National Environmental Policy Act (NEPA) Review Process

Presented by: Nina Abbas



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) "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities"
- NEPA-Related Laws and Authorities (List at 24 CFR 58.5).

https://www.hudexchange.info/environmental-review/federal-related-laws-and-authorities/

• Refer to Recipients' Manual, Chapter 2: Section 2

Who Is Responsible for the Environmental Review?

Part 58 Allows local units of government to perform NEPA responsibilities with States reviewing in place of HUD **Chief Elected Official (CEO)**

- Assumes responsibility for environmental review
- Must sign the Finding of No Significant Impact (FONSI) and the Request for Release of Funds/Certification
- Accepts the jurisdiction of the Federal Courts as the responsible entity in environmental matters for this certification

When should the Environmental Review start?

- Before making choice limiting actions, including acquisition and signing construction contracts
 - Must be able to reject the site
- Before commitment of funds 24 CFR Part 58.22 (a)
 - Neither a recipient nor any participant, including private nonprofit or for-profit entity, may commit federal funds before approval of the RROF
 - Neither a recipient nor any participant may commit non-HUD funds if the project has the potential to have an adverse impact or limit the choice of reasonable alternatives.

Importance of Early Start

- Begin environmental review process as soon as possible.
- Typical times required to complete review range from 1 to 120+ days.

Environmental Review Process High Level Overview

- Determine the Level of Environmental Review Required
- Applies to the project as a whole not just CDBG funds
- Create the Environmental Review Record
 - Must be Available to the Public at the local government
- Complete the Environmental Review and document compliance with the related Laws
- Publish Required Notices According to Level of Review

Steps in the Environmental Review Process

Determine

Determine the Level of Environmental Review Required (Applies to the entire project, not just CDBG <u>funds)</u>

Create

Create the Environmental Review Record

(Must be Available to the Public)

Complete

Complete the Environmental Review and document compliance with the related Laws

Publish

Publish Required Notices According to Level of Review

Submit

Submit the Request for Release of Funds and supporting documentation to DCA (DCA issues "release" letter)

Maintain

Maintain Documentation of Compliance (Including Mitigation) in the ERR

HUD's Project Description Instructions

The Project description is the foundation of the environmental review.

Capture the maximum anticipated scope of the project:

- Overall objective of the project
- List of all activities
- List of all funding sources (both HUD and non-HUD)
- Time frame of project (max of five years)
- Provide maps showing clearly defined site project boundaries
 - Project boundaries are not limited to the site owned/controlled by recipient/subrecipient

Levels of Environmental Review

- 24 CFR Part 58.34(a) Exempt
- 24 CFR Part 58.35 Categorically Excluded
 - Categorical exclusions <u>SUBJECT to</u> laws and authorities at 24 CFR Part 58.5
 - Categorical exclusions <u>NOT subject to</u> laws and authorities at 24 CFR Part 58.5
- 24 CFR Part 58.36 Environmental Assessment
- 24 CFR Part 58.37 Environmental Impact Statement

58.34	58.35 (b)		
Exempt Categorically Excluded NOT subject to 58.5			
	FACTIVITIES		
 Environmental and other studies Resource Identification Development of plans and strategies Information and financial services Administrative and Management Activities Public services, i.e., employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, welfare, recreational needs Inspections and testing for hazards or defects Purchase insurance and tools Engineering or design costs Technical assistance and training Temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities to control or arrest the effects from disasters or imminent threats to public safety, including those resulting from physical deterioration. Payments of principal and interest on loans or obligations guaranteed by HUD 	 Tenant-based rental assistance Supportive services such as health care, housing services, permane housing placement, day care, nutritional services, short-term paymer for rent, mortgage, or utilities, assistance in gaining access to government benefits. Operating costs including maintenance, furnishings, security, equipment, operation, supplies, utilities, staff training and recruitment Economic development activities including equipment purchase, inventory financing, interest subsidy, operating costs, and other expenses not associated with construction or expansion Activities to assist homeownership of existing dwelling units or units under construction, including closing costs and down payment assistance to homebuyers, interest buy downs or other actions resulting in transfer of title. Affordable housing pre-development costs: legal consulting, develop and other site-option costs, project financing, administrative costs for loan commitments, zoning approvals, and other activities which don't have a physical impact. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under Part 58, if: approvise by same the RE, and re-evaluation is not required, per 58.47. 		
Describe activity and make a written determination of exemption.	Describe activity and make a written 58.35(b) determination.		
Also, determine compliance with 58.6: National Flood Insurance Program Coastal Barrier Resource Act Runway Clear Zones 	Also, determine compliance with 58.6: National Flood Insurance Program (NFIP) Coastal Barrier Resource Act (CBRA) Runway Clear Zones 		

18.35(a) 58.36 Categorically Excluded AND subject to 58.5 TYPES OF ACTIVITIES Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements are already in place and will be relained in the same use without change in size or capacity of more than 20%. Activities not exempt or categorically excluded. • Replacement of water or sever lines • Replacement of water or sever lines • Generally, new construction of 5 or more homes, and conversion from one type of land use to another. • Project doesn't linvoive change in land use from residential to non-residential • One thensity is not linvoive change in land use from residential to non-residential • One thensity is not linvoive change in land use from residential to non-residential • Out density is not invoive change in land use from non-residential • One thensity is not more than 20% • Project doesn't invoive change in land use from non-residential • Out density does not involve change in land use from non-residential to non-residential • Out of thensity doesnot involve change in land use from non-residential • Out of thensity is not involve change in land use from non-residential to residential, commercial to industrial, or one industrial use to another • Complete Statutory Worksheet, (sec. 58.5) and induction (encluding leasing) or disposition of, or equity loans on an existing structure or acquisition inducted action for the same use • Complete Statutory Worksheet, (sec. 58.5) and induces the same than 2000 feet apart fund from 7015.16 Environmental Assessment (includ	Tategorically Excluded AND subject to 58.5 NEPA Environmental Assessment Creduation, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements for the facilities and improvements are aiready in place and will be retained in the Same use without change in size or capacity of more than 20%. Activities not exempt or categorically excluded. • Replacement of water or sever lines Reconstruction of curbs & sidewalks Generally, new construction of 5 or more homes, and conversion from one type of land use to another. • Project doesn't involve change in land use from residential to non-residential • Project doesn't involve change in and use from residential to non-residential • Control of the size than 75% of the estimated cost of replacement after rehab • Unit density change is not more than 20% • Project doesn't involve change in land use from non-residential to residential to non-residential • Cost of rehabilitation is less than 75% of the estimated cost of replacement after rehab • Orn-Residential Structures • Activity does not involve change in land use from non-residential to residential, commercial to industrial, or one industrial use to another Individual action on five or more units scattured on sites more than 2000 feet apart and no more than • Proiect doesn't involve change in land use from non-residential to residential and or the erimovements were in place and will not be changed on time or more units scattured on sites more than 2000 feet apart and no more than • Complete statutory Worksheet, (sec. 58.5) • Activity does not involve change in land			
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Environmental Assessment

Environmental Review Documents

Compliance & Administration - Forms

- Environmental Assessment
- Levels of Environmental Review Overview
- Environmental Review for Activity/Project that is Categorically Excluded Subject to Section
- Certification of Categorical Exclusion Not Subject to 58.5

Certification of Exemption

NSP Site Specific Environmental Checklist

Eight Step Decision Making Process for Wetlands and Floodplains

8 Step Process Flow Chart

- Early Notice and Public Review of a Proposed Activity in a Floodplain or Wetland
- Einal Notice and Public Review of a Proposed Activity in a Floodplain or Wetland

Executive Order 11990 Protection of Wetlands

Concurrent Notice Sample

- Notice of Intent to Request Release of Funds Sample
- Request for Release of Funds and Certification Form
- Steps for Developing a Tiered Review
- Part 58 Tiered Review Form
- Programmatic Agreement for Historic Preservation
- Tribal Consultation Letter Template

DCA RROF Checklist

- Applicant Form 9: Environmental Review Information
- Applicant Form 9A: Historic Preservation Environmental Review
- Applicant Form 9B: When To Consult With Tribes

- Use current forms on DCA Website
- Cite Authoritative Sources of Info
 - See HUD tool (https://www.hudexchange.info/envir onmental-review/federal-relatedlaws-and-authorities)
- Describe mitigation measure for any identified negative impacts
- Evaluate all alternatives
- Certifying Officer must sign FONSI

Environmental Impact Statement (EIS)

 EIS required if Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project

- Most CDBG projects do not trigger
- Contact DCA immediately for assistance

Compliance Factors



Air Quality



Endangered Species



Flood Insurance



Site Contamination



Airport Hazards



Environmental Justice



Floodplain Management



Sole Source Aquifers



Coastal Barrier Resources



Explosive and Flammable Facilities



Historic Preservation



Wetlands Protection



Coastal Zone Management



Farmlands Protection



Noise Abatement and Control



Wild and Scenic Rivers

 HUD's Laws and Authorities Web Page <u>https://www.hudexch</u> ange.info/programs/e <u>nvironmental-</u> <u>review/federal-</u> <u>related-laws-and-</u> authorities/

How do I clear each Compliance Factor?

- Consult HUD's Laws and Authorities Web Page Incorporate the HUD worksheets into review
 - Partner worksheets if completed by RC or Private Consultant
- Each factor must have documentation, including the items like Sole Source Aquifers that do not apply to Georgia
- A map or report from a qualified expert or the appropriate government agency is the most common documentation
- Fish and Wildlife online Endangered Species tool: <u>https://ecos.fws.gov/ipac/</u>

Request for Release of Funds and Certification

U.S. Department of Housing and Urban Development Office of Community Planning and Development OMB No. 2506-0087 (exp. 08/31/2023)

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 38 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

1. Program Title(s)	2. HUDIState Identification Number Grant # or Pending Year
4. OMB Catalog Number(s) 14.228	5. Name and address of responsible entity
6. For information about this request, contact (name & phone number)	
8. HUD or State Agency and office unit to receive request	7. Name and address of recipient (if different than responsible entity)
The recipient(s) of assistance under the program(s) listed above grant conditions governing the use of the assistance for the follow	

9. Program Activity(ies)/Project Name(s)

10. Location (Street address, city, county, State)

11. Program Activity/Project Description

Enough description that a HUD auditor or member of the general public would be able to understand the basics of the project. We do NOT need information on what CDBG is, this should be about the project.

Give us a list of the activities, and a few sentence summary of the project. This should not be a generic set of sentences for the type of project, but a description to the particular project. What is the problem you are trying to solve.

The description should include where work and beneficiaries are located, including street/neighborhood names or similar. How many people are being helped. Add other pertinent details.

Previous editions are obsolete

Request for Release of Funds Form HUD-7015-15

Environmental Notices Period Local Comment Period

- Publish in local newspaper of general circulation.
 - Legal or non-legal section
- Notice of Intent to Request Release of Funds (NOI): 7 days
- FONSI and NOI (Combined/Concurrent notice): 15 days
- Notice includes an additional **15 days** for public objection of RROF to DCA.
 - Begins the day after DCA receives the RROF.



Local Period – Objections

- Basis for Objections
 - Anything
- Local Government must consider comments
 - If you get a comment you must respond
 - Acknowledge and respond in writing
- Tell DCA about any comments and include your response

Objections to DCA

- Basis for Objections
 - RROF not signed by Certifying Officer
 - Omission of a required decision, finding, or step applicable to the environmental process
 - Committed funds prior to release of funds

Waiting Period Details

- All Waiting period days must be full 24-hour periods
- The day of publication DOES NOT COUNT toward the waiting period
- The DCA public comment period does not start until the day after receipt of the RROF
- Each part of the process must be separate, no overlapping days

Example Fastest Concurrent Notice and RROF

- Day1: Concurrent Notice Published
- Day 2-16: 15-day comment period
- Day 17: RROF signed and dated by certifying official, emailed to and received by DCA. DCA comment period does not start on the day we receive it.
- Day 18-32: State 15-day comment period
- Day 33: RROF letter prepared by DCA
- Weekends and any delay usually increases this by a few days
- If you have the time, allow for slightly more than 15 days. If you use the minimum and the newspaper runs it a day late you will have to republish.

Items to send when Requesting Release of Funds

CDBG Release of Funds Checklist

Items to Check	Status/Date	Notes
Community/SN		
Type of Review		
Date Received by DCA		
Release Date (no		
comments)		
Activity Description		
EIS Checkbox		
Signature/Date		
Special Conditions		
HPD Clearance		
Tribal Consultation		
Wetlands/Floodplain notices		
Concurrent Notice		

- CEO Signed and Dated Request for Release of Funds
 - HUD wants an actual description not just the budget line item
 - Make sure to select the appropriate EIS check box on page 2
 - Must be signed and dated after the end of the public comment period
- All Newspaper Notices (Concurrent in most cases, and Floodplain/Wetlands if necessary) – Scans or actual notices, make sure the date of the paper (not just in the notice) is visible.
- HPD clearance letter unless it is not subject to 58.5
- Proof of Tribal Consultation signed by a certifying officer of the local government if subject to 58.5 and the activity requires it.
- If you received an objection or comment, include it and your response.
- *If the project is a building or Multi-Family residential, provide Phase I results*

Required Items for your Application

Applicant forms listed in the manual and available on our web site:

DCA 9 Environmental Review Information

DCA 9A Historic Preservation Environmental Review Form

DCA 9B When to Consult With Tribes Under Section 106

Proof of tribal consultation Generally this should be a scan of the letters, any responses, and a memo letting us know that the others did not respond during the review period.

Letters should be signed by the Chief Local Official, o if he can not because of a conflict of interest or some other reason, by the next highest certifying official.

□Floodplain and Wetland Maps

Any other environmental review paperwork from stages that are complete when submitted.

Application Requirements & Bonus Points



Tribal Consultation must be completed by the Application Deadline

30 June 2025

4 Apr. 2025



If you complete the process and have a Release of Funds by Monday June 30, 2025, your application will receive 5 bonus points

Environmental Review Optional Advice for RROFs

- A memo listing items sent in with the RROF and items previously sent to DCA will make it faster and easier to review. Without this, if some items are in the application we probably won't know until you tell us.
- If you are an experienced administrator, grouping paperwork with the RROF instead of each item separately will make it easier for anything that is not bonus point related.
- For new administrators feel free to call or email me to make sure time periods are good.

Important Tips



- Change of scope in project (Grant Amendments) might require additional review.
- DON'T SPEND A DIME until your ER is complete and you have received Release of Funds from DCA
 - Exception for Admin and Design Costs
- When in doubt contact DCA/CDBG staff!

Current Issues

- Everything must be complete, including the response from Historic Preservation before you
 publish the FONSI/Concurrent Notice
- The Environmental Review lasts 5 years from release date. If construction is still taking place, you must stop and perform a completely new review
- Any Historic Preservation condition stops a conversion to Exempt
- Incidental Floodplain and Wetlands Do 8 Step, or Deed Restrict
- Tribal Consultation should be Government to Government, Signed by CEO
- Hazardous Waste: Check 300' radius.
- For Buildings or Multi-Family residential with 5 or more units, provide Phase I results with the RROF.
- Please Note: For a Phase 1 to be presumed Valid it must be less than 180 days since preparation.

HUD Policy Updates

HUD's Departmentwide Radon Policy Notice



HUD Departmental Radon Policy Notice

- On January 11, 2024, HUD published its departmentwide radon policy notice,
 "Departmental Policy for Addressing Radon in the Environmental Review Process" addressing the risk of radon exposure.
- This policy falls under HUD's contamination regulations at 24 CFR 50.3(i) & 58.5(i)(2), which is part of the environmental (NEPA) review of proposed HUD supported projects
- The Policy requires consideration of radon gas for projects:
 - With a CEST, EA, or EIS level of review
 - Structures occupied or intended to be occupied at least four (4) hours a day
- Radon testing is *not* required, but mitigation is required if the method used to consider radon shows levels at 4.0 pCi/L or greater.

Radon Policy Notice: Implementation





- Buildings with no enclosed areas having ground contact
 - For example, buildings built on piers
- Non-residential buildings which will not be occupied for more than four (4) hours per day
- Buildings with existing radon mitigation systems document radon levels are below 4 pCi/L with test results dated within two years (of application or certification)
- Buildings tested within five (5) years with test results below 4 pCi/L

How To Consider Radon under the Policy Notice

- HUD's Preferred, Best Practice: The American National Standards Institute (ANSI) and American Association of Radon Scientists and Technologists (AARST) radon testing and mitigation standards.
- Alternative strategies that can be used (if testing not otherwise required by law/reg):
 - <u>Do-It-Yourself (DIY) Testing</u>: Use of individual DIY home radon test kits
 - <u>Continuous Radon Monitoring Devices</u>: for use by trained local government staff in remote areas
 - <u>Review of science-based data on radon in the area where the project</u> site is located: state/tribal geologic data, CDC radon test data
- If use of any of the above methods determines that indoor radon levels are or may be above 4 pCi/L, then the Responsible Entity (RE) must document and implement a mitigation plan.



DIY Testing

- Do-it-yourself (DIY) test kits allowed in single-family dwelling units for "single-family" homes, buildings that feature 1-4 dwelling units
- Tests should ideally be approved by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NRPP)

Continuous Radon Monitors

- In remote areas where other types of testing is not possible or feasible, the use of continuous radon monitors (CRMs) by the local government is allowed to measure radon levels
- Devices should be approved by the NRSB or NRPP
- Contact your state or the National Radon Program Services at KSU for recommendations and assistance





Review of Science-Based Data: Examples of Data Sources



<u>https://www.cdc.gov/environmental-health-tracking/php/data-research/radon-testing.html</u> <u>https://extension.uga.edu/programs-services/radon-testing.html</u>

Mitigation

- Mitigation under the Notice functions just as other mitigation under 24 CFR 50.3(i) and 58.5(i)
- If radon testing or a review of science-based data shows a radon level for a building at or above 4 pCi/L, then the Environmental Review Record (ERR) must include a mitigation plan
- If using a review of science-based data radon testing can be done prior to initiation of mitigation to determine if mitigation is necessary for a building
 - If a review of science-based data shows levels at or above 4.0 pCi/L but subsequent testing shows levels in the building below 4.0, no mitigation is needed
 - By electing to test, Environmental Review preparers and recipients may ultimately save funds by avoiding unnecessary radon mitigation
- Mitigation plans must: identify the radon level; consider the risk to occupants' health; describe the radon reduction system that will be installed; whenever possible, establish an ongoing maintenance plan to ensure the system is operating as intended; establish a reasonable timeframe for implementation; and require post-installation testing.
 - Post-installation testing should be conducted by a licensed radon professional where feasible.

Getting Technical Assistance and Useful Resources

• For all questions and technical assistance on the Policy Notice, please reach out to your regular HUD environmental POC. Find that person here:

https://www.hud.gov/program_offices/comm_planning/environment_energy/staff

- HUD Policy for Addressing Radon in the Environmental Review Process
 <u>https://www.hudexchange.info/trainings/courses/hud-policy-for-addressing-radon-in-the-environmental-review-process/</u>
- For assistance with selecting a test or monitoring device, industry standards, and becoming certified in testing or mitigation, and other educational information, check out the National Radon Program Services at Kansas State University:

https://sosradon.org/

- Phone number 800-767-7236
- To view the ANSI/AARST standards online for free: <u>https://standards.aarst.org/</u>



Federal Flood Risk Management Standard



- Published April 23, 2024, amends existing floodplain regulations – effective June 24, 2024.
- Expands 100-year floodplain to newly defined "FFMS floodplain" (expanded area).
 - E.O.13690 January 2015
- New construction or substantially improved structures within FFMS floodplain must be elevated or floodproofed.
- Projects within FFMS floodplain required to complete 8step/ 5-step
- Added <u>24 CFR 55.7</u> 3-Tiered Approach to FFRMS
- Allows for public notices required for environmental reviews to be published online on appropriate government websites.
- <u>https://www.hud.gov/program_offices/comm_planning/env</u> <u>ironment_energy/ffrms</u>
- <u>https://floodstandard.climate.gov/</u> (Federal CISA Tool)
- <u>https://www.hud.gov/program_offices/comm_planning/env</u> <u>ironment_energy/ffrms/faqs</u>
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Send Environmental documents to cdbg.biz@dca.ga.gov

Resources

- <u>https://www.hudexchange.info/environmental-review/orientation-to-environmental-reviews/</u>
- https://egis.hud.gov/tdat/
- <u>https://www.hudexchange.info/environmental-review/federal-related-laws-and-authorities/</u>
- <u>https://www.hudexchange.info/resource/4707/environmental-review-record-related-federal-laws-and-authorities-worksheets/</u>
- <u>http://www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp</u>
- https://nepassisttool.epa.gov/nepassist/nepamap.aspx