



HUD's Environmental Review Process

Disaster Assistance Training 2012

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Goals:

- **Understand NEPA**
- **Overview of levels of environmental review**
- **Spot “red flags”** 
- **New Tools for Environmental Compliance**



National Environmental Policy Act 1969

NEPA:

Protect, Restore and
Enhance the Human
Environment



NEPA

- Environmental Study
 - Public Document – public process
 - Ensures that envt'l information is available to the public BEFORE decisions are made and BEFORE actions are taken



HUD Environmental Review – Part 58

- Chief Elected Official of the jurisdiction assumes responsibility for environmental review and must sign the Request for Release of Funds and Certification (58.10, 58.13)
- Chief Elected Official accepts the jurisdiction of the Federal Courts for the responsible entity for the environmental review (58.13(a))



Environmental Review Process and Restrictions

- Once applicant applies for HUD assistance, the project becomes
- “federal” and HUD’s restrictions at §58.22 apply

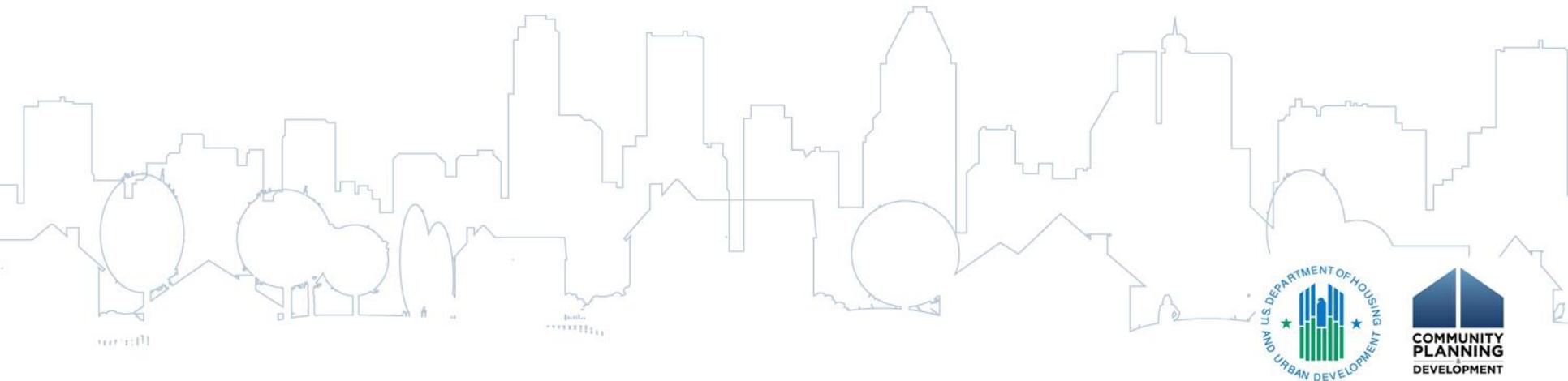


- **Neither applicant nor partners in the process, are allowed to commit or spend funds on physical activities, including acquisition until the review is complete**



Initial Project Screening

- Receive Project Application
- Project Description
- Project Location
- Budget



Identify the Project

- What is the scope?
- What Activities will be included?
- What is the location?

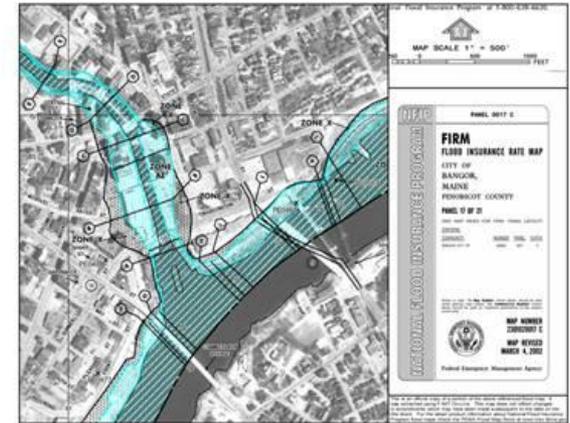
Get Maps

Planning Area Map

Wetlands Map

Floodplain Map

Historical Districts Map



Identify the Project: Aggregation

- Local grantees must group together and evaluate, as a single project, all individual activities that are related either geographically, functionally, or are logical parts of a composite of contemplated actions
- “but for” analysis . . . (segmentation)
- Consider a neighborhood target review for areas up to the size of a census tract; may review a class of sites prior to identifying individual sites (see July 26, 2010 memo)



Level of Review

- EIS (the general trigger is 2500 units or beds or infrastructure that will or may provide capacity for 2500 but there are exceptions)
- Environmental Assessment
- Categorically Excluded
- Categorically Excluded NOT Subject to 58.5
- Exempt



Exempt Activities 24 CFR Part 58.34(a)

- Environmental, planning & design costs
- Information & financial services
- Administrative/management activities
- Public services (no physical impact)
- Inspections
- Purchase of tools/insurance
- Technical assistance & training
- Temporary assist. for imminent threats
- Payment of principal and interest



Categorically Excluded Activities not subject to 58.5- 24 CFR 58.35(b)

- Tenant-based Rental assistance
- Supportive Services
- Operating costs (utilities, supplies)
- ED costs (non-construction)
- Pre-development costs
- Supplemental Assistance



Categorically Excluded subject to 58.5- 24 CFR 58.35(a)

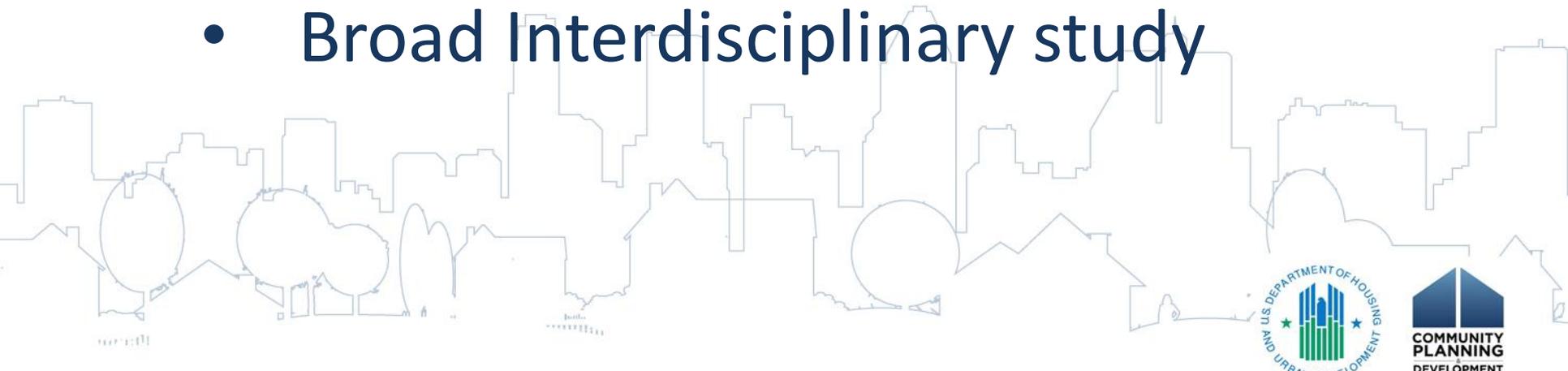
- Public Facilities < 20% size/ capacity increase
- Projects for accessibility and mobility
- Rehab of Single Family (density not increased beyond 4 units, land use is not changed, and footprint is not increased in floodplain or wetland)
- Minor Rehab of Multi-family (no change in use, < 20% change in density, est. cost rehab <75% of total cost of replacement after rehab)
- Rehab of Nonresidential (no change in use, - < 20% change in density)
- Acquisition/Disposition no change in use



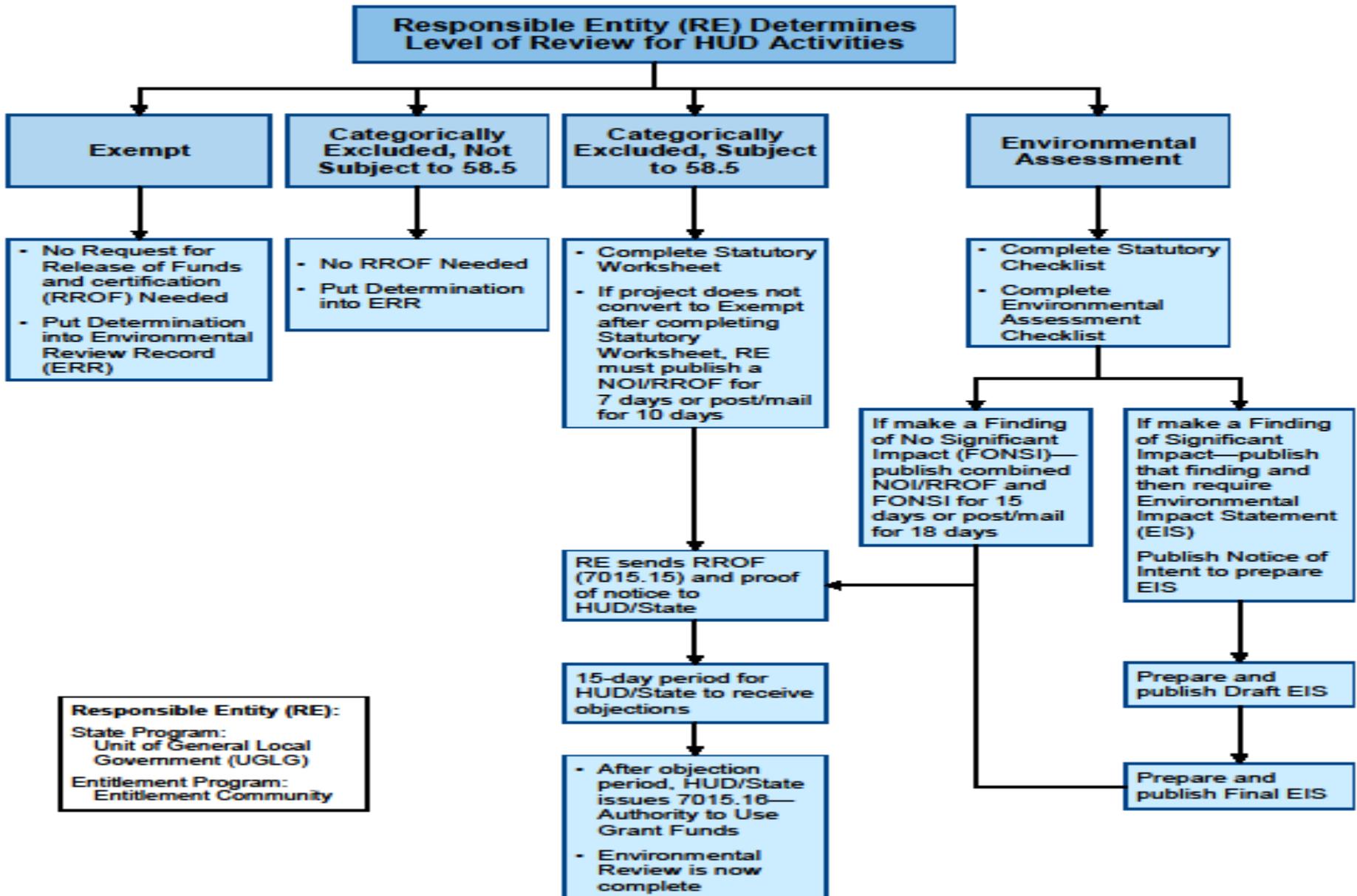
Environmental Assessment

NEPA portion of the review:

- Designed to determine if an EIS is required
- Requires analysis of alternatives
- Requires early consultation
- Broad Interdisciplinary study



Environmental Review Process



Public Notification

EA:

Combined Notice (FONSI and NOI)

CE that “triggers” compliance:

NOI/RROF only

CE No Compliance Triggered

None

CE Not Subject to 58.5 :

None

Exempt:

None



Public Comment Periods

24 CFR part 58.45

TWO PUBLIC COMMENT PERIODS

(1) NOI/FONSI - 15 days *from* Publication

18 days *from* Posting

NOI - 7 days *from* Publication

10 days *from* Posting

RE must *consider* comments prior to submitting its RROF to HUD/State

(2) HUD/State Comment Period 15 days



Laws and Authorities 58.6/ Flood Insurance

- FEMA National Flood Insurance Program flood insurance is required if project is located within a Special Flood Hazard Area – 100 year floodplain.
- The Flood Disaster Protection Act of 1973, as amended, requires that property owners purchase flood insurance for buildings located within Special Flood Hazard Areas (SFHA), when Federal financial assistance is used to acquire, repair, improve, or construct a building. Also required for insurable contents.
- Note that this is required by a statute and not the E.O. 11988. This requirement will apply in many cases where the 8 Step process may not be applicable.



BUY FLOOD INSURANCE

- **Duration of Flood Insurance Coverage.** The statutory period for flood insurance coverage may extend beyond project completion. For loans, loan insurance or loan guarantees, flood insurance coverage must be continued for the term of the loan. **For grants and other non-loan forms of financial assistance, flood insurance coverage must be continued for the life of the building irrespective of the transfer of ownership.**
- **Limits of NFIP coverage: \$250,000 for residential and \$500,000 for nonresidential structures.**
- **HUD recommends purchase for all insurable structures, but it is only required for those in the SFHA.**



One Bite Rule

One Bite Rule. HUD cannot offer Federal disaster assistance for a person's property for construction activities, where the person previously received Federal disaster assistance and failed to maintain the flood insurance. See 24 CFR 58.6(b).

Translation: Failure to maintain flood insurance after using Federal disaster assistance jeopardizes Federal assistance following subsequent disasters.



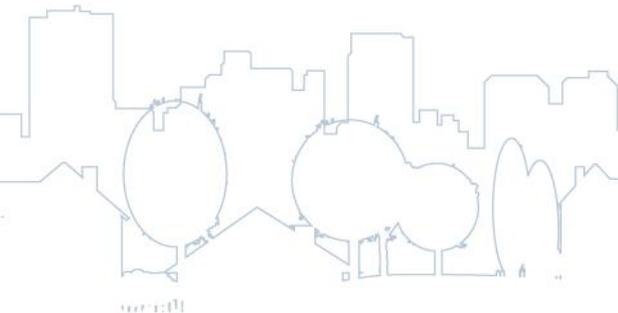
Laws and Authorities 58.6

OTHER

- Coastal Barriers



- Clear Zones



Laws and Authorities 58.5

- **Historic Preservation Act**
- **Floodplain Management & Wetlands Protection: Executive Orders**
- Coastal Zone Management Act
- Safe Drinking Water Act
- Endangered Species Act
- Wild & Scenic Rivers Act
- Clean Air Act
- Environmental Justice: Executive Order
- Aquifers
- Farmland Protection Act
- HUD Environmental Criteria & Standards
 - Noise Abatement and Control
 - Near Explosives or Flammable Sites
 - Near Airport Runway Protection Zones
 - **Toxic Hazards**



Laws and Authorities 58.5

- Historic Preservation Section 106 Consultation Process



Historic Preservation: Tribal Consultation

Must consult with appropriate tribes as part of Section 106 historic preservation process

- Use HUD's Tribal Directory Assessment Tool to identify tribes interested in project area
- Reach out directly to tribe for consultation- the SHPO will not do this for HUD/RE



Laws and Authorities 58.5

- Floodplains



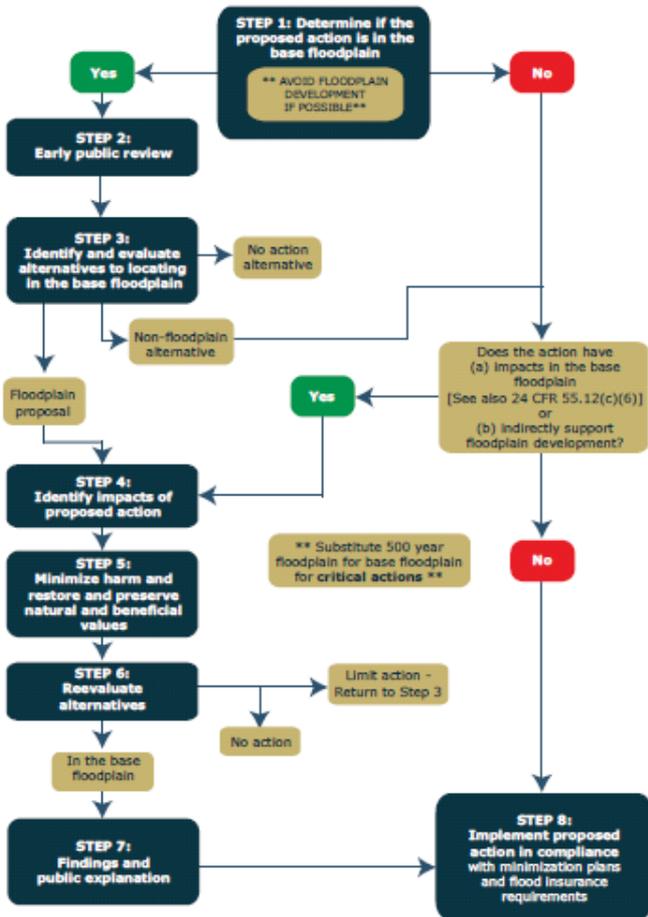
Laws and Authorities 58.5

- Avoid, minimize impacts, provide public notice



Is the site in a floodplain?

8- Step Decision-Making Process for Executive Order 11988



Floodplain Management

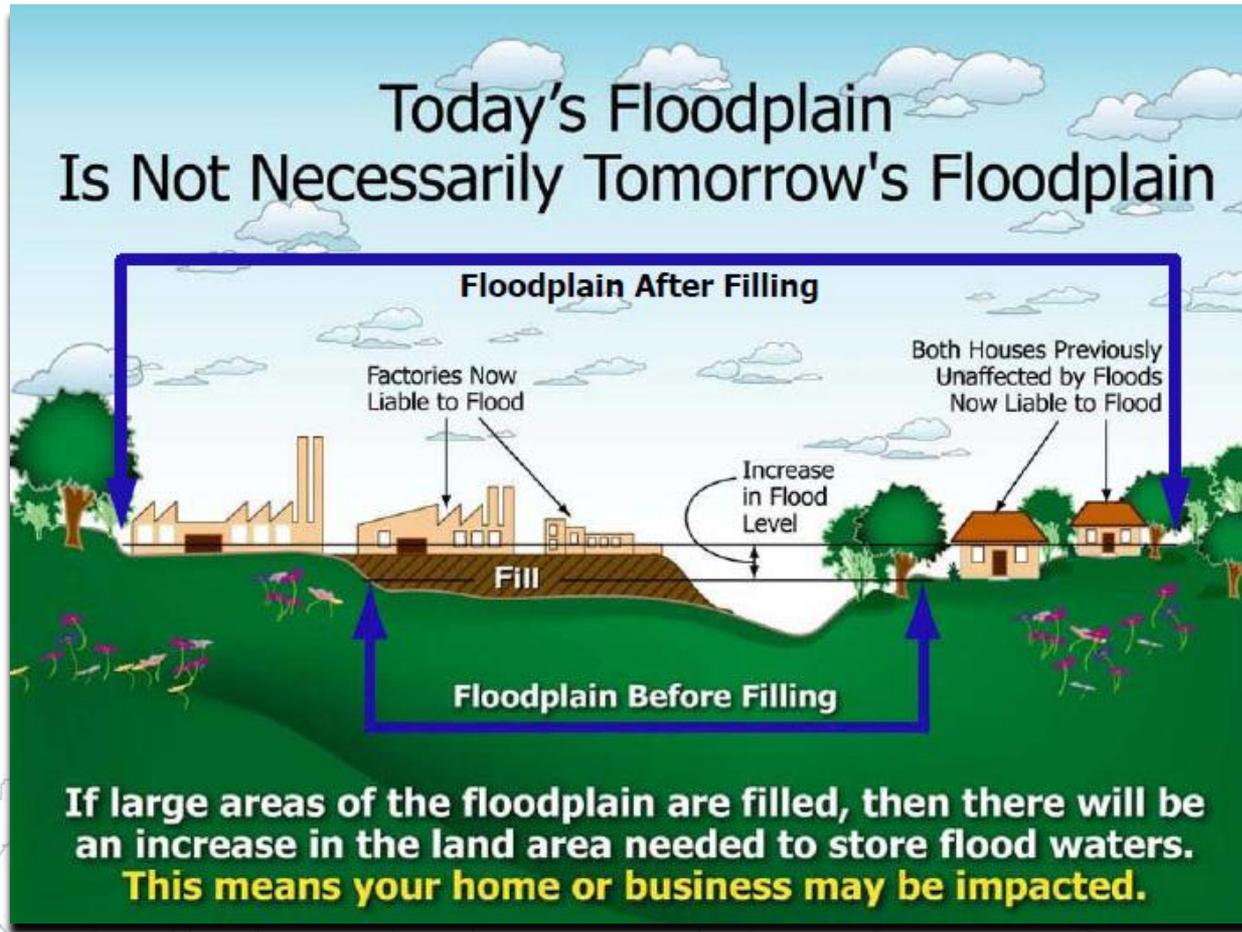
24 CFR Part 55

Applies to physical actions in 100yr:

- 1-4 family rehab if > 50% value
- buildings
- roads
- pipelines
- anything except minor clearing and grubbing



Be Aware of Cumulative Impacts



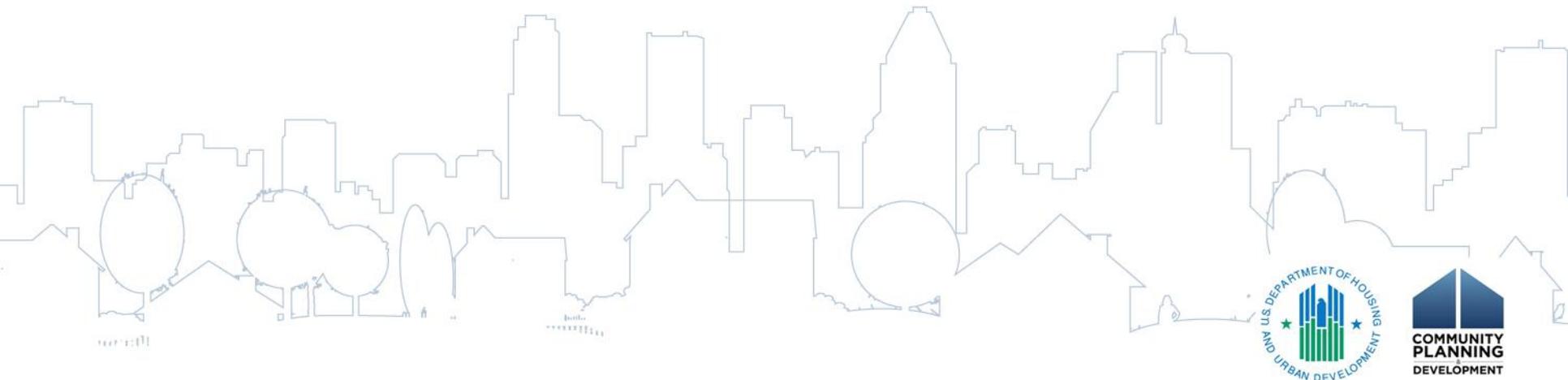
If you cannot avoid, minimize harm to lives and property

- limit fill of floodplain
- minimize grading
- relocate non-conforming structures
- preserve natural drainage
- use pervious surfaces / green alleys
- maintain buffers
- use detention ponds or rain gardens
- minimize tree cutting and destruction of wetland vegetation



Preliminary Data for Disaster Assistance

- EO 11988 requires “best available information”
- 24 CFR 55 interprets this as FEMA finalized FIRMs
- Disaster notices requires the use of “advisory maps” by incorporation
 - Other HUD programs only require enacted FIRMs



Advisory Maps

- The Disaster Recovery Enhancement Fund NOFA states that these grants are to be treated as the funds granted by this Hurricane Ike notice (<http://edocket.access.gpo.gov/2009/pdf/E9-3216.pdf>). The Ike notice states at 24.M: “The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA’s most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55.”



Sea-Level Rise and increases in extreme events (floods and droughts) are occurring and current maps do not consider trends or anticipated conditions (rearview):



Washaway Beach, Cape Shoalwater, WA has been eroding an average of 100 feet per year for a century.



In this Aug. 24, 2010, photo is a view looking east about a block from the tiny town of Minnewaukan, N.D.'s only school. Devils Lake, which was once 8 miles away, today is lapping at the community from three sides. (AP)

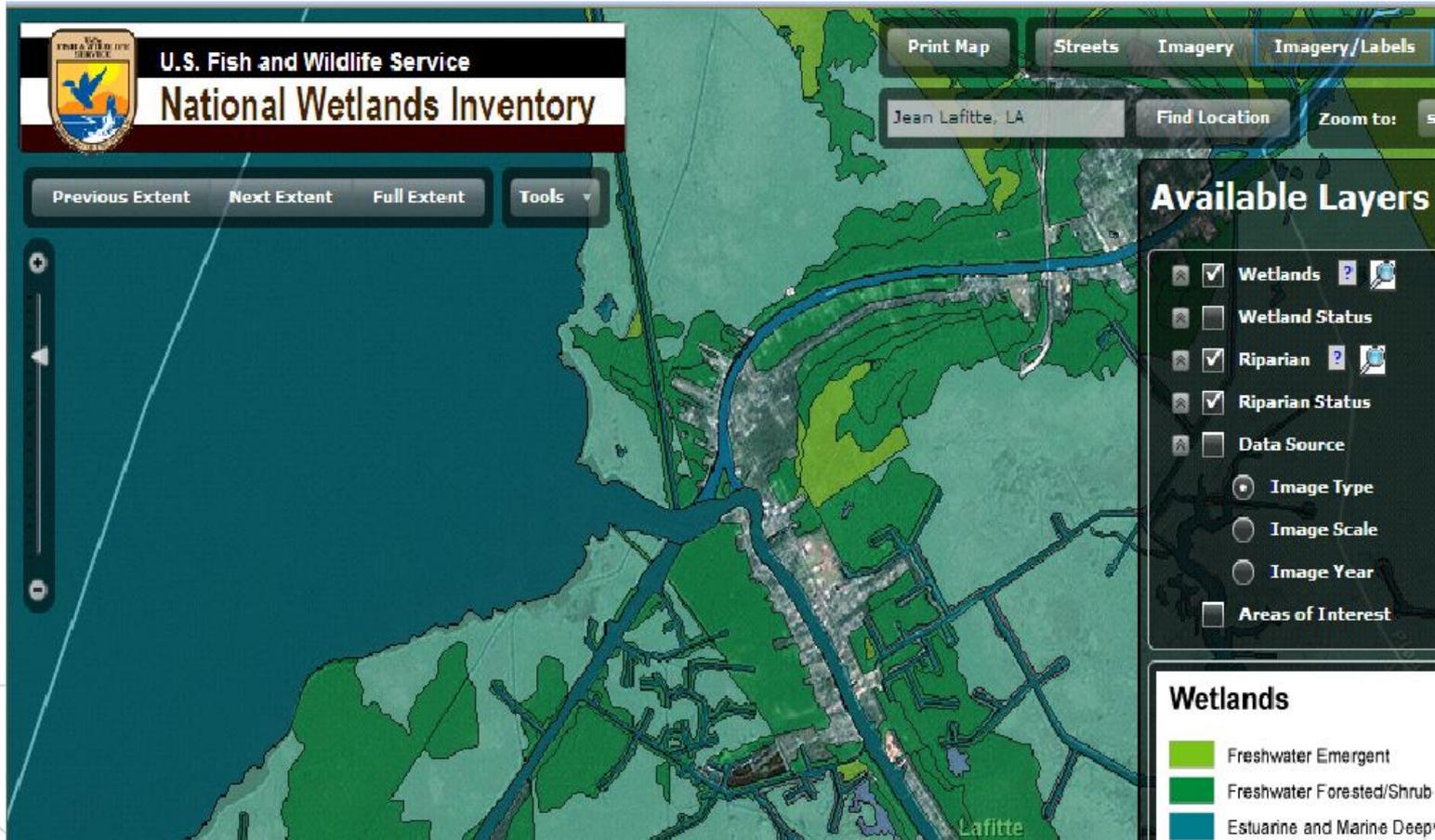


EO 11990- Protection of Wetlands

Purpose is “to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative[.]”



National Wetlands Inventory Map



*NWI maps are to be used from primary screening. Sites should be checked any time substantial filling, drainage, impounding, or other “new construction” activities occur.



Minimization Strategies



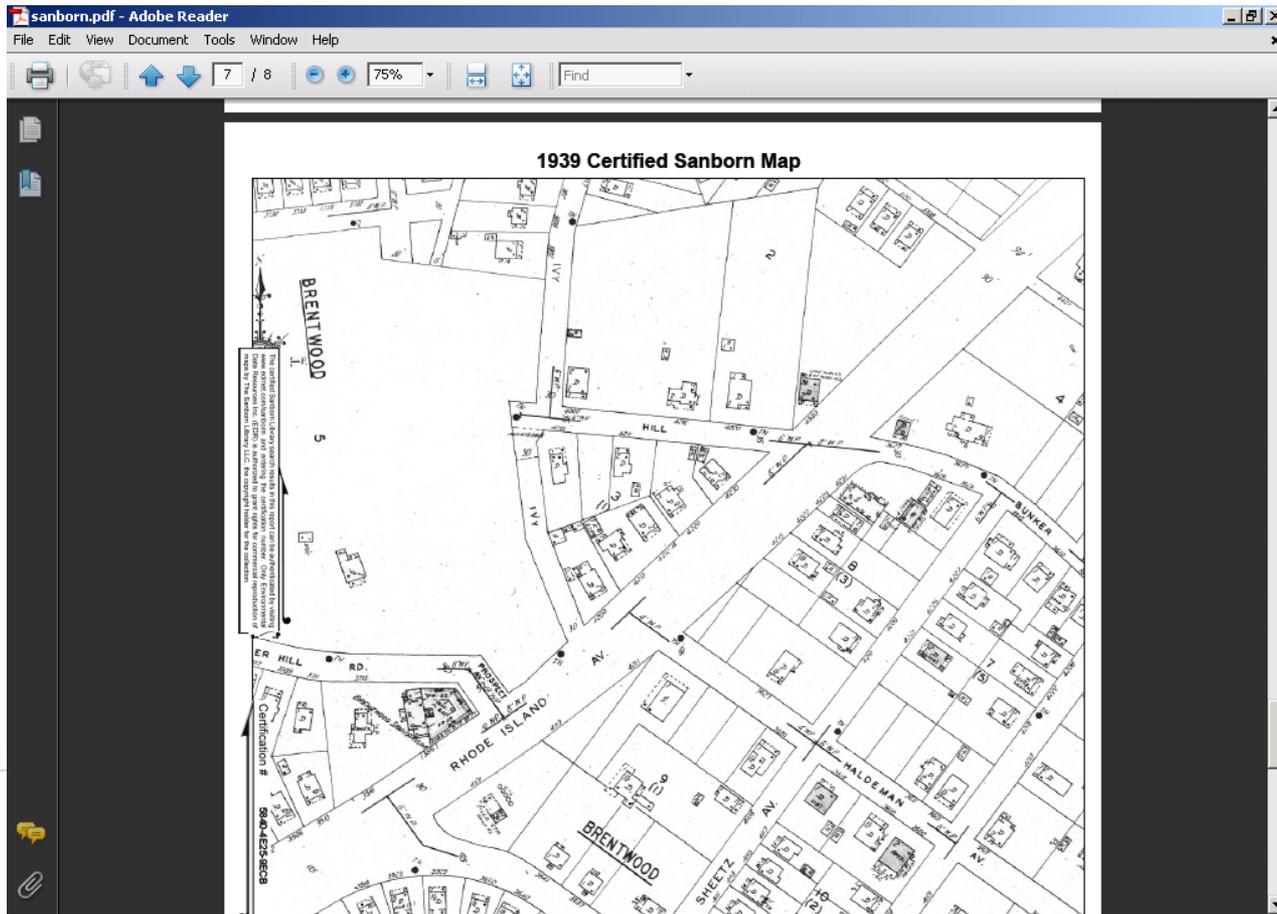
- Floodplain notices can be combined with wetlands
- Multiple locations can share notices and 8 Steps
- Minimization examples are manmade swales, permeable surfaces (e.g. green alleys), site planning around sensitive areas, and compensatory mitigation.

Toxics

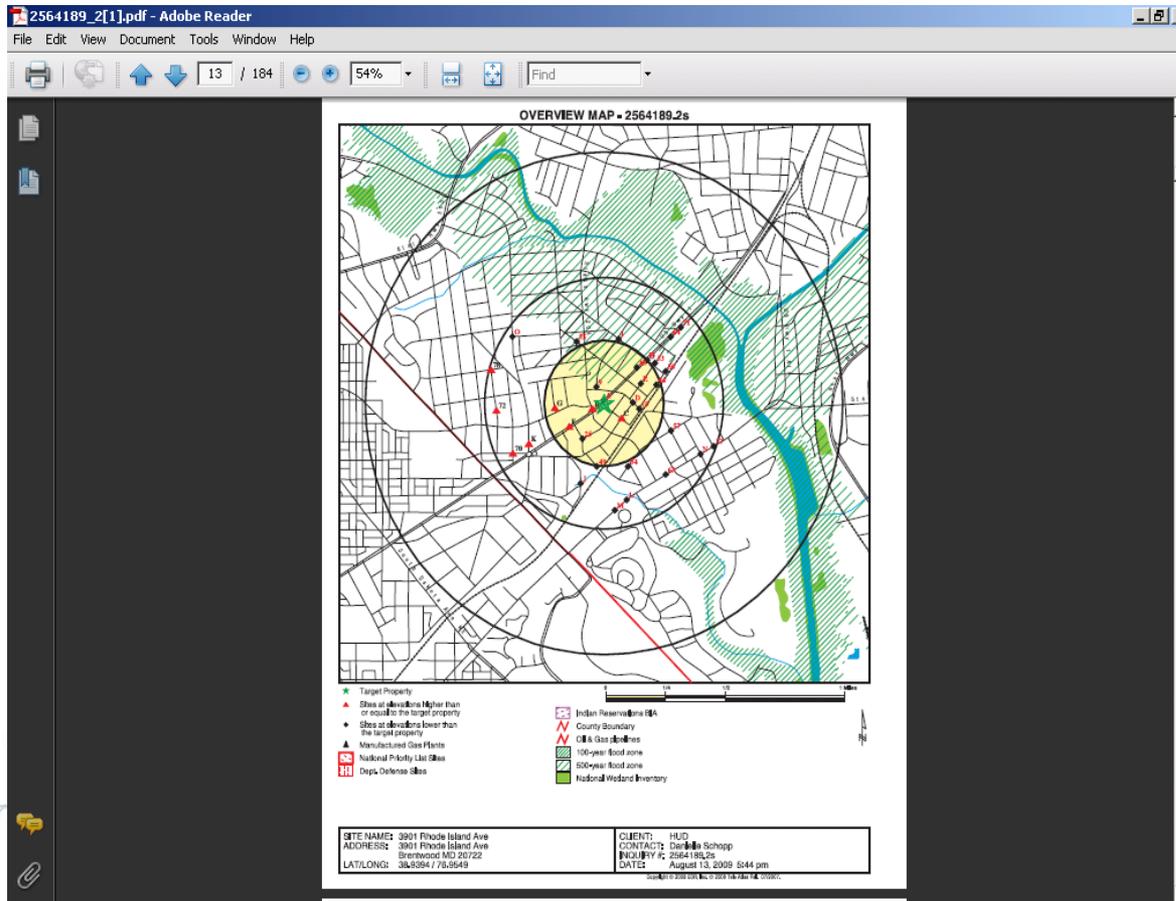
- HUD policy that all properties are free of hazards, contamination that could affect the health and safety of occupants
- Multifamily projects require an ASTM Phase I Environmental Assessment or equivalent – focus on ***Recognized Environmental Concern***



Toxics – info sources



Toxics – info sources EDR Report



Environmental Review Record

- Written record of review
- Must be available for public inspections
- Let the file tell the story – include project description, maps, photographs, studies, correspondence, public notices, etc.



Importance of Early Start

- Begin environmental review process as early as possible 58.30(b)
- Typical times required to complete range from 1 to 120 days
- Allow time for periods of public comment on environmental notices, including Finding of No Significant Impact (FONSI) and the Notice of Intent to Request Release of Funds (NOI-RROF)



Important Tips



- Recognize the additional time that will be required if the project is in the Floodplain, a wetland or has historic implications
- Responsible for ensuring flood insurance is maintained
- DON'T SPEND A DIME – until the environmental review is complete and you have received an approved Request for Release of Funds
- **When in doubt, contact your local environmental officer!**



New Compliance Tools

CPD - Environment x +

portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment

This web page provides information on environmental review requirements for HUD programs and the projects they fund in communities across the country. HUD-funded projects vary widely as to their complexity, and there are different levels of environmental review triggered by different kinds of projects.

Environmental Contacts
HUD has expert staff in locations around the country to assist persons involved in the environmental review of HUD-funded projects.
[more...](#)

Environmental Impact Statements
Find out about Environmental Impact Statements
[more...](#)

Environmental Review Requirements
Find out about Environmental Review
[more...](#)

Laws Regulations
A detailed listings of the [Laws](#) (U.S. Code) and the [Regulations](#) (Code of Federal Regulations) as well as Executive Orders and any policies that are adopted to govern the administering of HUD programs with regard to the environment.
[more...](#)

Tools

Assessment Tools for Environmental Compliance
[Find out about Assessment Tools for Environmental Compliance \(ATEC\)](#)

Resource Library
Links to various environmental resources and reference material.
[more...](#)

Training
Find out about local Environment information.
[more...](#)



The diagram is a circular graphic with 'ATEC' in the center. The outer ring contains the following categories: Air Quality, Wetland and Riparian, Endangered Species, CERCLA, ASD, Environmental Justice, Noise, History Preservation, and TDAI. The inner ring contains: Wetland and Riparian, Air Quality, Endangered Species, CERCLA, ASD, Environmental Justice, Noise, and History Preservation. The center contains 'ATEC' and 'Assessment Tools for Environmental Compliance'.



ATEC



- Tribal Directory Assessment Tool
- Section 106 Programmatic Agreement Database
- Noise Calculator
- Separation Distance Calculator



Questions

Call your Field Environmental Officer!

My contact info:

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