

# NEPA Environmental Procedure



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# Statutory & Regulatory Structure

- ❑ National Environmental Policy Act (NEPA) and implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508).
- ❑ HUD Regulations (24 CFR Part 58).
- ❑ NEPA-Related Laws and Authorities (List at 24 CFR 58.5).  
<https://www.hudexchange.info/environmental-review/federal-related-laws-and-authorities/>

# Environmental Review Regulations

## 24 CFR Part 58

- ❑ HUD's regulation allows local units of government to perform NEPA responsibilities with States reviewing in place of HUD
- ❑ Regulation titled "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities"
- ❑ Covered in Chapter 2 of the Recipients' Manual
- ❑ Compliance is a General Condition of all CDBG Awards

# Who Is Responsible for the Environmental Review?



- ▣ 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
  - ❑ 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 non-profit 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

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- Begin environmental review process as soon as possible.
- Typical times required to complete review range from 1 to 120 days.
- Must be completed by someone competent to do review

# Steps in the Environmental Review Process

- ❑ 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
- ❑ 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 (cont.)



- ❑ Submit the Request for Release of Funds and supporting documentation to DCA
- ❑ DCA issues Release of Funds Letter “Removing Environmental Conditions”
- ❑ Maintain Documentation of Compliance (Including Mitigation) in the Environmental Review Record (ERR)



# Levels of Environmental Review

## □ Four levels of review:

- 24 CFR Part 58.34(a) Exempt

- 24 CFR Part 58.35 Categorically Excluded

  - Categorical exclusions SUBJECT to laws and authorities at 24 CFR Part 58.5

  - Categorical exclusions NOT subject to laws and authorities at 24 CFR Part 58.5

- 24 CFR Part 58.36 Environmental Assessment

- 24 CFR Part 58.37 Environmental Impact Statement

# Levels of Environmental Review

58.35(a)		58.36
Categorically Excluded AND subject to 58.5		NEPA Environmental Assessment
TYPES OF ACTIVITIES		
<p>Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are already in place and will be retained in the same use without change in size or capacity of more than 20%</p> <ul style="list-style-type: none"> <li>Replacement of water or sewer lines</li> <li>Reconstruction of curbs &amp; sidewalks</li> <li>repaving of streets</li> </ul> <p>Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and handicapped.</p> <p><u>Single Family Housing Rehab</u></p> <ul style="list-style-type: none"> <li>Unit density is not increased beyond 4 units,</li> <li>Project doesn't involve change in land use from residential to non-residential</li> <li>The footprint of the building is not increased in a floodplain or a wetland.</li> </ul> <p><u>Multifamily Housing Rehab</u></p> <ul style="list-style-type: none"> <li>Unit density change is not more than 20%</li> <li>Project doesn't involve change in land use from residential to non-residential</li> <li>Cost of rehabilitation is less than 75% of the estimated cost of replacement after rehab</li> </ul> <p><u>Non-Residential Structures</u></p> <ul style="list-style-type: none"> <li>Facilities and improvements were in place and will not be changed in size or capacity by more than 20%</li> <li>Activity does not involve change in land use from non-residential to residential, commercial to industrial, or one industrial use to another</li> </ul> <p>Individual action (e.g., disposition, new construction, demolition, acquisition) on a 1 to 4 family dwelling; or individual action on five or more units scattered on sites more than 2000 feet apart and no more than 4 units per site.</p> <p>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 or disposed of will be retained for the same use</p> <p>*Combination of the above activities.</p>		<p>Activities not exempt or categorically excluded.</p> <ul style="list-style-type: none"> <li>Generally, new construction of 5 or more homes, and conversion from one type of land use to another.</li> </ul>
DOCUMENTATION REQUIRED IN ERR		
<p>Complete Statutory Worksheet, (sec. 58.5) and indicate converts exempt.</p> <p>Also, determine compliance with 58.6</p> <ul style="list-style-type: none"> <li>◆ NFIP</li> <li>◆ CBRA</li> <li>◆ Runway Clear Zones</li> </ul>	<p>Complete Statutory Worksheet (sec. 58.5)</p> <p>NOI/RROF notification</p> <p>RROF &amp; Certification (form 7015.15)</p> <p>Authority to Use Grant Funds (form 7015.16)</p> <p>Also, determine compliance with 58.6</p> <ul style="list-style-type: none"> <li>◆ National Flood Insurance Program</li> <li>◆ Coastal Barrier Resource Act</li> <li>◆ Runway Clear Zones</li> </ul>	<p>Environmental Assessment (including Statutory Checklist) *</p> <p>FONSI and NOI/RROF notification</p> <p>Form 7015.15</p> <p>Form 7015.16</p> <p>Also, determine compliance with 58.6</p>

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# Environmental Assessment

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

# Tiered Reviews

- Used when the addresses are unknown at the time of award
- Tier 1 (**Broad Level**) Environmental Reviews:
  - Includes Public Notice and RROF
  - Clear **as many of the statutes as possible** without knowing the addresses
    - Ex: Airport Hazard, Coastal, etc..
- Tier 2 (**Site Specific**) Environmental Reviews
  - Use once addresses are know
  - Checklist **includes only remaining statutes**
    - Ex: Floodplain, Historic Preservation, etc.

# Environmental Impact Statement (EIS)



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

# Compliance Factors for Environmental Review

- Air Quality
- Airport Hazards
- Coastal Barrier Resources
- Coastal Zone Management
- Endangered Species
- Explosives and Flammable Facilities
- Farmlands Protection
- Flood Insurance
- Floodplain Management
- Historic Preservation (includes Tribal consultation)
- Noise Abatement and Control
- Site Contamination
- Sole Source Aquifers
- Wetlands Protection
- Wild and Scenic Rivers
- Environmental Justice

# Compliance Factor Documentation

- HUD's Laws and Authorities Web Page  
<https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>
- We advise you to use the partner worksheets from HUD
- 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:  
<https://ecos.fws.gov/ipac/>



# HUD Worksheets

- ❑ Most HUD entitlements are now required to use the: HUD Environmental Review Online System (HEROS)
- ❑ States are not on the system, but they provide worksheets that mirror the HEROS system at: <https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>
- ❑ Under each category there is a Worksheet for the topic. Two sheets, one for reviews completed by the recipient and a Partner Worksheet if completed by a third party (grant administrator).
- ❑ DCA strongly advises making these worksheets part of your Environmental Review Record – they might be required in the future

# Environmental Notices – 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 (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.

# 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

- Day 1: 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
- 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

# Local Period – Objections

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- Basis for Objections

- Anything

- Local Government must consider comments

- Acknowledge and respond in writing

- If you get a comment you must respond

- Tell DCA about any comments and include your response

# DCA RROF Checklist

## 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		

# Request for Release of Funds Documentation

- ❑ 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 check box on page 2
  - ❑ Must be signed and dated after the end of the public comment period
- ❑ All newspaper notices – Actual notice newspaper cut sheets, not planned notices or text documents.
- ❑ HPD Clearance and Tribal Consultation Documentation

# 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.



# 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

# Important Tips

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- ❑ 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!

# Environmental Update – Northern Long-Eared Bat (NLEB)

- ❑ Final Rule effective February 16, 2016
  - ❑ Establishes Section 9 prohibitions against purposeful and incidental take
- ❑ NLEB protected under Sections 7 and 9 of the Endangered Species Act
  - ❑ Section 7 applies only to Federal actions
  - ❑ Section 9 applies to Federal and Non-Federal actions
- ❑ Blast e-mail dated June 6, 2016
- ❑ <http://www.fws.gov/Midwest/endangered/mammals/nleb/index.html>

# Current Issues

- ❑ Everything must be complete, including the response from Historic Preservation before you publish the FONSI/Concurrent Notice
- ❑ The review lasts 5 years from release date. If construction is still happening you have to stop and perform a completely new review
- ❑ HUD wants better descriptions on the Release of Funds (Who/What/Where)
- ❑ 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
- ❑ Hazardous Waste: Check 300' radius. Phase one last 1 year, 180 days to 1 year an update is required

# Application Requirements & Bonus Points



- ❑ Tribal Consultation must be completed by the Application Deadline of April 1 2020
- ❑ If you complete the process and have a Release of Funds by July 1 your application will receive 5 bonus points

# Resources

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

# Contacts



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