

## **Requirements for Housing Trust Fund Environmental Provisions - HTF Combined with Other Funds September 20, 2016**

Chantel Key: Sure. The poll is now open. The poll will be closing in about 15 seconds. The poll is now closed and I just shared the poll results.

Lauren McNamara: Okay. Excellent. Thank you, Chantel.

So it looks like a lot of you are not sure if you're going to be combining HTF funding with other HUD funding. But a few of you are a definite no. Four of you have definitely said no. And 29 of you said yes. So the next section of the webinar is going to go into more detail about what needs to be done if you're combining HTF with other HUD funding that has environmental review requirements under Part 50 or Part 58.

Okay. So it's anticipated that you guys are going to use HTF funds with other HUD funding sources like CDBG or HOME. And other HUD funding is subject to Part 50 or Part 58 environmental review and we're going to jump into that now. Let me just exit -- okay.

So the very first thing you need to figure out is who is doing the environmental review. For programs such as RAD, which you may be running into, HUD usually does the environmental review. For programs such as HOME or CDBG, a unit of local government assumes environmental responsibilities under Part 58, and they are called a Responsible Entity, or RE.

If you as the HTF grantee or subgrantee are working with other entities or other agencies providing funding, you should ask them who is doing the environmental review. Is it HUD? Is it the local government? Because they need to be informed early on that this is different.

So under Part 50 and Part 58, for almost all HUD funding, the environmental review must be complete prior to committing HUD funds to the project. So if you're including HTF funding, an environmental review that meets the HTF environmental provisions needs to be done before committing any HUD funding, including HTF funding. We do not want to have any issues with 58.22 violation. And this is when, if you were to commit any funds to the project prior to the environmental review being completed that's a choice limiting action.

So the environmental review needs to be complete. So you need to be talking to the person or the entity doing the environmental review, whether that's HUD or the local government to find out the timing on the environmental review. Because nothing can be -- you don't want to be stuck in a situation where you've made a violation and it will require a waiver and that's going to slow down the process for several months.

And then just a special note on HOME. HOME does have conditional commitments. So in the notice, 16-14, there is information and language on condition of commitments for HOME funding only when HTF is involved in a project. And this is only specific to HOME.

Another thing to keep in mind, for Part 50 and Part 58 reviews, they include consultation and public notification requirements that aren't part of the HTF environmental provisions. So for flood plains, if an eight step is being done, this requires public notice. And this could take up to 30 days. For HP, there's section 106 consultation with interested parties and this could also take up to 30 days. So just put that into your timeline of things. Part 50 and Part 58 environmental reviews do take time.

Another thing that does take time for Part 58 reviews specifically is the public comment and request for release of funds requirements for categorically excluded subject to 58.5 reviews and environmental assessments. If a project is funded with HTF and other Part 58 funding, the project will need to go through public comment and request for release of funds requirements. And this can take about 30 days.

Recordkeeping. The RE or HUD must maintain the environmental review record and they need to provide a copy to the HTF grantee or subgrantee. Appendices D and E are suggested formats that could be used by the RE or HUD to document compliance with the HTF provisions for the laws and authorities that are different from Part 50 and Part 58.

So these formats only cover what's different. You will still need to document what's the same. So we'll go into a breakdown of that. And there are formats also available on the HUD Exchange page that I showed you guys before.

The HTF projects will most likely fall under categorically excluded subject to 58.5 or an environmental assessment level. Some laws and authorities are handled differently to meet the environmental provisions for new construction and rehabilitation and I'll go into those in more detail. And if the project is an environmental assessment, then an EA level of analysis must be done. So you need to do all your laws and authorities, and you need to do your environmental assessment analysis.

So the following laws and authorities can be analyzed and documented in the same manner that they are currently done for Part 50 and Part 58 compliance. This is: coastal barrier resources, coastal zone management, explosives and hazards, endangered species, wild and scenic rivers, sole source aquifers, and environmental justice.

These environmental laws and authorities are different from Part 50 and Part 58 and must meet the HTF environmental provisions and I will go into more detail about each of these. So when you're doing your review, you can do what you normally do for everything else, but for these you need to do it so it meets the HTF environmental provisions. And this includes historic preservation, farmlands, airport zones, flood plains, wetlands, contamination, noise, and safe drinking water.

As we walk through the laws and authorities that are different from Part 58, the following will appear on the top. You should be used to this now. The NC for new construction, R for rehabilitation, NC/R for new construction and rehabilitation that are the same for each provision.

Okay. So historic preservation. If a project's listed or eligible to be listed on the national register, any work that is done on the project needs to meet the Secretary of Interior's standards -- and just a special note: if a property includes structures and archaeological resources.

Compliance with section 106 is achieved by following the procedures outlined in 36 CFR part 800. Consult with interested parties as you would under Part 50 and Part 58. And these parties include state historic preservation officers, federally recognized tribes, native Hawaiian organizations.

So documentation. So you need to document the section 106 consultation process, first and foremost. If a project is not listed or eligible to be listed individually or as part of a historic district, document how that was determined. If the project is listed or eligible to be listed, there must be no adverse effect. No adverse effect. And you need to provide documentation on how any work that's being done meets the secretary of interior's standards for rehabilitation including new construction. And this can be done with photos, architectural plans and certification by a qualified professional.

So here are the links to some resources. The first is the national register. You can use that as an initial screening tool. For more information about consultation, that can be found on our HUD Exchange page. If the project is listed or eligible to be listed it must meet the secretary of interior's standards and documented. And that is in the last link.

Here's a screenshot of the standards for rehabilitation and they also include new construction. You will need to document consultation with interested parties and if the project is listed or eligible to be listed, you need to document how there is no adverse effect and how work that will be done will meet these standards.

And as a second part of historic preservation, if any archaeological resources or human remains are discovered on the construction site, and this has come up before, you need to -- you should contact your local environmental staff, and you need to document the consultation correspondence with the affected tribes or descendant communities and how the project complies with federal, state, and/or local laws.

Here's the provision for farmlands for new construction and rehab. And this is different from Part 50 and Part 58. Projects cannot convert unique, prime, or statewide or locally significant agricultural properties to urban uses. And if the project is solely rehabilitation, just document the rehabilitation work that'll be done. It's not going to convert agricultural properties to urban uses.

So to document this, you can provide a map from the USDA web soil survey or a TigerWeb map showing urbanized areas. And be sure to mark the site and, as I said before, if it's rehabilitation, just document the rehabilitation activities that are taking place.

Here's a screenshot from TigerWeb showing a site marked in an urbanized area. And here's a screenshot from the USDA web soil survey showing the site marked not on significant farmlands.

All right. Airport zones. The airport zones provision is the same for new construction and rehab. Projects are not permitted within runway protection zones of civilian airports or the clear zones or accident potential zones of military airfields. You can start by using NEPAAssist to screen a proximity to airports. So this is different from Part 50 and Part 58.

If the project is over 1,500 feet away from a military airport or 2,500 feet from a civilian airport, document it with a map. If it is within these 1,500 feet, you need to show a map in more detail showing that the project is not within a designated APZ or a letter from the airport operator stating so. And if it's within 2,500 feet of a civilian airport, you need to provide a map showing that site's not within a designated RPZ or a letter from the airport operator stating so. And here's a screenshot from NEPAAssist using a measuring tool to show that my project is over 8,000 feet away from a civilian airport.

Flood plains. First we're going to cover the provision for new construction. The primary source for flood plains data is the FEMI flood insurance rate maps known as FIRM. Or when FEMA provides interim hazard data such as advisory base flood elevations or preliminary maps or studies, the latest available sources must be used.

And here's the breakdown in more detail. If the project is not in a flood plain, document it with a map. If the project is within a 100-year flood plain -- this is what's different -- an eight step process including notifications is required. As mitigations, the structure needs to be elevated to at least base flood elevation or flood-proofed to one foot above base flood elevation. And elevated and flood-proofed buildings must adhere to the national flood insurance program standards. And critical actions, once again, not allowed.

Projects in floodway for a new construction. No. Project sites within a floodway must be functionally dependent uses and HTF funding is not going towards functionally dependent uses. If your project is in a coastal high hazard area, it needs to be a non-critical reconstruction following a deconstruction caused by a disaster and designed for location in a coastal high hazard area consistent with FEMA national flood insurance program requirements for V zones. And if the project is in a 500-year flood plain, provide a map and that -- the project cannot be a critical action.

All right. So looking at flood plains for rehabs, the thing to note here is substantial improvement. That's when the cost of improving a structure is equal or greater than 50 percent the market value of the structure or increases the number of dwelling units by more than 20 percent.

And here's the breakdown how you would document this for rehabilitation. First one, if it's not in a flood plain, document that it's not in a flood plain. If the project is within a 100-year flood plain, an eight step process and notification is required and any structure that will substantially be improved needs to be elevated to at least base flood elevation or flood-proofed to one foot above base flood elevation and needs to adhere to the national flood insurance program standards and no critical actions are allowed.

If the project is within the floodway, it's not going to be a functionally dependent use if HTF funding is involved, so nothing should be in a floodway. If the project is in a coastal high hazard

area, the structure must be non-critical and designed for location in a V zone. If it's within a 500-year flood plain, provide a map and that the structure is not a critical action.

Resources for this -- and everyone should be familiar with this -- is the FEMA flood map service center, and here is a screenshot showing a project that is located outside of a flood plain. If the project was located within a flood plain, you'll need to provide documentation of the eight step and notifications as well as documentation that substantial improvement has been elevated or flood-proofed.

Wetlands. The provision for wetlands for new construction is different. Projects cannot impact wetlands. No draining, dredging, channelizing, filling, diking, impounding, or related grading activity can be done in wetlands. For rehabilitation, the provisions for wetlands states that if you're going to rehab an existing property, the property cannot be -- you cannot expand the building into the footprint of a wetland.

So to document this, you would provide a map showing a project location not in a wetland. And here's a map showing a site outside of a wetland using a fish and wildlife service national wetland inventory mapper.

Contamination. So contamination is different from Part 50 and Part 58 because the phase I is required for multifamily. And multifamily is more than four housing units. The provision is the same for new construction and rehab, the only difference is project/project activities, which is between the fifth and sixth line on the slide.

So all properties assisted with HTF funds must be free of hazardous materials, contamination, toxic chemicals, gases, and radioactive substances, where hazards could affect the health and safety of occupants. So this is very important. HTF projects must avoid sites located within a quarter mile of Superfund or CERCLIS sites or other contaminated sites reported to federal, state, or local authority. There must be no hazard that could affect the health and safety of occupants. There's more information on contamination that can be found on the HUD Exchange and NEPAassist is also a helpful tool.

Documentation. You need to document that the project is free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances. We'll go into more detail about how that's done for multifamily versus single family. You need to document that the project is not located within a quarter mile of a Superfund or CERCLIS site or other contaminated site reported to state, federal, local authorities.

For multifamily properties, a phase I environmental site assessment is required. If any recognized environmental conditions are identified, a phase II must be done. If contamination is found, a letter of no further action or equivalent must be obtained. For multifamily, your phase I should include information such as historical research, federal records and local records, and it needs to be done to the current ASTM standard, which is E1527-13. And that -- and we're in September 2016, so that is the current standard in September 2016.

For single family properties, a phase I is not required. But the project must be screened to not be within a quarter mile of Superfund, CERCLIS, or other contaminated sites reported to federal, state, or local authorities. If anything is identified in the screening process that raises concerns, it may be appropriate to have a phase I prepared or a testing and sampling done on the site. Here's a screenshot from NEPAssist looking at Superfund, brownfield, and toxic substance control act sites. And the site has a quarter mile buffer around it.

Noise. The provision for noise for new construction is different from Part 50 and Part 58. Interior noise levels must be 45 decibels or less. And I'll go into more detail on the next slide. You need to document your external noise level. If it's under 65, you're good.

If the exterior noise level is between 65 and less than 75 decibels, you need to document the mitigation measures taken to meet the interior noise level standard of no more than 45 decibels. If there are exterior noise levels of 75 or greater, document the mitigation measures taken to meet the interior noise level standard of no more than 45 decibels and also document that there are no outside noise sensitive uses. The noise provision for rehab is that all activities will be developed to ensure an interior noise level of no more than 45 decibels.

Resources to document the compliance with the noise environmental provision. You can use the HUD environmental review page. There's also the DNL calculator as well as STraCAT and the barrier performance module. And there's a ton of information on the HUD Exchange on how to use these tools and how to do noise analysis.

Here's a screenshot from the DNL calculator to calculate external noise levels. It looks at major noise sources such as roads, rail, or airports, and puts it all together into one calculation. So the combined DNL for this example that I'm using is under 52. So that's okay. The project would be okay. If the DNL calculation was above 65, you can use STraCAT to calculate noise attenuation of building components or the barrier design module can also be used if the noise levels are high.

And if you have any questions when it comes to looking at noise and attenuating noise levels, our field staff is very knowledgeable in how to analyze and how to attenuate and mitigate noise issues, so definitely reach out to them. And they are a great resource.

Safe drinking water. So safe drinking water, the provision is the same for new construction and rehab, and it isn't in Part 58. And it's very straightforward, you need to document that the project only uses lead-free pipes, solder, and flux. And this can be done by providing architectural plans, building specs, pictures, and certification by a qualified professional.

So now I'm going to open it up to questions on when HTF is combined with other HUD funds.

Danielle Schopp: Okay. Hi, Lauren. The first question is, "Can a Housing Trust Fund project that is categorically excluded subject to convert to exempt?"

Lauren McNamara: I would say that if a project is categorically excluded subject to and it meets the HTF environmental provisions and there are no circumstances that require a compliance that is consistent with 58.34(a)(12), then yes, the project can convert to exempt.

Danielle Schopp: Okay. Thanks. The next question is, "If a PJ will be providing Housing Trust Fund funding in conjunction with tax credits such as low income housing tax credit, will the for-profit developer be the responsible entity?"

Lauren McNamara: So a for-profit developer cannot be a responsible entity. Only a unit of local government such as a city, town, county, or state, can take on responsibility as the responsible entity. So a developer would not be the responsible entity. With that said, a developer can help provide documentation on the project, but they are not responsible for the environmental review. Do you have anything to add to that?

Danielle Schopp: No. "In a similar vein, if Housing Trust Fund and Part 58 funds are being combined, who pays for the environmental review?"

Lauren McNamara: That's a good question. So if Housing Trust Fund and Part 58 funding is being combined, who pays for the environmental review? You guys should probably work it out between yourselves as to who can pay for it. I can follow up with the program office about admin costs for HTF. But it should be decided how it's going to be paid for and who's going to provide what. But I will follow up with the program about that question.

Danielle Schopp: Okay. Can a tiered review that meets the Housing Trust Fund provisions be done?

Lauren McNamara: Oh, that's a good question. I would say that it really depends on how you set up your HTF program and how you're going to be combining it with Part 58 funding. So I would say it is possible to tier, but you definitely should talk to your field environmental officers if you're thinking of using tiering and the Housing Trust Fund projects. So definitely let them know what you're thinking and they can help answer any questions. But I can't see why not.

Danielle Schopp: Okay. And we have a question about choice limiting actions. "Other than construction, are there any choice limiting actions that cannot be initiated prior to documenting that the project meets the environmental provisions when it is a Housing Trust Fund only project?"

Lauren McNamara: So if a project only has HTF funding, the project just needs to meet the environmental provisions. So there's no choice limiting actions. A choice limiting action could be if you spend Housing Trust Funds and then funding and then find out later on that the project doesn't meet the provisions. But choice limiting actions would be more specific to when there's Part 50 or Part 58 funding involved. But if it's HTF only, then your project just needs to meet the provisions. You want to make sure it meets provisions before you commit money to it, because you don't want to have to pay money back. But no.

Danielle Schopp: Okay. If a project has been approved through a Part 58 environmental review, can that review also be used to satisfy the environmental provisions under the Housing Trust Fund?

Lauren McNamara: So that's a good question. So if the Part 58 review is done, you would need to supplement that Part 58 review with the environmental provisions that aren't met by only using Part 50 and Part 58.

Hold on a second. So you would need to supplement that review and look at historic preservation. You would also need to look at farmlands, airport zones, flood plains, wetlands, contamination, noise, and safe drinking water. So you would need to make sure that that Part 58 review meets the provisions for those items that are different from Part 58 and how they are laid out for the environmental provisions. So it's possible. You might have a review that's Part 58 that does meet the provisions, but you need to double check that it does.

Danielle Schopp: Okay. We have a conditional commitment question. "Can funds be conditionally committed prior to the environmental review when there are Housing Trust Fund and other federal funds in the project?"

Lauren McNamara: So it would really depend on the other federal funds. So for HUD, for example, the only type of HUD funding that can conditionally be committed to a project is HOME funds. I'm not sure how other federal funds work with conditional commitments. But for HUD, only HOME funds can be conditionally committed. And there's information on how to do that in this notice when you're combining it with HTF and then there's also another notice on looking at HOME commitments that was done in 2015. And I'm blanking on it. I think it's 15-09.

Danielle Schopp: Okay, Lauren. This next question is about noise. "Is there a difference between the Housing Trust Fund only noise requirements and Part 58 noise requirements?"

Lauren McNamara: So the Housing Trust Fund provisions, you just need to meet the noise. Like in Part 58, if you had high noise levels, you would have to go through an environmental waiver process, and that's not part of the Housing Trust Fund. So Housing Trust Fund for noise, you just have to meet the interior noise level of 45 and if exterior noise levels are higher than 75, there can be no outside noise sensitive uses. But for rehab, the interior noise level needs to be 45.

Danielle Schopp: Okay. At this point, we have no further questions.

(END)