



ENVIRONMENTAL REVIEW GUIDE FOR APPLICANTS

HOME and Housing Trust Fund



Community Housing and Grants Management Division

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Summary of Changes

Date	Section	Description of Changes
8/03/2026		Document created.

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OVERVIEW

This environmental review guide is intended to provide applicants and awardees of HOME Investment Partnerships Program (HOME) and Housing Trust Fund (HTF) with an understanding of what the HUD Part 58 environmental review process requires from the applicant/awardee and establishes a timeline expectation. **This guide is tailored to what is required from the applicant/awardee. This is NOT a comprehensive environmental review policy and procure manual.** North Dakota Housing Finance Agency (NDHFA) is responsible for ensuring the environmental review is completed correctly and is responsible for obtaining Authority to Use Grant Funds (AUGF) from HUD.

HTF Note: HUD Part 58 does not govern the **HTF** environmental review requirements; however, the HTF environmental requirements are very similar to Part 58. If applying for both HOME and HTF, all Part 58 requirements that apply to HOME will also apply to HTF in addition to any independent HTF requirements. If applying for HTF only, this guide still applies but contact NDHFA for specific requirements that apply to HTF only projects.

SECTION 1: CHOICE LIMITING ACTIONS

Projects receiving certain federal sources of funds must undergo environmental review under 24 CFR Part 58.

From the application submittal date, or from the date that NDHFA determines that it may use the federal funds for a project, until completion of the environmental review process, HUD's environmental review rules prohibit all participants in the development process for a project, including the applicant and any developer or sponsor of the project and any of their affiliates participating in the project, any construction manager, and any other consultants and contractors, from taking certain actions. These prohibited actions are called "choice-limiting actions." HUD's prohibition on taking choice-limiting actions continues in effect until the project has received its environmental clearance, which means the completion of an environmental review of the project and, if necessary, HUD approval of the release of the federal funds for the project after completion of the environmental review. In the information below, the period extending from the application submittal date, or from the date that NDHFA determines that it may use the federal funds for a project, to the date of environmental clearance is referred to as the "Choice-Limiting Action Prohibition Period."

The list of choice-limiting actions set out below is not all-inclusive and applicants are strongly urged to consult NDHFA prior to taking any action that could be a prohibited choice-limiting action. **IMPORTANT NOTE: Making a choice-limiting action during the Choice-Limiting Action Prohibition Period will disqualify a project from receiving the funds or other HUD financial assistance.**

1.01 Prohibited Choice-Limiting Actions

During the Choice-Limiting Action Prohibition Period, the applicant and all other participants in the development process are not allowed under HUD's environmental review rules to do any of the following, except to the limited extent described below.

1. Spend or commit any funds for the project, whether those funds are federal, state, local, bank, equity, or private funds, grants, loans or any other source or type of funds, **except** for the following activities:
 - a. Environmental, geotechnical and other studies

- b. Site inspection and testing
 - c. Engineering services
 - d. Architectural and design services
 - e. Permitting and zoning approvals
 - f. Financing applications
 - g. The payment of the option price under an option agreement complying with the requirements of Section 1.02 below.
2. Enter into a binding contract or agreement for any purpose, **except** as follows:
- a. The activities listed in subsection 1.a through f above.
 - b. An option agreement complying with the requirements of Section 1.02 below.
3. Enter into a binding contract or agreement for any of the following or actually undertake or do any of the following:
- a. Enter into an option to buy or lease all or part of the project site or to purchase an easement for the benefit of the project site, or amend, extend or renew an option, unless the option agreement complies with the requirements of Section 1.02 below.
 - b. Enter into, amend, extend or renew a purchase and sale agreement.
 - c. Purchase or lease all or part of the project site, including but not limited to any small additional parcel that may be needed to meet density or other local or state requirements.
 - d. Purchase or grant an easement or right-of-way.
 - e. Enter into an Agreement to Enter into a Housing Assistance Payments Contract (AHAP) or a Housing Assistance Payments (HAP) Contract.
 - f. Purchase or otherwise procure construction materials for the project.
 - g. Accept a bid for any work relating to the project, including but not limited to construction, rehabilitation, demolition or environmental remediation. HUD recommends that a project not even go out to bid prior to environmental approval. Contact NDHFA prior to going out to bid.
 - h. Excavation or earth removal.
 - i. Demolition.
 - j. Environmental remediation activities on, in or affecting the land or building(s) on the project site, including but not limited to lead paint, mold, asbestos, or soil remediation or other clean-up.
 - k. Utility or infrastructure construction or installation, e.g., sewer, water, electric or gas lines, drainage, stormwater management facilities, roads, sidewalks, etc.
 - l. Paving.
 - m. Grading, filling or clearing.

- n. Dredging or draining.
- o. Construction of buildings or other structures.
- p. Moving, rehabilitation, renovation or alteration of existing buildings.
- q. Burying, replacing or relocating a propane, oil, kerosene or other stationary aboveground tank, or a fuel conversion of a heating system, on a property or on the project site as a way of mitigating hazards to your project or for any other reason.
- r. Any other activity that has a physical effect on the land or buildings on the project site.

1.02 Site Control Agreements—Option Agreements

During the Choice-Limiting Action Prohibition Period, HUD permits option agreements that meet certain requirements. HUD and NDHFA strictly enforce these requirements. NDHFA will not proceed with the environmental review of a project if a non-complying agreement exists. In that case, NDHFA will require that the non-complying agreement be either rescinded and replaced with an agreement meeting HUD's requirement or amended to bring it into compliance with HUD's requirements.

1. Option Agreements—An applicant may enter only into an option agreement that states that it is subject to NDHFA's decision on the desirability of the project site based on the results of the environmental review and provides for an option price that is only a nominal portion of the purchase price. HUD does not define "nominal" but states that any reasonable interpretation is acceptable and recognizes that what is nominal will vary depending on the local real estate market and the purchase price.

1.03 Corrective Actions

Should a choice-limiting action occur, the applicant must notify NDHFA immediately. If NDHFA becomes aware that a choice-limiting action occurred after federal funds have been partially or fully expended, the applicant shall cooperate fully with any corrective actions prescribed by HUD. The corrective action may include repayment of federal funds.

SECTION 2: PHASE I ENVIRONMENTAL SITE ASSESSMENT

All multifamily projects are required to obtain a Phase I Environmental Site Assessment (ESA). It is the applicant's responsibility to obtain Phase I ESA. The Phase I ESA is a technical due diligence document prepared by a qualified environmental professional to identify potential environmental conditions associated with the project site. The Phase I ESA is **one component** of the broader environmental review required under **HUD 24 CFR Part 58**. While the ESA addresses site contamination and related concerns, it does **not** constitute the full environmental review.

The HUD Part 58 Environmental Review (ER) is a comprehensive assessment conducted to determine a project's compliance with federal environmental requirements. An Environmental Assessment (EA) is one possible **level of review** under Part 58. The Phase I ESA supports the ER/EA but does **not** replace or fulfill the full scope of the HUD Part 58 review.

2.01 Phase I ESA Timing

Ideally, a Phase I ESA should already be completed or in the works at the time of submitting an application to NDHFA for HOME and/or HTF funds. However, we understand that the viability of certain projects depends on

being conditionally awarded HOME or HTF dollars, which is unknown until applications are processed and conditional commitments are issued to selected applicants. If an applicant is unable or unwilling to start the Phase I ESA process until application decisions are made, then we ask that the Phase I ESA process be started at the earliest possible time after the applicant is notified of being selected for funding.

Phase I ESAs generally take three months to complete but can vary depending on the site conditions and the availability of the selected environmental consultant. If the Phase I ESA discovers a Recognized Environmental Condition (REC) or a condition on the site that warrants further investigation, a Phase II ESA is usually required. Depending on the specific conditions, a Phase II ESA can take six months to a year to complete.

2.02 Requesting a HUD Compliant Phase I ESA

Phase 1 ESAs are used for multiple purposes, such as evaluating business risks, which is why financial institutions usually request a Phase I ESA. When requesting a Phase I ESA for a HUD project, it must meet certain HUD requirements which usually are not included as part of the standard Phase I ESA. Applicants will need to specifically request a Phase I ESA ASTM E1527-21 (current standard as of 2026) and with HUD Environmental Standards at 24 CFR 58.5(i)(2) or 50.3(i). Additionally, the following non-scope items should be requested to be included as part of Phase I ESA:

1. Radon testing following ANSI/AARST standards. (rehab projects only at time of initial Phase I; new construction testing will occur after construction)
2. Vapor Encroachment Screening (ASTM E-2600-15) (new construction and rehab)
3. Asbestos Baseline Survey (ASTM E2356-18) (rehab projects only)
4. Lead-Based Paint Testing in all levels and units, indoors and outdoors (ASTM E1729) (rehab projects only)

When requesting Phase I ESA quote, it is good practice to include the HUD document *Using a Phase I Environmental Site Assessment to Document Compliance with HUD Environmental Standards at 24 CFR 58.5(i)(2) or 50.3(i)* with your request to ensure that the preparer understands the full scope of requirements. The referenced document can be found here: <https://files.hudexchange.info/resources/documents/Using-a-Phase-I-ESA-in-HUD-Environmental-Review.pdf>

2.03 Environmental Consultants

It is good practice to request quotes from multiple Phase I ESA preparers when selecting your environmental consultant. NDHFA does not recommend or endorse any one environmental consulting firm. The following is a list of environmental consultants that have prepared Phase I ESAs on NDHFA funded projects; however, each applicant is responsible for researching and selecting an environmental consultant.

1. Badlands Environmental Consultants (Bismarck, ND)
2. Blacktrail Environmental, Inc (Bismarck, ND)
3. Braun Intertec (Bloomington, MN with locations in Fargo and Bismarck)
4. NorthLand Environmental Consulting (Fargo, ND)
5. Terracon (Locations nationwide, including North Dakota)

SECTION 3: PROJECT AGGREGATION

All projects must be aggregated for the purpose of completing the HUD Part 58 environmental review. Project aggregation requires evaluating the **entire scope of the project** under a single, comprehensive environmental review, regardless of how many components of the project will receive HUD funding.

Aggregation must include all **physically and functionally related activities**, even if certain phases or elements do not directly utilize HUD funds. For example, if a project is planned in multiple phases and only the first phase receives HOME funds, the environmental review must address **all phases of the project**, not only the HUD assisted phase. This ensures compliance with HUD's requirements for evaluating cumulative impacts and prevents improper segmentation of related activities.

The aggregated project must be reviewed as a whole and must fully meet all applicable environmental compliance obligations under 24 CFR Part 58.

When writing the project description, applicants must make sure that the full scope of the project is clearly outlined and must include any current and future plans or phases of the project even if they do not directly utilize the HUD funds.

SECTION 4: SITE CONSIDERATIONS

When evaluating potential sites for HUD assisted projects, it is essential to identify existing environmental conditions and understand how those conditions may affect both the environmental review process and the long-term viability of the completed project. Certain federal laws and authorities frequently present challenges that must be addressed before a site can be deemed suitable for development.

The issues described in the following sections represent the **most common hurdles** encountered during environmental reviews. While not comprehensive, these are the conditions that most often require additional analysis, mitigation, or consultation, and that can extend the time needed to complete the environmental review.

1. **Floodplain Management:** If a proposed project site is located within a 100 year or 500 year floodplain, the project is considered to be within the HUD Federal Flood Risk Management Standard (FFRMS) floodplain. In such cases, the **8-Step Decision-Making Process** is required as part of the environmental review under 24 CFR Part 58. Mitigation for projects located in an FFRMS floodplain typically includes elevating the site or structure to a minimum of **Base Flood Elevation (BFE) plus two feet** or meeting another applicable FFRMS standard. NDHFA recognizes that in some communities, a significant portion of available development sites fall within mapped floodplains and that no practical alternatives may exist. This is expected and acceptable; however, applicants should be aware that projects located in floodplain areas generally require **an additional 30 days** to complete the environmental review due to the 8step process and its public notice requirements.
2. **Site Contamination:** Potential site contamination is often not immediately evident and is typically identified through the Phase I Environmental Site Assessment (ESA). Common indicators of concern may arise when reviewing historical or current land uses on the project site and surrounding properties. Sites with past or existing activities involving oil, gas, or fuel storage, as well as properties located near former or active dry-cleaning facilities, present elevated risk for contamination and warrant careful evaluation.

Given the wide range of potential contamination issues, it is difficult to estimate the amount of time it will take to properly test and develop a mitigation plan to resolve contamination issues

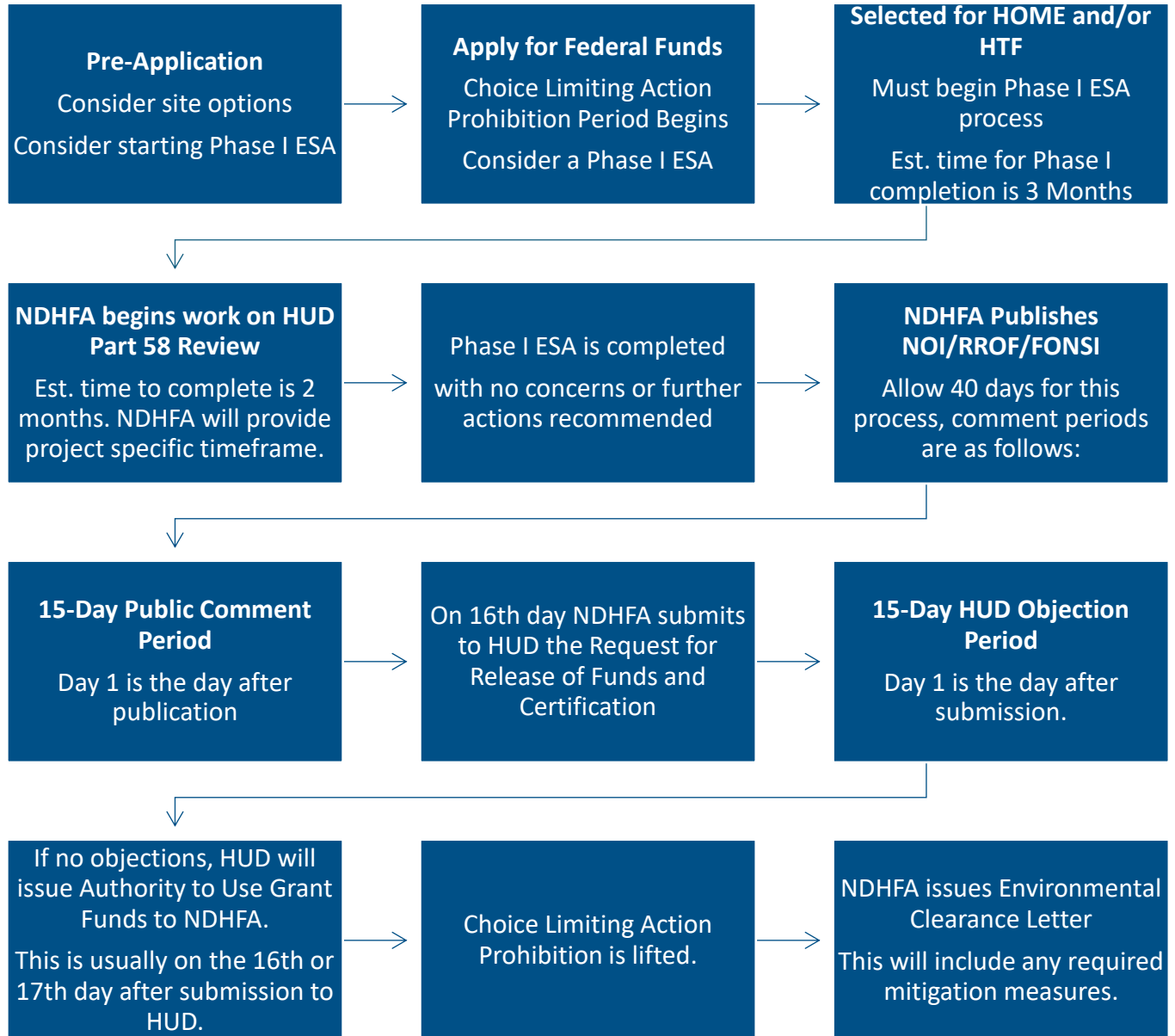
3. **Historic Preservation:** All HUD assisted projects must undergo review for compliance with Section 106 of the National Historic Preservation Act. As part of this process, applicants are required to obtain clearance from the State Historic Preservation Office (SHPO) for every project receiving HUD funds. Projects involving ground disturbance also require NDHFA to notify potentially affected Tribal Nations and provide them the opportunity to participate as consulting parties. Tribes may request that an archaeological survey be completed prior to project approval. Upon receiving the invitation to consult, Tribal Nations are given a **30-day period** to respond regarding any concerns related to the proposed project. Depending on the nature of Tribal comments or the need for additional consultation, the Section 106 process may extend beyond the initial 30-day response window.
4. **Noise:** All HUD assisted projects must undergo a noise assessment to evaluate compliance with HUD noise standards. Applicants should consider noise exposure during site selection and avoid locations near significant noise sources whenever feasible. Common high-risk locations include sites adjacent to **busy roadways, active rail lines, airports, or aircraft flight paths**.

If noise levels exceed HUD's acceptable thresholds, mitigation may be required. Mitigation measures may include **architectural design modifications**, enhanced building materials, or the construction of **noise barriers** to reduce interior noise exposure to compliant levels. All required noise mitigation must be incorporated into the final project design before environmental clearance can be issued.

SECTION 5: GENERAL ENVIRONMENTAL REVIEW TIMELINE

The following is a typical environmental review process flow chart with estimated times. Every environmental review is different; this is only intended to provide a general idea.

Visual Flowchart



Text Flowchart

Pre-Application

- Consider site options
- Consider starting Phase I ESA

Apply for Federal Funds

- Choice Limiting Action Prohibition Period Begins
- Consider a Phase I ESA

Selected for HOME and/or HTF

- Must begin Phase I ESA Process
- Estimated time for Phase I completion is 3 Months

NDHFA begins work on HUD Part 58 Review

- Estimated time to complete is 2 months. NDHFA will provide project specific timeframe.
 - Phase I ESA is completed with no concerns or further actions recommended

NDHFA Publishes NOI/RROF/FONSI

- Allow 40 days for this process, comment periods are as follows:
- **15-Day Public Comment Period**
 - Day 1 is the day after publication
 - On 16th day NDHFA submits to HUD the Request for Release of Funds and Certification
- **15-Day HUD Objection Period**
 - Day 1 is the day after submission.
 - If no objections, HUD will issue Authority to Use Grant Funds to NDHFA.
 - This is usually on the 16th or 17th day after submission to HUD.
 - Choice Limiting Action Prohibition is lifted.
- NDHFA issues Environmental Clearance Letter
 - This will include any required mitigation measures.

CHECKLIST FOR REQUESTING A HUD COMPLIANT PHASE I ESA

Phase I Environmental Site Assessments (ESAs) are used for multiple purposes, including evaluating business risks, which is why financial institutions commonly require them. For HUD-funded projects, however, a Phase I ESA must meet specific HUD requirements that go beyond a standard ESA. The following checklist outlines the required components and additional non-scope items that must be included for HUD compliance.

Project Name	Phase I Request Date	Estimated Cost
Requested By		Phase I Completion Date

PHASE I ESA MUST COMPLY WITH THE FOLLOWING

	Yes	No
Adheres to the current ASTM standards (ASTM E1527-21 current as of 2026).	☐	☐
Satisfies the HUD Environmental Requirements at 24 CFR 58.5(i)(2) or 50.3(i).	☐	☐
Phase I ESA was completed within six months of NDHFA conditional commitment.	☐	☐

ADDITIONAL NON-SCOPE ITEMS TO BE REQUESTED WITH PHASE I ESA

- ☐ Radon testing for a rehabilitation project following ANSI/AARST standards has been requested.
- ☐ Project is new construction; testing will be completed after construction.
- ☐ Vapor Encroachment Screening (ASTM E-2600-15) for new construction or rehab is included.
- ☐ Rehabilitation only: Asbestos Baseline Survey (ASTM E2356-18) is included. ☐ N/A
- ☐ Rehabilitation only: Lead-Based Paint Testing in all levels and units, indoors and outdoors (ASTM E1729) is included. ☐ N/A

BEST PRACTICES WHEN REQUESTING PHASE I ESA QUOTES

- ☐ HUD's guidance document: "Using a Phase I Environmental Site Assessment to Document Compliance with HUD Environmental Standards at 24 CFR 58.5(i)(2) or 50.3(i)," has been provided to Phase I ESA preparer. It can be found here: <https://files.hudexchange.info/resources/documents/Using-a-Phase-I-ESA-in-HUD-Environmental-Review.pdf>
- ☐ Confirm that the environmental professional understands all HUD-required non-scope items.
- ☐ Verify that all applicable non-scope items (radon, vapor encroachment, asbestos, lead-based paint) are included in the quote.

Applicant Signature	Date
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ENVIRONMENTAL SITE CONSIDERATIONS QUESTIONNAIRE

When evaluating potential sites for HUD-assisted projects, it is essential to identify existing environmental conditions and understand how those conditions may affect both the environmental review process and the long-term viability of the completed project. While many of these challenges can be properly mitigated, the sections below provide a foundational understanding of what to anticipate.

Name of Proposed Project			
Address	City	State	ZIP Code
Applicant Name	Estimated Project Start Date		

FLOOD INSURANCE AND FLOODPLAIN MANAGEMENT

	Yes	No
Is the proposed project located in a 100-year or 500-year floodplain? <i>If no, then skip to next section.</i>	☐	☐
If in a 100-year floodplain, is there or will there be a LOMR that brings all insurable property out of the 100-year floodplain?	☐	☐
If no LOMR, are you prepared to carry flood insurance for the life of the project? <i>Applies to projects in 100-year floodplain only.</i>	☐	☐
Are you prepared to elevate new construction to BFE plus 2-3 feet? <i>Rehabilitation projects are required to be floodproofed to FFRMS elevation requirements.</i>	☐	☐
Does your timeline allow for completion of the 8-step process? <i>Adds approximately 30 days to environmental review process.</i>	☐	☐

SITE CONTAMINATION

Potential site contamination is often not immediately evident and is typically identified through the Phase I Environmental Site Assessment (ESA). Common indicators of concern may arise when reviewing historical or current land uses on the project site and surrounding properties. Are you aware of this site or nearby properties being used for any of the following activities: oil, gas, or fuel storage, or located near former or active dry-cleaning facilities?	☐	☐
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HISTORIC PRESERVATION

Is the site listed on the National Register of Historic Places?	☐	☐
Will this project involve ground disturbance? <i>If no, then skip the remainder of this section.</i>	☐	☐
Has an archeological survey been completed for this project site?	☐	☐
Does your timeline allow for mandatory Tribal consultation invitations? <i>This adds at least 30 days to the environmental review process and must be initiated by NDHFA.</i>	☐	☐

NOISE

All HUD-assisted projects must undergo a noise assessment to evaluate compliance with HUD noise standards. If the project is located near a noise generator, further review will be required to determine if noise mitigation measures need to be incorporated into the project design. Is the proposed project site adjacent to any of the following:

	Yes	No
Within 1,000 feet of roadways with a daily average traffic count of 10,000 vehicles or more per day?	☐	☐
Within 3,000 feet of an active rail line?	☐	☐
Within 15 miles of a military or commercial airport?	☐	☐

Notes