



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Sustainable Housing and Communities
WASHINGTON, DC 20410-0050

Program Policy Guidance OSHC-2011-05	
Date:	August 23, 2011
Subject:	Documentation to Submit for Environmental Clearance Before Purchasing Real Property with Grant or Leverage Funds
Status:	Current
Applicability:	All OSHC Regional Planning and Community Challenge Grantees
Related Guidance:	PPG OSHC-2011-08 Property Acquisition
Comments:	

Dear Sustainable Communities Regional or Community Challenge Grantee:

This guidance document describes the documentation grantees must submit for environmental clearance before purchasing property with grant or leverage funds.

Before HUD approval of the property, grantees may not undertake any activities on the proposed property that have a physical impact or limit the choice of alternatives (such as executing a legally binding agreement to purchase the property). **Any such activities on or regarding the property before approval will prohibit the grantee from spending any grant or leverage funds on the property in the future.**

It is permissible for a grantee to enter into an "option agreement" with the seller of a property prior to environmental clearance. Execution of an option agreement signifies the seller's willingness to remove the property from the market for an agreed period of time, and the agreement *must* stipulate that the grantee's willingness to proceed with acquisition of the property is subject to a determination by the grantee on the desirability of the property for the project as the result of the completion of the environmental review. The finding of the review must show the property is desirable for its intended use by the grantee. The cost of the option must only be a nominal amount of the purchase price.

Information to Submit

Grantees need to provide the following information before HUD can approve the purchase of real property with grant or leverage funds:

- 1. Property Name and Location.**
- 2. Description of the Property and Subsequent Use.** Include all contemplated actions which logically are geographically or functionally a composite part of the project, regardless of funding.
- 3. Existing Conditions and Trends.** Include the current use of the property and its surroundings, and trends in the surrounding area likely to continue.

4. **Direct and Indirect Effects of Purchase.** Direct effects are those caused by the purchase and subsequent use, and occur at the same time and place. Indirect effects are those caused by the purchase and subsequent use, and are later in time or farther in distance, but still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
5. **Analysis of Cumulative Impacts.** The impact on the environment which results from the incremental impact of the purchase when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts result from individually minor but collectively significant actions taking place over time.
6. **Alternatives to the Proposed Purchase.**
 - a. *Alternatives and Project Modifications Considered.* Identify other reasonable actions considered and not selected, such as another site, design modifications, or another use of the site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.
 - b. *No Action Alternative.* Discuss the benefits and adverse impacts to the human environment of not purchasing the proposed property.
 - c. *Recommended Mitigation Measures.* Recommended feasible ways in which the proposal should be modified to minimize adverse environmental impacts and restore or enhance environmental quality.
7. **Any Additional Studies Performed.**

In addition, the grantee must submit documentation that the project complies with the following authorities:

8. **Coastal Zone Management** (Coastal Zone Management Act, § 307(c)&(d)). The grantee should provide one of the following types of documentation:
 - a. A general location map or statement establishing there are no coastal zone management areas in the community or state;
 - b. A map or a statement from the local planning department or state coastal commission or district as evidence the project is not in a coastal zone management area; or
 - c. A "Federal Consistency Determination" from the state coastal commission or district.
9. **Coastal Barrier Resources System.** HUD funds cannot be used for activities proposed in the Coastal Barrier Resource System. Grantees must verify their projects are not located in an area that is part of the Coastal Barrier Resources System and must provide one of the following types of documentation:
 - a. The grantee states that its program operates in an area or community that does not contain any shores along the Atlantic Ocean, Gulf of Mexico, or the Great Lakes or
 - b. The grantee provides HUD with a finding made by a qualified source based upon the official maps issued by the Department of the Interior or the flood insurance rate maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) stating that the grantee's proposed property or project is not located within designated coastal barrier resources. The grantee must cite the map panel number.
10. **Floodplain Management** (24 CFR Part 55, E.O. 11988) The grantee should provide one of the following types of documentation:
 - a. Evidence showing that the proposed action is, or is not, within a special flood hazard area mapped by FEMA. The project location must be indicated on an official FEMA map; or
 - b. Documentation that the decision making (8-step) process is not applicable (see 24 CFR 55.12) or

11. Historic Preservation (36 CFR Part 800). The grantee should provide one of the following types of documentation:

- a. A letter from the State or Tribal Historic Preservation Officer (SHPO/THPO) that concurs with the grantee's finding that there are "no historic properties affected" based on the grantee's description of the project and the Area of Potential Effect (APE), steps taken to identify historic properties, and the basis for determining that no historic properties are present or affected;
- b. Documentation to support the grantee's finding of no effect described above and the SHPO/THPO has not objected within 30 days of receiving such documentation (must verify the date the SHPO/THPO received the request);
- c. A letter from the SHPO/THPO that concurs with the grantee's finding of "no adverse effect on historic properties," based on the documentation in (a), as well as the project's effects on historic properties, why the adverse effect criteria were not applicable, and copies or summaries of any views provided by consulting parties and the public;
- d. A letter from the SHPO/THPO that concurs with a finding of "adverse effect," based on the grantee's description provided in the documentation described in (a) and (c). If the grantee determines a Memorandum of Agreement must be executed between HUD, the SHPO/THPO, and the grantee to resolve adverse effects, provide the documentation leading to that conclusion and evidence of consultation; or
- e. A letter from the SHPO/THPO including reasons for not being able to concur with the grantee's submission, including all of the information the grantee sent to the SHPO/THPO.

12. Noise Abatement (24 CFR Part 51 Subpart B). The grantee should provide one of the following types of documentation:

- a. Documentation that the project is not within 1,000 feet of a major roadway, 3,000 feet of a railroad, or 15 miles of a military or FAA-regulated civil airfield;
- b. If within the distances in (a), documentation showing the noise level is "acceptable" (at or below 65 DNL), including data sources and calculations;
- c. If within the distances in (a), and the noise level is not "acceptable," noise assessment calculations and evidence showing there will be an effective noise barrier; or
- d. Documentation (including noise assessment calculations and data sources) showing that the noise generated by the noise source(s) is "normally unacceptable," and evidence showing noise attenuation requirements are identified to bring the interior noise level with 45 DNL and there are no outdoor, noise-sensitive uses.

13. Hazardous Operations (24 CFR Part 51 Subpart C). The grantee should provide one of the following types of documentation:

- a. Documentation from local authorities and/or aerial photos that show no aboveground storage tanks are within one mile of the project; or
- b. If tanks are within one mile, documentation should include that there is an effective barrier, the calculations that support an acceptable separation distance, using HUD calculation methodology, for people and buildings, or a detailed description of the mitigation design to protect people and buildings; or
- c. A statement that the project does not involve rehabilitation or new construction, or involves only rehab that will not result in an increased number of people being exposed to hazardous operations by increasing residential densities, converting the type of use of a building to habitation, or making a vacant building habitable.

14. Airport Hazards (24 CFR Part 51 Subpart D). The grantee should provide one of the following types of documentation:

- a. Documentation there are no FAA-regulated airports within 2,500 feet and/or military airports within 15,000 feet (approximately 2.8 miles) of the project; or

- b. If the project is within the distances specified in (b), provide the map of the airfield, and/or a letter from the operators, showing whether or not the project is within a Runway Protection Zone, Clear Zone, or Accident Potential Zone.

15. Protection of Wetlands (E.O. 11990). New construction in wetlands will not be approved. The grantee should provide one of the following types of documentation:

- a. Evidence the project does not include new construction or expanding the footprint of an existing building or other improvements such as a parking lot; or
- b. Evidence any new construction will not occur in a designated wetland or expand the footprint of a building or other improvements into a wetland or result in adverse impacts to a wetland (e.g. grading that drains the wetland or directs contaminated runoff toward the wetland).

16. Toxic Chemicals & Radioactive Materials (24 CFR 50.3(i)). The grantee must provide:

- a. A Phase I ESA, prepared in accordance with the ASTM Standard E 1527-05, as amended.
- b. If the Phase I ESA concludes that recognized environmental conditions are present, a detailed Phase II ESA by an appropriate professional. If the Phase II ESA reveals site contamination, the grantee should contact HUD for further discussion and guidance.

17. Other § 50.4 authorities (e.g., endangered species, sole source aquifers, farmlands protection, flood, insurance, environmental justice).

- a. **Endangered species:** Evidence no endangered species habitat will be altered or species affected.
- b. **Sole source aquifers (SSA):** A copy of the EPA "Designated Sole Source Aquifer" map showing the project is not within the boundaries of an SSA; documentation from EPA that the project is not a regulated activity within the boundaries of an SSA; or documentation that EPA has reviewed and commented on the proposed action within an SSA.
- c. **Wild and Scenic Rivers:** Evidence the project is not within one mile of a designated Wild, Scenic, or Recreational river, or documentation that the grantee made contact with the Federal or state agency that has administrative responsibility for management of the river and that the proposed action will not affect river designation or is not inconsistent with the management and land use plan for the designated river area.
- d. **Farmland Protection:** Evidence that the proposed site is not farmland, or that the proposed project is consistent with current use, or evidence that the activity is occurring in an existing urbanized area or involved urban infill.
- e. **Environmental Justice** (E.O. 12898). The grantee must provide the following documentation:
 - i. Evidence whether the project is in an Environmental Justice Community of Concern:
 1. The median income of the neighborhood does not exceed 80 percent of the median income of the jurisdiction, OR
 2. The residents of the neighborhood primarily represent a minority population;
 - ii. If the finding is that the project site is not in a Community of Concern, documentation of that analysis is sufficient. Otherwise, include the analysis and:
 1. Evidence the project is compatible with surrounding land uses;
 2. Evidence the site or surrounding neighborhood does not suffer from adverse environmental conditions; *and*
 3. Evidence the project will not create an adverse and disproportionate environmental impact or aggravate an existing impact.
 - iii. If the finding is that the project site is in a Community of Concern and that there will be a disproportionate, adverse impact on the residents, the grantee must:
 1. Cancel the project;
 2. Move the project to a site that will not raise environmental justice concerns;

3. Modify the project to eliminate the adverse environmental effects; *or*
4. Engage the affected residents in meaningful participation (e.g. during the project scoping or planning phase) to educate them about the project, (its goals, expected outcomes, adverse impacts, etc.) and the alternatives available to minimize or mitigate the negative effects. Then the grantee must proceed in good faith on the outcomes of the community's guidance.

18. In addition, the proposed property and its use must align with the plan developed or being developed in the Regional Planning or Community Challenge planning process. The grantee must provide a letter stating that the proposed property and its use aligns with the plan.

Please note: In certain situations, a GTR or Environmental Officer will require additional documentation.