

[name of housing authority or tribal department]
[name of tribe]

[insert seal if desired]

ENVIRONMENTAL REVIEW POLICY AND PROCEDURES

These policies and procedures were adopted by the [HA Board/tribe] on _____, 2019.

SECTION 1: GENERAL PROVISIONS

A. Introduction. The Tribal Council of the [name of] Tribe ("Tribal Council") hereby enacts this Environmental Review Policy and Procedure ("Policy") in order to set forth the procedures to be followed in the conduct of environmental reviews. This Policy shall be administered by the [name of tribal department/housing authority] ("[abbreviation]").

B. Interpretation; Applicability. This Policy supersedes any and all ordinances, policies, laws or resolutions regarding its subject matter.

C. Compliance with Applicable Law. This Policy shall be implemented and may be conformed to comply with applicable provisions of the Native American Housing Assistance and Self-Determination Act of 1996, as amended ("NAHASDA"), the rules and regulations of the United States Department of Housing and Urban Development ("HUD"), and other applicable tribal, state and federal laws. This Policy shall not be construed or applied to prevent the Department from complying with the terms and conditions of any federal grant or contract, including any rules or regulations applicable to HUD-assisted programs.

D. Sovereign Immunity. The [name of] Tribe (“Tribe”) specifically retains all governmental immunities associated with its sovereign status. The Tribe’s subsidiaries, employees, officers and agents shall share in its sovereign immunity from suit. The Tribe does not waive its sovereign immunity in any respect and this Policy shall not be construed as such waiver.

E. Assumption of Authority. As a recipient of HUD assistance through ONAP-administered programs, the [name of] Tribe is the responsible entity (RE) that has assumed the federal environmental compliance responsibilities (according to 24 CFR Part 58) that would normally fall to HUD. The RE, as the governing entity with authority to assume responsibility for carrying out the environmental review process, must ensure compliance with the federal environmental requirements are achieved as described in 24 CFR Part 58. The Tribal Council hereby delegates to [person of organization] the authority to prepare environmental reviews, as applicable, for each program or project of the Department. The [person] shall receive training regarding environmental review requirements and responsibilities on an ongoing basis.

F. Certifying Officer. The chief executive officer for the [name of] Tribe assumes the role of the “responsible federal official” and is ultimately responsible for ensuring that all federal requirements and provisions of laws and regulations are met and certifying to this fact to HUD (“certifying officer”) (sections 58.2(a)(2) and 58.13). Another officer of the Tribe that has the legal capacity to make decisions on behalf of the tribe may be designated to sign on behalf of the certifying officer, but this designation must be either passed by tribal resolution or written and signed by the certifying officer. The certifying officer or designee is the only person authorized to execute the Request for Release of Funds and Certification (HUD form 7015.15) submitted to HUD whenever it is required (sec. 58.2(a)(2)).

SECTION 2: ENVIRONMENTAL REVIEW RESPONSIBILITIES

A. General. An appropriate environmental review shall be conducted prior to expending federal funds for any project and prior to committing funds or limiting the choice of reasonable alternatives (even with non-federal funding) on a project involving federal funding. Environmental reviews shall be required for all projects and activities involving HUD assistance, including but not limited to:

1. Program administration and management (e.g., staff salaries)
2. Homebuyer counseling
3. Vehicle maintenance
4. Security
5. Operations
6. Maintenance and rehabilitation of housing stock
7. Demolition and reconstruction of single-family residences
8. Housing development

Commented [ED1]: Customize list for your own activities

B. Records Retention. An appropriate environmental review record (including all supporting documentation) shall be compiled and retained in the file for each individual

project. Environmental review documentation shall be retained for a minimum of three (3) years following the date of grant closeout.

SECTION 3: ENVIRONMENTAL REVIEW PROCEDURES

A. Project Description and Level of Review. [name of TDHE/housing department] shall record project descriptions for all projects and activities to be completed using HUD assistance. The project description shall aggregate all related activities (on a functional or geographic basis) and include the maximum intended scope of the project. At a minimum, the project description will include scope of work (including any associated ground disturbance), legal addresses, site plans, a map of the property, photos, and HUD (and other federal) funding sources and amounts, as applicable. Reviews for activities that are recurring in nature (and in the same location, if applicable) can be specified to cover 5 years.

Based on the project descriptions, the appropriate level of environmental review shall be determined according to 24 CFR 58 (58.34(a), 58.35(b), 58.35(a), and 58.36). The possible levels of review are exempt; categorically excluded, not subject to 58.5 (CENST); categorically excluded, subject to 58.5 (CEST); and environmental assessment. The following activities can be generally categorized as follows:

1. Program administration and management (e.g., staff salaries): exempt
2. Homebuyer counseling: exempt
3. Vehicle maintenance: CENST
4. Security: CENST
5. Operations: CENST
6. Maintenance and rehabilitation of housing stock: CEST
7. Demolition and reconstruction of single-family residences: CEST when not more than 4 units within 2,000 feet of each other, environmental assessment if otherwise
8. Housing development: environmental assessment when more than 4 units or involving infrastructure

Commented [ED2]: Customize list for your own activities.

B. Exempt and CENST reviews. Exempt and CENST reviews will be completed for applicable activities (listed at 58.34(a) and 58.35(b)) using the HUD format. The reviews will include documentation of compliance with the laws and authorities listed at 24 CFR 58.6. No public comment process, request for release of funds, or HUD approval is necessary.

C. CEST reviews. CEST reviews will be completed for applicable activities (listed at 58.35(a)) using the HUD format. CEST reviews require compliance with all of the federal laws and authorities listed at 58.6 and 58.5. The preparer shall check "No" in the middle column of the 58.6/58.5 checklists when the proposal, by its scope and nature, requires no mitigation or formal consultation in order to be in compliance with the related laws and regulations OR check "Yes" if the project triggers formal

compliance consultation procedures with the oversight agency or requires mitigation measures or conditions. Regardless of whether “No” or “Yes” is noted, the compliance determination must be recorded, and credible, traceable and supportive source documentation must be supplied. Two outcomes are possible with CEST reviews:

1. Conversion to exempt. If “No” was checked for all laws and authorities in the 58.5 checklist, then the project converts to ‘exempt.’ No public comment process, request for release of funds, or HUD approval is necessary.

2. Cannot convert to exempt. If “Yes” was checked for any law or authority in the 58.5 checklist, then the project cannot convert to ‘exempt.’ A public notice (“Notice of Intent to Request a Release of Funds”) must be mailed to interested parties and agencies and posted or published, followed by a 10-day (for posting and mailing) or 7-day (for publishing) public comment period (starting the day after the publishing or posting). The day after the conclusion of the public comment period (and after any comments have been responded to), the Request for Release of Funds (HUD form 7015.15) can be completed and submitted to HUD for approval along with proof of publishing or posting of the public notice and any delegation of authority (if applicable). The project or activity cannot proceed until the [name of TDHE/housing department] receives HUD approval via the Authority to Use Grant Funds (HUD form 7015.16).

D. Environmental assessments. Environmental assessments will be completed for all other activities (activities not listed under 58.34(a), 58.35(b), or 58.35(a)) using the HUD format. In general, conversion of land use, infrastructure development, and new construction (of anything other than up to four dwelling units) require an environmental assessment. In addition to all of the federal laws and authorities listed at 58.6 and 58.5, environmental assessments require a National Environmental Policy Act (NEPA) analysis. Using HUD’s recommended format will cover all of the requirements. Following completion of the environmental assessment, which should be signed by the certifying officer (or delegate), a public notice (combined “Notice of Intent to Request a Release of Funds” and “Notice of Finding of No Significant Impact (FONSI)”) must be mailed to interested parties and agencies and posted or published, followed by an 18-day (for posting and mailing) or 15-day (for publishing) public comment period. The day after the conclusion of the public comment period (and after any comments have been responded to), the Request for Release of Funds (HUD form 7015.15) can be completed and submitted to HUD for approval. The project cannot proceed until [name of TDHE/housing department] or the Tribe receives HUD approval via the Authority to Use Grant Funds (HUD form 7015.16).

E. Compliance with 24 CFR 58.6. Documentation of compliance with the laws and authorities at 24 CFR 58.6 is required for all HUD-assisted projects and activities. It includes the following laws and authorities:

Airport Hazards: Exempt or CENST activities other than down payment assistance and maintenance can include the following text as the compliance determination: “This project does not involve new construction; substantial rehabilitation; acquisition of undeveloped land; activities that would significantly prolong the physical or economic life of existing facilities or change the use of the facility to a use that is not consistent with the recommendations of the Department of Defense (DOD)’s Land Use Compatibility Guidelines; activities that would significantly increase the density or number of people at the site; or activities that would introduce explosive, flammable, or

toxic materials to the area.”

Other activities/projects will require the determination (and documentation) of the straight-line distance between the project and the nearest airport operated by the Federal Aviation Administration (FAA, for civilian airports) or the Department of Defense (DOD, for military airports). If there is a civilian airport within 2,500 feet or military airport within 15,000 feet of the project site, then documentation (map or letter from the airport operator) demonstrating that the project site is outside the clear zone, runway clear zone, and/or accident potential zone must be included in the review.

If the project is within the accident potential zone (military airport), then the project must be consistent with **DOD guidelines**.

If the project is within the clear zone or runway clear zone, **a buyer’s notice will be signed and included in the environmental review record for down payment assistance, acquisition, or disposition of properties located in a clear zone or airport clear zone.** HUD assistance may not be used at this location if project involves new construction, substantial rehabilitation, acquisition of undeveloped land, or activities that would significantly prolong the physical or economic life of existing facilities that will be frequently used or occupied by people.

Coastal Barrier Resource Units: Either a map showing the community’s location away from the coast or a screenshot and **link** to U.S. Fish and Wildlife Service’s Coastal Barrier Resources website will be included in the environmental review documentation.

Flood Insurance: For exempt and CENST activities other than maintenance and down payment assistance, the following text can be used: “This project does not involve mortgage insurance, refinance, acquisition, repairs, rehabilitation, or construction of a structure, mobile home, or insurable personal property.” For all other activities (including maintenance and down payment assistance) the **FEMA flood insurance rate maps** must be consulted.

Flood insurance will be required on any property and/or equipment for any project involving HUD assistance in excess of \$5,000 (cumulatively) if the property is located in a Special Flood Hazard Area (Zone A or V) according to FEMA maps, or else assistance will be denied. For projects in Zone D, coverage is available but not mandatory.

F. **Compliance with 24 CFR 58.5.** All CEST reviews and EAs will include a demonstration of compliance with the related federal laws and authorities listed at 24 CFR 58.5.

Clean Air: For CEST-level activities, the following text shall be included as compliance documentation: “This project does not include new construction or conversion of land use facilitating the development of public, commercial, or industrial facilities OR five or more dwelling units. Therefore, this project is in compliance with the Clean Air Act.” For EA-level activities, the county’s National Ambient Air Quality Standards (NAAQS) status will be confirmed through **EPA** resources. If the county is in nonattainment, then **the tribe will confirm whether the project is consistent with the Tribal Implemmental Plan or consult with the EPA.**

Coastal Zone Management: A map showing the community’s location away from a coast will be included.

Commented [ED3]: Specified here:
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title32-vol2/pdf/CFR-2011-title32-vol2-sec256-8.pdf>

Commented [ED4]: Use this template
<https://www.hudexchange.info/resource/2758/notice-prospective-buyers-properties-in-runway-clear-zones/>

Commented [ED5]: <https://www.fws.gov/CBRA/>

CBRS Mapping Projects by State		
Alabama	Connecticut	Delaware
Florida	Georgia	Louisiana
Maine	Maryland	Massachusetts
Michigan	Minnesota	Mississippi
New Jersey	New York G.L.	New York L.I.
North Carolina	Ohio	Puerto Rico
Rhode Island	South Carolina	Texas
Virgin Islands	Virginia	Wisconsin

“According to USFWS’s CBRS website, Arizona does not have any CBRA units.”

Commented [ED6]: Located here:
<https://msc.fema.gov/portal>

Commented [ED7]: <https://www3.epa.gov/airquality/greenbook/mapnpoll.html>

Commented [ED8]: If the tribe has no TIP, then get a determination letter from EPA.

Contamination and Toxic Substances: A site visit will be conducted for all properties for a project. Photos will be taken, and a site visit checklist will be completed to document the environmental conditions on site. In addition, a database search will be conducted to investigate the proximity of the site to potential sources of hazardous and toxic substances. For multifamily or nonresidential properties, documentation of the past uses of the property will also be included. An ASTM Phase I Environmental Site Assessment can also be commissioned to meet these requirements. If further investigation is warranted, then [redacted] will be contacted and consulted regarding the risk to the project, and any appropriate testing will be conducted.

Furthermore, units will be inspected for [redacted] [substance] [at what frequency].

Endangered Species: A species list will be obtained from the U.S. Fish and Wildlife Service for every project. If any species occur in the vicinity of the project area, the U.S. Fish and Wildlife Service Ecological Services Division will be contacted for consultation regarding whether a species may be adversely affected by the project.

Explosive and Flammable Hazards: For projects that include development, construction, rehabilitation that will increase residential densities, or conversion, aboveground storage tanks within one mile of the project site will be noted. The project must be located an acceptable separation distance away from any aboveground storage tanks, as calculated by HUD's Acceptable Separation Distance Electronic Assessment Tool, or else a barrier must be constructed with the approval of a licensed engineer. For all other projects, the following text can be used as the compliance determination: "This project does not include the following activities: development, construction, rehabilitation that will increase residential densities, or conversion. Therefore, this project is in compliance with 24 CFR Part 51 Subpart C."

Farmlands Protection: For CEST-level activities not involving new construction, the following compliance determination can be used: "This project does not include new construction, acquisition of undeveloped land, or conversion that could potentially convert one land use to another. Therefore, this project is compliant with the Farmland Protection Policy Act." For new construction and EA-level activities, the farmland classification at the project location will be determined. If the land is considered "prime farmland," then the U.S. Department of Agriculture Natural Resources Conservation Services will be contacted regarding the completion of form AD-1006.

Floodplain Management: Using FEMA maps or best available information, the project location with respect to the 100-year floodplain (or 500-year floodplain for critical actions) will be determined. If the project is within a 100-year floodplain, the 8-step decision-making process shall be followed unless an exception at 55.12(c) applies or the project falls under 55.12(b) or 55.12(a). Under 55.12(b), minor improvements to single family properties (less than 50% of the replacement cost of the home) do not require an 8-step process. Under 55.12(a), certain activities require only the 5-step process. No federally assisted activities are possible in the floodway except for functionally dependent uses.

Historic Preservation: The Tribe shall send an invitation letter for consultation to the following parties as applicable:

For projects on tribal lands: Tribal Historic Preservation Officer (THPO)

Commented [ED9]: If you do order one, read HUD's "Using a Phase I ESA in HUD Environmental Reviews" guidance BEFORE ordering it.

Commented [ED10]: Such as if a violation occurred for a facility located within a half mile of the project

Commented [ED11]: A tribal environmental department? Regional EPA? Depends on your process

Commented [ED12]: Such as soil testing if the Phase I found anything suspect, or water quality testing if there's a water quality violation by a company.

Commented [ED13]: Up to you if you want to include this. Examples: lead-based paint, mold, asbestos, methamphetamine.

Commented [ED14]: Unless you work out a blanket clearance letter from USFWS about certain activities such as rehab or acquisition not having an effect on any of those species.

Commented [ED15]: Including rehab of a vacant building

But NOT including demo/reconstruction of existing single family homes that are not considered vacant

Commented [ED16]: <https://www.hudexchange.info/environmental-review/asd-calculator/>

Commented [ED17]: This can be done at USDA NRCS's Web Soil Survey website, <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

For projects on non-tribal lands: THPO and State Historic Preservation Officer (SHPO)

In addition, for any projects involving ground disturbance, the Tribe should also invite tribes with a historical and cultural interest in the county (according to HUD's Tribal Directory Assessment Tool) to consult. If archaeological resources are discovered after the environmental review, all work will stop, and consultation in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) will ensue.

Consultation parties will be allowed 30 days to respond.

Noise Abatement and Control: The project's proximity to noise sources will be determined. If there are any airports within 15 miles, railroads within 3,000 feet, or major roads within 1,000 feet of the project, a noise assessment will be performed. If the noise level is between 65-75 decibels, then an environmental assessment and attenuation is required for new construction. If the noise level is above 75 decibels, then HUD will be contacted for technical assistance regarding the viability of the project.

Sole Source Aquifers: A map of the community's location with respect to sole source aquifers will be kept on file. If the community is located on a sole source aquifer, then EPA's regional sole source aquifers coordinator will be contacted regarding compliance of [name of TDHE/housing department]'s projects.

Wetlands Protection: For new construction projects, projects involving the expansion of a building footprint, or ground disturbance, the presence or absence of wetlands on or near the project site will be determined. If the project could impact an on-site or off-site wetland, an 8-step decision-making process must be completed. In addition, the Army Corps of Engineers should be contacted regarding the necessity of a 404 permit.

Wild and Scenic Rivers: The presence or absence of designated wild and scenic rivers within proximity to the project will be determined and documented. If there is a designated wild and scenic river within 2 miles of the project, the managing agency for that river segment will be contacted to determine the project's compliance.

Environmental Justice: The project will be analyzed for adverse impacts that are disproportionate to a low-income and/or minority community.

G. Exhibits. The environmental review record shall contain copies of all exhibits, including the consultation requests sent to various agencies and the response of each agency and any maps.

H. Completion of the Review. A final determination or finding is required for CEST reviews and EAs. For CEST reviews, if "No" mitigation or conditions were required for all of the items under the 58.5 checklist, then the review can convert to exempt. An officer of the tribe shall sign the reviews as the "Responsible Entity Official." The certifying officer or delegate will sign the EAs as the "Certifying Officer." Exempt, CENST, and CEST-converted-to-exempt activities and projects can all be implemented after the signature by the 'Responsible Entity Official.' CEST projects that do not convert to exempt and EA projects must follow the public notification and release of funds process.

Commented [ED18]: Data on the noise generators must first be gathered (airport operators, state department of transportation), and then the noise assessment should be done in HUD's DNL Calculator: <https://www.hudexchange.info/programs/environmental-review/dnl-calculator/>

Commented [ED19]: <https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=9ebb047ba3ec41ada1877155fe31356b>

Commented [ED20]: listing at rivers.gov

The website will note which agency manages each river segment if there is a river nearby.

H. Public Notices and Request for Release of Funds. For CEST projects that do not convert to exempt and for EAs, public notices are required. CEST projects (that do not convert to exempt) require a Notice of Intent to Request a Release of Funds, and EAs require a combined Notice of Intent to Request a Release of Funds and Notice of Finding of No Significant Impact. These notices will be mailed to interested parties and relevant government agencies as well as published in a newspaper of general circulation or posted in community areas. The public comment period for CEST projects is 7 or 10 days if published or posted, respectively. For EAs it is 15 or 18 days if published or posted, respectively. The Request for Release of Funds (HUD form 7015.15) will not be signed and submitted to HUD until at least the day after the public comment period has ended (and after any comments are addressed). No funds will be committed or expended on the project until after the Authority to Use Grant Funds (HUD form 7015.16) has been received from HUD.

Commented [ED21]: You can be more specific here about whether you want to publish and/or post and where you'll do so.

H. Mitigation Measures. If the project required mitigation to be in compliance, evidence of the mitigation (e.g., flood insurance policy, new design specifications, photos of the mitigation) must be included in the environmental review record once the project is implemented.

I. Reevaluation of a Completed Review. Once an environmental review is completed, the environmental review record must still be updated with any changes to the scope of the project or environmental conditions, and the review must be reevaluated (24 CFR 58.47) to see if the original findings are still valid. If the findings change, a public notice and the HUD approval process may be necessary (if a CEST project can no longer convert to exempt); if the scope of the project or environmental conditions change significantly, a new environmental assessment may be necessary. Any project still underway after five (5) years may need to undergo a new environmental review.

J. Supplemental Assistance. If a project receives a new funding source after the environmental review has already been completed, a CENST review for supplemental assistance (58.35(b)(7)) will be completed. This should be filed with the original environmental review. No new RROF is necessary.

K. Self-Monitoring. [name of TDHE/housing department] will undergo self-monitoring at least once annually. The projects and activities performed to date in the last year will be matched to specific environmental reviews to determine whether environmental reviews were in place. The level of environmental review performed will be confirmed. The environmental review records will be perused to ensure they are complete and include supporting documentation. A third party will be hired annually to perform this function.

Commented [ED22]: Just sample language here. You can tailor this to your process.

L. Roles and Responsibilities. The [Executive Director] of [name of TDHE/housing department] is responsible for decisions regarding the activities [name of TDHE/housing department] will undertake and the funding sources to be used. The Executive Director will delegate the environmental review responsibilities to the Inspector, Program Manager, and/or Development Programs Coordinator, who will coordinate the review process including consultation with other agencies. The Finance

and Procurement departments should be alerted that activities cannot be undertaken until covered by a completed environmental review, and they should be notified when environmental reviews are complete. The Executive Director will coordinate with the Housing Board to obtain the necessary tribal signatures.

Commented [ED23]: Tailor this whole section based on who's going to do what. This is just a sample for a TDHE.