CH 2 ENVIRONMENTAL REQUIREMENTS

Introduction

The purpose of the environmental review process is to analyze the effect the proposed project will have on the people and the natural environmental components within the project area.

Units of local government who are recipients of CDBG funds must complete an environmental review of all project activities prior to taking any "choice limiting actions" regardless of funding source. This requirement also applies to projects funded with CDBG-Generated Program Income.

This chapter will cover the following:

- Definitions
- Background and Responsibilities
- Actions Triggering Environmental Review and Limitations Pending Clearance
- Classifying the Activity and Conducting the Appropriate Level of Review
- Publication and Posting of Public Notices
- Anti-Duplication Measures
- Re-evaluation of Review Findings

Section 1 -Definitions

"Categorical Exclusions Not Subject to Sec. 58.5 (CENST)"– a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required. These activities are not subject to review by the authorities listed in 24 CFR Part 58.5 but are still responsible for any applicable requirements under 24 CFR Part 58.6.

"Categorical Exclusions Subject to Sec. 58.5 (CEST)" – a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required. These activities are subject to review by the authorities listed in 24 CFR Part 58.5. A complete list of applicable activities can be found in the federal regulations at 24 CFR 58.35(a).

"Choice Limiting Actions" – any activity that a grantee undertakes, including committing or expending HUD or non-HUD funds, that reduces or eliminates a grantee's opportunity to choose project alternatives that would avoid or minimize environmental impacts or enhance the quality of the human environment.

"Commitment of Funds" – for the purposes of the environmental review, this includes:

- Execution of a legally binding agreement (such as a property purchase/donation or construction contract);
- Expenditure of CDBG funds;
- Use of non-CDBG funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be "choice limiting"--- e.g., undertaking bids for construction or demolition; acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

"Environmental Assessment (EA)" - a concise public document prepared to aid a grantee's compliance with federal and state laws and authorities as well as support its determination of whether an EIS or FONSI needs to be prepared.

"Environmental Impact Statement (EIS)" – a detailed written statement about a project's impact on the human environment. An EIS is required for major actions that significantly affect the environment.

"Exempt Activities"- a category of activities for which the grantee does not have to undertake environmental review and any provisions of law or authorities cited in 24 CFR Part 58.5. The grantee still must adhere to applicable requirements of 24 CFR Part 58.6.

"Finding of No Significant Impact (FONSI)" – a document prepared by a grantee that briefly presents the reasons why an activity or project (not including those that are categorically excluded) will not have a significant impact on the human environment. The FONSI is published or posted to allow the public an opportunity to comment on the proposed project. A FONSI must be completed for all Environmental Assessments in order to release grant funds.

"Human Environment" – the natural and physical environment and the relationship of present and future generations with that environment.

"Notice of Intent to Request for Release of Funds (NOI/RROF)" – document prepared by a grantee that informs the public that the responsible entity will be requesting funds for a project that requires formal compliance steps or mitigation. The NOI/RROF is published/posted to allow the public an opportunity to comment on the proposed CEST level project.

"Project" - An activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the CDBG recipient, subrecipient, or a public or private entity in whole or in part to accomplish a specific objective.

"Responsible Entity", "Grantee", or "Recipient" – the unit of local government receiving CDBG funds.

Section 2 - Background and Responsibilities

Overview of Process

The environmental review process should begin as soon as a recipient determined the projected use of HUD assistance. This process can be simplified into the following steps:

***Step 1*: Define the Project/Project Aggregation**

The first step in the process is to define the full extent of the project. A project is made up of multiple activities that must be grouped together and be evaluated as one (to "aggregate" the project), regardless of funding source. In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the grantee may choose different types of aggregation: functional (based on type of activities), geographic (based on location), or a combination. It is the responsibility of the grantee to choose how to aggregate these activities. It should be noted that if a project consists of several activities, some of which are categorically excluded and some of which require an environmental assessment, the recipient must aggregate the related activities and conduct an environmental assessment on the entire project.

***Step 2*: Determine the level of environmental review:**

Based on the activities that are part of the overall project, determine the appropriate level of environmental review. Detailed information regarding each level of review is provided later in this chapter.

- Exempt Activities: There are a series of activities that are exempt from environmental review. It is the responsibility of the grantee to identify these activities. These actions are not exempt, however, from the applicable requirements of 24 CFR Part 58.6. A complete list of applicable activities can be found in the federal regulations at 24 CFR 58.34.
- Categorically Excluded Activities: There are a series of activities that are categorically excluded from having to complete an environmental impact statement (EIS), environmental assessment, and a finding of no significant impact (FONSI). It is the responsibility of the grantee to identify these activities and record these determinations in writing. There are two categories of categorically excluded activities, those subject to 24 CFR Part Sec. 58.5 and those that are not. The lists for these categories will be given in Sec. 4 of this chapter or can be found in the federal regulations at 24 CFR 58.35.
- Environmental Assessment: If a project is not exempt or categorically excluded, the grantee must prepare an Environmental Assessment. More information on Environmental Assessments can be found in Sec. 4 of this chapter.

It should be noted that if any environmental review determines there will potentially be significant impact on the human environment, the grantee must prepare an EIS and

publish for public comment. However, it is the State's general policy not to fund projects that would require an EIS.

***Step 3*: Prepare Environmental Review Record (ERR)**

Regardless of the level of review required for a project, the grantee must maintain a complete written record of the ERR and make the records available to the public. More details on what should be included in the ERR are listed under the "ERR" section of this chapter.

Step 4a: Publish a Notice of Intent to Request the Release of Funds (NOI/RROF)

When a Categorically Excluded Subject To (CEST) level project requires formal compliance or mitigation is required, the grantee must complete a NOI-RROF. The NOI-RROF must either be published in a newspaper of general circulation, published on a government website, or posted and sent to interested parties to allow the public an opportunity to comment on the proposed project. Once the public comment period for the notice has expired, the complete environmental review record must be submitted to the State.

***Step 4b*: Publication of Finding of No Significant Impact (FONSI)**

When an Environmental Assessment level project is determined not to have a potentially significant impact on the human environment, the grantee must prepare a FONSI notice. The FONSI is a combined notice that includes the Notice of Intent to Request Release of Funds. The notice must be published in a newspaper of general circulation, published on a government website, or posted and sent to all interested parties. Once the public comment period for the FONSI has expired, the complete Environmental Review Record must be submitted to the State.

Applicable Regulations

The rules and regulations that govern the environmental review process can be found under 24 CFR Part 58, Subparts A-H. The provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508, and other state and Federal laws and regulations may also apply depending upon the type of project and the level of review required. These laws and authorities are referenced in the HUD and NEPA regulations. For additional information and assistance go to https://www.hudexchange.info/environmental-review/.

Responsible Party

- To carry out its environmental review responsibilities, the recipient should designate two responsible parties:

- Certifying Officer: The "responsible Federal official" who ensures compliance with the National Environmental Policy Act (NEPA) and the Federal laws and authorities cited at 24 CFR Part 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the local governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assigned to administering agencies or consultants.
- Environmental Officer: This person is typically the grant administrator or the consulting engineer. The Environmental Officer will be responsible for writing the project narrative, obtaining maps of the project area and other supporting documents, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings. However, the Responsible Entity is responsible for ensuring compliance with NEPA and applicable Federal laws and authorities, for issuing the public notification, for submitting the request for release of funds, when required, and for ensuring the ERR is complete.

Environmental Review Record (ERR)

Each CDBG recipient must prepare and maintain a written record of the environmental review undertaken for each project, including exempt activities such as administrative and engineering costs. This written record or file is called the ERR and must be available for public review. Electronically maintained ERRs must remain available for public review and monitoring. However, the State still requires a hard copy to be submitted for review.

The ERR must contain the following documents and parts:

- Description of the project and the activities that make up the project, regardless of individual activity funding source. To the extent feasible, grantees are encouraged to conduct environmental reviews for improvements to target areas and neighborhoods rather than limiting the assessment to just the activity being proposed or the streets being addressed within a neighborhood. The review may include all potential activities and phases of investment planned in the future;
- Evaluation of the effects of the project or the activities on the human environment;
- Written determination and other review findings (e.g., exempt and categorically excluded determination, findings of no significant impact), and public notices, when required;
- Documentation verifying compliance with NEPA and applicable Federal laws and authorities as cited in compliance checklists, environmental assessments, and environmental impact statements;
- Notices, when applicable; and
- Public comments, concerns, and appropriate resolution.

Keep in mind that, on average, an environmental assessment for a project usually takes at least 120 days to complete[1].

In addition to one hard copy of the ERR, recipients must also submit an electronic copy to the State for review. The electronic copy and all email correspondence related to the ERR should be sent to: sc-cdbg@sccommerce.com. No other CDBG correspondence should be sent to this address. Recipients are required to submit one original Request for Release of Funds and Certification to the State.

A preliminary environmental review including source documentation **must be conducted prior to contacting applicable agencies for comment.** Agencies must be provided sufficient project information, maps, and source documentation to make a determination of compliance with applicable laws.

Compliance with Floodplain/Wetlands Requirements

If any activity is proposed to take place in the Federal Flood Risk Management Standard (FFRMS) floodplain as defined by E.O. 13690 or construction in a designated wetland is proposed, the implementation of a specific decision-making process is required for compliance with Executive Orders 13690, 11988 and 11990. This procedure is commonly referred to as the "eight-step process." For more information on compliance with Floodplain/Wetlands Requirements, please see Appendix B.

Section 3: Actions Triggering Environmental Review and Limitations Pending Clearance

Actions Triggering the Requirements at Part 58

Once a recipient has applied for CDBG funds from the State, Part 58 requirements are applicable to the project. The recipient (and any other project participants) must cease all project activity until the environmental review has been completed and a determination of environmental clearance has been made.

Where a recipient (or other project participant) has begun a project in good faith as a private project, the State is not precluded from considering a later application for Federal assistance for the project. However, the third party must cease further actions on the project until the environmental review process is completed. Recipients may proceed with the project upon receiving approval from the State.

Exempt and Categorically Excluded Not Subject To (CENST) activities may be undertaken without risking a violation of requirements of 24 CFR Part 58. Grantees must document,

[1] In order to operate as efficiently, and produce as little waste as possible, we strongly suggest to the fullest extent practicable reducing duplication. This can include: joint planning processes, joint environmental research and studies, joint public hearings, joint EAs and joint EISs.

in writing, its determination that each activity is exempt or categorically excluded. The grantee still must comply with all applicable requirements under section 58.6.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken prior to obtaining environmental clearance to use CDBG funds even if the activities are being funded by the grantee or another funding source. If prohibited activities are undertaken prior to receiving approval from the State, the applicant is at risk for the denial of CDBG assistance. Undertaking prohibited activities at any point in the project interferes with the State's ability to comply with NEPA and Part 58. If prohibited actions are taken prior to environmental clearance, then environmental impacts may have occurred in violation of the Federal laws and authorities and the standard review procedures that ensure compliance.

Limitations Pending Environmental Clearance

Grantees are required to ensure that environmental information is available to the public and all interested parties before decisions are made and before actions are taken. Grantees may not commit or expend resources, either public or private funds (CDBG, other Federal, or non-Federal funds), or execute a legally binding agreement for property acquisition, demolition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. Further, it is HUD policy to not allow bids for choice limiting actions before the environmental review is complete. Choice limiting actions include but are not limited to:

- Acquisition;
- Leasing;
- Rehabilitation;
- Demolition;
- New construction; and
- Ground disturbance work.

CDBG funds may <u>not</u> be obligated for acquisition or construction activities prior to receiving ERR approval from the State. Recipients and participants in the development process who fail to adhere to environmental requirements may have all project costs disallowed. Recipients may be required to reimburse the State for any CDBG funds expended.

The environmental review must be completed before bidding to allow for an unprejudiced decision about the action, and to allow for any modifications or project cancellation based upon the environmental review.

In other words, recipients must avoid all actions that would preclude the selection of alternative choices before a final decision is made---that decision being based upon an understanding of the environmental consequences, and actions that can protect, restore, and enhance the human environment.

In order to achieve this objective, 24 CFR Part 58 prohibits the commitment of CDBG funds by the State or its recipients until the environmental review process has been

completed and the State has approved the release of funds approval, when required. Moreover, until the recipient has completed the environmental review process (and until receipt of State approval), neither the recipient nor project participant may commit non-HUD funds or undertake an activity if that action would have an adverse environmental impact or limit the choice of reasonable alternatives.

Section 4 – Classifying the Activity and Conducting the Appropriate Level of Review

To begin the Environmental Review process, funding recipients must first determine the environmental classification of each activity of the project. If the various activities have different classifications, the recipient must follow the review steps required for the most stringent classification. This chapter will focus upon the four environmental classifications that are recognized under the CDBG program:

- Exempt Activities;
- Categorically Excluded Activities;
- Activities Requiring an Environment Assessment; and
- Activities Requiring an Environmental Impact Statement.

Determining the classification is the responsibility of the CDBG recipient. To do this, the Environmental Officer must list all the activities associated with the project, review the information contained within this chapter, and match each activity to the appropriate classification.

Occasionally, projects funded under the CDBG program entail more than one activity. For example, a new wastewater treatment plant project would have both administrative and construction related activities. The administrative activities would be considered exempt whereas the construction related activities would require an environmental assessment, or possibly an environmental impact statement. Regardless of the number of activities associated with a project, only a single environmental review is required. Aggregating related activities ensures the recipient adequately addresses and analyzes the separate and combined impacts of a proposed project.

The following table has been developed to assist with the classification of activities. However, the funding recipient is advised to read the regulations listed under the exempt, categorically excluded ("subject to" or "not subject to" Sec. 58.5), and environmental assessment activity sections of this chapter for more detail. If a grantee is unsure of what activities your project entails, contact the State to clarify.

Activity	***Classification***
Acquisition/Disposition	Categorically Excluded Subject to Sec. 58.5

Activity	***Classification***
Clearance (Demolition)	Categorically Excluded Subject to Sec. 58.5 or EA
Water and Sewer Improvements Supplemental Assistance to a previously approved project	Categorically Excluded Subject to Sec. 58.5 or EA Categorically Excluded Not Subject to Sec. 58.5
Flood and Drainage Facilities Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Street Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Community Center/Facility: • Rehabilitation of existing • Construction of new	 Categorically Excluded Subject to Sec. 58.5 or EA EA
Parks, playground and other Recreational Facilities--Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Neighborhood facilities: • Rehabilitation of existing • Construction of new	 Categorically Excluded Subject to Sec. 58.5 or EA EA
Fire protection Facilities: • Rehabilitation of existing • Construction of new	 Categorically Excluded Subject to Sec. 58.5 or EA EA
Parking facilities: • Rehabilitation of existing • Construction of new	 Categorically Excluded Subject to Sec. 58.5 or EA EA
Public Utilities, other than Water or Sewer Facilities--Improvements	EA
Relocation Payments and Assistance	Exempt
Rehabilitation – Residential	Categorically Excluded Subject to Sec. 58.5 or EA
Rehabilitation – Commercial	Categorically Excluded Subject to Sec. 58.5 or EA
Planning and Technical Assistance	Exempt
General Administration	Exempt

Activity	*Classification*
Economic Development Assistance to Non-Profit Entities (activities not associated with construction or expansion)	Categorically Excluded Not Subject to Sec. 58.5
Economic Development Assistance to For-Profit Entities (activities not associated with construction or expansion)	Categorically Excluded Not Subject to Sec. 58.5
Multifamily New Construction Single-Family New Construction	EA Categorically excluded Subject to Sec. 58.5 (under certain conditions) or EA

Exempt Activities

An activity is classified as exempt from compliance with NEPA and the Federal laws and authorities cited at 24 CFR Part 58.5 because there is generally no effect whatsoever on the physical environment. These activities do not require the completion of a NOI/RROF.

Exempt activities include the following:

- Environmental and other studies, resource identification and the development of plans and strategies;
- Information and financial services;
- Administrative and management activities;
- Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- Inspections and testing of properties for hazards and defects;
- Purchase of insurance;
- Purchase of tools;
- Engineering or design costs;
- Technical assistance and training;
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

- Payment or principal and interest on loans made or obligations guaranteed by HUD;
- Any of the categorical exclusions listed in 58.35(a) provided that there are no circumstances which require compliance with any of the environmentally related Federal laws, and authorities listed at Part 58.5 of the regulations.

Exempt Activity Determination must be recorded on the *Environmental Review for Project that is Exempt or Categorically Excluded Not Subject to 58.5* (CENST).

The recipient is also responsible for documenting whether or not compliance with the requirements listed in 24 CFR Part 58.6 are applicable to the project. Document compliance with these requirements by attaching maps or other source documentation showing the project in relation to these areas or facilities.

Environmental Review forms are included in the Forms for this chapter.

Exempt environmental reviews must be signed by the Certifying Officer and a copy sent to the State for review. The original is retained by the recipient in the ERR.

Categorically Excluded Activities

Categorically Excluded Not Subject to 58.5 *(CENST)*

When a project consists solely of activities listed in this section, the CDBG recipient does not have to publish or post the *Notice of Intent to Request Release of Funds* (*NOI/RROF*) or execute the certification that is a part of that document. The Recipient must, however, complete the *Environmental Review for Project that is Exempt or CENST* 58.5 and submit a copy to the State for review and approval prior to committing any funds.

The following activities, listed at 24 CFR Part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to Section 58.5 compliance determinations:

- Tenant based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state and federal government services;
- Operating costs, including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- Economic development activities including, but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

- Activities to assist homeownership of existing dwelling units or dwelling units under construction, including closing costs and down payment assistance to home buyers, interest buy downs, and similar activities that result in the transfer of title to a property;
- Affordable housing predevelopment costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact; and
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 24 CFR Part 58.47.

Although these activities are not subject to 58.5, the recipient **must demonstrate that the activities will not occur in a runway clear zone or coastal barrier island and comply with Flood Disaster Protection** as required by 24 CFR Part 58.6. If you have any questions, reach out to the State.

Categorically Excluded Subject to 58.5 (CEST)

These activities are categorically excluded from NEPA requirements but have the potential to impact the environment. These activities are subject to the regulations and authorities listed in 24 CFR Part 58.5. It is the responsibility of the grantees to determine if their categorically excluded activities are subject to these other regulations or not. Determinations should be based upon verifiable source documents, relevant base data, and consultation with oversight agencies, and must be documented in writing.

The following are categorically excluded activities subject to 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent;
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons; and
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For single family (one to four units) residential buildings:
    - Unit density is not increased beyond four units; and
    - The land use is not changed.
  - For multi-family residential structures:

- Unit density is not changed more than 20 percent;
- The project does not involve changes in land use from residential to non-residential; and
- The estimated costs of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.

- For non-residential structures including commercial, industrial and public buildings:
  - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
  - The activity does not involve a change in land use, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another.

- An individual action (e.g., acquisition, demolition, construction, disposition, refinancing, development) on up to four dwelling units where there is a maximum four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between;
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site;
- Acquisition (including leasing) or disposition of, or equity loans on an existing structure or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use; and
- Combinations of the above activities.

To prepare the Environmental Review for categorically excluded activities subject to compliance with Part 58.5, the following steps must be completed, using the *Environmental Review for CEST* (HUD recommended format):

- Document compliance with the following Federal laws and authorities (note that further guidance on each factor is available via the "Documentation of Sources" on the CDBG web site, Environmental chapter attachments):
  - Other Federal Requirements listed at 24 CFR 58.6 (i.e., Airport Hazards, Coastal Barrier Resources, and Flood Disaster Protection).
    - See web site for Coastal Barrier Resources at: https://www.fws.gov/CBRA/
  - Clean Air Act
  - Coastal Zone Management Act

- ONLY Coastal Counties are required to obtain Determinations of Consistency from the SC Department of Environmental Services (SCDES, formerly known as DHEC), Office of Ocean & Coastal Resource Management. Coastal counties include Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper.

- Contamination and Toxic Substances (24 CFR Part 50.3(i) and 58.5 (i)(2)

  - Project sites involving rehabilitation, new construction, or demolition of single-family housing (1-4 units) must review the site to see if it is on the EPA Superfund National Priorities list or CERCLA lists, is located within 3,000' of a toxic/solid waste landfill site, has an underground storage tank, or is known or suspected to be contaminated by toxic/radioactive chemicals. All structures must be tested for radon to ensure a level of 4 pCi/L or less.

  - In addition to the above screening, for projects involving multifamily housing of 5+ units or non-residential properties, the historic uses of the property and adjacent properties must be determined. This applies for renovation, new construction, or demolition. A Phase I Environmental Assessment (ESA) is the most definitive way to satisfy the historic use review requirement. Please note that a Phase I ESA cannot be over 180 days old for a HUD environmental review. If potential toxins or hazards are identified during the Phase I, further assessment may be required.

  - Additional guidance is also available on HUD's website: https://www.hudexchange.info/programs/environmental-review/site-contamination/

  - HUD issued Notice CPD-23-103 regarding considering radon in the contamination analysis for projects subject to the contamination regulations at 24 CFR 50.3(i) or 24 CFR 58.5(i). See the CDBG website for the CPD Notice and requirements.

- Endangered Species Act

  - Federal Species - For projects that can document they meet the specific conditions outlined in the updated Region IV "U.S. Fish and Wildlife Service (USFWS) Clearance to Proceed with Federally-Insured Loan and Grant Project Requests" letter at https://www.fws.gov/sites/default/files/documents/2024-08/public-clearance-to-proceed-with-federally-insured-loan-grant-projects-august-2024.pdf, a finding of "no effect" can be made and no further consultation with USFWS is required.

  - For projects that do not meet the conditions outlined in the "U.S. Fish and Wildlife Service (USFWS) Clearance to Proceed with Federally-Insured Loan and Grant Project Requests" letter, a biological evaluation must be completed. The process for completing a biological evaluation in SC is outlined at https://www.fws.gov/office/south-carolina-ecological-services/project-review-

south-carolina-field-office and involves reviewing the project using the USFWS Information for Planning and Consultation (IPaC) tool (https://ipac.ecosphere.fws.gov/) and contacting the South Carolina Natural Heritage Program (SCNHP) https://schtportal.dnr.sc.gov/portal/apps/sites/#/natural-heritage-program to determine the threatened or endangered species that are known to occur in area and that may be affected by activities in your project site area. If the evaluation indicates that no threatened or endangered species are known to occur in the area, then a finding of "no effect" may be made and no further action is required. However, if the evaluation indicates any threatened or endangered species are known to occur in the area, a qualified biologist must complete further biological evaluation (including an on-site investigation) that will support a scientifically defensible findings of effect. If the biologist's evaluation indicates there is a "no effect" determination made, then no further action is required. If the biologist's evaluation indicates listed species may be affected, then USFWS must be contacted for further guidance.

  - State Species - Visit the SC Department of Natural Resources (SCDNR) website:https://schtportal.dnr.sc.gov/portal/apps/sites/#/natural-heritage-program This portal provides an immediate response if the project is no factor for SCDNR or if further consultation is required.

- Explosive and Flammable Hazards (24 CFR Part 51, Subpart C)
  - To document compliance with the requirements regarding separation from hazardous operations see "Siting of HUD-Assisted Projects Near Hazardous Facilities" at HUD's website.
- Farmland Protection Policy Act
- Floodplains and Wetlands
  - Executive Order 13690 (Federal Flood Risk Management Standard), Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Wetland Protection) - Determine whether or not the project is located in or will impact the FFRMS floodplain of concern and/or proposes construction in a designated wetland. If the answer to this question is "Yes," apply the Eight-Step Process (this procedure is outlined in Appendix B). The Early Notice and Public Review must either be published in a newspaper of general circulation or on an appropriate government site at least fifteen (15) days (excluding the date of publication) prior to publication of the Final Notice and Public Explanation (Final Notice). You may publish the Final Notice concurrently with the Notice of Intent to Request Release of Funds. (Note: Alterations to wetlands within the jurisdiction of the U.S. Army Corps of Engineers may require a special permit.)
- Historic Preservation

- Prepare the Section 106 Project Review Form for the South Carolina Department of Archives and History (also referred to as the State Historic Preservation Office, or SHPO). The process is completed when the SHPO concurs with the recipient's determination that "no historic properties" will be affected, or when the SHPO and the recipient execute a Memorandum of Agreement with regard to adverse effects.

- The grantee is required to document consultation with federally recognized Native American Indian tribes for all ground disturbing activities. Consult the HUD Tribal Directory Assessment Tool (TDAT) on the HUD website to determine which tribes should be contacted. Government to government consultation is required, so the invitation to consult must be from the grantee (on government letterhead). In addition, local governments should use the recommended HUD Tribal consultation letter template which is available in the Forms for this chapter.

- Generally, SHPO/Tribe has a thirty (30) day period for consultation invitation. This timeframe begins at the time SHPO/Tribe receives the request (not from the date the letter is mailed or date on the letter). Requests for consultation should be sent using certified mail or emailed with receipt notification so that the 30-day time frame can be documented in the ERR if the SHPO/Tribe fails to respond within the 30-day time period. For gauging the beginning and end of the 30-day period, an RE may assume that an emailed letter is received on the date it is sent. For a hard copy letter, an RE may send the letter certified mail, or if mail delivery is predictable and reliable, the RE may assume a 5-day delivery period and assume that the period ends 35 days after the letter is mailed.

- Noise Abatement and Control (24 CFR 51, Subpart B)

  - HUD provides additional guidance concerning noise abatement in "The Noise Guidebook". A copy may be obtained from the link above. In general, new construction or substantial rehabilitation of housing, schools/ learning centers, or libraries are among the noise sensitive activities and project activities that are located within 1,000 feet of a busy road or highway; 3,000 feet of an operating railroad; or within 15 miles of a civil or military airport are likely to require noise assessments.

- Sole Source Aquifers (Safe Drinking Water Act)

- Wild and Scenic Rivers Act

- Environmental Justice

  - 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.

In order to document compliance with all Federal laws and authorities, it is recommended you review the various compliance documentation resources found in attachments to this chapter, particularly the State of SC "Documentation Sources" for HUD Environmental Reviews on the CDBG web site.

Grantees are required to complete the following:

- Send a detailed project description and maps to the applicable agencies indicated on the required *Agency Contact List* (also found in the attachments to this Chapter) to document compliance with all federal laws and authorities;
- Describe how the activity will be carried out (e.g., stream crossing, road bores, new construction, slip line existing pipes, etc.);
- Indicate whether the project or activity site has previously been disturbed or is a continuation of the same use on the site;
- Provide topographical, USGS, National Wetlands Inventory, Archsite or equivalent, road map, or other maps which precisely locate the project in relation to applicable environmental features;
- Provide a copy of any source documentation related to the applicable environmental concern;
- Advise the agency of your preliminary findings and request a written determination of any potential project impacts from each agency;
  - Allow approximately four business weeks for a response. If you have not heard from a particular agency within this time frame, it is advisable to place a phone call to the applicable agency; and
  - As agency responses are received, review them carefully and complete the Compliance Factors section of the *Environmental Review for CEST*. Many times an agency will request additional information or require the recipient to take additional actions. Respond to these requests at the earliest possible time.
- If it is determined that there are no circumstances which require compliance with any of the laws and regulations listed in 24 CFR Part 58.5, finalize the *Environmental Review for CEST* and submit a hard copy of the completed forms and supporting documentation to the State as well as email a complete copy to sc-cdbg@sccommerce.com;
- If any circumstances exist which require compliance with the laws and authorities at 24 CFR Part 58.5, complete the applicable procedure(s) and proceed with posting or publication of the *Notice of Intent to Request Release of Funds (NOI/RROF)*.

Additional information regarding the posting option can be found in Section 5 of this chapter.

- Submit copies of the *Notice of Intent to Request Release of Funds (NOI/RROF)* to interested individuals and groups, local news media, appropriate State and Federal agencies.
- The public comment period begins the day after the notice appears in a newspaper of general circulation or is posted according to local public participation procedures. Any written comments received in response to these notices must be addressed and filed in the ERR. Add any commenters to the list of interested persons. On the day after the comment period has expired (7-day comment period for published notices and 10-day period for posted notices), submit the Request for Release of Funds and Certification to the State. A hard copy of the Environmental Review for CEST, as well as copies of all other relevant documents and Notices must also be mailed to the State and emailed to sc-cdbg@sccommerce.com.
- The State cannot approve the Request for Release of Funds and Certification before 15 calendar days have elapsed from the time of receipt of the Request or from the time specified in the Notice, whichever is later. This time period allows for consideration of any valid objections to procedural errors by the recipient. (See 24 CFR Part 58.75) After expiration of the time period, the State will issue a Notice of Removal of Environmental Conditions.
- Place the originals of all documents, any comments received, as well as proof of publication/posting documentation, in a file labeled ERR.

Environmental Assessment (EA)

If a project is not exempt pursuant to 24 CFR Part 58.34, or categorically excluded per 24 CFR Part 58.35, a full *Environmental Assessment* is required. Therefore, the *Environmental Assessment* must be completed in order to comply with NEPA and the related Federal laws and authorities cited at 24 CFR Part 58.5.

It should also be noted that if a project consists of several activities, some of which are categorically excluded and some which require an environmental assessment, the Recipient must aggregate the related activities and conduct an environmental assessment on the entire project.

Grantees are encouraged to conduct environmental reviews for improvements to target areas and neighborhoods rather than limiting the environmental assessment to just the activity being proposed or to the streets being addressed within a neighborhood.

The following procedures apply to completion of Environmental Assessments:

- Complete the *Environmental Assessment*, which requires grantees to document compliance with all Federal laws and authorities and apply any mitigation procedures necessitated by the laws and requirements cited at 24 CFR Part 50.4, Part 58.5, 58.6. Note that further guidance on each factor is available via the "Documentation of Sources" on the CDBG web site, Environmental chapter attachments.
- In addition to the laws and authorities listed in 58.5 and all those outlined in the prior "Categorically Excluded Subject to" section of the manual, for EA's grantees must also comply with all the additional NEPA Environmental Assessment factors as outlined on HUD's web site at (https://www.hudexchange.info/programs/environmental-review/environmental-assessment/) that include:
  - Land Development – This category includes physical elements that may impact the project or project area. The applicable factors are:
    - Conformance with Plans – The consistency of the project with the community's long-term plans.
    - Land Use and Zoning – The applicability of the current zoning and/or any changes required for the project.
    - Scale and Urban Design – The aesthetic design of the project and how it relates to the current neighborhood aesthetic.
    - Soil Suitability – How well the surface area can support the project and whether there is any mitigation measures required.
    - Slope – The presence of any hills or significant elevation changes on site that will need to be changed or will impact project design.
    - Erosion – The potential impact on erosion due to the proposed project.
    - Drainage/Stormwater Runoff – The change in drainage on site or any development plans that would impact drainage.
    - Hazards and Nuisances – The potential for the project to be impacted or have an impact on natural or man-made hazards, particularly extreme weather events or harmful nearby structures.
  - Socioeconomic – This category includes the human-level elements that may impact or be impacted by the project. The applicable factors are:
    - Employment and Income Patterns – Any potential impact on employment or other economic factors due to the project.
    - Demographic Character Changes – Any change in the community makeup caused by the proposed project.

- Displacement – The project's potential to drive out current residents or businesses as a result of this project.
- Environmental Justice: 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.

- Community Facilities and Services – This category includes community assets and services that may be affected by the project. For each factor the project should be analyzed to determine whether any new residences will have access to the facilities and services, as well as whether the project will reduce access to them. The applicable factors are:
  - Educational and Cultural Facilities
  - Commercial Facilities
  - Healthcare and Social Service
  - Solid Waste Disposal and Recycling
  - Wastewater and Sanitary Sewers
  - Water Supply
  - Public Safety – Police, Fire, and Emergency Medical
  - Parks, Open Spaces and /Recreation
  - Transportation and Accessibility.
- Natural Features – This category includes the natural wildlife and similar features that may be affected by the project. The applicable factors are:
  - Unique Natural Features – The presence of any rare or valuable geological features on site that will be impacted by the project.
  - Water Resources – Any groundwater or surface water on the project site that will be impacted beyond what is analyzed in other environmental factors.
  - Vegetation – The change in the presence of vegetation on the site due to the construction, particularly when permeable surfaces will be impacted.
  - Wildlife – The impact the project may have on habitats that are already present on site or adjacent areas.

- Climate Change & Energy – This category includes factors that take a long-term look at the impact of the project. The applicable factors are:
  - Climate Change Impacts: In accordance with Executive Order 14148: Initial Rescissions of Harmful Executive Orders And Actions, analysis of compliance for this authority is no longer required. HUD recommends that when completing reviews you include language under the Environmental Assessment factor heading to indicate that compliance with the applicable factor is no longer required.
- Energy Efficiency – Any steps taken to reduce carbon emissions and energy use during the development of the project, as well as the use of any energy efficient appliances or buildings.

♦ In order to document compliance with all Federal laws and authorities, it is recommended that funding recipients review the various compliance documentation resources found in the attachments to this chapter, particularly the State of SC "Documentation Sources."

♦ Grantees are also required to complete the following:
- Send a detailed project description and maps to the applicable agencies indicated on the *Agency Contact List* to document compliance with all Federal law and authorities;
- Describe how the activity will be carried out (e.g., stream crossing, road bores, new construction, slip line existing pipes, etc.);
- Indicate whether the project or activity site has been previously disturbed or is a continuation of the same use on the site;
- Provide topographical, USGS, National Wetlands Inventory, Archsite or equivalent, road map, or other maps which precisely locate the project in relation to environmental features; and
- Provide a copy of any source documentation related to their applicable environmental concern.
- Advise the agency of your preliminary findings and request the agency to provide a written determination of any potential project impacts. Grantees must reach a level of clearance/finding indicating that the project is or is not an action likely to have a significant impact on the environment.
  - Allow approximately four business weeks for a response. If you have not heard from a particular agency within this time frame, it is advisable to place a phone call to the applicable agency; and

For most agencies**, allow approximately one month for a response. If no response is received, contact the agency.** Once a response is received grantees may begin preparing compliance factors.

- As agency responses are received, review them carefully and complete the Compliance Factors section of the *Environmental Assessment*https://www.cdbgsc.com/wp-content/uploads/2020/09/Part-58-CEST-Format-as-of-9-2020.docx. Many times an agency will request additional information or require the recipient to take additional actions. Respond to these requests at the earliest possible time.

- The Certifying Officer should execute the declaratory statement at the end of the *Environmental Assessment*. The Statement must be signed prior to the issuance of the *Combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF)* that is published in the newspaper or posted.
- Grantees must prepare the *Combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF)* for publication in a newspaper of general circulation serving the jurisdiction or posting in a prominent location. Copies must also be sent to interested individuals and groups, local news media, appropriate state and Federal agencies, and the Environmental Protection Agency (EPA) Regional Office (EPA address is included on the *Agency Contact List)*. Remember to correctly state the significant dates that will occur to avoid having to potentially re-publish the Notice.
- The *FONSI/NOI-RROF* Combined Notice has a 15-day comment period if published, 18 days if posted.
  - The date of publication and posting is NEVER counted when computing time periods.
  - Contact the State's Environmental Specialist for assistance in computing time periods, or utilize the Publication Guide that is located in the attachments to this chapter.
- Once the comment period has expired, the grantee must submit a *Request for Release of Funds and Certification*, a copy of the Notices, and a hard copy of the complete *Environmental Assessment* to the State as well as email a full copy to sc-cdbg@sccommerce.com. The State then has fifteen days from the time of receipt of the Request or from the time specified in the Notice, whichever is later, to receive objections to release of funds.
- Place the originals of all documents, any comments received, as well as proof of publication/posting documentation, in a file labeled ERR.

Per NEPA requirements, *Environmental Assessments* should be completed in a one-year timeframe starting when the environmental review is first initiated (agency letters submitted) and ending with when the FONSI is signed by the Certifying Officer.

In addition to following the federal environmental compliance requirements in Part 58, all projects requiring an *Environmental Assessment* must comply with State law for preventing non-point source pollution. All land disturbing activities impacting five or more acres, except for exempted activities, are regulated by the Stormwater Management and

Sediment Reduction Act. *See* S.C. Code Ann. §48-14-10 et. seq. For more information on compliance with the Stormwater Management and Sediment Reduction Act, please see Appendix C.

Environmental Impact Statement (EIS)

An EIS details the Recipient's final analyses and conclusions related to potential significant environmental impact of the project. Recipients must follow prescribed steps during preparation, filing, and review of an EIS. *See* 24 CFR 58, Subpart G, and 40 CFR 1500-1508.

An EIS may be required when:

- The project is so large that it triggers density thresholds, and common sense suggests it may have a substantial environmental impact; and/or
- A Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project.

If the project meets one of the conditions above, the grantee must prepare an EIS if the project meets any of these requirements below:

- Any project to provide a site or sites for hospitals and nursing homes with a total of at least 2,500 beds;
- Any project to remove, destroy, convert, or substantially rehabilitate at least 2,500 existing housing units;
- Any project to construct, install or provide sites for at least 2,500 housing units;
- Any project to provide water and sewer capacity for at least 2,500 housing units; and/or
- Any project that exceeds the 2,500-unit threshold for nonresidential housing construction.

If the sole reason for preparing an EIS is that a project will exceed one or more of the thresholds listed above, the recipient may prepare an environmental assessment. In such cases, if a Finding of No Significant Impact is made, it must be made available for public review for at least 30 days before the Recipient can make a final determination about whether to prepare an EIS.

Section 5 – Publication and Posting of Public Notices

Recipients have the option of either publishing or posting notices, depending on the type of notice:

- *FONSI*, *NOI/RROF, Combined Notice* – May be **published** in a newspaper of general circulation serving the affected geographical area or on an appropriate government

website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency, or **posted** in prominent public places within the recipient's geographical boundaries.

- Suitable public locations for posting may include but are not limited to;
  - Municipal and county buildings accessible to the general public;
  - Post offices;
  - Libraries;
  - Health departments;
  - DSS offices; and
  - Any local establishments frequented by project area residents.

- *Eight-Step notices* – May be **published** in a newspaper of general circulation or on an appropriate government web site that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency. (NOTE: Posting throughout the local government is not allowed for these.)

In addition to publishing or posting public notices, copies must be disseminated to the following entities:

- Regional Office of the Environmental Protection Agency; and
- Other agencies, groups, or persons who may have an interest in the project, and local news media.

The Certifying Officer must confirm in the *Request of Release of Funds* that notices have been published/posted.

Public Comment Periods

Below is a chart showing the different time periods, in calendar days, and requirements for posting and publishing relevant documents required for environmental reviews. Recipients may provide longer comment periods on the *FONSI* and/or *NOI/RROF*, if desired, but these are the minimum number of days required.

The date a notice appears in the newspaper or on which it is posted/mailed **cannot be counted** when calculating time periods.

Document	Method	Time Period	Comments
FONSI	Published	15 days	Published in newspaper of general circulation, or on an appropriate government website.
	Posted	18 days	Posted in suitable locations in the unit of local government.
Notice of Intent to Request Release of Funds (NOI/RROF)	Published	7 days	Published in newspaper of general circulation, or on an appropriate government website *(for a project that is categorically excluded subject to Sec. 58.5 and does not convert to exempt; or after the FONSI comment period ends for an EA)*
	Posted	10 days	Posted in suitable locations in the unit of local government *(for a project that is categorically excluded subject to sec. 58.5 and does not convert to exempt; or after the FONSI comment period ends for an EA)*
Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI and NOI/RROF)	Published	15 days	Published in newspaper of general circulation, or an appropriate government website as a combined notice.
	Posted	18 days	Posted in suitable locations in the unit of local government as a combined notice.
Early Notice and Public Review (part of Eight-Step process)	Published only - either in newspaper of general circulation, or on an appropriate	15 days	*See* 24 CFR Part 55, FFRMS Executive Order 13690, Floodplains EO 11988 and Wetlands EO 11990 *Posting of this notice in suitable locations throughout the local government is not allowed*

Document	Method	Time Period	Comments
	government website		
Final Notice of Explanation (part of Eight-Step process)	Published only – either in newspaper of general circulation, or on an appropriate government website	7 days	*See* 24 CFR Part 55, FFMRS Executive Order 13690, Floodplains EO 11988 and Wetlands EO 11990 *Posting of this notice in suitable locations throughout the local government is not allowed*

Section 6 – Anti-Duplication Measures

Environmental Reviews Prepared by or for Other Federal Agencies

The State will accept environmental reviews prepared by or for other Federal funding agencies provided that the ERR and associated public notifications meet or exceed the requirements established by 24 CFR Part 58.

- A recipient wishing to utilize an ERR prepared by or for another Federal funding agency must:
  - Make an independent evaluation of the environmental issues;
  - Take responsibility for the scope and content of the environmental review;
  - Make an environmental finding;
  - Publish the applicable public notice (i.e., *NOI/RROF* or Combined *FONSI/NOI-RROF*); and
  - Submit a *Request for Release of Funds and Certification* and complete copy of the ERR to the State, with a request for a written determination of consistency with 24 CFR Part 58 requirements.
- Upon receipt and review of the ERR, the State will either:
  - Issue a determination that the ERR meets HUD environmental requirements and is substantially equivalent; or
  - Require additional review and public notices, as appropriate.

Conducting Environmental Reviews for Projects with Unspecified Sites (Tiering)

There are times where it is not possible, because of the nature of the activities to be carried out, to identify on the front end the exact geographic location of the activities to be completed. Grantees may tier their environmental reviews and assessments in order to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. An example of this may be a phased downtown streetscape program. Tiering is discussed in more detail in Appendix A.

Section 7 – Re-evaluation of Review Findings

If the size or scope of the CDBG project changes significantly, or if the location changes, the recipient must reassess the project's environmental impact and update the ERR. The purpose of the re-evaluation is to determine if the original environmental finding is still valid. Generally, the original ERR is considered valid for five years unless conditions have changed.

If the recipient determines that the original *Finding of No Significant Impact* is no longer valid, the recipient must notify the State and prepare a new Environmental Assessment according to the procedures specified in Section 2.

- Recipient must re-evaluate its assessment findings in any of the following situations:
  - There is change of location or a substantial change or amendment in the nature, magnitude, or extent of a project, including adding new activities not covered in the original project scope;
  - There are new circumstances and environmental conditions that may affect the project or have a bearing on its impact or activity that is proposed to be continued; and/or
  - The recipient selects an alternative approach not considered in the original assessment.
- If the findings of the *Environmental Review for Project that is Categorically Excluded* or the FONSI determination are still valid, but data or conditions upon which it was based have changed, the recipient must complete the following:
  - Amend its original review and update its ERR by including the re-evaluation and determination based on its findings:

- The narrative or a memorandum to ERR should clearly describe the project and indicate what changes are being made. Include narrative and maps identifying the original and revised project, as applicable;
- Provide the date the original review was completed and funds were released or whether the project converted to exempt;
- Identify and discuss the environmental compliance issues (including other requirements at Section 58.6) being affected by the changes and the findings and conclusions reached, with documentation that supports the findings/conclusions. This is best documented via the Environmental Review, depending on the level of review;
- Identify any necessary mitigation measures and how they will be incorporated into the project; and
- Document whether the original findings are still valid. If they are not, contact the State.

  - If the FONSI determination is still valid, complete an Affirmation of Original Environmental Determination. A copy can be found in the attachments section.

- Copies of all documentation generated through the re-evaluation process must be submitted to the State.
- Funds cannot be released unless the new decision is appropriately documented and reported.
- If the original findings cannot be affirmed, a new environmental review must be undertaken.

CH 2: ENVIRONMENTAL REQUIREMENTS

Chapter 2: Environmental Requirements Forms/Documents

Environmental Review Forms

- Environmental Assessment
- Environmental Assessment - Documentation of Sources from HUD
- Environmental Review for Projects that are Categorically Excluded Subject to 58.5 (CEST)
- Environmental Review for Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 (CENST)
- Affirmation of Original Environmental Determination

Environmental Review Documentation

Agency Forms and Consultation Guidelines

- Agency Contact List
- Section 106 Historic Preservation Review Form
- SHPO Agreement
- ACHP Guidance on Assistance to Consulting Parties
- ACPH e106 Notice of Availability, Instructions and Form, & Adverse Effect Notification Form
- HUD Recommended Tribal Consultation Letter Templates
- Catawba Indian Nation Consultation Guidelines
- U.S. Fish and Wildlife Service Clearance to Proceed with Federally-Insured Loan and Grant Project Requests (fws.gov)
- Army Corps of Engineers, Jurisdictional Determination Request
- Wetland Identification Procedures
- HUD CPD Notice 12-006 Tribal Contact
- HUD CPD Notice 23-103 Addressing Radon

Environmental Notices

- HUD 8-step Notices (Early Notice and Public Review and Final Notice and Public Explanation)
- Combined Notice-Notice to Public of No Significant Impact on the Environment and Notice to Public of Request for Release of Funds
- Request for Release of Funds and Certification

Environmental Decision-Making Tools

- Using a Phase 1 Environmental Site Assessment to Document Environmental Compliance
- Environmental Review Flow Chart
- Decision Making Process for Floodplains Flow Chart
- Publication Guide for NOI and FONSI
- Publication Guide for NOI/RROF
- NEPA Public Comment Period Calculator
- Using Tiering with Unspecified Sites
- Site-Specific Review Checklist

Chapter 2: Appendix

Appendix A

Conducting Environmental Reviews for Projects with Unspecified Sites

There are projects where it is not possible, because of the nature of the activities to be carried out, to identify on the front-end the exact geographic location of the project's activities until they are underway. In these situations, a tiered environmental review may be prepared. The concept of tiering or conducting environmental reviews of unspecified sites allows for broad reviews of environmental impacts at an early stage and a review of site-specific impacts when the site is identified. (More information on tiering is including in the attachments to this chapter.) Examples of these projects would include a phased downtown revitalization or a neighborhood demolition program. Conceptually, the review procedure can be structured in three basic steps. These steps are outlined below.

- Step 1 - Prepare an area-wide (Tier One) environmental assessment (*Environmental Assessment*) or *Environmental Review for CEST* if the activities are categorically excluded subject to Sec. 58.5 which clearly establishes:
  - The purpose of the project and the geographic area where the unspecified sites will be located.
  - Conclusions about environmental impacts and compliance with applicable laws and authorities which will not change no matter where the project is located within the geographic area that is the focus of the area-wide review. Examples include floodplains, wetlands, endangered species, and impact categories that are not applicable or relevant. There must be justification of all such conclusions.
  - Where conclusions cannot be reached until a specific site becomes known, devise written strategies and criteria for selecting specific sites/activities and making certain the applicable laws and authorities identified at 24 CFR Part 58.5 or impact categories contained in the *Environmental Assessment* or *Environmental Review for CEST* are addressed or mitigated when the specific site is identified. Include justification and/or evidence demonstrating why some factors need not be further evaluated when the specific site is identified.
- Step 2 - Publish Appropriate Notices and Request Release of Funds (if applicable). Publish applicable environmental notices for projects that are subject to Part 58.5 (e.g., Floodplains or Wetlands Notice, historic properties), as well as required public notices (*Combined FONSI/NOI-RROF, or NOI/RROF).*

- Based upon the environmental conclusions reached about the geographic area, and the strategies developed to comply with the remaining applicable laws, authorities, and impact categories for project sites identified later on, the recipient may publish the applicable public notice (i.e., Combined *FONSI/NOI-RROF* or *NOI/RROF*).
- The public notice (i.e., *FONSI/NOI-RROF* or *NOI/RROF*) must outline the proposed activities and identify the specific environmental factors that will be evaluated once a specific site is identified.
- It must also include a statement that any activities which do not comply with the review's acceptability criteria for activities or sites will be excluded. If these activities are to be pursued, a separate review must be completed and cleared before they can be undertaken.

Recipients proposing to adopt the non-specific site review strategy must consult with the State's Environmental Compliance Specialist prior to finalizing the strategy.

♦ Step 3 - Complete a *Site-Specific Review Checklist* once specific project sites become known, prior to committing or expending funds, and include the completed form in the ERR. This Tier Two checklist does not require submission to the State.

The strategies/mitigation measures identified in the Tier One review will be used to evaluate the individual sites. The checklist should cover all compliance areas that were not resolved as part of the area-wide Tier One review. All compliance requirements satisfactorily resolved during a Tier One review are excluded from any additional examination or consideration (i.e., findings of no impact or impacts resolved through mitigation requirements).

♦ Throughout the process, the ERR must be documented as follows:

- Include a copy of the area-wide review and strategies, with documentation supporting the environmental findings.
- Place a record of each project action (i.e., site specific) in the ERR.
- Place evidence in the ERR documenting that the adopted strategy has been applied for each action.
- Document the projects are in compliance with the other Federal requirements listed at Sec. 58.6.
- Place a finding in the ERR which states that implementation of the action will not affect the environmental findings.
- Any activities or sites falling outside the acceptability criteria specified in both the area-wide and site specific review components must have separate environmental reviews prepared.
- Subsequent site-specific reviews will not require notices or approval from the state, unless the certifying officer determines there are unanticipated impacts or impacts

not adequately addressed in the prior tiered review. There must be written documentation of compliance before funds are committed to specific sites.

- HUD generally considers the ERR valid for five years.

Appendix B

Compliance with Floodplain/Wetlands Requirements

If any activity is proposed to take place in the Federal Flood Risk Management Standard (FFRMS) floodplain or construction in a designated wetland is proposed, the implementation of a specific decision-making process is required for compliance with Executive Orders 13690, 11988 and 11990. This procedure is commonly referred to as the "eight-step process." A flow chart depicting the decision-making process is located at the following link: 8 Step Decision-Making Process for Executive Order 11988 (hudexchange.info). The steps are summarized below.

Due to the use of HUD funds, compliance with Executive Order 11990 through completion of the 8-step process will be required for projects with wetland impacts regardless of whether the USACE requires or has authorized a general or regional Section 404 permit. An individual Section 404 permit may be used to comply with steps 1 through 5 of the 8-step process provided the following conditions are met: a.) the individual permit has been authorized, b.) no construction will occur in the 100-year floodplain (or 500-year for critical actions), and c.) all the affected wetlands (jurisdictional and non-jurisdictional) are covered by the individual permit.

For floodplains, an abbreviated five-step process, which excludes steps 2, 3, and 7 of the full eight-step process, must be completed for activities covered under 24 CFR 55.12(a). The eight-step process is not required for activities excluded under 24 CFR § 55.12(b) and (c).

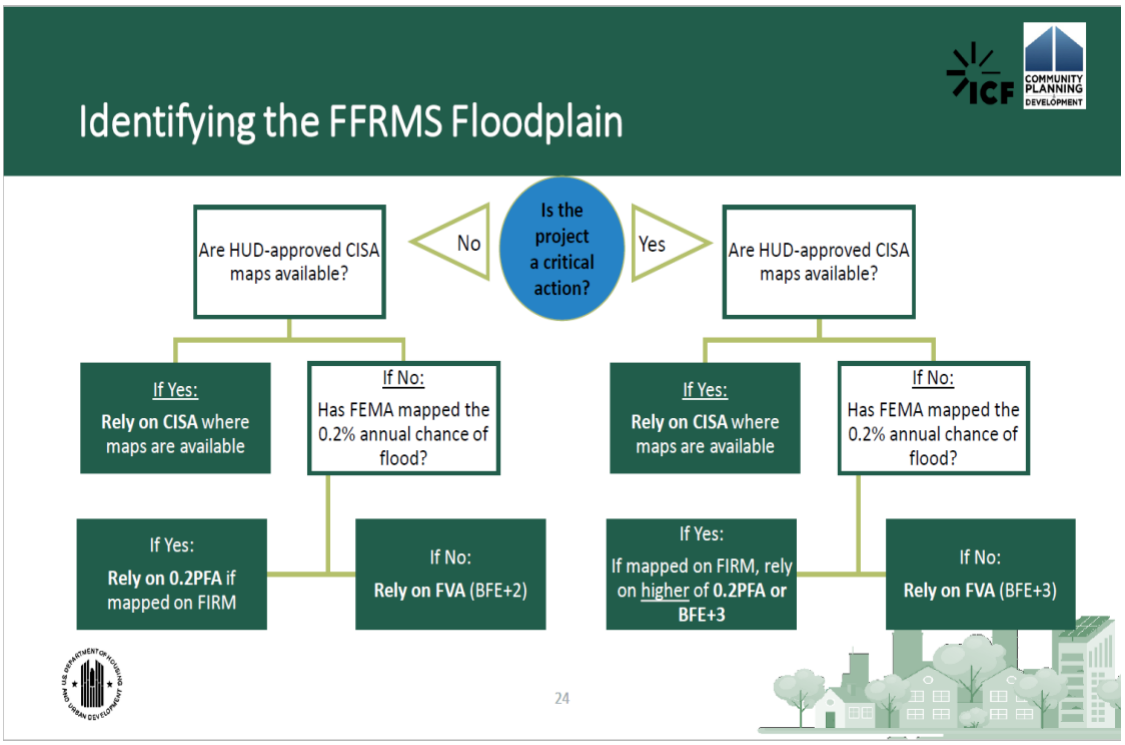
Per 24 CFR 55.1, HUD financial assistance may not generally be used for any activities in a floodway, other than functionally dependent use (i.e. marina, port facility, bridge, dam) unless otherwise outlined in the regulations at 55.8. Federal assistance may not be used in a coastal high hazard area (V zone) if the project is a critical action.

HUD Notice CPD-17-013 states that construction, installation, or repair of linear infrastructure located entirely below ground level or entirely above base flood elevation (BFE) may comply with Part 55 if there is no new construction or ground disturbance within the floodway. Underground pipelines may pass under a floodway if installed by construction technology such as directional drilling or other technology that would not disturb the stream or floodway. Above ground lines may pass over a floodway by being attached to an existing bridge or supported by existing construction spanning the channel such as a utility bridge, pipeline bridges or pipe rack, as long as the pipeline is entirely above BFE within the horizontal limits of the floodway and there are no new supports for the bridge, such as pillars, posts, or bents, within the floodway. However, due to the new regulation change at 24 CFR Part 55, utilities are now allowed in the floodway under certain conditions (see 55.8 for additional information). HUD has not issued revised guidance on this process at this time; therefore, if you are contemplating an activity in a

floodway area, contact the State prior to completing the 8-Step process to ensure the activity qualifies under the new regulation.

Step 1: Determine if the Project is in a Floodplain or Wetland

The first step is to determine if the project is located in the FFMRS floodplain or results in construction in a wetland. Use the tiered approach (CISA, 0.2PFA or FVA) to determine the FFRMS floodplain. See the Flow Chart below outlining the steps that need to be taken to correctly identify the FFRMS floodplain for your project. Additional information can also be obtained from the HUD FFMRS Final Rule webinar series on HUD Exchange here: https://www.hudexchange.info/news/ffrms-final-rule-webinar-series/.



- For wetlands, determine if you will have any new construction activities (i.e., grading, clearing, draining, filling, diking, impounding, or related activities) that **directly** impact onsite wetlands. If so, determine the presence or absence of wetlands, including non-jurisdictional wetlands, in accordance with the 1987 *US Army Corps of Engineers (USACE) Wetlands Delineation Manual, Technical Report Y-87-1. United States Army Engineer Waterway Experiment Station, Vicksburg, Mississippi as amended,* as well as streams that are also defined as waters. Generally, grantees should hire a qualified professional to provide a scientifically defensible wetlands delineation for ground disturbing projects. National Wetland Inventory Maps must be submitted. However, they will not be accepted as stand-alone documentation for the presence or absence of wetlands. Grantees are ultimately responsible for compliance with all environmental regulations and permitting requirements.

- Activities that **indirectly** impact wetlands such as by modifying the flow of stormwater, releasing pollutants, or otherwise changing conditions that contribute to wetlands viability are not subject to the 8-Step process; however, HUD strongly encourages measures to preserve such wetlands from future impacts, including by obtaining a restrictive covenant, conservation easement, or other mechanism.
- Funding recipients should request developers to provide an evaluation by an engineer or hydrologist for areas which are not covered by FEMA or these other sources.

Step 2: Engage Public Comment

After a recipient determines the project is located in the FFRMS floodplain/wetland, the second step is to publish a notice in the local newspaper or on an appropriate government web site informing the public[2] of the proposal and inviting comments.

- 24 CFR Part 55, EO 11988 and 11990 includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting of the rationale for the proposed action affecting the FFMRS floodplain/wetland.
  - An acceptable format for this notice called the *Early Notice and Public Review* is provided in this manual. It should provide a description of the proposed action and areas of impact with time for meaningful input from the public. This notice must be published in a newspaper of general circulation in the affected community or on an appropriate government website. Posting is not allowed.
  - Be sure to address potential impacts to the functions and values in the notice.
  - For projects in a floodplain, a copy of the Early Notice and Public Review must be forwarded to the FEMA Regional Environmental Officer for comment and documented in the ERR.

Step 3: Identification and Evaluation of Alternative Locations

The third step involves identification and evaluation of the practicable alternatives to locating in the FFRMS floodplain and/or wetlands.

- This determination requires the Recipient to consider whether the floodplain can be avoided to minimize harm to or within the floodplain by:
  - Adoption of an alternative project site;
  - Other means which accomplish the same purposes as the proposed project but would minimize harm to or within the floodplain or wetland; or
  - Taking no action.

[2] If much of the affected public is non-English speaking, the notice must be bilingual.

- Include the costs of flood insurance and potential property losses from flooding in an economic consideration of the practicability of alternatives.

Step 4: Identify Impacts of Proposed Project

The fourth step is to identify the impacts of the proposed project, including actions occurring outside the floodplain/wetland that will affect the FFMRS floodplain or wetland. In other words, if the project directly or indirectly supports floodplain/wetland development that has additional impacts, these additional impacts need to be identified also. Be sure to address potential impacts to the natural and beneficial floodplain/wetland functions and values including taking into account impacts related to future climate-related flood levels and sea level rise.

If negative impacts are identified, methods must be developed to prevent potential harm as discussed in Step 5. The term harm, as used in this context, refers to human lives, property, and natural and beneficial floodplain values.

Step 5: Minimize Potential Impacts & Identify Methods to Restore and Preserve Beneficial Values

If the proposed project has identifiable impacts (as identified in step 4), they must be restored and preserved.

- Minimize the impacts identified and restore and preserve the beneficial values served by floodplains and wetlands, and mitigate impacts that cannot be minimized.
- The concept of restoration and preservation applies only in floodplain/wetland values.
- Elevation – required for all new construction and substantial improvements. See chart below for additional information.
- Minimization – ERR must include a discussion of all minimization techniques incorporated into the project design including those considered but not approved. Techniques may include stormwater management, green infrastructure, use of permeable surfaces and nature-based approaches, adjusting project footprints, resilient building codes, FEMA-identified Severe Repetitive Loss (SLR) mitigations, etc.
- Restoration and Preservation
- Planning for safety – Critical actions require an early warning system. Multifamily properties and healthcare facilities require an evacuation plan.

Summary of Elevation and Floodproofing Requirements

Property type	Activity	Elevation	Floodproofing alternative permitted
Residential*	New construction & Substantial improvement**	Required to the elevation of the FFRMS floodplain	Only for mixed-use buildings where all residential is elevated
Residential*	Minor improvements & other	Not required	N/A
Non-residential	New construction & Substantial improvement**	Required to the elevation of the FFRMS floodplain	Yes
Non-residential	Minor improvements & other	Not required	N/A
FHA Single Family	New construction & Substantial improvement**	Required to BFE+2	No
FHA Single Family	Minor improvements & other	Not required	N/A

Methods to be used to perform these actions are discussed in Step 6.

Step 6: Re-evaluate Project, Implement Actions to Minimize Impacts

At this stage, the proposed project needs to be re-evaluated in relationship to alternatives identified in Step 3, taking into account the identified impacts, the steps necessary to minimize these impacts and the opportunities to restore and preserve wetland/floodplain values.

- As a general rule, if the proposed project is determined to be no longer feasible, consider limiting the project to make non-floodplain or non-wetland sites practicable.
  - If neither is acceptable, the alternative is no action.
- If the proposed project is outside the floodplain or wetland but has impacts that cannot be minimized, the Recipient should consider whether the project can be modified or relocated in order to eliminate or reduce the identified impacts or, again, take no action.

The re-evaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed project located both in and out of the floodplain or wetland. The comparison should emphasize floodplain/wetland functions and values; and a site out of the floodplain/wetland should not be chosen if the overall harm is significantly greater than that associated with the floodplain or wetland site. Also, if the project is located in an Environmental Justice (EJ) community, the re-evaluation must address public input provided during the public outreach process and document how the activity reduces historical environmental disparities related to flood risk or wetlands impacts in the community.

Step 7: Publish Final Notice and Public Explanation

- If the re-evaluation results in the determination that the only practicable alternative is to locate the project in the floodplain or wetland, a *Final Notice and Public Explanation* which can be published in a local newspaper or on an appropriate government website.
  - A sample of this second notice is in the attachments to this chapter.
  - For Step 7, it is permissible to publish the *Final Notice and Public Explanation* concurrently with the *Notice of Intent to Request Release of Funds* (related to categorical exclusions that cannot convert to exempt) or Combined Notice of *Finding of No Significant Impact* (*FONSI)* and *Notice of Intent to Request Release of Funds* (related to an EA).
  - However, it should be made clear that the notices serve different purposes. For projects in a floodplain, a copy of the Statement of Findings and Public Explanation must be forwarded to the FEMA Regional Environmental Officer for comment and documented in the ERR.

REMINDER: The ***Early Notice and Public Review*** and the ***Final Notice and Public Explanation*** **may now either be published in a newspaper of general circulation or on a government web site. Posting is still not allowed.**

Step 8: Implement the Proposed Project

Once the proper documentation has been reviewed and published, the project may continue.

- Compliance with EO 13690, 11988 and/or 11990 has been achieved through documentation of the "eight-step process", and implementation of the conditions for approving the project in the floodplain or wetland. Therefore, this documentation should be placed in the project ERR.

Appendix C

Compliance with Stormwater Management and Sediment Reduction Act

In addition to following the Federal environmental compliance requirements in Part 58, all projects requiring an *Environmental Assessment* must comply with State law for preventing non-point source pollution. According to State law, all land disturbing activities impacting five or more acres, except those exempted by the Act, and regulations, are regulated by the Stormwater Management and Sediment Reduction Act (Chapter 14, Title 48, SC Code).

- "Land disturbing activities" are defined as "any use of the land by any person that results in a change in the natural cover topography that may cause erosion and contribute to sediment and alter the quality and quantity of storm water runoff."
- Activities which may require compliance with the Act include;
  - Water and sewer projects;
  - Drainage projects;
  - Street paving;
  - Parking lot development;
  - Industrial development; and
  - Site improvements.
- The SC Department of Environmental Services (SCDES, formerly SCDHEC) is the State agency ultimately responsible for implementation of the Act.
  - Questions should be directed to the Stormwater Management Section at SCDES.
  - CDBG recipients must indicate in the ERR whether or not a planned activity will or will not require compliance with the Act.