

Historic Properties Section 106 Review for MF and Healthcare FHA



July 23, 2020 1 PM – 2:30 PM EST

Dial in number: 1-929-205-6099 | **Webinar ID:** 982-6209-8875

Presenters:

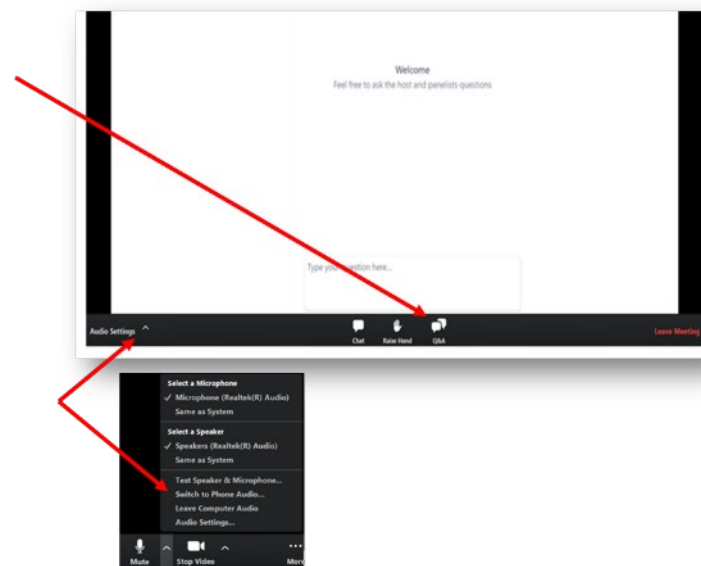
- Nancy E. Boone, HUD Federal Preservation Officer, Office of Environment & Energy;
- Sara Jensen, Office of Housing Program Environmental Clearance Officer

TA Provider: Enterprise Community Partners, Inc.



Welcome

- Webinar information
 - **Dial in number: 1-929-205-6099 | Webinar ID: 982-6209-8875**
- The webinar will begin promptly at 1pm EST.
- All attendees will be muted.
- Please **use the Q&A panel** on the bottom of your screen to ask questions. Please **do not use the Chat option** – Questions will be answered through the Q&A panel.
- For best audio quality, please listen to the webinar via phone line by using the dial-in number provided.
- To switch from computer audio to phone audio, follow these steps and enter your participant ID:



Training Objectives

- A. Demolition of part of a historic building
- B. Replacement of original 1890's windows
- C. Construction of a new compatible addition on the rear of a historic building
- D. Construction of a new building on a known archeological site
- E. Construction of a 10 story residential tower in a historic neighborhood of 2-3 story houses

Topics

- Section 106 Overview
- No Potential to Cause Effects Memos and Programmatic Agreements
- National Register of Historic Places
- Consultation with SHPO, tribes and interested parties
- Proposed HUD Delegation to FHA Lenders
- Determining Effect
- Resolving Adverse Effects
- Section 106 and HEROS
- Foreclosure, Anticipatory Demolition, Unanticipated Discoveries
- Historic Tax Credits

Section 106 Overview

- **Standard:** The National Historic Preservation Act of 1966 requires federal agencies to consider the impact of their projects on historic properties (process known as “Section 106” Review).
- **Purpose:** Section 106 provides a framework for problem solving that is grounded in consultation and provides stakeholders access to the federal decision-making process. Historic preservation is not the only useful public purpose. Results range from full preservation to total loss of historic properties.
- **Applies to:** MF and Healthcare FHA deals with new construction, rehab, demolition, or refinancing with activities beyond maintenance; transfers (e.g. RAD or Section 8(bb)); HAP renewals with capital repairs



Section 106 Process

Initiate process

- Determine undertaking
- Coordination with other reviewers (NEPA)
- Notify SHPO / THPO
- Identify Tribes and other consulting parties
- Plan to involve the public

Identify historic properties

- Determine APE
- Identify historic properties
- Consult with SHPO/THPO, Tribes, and other consulting parties
- Involve the public

Assess adverse effects

- Apply criteria of adverse effect
- Consult with SHPO/THPO, Tribes, and other consulting parties
- Involve the public

Resolve adverse effects

- Avoid, minimize, or mitigate adverse effects
- Notify ACHP
- Consult with SHPO/THPO, Tribes, and other consulting parties
- Involve the public

Law, Regulations and Guidance

- National Historic Preservation Act (54 U.S.C. § 300101 et seq.)
- HUD regulation at 24 CFR 50.4(a)
- Section 106 regulation at 36 CFR 800
- MAP guide requirements 9.5.D
- Office of Residential Care (ORCF) 232 handbook requirements 7.5.D
- Environmental Review Requirements for RAD Transactions

Results

No further Section 106 review needed when

- No Potential to Cause Effects Memo applies
- Project activities do not exceed “Maintenance”
- All activities in project are Exempt in a Programmatic Agreement

Otherwise, Section 106 review is required and results in one of three possible determinations

- No Historic Properties Affected
- No Adverse Effect
- Adverse Effect

No Potential to Cause Effects Memos

- Project Activities are limited to things that have no or minimal physical effects
 - Approved in Memos issued by HUD's Departmental
 - Environmental Clearance Officer
 - Posted online at [HUD Exchange](#)
- Examples
 - 223(f) refinancing transactions of non-insured mortgages with no associated rehabilitation or new construction, and no physical activities beyond Maintenance
 - RAD projects limited to Maintenance activities

Maintenance Notice

- “Notice CPD-16-02 Guidance for Categorizing an Activity as Maintenance for Compliance With HUD Environmental Regulations, 24 CFR Part 50 and 58”
- [HUD Exchange](#)

Feature or System	Maintenance Activities	Rehabilitation Activities
<ul style="list-style-type: none">• Interior Walls and Ceilings	<ul style="list-style-type: none">• Patching or mending cracked plaster• Patching or fixing holes or cracks in drywall• Replacing stained ceiling tiles• Painting or wallpapering	<ul style="list-style-type: none">• Installation of new drywall or paneling• Installation of new acoustical ceiling• Installation of dropped ceilings

Programmatic Agreement (PA)

- Programmatic Agreements are negotiated state by state by HUD and SHPO to expedite Section 106 review
<https://www.hudexchange.info/resource/3675/section-106-agreement-database/>
- PA can include Exempt Activities like:
 - Rehabilitation of buildings constructed less than 50 years ago with no ground disturbance
 - Repair or in-kind replacement of roofs
 - Repair or replacement of mechanical systems
 - Kitchen and bathroom remodeling
 - If project consists solely of Exempt Activities, further review by SHPO and tribes is not required

Part 50 Programmatic Agreements

- Kansas, California, Alaska, Minnesota, South Carolina
- Pending in Texas, New York, Nevada
- Model statewide Part 50 PA and proposed model Part 50/58 PA

**PROGRAMMATIC AGREEMENT
BETWEEN REGION IV OF
THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE
FOR THE REVIEW OF HUD-FUNDED ACTIVITIES
SUBJECT TO 24 CFR PART 50
IN THE STATE OF SOUTH CAROLINA**

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") through various offices, including the Public and Indian Housing (PIH), Housing, and Community Planning and Development (CPD), provides grant funding, mortgage insurance and other assistance, subject to environmental review under 24 CFR Part 50, "Protection and Enhancement of Environmental Quality", to entities within the State of South Carolina;

WHEREAS, HUD is responsible for complying with Section 106 of the National Historic Preservation Act of 1966, as amended, (54 U.S.C. § 300101 et seq.) implemented pursuant to 36 C.F.R. 800 ("Section 106") whenever HUD conducts an environmental review under 24 C.F.R. Part 50;

WHEREAS, through its field offices, HUD undertakes many activities that include the acquisition, leasing, repair, minor rehabilitation, disposition of properties, most of which are affordable housing, as well as other activities that include the substantial rehabilitation, demolition, conversion and new construction of residential and non-residential properties, each of which is an undertaking ("Undertaking") as defined pursuant to 36 C.F.R. 800.16(y),

WHEREAS, the Advisory Council on Historic Preservation issued in 1995 and revised in 2006 a "Policy Statement on Affordable Housing and Historic Preservation" that addresses implementation principles for Section 106 compliance, and those principles have been utilized in developing this Agreement;

WHEREAS, HUD has determined that some of the Undertakings funded by its PIH, Housing, and CPD programs have limited potential to affect properties included in or eligible for inclusion in the National Register of Historic Places (hereafter referred to as "historic properties") and have consulted with the South Carolina State Historic Preservation Officer ("SHPO") pursuant to 36 C.F.R. 800.14 of the regulations implementing Section 106;

WHEREAS, HUD invited the Catawba Indian Nation, Eastern Band of Cherokee Indians, Muscogee (Creek) Nation, Eastern Shawnee Tribe of Oklahoma, Tuscarora Nation, and Alabama-Quassarte Tribal Town to consult in the development of this Agreement and sign it as an Invited Signatory, in recognition of the unique government-to-government relationship between the Federal government and federally-recognized Indian tribes and none commented or accepted the invitation to sign the Agreement;

Section 106 Terminology

- **Historic Property**
 - Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places.
 - The term includes artifacts, records, and remains that are related to and located within such properties.
 - The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

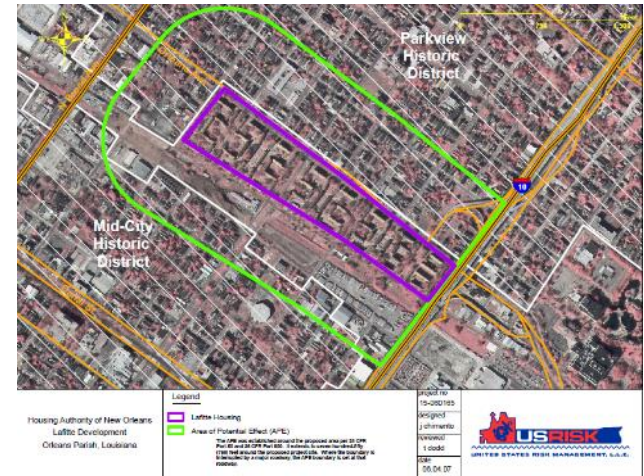
Section 106 Terminology – Cont'd

Consulting Parties

- Agency Official, State Historic Preservation Officer (SHPO), federally recognized Indian tribes and Tribal Historic Preservation Officer (THPO), local governments, organizations with a demonstrated interest, the public, and the Advisory Council on Historic Preservation
- Area of Potential Effect (APE)
 - Extent of area that may be directly or indirectly affected by a project

Area of Potential Effects (APE)

- Extent of area that may be directly or indirectly affected by a project
- Reasonably foreseeable effects
- Interior rehab, APE is the building
- Exterior rehab, APE usually the building and its immediate setting, the parcel
- Rehab or new construction in a historic area, APE could extend into adjacent area



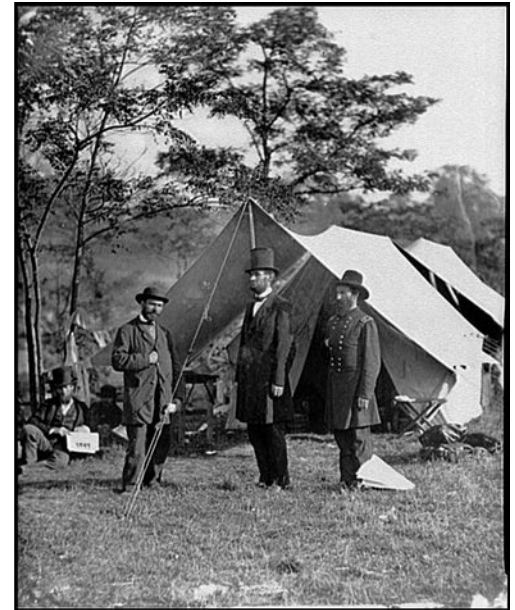
National Register of Historic Places Criteria

- Historic Significance
- Famous Person
- Architectural Significance
- Archeological Significance
- Level of Significance: local, state or national
- Generally 50 years old or older
- Eligible individually or as part of an historic district



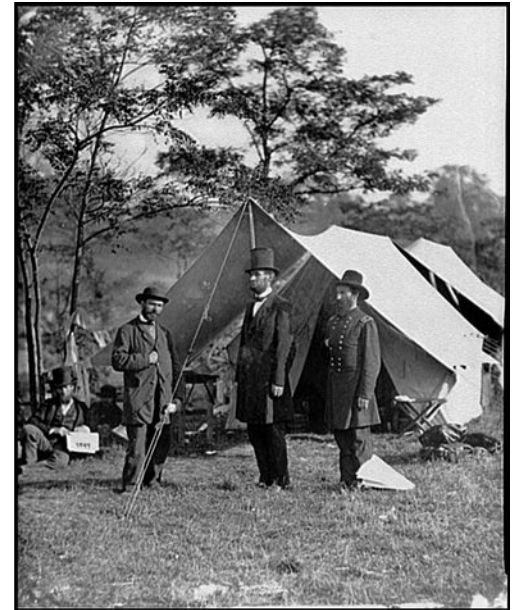
National Register of Historic Places - A

- Historic Significance
 - Associated with events that have made a significant contribution to the broad patterns of our history



National Register of Historic Places - B

- Important Person
 - Associated with the lives of significant persons in our past



National Register of Historic Places - C

- Important Person
 - Associated with the lives of significant persons in



Lauderdale Courts
Memphis 1938



Anne Spencer
Lynchburg, Virginia



National Register of Historic Places - D

- Architectural Significance
 - Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction



Falling Water
1935



San Felipe Courts Houston
1940-44

National Register of Historic Places – Historic District

- Historic District
- Individual parts comprise a greater whole
- Neighborhood, downtown, landscape or other area with a concentration of historic buildings
- Contributing Buildings
- Non-contributing Buildings
 - Lack age
 - Lack Integrity



Map of New Orleans Historic Districts

National Register of Historic Places - E

- Likely to Yield Important Information
 - Have yielded or may be likely to yield, information important in history or prehistory



POLL QUESTION 1

When has building lost Integrity?

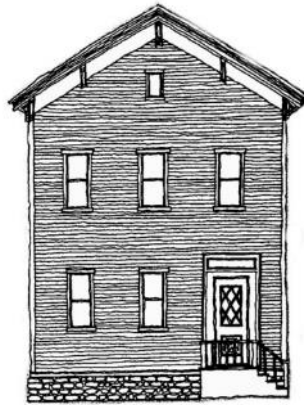
Integrity: *location, design, setting, materials, workmanship, feeling, and association*



University of Vermont
Historic Preservation
Program



A



B



C



D

National Register of Historic Places – Condition vs. Integrity

Condition



Strawberry Mansion District
Philadelphia

vs.

Integrity

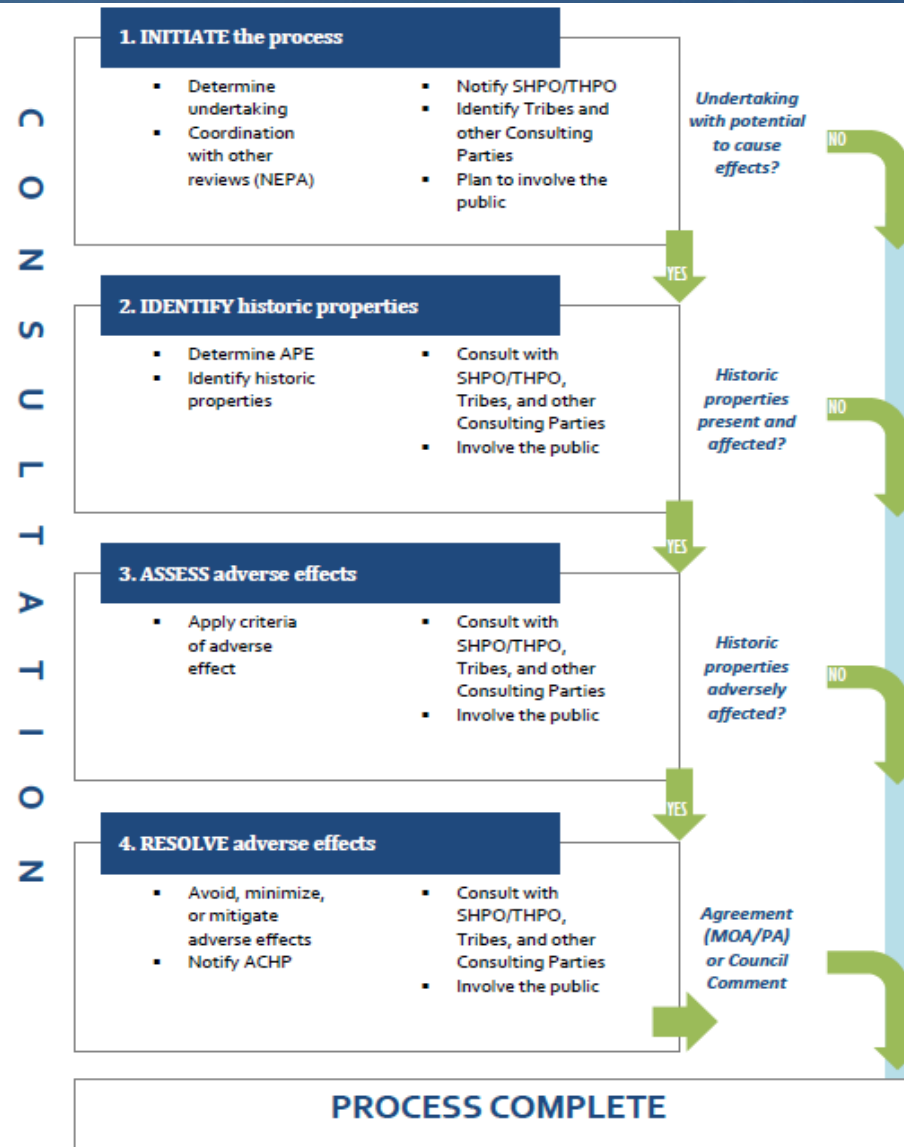


John Jay Housing 1942
Springfield, Illinois

Where to find information on Historic Properties

- National Register database
<http://www.nps.gov/nr/index.htm>
- State databases [Historic Property identification-Where to Start](#)
- National Historic Landmark (NHL) state lists
<http://www.nps.gov/nhl/designations/listsofNHLs.htm>
- Local historical and preservation organizations, local planning departments, and the internet

Section 106 Process Graphic



Agency Official

- HUD Official for Part 50 programs
- Must ensure compliance before project approval
- Agency Official is the decision-making party
- Engage historic preservation professionals as needed
- **HUD must conduct tribal consultation**
 - Cannot be delegated to consultant or lender



State Historic Preservation Officer (SHPO)



- SHPO Role in Section 106 is to:
 - Concur in Agency Official's findings
 - Provide access to information on known historic properties to the Agency Officials when requested
 - Provide access to information on known historic properties to the Agency Officials when requested
 - Consult with Agency Official regarding evaluation of effects when requested
 - Consult with Agency Official to resolve adverse effects
 - Review and sign Memorandum of Agreement (MOA) or Programmatic Agreement (PA)
 - Directory of SHPOs available at: <http://www.ncshpo.org/>

Applicant

- Applicant (Lender and/or their consultant) may:
 - Assemble complete project description
 - Assemble information for the Section 106 review
 - May include preliminary contact with SHPO to identify historic properties and effects
 - Include response in Environmental Report
 - May draft letter to tribes from Agency Official
 - Obtain studies, historic property surveys, etc. as necessary
 - Provide information to Agency Official
 - Alert the Agency Official regarding potential adverse effects of the project
 - Prevent actions prior to completion of Section 106
 - **May not initiate consultation with tribes**

Current Practice

MAP and 232 Handbook

- Lender may submit 'preliminary letter' (MAP) / 'letter' (232) to SHPO
- Some SHPOs will only respond to HUD
- HUD makes final determination of effect
- Only HUD can consult with a tribe/THPO
 - Lender or consultant may not initiate consultation with tribe/THPO
 - Qualified consultant may help facilitate tribal consultation after initiation by HUD

Current practice
confusing and
inconsistent

Delegation

- 36 CFR 800.2(c)(4)
- Agency may authorize applicants to initiate consultation
- Very limited applicability at HUD
- OEE issues authorizations
- Written notification to SHPO(s)
- Agency remains responsible for tribal consultation
- Applicant can gather information and make recommendations to HUD

Proposed Delegation Memo for FHA

- Delegation for FHA will be issued via MAP Guide and Mortgagee Letter
- SHPOs and THPOs must be informed
- Will allow lenders and their consultants to conduct Section 106 for projects without adverse effects
- Training will be offered when Memo is issued
- Will allow consultation to begin when HUD issues FHA number
- Will require a Qualified Historic Preservation Professional when a project includes:
 - Demolition of a building over 45 years
 - New construction in an historic area
 - Substantial ground disturbance
 - Exterior rehab of a building over 45 years

Proposed Delegation Memo for FHA (continued)

- HUD must enter consultation when:
 - Project may have an adverse effect
 - There is disagreement with SHPO/THPO
 - Tribes, consulting parties or the public object to lender determinations
 - There is possible foreclosure or anticipatory demolition
 - HUD deems the consultation record inadequate
 - **HUD office of housing is legally responsible for all findings**

Historic Preservation Professional

- Meets 36 CFR 61 Professional Qualifications Standards set by the Secretary of the Interior (SOI)
- Expertise in identifying historic properties, evaluating effects, and preparing Section 106 agreement documents like MOAs
- HP Professional may prepare Section 106 documentation for the Applicant or Agency Official
- MAP and 232 Guide: Because of the technical nature of historic property identification, evaluation and treatment, it may be appropriate to retain a qualified historic preservation professional to prepare the findings.
 - MAP Examples: National Register eligibility is unclear, adverse effects are expected, there are archeological sites, the project is controversial
- Eligible project expense
- **May not initiate consultation with tribes**

Interested Organizations and Individuals

- “Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties.”
- Agency Official invites them upfront and/or parties request consulting party status
- Examples: local historic preservation organizations, public housing residents, National Trust for Historic Preservation, neighborhood groups



Credit: City of Chicago

Advisory Council on Historic Preservation (ACHP)

- Independent federal agency
- HUD Secretary is ACHP member, represented by DAS for CPD
- Promotes the preservation and use of the country's historic resources
- Advises the President and Congress on national historic preservation policy
- Administers the Section 106 process

Indian Tribes

WHEN to Consult?

When the project involves the types of activities that may affect historic properties of religious or cultural significance to tribes including:

Checklist

- ground disturbance (digging)
- new construction in undeveloped natural areas
- introduction of incongruent visual, audible, or atmospheric changes
- work on a building with significant tribal association
- transfer, lease or sale of historic properties of religious and cultural significance



Indian Tribes

WHAT to Consult About?

Historic properties of religious and cultural significance to tribes including:

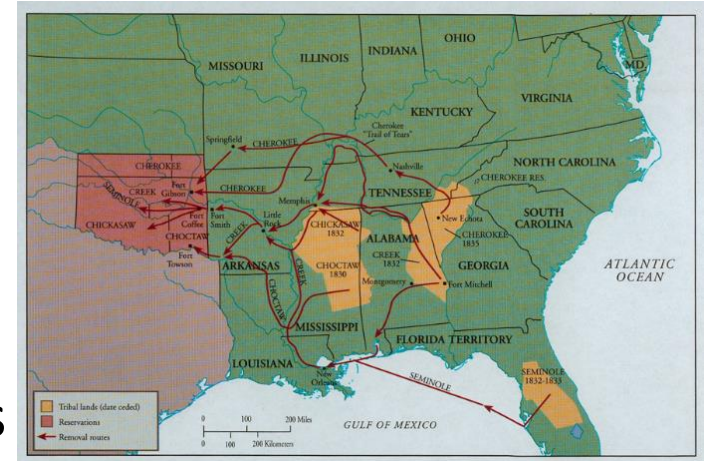
- archeological sites
- burial grounds
- sacred landscapes or features
- ceremonial areas
- traditional cultural landscapes and places
- plant and animal communities
- structures with significant tribal association
- Tribes have special expertise in evaluating these sites for the National Register



Indian Tribes

WHO to Consult?

- Consultation required ON and OFF tribal lands
- Federally recognized tribes with current or ancestral interest
- Tribal Historic Preservation Officers (THPOs)
- Tribal Directory Assessment Tool (TDAT) [Tribal Directory Assistance Toolkit](#)
- Guidance: [HUD Exchange](#)



Archeological Surveys

If a party requests an archeological survey, use HP Fact Sheet #6 Guidance on Archeological Investigations in HUD Projects

- [HUD Exchange](#) Web address
- Information received from SHPO, THPO, tribes
- Likely impact of the project on potential properties
- Previous ground disturbance
- Likely significance of potential properties
- Magnitude of the project and degree of HUD involvement
- Public interest

POLL QUESTION 2

Who should be invited to consult in the Section 106 review of this project?

Transformation of 1960's public housing project into mixed use development where Phase 1 is FHA insured new construction.

- A. Local historic commission
- B. Indian tribes
- C. Public housing residents
- D. Mid-century modern preservation group
- E. Project opponents
- F. All the above

Project Description

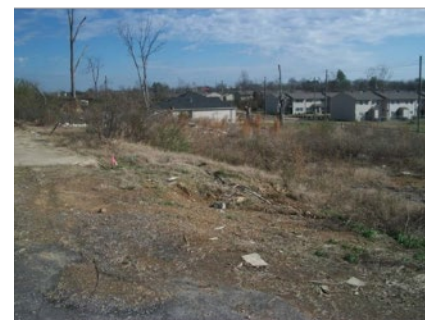
- Include all parts of the project, not just HUD-assisted part
- Physical features and condition of buildings and grounds
- Dates of construction and major alterations
- Notable exterior and interior architectural features and materials
- Proposed physical project activities
- Maps of project location and layout of site
- Digital photos of building exterior, notable interior features, areas of proposed work, and overall streetscape

Documentation Package

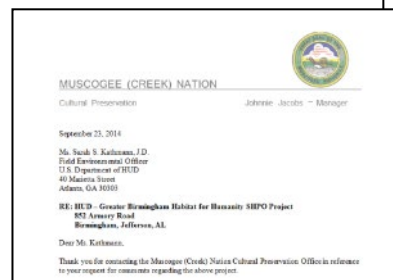
- **A description of the:**
 - undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
 - steps taken to identify historic properties;
 - affected historic properties, including information on the characteristics that qualify them for the National Register;
 - undertaking's effects on historic properties;
- An explanation of why the criteria of adverse effect were found inapplicable or applicable, including any conditions or future actions proposed to avoid, minimize or mitigate adverse effects; and
- Copies or summaries of any views provided by the consulting parties, including Indian tribes, and the public.
- **Check SHPO website for format requirements**

No Historic Properties Affected

- There are no historic properties in the APE or
- There are historic properties, but they will not be affected by the project
- Agency Official notifies SHPO, any consulting tribes, and other consulting parties
- Parties have 30 days to object



Birmingham, Alabama



Criteria of Adverse Effect

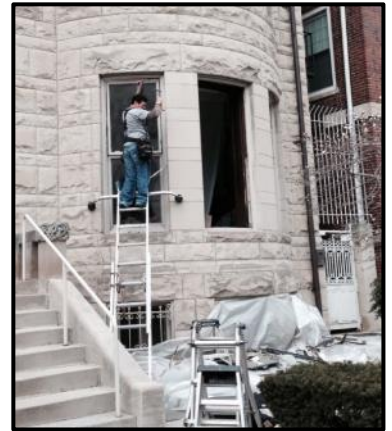
[36 CFR 800.5(a)(1)]

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association...

Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Examples of Adverse Effect

- Damage, destruction, or removal of historic properties
- Change in the character of use/setting
- Introduction of incompatible visual, audible, or atmospheric elements
- Alteration not according to the Secretary's Standards for Rehabilitation
- <http://www.nps.gov/tps/standards.htm>



Secretary of the Interior's Standards for Rehabilitation

- Find a compatible use
- Retain historic materials and features
- Repair rather than replace
- If necessary, replace in kind
- Preserve archeological resources
- Distinguish new construction from the old
- National Park Service guidance on the Standards
<http://www.nps.gov/tps/standards.htm>
- Preservation Briefs
<http://www.nps.gov/tps/how-to-preserve/briefs.htm>



No Adverse Effect

- There are historic properties that will be affected by the project, but the effects will not be adverse
- Agency Official notifies SHPO, consulting tribes, and other consulting parties
- Parties have 30 days to object



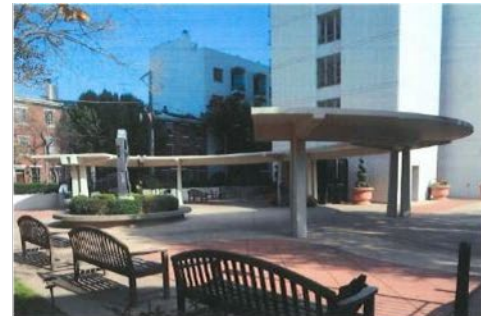
New Haven,
Connecticut



Veterans Commons
San Francisco

No Adverse Effect through Consultation

- Initial design of entrance addition was determined to be an Adverse Effect
- Further consultation led to redesign of the entrance and resulted in No Adverse Effect



Casa Farnese, Philadelphia

Poll Question 3

Which is **NOT** an adverse effect?

- A. Demolition of part of a historic building
- B. Replacement of original 1890's windows
- C. Construction of a new compatible addition on the rear of a historic building
- D. Construction of a new building on a known archeological site
- E. Construction of a 10 story residential tower in a historic neighborhood of 2-3 story houses

Resolve Adverse Effects

- If Adverse Effect, HUD must notify Advisory Council and invite their participation in consultation
 - Include 36 CFR 800.11 documentation
 - Council will respond within 15 days
 - **e106 Notification online**
- Criteria for Council participation 36 CFR Part 800 Appendix A
 - Substantial impacts on important properties
 - Precedent-setting issues
 - Controversial
 - Tribal concerns
- Notify National Park Service if NHL might be affected

Resolve Adverse Effects (continued)

- Notify consulting tribes, interested organizations and individuals, and the public
- Share information
- Consider alternatives
- Manage consultation and timeframes
- Consult to **Avoid, Minimize or Mitigate** Adverse Effects

Mitigation Examples

- Consider alternatives
- Consider mitigation measures
- Mitigation measures are eligible costs
- Mitigation measures may relate to the specific property that is being affected, or other historic properties in a similar location or of a similar type.

Mitigation Measures

Avoidance

Documentation

Curation

Monitoring

Modification of project

Research/Publication

Off-site preservation

Archeological data recovery

Preservation fund

Survey

Preservation plan

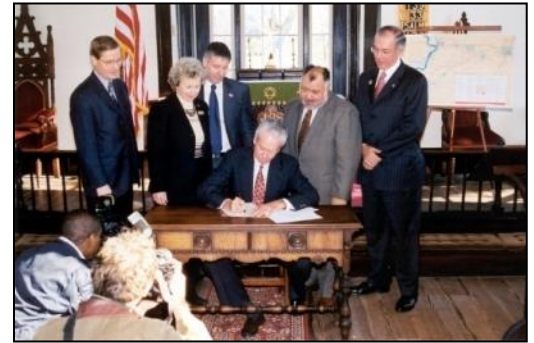
Rehab grants

Compatible new designs

Resolve Adverse Effects - MOA

Memorandum of Agreement (MOA)

- Must be executed prior to decision point for project
- Agency Official is responsible for ensuring implementation of conditions
- Conditions should be included in Firm Commitment



Resolve Adverse Effects – Iberville, New Orleans



Iberville, New Orleans

Section 106 Firm Conditions

- Appropriate Condition: Signed MOA with SHPO/Tribe requires an archaeologist be present during excavation.
 - The archaeologist should be selected and already have a contract in place.
- Inappropriate Condition: MOA will be developed or signed in the future.
 - All consultation must be complete, correspondence with tribes resolved, etc. before HUD can complete an environmental review and issue a FIRM.

Resolve Adverse Effects – Cont'd.

- Developer should not reach out to SHPO with a draft MOA
- May provide a draft to HUD and HUD will provide to SHPO and consulting parties at the appropriate time
- Early introduction of MOA is perceived as contrary to a good faith consultation

POLL QUESTION 4

Please choose the correct response for a 223(f) transaction:

- A. Section 106 review is not required because the project consists solely of activities listed in a Programmatic Agreement.
- B. Section 106 review is not required because the project consists solely of activities included in a No Potential to Cause Effects memo
- C. Section 106 review is required because the project includes activities with the potential to cause effects.
- D. I need more information before making this determination.

HEROS Example 1:

No Potential to Cause Effects

2050 – Historic Preservation (50/58)

Project Name: Sample-Review-2018



General Requirements	Legislation	Regulation
Regulations under Section 106 of the National Historic Preservation Act (NHPA) require a consultative process to identify historic properties, assess project impacts on them, and avoid, minimize, or mitigate adverse effects	Section 106 of the National Historic Preservation Act (16 U.S.C. 470f)	36 CFR 800 "Protection of Historic Properties" http://www.access.gpo.gov/nara/cfr/waisidx_10/36cfr800_10.html

Reference

<https://www.onecpd.info/environmental-review/historic-preservation>

Note that if you change answers on this screen, make sure to press "Next" button in order for the information to save and proceed to the appropriate next question.

Is Section 106 review required for your project?

- ☐ No, because the project consists solely of activities listed as exempt in a Programmatic Agreement (PA ). (See the [PA Database](#) to find applicable PAs.)
- ☒ No, because the project consists solely of activities included in a No Potential to Cause Effects memo or other determination [36 CFR 800.3(a)(1)]. 
- ☐ Yes, because the project includes activities with potential to cause effects (direct or indirect).

Next

Save and Return to Summary

Cancel Review



HEROS Example 1 - continued

2050 – Historic Preservation (50/58)
Project Name: Sample-Review-2018


General Requirements	Legislation	Regulation
Regulations under Section 106 of the National Historic Preservation Act (NHPA) require a consultative process to identify historic properties, assess project impacts on them, and avoid, minimize, or mitigate adverse effects	Section 106 of the National Historic Preservation Act (16 U.S.C. 470f)	36 CFR 800 "Protection of Historic Properties" http://www.access.gpo.gov/nara/cfr/waisidx_10/36cfr800_10.html

Reference

<https://www.onecpd.info/environmental-review/historic-preservation>

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- ☒ No, because the project consists solely of activities included in a No Potential to Cause Effects memo or other determination [36 CFR 800.3(a)(1)].
- ☐ Yes, because the project includes activities with potential to cause effects (direct or indirect).

Threshold(b). Upload the memo in the Screen Summary at the conclusion of this screen, provide a link to the memo, or explain and justify the other determination here:

This project is a 223(f) refinance of an existing building that is not currently HUD insured. The refinance will be accompanied by the following work in the units: carpet replacement, interior and exterior painting, caulking and weather stripping all windows and exterior doors, drywall patching. No ground disturbance will occur. Please see uploaded scope of work.

As per MAP Section 9.5.D.2.b, HUD has written an No Potential to Cause Effects Memo that covers this action. The memo is specific to 223(f) projects with no work beyond maintenance and is located here:
<https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/>

Next

Save and Return to Summary
Cancel Review

HEROS Example 1 – Compliance Determination

Screen Summary

Compliance Determination

Describe the basis that led to your determination here, identifying all key elements from your support documentation that substantiate your determination. You are strongly encouraged to edit this language to provide a clear description of your determination and a synopsis of

- Map panel numbers and dates
- Names of all consulted parties and relevant consultation dates
- Names of plans or reports and relevant page numbers
- Any additional requirements specific to your region

This 223(f) refinance with no work beyond maintenance fits under a HUD No Potential to Cause Effects Memo. There is a link to the No Potential to Cause Effects memo in the threshold section, and a project scope of work uploaded to HEROS. This project has No Potential to Cause Effects and is in compliance with Section 106.

Supporting documentation


Upload all supporting documents required in this section here:

[223\(f\) scope of work.docx](#) ✖


Are formal compliance steps or mitigation required?
Only Responsible Entity (for Part 58) or HUD (for Part 50) Users may respond to this question. Ensure that this question is complete before finalizing the review.

☐ Yes

☐ No



HEROS Example 2: Programmatic Agreement

2050 – Historic Preservation (50/58)		Project Name: 123-Project-Street
General Requirements	Legislation	Regulation
Regulations under Section 106 of the National Historic Preservation Act (NHPA) require a consultative process to identify historic properties, assess project impacts on them, and avoid, minimize, or mitigate adverse effects	Section 106 of the National Historic Preservation Act (16 U.S.C. 470f)	36 CFR 800 "Protection of Historic Properties" http://www.access.gpo.gov/nara/cfr/waisidx_10/36cfr800_10.html
Reference		
https://www.onecpd.info/environmental-review/historic-preservation		
Note that if you change answers on this screen, make sure to press "Next" button in order for the information to save and proceed to the appropriate next question.		
<p>Is Section 106 review required for your project?</p> <p><input checked="" type="radio"/> No, because the project consists solely of activities listed as exempt in a Programmatic Agreement (PA ). (See the PA Database to find applicable PAs.)</p> <p><input type="radio"/> No, because the project consists solely of activities included in a No Potential to Cause Effects memo or other determination [36 CFR 800.3(a)(1)].</p> <p><input type="radio"/> Yes, because the project includes activities with potential to cause effects (direct or indirect).</p>		
<div>Next</div>		
<div>Save and Return to Summary</div>		<div>Cancel Review</div>

HEROS Example 2 – Programmatic Agreement - B

2050 – Historic Preservation (50/58)		Project Name: 123-Project-Street
General Requirements	Legislation	Regulation
Regulations under Section 106 of the National Historic Preservation Act (NHPA) require a consultative process to identify historic properties, assess project impacts on them, and avoid, minimize, or mitigate adverse effects	Section 106 of the National Historic Preservation Act (16 U.S.C. 470f)	36 CFR 800 "Protection of Historic Properties" http://www.access.gpo.gov/nara/cfr/waisidx_10/36cfr800_10.html
Reference https://www.onecpd.info/environmental-review/historic-preservation		
<p>Note that if you change answers on this screen, make sure to press "Next" button in order for the information to save and proceed to the appropriate next question.</p>		
<p>Is Section 106 review required for your project?</p> <p> <input checked="" type="radio"/> No, because the project consists solely of activities listed as exempt in a Programmatic Agreement (PA ●). (See the PA Database to find applicable PAs.) <input type="radio"/> No, because the project consists solely of activities included in a No Potential to Cause Effects memo or other determination [36 CFR 800.3(a)(1)]. <input type="radio"/> Yes, because the project includes activities with potential to cause effects (direct or indirect). </p>		
<p>Threshold(a). Either upload the PA in the Screen Summary at the conclusion of this screen or provide a link to it here:</p> <div style="border: 1px solid black; padding: 5px;"> <p>See attached, Programmatic Agreement between Region 5 of HUD and the Minnesota State Historic Preservation Office for the Review of HUD-Funded Activities Subject to 24 <u>CFR</u> Part 50 in the State of Minnesota</p> </div> <p>Upload exemption(s) in the Screen Summary at the conclusion of this screen or copy and paste all applicable text from the PA here:</p> <div style="border: 1px solid black; padding: 5px;"> <p>Under Section I.D of the PA, refinances and rehabilitation of properties less than 45 years old, without ground disturbance, have no potential to affect historic properties and are exempt from further review under Section 106. Because this project meets that exemption, no further consultation is required.</p> </div>		
<input type="button" value="Next"/>		

HEROS Example 2: Programmatic Agreement - C

Screen Summary

Compliance Determination

Describe the basis that led to your determination here, identifying all key elements from your support documentation that substantiate your determination. The following minimum language is based on your responses in this section. You are strongly encouraged to edit this language to provide a clear description of your determination and a synopsis of the information that it was based on, such as:

- Map panel numbers and dates
- Names of all consulted parties and relevant consultation dates
- Names of plans or reports and relevant page numbers
- Any additional requirements specific to your region

This project is covered by an exemption from further 106 review under the Part 50 Programmatic Agreement between HUD and the MN SHPO based on the age of the building (30 years old) and the fact that the project will not include ground disturbance. The Part 50 Programmatic Agreement and proof of building age uploaded to HEROS.

This project is in compliance with Section 106.

Supporting documentation

Upload all supporting documents required in this section here:

Upload File

HUD Part 50 Programmatic Agreement- Execcuted.pdf

proof of building age.docx

✖

✖

Are formal compliance steps or mitigation required?

Only Responsible Entity (for Part 58) or HUD (for Part 50) Users may respond to this question. Ensure that this question is complete before finalizing the review.

☐ Yes

☒ No

Save and Return to Summary

Cancel Review

HUD will ensure that the following measures are carried out.

I. ACTIVITIES THAT DO NOT REQUIRE REVIEW

The following types of activities have little or no potential to affect historic properties and are exempt from further review under Section 106. To document and conclude the review, HUD shall note in the administrative record the applicability of one or more of the exemptions.

- A. Activities that are Exempt and/or Categorically Excluded and not subject to related laws under 24 CFR 50.19(b)
- B. Refinancing without demolition or rehabilitation of existing buildings, or new construction, and no physical activities beyond maintenance activities as defined in HUD Notice CPD-16-02 "Guidance for Categorizing an Activity as Maintenance for Compliance with HUD Environmental Regulations, 24 CFR Parts 50 and 58"
- C. Leasing without demolition or rehabilitation of existing buildings, or new construction, and no physical activities beyond maintenance as defined in HUD Notice CPD-16-02 "Guidance for Categorizing an Activity as Maintenance for Compliance with HUD Environmental Regulations, 24 CFR Parts 50 and 58"
- D. Projects including refinancing and rehabilitation of existing buildings less than 45 years old, with no ground disturbance, unless the property is located within or adjacent to or adjoining a National Register of Historic Places listed or eligible historic district
- E. Undertakings that are limited to the rehabilitation of interior spaces within single family residential structures as defined by HUD regulation as 1 to 4 unit residential



HEROS Example 3: 106 Consultation Required

Next

Screen Summary

Compliance Determination

Describe the basis that led to your determination here, identifying all key elements from your support documentation that substantiate your determination. The following minimum language is based on your responses in this section. You are strongly encouraged to edit this language to provide a clear description of your determination and a synopsis of the information that it was based on, such as:

- Map panel numbers and dates
- Names of all consulted parties and relevant consultation dates
- Names of plans or reports and relevant page numbers
- Any additional requirements specific to your region

Based on Section 106 consultation there are No Historic Properties Affected because there are no historic properties present. The project is in compliance with Section 106.

Supporting documentation

Upload all supporting documents required in this section here: Upload File

letter to SHPO.docx ✖

letter to Delaware tribe.docx ✖

SHPO concurrence.docx ✖

Are formal compliance steps or mitigation required?

Only Responsible Entity (for Part 58) or HUD (for Part 50) Users may respond to this question. Ensure that this question is complete before finalizing the review.

☐ Yes

☒ No

Save and Return to Summary

Cancel Review

HEROS Tips

- File Names
 - Clearly describe content of file
 - No special characters (& , ' " / * ^ \$ % # @ !)
- HEROS system is closed on Sundays
- MF FHA Partners: [HEROS Guidance for Multifamily FHA Partners PDF](#)
- Healthcare FHA Partners: [HEROS-Guidance-for-ORCF-Partners.pdf](#)

Foreclosure

- 36 CFR 800.9
 - Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed.
- 36 CFR 800.16 (j)
 - Foreclosure means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.
- ACHP comments to Agency Official, Head of Agency, Public
- ACHP finding of foreclosure can be used in litigation

Anticipatory Demolition

- Section 110(k) of the National Historic Preservation Act
MAP Guide

“...even before the concept meeting or application submission takes place, any action by a potential lender or borrower, or any action by another party that the lender or borrower has the legal power to prevent, that is taken with the intent to circumvent Section 106 review and that significantly adversely affects a historic property, could result in rejection of an application.”

Unanticipated Discoveries

- If historic properties are discovered during construction, stop construction and notify tribes, THPO, SHPO, and ACHP within 48 hours, and reenter consultation
- If discovery includes human remains, respectfully cover over and secure the remains, and notify same parties plus local law enforcement officials [Discovery of Human Remains Policy 0207 pdf](#)
 - Priority to leave burials undisturbed in place
- Site visit recommended to resolve potential adverse effects

20% Historic Tax Credit (HTC)

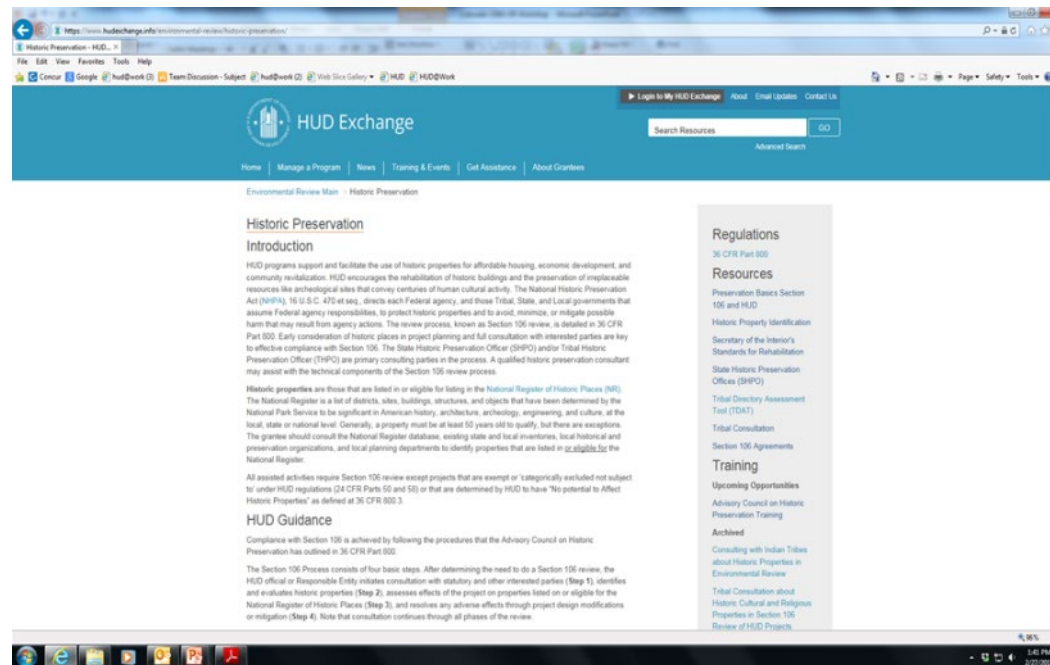
- Federal Historic Tax Credit is 20% of qualified rehabilitation expenses
- Listed on (or eligible for) the National Register
- Income-producing property
- Substantial rehabilitation that exceeds Adjusted Basis
- Work meets Secretary of the Interior's Standards for Rehabilitation
- Can be combined with LIHTC
- Resources:
- National Park Service: [Tax Incentives: Before you Apply](#)
- HUD Exchange: [HUD Exchange Historic Preservation Tax Credit](#)

20% Historic Tax Credit (HTC) – Cont'd

- National Park Service: [Tax Incentives: Before you Apply](#)
- HUD Exchange: [HUD Exchange Historic Preservation Tax Credit](#)

HUD Exchange Webpage Search for “HUD, Historic Preservation”

- Search for “HUD, Historic Preservation”
- [HUD Exchange Historic Preservation](https://www.hudexchange.info/environmental-review/historic-preservation/)



Housing Environmental Website

- HEROS Login and Guidance
- Housing Guidance Documents
- FAQs
- [HUD Exchange Info Environmental Review Housing](#)

Upcoming Webinars

- Noise Training for FHA Partners (August 20, 2020)
- Section 106 Programmatic Agreements (TBD Fall 2020)
- HEROS Training for Multifamily Healthcare FHA Partners (September 15, 2020)

Past Webinar Materials

- **Acceptable Separation Distance (ASD) to Industry Standards for Propane Tanks (Feb 21, 2020)**

[HUD Exchange Webinar on OEE Updates to HUDs ASD Requirements for Propane Tanks](#)

- **Floodplains Overview for all HUD programs (March 31, 2020)**

[Webinar 24 CFR Part 55 Floodplain Management and Wetlands Protection Rules](#)

- **Floodplain Training for FHA Partners (May 12, 2020)**

[HUD Exchange Webinar 24 CFR Part 55 Floodplain Management for Multi-family and Residential Care FHA Programs](#)

Submit Questions

Holding for additional 10 minutes to allow for more questions.

Please use the Q & A panel to submit questions.





Thank You.

On specific projects, contact the MF office processing your application or for ORCF, at LeanThinking@hud.gov.

Questions submitted through the Q&A panel will be answered after the webinar

