



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

MEMORANDUM FOR: All Regional and Field Environmental Officers

FROM: Danielle Schopp, Director, Office of Environment and Energy, DGE

SUBJECT: Application of §51.104 to Land Use Conversions

Purpose

This memorandum is to clarify and restate the Office of General Counsel’s determination regarding the application of 24 CFR Part 51 Subpart B §51.104. It specifically explains the requirements of projects converting from non-residential land use to residential.

Background

The Department’s noise regulation, 24 CFR Part 51 Subpart B, includes special requirements for projects in Normally Unacceptable and Unacceptable noise zones. In particular, §51.104(b) defines circumstances requiring an Environmental Impact Statement (EIS).

While the heading of Section 51.101(a)(3) is “HUD support for new construction,” the text of this section and §51.100(a)(4) refers to “new construction of noise sensitive uses.” The conversion of an existing building from industrial, commercial, or another non-residential land use to residential use is the development of a new noise-sensitive use just as new construction from the ground up. The Office of Environment and Energy (OEE) applies the provisions in §51.104(a) and (b) regarding approval procedures for projects in Unacceptable noise zones to those same projects to which the general prohibition in §51.101(a)(3) applies.

This is validated by the Office of Housing’s Multifamily Accelerated Processing (MAP) Guide. The language in Section 9.5.H.2 of the MAP Guide applying these procedures to conversions to residential use constitutes a statement by the Department that the regulatory requirements in §51.104(a) and (b) are applicable to conversions to residential use.

Those procedures require the approval of the Assistant Secretary (A/S) for Community Planning and Development (CPD), or the Certifying Officer for activities subject to 24 CFR Part 58, for any project in the Unacceptable noise zone (24 CFR 51.104(b)(2), second sentence); approval of the A/S for CPD or the Certifying Officer for noise attenuation measures in Unacceptable noise zones (§51.104(a)(2), last sentence); and either preparation of an Environmental Impact Statement (EIS) for projects in Unacceptable noise zones or receiving a waiver of the EIS requirement by the A/S for CPD or the Certifying Officer (§51.104(b)(2), first and third sentences). These same requirements are specified in Sec. 9.5.H.2 of the MAP Guide. It is significant that if these Part 51 requirements were inapplicable to conversions to residential use, the A/S for CPD would have no jurisdiction or authority to provide the approvals and waivers specified in the MAP Guide for

Federal Housing Administration projects.

Guidance

The Office of Environment and Energy, in consultation with the Office of General Counsel, has concluded that 24 CFR 51.104(b)(2) does not apply to rehabilitation of existing properties maintaining the land use at the time of application for HUD assistance. Section 51.104 of the noise regulation applies only to new construction and existing buildings that will be converted from their original land use to residential.

The interior noise goal of 45dB (24 CFR 51.101(a)(9)) is applicable to all HUD-assisted properties. Project proponents should work with their regional environmental staff on attenuation strategies.

Questions should be directed to James Potter at 202.402.4610 or james.m.potter@hud.gov.