

SOUTH CAROLINA DEPT. OF COMMERCE
NEPA
Deep Dive

**State of South Carolina Department of Commerce
2025 CDBG Implementation Workshop**

Presented by Civitas, LLC





National Environmental Policy Act (NEPA)

- **Enacted:** 1970 – Requires federal agencies to evaluate and disclose the potential environmental impacts of proposed actions before making decisions.
- **Purpose:** Balance environmental, economic, and social factors; promote transparent, informed decisions.
- **When It Applies:** Proposed action that uses federal funding and/ or requires federal permits or authorizations, and that has the potential to affect the environment.
- **HUD Context:** Integrated into 24 CFR Part 58/50; most construction, rehab, demolition triggers review; planning/ administrative activities are generally exempt.



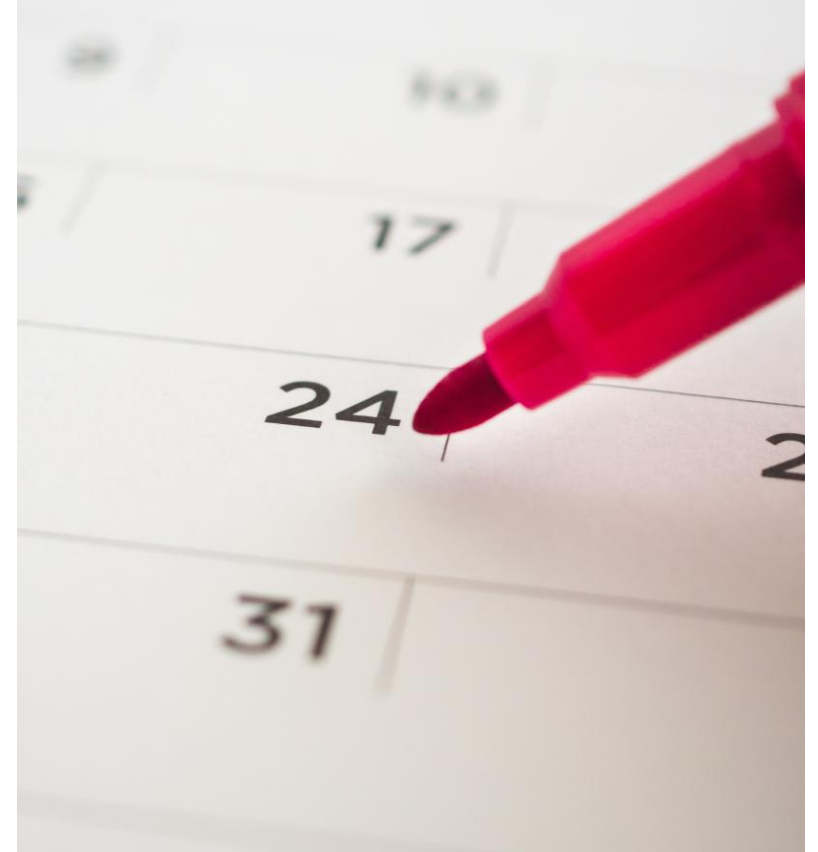
Terminology Overview

- **Environmental Review (ER):** Analysis of an activity's environmental impact.
 - Documents findings (Environmental Review Record)
 - [24 CFR Part 58](#) – Local Government Regulations
 - Responsible Entity (RE) – A unit of general local government, tribe, or state that assumes HUD environmental review responsibilities.
 - Certifying Officer – Official of RE who is legally responsible for ER decisions and compliance.
 - Applies to most HUD grant programs.
- **Project Description** – Covers all related activities and includes a clear geographic area.
- **Choice Limiting Actions** – No activities can begin until the environmental review is complete, regardless of funding source.



When is an ER Required?

- All activities that use federal funds and/ or require federal permits or authorizations.
- Estimated Timeline:
 - No potential to impact environment: 1-2 days (Exempt/CENST)
 - Potential to impact environment: 60-75 days (CEST)
 - High potential to impact environment: 90-120 days (EA)
- **Before Choice Limiting Actions**





Choice Limiting Actions

- Cannot be taken until after completion of the ER.
- Examples:
 - Physical impact – acquisition, construction, etc.
 - Legally binding contracts
 - Includes non-federal funding sources
 - Includes all associated activities
 - Use of funds
- Exempt/CENST are not choice limiting.



Project Description

- Most impactful step of the entire process
- Maximum anticipated scope
- Includes all actions, regardless of funding source
- Well-defined geographic boundaries
- Sensitive information can be omitted from public version

Project Aggregation – 24 CFR 58.32



Related activities must be part of one review



Prevents using lower standards



Includes all funding sources

- **Related activities include:**
 - Occur at the same location
 - Are functionally similar but at different locations (e.g., sewer repair in multiple places)
 - A combination of both above
 - Exception: Planning and administrative costs

KNOWLEDGE CHECK



Scenario:

A grantee plans on building a new park in an LMI area.

The proposed area is currently privately owned and will need to be acquired by the grantee.



Can the grantee purchase the property while waiting for the ER to be completed?



Can the grantee purchase the property while waiting for the ER to be completed?

No, acquisition is a “choice limiting” action and requires a complete ER.



Can the grantee hire a firm to design the potential park while waiting for the ER to be completed?



Can the grantee hire a firm to design the potential park while waiting for the ER to be completed?

**Yes, design is an Exempt activity – 24
CFR 58.34(a)**



Exempt and CENST

Technically two separate levels but functionally the same.

Exempt – Determined by NEPA not to impact the environment

- Environmental or engineering studies
- Administrative and management activities
- Public services
- Other similar activities

CENST – Determined by HUD not to impact the environment

- Supportive Services
- Certain Economic Development activities
- Equipment purchase
- Other similar activities

EXEMPT & CEST CASE STUDY

└ **Categorically Excluded Subject to 58.5 (CEST)**

- Activities that have the potential to impact the environment
- Includes most:
 - Minor Rehabilitation
 - Facility Improvements
 - Infrastructure Improvements (no more than 20% change in capacity or size)
 - Acquisition
 - New Construction



Environmental Assessment (EA)

- Activities that are likely to have some effect on the environment
- Primarily includes:
 - Major rehabilitation
 - Activities that impact more than four units
 - Change in land use
 - Expansion of facilities, infrastructure, or density over 20%

Environmental Impact Statement (EIS)

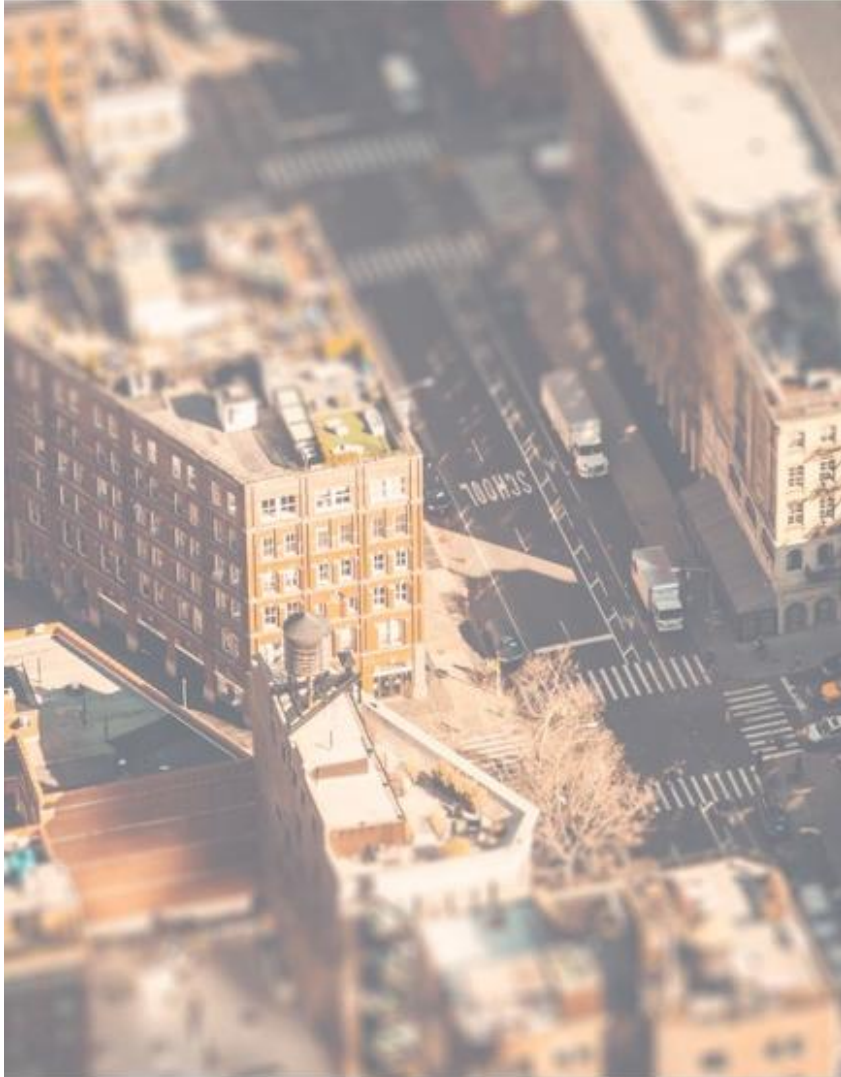
- Final level of review
- Applies only to very large projects, such as new construction of 2,500 units or more



Important Exceptions

- A CEST converts to an EA when...
 - Increase in unit density, size or capacity by more than 20%
 - Change in land use (e.g., residential to commercial)
 - Rehabilitation cost is more than 75% of replacement cost (multi-unit)
 - Non-rehabilitation actions on more than four units less than 2,000 feet apart (primarily demolition and new construction)

KNOWLEDGE CHECK



Levels of Review:

A county will improve the local water system by replacing 2" pipes with 3" pipes.

What level of environmental review is required?

The city will be constructing a new library on a vacant lot.

What level is required?



Summary: Most Important Concepts

- **Project Description** – Covers all related activities and includes a clear geographic area.
- **Choice Limiting Actions** – No activities can begin until the ER is complete, regardless of funding source.
- **Five Levels of Review**
 - Exempt and CENST – Assumed no environmental impact
 - CEST – Potential environmental impact
 - EA – Likely environmental impact
 - Environmental Impact Statement

ENVIRONMENTAL FACTORS

CEST / Exempt

3 factors to review and document:



Flood Insurance



Airport Distance



Coastal Barrier
Resource Units



CEST

16 factors (including previous 3):

1. Flood Insurance
2. Airport Distance
3. Coastal Barrier Resource Units
4. Clean Air
5. Coastal Zone Management
6. Contamination and Toxic Substances
7. Endangered Species
8. Farmland Protection
9. Explosive and Flammable Hazards
10. Floodplain Management
11. Historic Preservation
12. Noise Abatement and Control
13. Sole Source Aquifers
14. Wetlands Protection
15. Wild and Scenic Rivers
16. Environmental Justice



Environmental Assessment

Includes all previous factors plus:

Land Development

- Four subcategories

Socioeconomic

- Two subcategories

Community Facilities and Services

- Nine subcategories

Natural Features

- Four subcategories



Documenting Compliance

- Location of the Project
- Nature of the Project
- Memorandum of Understanding or similar agreement
- Formal Mitigation Steps

Case Study



Case Study

- 22-24 Cooper Street, Charleston, SC
- Project: Demolition of two dilapidated structures and construction of new Sonder Public Library and Children's Center.
- Level of Review: Environmental Assessment
- Does not meet exclusion requirements under 24 CFR 58.35 due to:
 - Change in land use
 - Increase in capacity by more than 20%



Important Note

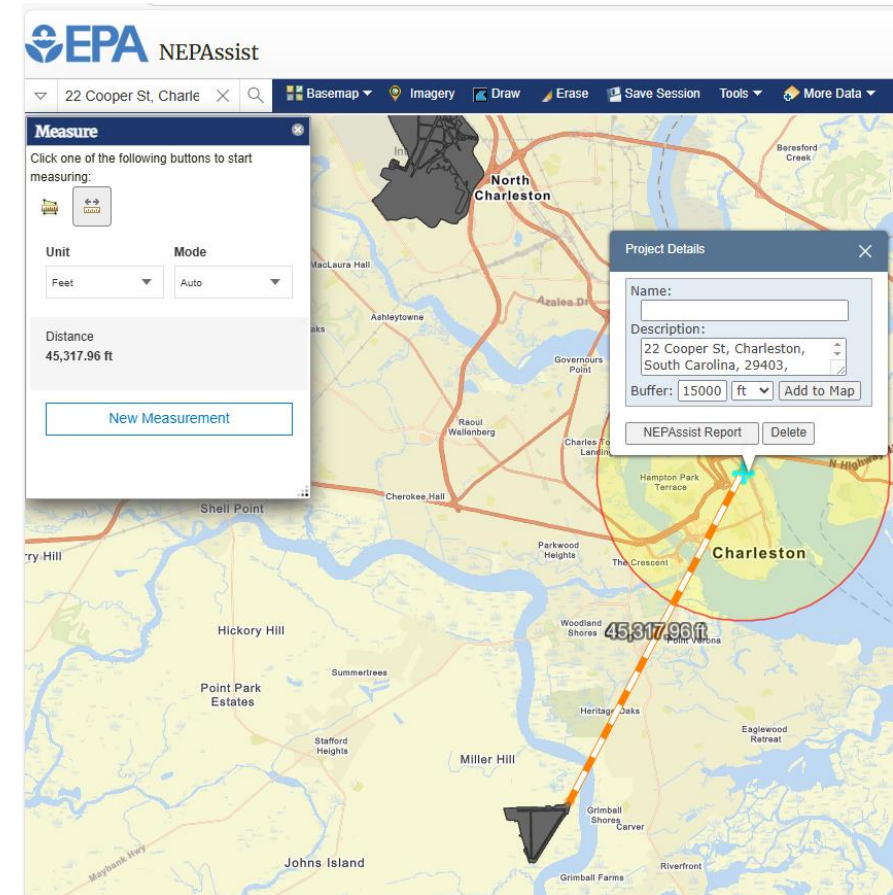
Regulatory Changes in 2024 and 2025

- Part 58.5(i) Compliance – Site Contamination
- Part 55 Compliance – Floodplain Management
- Executive Order 12898 Environmental Justice – No longer applicable



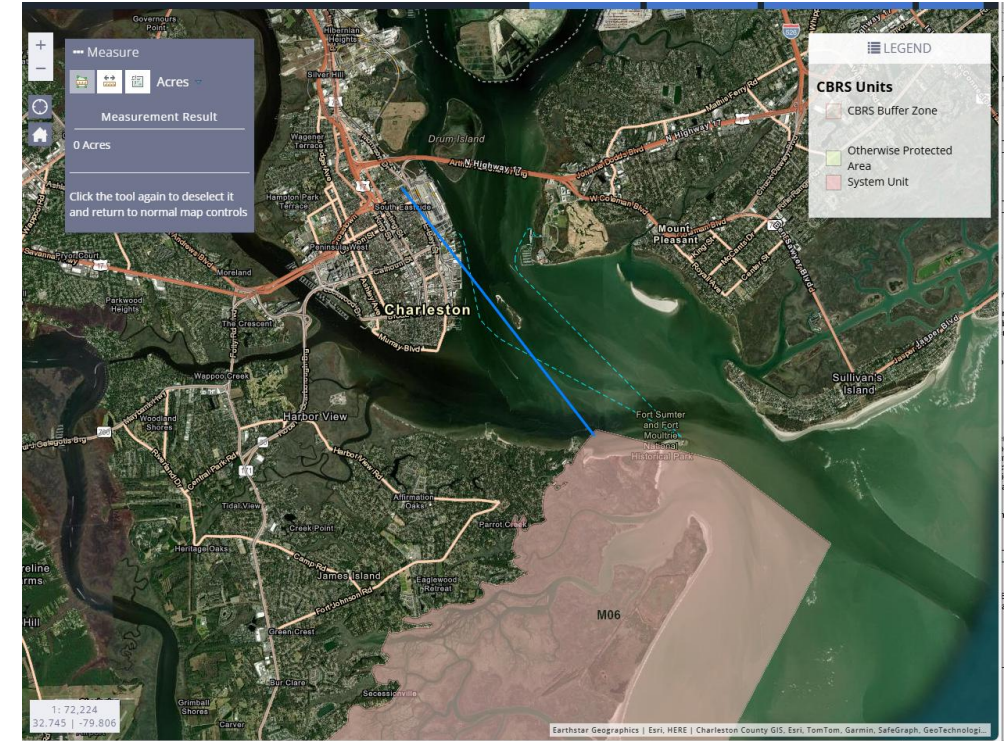
Airport Hazards

- Compliance determined by location
 - > 15,000 feet from military airfield
 - > 2,500 feet from civilian airfield
- Recommended Documentation
 - NEPAassist
 - 15,000 ft buffer
 - Measurement to nearest airport



Coastal Barrier Resources

- Compliance determined by location
 - Cannot be located within a Coastal Barrier Resource Unit
- Recommended Documentation
 - US Fish and Wildlife CBRS Mapper
 - Measurement to nearest unit





Flood Insurance

- Compliance determined by location, nature, or formal steps
 - Location: Not located in a Special Flood Hazard Area
 - Nature: Does not include insurable property
 - Formal Step: Flood insurance in place and maintained
- Recommended Documentation
 - FEMA Map
- State programs are exempt from this environmental factor.



Clean Air

- Compliance determined by location or nature
 - Location: County is not in non-attainment or maintenance status
 - Nature: Does not include new constructions or multiunit housing
 - Nature: Project does not exceed *de minimis* levels of applicable pollutants
- Recommended Documentation
 - EPA Greenbook Status List
 - SCDES/Air Regulation Section – SC Currently does not have any nonattainment or maintenance counties.



Coastal Zone Management

- Compliance determined by location, nature, or formal steps
 - Location: Not located within Coastal Zone
 - Nature: Project not subject to state review or is consistent with state plan
 - Steps: Mitigation plan established
- Supporting Documentation
 - Map showing project is outside of applicable counties OR
 - Copy of Coastal Zone Consistency Letter



Key Factor: Contamination and Toxic Substances

- Required for all activities
- Sites known or likely to have contamination (per HUD guidance)
 - Listed Superfund or State equivalent sites
 - Located within 3,000 feet of a landfill or similar site
 - With an underground storage tank



Key Factor: Contamination and Toxic Substances

- Investigate previous uses of sites
- Conduct site visit
- Utilize NEPAassist and log all sites within 3,000 feet (best practice)
- Conduct ASTM certified Phase I ESA report if:
 - Site is contaminated or likely contaminated
 - Occupied by people (parks, buildings, etc.)

└ Site Contamination – Superfund Sites

- HUD Exchange: *Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include but are not limited to sites... (i) listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list;*
- Compliance
 - NEPAassist – CERCLA
 - SC Department of Environmental Services – Active Remediation Projects

Notice: [CPD-23-103](#)



Site Contamination – Landfills

- HUD Exchange: *Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include but are not limited to sites... (ii) located within 3,000 feet of a toxic or solid waste landfill site;*
- Compliance
 - SC Department of Environmental Services Annual Report – Landfill classifications and locations
 - NEPAassist – EPA Facilities

Notice: [CPD-23-103](#)

└ Site Contamination – Underground Storage Tanks

- HUD Exchange: *Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include but are not limited to sites... (iii) with an underground storage tank.*
- Compliance
 - EPA UST Finder – Maps underground storage tanks tracked by EPA
 - SC DES – Statewide Underground Storage Tank Registry



Site Contamination – Radon

- Formalizes process for addressing radon
- **Applicability:**
 - Buildings with ground contact (including crawlspaces, utility tunnels, parking garages) **AND**
 - Will be occupied for more than four hours per day **AND**
 - Does not have an existing radon mitigation system **AND**
 - Was not tested within last five years with levels below 4.0 pCi/L

Notice: [CPD-23-103](#)



Site Contamination – Radon

- Multiple ways to show compliance:
 1. Recommended: Site tested by trained expert to ANSI/AARST standards
 2. DIY Test Kit (only applicable for single-family residential structures)
 3. Monitoring Equipment (requires staff training)
 4. Scientific Data Review
 - Only used when all other methods are not practical due to cost or timeline
 - Review CDC Radon Data (EPA data is not valid) to determine average radon levels of structures over the last ten years.
 - At least 10 results each year required

Results Under 4.0 pCi/L – Record results and move on

Results 4.0 pCi/L or Above – Mitigation Plan required

Using the CDC Radon Tool



Phase 1 Applicability

- HUD 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)
 - Acquisition and/or development of multifamily housing with five or more units or non-residential properties require evaluation of previous uses of the site.
 - Phase I is the industry standard that meets that requirement
 - Use of Phase I is highly recommended but not required.
 - Does not address radon

Notice: [CPD-23-103](#)



Key Factor: Endangered Species

- Applies to all activities with the potential to impact endangered species or habitats (very broad)
- Some areas may have a regional “Clearance to Proceed” agreement to streamline review
- <https://www.fws.gov/carp/library/collections/endangered-species>



Key Factor: Endangered Species

- For other projects, U.S. Fish and Wildlife has created Information for Planning and Consultation ([iPac](#)), an online system to streamline the process
- If initial determination finds that there is a potential to effect species, then formal consultation is required.
- Compliance documentation includes all reports from Clearance to Proceed or iPac and correspondence with US Fish and Wildlife, if required.



Farmlands Protection

- Applicability
 - Construction of utilities, infrastructure, or buildings on undeveloped land and
 - Is not in a Census Bureau mapped Urban Area
 - Is not located on “Important Farmland”
- Compliance
 - Nature of Project
 - Location of Project
 - US Census Bureau TIGERweb Urban Area Map
 - USDA Soil Survey Map

Using iPac



Explosives and Flammable Hazards

- When is this applicable?
 - HUD-assisted project that includes hazardous facilities.
 - Must be located at an acceptable separation distance from residences and other places where people congregate.
 - Development, construction, rehabilitation that will increase the number of people using a structure or site, or will convert land.
 - Rehabilitation of a vacant unit is only an “increase in density” if it has been vacant for over one year.
 - Determine current or planned applicable stationary aboveground storage containers within 1-mile
 - If present, determine Acceptable Separation Distance using HUD tool

- [illegible]



SOUTH CAROLINA DEPT. OF COMMERCE

Decision Making Process (24 CFR 55.20)

- 5-Step or 8-Step Process
- 5-Step ([24 CFR 58.14](#))
 - Applies only to certain projects
 - Disposition and acquisition of certain structures
 - Minor rehabilitation of single-family structures (less than 5 units)
 - Minor rehabilitation of non-residential structures
- Does not require
 - Publication of Early Notice (Step 2)
 - Determine Practical Alternatives (Step 3)
 - Publication of Final Notice (Step 7)



8-Step Process (24 CFR 55.20)

8-Step Process includes:

1. Determine floodplain or wetland status
2. Publish Early Notice (15-days)
3. Determine Practical Alternatives
4. Identify Adverse and Beneficial Impacts
5. Mitigate Adverse Impacts
6. Re-Evaluate Alternatives
7. Publish Final Notice (7-days)
8. Adjust Project, if necessary



Determining Elevation

- New Construction and Substantial Improvements of structures must be elevated above floodplain
- Step 1: Take Base Flood Elevation with FEMA and add 2 feet to determine FVA elevation
- Step 2: Determine Site Elevation Using USGS Tool ([EPQS](#))
- Step 3: Check site plans and alter to raise elevation, if necessary.



Key Factor: Historic Preservation

- Applies to all federally assisted projects unless covered by a Programmatic Agreement
- Protects historic properties, archaeological sites, and cultural resources
- RE initiates consultation with State Historic Preservation Office (SHPO) and other consulting parties
- 30-day review period (minimum) for SHPO response
- Aim to avoid, minimize, or mitigate adverse effects



Historic Preservation

- **Tribal Consultation** is only required in certain circumstances.
 - Significant ground disturbance
 - New construction in undeveloped areas
 - Incongruent visual, audible, or atmospheric changes
 - Activities that impact structures with significant tribal, religious, or cultural association
- Tribal consultation **MUST** occur between government agencies.
 - Consultants and subcontractors cannot be the primary contact
 - Use email and physical address
 - Must use TDAT to determine Tribes in the county

Tribal Contacts – Sample

- Tribal Contacts: <https://egis.hud.gov/tdat>

Contact Information for Tribes with Interests in Horry County, South Carolina

Tribal Name				County Name		
- Catawba Indian Nation (aka Catawba Indian Tribe of South Carolina)				Horry		
Contact Name	Title	Mailing Address	Work Phone	Fax Number	Email Address	URL
Bill Harris	Chief	996 Avenue of the Nations, Rock Hill, SC - 29730	(803) 366-4792	(803) 327-4853	bill.harris@catawbaindian.net	www.CatawbaCulture.org
Dr. Wenonah G. Haire	THPO and Catawba Cultural Center Executive Director	1536 Tom Steven Road, Rock Hill, SC - 29730	(803) 328-2427 ext. 224	(803) 328-5791	wenonah.haire@catawba.com	www.CatawbaCulture.org
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Historic Preservation

- Compliance Documentation Includes:
 - All correspondence between SHPO and Tribal associations
 - Documentation showing when packets were received
 - Concurrence letters or other responses from SHPO and Tribal associations
 - Screenshot of TDAT, if Tribes are consulted



Historic Preservation

- Recommend starting ER process with Historic Preservation
 - Step 1: Complete Packets
 - Step 2: Mail packets (30-day timeline begins once the packet is received).
 - Step 3: Receive comments or concurrence.

Once concurrence is received or a mitigation plan is approved, this process is complete.

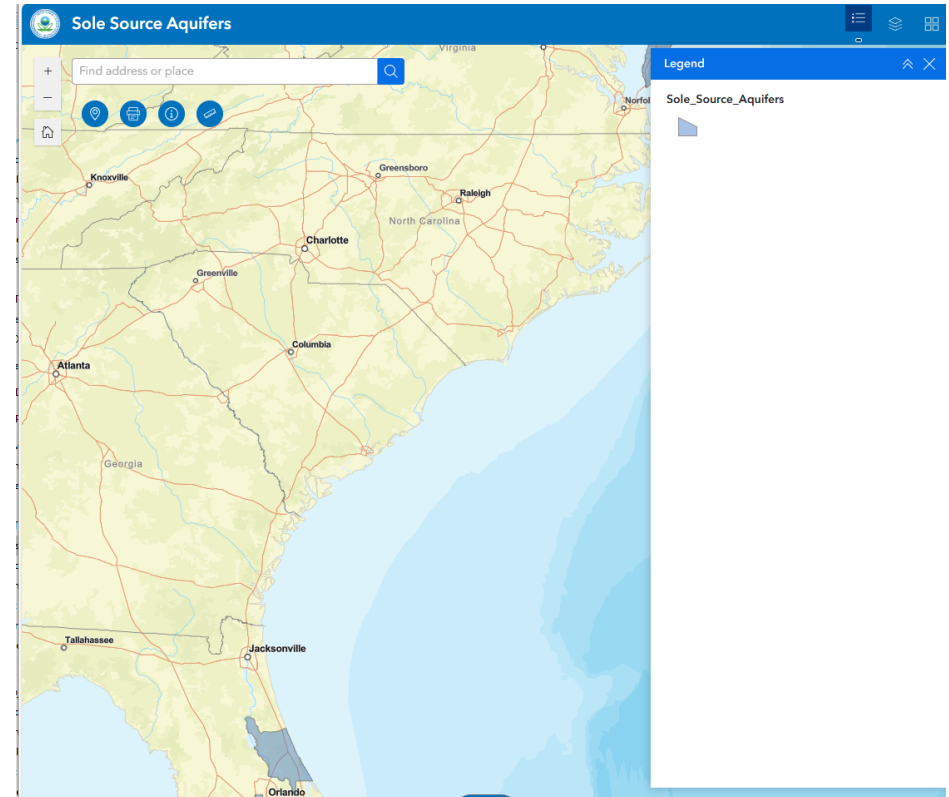


Noise Abatement and Control

- Applicability
 - New Construction for residential use
 - Rehabilitation of an existing residential structure
 - Research demonstrations
 - “Noise sensitive” development such as parks, non-residential structures, etc.
- Compliance for applicable projects
 - Standard noise attenuation measures in place
 - Documentation showing estimated DNL below 65 decibels

Sole Source Aquifers

- Applicability
 - Areas within a Sole Source Aquifer
 - Activities are not limited to existing structures
 - Activities are not covered by EPA/HUD Memorandum of Understanding
- No Sole Source Aquifers in South Carolina





Key Factor: Wetlands

- Applies to New Construction, as defined by Executive Order 11990
- Draining, Dredging, Channelizing, Filling, Diking, Impounding, Other related activities
- Requires 8-Step Decision Making Process
- National Wetlands Inventory Mapper and Site Visit in accordance with state HUD guidance
- State has process for checking wetlands in developed areas that may be able to use

Using NWI Mapper



Wild and Scenic Rivers

- Wild and Scenic Rivers
- Nationwide Rivers Inventory List
- Eligible and Suitable Rivers
- Study Rivers List
- Will the project:
 - Have a direct and adverse impact on a waterway?
 - Invade the area or diminish the river boundaries?
 - Have an adverse effect on the rivers value?
 - If yes, consultation with federal and state agencies required.



Environmental Justice Requirements Changes

- No longer applicable.
- Executive Order 14173 eliminated this environmental factor.
- HUD Guidance: *In accordance with Executive Order 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity, analysis of compliance for this authority is no longer required. HUD recommends that when completing reviews you include language under the Environmental Justice compliance heading and Environmental Assessment factor heading to indicate that compliance with the applicable authority/factor is no longer required. (State of South Carolina Documentation Sources for HUD Environmental Reviews by Lenwood E. Smith, II – February 19, 2025)*



Key Takeaways

- Many environmental factors considered, but some require more work
- Floodplains, Historic Preservation, Endangered Species, Site Contamination and Wetlands tend to have additional steps
- Floodplains/Wetlands can add over 22 days to the process
- Historic Preservation has a required 30-day period
- **Start early!**

An aerial photograph of a city, likely Asheville, North Carolina, featuring a large park with a prominent waterfall and surrounding urban development. The image is overlaid with a blue-to-green gradient.

ANY QUESTIONS?
THANKS FOR LISTENING