do not occupy or modify the floodplain or wetland;
- ii. Appropriate provision is made for site drainage that would not have an adverse effect on the wetland; and
- iii. A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland.

Question: Is open water, which is identified in USFWS wetland maps as wetlands, considered a wetland under 25 CFR 55.

Bodies of water such as ponds may qualify as a wetland under HUD’s definition in 24 CFR 55.2(b)(11), depending on whether it meets the criteria in that definition. Pay special attention to areas around open water, as wetlands often appear near more permanent water bodies.

Question: Regarding Wetland issue, in what situation are you required to obtain permit from USACE?

Section 404 of the Clean Water Act requires a permit before dredged or fill material may be discharged into Waters of the United States. The standards are similar to Part 55, in that such discharges are prohibited if a practicable alternative exists that would cause less damage or the nation’s waters would be significantly degraded. For more information on permitting, see <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404>. For more on the definition of “Waters of the United States,” see <https://www.epa.gov/cwa-404/definition-waters-united-states-under-clean-water-act>.