

CHAPTER 11: ENVIRONMENTAL REQUIREMENTS

11.1 PURPOSE AND OVERVIEW

The purpose of this chapter is to describe the environmental requirements that must be met by the Agency and by the lender as a part of multifamily housing loanmaking and loan servicing activities.

Key Topics in this Chapter

- Agency Review During Loan Origination
- Environmental Requirements for Servicing Actions
- Other Environmental Requirements

11.2 GENERAL ENVIRONMENTAL REQUIREMENTS

The Agency will complete an environmental review in accordance with the National Environmental Policy Act and RD Instruction 1940-G, prior to taking any official action on an application for loan guarantee.



NEPA requires that Agency actions be classified into three basic categories of action:

- Those that qualify as categorical exclusions;
- Those that require an Environmental Assessment (EA); and
- Those that require an Environmental Impact Statement (EIS).

Due to the wide range of activities funded by the Agency, it established two categories of actions requiring an EA:

- Class I Actions – actions which require an environmental assessment with limited detail and analysis; and
- Class II Actions – actions requiring a fully detailed environmental assessment.

The classification of actions provides the Agency with a starting point for beginning its environmental review. Most multifamily housing activities will qualify for a Class I EA, but some will qualify for a Class II EA. For a complete list of housing actions and their classifications, refer to RD Instruction 1940-G.



The Agency environmental review must examine the potential impacts of the proposed project on the environment and on a wide range of protected resources. Exhibit 11-1 provides a list of major resources that must be considered.

Exhibit 11-1	
Major Protected Resources	
Wetlands	Natural Landmarks
Floodplains	Important Farmland
Wilderness Areas	Prime Forestland
Wild and Scenic Rivers	Pine Rangeland
Historical and Archeological Sites	Coastal Zone Management
Area	
Critical Habitat or Endangered or	Sole Source Aquifer
Recharge Area	

The Agency environmental review will provide the necessary documentation to:

- Demonstrate compliance with the requirements for the protection of the environment, including the development of practicable alternatives (which must always include the “no action” alternative) to either avoid or lessen adverse environmental impacts; and
- Demonstrate why the potential impact on the environment is not considered to be significant and therefore, an EIS is not required. Environmental files must include appropriate, detailed, and accurate supporting documentation, maps, results of consultation, and evidence that required public notices were published and sent to the parties listed in RD Instruction 1940.331.
- All mitigation measures listed in the environmental review will be included in legally binding documents, such as the Letter of Conditions and Conditional Commitment for Guarantee.
- Evidence that mitigation measures were implemented during project completion. This evidence will be obtained and included in the environmental file.

11.3 ENVIRONMENTAL RISK MANAGEMENT

The Agency and the guaranteed lender will incorporate into their lending practices an environmental risk management program. The purpose of this risk management program is two-fold:

- To minimize adverse impacts to the security interests of the Agency and the lender in real property caused by potential contamination from hazardous substances, hazardous wastes, and petroleum products; and

- To establish a process by which the Agency and the lender can minimize their liability under the laws regulating management of hazardous substances, hazardous wastes, and petroleum products.

A major component of this risk management program will be the performance of due diligence. Due diligence is the process of inquiring into the environmental condition of the real estate in the context of a real estate transaction, to determine the presence of contamination from hazardous wastes and petroleum products, and to determine what impact such contamination may have on the market value of the property.

Lenders are required to perform due diligence in conjunction with appropriate loan processing and servicing actions. The minimum standard the Agency will accept as evidence of due diligence is the most current version of the *ASTM Standard E-1527, Phase I Environmental Site Assessment*, published by the American Society for Testing and Materials (ASTM), completed by a qualified environmental professional. Guaranteed lenders may incorporate the ASTM standards into their processing and servicing procedures or use an equivalent process of due diligence approved by the State Environmental Coordinator in consultation with the Regional Office of the General Counsel. Lenders must provide the Agency with a copy of the due diligence report and maintain a copy in the loan file. Noncompliance with this section may jeopardize the Agency's payment of loss claims due to environmental contamination.

Due diligence will be performed for:

- All applications for existing multifamily housing units, when:
 - ◇ An appraiser reports to the Agency or to the guaranteed lender that potential contamination from hazardous substances, hazardous wastes, or petroleum products has been observed on the property or encountered through research or interviews with individuals knowledgeable about the property; or
 - ◇ The Agency or the guaranteed lender becomes aware of possible contamination through some means other than the appraiser's report.
- All applications for new construction of multifamily housing units.

Additionally, if underground storage tanks are present at existing structures, the lender will ensure that the tanks comply with appropriate regulatory requirements or they will be removed.

11.4 RESPONSIBILITY FOR ENVIRONMENTAL REVIEWS

The Agency is responsible for completing the appropriate level of environmental review in accordance with RD Instruction 1940-G. This includes the assembly and analysis of relevant material, the development and analysis of practicable alternatives and mitigation measures, and the development of recommendations and decisions.



The Agency will require information from the lender and the lender's applicant to complete this environmental review. Lenders have a responsibility to become familiar with Federal environmental requirements so that they can advise applicants and reduce the probability of unacceptable applications being submitted to the Agency. Lenders are also expected to cooperate in the collection of any environmental data which the Agency determines is necessary and in the resolution of potential environmental problems.

The Agency approval official will use the environmental review documents and the recommendations of the State Environmental Coordinator to make the Agency's final decision regarding an environmental impact determination and compliance with environmental requirements, as well as flood insurance requirements. This decision will be documented on *Form RD 1940-22, Environmental Checklist for Categorical Exclusions*, for a categorical exclusion, a Finding of No Significant Impact (FONSI) for an EA, or a Record of Decision (ROD) for an EIS.

The State Environmental Coordinator is available to provide technical assistance and guidance to Agency staff, lenders and borrowers. They are also available to assist in problem resolution on environmental issues. Environmental issues or problems should be referred promptly to the State Environmental Coordinator.

11.5 ENVIRONMENTAL REVIEWS DURING LOAN ORIGATION

The Agency's environmental review of the property, as required under NEPA will be initiated as early as possible, but no later than the selection of the proposal for further processing. This means the environmental review will normally be prepared simultaneously with the development of the application package. This review must be complete and a Finding of No Significant Impact (FONSI) issued prior to the Agency's issuance of a conditional commitment.

A. The NOFA Submission Stage


One of the NOFA submission requirements is a description of any "known environmental issues that may affect the project." During this stage, the Agency will

take note of environmental issues that are disclosed by the lender in assessing the preliminary feasibility of the property. It is important that all known information is disclosed at this stage. Information not disclosed, that was known to the lender or borrower, could be grounds for disqualification of funding at a later stage.


B. The Application Submission Stage

1. Submission Requirement

The lender must submit the following information (unless such information was previously submitted) as part of the loan application package (see paragraph 4.9B):

- *Form RD 1940-20, Request for Environmental Information.* This form must include information about the environmental conditions of the proposed site and the project's potential impact on the environment. This completed form should be submitted to the Agency as quickly as possible, since it is used to assist the Agency in completing its environmental review. 
- Phase I Environmental Site Assessment report as prescribed by the American Society for Testing and Materials (ASTM).
- Lender comments regarding relevant off-site conditions.
- Land survey.
- *FEMA 81-93, Standard Flood Hazard Determination.*

2. Agency Response

As early as possible in the planning and decision making process, the Agency will initiate the collection of environmental information and the appropriate level of environmental review in accordance with RD Instruction 1940-G. 

The environmental review will be completed prior to loan approval, obligation of funds, or other commitment of Agency resources, including issuance of a conditional commitment for guarantee whichever occurs first; and prior to the Agency decision on any servicing action which is subject to Agency approval. A commitment of Agency resources may not be made subject to completion of the environment review.

The environmental review is considered complete when the environmental documents have been properly executed, when all applicable public notices have been published, the

associated public comment periods have expired, and the Agency has taken any necessary actions to address the comments received.

11.6 ENVIRONMENTAL REVIEWS DURING THE SERVICING PERIOD

All lender servicing actions which require prior approval of the Agency are subject to the Agency's completion of a NEPA environmental review. Agency approval of a liquidation action plan will normally qualify as a categorical exclusion, provided the proposed disposition of the property will not alter the purpose, operation, location or design of the project as originally approved. However, it is the lender's responsibility to ensure that due diligence is conducted in conjunction with the appraisal for all loan servicing actions which require a determination of security value or which could lead to acquisition of real property by the Agency or the guaranteed lender.

If, through environmental audits, due diligence or some other means, a release or threatened release of hazardous substances, hazardous wastes, or petroleum products is discovered on a borrower's property, the Agency official, in consultation with the State Environmental Coordinator and the guaranteed lender, will promptly notify the borrower in writing that immediate corrective action must be taken, consistent with appropriate regulatory authority requirements. Simultaneously, the State Environmental Coordinator will notify the appropriate regulatory authority for any necessary enforcement action.

In the case of a defaulted loan where the Agency may consider taking title from the lender, the Agency will review the due diligence report and the appraisal, prior to accepting title. If contamination is present and the cost of mitigation exceeds the market value or the amount of the debt, the Agency may decide not to accept title from the lender. If there is a loss claim due to contamination, the Agency will not finalize the loss claim until the lender has sold the property. The Agency will also review the due diligence report and appraisal prior to its consent to the release of security property by the guaranteed lender and when there are bankruptcy proceedings.

11.7 OTHER ENVIRONMENTAL REQUIREMENTS

A. Flood Hazard Determination

Property located in Special Flood Hazard Areas designated by the Federal Emergency Management Agency are not eligible for federal financial assistance, including loan guarantees, unless flood insurance through the National Flood Insurance Program (NFIP) is available. The lender must ensure that NFIP flood insurance is purchased prior to loan closing and issuance of the guarantee, in accordance with the National Flood Insurance Act, as amended, and RD Instruction 426.2.

The lender is responsible for ensuring the completion of *FEMA Form 81-93, Standard Flood Hazard Determination* and for submitting a copy to the Agency with the request for guarantee. The form provides specific information with regard to the proposal's location in a floodplain, the community's NFIP eligibility, its proximity to floodplains and the availability of flood insurance. This information is necessary for a determination of site eligibility by the Agency. The environmental review conducted by the Agency will examine whether or not there is a reasonable alternative to a proposed purchase/construction in the floodplain.

Flood insurance must cover the lesser of the outstanding principle balance of the loan or the maximum amount of coverage allowed under FEMA's National Flood Insurance Program. Prior to loan closing, the lender is responsible for sending the applicant a copy of *Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance*. The applicant must sign and return the form at or before loan closing.

B. Clean Air Act and Water Pollution Control Act

Federal contracts that exceed \$100,000, must meet all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Air Act, Executive Order 11738; and EPA regulations 40 CFR Part 15. The lender must ensure compliance with this requirement during construction of the property and throughout the servicing period.