



CDBG and Environmental Review

For Grant Administrators

CDBG and Environmental Review

- If you want to successfully participate in the CDBG program, then
- Compliance with Environmental Review Requirements is the key to success!

Why Environmental Review?

- Protect health and safety, avoid or mitigate impacts that may harm our clients,
- Avoid or mitigate any harm to the surrounding environment and project site.
- Avoid litigation that could stop project on environmental grounds
- Avoid monitoring findings and/or loss of HUD financial assistance to your project
- **REQUIRED** – by Federal Law & Regulation under the National Environmental Policy Act of 1969 (NEPA) and NEPA related laws

Statutory & Regulatory Structure

- National Environmental Policy Act (NEPA) and implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508).
- HUD Regulations (24 CFR Part 58).
- NEPA-Related Laws and Authorities (24 CFR 58.5).

What is NEPA?

- Ensures that environmental information is available to public BEFORE decisions are made and BEFORE actions are taken
- Requires systematic, interdisciplinary approach
- Helps public officials make decisions with an understanding of environmental consequences

NEPA-Related Laws/Authorities

- National Historic Preservation Act (1966)
- Floodplain Management & Wetlands Protection: Executive Orders (1977)
- Coastal Zone Management Act of 1972
- Safe Drinking Water Act (1974)
- Endangered Species Act (1973)
- Wild & Scenic Rivers Act (1968)

NEPA-Related Laws/Authorities

- Clean Air Act (1970)
- Farmland Protection Policy Act (1981)
- HUD Environmental Criteria & Standards
 - Noise Abatement and Control
 - Near Explosives or Flammable Sites
 - Near Airport Runway Protection Zones
 - Near Toxic Hazards
- Environmental Justice E.O. (1994)
- Noise Control Act (1972)

Environmental Review Regulations

24 CFR Part 58

- HUD's regulation allows local units of government to perform NEPA responsibilities that would otherwise apply to HUD.
- Regulation titled "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities"

Certifying Officer

- As part of CDBG grant agreement, the Chief Elected Official of the jurisdiction assumes responsibility for environmental review and must sign the Request for Release of Funds /Certification (RROF/C) and findings.
- CEO accepts the jurisdiction of the Federal Courts for the responsible entity in environmental matters for this certification.

Choice Limiting Actions!

- Cannot commit HUD and non-HUD funds to a proposed project prior to release of funds authorization
- Must oversee actions of sub-recipient
- Choice-limiting actions will reduce or eliminate your opportunity to choose alternatives
- Examples: property acquisition, leasing, demolition, rehabilitation, construction, and site improvements (including site clearance)

Choice Limiting Actions!

Limitation on Activities

- Do not take ANY action until the environmental review compliance is achieved.
- Option agreements are allowable.

Importance of Early Start

- Begin environmental review process as soon as possible.
- Typical times required to complete review range from 1 to 120 days.
- Allow time for periods of public comment on environmental notices, including Finding of No Significant Impact (FONSI) and the Notice of Intent to Request for Release of Funds (NOI-RROF).

Steps in the Environmental Review Process

- Designate Environmental Review Officer.
- Create the Environmental Review Record.
- Develop Project Description.
- Determine the Level of Environmental Review Required.
- Notify State/ Federal Agencies for Comment.
- Publish Required Notices According to Level of Review.

Steps in the Environmental Review Process, cont.

- Submit RROF and Certification to the State.
- Obtain Letter “Removing Environmental Conditions” from State.
- Proceed with Project.
- Maintain Documentation of Compliance in the Environmental Review Record (ERR).

State Requirements/Process

- Insert example here or incorporate into bullets on slides containing federal info

Designate Environmental Review Officer

- Manages entire environmental review process and serves as point of contact for public inquiries regarding the environmental review.
- If paid from CDBG, must follow procurement standards.
- The Certifying Officer is the Chief Elected Official and assumes responsibility by signing off on the environmental review.

Identify the Project

- What is the scope?
- What Activities will be included?
- What is the location?
 - Get Maps
 - Planning Area Map
 - Wetlands Map
 - Floodplain Map
 - USDA-SCS Soil Survey Map & Report
 - Farmland Conservation Map
 - Historical Districts Map - GIS

Identify the Project Concept of Aggregation

- Local grantees must group together and evaluate, as a single project, all individual activities that are related either geographically or functionally, or are logical parts of a composite of contemplated actions.
- In projects with multiple activities, the Environmental Review must be completed utilizing the highest level of review relative to the activities included in the project.

Environmental Review Record

- Written record of review
- Must be available for public inspection
- Must contain the following:
 - description of project and each activity
 - maps
 - photographs
 - site plans
 - correspondence
 - studies

Environmental Review Record

- public notices
 - written determinations or findings as evidence of review, decision making and action
 - RROF/Certification, Release of Funds
 - copies of comments and RE's responses.
- **DO NOT APPROACH ARBITRARILY**
 - Be thorough
 - Be responsible
 - Be thoughtful

Levels of Environmental Review

- Four levels of review:
 - 24 CFR Part 58.34(a) Exempt
 - 24 CFR Part 58.35 Categorically Excluded
 - Categorical exclusions SUBJECT to laws and authorities at 24 CFR Part 58.5
 - Categorical exclusions NOT subject to laws and authorities at 24 CFR Part 58.5
 - 24 CFR Part 58.36 Environmental Assessment
 - 24 CFR Part 58.37 Environmental Impact Statement

Exempt Activities

- Activities which are deemed not to affect the human and /or physical environment (i.e. environmental studies, planning, or administrative activities)
- No publication requirements
- Document finding in the environmental review record and proceed with project

Categorically Excluded

- Activities excluded from NEPA requirements but may be subject to other Federal laws
- 2 Classes
 - 58.35(a) – activities SUBJECT TO other federal laws or authorities (CEST)
 - 58.35(b) – activities NOT SUBJECT TO other federal laws or authorities (CENST)

Environmental Assessment

- Environmental Assessment is required if project activities are not determined to be Exempt or Categorically Excluded.
- EA is required in extraordinary circumstances.
- Most CDBG funded activities require an Environmental Assessment.

Environmental Impact Statement

- An Environmental Impact Statement (EIS) is required when the RE determines that the project will have a potentially significant impact on the physical/human environment.
- This determination often results from the scoping process and environmental responses collected from the applicable contacting agencies as well as interested and affected parties.

Process for Exempt Activities

- If activity is determined exempt, no further review is required.
- Complete the “Finding of Exemption” form including all activities determined “exempt” from environmental review process and submit to State.
- The Certifying Officer must sign the determination.

Process for Categorically Excluded Subject to (CEST)

- Complete Statutory Checklist, including a detailed project description.
- If activities occur in floodplain or wetlands, conduct 8-step decision making process.
- Submit Section 106 Project Information form and submit to SHPO Certifying Officer
- Publish NOI/RROF and respond to public comments.
- Submit to State CDBG staff for Release of Funds.

Process for Categorically Excluded Not Subject To (CENST)

- Complete Statutory Checklist, including a detailed project description.
- Certifying Officer must sign off on the determination.
- Submit to State CDBG staff for Release of Funds.

Process for Environmental Assessment

- Consult with the SHPO/THPO to complete the Section 106 process.
- For projects in floodplains or wetlands, conduct 8-step process. Publish notices. Consider and respond to comments.
- Comply with other laws and authorities.
- Complete Environmental Assessment documenting the level of review and submit to State CDBG Environmental Review Officer for review.

Process for Environmental Assessment

- Publish Combined Notice (FONSI-NOI/RROF) and allow 15 day comment period.
- Send copies of FONSI to agencies required by your state CDBG staff.
- Submit public notice, affidavit of publication and Request for Release of Funds and Certification (RROF/C) to state CDBG staff.

Process for Environmental Assessment

- Allow for 15 day (at least) time for objecting begins upon when the State CDBG agency receives the recipient's NOI/RROF/C.
- The State CDBG agency may release funds via the "Authority to Use Grant Funds" (form HUD 7015.16) or comparable letter.

Process for Environmental Impact Statement (EIS)

- In the event the environmental assessment reveals that an EIS may be required, contact your state CDBG staff to discuss possible means of mitigation and/or project modifications.

Section 106 Process

- Section 106 of the National Historical Preservation Act
- Start the Section 106 process as early as is feasible
- Submit Section 106 Project Information Form and all applicable supporting documentation to SHPO/THPO
- SHPO will recommend if Cultural Resource Assessment or Memorandum of Agreement (MOA) or other method to mitigate adverse consequences is required

Floodplains and HUD “8 Step” Process

1. Determine if project area is located in a floodplain or wetland
2. Publish “early” notice of proposal to allow public to consider and comment on action (15 day comment period)
3. Evaluate practicable alternatives to locating project in a floodplain or wetland
4. Identify potential direct and indirect impacts associated with project occupancy and modification of floodplain or wetland

HUD 8-Step Process, cont.

5. Design or modify actions to minimize adverse impacts and preserve floodplain
6. Reevaluate whether proposed action is practicable/feasible in light of flood hazards and costs of minimization
7. Publish final notice of decision, identify why there is "no practicable alternative" and mitigation measures adopted (can be combined with FONSI notice.)
8. Obtain approval (receive RROF/C) and implement action with mitigation

Important Tips

- Change of scope in project might change review required.
- **DON'T SPEND A DIME** – until your ER is complete and you have received Release of Funds from your state agency.
- Even \$.01 of CDBG money commits entire project to regulations
- **When in doubt – contact your state CDBG staff!**

Environmental Review Mini-Quiz Questions

- List the 4 levels of environmental review that may apply to a project.
- How many times must environmental notices be published for the following:
 - (a) Environmental Assessments;
 - (b) Exempt Activities;
 - (c) Categorical Exclusions subject to NEPA related laws and authorities
 - (d) Categorical Exclusions not subject to related laws and authorities
 - (e) Finding of No Significant Impact

Environmental Review Mini-Quiz

Questions

- For each of the following activities, indicate the appropriate level of review:
 - Environmental studies & administrative costs
 - Removal of barriers that restrict access/mobility for handicapped persons
 - Construction of wastewater treatment plant
 - Replacing of existing deteriorated sanitary sewer lines with new lines in the same right of way. The new lines are the same diameter as the previous lines.
- List the (#) federal and state agencies that must be notified for environmental comment on all assessed activities. (state specific)

Handouts/Attachments

- Environmental Review Process Charts
- Sample Notice of Intent to Request Release of Funds NOI/RROF)
- Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds

Handouts/Attachments

- Request for Release of Funds and Certification (OMB No. 2506-0087, HUD Form 7015.15)
- Sample: Notice for Public Review of a Proposal to Support Activity in the (100-Year Floodplain or Wetland)
- Environmental Review Record