

**HUD PROGRAMS**  
**3<sup>RD</sup> PARTY ENVIRONMENTAL  
 & ENGINEERING DISCUSSION**



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**Environmental Assessment Update**  
**EPA's All Appropriate Inquiry (AAI)**

- **What is it?**

On November 1, 2005, the United States Environmental Protection Agency (EPA) issued the final rule defining the standard for conducting "All Appropriate Inquiry" (AAI) for Phase I Environmental Site Assessments (Phase I ESAs).

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**Environmental Assessment Update**  
**EPA's All Appropriate Inquiry (AAI)**

- **ASTM E 1527-05**

Property purchasers and other parties obtaining "Phase I ESAs" typically obtain a study that conforms to the ASTM E1527-00 Phase I Environmental Site Assessment Process, commonly recognized as the industry standard.

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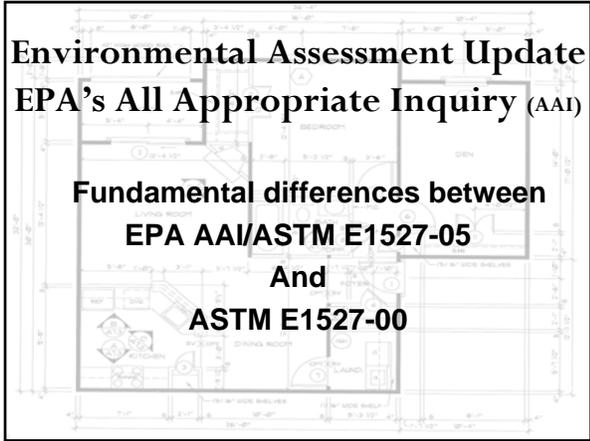
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**Environmental Assessment Update  
EPA's All Appropriate Inquiry (AAI)**

**Fundamental differences between  
EPA AAI/ASTM E1527-05  
And  
ASTM E1527-00**



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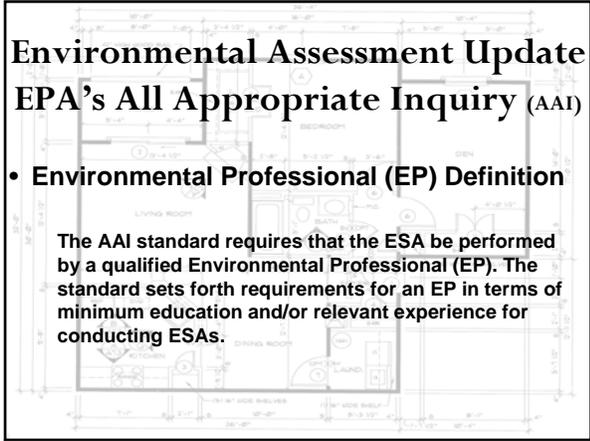
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**Environmental Assessment Update  
EPA's All Appropriate Inquiry (AAI)**

**• Environmental Professional (EP) Definition**

The AAI standard requires that the ESA be performed by a qualified Environmental Professional (EP). The standard sets forth requirements for an EP in terms of minimum education and/or relevant experience for conducting ESAs.



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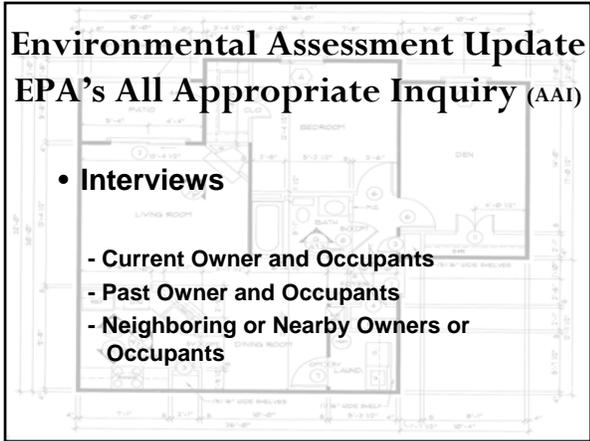
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**Environmental Assessment Update  
EPA's All Appropriate Inquiry (AAI)**

**• Interviews**

- Current Owner and Occupants
- Past Owner and Occupants
- Neighboring or Nearby Owners or Occupants



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## Environmental Assessment Update EPA's All Appropriate Inquiry (AAI)

- Data Gaps
- Governmental Records Review – includes tribal, brownfields, and voluntary cleanup sites
- Purchase Price of the Property
- Records of Activity and Use Limitations (Engineering and Institutional Controls)
- Environmental Cleanup Liens
- Shelf Life

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## 3<sup>rd</sup> Party Review – Biggest Issues

- D3G has had the opportunity to review hundreds of Phase I ESA's performed by others. Most common issues:
  - Non-Qualified Env. Professional (EP)
  - Lack of Interviews/Questionnaires
  - No Discussion of "Data Gaps"
  - Incomplete historical research

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## SPECIAL & NEPA (4128) ISSUES



**COMMON  
ISSUES WITH  
HUD FORM 4128  
COMPLETION**

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## COMMON 4128 ISSUES

- **Incomplete Environmental Questionnaire (4128) Form**
- **Incomplete Sample Notes Checklist Form**
- **Lack of Noise Survey for Sub-rehabilitation and New Construction Projects:**
  - Some 4128's only make a recommendation for a noise study (for additional fees of course!); when pursuant to HUD processes, a Noise Study is a required part of a 4128 for 221(d4) projects!
- **Incorrect or NO identification of Floodplains and Wetlands**
  - Must review National Wetland Inventory (NWI) Maps for ALL projects
  - New Construction is to include ACE defined Wetlands
  - No coordination between ESA visual observations and 4128 reporting regarding surface waters and or aquatic vegetation
  - ALTA survey is the definitive source of on-site FEMA floodplains. 3<sup>rd</sup> Parties do not always ask for the document.

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## NOISE ISSUES

- **Noise Assessments per HUD's Noise Guidebook**

- Not required for 223f, concern with d4 Program for SR & NC
- Planes, trains, and automobiles
- Three categories of noise levels:
  1. Acceptable (<65)
  2. Normally Unacceptable (66-75)
  3. Unacceptable (>75) – requires waiver from headquarters



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## SURFACE WATER & FEMA ISSUES

- **100/500-Year Flood Plain**
  - Defined by FEMA ([www.fema.gov](http://www.fema.gov))
  - Zone A = 100-Year; Zone B or Shaded X = 500-Year
  - Critical Action issues
    - Lowest floor elevation
    - Site Ingress/Egress (including driveways)
    - Critical Systems (e.g. transformer/generator)
  - LOMR/LOMA Process - Time consuming and expensive
- **Jurisdictional Wetlands**
  - National Wetland Inventory (NWI) Maps
  - ACE defined Wetlands
  - Visually observed surface waters and or aquatic vegetation
  - USDA Hydric soils classification



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## HUD 8-STEP DECISION

### MAKING PROCESS

For new construction and substantial rehabilitation projects, compliance with Executive Order (EO) 11988 (Floodplain Management) and EO 11990 (Protection of Wetlands) via the 8-Step Decision Making Process may be required if a flood zone or wetland area will be directly or indirectly affected. It includes consultation, issuing two public notices and taking public comment. The eight-step process shall be completed before issuance of a Firm Commitment.

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## ACCEPTABLE SEPARATION DISTANCE

- Discussed in 4128, not ESA
- Size and Contents of Aboveground Storage Tanks (ASTs)
- Existing facility vs. New Construction
- Ordinary vs. extraordinary



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## MOLD AND MOISTURE ISSUES IN HOUSING



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## WHAT IS MOLD?

- (1) **Mold is Fungi**
  - Fungi is everywhere
  - Earth's original "recycler"
  - Nature's garbage disposal
  - 50% of the Earth's biomass is fungi
- (2) **Mold requires 3 things for growth**
  - Organic material (e.g. wood, dirt, paper, sheetrock)
  - Suitable temperature (40 to 100 Fahrenheit)
  - Moisture
- (3) **Remove one of the 3 components and ....**
  - Mold becomes dormant

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## EXTERIOR - MOISTURE AND DRAINAGE ISSUES

- **Poor Exterior Drainage**
  - Poor exterior grading
  - Lack of gutters and downspouts
  - Sub-grade living areas
  - Excessive mulch bed height
- **Faulty / Damaged Facades**
  - Poor/receding caulking
  - Balcony flashing
  - Roof leaks
  - EIFS siding issues




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## INTERIOR - MOISTURE ISSUES

- **Leaky plumbing**
  - Wet wall leaks
  - Hydronic (2/4 pipe) systems
  - Damaged condensate drains
- **Faulty/Poor HVAC systems**
  - Excessive humidity
  - Poor ventilation




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## INTERIOR - MOISTURE ISSUES



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## NEW CONSTRUCTION

WHAT LURKS BEHIND THESE WALLS???



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## NEW CONSTRUCTION

- Building Material Storage
- Construction Design Issues
- Catastrophic Weather
- Excessive Humidity
- Extended Lease-Up Issues



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## NEEDS ASSESSMENT



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## PCNA CONSIDERATIONS

- **Age of Property**
  - Recent replacements (last 5 years)
  - Last rehabilitation
- **Factors Affecting Estimated Useful Life**
  - Quality of component
  - Quality of installation
  - Level of maintenance
  - Climatic conditions
  - Intensity of use & tenant profile
- **Owner "Elected" Improvement Issues**

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## CRITICAL vs. NON-CRITICAL

### Critical Repairs

- Critical Repairs include:
  - Life Safety
  - Code Violations (FHAAG violations per 10/10/02 FAQ)
  - Conditions which prevent sustainable occupancy
- Repairs must be completed "by initial/final endorsement of the mortgage" (MAP Appendix 5M).
- MAP 5.26(a) says "Only Non-Critical Repairs may be deferred" yet deferral of Critical Repairs occurs if:
  - Justified due to circumstances
  - Aggressive time-table recommended
  - HUD approval

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## CRITICAL vs. NON-CRITICAL

### Non-Critical Repairs

- Necessary repairs due to age, faulty system, deferred maintenance, or condition which left un-attended could worsen (e.g. 20 year old roof system).
- Owner Elective Improvements / Sponsor Initiated Repairs (e.g. Section 202 Refinancing).
- Non-Critical Repairs are those that will not:
  - (a) Endanger the safety of residents, etc.
  - (b) Adversely affect ingress/egress
  - (c) Prevent the project from reaching sustainable occupancy
- Non-Critical Repairs may be deferred (subject to HUD approval) until after endorsement, but must be completed within 12 months thereafter

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TO IMPROVE.....OR  
NOT TO IMPROVE, THAT IS THE  
QUESTION!

ARE OWNER IMPROVEMENTS  
ALLOWED IN A 223-F  
TRANSACTION????

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## HUD GUIDEBOOKS SAY "YES"

### 4460.1 Chapter 5, Section 5.5: Architectural Analysis & Inspection

4. Sponsor's proposed work may include:
  - a. Necessary repairs and replacements.
  - b. New amenities, facilities, or equipment to improve marketability.
  - c. Replacement of outdated items to improve marketability or rents.
  - d. Installation of additional items, or replacement of items with more cost effective ones in order to reduce maintenance or operating expenses (note: "Energy conservation improvements proposed by the sponsor, except for attic insulation, caulking and weather stripping work, must be supported by an engineer's recommendations and life-cycle cost analysis.")
5. Sponsor's proposed work may not include items which would increase the mortgage risk.

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## HUD REGIONAL OFFICES SAY

### “YES”

- HUD Michigan Mortgagee Bulletin #4 and #5
  - Requires “Owner Elective Repairs” to be Non-Critical Repairs.
  - Requires that the PCNA provider review the costs and make “an assessment of their reasonableness.”
  - Requires that an independent cost estimator verify all costs.
  - All repairs must be specific as to location, number of units, square footage, etc. Vague references within proposed owner improvements are not acceptable. This is also necessary for a determination that work is completed for escrow releases
- San Francisco “223-F Guidance for Repair” Training Session
  - Allows “Owner Elective Repairs” to be Non-Critical Repairs.
- Greensboro says “YES” to owner improvements, as long as they are well defined, quantifiable, and can be inspected properly upon completion of 12-month repairs.

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## D3G’s INTERPRETATION

- Upgrades and Improvements are allowable as long as the 221(d4) threshold is not approached.
- These “upgrades” can be initiated by the Owner.
- Improvements are allowed as long as they are purposeful (e.g. marketing, betterment, tenant amenity..)
- Costs for improvement/upgrades, as identified by the Borrower, MUST be supported with a defined and quantifiable scope of work, as well as unit pricing provided by a licensed Contractor
- Owner supplied repairs must be detailed in scope, material and quantity; sufficient enough for cost estimation and “Cost Reasonableness” determination pursuant to HUD Handbook 4460.1.
- 12-month construction period must be reasonable.

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