

# 2014 DCA ENVIRONMENTAL MANUAL

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## 2014 DCA ENVIRONMENTAL MANUAL

**This Manual contains the following:**

- **Environmental Site Assessment Standards and Reporting Requirements**
- **Environmental Forms**
  1. **Environmental Certification**
  2. **Owner Environmental Questionnaire and Disclosure Statement**
  3. **Property Log and Information Checklist**
  4. **HOME and HUD Environmental Questionnaire**
  5. **HOME and HUD Environmental Questionnaire Guidance**

### **Environmental Site Assessment Standards and Reporting Requirements**

The Georgia Department of Community Affairs (“DCA”) requires site-specific environmental assessment for all development proposals being considered for funding with 9% Tax Credits, 4% Tax Credits, and/or HOME Loans. At a minimum, DCA requires a Phase I Environmental Site Assessment (“Phase I”), in accordance with, but not limited to, standards developed by the American Society for Testing and Materials (“ASTM”) and set forth in the “Standard Practice for Environmental Site Assessments, Phase I Site Assessment Process.”, ASTM 1527-13. If a Phase I recommends additional review or a Phase II report, the Phase II and/or the additional review documentation must be provided. For projects which request HOME funds or list other HUD funding sources, including but not limited to Project Based Rental Assistance (“PBRA”), the Environmental Professional (see Section A(3)(a) below) must complete the HOME and HUD Environmental Questionnaire. This form can be found in the Application Forms section.

## I. Introduction and Overview

A Phase I serves as a screening process designed to discover environmental concerns, recognized environmental conditions, controlled recognized environmental conditions and non-scope issues which may potentially impact the subject property, and to ensure that “all appropriate inquiry” (as that term is defined by the EPA in 70 Fed. Reg. 66070, 72; 40 C.F.R. Part 312) is conducted. By contrast, a Phase II Environmental Site Investigation (“Phase II”) is intended to further investigate any environmental issues raised by the Phase I.

DCA requires the Environmental Professional to follow ASTM E 1527-13, or any updated version promulgated by ASTM which meets the requirements of the EPA’s AAI regulations (the “ASTM Standards”), in conducting Phase I Environmental Site Assessments. DCA also has additional investigative and testing requirements which exceed the ASTM Standards. Some of these extra requirements are referred to as “non-scope considerations” in Section 13 of ASTM E 1527-13. DCA’s additional requirements include, but are not limited to, asbestos, mold, lead-based paint, lead in drinking water, noise, radon, PCBs, floodplains and wetlands (hereinafter referred to as “non-scope issues”). Where DCA guidelines are more stringent than the ASTM Standards, the DCA guidelines are to be considered controlling.

Any Phase I submitted to DCA must demonstrate that all appropriate inquiry regarding previous ownership and use of the property consistent with good commercial or customary practice was conducted. Applicants must use appropriate due diligence when evaluating the property and investigating surrounding areas that may impact the property, in short they should make “all appropriate inquiries” to learn the property’s true condition. Applicants must become familiar with federal, state, and local health, safety, and environmental laws governing the property. Developers and owners must disclose their knowledge of actual or suspected environmental concerns in accordance with ASTM Standards and are strongly encouraged to contact DCA if unusual or questionable conditions exist before they submit their formal Application to DCA.

## II. Environmental Assessment Requirements

### A. Phase I Requirements

1. The Phase I Report must be in the format shown in *Section V: Required Format for Phase I Report*. Phase I Reports that deviate from this format may not be accepted. The inclusion of additional appendices to the Phase I Report is acceptable. Please note that if a prescribed sub-section or appendix is not applicable, the Environmental Professional must note “Not Applicable” or “Not Available” in that section of the report or that appendix. Note: During the competitive round, the Applicant could have points deducted from its score if the proper format is not followed.
2. The Phase I must substantially comply with ASTM E 1527-13 or any updated version promulgated by ASTM that meets the requirements of the EPA’s AAI regulations.
  - a. The Phase I Report must contain a statement that ASTM E 1527-13 (or any updated version) was used in completing the Phase I and that “all appropriate inquires” were conducted.
  - b. The Environmental Professional must include a description of the procedures followed while conducting the Phase I investigation in the Phase I Report, including a detailed scope of services.
  - c. Generally, most Phase I Reports are performed to qualify for one of the three landowner liability protections under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (1980): the innocent landowner limitation; the contiguous property owner limitation; or the *bona fide* prospective purchaser limitation. The Environmental Professional must consult with the Applicant to determine the Applicant’s purpose for performing the Phase I and must set forth the purpose for which the Phase I site investigation was undertaken in the Phase I Report. Specifically, the Environmental Professional must expressly state that he understands that the purpose of the Phase I is to ascertain whether the property is environmentally suitable for construction of multifamily housing.

- d. The Applicant must submit the number and type of duplicate originals of the Phase I Report specified in the applicable Qualified Allocation Plan.
3. In addition, the Phase I must be performed under the supervision of, reviewed, signed, and certified by an Environmental Professional, using the Environmental Consultant Signature Page for Phase I Reports, which can be found in the Forms section of this Manual. The Environmental Consultant Signature Page for Phase I Reports must appear immediately following the cover page of the Phase I Report.
    - a. An “Environmental Professional” is, as defined in 40 C.F.R. § 312.10(b):
      - (i) A Professional Engineer (“P.E.”) or a Professional Geologist (“P.G.”) who is licensed to practice engineering or geology, respectively, in the state of Georgia with at least three (3) years full-time “relevant experience,” including but not limited to participation in performance of environmental site assessments which involved the understanding of surface and subsurface environmental conditions.
        - (1) The term “relevant experience” is used here as it is defined in 40 C.F.R. § 312.10(b).
        - (2) The P.E. or P.G. must be an employee or principal of the environmental consulting firm retained to complete the environmental assessment.
      - (ii) A person with at least a Baccalaureate degree from an accredited institution in engineering or science who is licensed to perform environmental site assessments and to conduct all appropriate inquiries in the state of Georgia with at least five (5) years full time relevant experience.
      - (iii) A person having ten (10) years relevant experience.
    - b. The Phase I must include the resume(s) that describe the qualifications of all personnel involved with the Phase I environmental site assessment in the appendix as listed in the required format; the qualifications of all such personnel must also be discussed in Section 2.4 of the Phase I Report.
    - c. The Environmental Professional may not be affiliated with the developer/owner, or a buyer or seller of the property, or a firm engaged in any

business that might present a conflict of interest or give the appearance of a conflict of interest.

4. The Phase I Report must include a “Site Map” (must be to scale) in the appendix as listed in the required format showing:
  - a. An area large enough to display the relative location of the site in its orientation to adjacent properties and facilities, with existing streets and drives within fifty (50) feet of the site.
  - b. Delineation of the perimeter of any major existing structures on the site.
  - c. Any visible or reasonably ascertainable easements on the site.
  - d. Environmental concerns where applicable.
  - e. Direction (established or presumed) of groundwater flow.
  - f. The boundaries of all floodplains, wetlands, and/or potential State Waters on or adjacent to the site.
5. The Phase I Report must include a comprehensive historical review of the subject property.
  - a. The Phase I must include in the appendix as listed in the required format, a copy of documentation provided by the title company or title professional regarding reasonably ascertainable recorded land title records, judicial records and records of environmental liens and activity and use limitations. The Environmental Professional must discuss the chain of title, judicial records, records of environmental liens and activity and use limitations associated with the property and any other pertinent records found by the title company or title professional in the historical records review which, when reviewed in its entirety, clearly shows a history of previous uses of the property back to 1940 or the property’s obvious first developed use, whichever is earlier.
    - (i) This review *must* consider the “standard historical sources” listed in Section 8.3.4.1 through 8.3.4.8 of ASTM E 1527-13, to the extent required by ASTM.
    - (ii) DCA may, at its sole discretion, also require the review of any sources listed in Section 8.3.4.9 of ASTM E 1527-13.

- b. The Environmental Professional must comment on the results of the historical review. The historical review must:
  - State whether information about environmental liens or activity and use limitation records were reasonably ascertainable,
  - Describe what efforts were made to identify environmental liens and/or activity and use limitations, and give a professional opinion as to any potential environmental concerns,
  - Identify recognized environmental conditions, controlled recognized environmental conditions and/or non-scope issues.

If no recognized environmental conditions or controlled recognized environmental conditions were identified in the historical review, the Environmental Professional must conclusively say so in the historical review section of the Phase I Report. The Environmental Professional must also state in the historical review section whether any non-scope issues were identified in the historical review. Environmental lien information can often be obtained along with a chain of title and judicial records review. Although some of these items are designated user responsibilities in ASTM E 1527-13, DCA requires that the Environmental Professional research, evaluate and assess these matters.

6. The Environmental Professional must make reasonable efforts to conduct all interviews required by ASTM as part of the Phase I site assessment.
  - a. Note that for abandoned properties, the Environmental Professional must also interview owners and occupants of neighboring properties.
  - b. The Environmental Professional must also make a reasonable attempt to interview at least one staff member at any one of the following: local fire department; state or local health department or environmental agency; the local agency responsible for the issuance of building permits; the local agency responsible for issuance of groundwater use permits; state or local agency with jurisdiction over hazardous waste disposal.

- c. Documentation of all interviews (or documentation of attempts to complete such interviews) must be included in the appendix as listed in the required format.
7. The consultant preparing the Phase I Report must gather from the user(s) of the Phase I Report all information required in Section 6 of ASTM. Information obtained from the user interview(s) must be included in Section 4.3.4 of the Phase I Report, and documentation of the interview(s) must be included in the appendix as listed in the required format.
  - a. The Applicant must be interviewed as a “user” for every Phase I Report submitted to DCA. Additionally, for purposes of Applications submitted to DCA, all of the following parties are also considered “users”: the entity that has title to the property or the entity that will take title to the property, project development partners, equity partners for the project, and any other party which would be defined as a “user” within the meaning of Section 3.2.98 of ASTM.
  - b. Where there are multiple users, the text of Section 4.3.4 of the Phase I Report should make clear from which user the information was obtained.
  - c. If the consultant preparing the Phase I Report was unable to interview any one or more users, the consultant must describe what attempts were made to interview such users, include documentation of these attempts in the appendix as listed in the required format, and discuss the data gap in Section 6.0.
8. The Phase I Report (including, but not limited to, regulatory database reviews, interviews, and searches for recorded environmental liens) must be completed less than one hundred eighty (180) days before Application submission. Phase I reports older than (180) days may require an updated environmental report, while Phase I reports older than one year may require a new report. Consult your Environmental Professional for guidance. For projects applying for federal funds, DCA may request an updated or new Phase I report prior to loan closing.
  - a. The date of the Phase I Report shall be clearly placed on the cover page of the Phase I Report.

- b. The date of the site reconnaissance shall be specified in Section 5.1 of the Phase I Report. The Phase I Report must be issued no more than sixty (60) days after the site reconnaissance unless waived by DCA at its sole discretion.
  - c. DCA reserves the sole right to require an update of any Phase I which is equal to or greater than one hundred eighty (180) days old at the time final approval of any Application is granted or at any time prior to commencement of construction if additional information regarding an environmental issue is discovered.
9. If an updated Phase I report is necessary because the original Phase I report is between one hundred eighty (180) days and one (1) year old at the time of Application submission, then the updated Phase I must include the following updated components, in accordance with Section 4.6 of the ASTM Standards:
- a. Description of the new site reconnaissance, including visual inspection of the property and of adjoining properties.
  - b. Updated site photos.
  - c. Updated federal, tribal, state, and local governmental records.
  - d. Updated search for environmental liens.
  - e. New interviews with owners, occupants, and operators of the property (or of neighboring properties, in the case of an abandoned or vacant site).
  - f. All original materials and updates.
  - g. The opinion of an Environmental Professional addressing all conditions (changed and unchanged) at the site.
  - h. The Environmental Consultant Signature Page for Phase I Reports, signed by all appropriate parties.
  - i. An Environmental Certification signed by the Environmental Professional who conducted the update.
10. The Environmental Professional must address any previous environmental site assessments (Phase I and/or Phase II) that were performed for the subject property in Section 5.5.7 of the Phase I Report, and include the available previous Reports (text and applicable appendices only) in the appendix as listed in the required format.

11. The Phase I Report must reflect all of the Environmental Professional's investigations and findings and contain an Executive Summary setting forth clearly written conclusions, including the exact language from either Section 12.8.1 or Section 12.8.2 of the ASTM Standards, as appropriate, and recommendations. The Environmental Professional's opinions must be included in the Phase I Report in the manner described in Section E below. The Phase I Report must also identify and comment upon:
  - a. All supporting data and test results.
  - b. Any and all data gaps, as defined in Section 3.2.20 and Section 3.2.21 of the ASTM Standards, that affect the ability of the Environmental Professional to identify recognized environmental conditions, controlled recognized environmental conditions, suspected environmental concerns and/or non-scope issues.
    - (i) Data Gaps must be discussed in Section 6.0 of the Phase I Report.
    - (ii) The Environmental Professional must also enumerate in this section the good faith efforts made to gather the information that could not be obtained.
  - c. Commonly known/reasonably ascertainable information available to the user(s) or which the Environmental Professional is required to obtain under AAI. This information must be discussed in either Section 4.3.4.4 or Section 5.3 of the Phase I Report, as set forth in the format for Phase I Reports included in Section V of this Manual.
12. Any deviations from DCA Environmental Site Assessment Standards or ASTM E 1527-13, or any limitations of the Phase I environmental site assessment, must be described in Section 2.6 of the Phase I Report.
13. All data references (including, but not limited to, the following: regulatory database search references; the ASTM standard followed; floodplain maps; wetlands maps; U.S. Topographical maps; soil survey; aerial photographs; telephone interviews with agencies; and fire insurance maps, if available) used to complete the Phase I Report must be listed in Section 9.0 of the Report.

14. The Environmental Professional must:

- a. Field-verify the distance to any facilities identified in any of the standard environmental record sources during the site reconnaissance, and the Environmental Professional must document such verification in Sections 5.4 and 5.6 of the Report.
  - b. Visually and/or physically observe adjoining properties and note any physical limitations to all visual inspections.
15. In Section 10.0 of the Phase I Report, there must be a discussion of the purchase price as it relates to the fair market value of the property, in accordance with Section 6.5 of ASTM E 1527-13. The ASTM 1527-13 standards anticipate that most of the time this assessment of purchase price will be performed by a user (more than likely, the entity that has title to the property or the entity that will take title to the property) and provided to the environmental professional. Therefore, this information should be addressed in the Owner Environmental Questionnaire and Disclosure Statement or in a separate valuation statement, as appropriate. If not addressed and provided to the Environmental Professional, the Environmental Professional must address this issue. The user is not required to disclose the purchase price, but if the purchase price is significantly less than the fair market value, s/he should disclose this to the Environmental Professional and explain why a difference exists. It is DCA's opinion that even if the fair market value and purchase price were the same, it would be prudent for the prospective purchaser to identify how the fair market value was determined. This standard does not require that a real estate appraisal be obtained in order to ascertain fair market value of the property.
- a. Where the purchase price does not reflect the fair market value of non-contaminated property, the Environmental Professional must identify the potential causes, including environmental causes.
    - (i) Although this item is a designated user responsibility in ASTM E 1527-13, DCA requires that the Environmental Professional review the information provided by a user. If the Environmental Professional is not provided with information from a user, the Environmental Professional must inquire of the seller, broker, or real estate professional associated

with the project as to the fair market value of the property and as to the causes for any differential between the fair market value and the purchase price of the property unless a substantive response regarding these matters has already been provided by the user(s).

- (ii) If the Environmental Professional determines that a sales price has not yet been negotiated for the property, then that fact should be referenced in Section 10.0 of the Report.
- b. Although this standard does not require that a real estate appraisal be obtained in order to ascertain the fair market value of the property, DCA may, at its sole discretion, require that a real estate appraisal be obtained in order to ascertain the fair market value of the subject property.
- c. If neither the user, Applicant, seller, broker, nor real estate professional can or will disclose to the Environmental Professional whether a differential exists between the purchase price of the subject property and the fair market value of the subject property, the Environmental Professional must assess this as a data gap and discuss it in Section 6.0 of the Report.

**B. Non-Scope Issues for Phase I Reports.** The Phase I Report must also address and discuss the following issues:

**1. Wetlands**

- a. As a general rule, projects will not be accepted for any DCA funding or approved for tax credits (including HOME funds and/or other HUD funding sources) if they will disturb any jurisdictional wetlands or stream on the subject property (or on any adjacent property where disturbing jurisdictional wetlands is necessary to gain access to the subject property) without evidence of prior review and approval by the U.S. Army Corps of Engineers (USACE) submitted to DCA by August 30, 2014 unless clearly shown to be exempt from requiring USACE approval. This evidence should include an approval letter, the site plan approved by USACE, engineering drawings, and the appropriate USACE permits. If jurisdictional waters impacts for a project do not require prior

approval, adequate explanation and supporting documentation must be provided.

- b. The Environmental Professional must determine if any portion of the subject property is or may be considered jurisdictional wetlands based upon:
  - (i) A review of the U.S. Fish and Wildlife Service National Wetlands Inventory (“NWI”) maps.
  - (ii) The site reconnaissance by a qualified professional.
  - (iii) Any other available relevant resources (including, but not limited to, the USGS topographic map and Soil Survey for the subject property).
- c. The presence of jurisdictional wetland areas (including streams or any potential jurisdictional wetland areas) on the property must be clearly shown on the Site Map.
  - (i) If wetlands are suspected on the site through either the site reconnaissance or the examination of the NWI map, a wetlands delineation must be performed in accordance with all federal guidelines and included in the Application. The purpose of the delineation is to verify the existence of wetlands and to determine the extent thereof.
  - (ii) An Expanded Preliminary Jurisdictional Determination issued by USACE is required if the proposed development will disturb wetlands or other jurisdictional waters. The jurisdictional determination and other evidence must be provided by August 30, 2014. Evidence may include a complete Pre-Construction Notification that was submitted to the USACE that shows the 45-day nationwide permit review period has expired with no response from the USACE.
  - (iii) If the proposed development is not expected to disturb the wetlands, it must be made clear to DCA through the delineation and project concept plans that the development activities will have no impact. If documentation submitted does not meet DCA’s requirements then at its discretion, DCA may request that the Applicant provide a professional opinion. For all projects that identify wetlands on the site, regardless of whether the wetlands are proposed to be disturbed, DCA will require

evidence that an Expanded Preliminary Jurisdictional Determination has been requested from USACE. Evidence of submittal of the request must be provided within 60 days of notice of award.

- (iv) A copy of the NWI map, USGS topographic map, any necessary wetlands delineation report, and USACE permits (if applicable) must be included in the appendix as listed in the required format of the Phase I Report.
- d. For all projects, compliance with the federal Clean Water Act and applicable U.S. EPA and USACE regulations, policies and guidance is required. If jurisdictional wetlands will be filled or impacted and the proposed project requires completion of the HOME and HUD Environmental Questionnaire (see page 1 above), the HOME and HUD Environmental Questionnaire must include evidence that the wetland management eight-step process, as set forth below,<sup>1</sup> has been followed. Such documentation should be included in the appendix as listed in the required format of the Phase I Report. Please note that completion of the eight-step process is required to be completed until August 30, 2014.
- (i) Except or actions covered by 55.12(a) the decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives when addressing floodplains and wetland. The steps to be followed in the decision making process are as follows:
    - (1) **Step 1.** Determine whether the proposed action is located in the 100-year floodplain (or a 500-year floodplain for critical actions) or results in new construction in a wetland. If the action does not occur in a floodplain or result in new construction in a wetland, then no further compliance with this part is required. The following process shall be followed by HUD (or the responsible entity) in making wetland determinations.

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<sup>1</sup> See proposed 24 C.F.R. § 55.20 at 55 Fed. Reg. 396, 403 (January 4, 1990).

- a. Refer to § 55.28(a) where an applicant has submitted with its application to HUD (or to the recipient under programs subject to 24 CFR part 58) an individual Section 404 permit (including approval conditions and related environmental review).
  - b. Refer to § 55.2(b)(11) for making wetland determinations under this part.
  - c. For proposed actions occurring in both a wetland and a floodplain, completion of the decision making process under § 55.20 is required regardless of the issuance of a Section 404 permit. In such a case, the wetland will be considered among the primary natural and beneficial functions and values of the floodplain.
- (2) **Step 2.** Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in a 100-year floodplain (or a 500-year floodplain for a Critical Action) or wetland, and involve the affected and interested public and agencies in the decision making process.
- a. The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.
  - b. A minimum of 15 calendar days shall be allowed for comment on the public notice.
  - c. A notice under this paragraph shall state: The name, proposed location and description of the activity; the total number of acres of floodplain or wetland involved; the related natural and beneficial functions and values of the floodplain or wetland that may be adversely affected by the proposed activity and the HUD approving

official (or the Certifying Officer of the responsible entity authorized by 24 CFR Part 58) and the phone number to call for information. The notice shall indicate the hours and the HUD or the responsible entity office, and any Web site at which a full description of the proposed action may be reviewed.

(3) **Step 3.** Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or a 500-year floodplain for a Critical Action) or wetland.

a. Except as provided in paragraph (c)(3) of this section, HUD's or the responsible entity's consideration of practicable alternatives to the proposed site selected for a project should include:

- (i) Locations outside and not affecting the 100-year floodplain (or 500-year floodplain for a Critical Action) or wetland;
- (ii) Alternative methods to serve the identical project objective, including feasible technological alternatives; and
- (iii) A determination not to approve any action proposing the occupancy or modification of a floodplain or wetland.

b. Practicability of alternative sites should be addressed in light of the following:

- (i) Natural values such as topography, habitat, and hazards;
- (ii) Social values such as aesthetics, historic and cultural values, land use patterns, and environmental justice; and
- (iii) Economic values such as the cost of space, construction, services, and relocation.

c. For multifamily projects involving HUD mortgage insurance that are initiated by third parties, HUD's consideration of practicable alternatives should include a determination not to approve the request.

(4) **Step 4.** Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the 100-year floodplain (or 500-year floodplain for a Critical Action) or the wetland

and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action.

- a. Floodplain evaluation: The focus of the floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include:
- (i) Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;
  - (ii) Living resources such as flora and fauna;
  - (iii) Cultural resources such as archaeological, historic, and recreational aspects; and
  - (iv) Agricultural, aquacultural, and forestry resources.

b. Wetland evaluation: In accordance with Section 5 of Executive Order 11990, the decision maker shall consider factors relevant to a proposal's effect on the survival and quality of the wetland. Among these factors that should be evaluated are:

- (i) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion;
- (ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources;
- (iii) Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use; and
- (iv) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

(5) **Step 5.** Where practicable, design or modify the proposed action to minimize the potential adverse impacts to and from the 100-year

floodplain (or the 500-year floodplain for a Critical Action) or the wetland and to restore and preserve its natural and beneficial values.

- a. Minimization techniques for floodplain and wetland purposes include, but are not limited to: the use of permeable surfaces, natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, evapotranspiration, stormwater capture and reuse, green or vegetative roofs with drainage provisions, and Natural Resource Conservation Service conservation easements. Floodproofing and elevating structures, including freeboard above the required base flood elevations, are also minimization techniques for floodplain purposes.
- b. Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one acre of wetland. Compensatory mitigation includes, but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by state or Federal agencies. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable.
- c. Actions covered by § 55.12(a) must be rejected if the proposed minimization is financially or physically unworkable. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:
  - (i) Preparation of and participation in an early warning system;
  - (ii) An emergency evacuation and relocation plan;
  - (iii) Identification of evacuation route(s) out of the 500-year floodplain; and

- (iv) Identification marks of past or estimated flood levels on all structures.

(6) **Step 6.** Reevaluate the proposed action to determine:

- a. Whether it is still practicable in light of its exposure to flood hazards in the floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to which it will aggravate the current hazards to other floodplains or wetlands, and its potential to disrupt the natural and beneficial values of floodplains or wetlands; and
- b. Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.
  - (i) The reevaluation of alternatives shall include the potential impacts avoided or caused inside and outside the floodplain or wetland area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and values served by the floodplain or wetland.
  - (ii) A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable; flood proofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the base flood elevation for sites located in floodplains, as appropriate on the applicable source under § 55.2(b)(1). For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

- (7) **Step 7.** a. If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action) or the wetland, publish a final notice that includes:

- (i) The reasons why the proposal must be located in the floodplain or wetland;
  - (ii) A list of the alternatives considered in accordance with paragraphs (c)1 and (c)(2) of this section; and
  - (iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial functions values.
- b. In addition, the public notice procedures of §55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.
- (8) **Step 8.** Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility on HUD (or on the responsible entity authorized by 24 CFR 58) and the recipient (if other than the responsible entity to ensure that the mitigating measures identified in Step 7 are implemented.
- e. The Regional Federal Emergency Management Agency (FEMA) Office must be contacted anytime an 8-step process (site specific or area-wide) has been initiated. A copy of the Early Notice for Public Review (Notice 1 or Step 2) and Final Notice for Public Review (Notice 2 or Step 7) must be forwarded to the FEMA Regional Environmental Officer for comment. Contact information is below:

Stephanie Everfield [verify correct contact]  
Department of Homeland Security  
FEMA Regional Environmental Office  
3003 Chamblee Tucker Road  
Atlanta, GA 30341-4112  
[fema-r4@fema.dhs.gov](mailto:fema-r4@fema.dhs.gov)

## 2. State Waters

- a. The Environmental Professional must identify any potential State Waters That Require a Buffer and the extent of all applicable buffers that are:
  - located on the subject property or
  - located on an adjacent property where the required buffers may encroach on the subject property.
  - (i) “State Waters” are defined as any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state, which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.
  - (ii) State Waters That Require a Buffer are identified by the presence of or field indicators that base flow (groundwater contribution) exists in the channel. Refer to the official language in the state law (DNR Rule 391-3-7) and the EPD’s Field Guide for Determining the Presence of State Waters That Require a Buffer.
- b. The location and extent of any potential State Waters, that require a buffer, along with all buffers required by state and/or local law, must be shown on the Site Map.
- c. The Environmental Professional must render an opinion as to whether State Waters are located on the subject property using EPD’s Field Guide for Determining the Presence of State Waters That Require a Buffer. DCA recommends that the Local Issuing Authority as determined by the EPD make the final State Water determination and, if permitted, include a letter in the Application.
- d. DCA does not allow for the disturbance of Streams with the exception for the construction of a roadway where site constraints necessitate the need to disturb the Stream. Documentation of this type of condition must be provided to DCA.
- e. All applicable buffers or setbacks that must be located on the subject property must be identified and discussed.

- f. No project will be accepted for any DCA funding or approved for tax credits (including HOME funds) if it contemplates any land-disturbing activity in any required buffer area *unless* an appropriate variance(s) or exemption(s) has been applied for from all appropriate agencies with jurisdiction over such buffers, and documentation of such application of variance(s) or exemption(s) is included in the Application Submission. The Environmental Professional must identify and discuss these issues in Section 3.5 of the Phase I Report.

### 3. **Floodplains/Floodways.**

In accordance with 24 CFR § 55.2 (b)(2), no funding will be approved in floodways or Coastal High Hazard Areas, unless it is a dependable activity to the floodways or Coastal High Hazard Areas. The Environmental Professional must review the Federal Emergency Management Agency (“FEMA”) National Flood Insurance Maps with a community panel number to determine if any part of the subject property is considered to be located in a 100-year floodplain/floodway. If these maps are not available for the development site, the Applicant must provide evidence that shows that the site is not prone to flooding. The exact location of the development must be clearly marked on the map.

- a. The presence of floodplain/floodway areas on the property must be clearly defined and supported by the appropriate FEMA map(s). A copy of the FEMA map(s) for the subject property must be included in the appendix as listed in the required format of the Phase I Report, whether or not there is a 100-year floodplain/floodway identified on the subject property. The boundaries of the proposed site for development must be delineated on the FEMA map. In addition, a Site Map that clearly defines the areas of floodplain/floodway in relation to all site improvements, including buildings, paving, and site amenities must be included in the Application. The Conceptual Site Development Plan must clearly show where all development and incidental development lies in relation to the floodplain/floodway.
- b. In all circumstances, the Applicant must document any mitigation required by applicable laws for impacts to existing floodplains or floodways planned for development.

- c. In no event will any project be accepted for funding that will place buildings in a 100 year floodplain/floodway unless the following requirements are met:
- (i) Tax credit rehabilitation projects *may* be eligible for funding where the existing buildings, paving or site amenities are located in the 100-yr floodplain/floodway *if* the following is included with the Application Submission:
    - (1) Verification (note on FEMA map) by the Environmental Professional that the proposed site for redevelopment is on the FEMA floodplain/floodway map included in the appendix as listed in the required format;
    - (2) A Site Map that clearly defines the areas of floodplain/floodway; and
    - (3) Evidence that the elevation of the lowest existing floor is 6" above the FEMA designated floodplain/floodway elevation. Such documentation must clearly demonstrate existing conditions and should include a land survey indicating the location of the existing buildings, paving and site amenities existing floodplain/floodway, elevation of existing floodplain/floodway, elevation of lowest floor level in existing buildings and FEMA elevation of the existing floodplain/floodway.
  - (ii) Tax credit new construction projects and HOME funded new construction *or* rehabilitation projects will be approved *only if* the property will be reclassified out of the 100 year floodplain/floodway for those areas where site improvements will be placed, including buildings, paving, and site amenities, prior to project completion *and* the following documentation showing the reclassification is included with the Application Submission:
    - (1) A Site Map that clearly defines the areas of floodplain/floodway and site improvements;
    - (2) All areas of the floodplain/floodway must be documented by the FEMA map for the areas in which the site is located, regardless of

whether the proposed site for development appears to be located in a floodplain/floodway. The proposed site for development must be located on that map;

- (3) The qualified Environmental Professional or Engineer must include an opinion as to whether or not the proposed project will impact any floodplain or floodway;
  - (4) The qualified Environmental Professional or Engineer must document mitigation for impacts to existing floodplains/floodways planned for development, and include consideration of alternative locations for the development;
  - (5) A FEMA Conditional Letter of Map Amendment (CLOMA) or Letter of Map Revision-Based on Fill (CLOMR-F) must be obtained for the property that shows that the property is eligible for reclassification out of the floodplain/floodway area and submitted at the time of application. A final Letter of Map Amendment (LOMA) or Letter of Map Revision-Based on Fill (LOMR-F) from FEMA along with an elevation certificate and all other information to document the reclassification must be provided to DCA at the completion of the project; and
  - (6) For rehabilitation projects only, DCA may consider evidence that the property is eligible for flood insurance and that such insurance will be in place if awarded funding from DCA in lieu of a CLOMA or CLOMR-F.
- (iii) Additional requirements for HOME Projects and projects that have other HUD funded sources including, but not limited to, PBRA:
- (1) The HOME and HUD Environmental Questionnaire must be included in the appendix as listed in the required format of the Phase I Report.
  - (2) Where construction, including site improvements, and landscaping activities occupy or modify the floodplain/floodway, documentation for HOME Funding must include evidence that the eight-step

Floodplain Management process has been followed as mandated by 24 C.F.R. § 55.20 (Executive Order 11988).

- (3) Documentation from the Environmental Professional regarding direct and indirect impacts associated with constructing the project on or near a floodplain/floodway.
- (4) Documentation from the Environmental Professional regarding proposed mitigation.
- (5) Documentation from the Environmental Professional regarding the consideration of alternative locations for the development.
- (6) HOME-funded projects may require flood insurance. Such insurance must be in the form required by the US Department of Housing and Urban Development.

4. **Public and Historic Records Review.** In addition to those standard environmental record sources listed in Section 8.3.4 of ASTM E 1527-13, the Environmental Professional must review the most current version of following databases:

- a. FINDS List (1/4 mile search distance).
- b. TRI List (1/4 mile search distance).
- c. State “Non-HSI” List (a.k.a. Georgia HSRA Notification Files within one Mile).

The Non-HSI List must be no older than six (6) months.

5. **Noise.** All new construction and rehabilitation projects must meet DCA requirements for interior and exterior noise limits. The DCA and HUD Noise Limitations are 45 decibels (dB) for interior locations and 65dB for exterior locations. For HUD funded projects submitted to DCA, all new construction and rehabilitation projects must also meet the requirements set forth in the HUD noise regulations, 24 C.F.R. Part 51 Subpart B (24 C.F.R. § 51.100 *et seq.*).

a. **Noise Assessment**

(i) The Environmental Professional must determine if the subject property (or any part thereof as measured from the property line) is within:

- (1) five (5) miles of a civil airport;
- (2) fifteen (15) miles of a military airfield;

- (3) 1000 feet of a major highway or busy road with greater than 10,000 average daily traffic count; or
- (4) 3000 feet of a railroad or rail line.

These conclusions and supporting discussion should be included in Section 5.4.22 of the Phase I Report. Also, if the subject property (or any part thereof as measured from the property line) is within the distances of noise sources discussed in the paragraph above, the Environmental Professional must complete a noise assessment in accordance with the HUD Noise Assessment Guidelines (“NAG”)<sup>2</sup> and 24 C.F.R § 51.100 *et seq.* In addition, the Environmental Professional must provide an opinion on the results of such assessment/study, and the report must contain a complete mitigation plan for remediation of sound levels. Noise levels shall be documented using the Site DNL Calculator located at HUD’s website ([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/review/noise](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review/noise)).

(ii) The Noise Assessment must include the following documentation in the appendix as listed in the required format:

- (1) Map(s) that clearly delineate the distances between the subject buildings and/or exterior amenities and the above-listed noise sources (the location of the noise assessment locations (NALs))
- (2) Documentation from the Georgia Department of Transportation detailing the most recent traffic counts for major highways or busy roads with greater than 10,000 average daily traffic count
- (3) Documentation from applicable railroad operators regarding daily operations
- (4) Noise contours published by military or civil airports
- (5) Noise contours constructed according to the HUD Noise Assessment Guidelines when published contours are not available for civil or military airports

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<sup>2</sup> The Noise Assessment Guidelines are contained within the HUD *Noise Guidebook* which can be found at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/training/guidebooks/noise](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/training/guidebooks/noise).  
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- (6) Print out of the Site DNL calculator and supporting documentation.
- (iii) The noise assessment must use ten (10) year traffic projections for roadway, aircraft, and railway noise.
- (1) Where ten (10) year traffic projections are not available for aircraft or railway noise, the Environmental Professional may use currently available noise projections, and must notate this information in the noise assessment.
  - (2) For ten (10) year traffic projections, the Environmental Professional must take currently available traffic projections and estimate a 3% per year growth until 2024 and must notate this calculation in the noise assessment.
  - (3) Alternative methods for projecting 10 year traffic projections must be accompanied by adequate documentation from state and local planning authorities.
- (iv) In cases where there are other contributing noise sources, such as factories, mills, or other noise sources that may emit loud levels of noise, the noise evaluation should not be limited to roadways, aircraft and railway noise. DCA reserves the right to consider any additional possible noise sources in determining whether the DCA noise requirements have been met. At its discretion, DCA will use the standard set forth in the Noise Guidelines 24 CFR 51.103 to evaluate the day-night average sound levels produced by the other contributing noise sources that states: “day-night average sound level produced by the loud impulsive sounds alone shall have 8 decibels added to it in assessing the acceptability of the site.”

**b. Noise Attenuation Plan**

If the Noise Assessment data indicates that the calculated 10 year projected noise level at any building or exterior amenity is greater than the HUD “Acceptable” standard of 65 decibels (dB), a complete noise attenuation plan is required. The proposed remediation must demonstrate that it will bring the interior sound levels to 45 dB and exterior sound levels to 65 dB, in accordance with the HUD Noise Assessment Guidelines (“NAG”), 24 C.F.R § 51.100 et seq..

The Attenuation Plan must be submitted with the Phase I Report in the appendix as listed in the required format. The noise attenuation plan must contain sufficient detail to allow DCA to independently verify that the proposed interior and exterior noise mitigation measures will result in these reduced noise levels. All sound mitigation costs must be included in the construction development budget.

- (i) In cases where interior noise levels are proposed to be mitigated partially or completely through the use of specified building materials, the Applicant must submit a letter from the architect and/or environmental professional that:
  - (1) discusses the sound transmission class of the construction materials that are to be specified for the project;
  - (2) contains an estimate of the interior noise levels in the interior of the buildings at the project site after construction is completed.
  - (3) provides an opinion that the noise attenuation plan will reduce noise levels to an acceptable level.
  - (4) HUD's Sound Transmission Classification Assessment Tool (STraCAT) assessment tool may be used as support for this portion of the plan.
- (ii) In cases where noise levels are proposed to be mitigated through either existing barriers or future barriers constructed on the site, the environmental professional must provide the appropriate workcharts from Chapter 5 of the HUD *Noise Guidebook* to demonstrate the value of the barrier adjustment. HUD's on-line Barrier Performance Module may only be used to supplement the traditional workcharts from the *Noise Guidebook*. Documentatiton to support the barrier performance must also be provided as follows:
  - (1) scaled diagrams of the physical situation proposed with noise barrier containing detailed heights, lengths, and angle measurements;
  - (2) a description of the composition of the natural or manmade barrier;
  - (3) topographic maps that support the elevations of the noise source, proposed barrier, and ground floor elevation of the proposed building or amenities' structure.
  - (4) DCA does not consider any type of tree to provide any barrier to the transmission of sound.

- (iii) If the proposed project has HOPE VI funds or PBRA funds and HUD has made an independent determination that the NAG and/or Noise Attenuation Plan is acceptable or that a waiver of HUD requirements has been granted, then documentation from HUD, along with the proposed noise attenuation plan, should also be included in the appendix as listed in the required format.

6. **Water Leaks/Mold/Fungi/Microbial Growth.** The Environmental Professional must identify during the site reconnaissance any visible water leaks, mold, fungi or microbial growth in or on any on-site structures or improvements that will not be demolished or replaced. For multi-family housing structures, the Environmental Professional must evaluate water leaks, mold, fungi and microbial growth in every unit in which the Environmental Professional is conducting a lead based paint, radon, or asbestos assessment. If no lead based paint, radon, or asbestos assessment is being performed for the multi-family housing structure, the Environmental Professional must attempt to evaluate water leaks and mold in 10% of the units on the property or, at a minimum examine at least five (5) units. Each of the buildings on the property must be examined for water leaks and mold.

- a. The Environmental Professional must visually examine the following areas in the selected units during the site reconnaissance and must discuss all findings in the Phase I report: (i) ventilation systems; and (ii) areas behind walls, under floors, and above ceilings—when such areas are readily accessible. What will be considered “readily accessible” will vary with the particular situation of the subject property and will depend on the professional judgment of the Environmental Professional.
- b. The Environmental Professional must state whether areas behind walls, under floors, and above ceilings were readily accessible.
- c. If such conditions and/or materials exist on the properties, the Qualified Environmental Professional must include recommendations for the elimination, removal, or remediation of these conditions and/or materials according to all EPA and HUD guidelines, as applicable.
- d. The Environmental Professional must complete any other investigation or testing required by EPA and HUD mold guidelines.

- e. Upon reviewing 5.4.17 of the Phase I Report, DCA may require further investigation and/or testing at its sole discretion.

**7. Radon Gas.** The Phase I Report must discuss the 1993 EPA Map of Radon Zones's, or any updated EPA Map of Radon Zone's, designation of the property for any project and include the EPA Radon map in the the appendix as listed in the required format.

- a. If the Applicant's project involves the renovation or use of an existing structure, a radon test must be performed to determine radon gas levels, *unless* an EPA approved short-term radon test has been performed in the lowest public areas of the building(s) within the last six months which demonstrated radon levels at or below 4 pci/l or 0.02 WL. A copy of the Radon Report should be attached to the Phase I Report. Any readings that exceed the EPA limits must mitigate radon levels are part of the work scope in accordance with *ASTM E2121 - 13 Standard Practice for Installing Radon Mitigation Systems in Existing Low-Rise Residential Buildings*.
- b. If the Applicant's project involves new construction, the building(s) must be constructed in accordance with current EPA requirements for radon resistant construction techniques, including, but not limited to, *ASTM E1465 - 08 Standard Practice for Radon Control Options for the Design and Construction of New Low-Rise Residential Buildings* and the buildings must be tested for radon upon completion of construction. The Phase I Report must include statements to this effect in Section 5.4.21.
- c. The minimum requirement for testing locations is one test per every 2000 square feet of ground-contact units. However, radon concentrations can be highly localized and best practice for radon testing should involve a certified radon tester (<http://www.radongas.org/> or <http://www.nrsb.org/>). In addition, it is recommended that at least one test be located in each building on each floor above the ground-contact level, covering a minimum of 10% of the units on all floors above the ground floor.

**8. Asbestos.** An asbestos survey must be performed on all buildings scheduled for demolition or renovation, regardless of when they were constructed. The Environmental

Professional must note the condition of all presumed and suspected asbestos containing materials (“ACM”), as defined by OSHA regulations, in the Phase I Report.

- a. If any structure or improvement is suspected or presumed to have ACM, then a representative sampling is required to confirm the presence and extent of any such ACM. A minimum of one unit per building or 10% of the total units shall be tested.
- b. If a comprehensive asbestos survey was performed for the property on or after January 1, 1986 by a Georgia licensed asbestos professional then the Environmental Professional must review the survey and discuss it in the Phase I Report.
- c. All asbestos related assessments, testing, and remedial action programs must be in compliance with state and federal law and current EPA guidelines, including, but not limited to, *Guidance for Controlling Asbestos Containing Materials in Buildings*, June 1985, EPA 560/5-85-024 (a.k.a. the “Purple Book”) (available from the TSCA Hotline (202) 554-1404 or Asbestos Ombudsman (800) 368-5888.
- d. DCA requires friable ACM to be remediated by removal or encapsulation.
- e. An Operations and Maintenance (“O&M”) Plan will be required for any encapsulated friable ACM or any non-friable ACM that will remain in any structure or improvement.
  - (i) All Operations and Maintenance plans must be in conformance with current EPA guidelines, including, but not limited to, *Managing Asbestos in Place: A Building Owner’s Guide to Operations and Maintenance Programs for Asbestos Containing Materials*, July 1990, EPA 20T-2003 (a.k.a. the “Green Book”) (available from the TSCA Hotline (202) 554-1404 or Asbestos Ombudsman (800) 368-5888 and the DCA O&M Guidance Plan included in this Manual.
- f. The demolition or renovation of any improvement must be completed in accordance with all applicable laws and regulations.

## **9. Lead-Based Paint**

- a. The following lead-based paint assessment activities are required when *any* current or former structure located on the subject property was constructed prior to 1978:
- (i) Where such structures are present on the subject property and are not planned for demolition, lead based paint sampling is required of both the interior and exterior of the building using EPA and HUD approved testing methods and procedures, *unless* the structure has a valid certificate of compliance under applicable lead-based paint laws. If any lead-based paint is detected, then soil sampling for total lead content must conform to all requirements in Section D.
  - (ii) Where such structures are present on the subject property and are planned for demolition, lead-based paint sampling is required of both the interior and exterior of the building, using EPA and HUD approved testing methods and procedures, to determine the presences of lead based paint. Lead in soil testing will be required *unless*:
    - (1) No lead based paint is discovered upon sampling both the interior and exterior of the building (using EPA and HUD approved testing methods and procedures); or
    - (2) The structure has a valid certificate of compliance under applicable lead-based paint laws.
  - (iii) Where such structures have been demolished, lead in soil sampling for total lead is required, *unless* waived by DCA at its sole discretion.
- b. Prior to conducting any lead in soil sampling, applicants are strongly encouraged to submit a proposed scope of work conforming to all the requirements for Phase II investigations found in Section D of this manual. DCA requires conformance to the standards for Phase II investigations, even though, lead in soil is a non-scope issue, according to the ASTM Standards. Thus is not normally under the purview of a Phase II investigation.
- (i) If the Applicant does *not* submit a proposed Phase II scope of work and the Site Map to DCA for DCA's prior review, *or* if the lead in soil sampling has already been completed, DCA may, at its sole discretion,

require additional testing and analysis prior to completing the threshold review of the Application.

- (ii) If the Applicant does not receive a response from DCA regarding the proposed Phase II scope of work within fifteen (15) business days prior to Application submission, the Applicant should proceed with the Phase II work. DCA reserves the right upon reviewing the Report for any such Phase II to require that the Applicant conduct any of the following environmental activities, at DCA's sole discretion: (i) perform additional testing; (ii) perform remediation and confirmatory testing; (iii) obtain a brownfield's "limitation of liability"; or (iv) obtain a "no listing" letter under HSRA.
- c. Any lead-based paint in excess of applicable standards must be inspected, remediated or abated in accordance with all applicable federal, state and local laws and regulations, including, but not limited to, the Georgia Rules for Lead-Based Paint Abatement, Certification and Accreditation.
- d. An O&M Plan is required for any lead-based paint remaining in place and must conform to the O&M Guidance Plan in the Operations Section of this Manual.

## **10. Lead in Drinking Water**

- a. Where a local utility currently provides or may provide drinking water to the property, the Environmental Professional must review and provide in the Phase I Report the most current information documenting the local utility's compliance or non-compliance with current EPA standards for lead in drinking water. The Environmental Professional must also conduct a visual assessment of the plumbing system(s) in any buildings that will not be demolished to determine the risk of lead in drinking water due to lead solder in pipes.
- b. If the Environmental Professional's review and/or visual assessment suggests a risk of lead in drinking water at the property, testing must be performed at the tap in accordance with the EPA publication *Lead in Drinking Water in Schools and Non-Residential Buildings*, EPA 812-B-94-002, April 1994.
- c. If the buildings are more than 25 years old (built prior to 1987), the systems must be tested for lead in drinking water according to the guidelines

referenced above, regardless of the results of the review or visual assessment.

- d. If lead is detected in the drinking water, remediation is required in accordance with all applicable federal, state and local laws and regulations.
- e. If all the plumbing is removed and replaced with pipes in accordance with Section 1417(e) of the Safe Drinking Water Act (SDWA), then lead testing is not required. The SDWA states that "lead free" means those fittings and fixtures that are in compliance with the standard established under Section 1417(e) with regard to plumbing fittings and fixtures intended to dispense water for human consumption. Further, Section 1417(a)(1) of the SDWA requires that only "lead free" pipe, solder or flux may be used in the installation or repair of (1) Public Water Systems, or (2) any plumbing in a residential or non-residential facility providing water for human consumption.

#### **11. PCBs**

- a. Documentation must be included in the Phase I report indicating the condition of any transformers or other electrical equipment observed on or adjacent to the property that could contain polychlorinated biphenyls ("PCBs").
- b. The Environmental Professional must determine ownership of and responsibility for the electrical equipment and include in the Phase I Report a discussion of such ownership/responsibility and a statement as to whether or not the equipment contains PCBs.

#### **12. Photographs.** Photographs documenting the current state of the property must be included in the appendix as listed in the required format of the Phase I Report.

- a. The photographs must show the inside of any structures and the grounds of the property (including adjacent sites).
- b. The photographs should be clearly dated and labeled with a description of the view presented.

#### **13. Endangered Species.** The Environmental Professional must review the list of protected species from the U.S. Fish and Wildlife Service, check the occurrence records from the Georgia Natural Heritage Inventory Program, and provide comment regarding

on-site habitats, the potential for the presence of endangered species and whether or not the presence of such species will be impacted by the proposed development.

**14. Other Hazards and Considerations.**

- a. The Environmental Professional must also consider and discuss in the Phase I Report other hazards or considerations, including, but not limited to, the presence of urea formaldehyde in existing structures, existing septic tanks or wells on the property, or the absence of the availability of a municipal water or sewer system to the property, including any moratorium on new hookups.
- b. The Environmental Professional must provide documentation that the municipal water and sewer services are available to the property, as such, service is required under the DCA's Appendix I Threshold Criteria for all properties seeking DCA approval. A record of a phone conversation between the Applicant and the relevant authority, a record of a conversation between the Environmental Professional and the relevant authority, or a copy of a letter sent to the Applicant by the relevant authority are all acceptable forms of documentation.

**15. Historic Preservation.**

**a. General Requirements**

- b. The Environmental Professional must provide a professional opinion on whether the proposed project may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter "National Register") pursuant to Section 800.13 of the historic preservation regulations, 36 CFR Part 800. 36 CFR Part 800 also implements Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 (hereinafter Section 106") and the Native American Graves Protection and Repatriation Act (NAGPRA) (U.S. Code 25, §3001, et seq. The Environmental Professional must provide a professional opinion on its findings in the appendix as listed in the required format of the Phase I report. Section 106 requires DCA, as a Responsible Entity for the administration of federal funds, to identify and assess the effects of its actions on historic resources. As such, DCA must consult with appropriate state and local officials, Indian tribes, applicants for federal assistance, the Advisory Council on

Historic Preservation and members of the public and consider their views and concerns about historic preservation issues when making final project decisions. Section 106 applies when three thresholds are met: 1) there is a federal or federally licensed action, including grants, licenses, and permits, and 2) that action has the potential to affect properties listed in or eligible for listing in the National Register of Historic Places 3) that action has the potential to affect places of cultural and historical significance such as an archeological site or a traditional cultural property - Effects are resolved by mutual agreement, usually among the affected state's State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), DCA, and any other involved parties (in this case, the Applicant).

**Tribal Historic Preservation Review**

If it is determined that the proposed project will affect tribal historic properties, DCA must consult with THPO to determine actual effect based on criteria found in the Council's regulations. DCA shall forward gathered documentation to the appropriate Tribal Council for a thirty 30) day determination of eligibility.

**c. Preservation Professional** If it is determined that the proposed project will affect historic properties, the Applicant or Environmental Professional must employ a qualified professional or contract with a qualified professional(s) (hereinafter "Preservation Professional") who meet the minimum requirements set forth in the *Secretary of Interior's Professional Qualifications Standards* at 36 CFR Part 61 (hereinafter "Professional Qualification") to determine actual effects base on criteria found in the Council's regulations and made one of three determinations, *No effect*, *No adverse effect* or *Adverse effect*. In addition to these minimum requirements, the Preservation Professional must have a minimum of one-year experience in applying the National Register of Historic Places eligibility criteria to buildings, structures and districts when identifying historic properties and in applying the *Secretary of the Interior's Standards for Rehabilitation* to rehabilitation projects and must have demonstrated the successful application of acquired proficiencies in the field of historic preservation by meeting at least one of the following:

- i. Demonstrated experience in completing the application forms for the rehabilitation of historic buildings pursuant to the National Park Service's Federal Historic Preservation Tax Credit program; or
  - ii. Demonstrated experience in developing plans for the rehabilitation or restoration of historic buildings that have been implemented; or
  - iii. Have received an award from a local, state, or national organization in recognition for a historic building rehabilitation or restoration project; or
  - iv. Have served on local historic preservation commission, state National Register of Historic Places Review Board, or state or national historic preservation board or committee in capacity of architectural Historian or Architect
- Applicants must notify DCA and SHPO in writing once their Preservation Professional has been selected, but prior to initiation of the undertaking. The notification shall include the curriculum vitae of the Preservation Professional(s) qualifications and the address, phone and fax numbers of the Applicant's primary points of contact for project activities.

**d. Minimum Requirements**

For the proposed project, the Preservation Professional must, at a minimum:

- i. consult previous surveys of historic properties and/or districts, if any, to identify if the subject property or other properties within the area of potential effects are fifty (50) years old or older and evaluate each for eligibility in the National Register of Historic Places;
- ii. consult with the owner of the property and record such information (owner's knowledge of the past history, age, alterations, etc.) for use by the Preservation Professional in making a decision concerning the National Register-eligibility of subject properties; and
- iii. maintain a file on the identification and National Register evaluation of each subject property and on other properties within the area of potential effects.

The file shall include the following data used in the determination:

- 1) Interior and exterior building and neighborhood context photographs per Section 106 keyed to a location map;

2) Information on whether the property and/or district meets the criteria for the National Register inclusion; and

3) Information indicating whether the property is contributing or non-contributing as part of a National Register-eligible historic district, or if it is individually eligible for the National Register.

**e. Determinations**

- If the Preservation Professional needs assistance in determining the eligibility of a property or district for the National Register, or the Preservation Professional and the Applicant disagree on the eligibility of a property or district, the Preservation Professional shall forward the documentation gathered to the SHPO for a thirty (30) day determination of eligibility. If necessary, the Applicant may obtain a formal determination of eligibility from the Keeper of the National Register in accordance with 36 C.F.R. Section 800.4(c).

- If the Preservation Professional determines that the subject property does not meet the National Register criteria, then the Preservation Professional shall submit a letter to the Applicant indicating that there is No Historic Property. Applicant shall include a copy of the letter in the appendix as listed in the required format.

- If the Preservation Professional determines that the property is a contributing structure which is either listed in the National Register or is eligible for listing in the National Register (or a lot within such a listed or eligible district), prior to the initiation of any work, the Applicant shall request the Preservation Professional's review of the proposed work. Within thirty (30) days from the receipt of a request from the Applicant, the Preservation Professional shall review work write-ups or plans and specifications submitted for all proposed activities for their effects to historic properties as follows:

The Applicant in consultation with the Preservation Professional shall develop preliminary design documents for SHPO review and approval prior to the initiation of construction activities. The Applicant shall take into account the comments and recommendations made by the Preservation Professional for both rehabilitation and new construction activities.

a) Other: The Applicant shall notify SHPO when ground-disturbing activities, to include excavation for footing and foundations, installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines, and septic tanks, are proposed as part of an undertaking. In addition, if previously unidentified historic properties, including archaeological sites, are discovered during project rehabilitation or construction, the Applicant shall immediately stop all project activities. The Applicant shall immediately contact the Preservation Professional for consultation.

**f. Public Participation Regarding Activities**

The Applicant, in consultation with the Preservation Professional, shall determine the public interest in planned rehabilitation or new constructions activities which may affect potentially historic properties or districts by informing the public about potentially historic properties while meeting its public participation requirements as set forth in the regulations for the HOME program and in complying with 24 C.F.R. Part 58. Section 106 procedures require public participation and consultation with the State Historic Preservation Officer and any individuals and organizations that have a demonstrated interest in the undertaking of the historic preservation project at every stage of the process, i.e., from 1) initiation; 2) identification and evaluation of historic properties; 3) determination of effects; 4) resolution of adverse effects; to 5) completion. This is intended to insure that the people and entities most affected by a federally funded project have an opportunity to participate in the decisions affecting it. The Applicant shall notify the Preservation Professional of the public interest in any project activities if planned activities are determined to trigger the requirements of Section 106. The Applicant shall record all comments received at any public meetings, in writing, or by phone, which records shall become part of the Historic Preservation Environmental Review Record.

**16. Vapor Intrusion**

The Phase I ESA must include a Tier I Vapor Encroachment Screening according to ASTM E 2600-10 standards to determine if there is a potential for vapors to occur in the subsurface below existing and/or proposed on-site structures from

hazardous substances that consist of VOCs, SVOCs and inorganic volatile compounds. If the Vapor Encroachment Screening reveals that vapors break the boundary of the subject property, a Vapor Encroachment Condition (VEC) exists and "may" present an unacceptable health risk to occupants. An additional assessment must be performed according to ASTM E 2600-10 standards.

### **C. Required Documentation for Phase I Reports.**

The following documents must be included in the Phase I Report:

1. **Environmental Consultant Signature Page for Phase I Reports.** This document must be completed, signed by the appropriate parties, and included immediately after the cover of the Phase I Report. This form can be found within the Forms Section in this Manual.
2. **The Environmental Certification.** This document must be completed, signed by the Environmental Professional, and included in the appendix as listed in the required format. This form can be found within the Forms Section in this Manual.
3. **Owner Environmental Questionnaire & Disclosure Statement.**
  - a. This document must be completed and signed by the owner of record of the proposed development site, and must be signed and notarized in the spaces provided no earlier than ninety (90) days prior to Application submission. This form can be found within the Forms Section in this Manual.
  - b. For all information to the document that is not or cannot be provided by the owner of record, the Environmental Professional must seek out the information and address the information in the Phase I Report.
  - c. The signed and notarized Owner Environmental Questionnaire & Disclosure Statement must then be forwarded to the Environmental Professional to be reviewed and included in the appendix as listed in the required format of the Phase I Report.
4. **Property Log and Information Checklist.** This document must be prepared by the Environmental Professional and attached to the Phase I Report. All entries must be fully documented and explained in the Phase I Report. This form can be found within the Forms Section in this Manual.

5. **HOME and HUD Environmental Questionnaire.** This document must be included in the Phase I Report for all projects requesting HOME funding and/or HUD funding sources, including but not limited to PBRA. This form can be found within the Forms Section in this Manual.
6. **Proof of Insurance.** Proof of insurance in specified amounts listing GHFA and DCA as an additional insured on the general commercial liability policy and giving the proper 30-day cancellation period.
7. **Comprehensive Historical Review.** This must be discussed in the Phase I Report and documentation must be included in the appendix as listed in the required format of the Phase I Report.
8. **Letters of Reference.** The environmental consulting firm that performed the Phase I (and Phase II, if required) must include in the appendix as listed in the required format of the Phase I Report, three letters of reference attesting to the firm's prior work. At least one of the references should be from a real estate firm or law firm that used the environmental consulting firm to support a real property transaction. Letters of reference must be for work completed within the last twenty four (24) months.
9. **The Georgia Historic Preservation Division Environmental Review Form.** The Environmental Professional must prepare this document and a copy must be attached to the Phase I Report for all projects that may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places. All entries must be fully documented and explained in the Phase I Report. This form can be found within the Forms Section in this Manual or on the HPD website.

#### **D. Requirements for Phase II Investigations and Non-Scope Testing**

##### **1. Purpose**

- a. The purpose of a Phase II Environmental Site Assessment (Phase II) or any Non-Scope Testing (Non-Scope Testing) (collectively referred to as 'testing') is typically to determine the presence or absence of recognized environmental condition(s), suspected environmental concern(s), extent of

non-scope issue(s), or to quantify the extent of an actual or suspected release or potential release identified in the Phase I Report. Testing may require additional information gathering and/or physical sampling, if appropriate. If the Phase I Report documents a recognized environmental condition, suspected environmental concern or non-scope issue, a Phase II Environmental Site Assessment or Non-Scope Testing is required in all but the most exceptional circumstances. Testing must be completed as part of the Application submission.

- b. The Phase II and Non-Scope testing need only extend to those investigations necessary to resolve the recognized environmental conditions, suspected environmental concerns, or non-scope issues, or to quantify the extent of any release identified in the Phase I Report. If clear and convincing evidence exists that a property is *not* impacted by a potential recognized environmental condition, suspected environmental concern, or non-scope issue, then DCA at its sole discretion may waive the requirement for a Phase II for that issue.
- c. The Phase II and Non-Scope testing must include thorough documentation of the methods utilized to conduct sampling and research. Good management practices and regulatory standards must be followed at all times, especially where physical sampling and laboratory analysis is involved. Groundwater sampling activities must comply with current U.S. Environmental Protection Agency and Georgia Environmental Protection Division standards and policies.

## **2. DCA Review of Testing Scope of Services**

- a. If a Phase I Report recommends a Phase II Environmental Site Investigation or any other testing relating to non-scope items (Non-Scope Testing) (collectively referred to in this Section as “testing”), further testing, the Applicant is strongly encouraged to submit the Phase I Report (text only), along with the proposed Phase II or other Non-Scope Testing scope of work and the Site Map, no later than sixty (60) days prior to Application submission for DCA to review.

- b. The proposed scope of work must be submitted to the attention of the Office of Affordable Housing Architecture & Construction Department with a cover letter clearly indicating its contents and requesting approval of the scope.
- c. While submittal of this documentation is not required, the strict time frame associated with Threshold Review could make it impossible for modifications testing to be completed prior to selection of a project if DCA determines that the work scope is not adequate.
- d. If the Applicant does not submit a draft of the proposed testing scope of work, or if the testing has already been completed, DCA may, at its sole discretion, require that the Applicant conduct any of the following environmental activities prior to completing the threshold review of the application: (i) perform additional testing; (ii) perform remediation and confirmatory testing; (iii) obtain a brownfield's "limitation of liability"; (iv) obtain a "no listing" letter under the Georgia Hazardous Site Response Act ("HSRA"), O.C.G.A. § 12-8-90 *et seq.*, 1992, as amended; (v) develop a Noise Attenuation Plan; (vi) develop an O & M Plan with respect to certain known, suspected, or potential environmental hazards which are discovered during the Phase I and/or Phase II reviews. If the required activities cannot be completed within the required time frame, the project will fail Threshold.
- e. DCA will review the proposed scope of work and issue its concurrence or include additional work scope items that will satisfy the threshold requirements.
- f. If the Applicant does not receive a response from DCA regarding the proposed scope of work within fifteen (15) business days prior to Application submission, the Applicant should proceed with the testing.
- g. DCA reserves the right upon reviewing the report for any such testing to require that the Applicant conduct any of the following environmental activities, at DCA's sole discretion: (i) perform additional testing; (ii) perform remediation and confirmatory testing; (iii) obtain a brownfield's "limitation of liability"; (iv) obtain a "no listing" letter under HSRA; (v) develop a Noise Attenuation Plan; or (vi) develop an O & M Plan with respect to certain known,

suspected, or potential environmental hazards which are discovered during the Phase I and/or Phase II reviews.

- h. The proposed scope of work must:
  - 1. List the recognized environmental conditions, suspected environmental concerns, and/or non-scope issues.
  - 2. Specify the locations and depth of any proposed monitoring wells, soil borings, and/or samples and include a Site Map showing the same.
  - 3. Specify the number of samples and depth of samples.
  - 4. Specify the test methods and analytical methodology, which will be used.
  - 5. Include a cost assessment for all testing and reporting activities.

### 3. The Phase II Report

The Phase II Report must be performed under the supervision of, reviewed, signed, and certified by an Environmental Professional, using the Environmental Consultant Signature Page for Phase II Reports. This can be found in the Forms Section of this Manual. The Environmental Certification must appear immediately following the cover page of the Phase II Report. If the Environmental Professional, supervising and signing the Environmental Consultant Signature Page for Phase II Report, is not the same as the Environmental Professional who signed the Phase I Report for the property. The qualifications of such personnel should be described in the Phase II Report. The Phase II Report also must summarize in a table and/or figure format all soil and/or groundwater analytical data. Non-scope testing must meet the below requirements, where applicable.

- a. The Phase II Report must summarize all applicable state and federal notification and/or cleanup standards.
- b. The Phase II Report must include an estimate of costs for any necessary environmental remediation. This cost estimate must be included in the development cost estimates and contain both the *total* estimated costs and the estimated costs for *each* separate activity.
- c. The Phase II Report must be clearly dated on the cover and must not be less than one hundred eighty (180) days old at the time of formal application submittal.

- d. The Environmental Professional must thoroughly explain all investigations, analytical data, test results, findings, and conclusions in the Phase II Report. This includes the Environmental Professional's interpretations and clear recommendations.
- e. Appropriate documentation (e.g., records review data or research, photographs, interview notes, any analytical results, etc.) that supports the findings and opinions in the Phase II Report must be included in the appendices to the Report.
- f. If volatiles are part of the testing scope, the Environmental Professional must utilize a photo-ionization detector ("PID"), or other appropriate field organic screening instrument, to analyze the likely presence of volatile organic compounds in any soil borings or samples taken during the performance of any Phase II or any other soil testing event and must discuss the results of the PID analysis in the Phase II Report.
- g. For any groundwater testing for metals, turbidity measurements must be performed in the field. If turbidity is greater than 5 Nephelometric Turbidity Units ("NTUs"), both a filtered and a non-filtered analysis must be run.
- i. The Phase II Report must contain a copy of any soil boring logs and must show the depth to groundwater, except where borings are not installed to groundwater.
- j. The Environmental Professional must require any laboratory submitting analytical results relating to a project to provide the following stipulation in the report:

*I stipulate that **[name of laboratory]** is accredited by **[name of accrediting agency]** and has been assigned **[accreditation number]**. The accreditation relates to **[media - e.g., air, drinking water, hazardous waste]**. The effective date of accreditation is **[date]** and expires on **[date]**. I further certify that the sample(s) for which this data is being submitted has been handled pursuant to the appropriate chain of custody.*

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

## **E. Professional Opinion and Related Requirements for Phase I and Phase II Reports**

### **1. Primary Requirements.**

- a. In any Phase I Report, the Environmental Professional must provide a professional opinion as to:
  - (i) The existence or non-existence of any recognized environmental conditions, suspected environmental concerns, and/or non-scope issues.
  - (ii) Whether the property has known contamination or is at risk for contamination from any recognized environmental conditions, suspected environmental concerns and/or non-scope issues.
  - (iii) Whether further environmental assessment activities are necessary.
  - (iv) Whether “all appropriate inquiry,” as described in Section 3.2.6 of ASTM E 1527-13, was conducted.
  - (v) Whether the review of pertinent documents or conditions addressed in each sub-section in Sections 4.0 and 5.0 of the Phase I Report indicates or does not indicate the presence of any recognized environmental conditions.
- b. In any Phase II Report, the Environmental Professional must provide a professional opinion as to:
  - (i) Whether the property is contaminated.
  - (ii) Whether any contamination discovered is from an on-site or off-site recognized environmental condition, suspected environmental concern, and/or non-scope issue.
- c. The Environmental Professional must identify and comment upon the significance of all data gaps that affect the Environmental Professional's ability to identify any recognized environmental conditions, suspected environmental concerns, and/or non-scope issues in Section 6.0 of the Phase I Report.

- d. The Phase I or Phase II Report must list the following parties as “users” of the Report and state that they may use and rely upon it: the entity that has title to the property or the entity that will take title to the property, project development partners, equity partners for the project, and any other party which would be defined as a “user” within the meaning of Section 3.2.98 of ASTM. For Phase I Reports, this list should be included in Section 2.6 of the Report and each of the named users must be interviewed for the “user interview” portion of the Report, Section 4.3.
  - e. The Phase I Report or Phase II Report and the Environmental Certification must state that DCA and GHFA may rely on the Phase I Report and Phase II Report. For Phase I Reports, this statement should be included in Section 2.6 of the Report.
2. **Additional Requirements.** In any Phase I or Phase II where contamination from an on-site or off-site source is known or has been determined, the Environmental Professional must provide a professional opinion as to:
- a. Whether any regulatory reporting or cleanup obligations are triggered.
  - b. Whether any onsite or offsite contamination at or in close proximity to the subject property poses a hazard to human health and safety.
  - c. Whether the subject property is likely to be listed on the Georgia Hazardous Site Inventory (“HSI”) or otherwise become part of an HSI site based on any documented soil and/or groundwater contamination.
  - d. Whether the proposed project would exacerbate any existing contamination, upon reviewing the site plans.
3. **Restrictions/Limitations.** The Phase I and/or Phase II Report(s) providing the Environmental Professional’s professional opinion may not contain:
- a. Any language eliminating or disclaiming the liability of the Environmental Professional or their firm.
  - b. Any language eliminating or modifying the Environmental Professional’s duties, obligations, or statement of work.

- c. The report may *not* state that it is exclusively for the use of the party who hired the Environmental Professional or that there is no accountability, obligation or liability to any third party.

**F. Insurance Requirements**

1. The Environmental Professional must carry insurance that provides full coverage for all work performed. The Environmental Professional must maintain insurance policies covering all of the following types of insurance in the greater of either the following amounts of coverage or the amounts of coverage that the Environmental Professional typically carries:
  - a. Commercial General Liability insurance, total combined single limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate;
  - b. Professional Errors and Omissions insurance with limits of \$2,000,000.00 each claim and \$2,000,000.00 in the aggregate; and
  - c. Pollution Liability insurance with limits of \$2,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, with coverage extended to include third party liability for death, bodily injury, diminution of value of property and property damage.
2. The Georgia Housing and Finance Authority (GHFA) and DCA must be named as an additional insured on the commercial general liability insurance. In addition, GHFA and DCA must also be listed as a certificate holder on all policies. The insurance should be documented on an Acord 25 certificate. Such insurance, including any deductible or self-insured retention, shall by its terms be primary with respect to any insurance carried by the Applicant or any parent, subsidiary, or affiliated entities. For such policies written on a claims-made basis, the Environmental Professional must maintain such coverage for a period of at least three (3) years following the completion of the final Phase I and/or Phase II Reports.
3. The Environmental Professional must promptly notify DCA/GHFA of any changes made to the insurance policies required by this Section.

4. Upon written request of DCA/GHFA, the Environmental Professional must promptly deliver copies of policies evidencing the insurance coverages required by this Section (F) to DCA/GHFA.
5. All required insurance shall be underwritten by an insurance carrier acceptable to DCA/GHFA and with an AM Best rating of not less than A-. Such insurance policies are to provide that the insurer must give DCA/GHFA at least thirty (30) days prior written notice of cancellation/termination/material change, and to provide that no action by the insured shall invalidate or diminish the insurance or bond(s) provided to DCA/GHFA.
6. Proof of insurance must be included in the appendix as listed in the required format of the Phase I Report.
7. For ease of processing, the project name should be included on the insurance certificate.

**G. HUD Environmental Clearance & Environmental Review Process for project applying for HOME or other federal funding.**

The Georgia Department of Community Affairs, as the responsible entity (RE) referred to in 24 C.F.R. § 58.43, Environmental Review Procedures for Entities Assuming HUD Responsibilities, is responsible for undertaking environmental reviews for proposed HOME projects. In this capacity, DCA must ensure that the environmental review process is satisfied before certain HUD funds are committed to specific projects. When initial awards of HOME funds are announced, DCA will publish notices of its intent to allocate HOME funds in local newspapers in the proposed projects' areas. After comments, if any, have been received, HUD will review the comments to determine if there has been a finding. Once that process is complete and there has been no finding, DCA will seek HUD's approval of its commitment of HOME funds to the proposed project. In order to ensure that the environmental review process is not challenged, or to avoid non compliance with HUD's environmental procedures, Owners and/or Developer of proposed projects must, once applications are submitted, refrain from undertaking activities that could have an adverse environmental impact prior to the receipt of an environmental clearance letter from DCA removing the stipulated

conditions. Such activities include acquiring, rehabilitating, converting, leasing, repairing, or constructing property. As a result, an Applicant can not commit or expend HUD or non-federal funds until the environmental review process has been completed and the Owner and/or Developer has received a clearance letter from DCA permitting project activities. For detailed procedures for complying with this requirement and completing the HOME HUD Questionnaire, please see the HOME HUD Environmental Guidance

### **III. DCA Evaluation and Conclusions**

DCA conducts an independent review of the environmental materials submitted with an application. Any environmental concerns or issues identified (e.g., soil or groundwater contamination) in the Phase I or Phase II review must be addressed in accordance with these Standards. In addition, DCA will routinely conduct an independent review of publicly available information regarding the environmental condition of a property. DCA may require additional assessment of a property, including but not limited to, file review and/or Phase II sampling.

Environmental issues with the potential to impact the subject property which are not satisfactorily identified by the Environmental Professional and are later identified by DCA can be grounds for failing the threshold review. Issues that cannot be resolved during the Application period, or which present or may present a risk to the health or safety of persons or to the environment, and/or that present an unacceptable degree of lender and/or owner liability will be grounds for site rejection. Such decisions will be made at DCA's sole discretion. Increasingly, applicable law requires environmental remediation and repair work to be performed and documented according to strict regulatory standards. If proper documentation does not exist to substantiate remedial work performed prior to the commencement of the Phase I, then limited confirmatory testing or a Phase II may be required.

Upon review of the completed Phase I and/or Phase II reports, DCA, at its sole discretion, may impose additional assessments and/or environmental actions including, but not limited to, (i) performing remediation and confirmatory testing; (ii) obtaining a

brownfield's "limitation of liability"; (iii) obtaining a "no listing" letter under HSRA; (iv) developing a Noise Attenuation Plan; or (v) developing an Operations and Maintenance Plan ("O&M Plan"), as a requirement for, or condition of, a funding commitment or tax credit allocation. Properties with recognized environmental conditions, potential environmental concerns, or non-scope issues, that are not satisfactorily addressed by Phase II testing are unlikely to pass the threshold review or be approved for funding for tax credits. No project expenditures may be incurred or any HOME funds drawn down for any activity (other than exempt activities) prior to receipt of an environmental clearance letter releasing the conditions/funds. This may be obtained by completing an environmental review of each project as described in Part III of the 2014 Environmental Manual.

DCA reserves the right to refuse to fund or to withdraw funding from a project in which environmental hazards are discovered subsequent to DCA's completion of its threshold review. However, at DCA's sole discretion, applicants may be given the opportunity (i) perform additional testing; (ii) perform remediation and confirmatory testing; (iii) obtain a brownfield's "limitation of liability"; (iv) obtain a "no listing" letter under HSRA; (v) develop a Noise Attenuation Plan; or (vi) develop an O & M Plan with respect to certain known, suspected, or potential environmental hazards, which are discovered during the Phase I and/or Phase II reviews. Option (vi) may be exercised when HUD and/or EPA regulations allow the environmental hazard to remain at the site.

#### **IV. Operations and Maintenance Plans**

Some properties may have conditions that are currently acceptable but must be maintained or confirmed throughout the compliance or affordability period or the life of the loan whichever is greater with an ongoing O&M Plan. Examples may include the presence of ACM, lead-based paint, or underground storage tanks. The following documentation will be necessary for properties that require ongoing operations and maintenance:

1. A written O&M Plan must be submitted to DCA by the developer/owner *immediately* upon the completion of any remedial actions required. An

Environmental Professional must prepare and certify that the provisions, if carried out with diligence, are sufficient to maintain the property in accordance with the DCA O & M Guidance Plan, sound business practices, and any other applicable regulatory standards. DCA will review the O & M Plan and determine if it meets the standards set forth in the DCA O & M Guidance Plan. The developer/owner must execute a written agreement with DCA that recognizes the developer/owner's obligation to carry out the O & M Plan including, if applicable, preparing documentation necessary to demonstrate compliance. At its discretion, DCA may require additional O & M Plan provisions.

2. The developer/owner must send written certification to DCA on an annual basis that certifies the property is being maintained in accordance with any applicable O & M Plans, environmental laws and regulations. The developer/owner must make an on-site inspection and inquiry before making the certification. The scope of the certification should include both the buildings and grounds, and cover the activities of the developer/owner, tenants, sub-lessees, their agents and any other third parties. These certifications must specifically address the ongoing effectiveness and adequacy of all current remedial and maintenance actions. Such certifications must be included as part of the annual Physical Inspection Report submitted to DCA.
3. In addition, an inspection and confirmation must be made immediately following the occurrence of events that might reasonably be expected to impact the environmental condition of the property or the efficacy of prescribed remedial or maintenance actions. Such events would include, but are not limited to fire, flood, building construction or rehabilitation, spills or leaks of hazardous wastes or substances, unusual or intense use of property facilities, and/or significant changes in custodial or management personnel.
4. If the developer/owner is unable to confirm that the property is being maintained in accordance with any applicable O & M Plans, environmental laws, and regulations, the developer/owner must take any and all remedial and maintenance actions necessary to correct these conditions. The developer/owner must promptly confirm

in writing to DCA the environmental status of the property immediately following implementation of any remedial actions.

5. The developer/owner must report to DCA and the appropriate local, state, or federal authority all known violations of applicable environmental statutes and state laws on the property. In addition, the developer/owner must take all necessary actions to ensure that all violations are promptly corrected and that the property is brought back to and maintained in full compliance with appropriate environmental statutes and good management practices.

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**ENVIRONMENTAL CONSULTANT SIGNATURE PAGE**

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2. Records of environmental liens and activity and use limitations)
3. Legal description

#### **APPENDIX E -- NON-SCOPE TESTING**

1. Lead based paint
2. Lead in soil
3. Lead in water
4. Asbestos
5. Radon
6. Vapor Encroachment Screening

#### **APPENDIX F -- NOISE ASSESSMENT DOCUMENTATION (if applicable)**

1. Noise assessment report
2. Noise attenuation plan

#### **APPENDIX G -- REGULATORY SEARCH INFORMATION**

1. Regulated Facilities Radius Map Report
2. File Review Documents (if applicable)

#### **APPENDIX H -- RECORD OF COMMUNICATIONS AND INTERVIEWS**

1. User/applicant interview
2. (abandoned properties) Interview of owners and occupants of neighboring properties
3. documentation of attempts to interview:
  - a. local fire department;
  - b. state or local health department or environmental agency;
  - c. local agency responsible for issuance of building permits;
  - d. local agency responsible for issuance of groundwater

#### **APPENDIX I -- AUTHOR CREDENTIALS, DOCUMENTATION OF QUALIFICATION AS AN "ENVIRONMENTAL PROFESSIONAL"**

#### **APPENDIX J -- OWNER ENVIRONMENTAL QUESTIONNAIRE**

#### **APPENDIX K -- PROPERTY LOG AND INFORMATION CHECKLIST**

#### **APPENDIX L -- PROOF OF INSURANCE**

#### **APPENDIX M -- LETTERS OF REFERENCE**

**APPENDIX N -- ENVIRONMENTAL CERTIFICATION**

**APPENDIX O-- CONSUMER CONFIDENCE REPORT ON WATER QUALITY**

**APPENDIX P-- ENDANGERED SPECIES DOCUMENTATION (if applicable)**

**APPENDIX Q-- SHPO REVIEW DOCUMENTATION (if applicable)**

**APPENDIX R-- ADDITIONAL HOME REQUIREMENTS (if applicable)**

1. HOME and HUD Environmental Questionnaire
2. HOME and HUD Questionnaire supporting documentation
3. 8-step process for floodplains and wetlands

**APPENDIX S— OPERATION AND MAINTENANCE MANUAL (if applicable)**

**APPENDIX T – PREVIOUS REPORTS (if applicable)**

1. Previous Phase I (text and pertinent appendices only)
2. Previous Phase II Reports

**APPENDIX U-- OTHER (if applicable)**

**ATTACHMENT 1, PHASE II REPORT**

1. Current Phase II Report

## **VI. Common Errors or Omissions and Documentation Checklist**

**This checklist reflects items commonly omitted or problematic with the Phase I Environmental Site Assessments. Since this checklist is not intended to be a comprehensive checklist of all items required for a DCA approved Phase I Environmental Site Assessment, please read the Environmental Guide thoroughly before submitting a Phase I report to DCA.**

### ***Common Omissions Include:***

- Report Date (not included on the cover).
- Environmental Certification Form.
- Signature of the Environmental Professional on the Environmental Certification form.
- Signature of the Applicant on the Environmental Certification form.
- Environmental Professional's resume, qualifications, letters of reference.
- Proof of insurance in specified amounts on appropriate certification forms; GHFA and DCA listed on the certificate as a certificate holder and as an additional insured for the commercial general liability policy.
- Owner Environmental Questionnaire and Disclosure Statement.
- Property Log.
- Incomplete HOME and HUD Environmental Questionnaire.
- Professional Opinion, conclusions, and recommendations on all matters observed on the subject site and or surrounding sites in the Executive Summary and in Sections 4.0 and 5.0 of the Report.
- Date of Site Reconnaissance.
- Comprehensive historical review in accordance with ASTM requirements and DCA standards.
- Interviews – names and titles of interviewees; documentation of all interviews and attempts to interview in the Appendices.
- Geological investigation.

- Floodplain investigation and map.
- Wetlands investigation, including wetlands maps.
- Site map indicating groundwater flow.
- Discussion of each property identified in the environmental regulatory database(s) and rationale(s) for determining whether each property presents a recognized environmental condition to the subject property.
- Photographs: dates.
- Noise Assessment Report and professional opinion (including NAG when noise levels exceed HUD limitations).
- Radon site classification for new construction; Radon testing in buildings for rehabilitation.
- Survey of mold conditions in buildings for rehabilitation.
- Lead in Drinking Water documentation.
- Asbestos sampling/survey.
- Lead Based Paint sampling.
- Map locating all sites identified in Regulatory Review, including, but not limited to the following:

FINDS	Federal CERCLIS/CERCLIS NFRAP
RCRA TSD	RCRA Generators
NPL	ERNS
TRI	UST
State LUST	HSRA (a.k.a. non-HSI)
HSI	Spills List
SWS	RCRA CORRACTS

***Common Errors Include:***

- Report Date (outdated).
- DCA Format not followed.
- Noise Assessment Report and professional opinion (not including 10-year traffic projections).

- Use of Disclaimer language inconsistent with requirements of these Environmental Guidelines.
- Site reconnaissance observations not sufficiently discussed.
- Photographs: observations and potential environmental impacts not sufficiently discussed.

## **VII. Glossary of Terms and Acronyms**

HSRA	Georgia Hazardous Site Response Act [O.C.G.A. Section 12-8-90 <u>et seq.</u> ]
HSI	Hazardous Site Inventory
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. Section 9601 <u>et seq.</u> ], as amended by the Superfund Amendment and Reauthorization Act of 1986
CERCLIS	Comprehensive Environmental Response, Compensation and Liability Information System
CERCLIS NFRAP	CERCLIS—no further remedial action planned
EPCRA	Emergency Planning and Community Right to Know Act of 1986 [43 U.S.C. Section 11001 <u>et seq.</u> ]
EPD	Georgia Department of Natural Resources, Environmental Protection Division
ERNS	Emergency Response Notification System [40 C.F.R. Parts 300, 370, and 372]
FINDS	Facility Index System [40 C.F.R. Section 6901 <u>et seq.</u> ]
LUST	Leaking Underground Storage Tank Act
NPL	National Priorities List [42 U.S.C. Section 9605]
RCRA	Solid Waste Disposal Act as Amended by Resource Conservation and Recovery Act [42 U.S.C. Section 6901 <u>et seq.</u> ]
RCRA CORRACTS	RCRA corrective action database
RCRIS	Resource Conservation and Recovery Information System
SARA	Superfund Amendments and Reauthorization Act of 1986
TRI	Toxics Release Inventory