

CHAPTER SEVEN

ENVIRONMENTAL REVIEW

1. OVERVIEW

- A. All new construction, acquisition or acquisition rehabilitation activities (including manufactured housing) must meet the applicable environmental requirements specified in 24 CFR 93.301(f) for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards, contamination, noise, endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers.
- B. It should first be noted that HUD's Office of General Counsel has determined that individual project selection is not a federal action to which the NEPA environmental assessment requirements, or consultation requirements under other Federal authorities such as the National Historic Preservation Act or the Endangered Species Act, would apply. Unlike some other HUD statutes, the NHTF statute does not specifically include a provision for Environmental Review.
- C. HUD and THDA are committed to the principles of NEPA and in ensuring decent, safe, sanitary, and affordable housing for people with extremely low incomes. Consequently, HUD has developed NHTF Environmental Provisions under the NHTF Property Standards.
- D. All new construction, acquisition or acquisition rehabilitation activities (including manufactured housing) must meet the applicable environmental requirements specified in 24 CFR 93.301(f) for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards, contamination, noise, endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers.
- E. 24 CFR § 93.301(f)(1) - New Construction Including new construction or acquisition of existing housing that has been newly constructed or rehabilitated fewer than 12 months before the commitment of NHTF funds - 24 CFR § 93.301(f)(1)(3)(i)(A) and (4) 24 CFR § 93.301(f)(2) - Rehabilitation of existing housing that has not been newly constructed or rehabilitated fewer than 12 months before the commitment of NHTF funds - - 24 CFR § 93.301(f)(1)(3)(i)(B) and (4).

2. RESPONSIBILITY FOR THE ENVIRONMENTAL REVIEW

- A. The state as the grantor will be the Responsible Entity (RE) for the environmental review. However, the state will depend on the grantee/developer to gather the necessary information and publish the required notices, when required, with the assistance of the state. Only the state can certify that the environmental review requirements have been met.

3. TIMING

- A. NHTF housing projects must meet the applicable Property Standards, including the NHTF Environmental Provisions at 24 CFR § 93.301(f)(1) or (2) at project completion [§ 93.407(a)(2)(iv)] However, it should be determined prior to construction if a project will meet the NHTF Environmental Provisions.
 - 1. **If a project cannot meet the NHTF Environmental Provisions, the project cannot**

be funded by NHTF.

2. For example, if a project will impact a wetland, it cannot be funded by NHTF.
- B. Before ANY payment is made by THDA a Phase One Environmental conducted on all multi-family (4-units or more) sites must also be submitted to THDA.
- C. Responsible for establishing internal controls to enforce compliance with NEPA and Part 58.

4. ENVIRONMENTAL REVIEW PROVISIONS

A. **NHTF ENVIRONMENTAL PROVISIONS COVER** – Historic Preservation, Farmlands, Airport Zones, Coastal Barrier Resources System, Coastal Zone Management, Floodplains, Wetlands, Explosives and Hazards, Contamination, Noise, Endangered Species, Wild and Scenic Rivers, Safe Drinking Water and Sole Source Aquifers.

1. It should be noted that THDA does not allow construction or acquisition and rehabilitation within a 100 year flood plain under any circumstances. Additionally, THDA requires that any property be specifically and individually cleared by the State of Tennessee’s Historic Commission. There are no historic clearances that may be inferred simply by meeting a federal statute.
2. Unlike NEPA, when a project is only using NHTF funds, without any other federal funding sources, there are no levels of review (CEST/EA), no public comment periods, no Request for Release of Funds and Certification and no Authority to Use Grant Funds documents or provisions.

B. **RECORDKEEPING:** The grantee administering NHTF must maintain documentation demonstrating that each project meets the NHTF Environmental Provisions at project completion [§ 93.407(a)(2)(iv)] Suggested formats can be used to document compliance with the NHTF Environmental Provisions.

C. **REQUIRED PROVISIONS:**

1. **Historic Preservation** – (i) NC/R (A) Standards. The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places.
 - a. Qualification Standards; 19 NHTF Only Historic Preservation
 - i. NC/R Resources: Check to see if the property is listed or eligible for listing in the National Register of Historic Places individually or as part of an historic district by contacting the Tennessee State Historic Office.
 - b. Site specific clearance is required by the Tennessee Historic Commission on all properties regardless of age.
 - c. Historic Preservation (i) NC/R (B) Archaeological resources. If under any circumstances archaeological resources or human remains are discovered on the project site during construction, the grantee must consult with affected tribes and/or descendant communities and comply with the Native American Graves

Protection and Repatriation Act (25 U.S.C. 3001–3013), State law and/or local 23 NHTF.

2. **Farmland** - 24 NHTF Only NC/R Project activities must not result in the conversion of unique, prime, or statewide or locally significant agricultural properties to urban uses.

- a. Resources:

USDA Web Soil Survey

<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

TigerWeb Urbanized Areas

<https://tigerweb.geo.census.gov/tigerweb/>

- b. If the project activities consist solely of rehabilitation, then the project will not result in the conversion of unique, prime, or locally significant agricultural properties to urban uses. 25 NHTF Only Farmland.
 - c. For New Construction Documentation: A map from the Web Soil Survey showing that the project site is not a unique, prime or statewide or locally significant agricultural property, or a map showing the project is in an urban area.
3. **Airport Zones** – NC/R Projects are NOT permitted within the Runway Protection Zones (RPZ) of civilian airports, or the clear zones or Accident Potential Zones (APZ) of military airfields.

- a. Resources:

NEPAssist

<https://www.epa.gov/nepa/nepassist>

(Airport polygons under Transportation) 29 NHTF Only Airport Zones

- b. NC/R Documentation: A map showing the site is not within 15,000 feet of a military airport or within 2,500 feet of a civilian airport. If within 15,000 feet of a military airport, a map showing the site is not within a designated APZ or a letter from the airport operator stating so.
 - c. If within 2,500 feet of a civilian airport, a map showing the site is not within a designated RPZ or a letter from the airport operator stating so.
4. **Coastal Barrier Resource System** – NC/R No projects may be assisted in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the U.S. Fish and Wildlife Service (FWS).
 - a. For Tennessee, simply attach a map demonstrating that Tennessee has no coastal boundaries.
 5. **Floodplains** – NC/R No activities in the 100-year floodplain are permitted by the Tennessee Housing Development Agency. Please site property on a flood map demonstrating it is not within a 100-year floodplain. Please use FEMA FIRM or other latest-available FEMA data showing the project location is not within a floodplain.

6. **Wetlands** – NC No draining, dredging, channelizing, filling, diking, impounding, or related grading activities are to be performed in wetlands. No activities, structures, or facilities funded under this program are to adversely impact a wetland. A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.
 - a. No rehabilitation of existing properties that expand the footprint into a wetland is allowed. A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. NHTF Only Wetlands NC/R
 - b. Resources:

FWS National Wetlands Inventory
<http://www.fws.gov/wetlands/Data/Mapper.html>
 - c. Documentation: A map showing the project is not located in a jurisdictional or non-jurisdictional wetland.
7. **Explosives and hazards** – NC Projects must be in compliance with the standards for acceptable separation distance, as set forth at 24 CFR part 51, subpart C.
 - a. Documentation: Document that the project meets the standards for acceptable separation distance.
 - b. If the rehabilitation of the building increases the number of dwelling units, then the project must be in compliance with the standards for acceptable separation distance as set forth at 24 CFR part 51, subpart C.
 - c. Documentation: If the project will not increase residential densities, then the project is in compliance with 24 CFR part 51, subpart C. Document that the rehabilitation will not increase the number of dwelling units in the building. If the project will increase residential densities, document that the project meets the standards for acceptable separation distance.
 - d. Resources:

HUD’s Environmental Review Page – Explosives and Flammable Facilities.
<https://www.hudexchange.info/programs/environmentalreview/explosive-and-flammable-facilities/>
8. **Contamination** – NC/R All properties assisted with NHTF funds must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive

substances, where a hazard could affect the health and safety of occupants or conflict with the intended use of the property:

- a. All proposed multifamily (more than four housing units) NHTF project/project activities require a Phase I Environmental Site Assessment (ESA-ASTM). If the Phase I ESA identifies recognized environmental conditions (RECs), a Phase II (ESA-ASTM) will be required. ASTM reports shall be prepared in accordance with the most current ASTM standard. Single family housing does not require a Phase I ESA. 54 NC/R NHTF Only Contamination (ix)
- b. NHTF projects must avoid sites located within 0.25 miles of a Superfund or CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System) site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from EPA or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended utilization of the property.

Note: The CERCLIS Public Access Database has been retired. The EPA is transitioning to the Superfund Enterprise Management System, or SEMS. SEMS includes the same data fields and content as CERCLIS. 55 NHTF Only Contamination NC/R

- c. Resources:

HUD's Environmental Review Page – Site Contamination
<https://www.hudexchange.info/environmental/review/sitecontamination/>

NEPAssist
<https://www.epa.gov/nepa/nepassist>

9. Noise – NC

- a. Internal noise levels: All activities will be developed to ensure an interior noise level of no more than 45 decibels (dB).
- b. External noise levels:
 - i. Project sites exposed to less than or equal to 65 dB of environmental noise are acceptable.
 - ii. Sites between 65 dB and less than 75 dB are acceptable with mitigation (e.g., noise walls, careful site planning) that result in an interior standard of 45 dB. (3) Locations with environmental noise levels of 75 dB or greater may not have noise sensitive outdoor uses (e.g., picnic areas, tot lots, balconies, or patios) and require sound attenuation in the building shell to achieve the 45 dB interior standard.
 - iii. 62 NHTF Only Noise
 - (a) NC Documentation: If under 65 dB, document the external noise level. If the exterior noise level is between 65 dB and less

than 75 dB, document the mitigation measures taken to meet the interior noise level standard of no more than 45 dB.

(b) If there are exterior noise levels of 75 dB or greater, document the mitigation measures taken to meet the interior noise level standard of no more than 45 dB.

(c) Also document that there are no outside noise sensitive uses involved in the project. 63 NHTF Only Noise (x) R (A) Internal noise levels.

iv. All activities will be developed to ensure an interior noise level of no more than 45 decibels (dB).

(a) Documentation: Document that interior noise levels will be no more than 45 dB.

v. Resources:

HUD's Environmental Review Page – Noise Abatement and Control

<https://www.hudexchange.info/programs/environmental-review/noiseabatement-and-control/>

DNL Calculator

<https://www.hudexchange.info/stracat/>
<https://www.hudexchange.info/environmentalreview/dnl-calculator/>

STraCAT – Barrier Performance Module

<https://www.hudexchange.info/programs/environmental-review/bpmcalculator/>

10. **Endangered Species** – NC/R The grantee must avoid all actions which could jeopardize the continued existence of any endangered or threatened species, as designated by the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS), or would result in the destruction or adversely modify the designated critical habitat of such species.

a. Endangered Species (xi) NC/R

i. Documentation: Provide documentation that there are no endangered, threatened species, or critical habitat on the project site. If there are endangered, threatened species or critical habitat on the project site, document that the project will not jeopardize an endangered or threatened species, and will not adversely modify critical habitat. This may require informal consultation with FWS and/or NMFS.

11. **Wild and Scenic Rivers** – NC/R The grantee must avoid activities that are inconsistent with conservation easements, land-use protections, and restrictions adjacent to wild and scenic rivers, as designated/listed by the Department of Interior. Maps for the National Wild and Scenic Rivers System are available at the governing departments.

i. Resources:

HUD's Environmental Review Page – Wild and Scenic Rivers
– Guidance

<https://www.hudexchange.info/environmental-review/wild-and-scenicrivers/>

- ii. Documentation: Document that the project is not located near a Wild and Scenic River. If the project site is located near a Wild and Scenic River, document that the project is consistent with the River's Management Plan.

12. **Safe Drinking Water** – NC/R Projects with a potable water system must use only lead-free pipes, solder, and flux.

i. Resources:

EPA's Drinking Water Requirements for States and Public Water Systems

<https://www.epa.gov/dwreginfo>

- ii. Documentation: Document that the project only uses lead-free pipes, solder, and flux. This may include architectural plans, building specifications, and certification by qualified professional.

13. **Sole Source Aquifer** – NC/R Project activities should avoid sites and activities that have the potential to contaminate sole source aquifer areas (SSAs). EPA defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. If the project overlies an SSA, EPA must review the project. EPA review is designed to reduce the risk of ground water contamination that could pose a health hazard to those who use it.

- a. There are no sole source aquifers in the State of Tennessee.

b. Resources:

HUD's Environmental Review Page – Sole Source Aquifers – Guidance

<https://www.hudexchange.info/environmental-review/sole-source-aquifers/>

- c. Documentation: Document that the project site is not located on an SSA. If the project site located on an SSA, provide documentation from EPA that the project will not impact the SSA (including regional MOUs)