**Model**

**U.S. Department of Housing and Urban Development (HUD)**

**Comfort/Status Letter**

**September 2021**

[**Insert Addressee**]

RE: [**Insert name or short description of property/site**]

Dear [**Insert name of interested party**]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or the Agency) on [**insert** **date**] about your plans concerning the property referenced above (“Property”). In your inquiry, you described your interest in [**insert general description of the “Development” (e.g., leasing or developing the Property for residential or recreational development or refinancing an existing property)**] (“Development”) and requested that we provide you with a Superfund comfort/status letter. [**Note:** **HUD language for use when the letter is being requested pursuant to a HUD specific program:** In your inquiry, you described the Department of Housing and Urban Development’s (HUD) requirements for housing development projects within, on, or near a Superfund site, which are found in HUD’s Part 50 and 58 regulations (24 C.F.R. § 50.3(i) and 24 C.F.R. § 58.5(i)(2)]. [**Note: If HUD-specific program is known (e.g., Federal Housing Administration (FHA) multifamily or healthcare) also include specific regulations.**]You are requesting a letter from EPA stating that the project is suitable for residential use (“Development”).

[**Optional: EPA regional office practice information.**]

The purposes of this comfort/status letter are to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns that you have identified at the Property and summarize the relevant information available to EPA about the [**insert name of Superfund Site**]as of the date of this letter. We hope this information will enable you to make informed decisions as you move forward with your plans for the Property.

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),[[1]](#footnote-2) the Agency’s mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return properties to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy.[[2]](#footnote-3) We are providing this information so that [you and] HUD will have EPA’s assessment of the acceptability of this property for residential use.

**Property Status**

Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the Superfund Enterprise Management System (SEMS).[[3]](#footnote-4) [**Add the site-specific link to the Superfund site profile, if available**].

The Property [**insert one of the following:**

[**a.**] is defined as

[**b.**] is situated within

[**c.**]may be part of

[**d.**]is located near the[**insert SEMS/NPL site name**] (“Site”).]

This Site [is or was] located in SEMS, [**insert one of the following:**

[**a.**] but is not on the National Priorities List (NPL).

[**b.**] and has been proposed to the National Priorities List (NPL).

[**c.**] and is on the National Priorities List (NPL).

[**d.**] and is subject to [**describe the ongoing response action**] under the Superfund Alternative Approach.[[4]](#footnote-5)

[**e.**] but was [deleted or partially deleted] from the National Priorities List (NPL).]

For the reasons stated below, we are addressing the Siteunder Superfund [remedial/removal] authority.

**History and Status of the Site**

SEMS provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal removal action, and (3) sites with a [Superfund Alternative Approach](https://www.epa.gov/enforcement/superfund-alternative-approach) agreement.[[5]](#footnote-6)

**Reuse of the Property**

Based on the information [you provided or that was provided on your behalf], EPA understands that [you **or** **insert name of interested party if requestor is a third party**] intend to [**insert brief description of the development**] at the Property. We also understand the Development will involve [**insert brief description of proposed on-site activities**]. **[Optional, in whole or in part, and to be revised, as needed, if incompatibilities are currently known:** Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with the EPA [or federal agency] cleanup actions and institutional controls (ICs) designed to protect the remedy and prevent unacceptable exposure to residual contamination.] [**Note:** **For example, the EPA Region could include language that an interested party should not conduct any activities or construct any structures that would interfere with EPA’s investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup.**] As of the date of this letter, your proposed use of the Property as you have described it to us appears consistent with EPA’s selected cleanup option and is suitable for residential use. [**If EPA cannot make a determination as to whether the Property is suitable for residential use, if appropriate, include language that states whether the contamination poses a risk to human health.**] [**If groundwater, vapor intrusion, or institutional control issues are identified, explain the Agency concerns and potential options, if possible. Also, insert any land restrictions, if known by the EPA Region**]. As your plans develop further, please continue to discuss the development with us.

**CERCLA’s Bona Fide Prospective Purchaser Liability Protection**

EPA is providing you with information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who meets the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

**[For lessees, add:** The statutory definition of a BFPP also includes a party who acquires a leasehold interest in a property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]

A key advantage of the BFPP provision is that it is self-implementing; therefore, the Agency is not involved in determining whether a party qualifies for BFPP status. A party, on its own, can achieve and maintain status as a BFPP, which provides statutory protection from CERCLA liability, without entering into an agreement with EPA, so long as that party meets the threshold criteria and continuing obligations identified in the statute.[[6]](#footnote-7)

Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than EPA,ultimately determines whether a landowner has met the criteria for BFPP status. Thus, EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

**[Optional: Include the following section(s) depending on whether the information is sufficient to identify site-specific reasonable steps. The EPA Region may also include language indicating that EPA, state, and PRPs will require continuing access to the property for the purpose of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls.]**

[**Optional**: **Reasonable Steps**

Among other criteria outlined in CERCLA, a BFPP must take “reasonable steps” to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substance as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance.[[7]](#footnote-8)

[**If there is enough information available to the EPA Region to determine reasonable steps, insert the following:** By making the BFPP Exemption subject to the obligation to take ‘reasonable steps,’ EPA believes Congress intended to protect certain landowners from CERCLA liability while at the same time recognizing that these landowners should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency has [**insert most recent/relevant action taken by the Agency**] at the Siteand identified several environmental concerns. Based on the information we have evaluated; we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

[**Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern.**]

Any reasonable steps suggested by EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps whether EPA regional staff has identified any such steps.[[8]](#footnote-9)]

**[Note: Pursuant to requirement C7 of the** [**OSRE Roles Chart**](https://cfint.rtpnc.epa.gov/ioic/osre_roles/)**, before the EPA Region inserts language discussing a statutory exemption or guidance not included in this model letter, the Region should consult with OSRE as this would be considered a significant deviation from this model.]**

[**Liens**

[**Optional: Superfund Lien Pursuant to CERCLA § 107(*l*)**

[**Insert one of the following:**

[**a.**]No Superfund lien has arisen against the[“Site” or “Property”]pursuant to CERCLA § 107(*l*). or

[**b.**]A Superfund lien has arisen on the[“Site” or “Property”]pursuant to CERCLA § 107(*l*).]

[**Then choose one of the following:**

[**i.**]EPA has not filed a notice of lien pursuant to CERCLA § 107(*l*)(3) on this [Site or Property] and is not in a position today to determine whether we intend to file such notice of lien with respect to the [Site or Property].

[**ii.**] EPA has not filed a notice of lien pursuant to CERCLA § 107(*l*)(3) on this [Site or Property]. Generally, the Agency will not file a notice of lien on property currently owned by a non-liable party.

[**iii.**] EPA has not filed a notice of lien pursuant to CERCLA § 107(*l*)(3) on this [Site or Property] because to date, we have recovered all the costs incurred at the Site from the potentially responsible parties (PRPs).

[**iv.**]EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(*l*). According to the Settlement Agreement between the Agency and [**insert name of the interested party**], when the property is sold, we will release this lien upon compliance by the [**insert name of the interested party**] with the terms of the settlement agreement.

[**v**.]EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(*l*) and [is or is not] willing to seek resolution leading to release of the lien.

[**vi.**]EPA generally will not file a notice of a CERCLA § 107(*l*) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (*See* CERCLA § 107(*l*)(2)).]]

[**Optional: Windfall Lien Pursuant to CERCLA § 107(r)**

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(*l*) lien (aka “Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to EPA’s cleanup.[[9]](#footnote-10)

[**Optional, if applicable. Choose one of the following:**

[**a.**] Based upon the information available to EPA, the Agency is not in a position today to determine whether the Windfall Lien Policy may apply to this [Site or Property].

[**b.**]EPA has not filed notice of a windfall lien under Section 107(r) of CERCLA on this [Site or “Property”]. In accordance with EPA policy, the Agency, generally, will not file notice of a windfall lien [**insert reason set forth in the windfall lien policy, for example, “where a bona fide prospective purchaser acquires the property at fair market value after cleanup”**].

[**c.**]Based upon the information available to EPA and consistent with the Windfall Lien Policy, we believe that your situation may fall under the [**insert reason set forth in the Windfall Lien Policy**] section of the policy.

[**d.**] Based upon the information available to EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property][**Optional:** in the amount of $ \_\_\_]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.]]

**State Actions**

We can only provide you with information about federal **[insert relevant statue, e.g., Superfund]** actions at the [Site or Property], federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact [**insert** **name of state’s environmental program or name of specific state contact and contact information**]. [**NOTE: If there is a state contact who handles technical issues, also insert their contact information.**]

**Conclusion**

EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact [**insert EPA contact information**].

Sincerely,

[**Insert regional contact name**]

[**Insert regional contact title**]

[**Optional:** **Enclosure(s) (#)**]

cc: [**Insert EPA OSRE comfort/status letter contact**]

[**Insert EPA FFEO comfort/status letter contact, if applicable**]

[**Insert EPA OLEM contact, if applicable**]

[**Insert state contact(s), if applicable**]

**[Insert HUD contact(s)]**

1. 42 U.S.C. §§ 9601, *et seq.* [↑](#footnote-ref-2)
2. *See* [*2019 Policy on the Issuance of Superfund Comfort/Status Letters*](https://www.epa.gov/enforcement/comfortstatus-letters-guidance). [↑](#footnote-ref-3)
3. SEMS is available at: <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. [↑](#footnote-ref-4)
4. See 2019 Policy on the Issuance of Superfund Comfort/Status Letters available on the Agency’s website at https://www.epa.gov/enforcement/comfortstatus-letters-guidance. [↑](#footnote-ref-5)
5. See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2019), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency’s website at <https://www.epa.gov/enforcement/superfund-alternative-approach>. [↑](#footnote-ref-6)
6. See EPA’s *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* ("Common Elements Guidance") (July 29, 2019), available on the Agency’s website at <https://www.epa.gov/enforcement/common-elements-guidance>. [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.” [↑](#footnote-ref-9)
9. For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA (“*Windfall Lien Policy”) <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>. [↑](#footnote-ref-10)