

## Harrison, Karyn

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**From:** Fretwell, Therese J <Therese.J.Fretwell@hud.gov>  
**Sent:** Monday, January 06, 2014 12:55 PM  
**To:** Dow, Diane; Mahon, Donna; Furda, Michael R  
**Subject:** FW: ASD clarification  
**Attachments:** Part 51 disaster guidance.MS.4.28.07.pdf

Hi Diane,

Here is the definitive answer on the ASD question. HUD has provided guidance that density increase is the key to the 51C trigger.

Therese Fretwell  
Regional Environmental Officer  
Regions I & II  
New York Office  
212-542-7445

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**From:** Schopp, Danielle L  
**Sent:** Monday, January 06, 2014 1:48 PM  
**To:** Fretwell, Therese J; Hartenau, Christopher H  
**Cc:** Rivera, Nelson A; Sanders, Jerimiah J; Shumway, John B  
**Subject:** RE: ASD clarification

Therese,

As long as the density is not increased, then consistent with the attached guidance, the Responsible Entity (RE) may document that 24 CFR 51(C) does not apply because the number of people exposed to the hazard has not increased. The RE may make its own determination that 24 CFR 51(C) does apply in instances of reconstruction. The intent of this email is to communicate that from HUD's perspective the RE does have the authority to determine that 24 CFR 51(C) does not apply in cases of reconstruction where the density is not increased.

I hope this is helpful. Thank you for following up.

-Danielle

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**From:** Fretwell, Therese J  
**Sent:** Monday, January 06, 2014 11:58 AM

**To:** Hartenau, Christopher H; Schopp, Danielle L  
**Cc:** Rivera, Nelson A; Sanders, Jerimiah J; Shumway, John B  
**Subject:** RE: ASD clarification

Hi Danielle and Chris, Happy New Year!

Thanks for giving some attention to this question while I was away. NJ is eager to know how to proceed on these sites.

(From Chris' email below)

I don't know what our current position is on whether reconstruction constitutes new construction, and whether placing the reconstructed home in a different footprint would make a difference in whether it would be considered new construction.

This is the crux of the question. If they reconstruct (and elevate) a home with an altered footprint in an area with an unacceptable ASD, do we consider it new construction? If not, then I have my answer for NJ.

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**From:** Hartenau, Christopher H  
**Sent:** Thursday, January 02, 2014 5:56 PM  
**To:** Schopp, Danielle L  
**Cc:** Rivera, Nelson A; Sanders, Jerimiah J; Fretwell, Therese J; Shumway, John B  
**Subject:** FW: ASD clarification

Danielle – You're correct that I reviewed the MS guidance, originally proposed in memo form – see attached email. My comment on the Subpart C discussion was that it's reasonable to conclude that HUD's intent was not to cover actions that don't increase the number of people being exposed to hazardous operations, even if the action is not considered "rehabilitation" per se, as long as the action isn't considered new construction or development. Even though the MS program was apparently just an elevation program, the memo/email concluded that application of 51C was not required for grants to elevate, rehabilitate, or "reconstruct" housing where the number of dwelling units is not increased. (We also said the state had the option of applying it if they wanted to.) I don't know what our current position is on whether reconstruction constitutes new construction, and whether placing the reconstructed home in a different footprint would make a difference in whether it would be considered new construction.

PS the addressee list on Dick Broun's email is a real blast from the past.

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**From:** Schopp, Danielle L  
**Sent:** Monday, December 16, 2013 3:03 PM  
**To:** Hartenau, Christopher H  
**Cc:** Rivera, Nelson A; Sanders, Jerimiah J; Fretwell, Therese J  
**Subject:** FW: ASD clarification

Chris,

We have an established precedent that ASD does not apply to reconstruction on the same site as long as the units of housing are not increased. See attached.

I want to keep the precedent – but also wanted to check in with you. I believe that you reviewed the email contents attached . . . but wanted to make sure before confirming things with NJ.

Thanks,  
Danielle

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**From:** Fretwell, Therese J  
**Sent:** Thursday, December 12, 2013 6:12 PM  
**To:** 'Dow, Diane'; Furda, Michael R; Schopp, Danielle L  
**Cc:** 'Mahon, Donna'  
**Subject:** RE: ASD clarification

Hi Diane,

I brought this question up to our office's director, Danielle Schopp, today. OEE is going to discuss the matter further with our Office of General Counsel and provide us with some additional guidance.

The issue here is how to handle reconstruction projects when they are proposed for substantially damaged homes located on sites that do not meet the ASD standard for a HUD-assisted project. Specifically the issue needing clarification is if the density threshold for modernization and rehabilitation that define a HUD-Assisted project for applicability of 24 CFR 51 subpart C can also be applied to "reconstruction" applications. (24 CFR 51.201)

We will get back to you with some clarification as soon as we can.

Thanks for the question, you are certainly keeping us on our toes, and it was very nice to meet you yesterday.

Therese Fretwell  
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**From:** Dow, Diane [<mailto:Diane.Dow@dep.state.nj.us>]  
**Sent:** Thursday, December 12, 2013 1:44 PM  
**To:** Fretwell, Therese J; Furda, Michael R  
**Cc:** Mahon, Donna  
**Subject:** ASD clarification

Hi Theresa and Mike,

Thank you for answering our questions yesterday. It was very helpful.

I was hoping you could clarify something for us concerning reconstruction of a home on a property where the entire property does not meet the ASD of a tank. Donna and I talked about it last night and we are not clear on the guidance you provided.

It is understood that if a reconstruction project that does not meet the ASD of a hazardous tank remains within the structural footprint of the pre-storm home that compliance can be met, however we were not clear as to whether a reconstructed home would be in compliance if the home was reconstructed farther from the tank. Below is a description from one of our contractors of an actual RREM project that he is currently reviewing. If the location of the house does move, it can only move further away from the tank. If you could clarify this issue, we would appreciate it. Thanks again for your time yesterday. Theresa, it was nice meeting you. Diane

*Application RRE0007123 in Task Order 14 proposes reconstruction of a house at 418 North Elberon Avenue, Atlantic City. A 550-gallon heating oil tank at 402 Warrena Road is approximately 178 feet east of the proposed activity site and 189 feet east of the existing structure on the site. The tank does not have external containment. Its ASDs are 216 feet for thermal radiation to people and 38 feet for thermal radiation to buildings. The intervening land is flat and contains no fire-resistant structure.*

*The front of the structure at 418 North Elberon Avenue appears to be within 10 feet of the sidewalk to the northeast, and the southeast side of the structure—the side closer to the tank—appears to be a little more than 5 feet from the lot line. The zoning district is R-2, which requires a minimum front yard of 15 feet, a minimum side yard of 5 feet, and a minimum back yard of 25 feet. It appears that the house could not be rebuilt closer to the tank without violating local zoning. The new house would have to be farther from the sidewalk, which would be farther from the tank. The house could not be moved significantly closer to the lot line on the side closer to the tank.*

*Reconstruction farther from a hazardous tank should not cause a proposed activity to be found in noncompliance with ASD requirements. This is especially true when reconstruction farther from the tank is required by local zoning.*

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