

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 obligating CDBG funds. This requirement also applies to projects funded with CDBG generated Program Income.

This chapter will cover the environmental regulations that must be followed on all CDBG funded projects. Definitions, forms and step-by-step instructions on how to complete the environmental reviews are provided within this chapter and the attachments at the end of the chapter.

Section 1 - Background and Responsibilities

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 (some of which are enforced by state agencies) 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

- ◆ In order to carry out its environmental review responsibilities, the recipient should designate two responsible parties:
- ◆ Certifying Officer: The responsible entity (i.e., CDBG recipient) must designate a certifying officer---the "responsible Federal official"---to ensure compliance with the National Environmental Policy Act (NEPA) and the Federal laws and authorities cited at section 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental

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requirements have been followed. This function may not be assumed by administering agencies or consultants.

- ◆ Environmental Officer: The funding recipient should designate an Environmental Officer. This person is the grant administrator or the consulting engineer. The Environmental Officer will be responsible for writing project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings. However, the recipient is responsible for ensuring compliance with NEPA and the Federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds, when required, and for ensuring the Environmental Review Record (ERR) is complete.

CDBG funds may not 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 Grants Administration for any CDBG funds expended.

Environmental Review Record

Each CDBG recipient must prepare and maintain a written record of the environmental review undertaken for each project, including exempt activities such as administrative costs and tenant-based rental assistance. This written record or file is called the Environmental Review Record (ERR), and must be available for public review. Environmental Review Records maintained electronically are in compliance with the requirements of 24 CFR Sec. 58.38 which states: "The responsible entity must maintain a written record of the environmental review undertaken for each project. This document will be designated the 'Environmental Review Record' (ERR)." Electronically maintained ERRs must remain available for public review and monitoring in accordance with 24 CFR Sec. 58.35 (i.e., an individual, organization or HUD monitor wishing to review an ERR cannot be denied access to an ERR because it is stored on an employee's computer or a private network). However, Grants Administration still requires a hard copy to be submitted for our review.

The ERR must contain the following documents and parts:

- ◆ Description of the project and each of the activities comprising 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 environmental assessment to just the activity being proposed or to the streets being addressed within a neighborhood. The review should include all potential

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activities and phases of investment planned in the future. The ERR must also contain written determinations and other review findings (e.g., exempt and categorically excluded determinations, findings of no significant impact), and public notices, when required. The ERR shall also contain documentation that verifies compliance with NEPA and the Federal laws and authorities cited in compliance checklists, environmental assessments and environmental impact statements.

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.

- ◆ With regard to environmental assessments, complete the applicable sections of the *Environmental Assessment* (the HUD recommended format). This checklist provides a format for funding recipients to record notices, project descriptions and public comments. Use HUD recommended format or an equivalent format to record determinations and other review findings;
- ◆ Documentation of compliance with Federal laws and authorities;
- ◆ Documentation of compliance with the National Environmental Policy Act (NEPA), when applicable;
- ◆ Notices, when applicable; and
- ◆ Public comments received.

Public comments, concerns and appropriate resolution by the recipient must be completed prior to requesting release of funds from the State, and must be fully documented in the ERR.

The ERR will vary in length and content depending upon the level of review required (based upon the types of project activities).

Keep in mind that, on the average, an environmental assessment for a project usually takes at least 90 days to complete.

In addition to one hard copy of the Environmental Review Record (forms and documentation) you must also submit an **electronic copy** to Grants Administration for review. The electronic copy and all email correspondence related to the ERR should be sent to a special CDBG email account established to handle environmental documents: sc-cdbg@sccommerce.com

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At this time, 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 Grants Administration.

Section 2: Actions Triggering Environmental Review and Limitations Pending Clearance

Actions Triggering the Requirements at Part 58

Once a recipient has submitted an application for CDBG funds to the State, Part 58 requirements are applicable to the project. At this point the recipient (and any other project participants) must cease all project activity until the environmental review (ER) has been completed. Part 58 prohibits further project activities and actions from being undertaken prior to completion of the review and the determination of environmental clearance.

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, but 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, after the environmental review process has been completed for the project.

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58. For example, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the project participant's own funds, prior to obtaining environmental clearance to use CDBG funds. If prohibited activities are undertaken prior to receiving approval from the State, the applicant is at risk for the denial of CDBG assistance. The reason is these actions interfere 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

According to the NEPA (40 CFR 1500-1508) and Part 58, the recipient is required to ensure that environmental information is available before decisions are made and before actions are taken. Recipients may not commit or expend resources, either public or private funds (CDBG, other Federal, or non-Federal funds), or execute a

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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 (such as construction, demolition, acquisition, etc.) before the environmental review is complete. This policy is consistent with NEPA regulations at 40 CFR 1501.2 that require Agencies to “integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.”** The environmental review must be completed before bidding in order 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 any and 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 (i.e., the natural, physical, social and economic environment).

In order to achieve this objective, Part 58 prohibits the commitment of CDBG funds by the State or its recipients until the environmental review process has been completed and Grants Administration release of funds approval, when required, has been received. Moreover, until the recipient has completed the environmental review process (and until receipt of Grants Administration 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.

For the purposes of the environmental review process, **“commitment of funds”** 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.

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Section 3 – 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. The term “project” can be defined as 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. 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, or
- ◆ 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 of 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 where as 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, 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 (EA) activity sections of this chapter for more detail.

<i>Activity</i>	<i>Classification</i>
Acquisition/Disposition	Categorically Excluded Subject to Sec. 58.5
Clearance (Demolition)	Categorically Excluded Subject to Sec. 58.5 or EA

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<i>Activity</i>	<i>Classification</i>
Water and Sewer Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Supplemental Assistance to a previously approved project	Categorical 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 Construction	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 Construction	Categorically Excluded Subject to Sec. 58.5 or EA EA
Fire protection Facilities: Rehabilitation Construction	Categorically Excluded Subject to Sec. 58.5 or EA EA
Parking facilities: Rehabilitation Construction	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

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<i>Activity</i>	<i>Classification</i>
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
New construction Single family housing 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 Sec. 58.5 because there is no effect whatsoever on the physical environment.

A list of Exempt activities is found at 24 CFR Part 58.34. Exempt activities may include the following:

- ◆ Environmental studies necessary to comply with applicable laws.
- ◆ Development of a comprehensive community development plan including data gathering and studies necessary for development of the plan.
- ◆ Development of CDBG program plans.
- ◆ Development of codes, ordinances and regulations necessary for the implementation of the program.
- ◆ Design and engineering costs associated with carrying out an approved CDBG eligible activity.
- ◆ Development of a policy/planning/management capacity.
- ◆ Eligible administrative costs.
- ◆ Eligible public service activities that would not have a physical impact or result in any physical changes.
- ◆ Any of the categorical exclusions subject to Sec. 58.5 listed in Section 3 of this chapter, provided that there are no circumstances, which require compliance

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with any of the environmentally related Federal laws, and authorities listed at Part 58.5 of the regulations.

This is recorded on the *Environmental Review for Project that is Exempt or Categorically Excluded Not Subject to 58.5* (CENST) or the *Environmental Review for Project that is Categorically Excluded Subject to 58.5* (CEST).

- ◆ The recipient is also responsible for documenting whether or not compliance with the “other requirements”—as cited in sec. 58.6—coastal barrier resources, disclosure that properties are within civil or military airport clear zones or runway clear zones, and the Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 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 for CEST and CENST are included in the attachments of this chapter.
- ◆ The Environmental Review must be signed by the certifying officer and a copy sent to Grants Administration for review.
- ◆ The original is retained by the recipient in the ERR.
- ◆ Once Grants Administration has accepted other documentation indicated on the Start-Up Checklist, funds may be drawn down using standard procedures.

Categorically Excluded Activities

Categorically Excluded Subject to 58.5

The list of Categorically Excluded activities is found at 24 CFR Part 58.35 of the environmental regulations. While the activities listed in 58.35(a) are categorically excluded from National Environmental Protection Act (NEPA) requirements, the recipient must nevertheless determine whether or not compliance with the Federal laws, authorities and Executive Orders listed in Sec. 58.5 are invoked by project activities. These 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.

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- ◆ Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons.
- ◆ 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,
 - ◇ The land use is not changed, and
 - 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.
- ◆ Combinations of the above activities.

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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:
 - Flood Plains and Wetlands
 - Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Wetland Protection). Determine whether or not the project is located in or will impact the floodplain and/or proposes construction in a designated wetland. If the answer to this question is "Yes," apply the Eight-Step Process (this procedure is described later in this chapter). The *Early Notice and Public Review* must be published in a newspaper of general circulation at least fifteen days (excluding the date of publication) prior to publication of the *Final Notice and Public Explanation*. You may publish the latter 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* (included in the attachments to this chapter) 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 responsible entity (on government letterhead). In addition, local governments should use the HUD Tribal consultation letter found at the following link: <https://www.hudexchange.info/resource/3785/tribal-consultation-letter-template/> (which is also found in the Environmental chapter attachments).
 - 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

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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.

- Coastal Zone Management Act
 - ONLY Coastal Counties are required to obtain Determinations of Consistency from the Department of Health and Environmental Control's Office of Ocean & Coastal Resource Management. Coastal counties include Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper.
- Sole Source Aquifers (Safe Drinking Water Act)
- Endangered Species Act
 - Concurrence from the US Fish and Wildlife Service is required unless the project is covered under the clearance letter for HUD funded projects, which is available at:

www.fws.gov/charleston/regulatory.html

For State natural resources, visit the SC Department of Natural Resources website:

<https://schtportal.dnr.sc.gov/portal/apps/sites/#/natural-heritage-program> (Note: This portal provides an immediate response if the project is no factor for SCDNR or if further consultation is required.)

- Wild and Scenic Rivers Act
- Clean Air Act (including removal of asbestos containing materials)
- Farmland Protection Policy Act
- 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 HUD's website. 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.
- Explosive and Flammable Hazards (24 CFR Part 5, Subpart C)

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- To document compliance with the requirements regarding separation from hazardous operations see “Siting of HUD-Assisted Projects Near Hazardous Facilities” at HUD’s website.
- 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. Further guidance on the required documentation (and what to do if any of the above conditions are found) is available on the “Documentation of Sources” in the Environmental Chapter Attachments.
 - 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. Please see the “Documentation of Sources” in the Environmental Chapter Attachments for further guidance on the required documentation (and what to do if toxins/hazards are present).

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

- Environmental Justice
- Other Federal Requirements listed at 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/>
 - 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.

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- ◆ Send a detailed project description and maps to the agencies indicated on the required *Agency Contact List* (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.
- ◆ 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 none of the laws and regulations listed at 24 CFR Part 58.5 apply, finalize the *Environmental Review for CEST* (included in the attachments to this chapter) and submit a copy of the completed forms and supporting documentation to Grants Administration.
- ◆ If any circumstances exist which require compliance with the laws and authorities at Section 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 stated and Federal agencies, and the Environmental Protection Agency (EPA) Regional Office (the EPA address is included on the *Agency Contact List*).
- ◆ 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 Grants

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Administration. A copy of the *Environmental Review for CEST*, as well as copies of all other relevant documents and Notices must also be forwarded to Grants Administration for review.

- ◆ Grants Administration 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 is to consider any valid objections to procedural errors by the recipient. (See 24 CFR Part 58.75 for permissible basis for objections.) After expiration of the time period specified, Grants Administration will issue a *Notice of Removal of Environmental Conditions* (included in the attachments to this chapter).
- ◆ Place the originals of all documents, any comments received, as well as proof of publication/posting documentation, in a file labeled ERR.

Categorically Excluded Not Subject to 58.5

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 CENST* (included in the attachments to this chapter) and submit a copy to Grants Administration 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 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;

Although these activities are not subject to 58.5, the recipient must demonstrate that the activities will not be located in a runway clear zone or coastal barrier island, and comply with Flood Disaster Protection as required by 58.6.

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- ◆ 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; and
- ◆ 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.
- ◆ 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 Sec. 58.47.

To prepare the environmental review for categorically excluded activities NOT subject to 58.5, the funding recipient must demonstrate that the activities will not be located in a runway clear zone or coastal barrier island (see website at <https://www.fws.gov/CBRA/>) and comply with Flood Disaster Protection Use the form *Environmental Review for Project that is Exempt or Categorically Excluded Not Subject to 58.5* (CENST) found in the attachments.

Environmental Assessment

If a project is not Exempt (24 CFR Part 58.34) or Categorically Excluded (24 CFR Part 58.35), a full Environmental Assessment is required. Therefore, the *Environmental Assessment* must be completed for projects in this category in order to comply with NEPA and the related Federal laws and authorities cited at Sec. 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.

The following procedures apply to completion of Environmental Assessments:

- ◆ Complete the *Environmental Assessment* by documenting 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:
 - Floodplains and Wetlands
 - Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Wetland Protection). Determine whether or not the project is located in or will impact the floodplain and/or proposes construction in a designated wetland. If the answer to this question is "Yes," apply the

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Eight-Step Process (this procedure is described later in this chapter). The *Early Notice and Public Review* must be published in a newspaper of general circulation at least fifteen days (excluding the date of publication) prior to publication of the *Final Notice and Public Explanation*. You may publish the latter 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* (included in the attachments to this chapter) 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 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 responsible entity (on government letterhead). In addition, local governments should use the HUD Tribal consultation letter found at the following link: <https://www.hudexchange.info/resource/3785/tribal-consultation-letter-template/> (which is also found in the Environmental chapter attachments).
 - 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 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.
- Coastal Zone Management Act
 - ONLY Coastal Counties are required to obtain Determinations of Consistency from the Department of Health and Environmental

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Control's Office of Ocean & Coastal Resource Management. Coastal counties include Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper.

- Sole Source Aquifers (Safe Drinking Water Act)
- Endangered Species Act
 - Concurrence from the US Fish and Wildlife Service is required unless the project is covered under the clearance letter for HUD funded projects, which is available at www.fws.gov/charleston/regulatory.html

For State natural resources, visit the SC Department of Natural Resources website:

<https://schtportal.dnr.sc.gov/portal/apps/sites/#/natural-heritage-program> (Note: This site provides an immediate response if the project is no factor for SCDNR or if further consultation is required.)

- Wild and Scenic Rivers Act
- Clean Air Act (including removal of asbestos containing materials)
- Farmland Protection Policy Act
- 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 HUD's website. 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.
- Explosive and Flammable Hazards (24 CFR Part 5, 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.
- 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. Further guidance on the required

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documentation (and what to do if any of the above conditions are found) is available on the “Documentation of Sources” in the Environmental Chapter Attachments.

- 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. Please see the “Documentation of Sources” in the Environmental Chapter Attachments for further guidance on the required documentation (and what to do if toxins/hazards are present).
- HUD Standards for noise abatement (24 CFR 51B); separation from hazardous operations (24 CFR 51C); and hazardous substances and radioactive materials (sec. 58.5(i)(2)).
 - HUD provides additional guidance concerning noise abatement in “The Noise Guidebook”. A copy may be obtained from HUD’s website. 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.
 - To document compliance with the requirements regarding separation from hazardous operations see “Siting of HUD-Assisted Projects Near Hazardous Facilities” at HUD’s website.
- Environmental Justice
- Other Federal Requirements listed at 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/>
- ◆ 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.
- ◆ Send a detailed project description and maps to the agencies indicated on the *Agency Contact List* (found in the attachments to this Chapter) to document

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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.). Provide topographical, USGS, National Wetlands Inventory, Archsite or equivalent, road map, or other maps which precisely locate the project in relation to environmental features. 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. 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.

- ◆ As agency responses are received, begin preparation of the Compliance Factors and Environmental Assessment Factors of the *Environmental Assessment*. Use verifiable source documents, relevant base data, and contact with authorities and experts to support the environmental findings.
- ◆ 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.
 - Certifying Officer (see 24 CFR Part 58.13 of the regulations) should execute the declaratory statement at the end of the *Environmental Assessment*; and
 - Statement must be signed prior to the recipient issuing the *Notice of Finding of No Significant Impact (FONSI)* that is published in the newspaper, or posted.
- ◆ 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 post 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.
 - The *FONSI/NOI-RROF* Combined Notice has a fifteen-day comment period if published, 18 days if posted.
 - ◇ The date of publication and posting is NEVER counted when computing time periods.
 - ◇ Contact Grants Administration's Environmental Specialist for assistance in computing time periods, or utilize the Publication Guide that is located in the attachments to this chapter.

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- ◆ Once the comment period has expired, the recipient may submit a *Request for Release of Funds and Certification*, a copy of the Notices, and a copy of the complete *Environmental Assessment* to Grants Administration for review. Grants Administration 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.

Environmental Impact Statement

An Environmental Impact Statement (EIS) details the recipient's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. Recipients must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (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.
 - A Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project.
- ◆ Preparation of an EIS is mandatory 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.
 - Any project that exceeds the 2,500-unit threshold for nonresidential housing construction.

Contact Grants Administration's Environmental Specialist if you believe an EIS is required.

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 (EA). In such cases, if the recipient makes a *Finding of No Significant Impact*

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(*FONSI*), the *FONSI* must be made available for public review for at least 30 days before the recipient makes a final determination about whether to prepare an EIS.

Section 4 – 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*).

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- 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 Grants Administration's Environmental Compliance Specialist prior to finalizing the strategy.
- ◆ Step 3 - Complete a *Site Specific Review Checklist* (included in the attachments to this chapter) 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 GA.
 - 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 in 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. Document the ERR 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.

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- 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.

Section 5 – Publication and Posting of Public Notices

CDBG Recipients have the option of either publishing the *FONSI* and *NOI/RROF* in a newspaper of general circulation serving the affected geographical area or posting said notices in prominent public places within the recipient's geographical boundaries.

Notices required for completion of the "eight-step process" - "*Early Notice and Public Review*" and "*Final Notice and Public Explanation*" - may only be published. Posting is not an option.

- ◆ Suitable 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.
- ◆ 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 confirms in the *Request of Release of Funds* that notices have been posted.

Public Comment Periods

Below is a chart showing the different time periods and requirements for posting and publishing relevant documents required for environmental reviews. **Note: The date**

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a notice appears in the newspaper or on which it is posted/mailed cannot be counted when calculating time periods. Time periods identified below are in calendar days. Recipients may provide longer comment periods on the *FONSI* and/or *NOI/RROF*, if desired, but these are the minimum number of days required.

Document	Method	Time Period	Comments
FONSI	Published	15 days	
FONSI	Posted	18 days	
NOI/RROF	Published	7 days 15 days for State to receive objections	Published 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.
NOI/RROF	Posted	10 days 15 days for State to receive objections	Posted 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.
FONSI and NOI/RROF	Published	15 days comment 15 days for state to receive objections	Published as a combined notice.
FONSI and NOI/RROF	Posted	18 days 15 days for State to receive objections	Posted as a combined notice.
Early Notice and Public Review	Published	15 days	Floodplains EO 11988 and Wetlands EO 11990
Final Notice and Public Explanation	Published	7 days	Floodplains EO 11988 and Wetlands EO 11990

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Document	Method	Time Period	Comments

Section 6 - Floodplain/Wetland Compliance Requirements and Stormwater Management Act

This section discusses the steps to take regarding projects in floodplains or wetland areas as well as a brief discussion about the Stormwater Management Act.

Compliance with Floodplain/Wetlands Requirements

If any activity is proposed to take place in a 100-year floodplain (either designated by FEMA or identified using best available information) or construction in a designated wetland is proposed, the implementation of a specific decision-making process is required for compliance with Executive Orders 11988 and 11990. This procedure is commonly referred to as the "eight-step process." A flow chart depicting the decision making process can be found at the end of this chapter. 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), c.) and 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). 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

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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. The 8-step process applies.

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 base (100 year or 500 year for critical actions) floodplain or results in construction in a wetland.

- ◆ The maps identified below are published by the Federal Emergency Management Agency (FEMA). Check the following maps to determine if the project is located within a floodplain:
 - If the community has been identified as flood-prone by FEMA, a copy of the community's most recently published map (including any letters of map amendments or revisions) should be obtained. The map will identify the community's special flood hazard areas.
 - ◇ Flood Hazard Boundary Map, and/or
 - ◇ Flood Insurance Rate Map.
 - If the FEMA maps are not available, a determination of whether the project is located in a floodplain may be made by consulting other sources, such as:
 - ◇ U. S. Army Corps of Engineers - Hydrology, Hydraulics, and Coastal Team
 - ◇ Local Soil Conservation Service District;
 - ◇ Floodplain Information Reports;
 - ◇ USGS Flood-prone Area;
 - ◇ Topographic Quadrangle maps; or
 - ◇ State and local maps and records of flooding.
- ◆ For wetlands, 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 through various applicable memorandums*, as well as streams that are also defined as waters. Generally, grantees should hire a

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qualified professional to provide a scientifically defensible wetlands delineation for ground disturbing projects. National Wetland Inventory (NWI) 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.

- ◆ 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 a floodplain/wetland, the second step is to involve the public in the decision-making process by publishing a notice in the local newspaper informing the public of the proposal and inviting comments.

- ◆ 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 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 rather than posted.
 - 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 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.

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Step 4: Identify Impacts of Proposed Project

- Identify the impacts of the proposed project in step four, including actions occurring outside the floodplain/wetland that will affect the 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.

If negative impacts are identified, methods must be developed to preserve potential harm as discussed in Step 5. The term harm, as used in this context, applies to lives, property, 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.

- ◆ The concept of minimization applies to harm.
- ◆ The concept of restoration and preservation applies only in floodplain/wetland values.

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 "rule of thumb" if the proposed project is determined to be no longer feasible, you should 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

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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.

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* must be published in a local newspaper.
 - A sample of this second notice is in the attachments to this chapter.
 - ◇ The recipient may not post the *Early Notice and Public Review* or the *Final Notice and Public Explanation*. These notices are required to be published.
 - ◇ 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.

Step 8: Implement the Proposed Project

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

- ◆ Compliance with EO 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.

Compliance with the 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).

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- ◆ "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 Health and Environmental Control (DHEC) is the State agency ultimately responsible for implementation of the Act.
 - Questions should be directed to the Stormwater Management Section at DHEC.
 - CDBG recipients must indicate in the ERR whether or not a planned activity will or will not require compliance with the Act.

Section 7 – Environmental Reviews Prepared by or for Other Federal Agencies

Grants Administration 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 shall:
 - 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 Grants Administration, with a request for a written determination of consistency with 24 CFR Part 58 requirements.
- ◆ Upon receipt and review of the document, Grants Administration will:

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- Issue a determination that the ERR meets HUD environmental requirements and is substantially equivalent; or
- Require additional review and public notices, as appropriate.

Section 8 – 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 Grants Administration 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.
 - 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 whether it converted to exempt or the date of release of funds.
 - ◇ 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

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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.
- ◇ Document whether the original findings are still valid. If they are not, contact Grants Administration.
- For FONSI's, complete an Affirmation of Original Environmental Determination.
- ◆ Copies of all documentation generated through the re-evaluation process must be submitted to Grants Administration.
- ◆ 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.

Chapter 2: Environmental Requirements Attachments

Environmental Review Forms

- Environmental Assessment
- Environmental Assessment Documentation Sources
- 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

- Section 106 Historic Preservation Review Form
- SHPO Agreement
- **Fees in the Section 106 Review Process**
- **ACPH e106 Notice of Availability, Instructions and Form, Adverse Effect Notification Form**
- Sample USDA Tribal Review Sheet
- Catawba Indian Nation Consultation Guidelines
- US Fish and Wildlife Service, Section 7 Consultation Requirements
- Blanket US Fish and Wildlife Service Concurrence Letter for Certain Projects
- Army Corps of Engineers, Jurisdictional Determination Request
- Wetland Identification Procedures
- HUD CPD Notice 12-006 Tribal Contact

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Additional Agency/Consultation Resources

- Agency Contact List
- Web Resources for Environmental Review
- Federally Endangered Species List for SC - link to SC DNR Website
- Environmental Assessment Factors Guidance

Environmental Notices

- HUD 8-step Notices (Early Notice and Public Review and Final Notice and Public Explanation)
- Notice to Public of Intent to Request Release of Funds
- 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

- Process for Combined Notice Publication
- Environmental Review Flow Chart
- Decision Making Process for Floodplains Flow Chart
- Flood Plain Management Worksheet
- 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