

CHAPTER 1 – NAHASDA, OTHER HUD ONAP PROGRAMS, AND ENVIRONMENTAL REVIEW BASICS: OVERVIEW AND REGULATORY STRUCTURE

This chapter provides a brief overview of Indian Housing Block Grant (IHBG) and Title VI (Federal Guarantees for Financing of Tribal Housing Activities), of the Native American Housing Assistance and Self Determination Act (NAHASDA) as well as the Indian Community Development Block Grant Program (ICDBG) and the Section 184 Loan Guarantee Program of the Housing and Community Development Acts. It summarizes the programs' various requirements and the tribes' program partners. The objectives of this course and the contents of this training manual are also outlined in this chapter.

After completing this chapter you will:

- Understand which programs are subject to the environmental review requirements.
- Know who is responsible for conducting and documenting the environmental review under the ONAP programs.
- Know which laws and authorities govern the environmental review requirements.

WHO SHOULD USE THIS TRAINING MANUAL?

The primary users of this training manual are Indian tribes that are recipients of HUD assistance. The term "tribes" as used in this manual is as defined in Section 4, subsection 12 of NAHASDA, unless otherwise specifically noted. Other users of this manual include entities that will fund their projects (in whole or in part) with HUD assistance, including tribally designated housing entities (TDHEs), Indian housing authorities, and other public or private nonprofit or for-profit entities or their contractors.

Office of Native American Program (ONAP) personnel who interact with these entities and provide advice throughout the environmental review process will also benefit from this training manual. It may also be useful for other staff who require information about the environmental

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review process in general or who are responsible for supervising or managing the Part 58/50 environmental review process.

COURSE OBJECTIVES

Unless the responsibility is retained by HUD pursuant to a tribal request as provided for under the IHBG, Title VI or Section 184 program regulations (discussed below), the responsibility for complying with environmental review requirements rests solely with the tribe each time grant or guaranteed funds (or program income) are to be used for an activity. The purpose of this course is to help tribes become familiar with the various levels of environmental review that apply to activities. It also assists tribes in devising standard procedures for carrying out and documenting an environmental review.

This course manual is organized so that it can serve as both a training manual and a handbook for conducting the environmental review process for HUD ONAP-assisted activities. The manual offers a step-by-step guide through the terminology, requirements, and procedures of the environmental review process.

PROGRAMS COVERED IN THIS TRAINING MANUAL

This training manual covers the environmental review requirements for six Office of Native American Programs (ONAP) programs. In this and remaining chapters, these programs will be referred to as ONAP programs. There are other HUD programs for which a limited number of tribes or Native American organizations may be funded, e.g., Rural Housing and Economic Development Grant Program. For these programs, the environmental review responsibility has been retained by HUD, and HUD has performed and would perform the review under the provisions of 24 CFR Part 50; these programs are not discussed in this manual.

The six ONAP programs are as follows:

- Indian Housing Block Grant (IHBG);
- Title VI – Federal Guarantees for Financing of Tribal Housing Activities (Title VI);

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Native Hawaiian Housing Block Grant (NHHBG);*

* The sole recipient of NHHBG funds is the State of Hawaii – Department of Hawaiian Home Lands (DHHL). For purposes of clarity and to facilitate the presentation and discussion in this manual, it has been determined that no detailed discussion or presentation of that program will be provided. The responsibilities for environmental review under that program, as set forth in 24 CFR 1006.350 require that the DHHL follow 24 CFR Part 58.

Indian Community Development Block Grant Program (ICDBG) (including the ICDBG Imminent Threat Grants set-aside program);

Section 184 – Loan Guarantee Program (Section 184); and

Section 184A Native Hawaiian Loan Guarantee Program**

** Because the 184A program is similar to the regular Section 184 program but is limited to Hawaiian Home Lands, it has also been determined that no detailed discussion or presentation of that program will be provided; the environmental review requirements for Section 184 A are the same as for Section 184.

IHBG and Title VI are programs funded under NAHASDA. ICDBG is funded under the Housing and Community Development Act of 1974, as amended, and Section 184 is funded under the Housing and Community Development Act of 1992. The sections immediately following provide a summary the relevant ONAP programs.

These program summaries focus on the tribe as the recipient of program funds. Under programs rules, other entities may be eligible to receive funds. However, these other entities do not have the legal authority to assume the environmental review responsibilities. Only the tribe has legal authority to assume these responsibilities.

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Clarifying Tribal Responsibility

Section 58.2 (a)(5) and (a)(7), respectively, state that the Indian tribe is the "recipient" (for purposes of the environmental release of funds process only) and "responsible entity" with respect to assistance under NAHASDA and Section 184 programs. Section 58.2(a)(7) clarifies that Regional Corporations in Alaska are considered Indian tribes for the purposes of environmental review. Please note: Section 58.2(a)(5) has no effect whatsoever on a TDHE's ability to be the recipient of funding assistance under NAHASDA programs – it only affects which entity can execute a Request for Release of Funds and Certification – Form HUD 7015.15 (RROF) as the recipient. This regulatory language is necessitated by the specific language in section 105(b) of NAHASDA.

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996 (NAHASDA), AS AMENDED

NAHASDA reorganized and simplified HUD's system of housing assistance to Native Americans by eliminating several separate programs of assistance (all of those under the United States Housing Act of 1937 and several others, e.g., the IHOME Program) and replaced them with a block grant program and a guarantee program. The two programs authorized for Indian tribes under NAHASDA are the Indian Housing Block Grant (IHBG), a formula-based grant program, and the Title VI Loan Guarantee, which provides financing guarantees for private market loans to develop affordable housing.

In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide federal assistance to Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

NAHASDA was amended in 2000 to add Title VIII – Housing Assistance for Native Hawaiians. This amendment to NAHASDA added a program similar to IHBG (NHHBG) for Native Hawaiians who reside on Hawaiian Home Lands. Regulations for implementing the program are found at 24 CFR 1006.

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Indian Housing Block Grant (IHBG)

The Indian Housing Block Grant Program (IHBG) is a formula grant that provides funding assistance for a range of affordable housing activities on Indian reservations and Indian areas. Regulations are published at 24 CFR Part 1000.

Eligible IHBG recipients are federally recognized Indian tribes or their tribally designated housing entities (TDHEs). In addition, a limited number of state recognized tribes that were funded under the Indian Housing Program authorized by the United States Housing Act of 1937 (USHA) are also eligible recipients. With the enactment of NAHASDA, Indian tribes are no longer eligible for assistance under the USHA.

An eligible recipient must submit to HUD an Indian Housing Plan (IHP) each year to receive funding. This IHP must be found by HUD to be in compliance with the requirements of NAHASDA. At the end of each year, recipients must submit to HUD an Annual Performance Report (APR) reporting on their progress in meeting the goals and objectives included in their IHPs.

Eligible activities (set forth in Section 202 of NAHASDA) include housing development, assistance to housing developed under the Indian Housing Program, housing services to eligible families and individuals, crime prevention and safety, and model activities (which must be specifically approved by HUD) that provide creative approaches to solving affordable housing problems.

Title VI – Federal Guarantees for Financing of Tribal Housing Activities

The purpose of the Title VI loan guarantee is to assist recipients (called “borrowers” because they receive loans) who want to finance eligible affordable housing activities but who are unable to secure financing without the assistance of a federal guarantee. A federal guarantee is a pledge by the U.S. government to repay all or a portion of the unpaid principal balance and accrued interest for an obligation by a borrower to a lender after a default under the terms of the repayment agreement. Regulations are published at 24 CFR Part 1000, Subpart E.

The borrower leverages IHBG funds to finance affordable housing activities today by pledging future grant funds as security for repayment of the guarantee obligation. A private lender or investor provides the financing, and HUD provides the guarantee to the lender or investor.

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The borrower repays the obligation. However, if a borrower fails to repay the debt and a default is declared, HUD will repay the obligation and seek reimbursement from the borrower's future IHBG grant funds.

Eligible borrowers under this program include tribes that receive IHBG funds and TDHEs authorized by a tribe to receive IHBG funds and to make obligations and pledge IHBG funds as security for those obligations.

Eligible lenders under the Title VI loan guarantee program are listed in Section 1000.404.

Eligible activities (Section 202 of NAHASDA) are the same as those for the IHBG program.

Native Hawaiian Housing Block Grant (NHHBG)

Section 513 of the Hawaiian Homelands Homeownership Act of 2000 added Title VIII to NAHASDA. Title VIII established a program of block grant assistance to provide affordable housing for Native Hawaiians. Regulations are published at 24 CFR Part 1006.

The eligible recipient of NHHBG funds is the Department of Hawaiian Home Lands (DHHL), which funds affordable housing activities to benefit Native Hawaiians eligible to live on Hawaiian Home Lands.

Eligible activities set forth in Subpart C of Part 1006 include construction or reconstruction of affordable housing, downpayment and closing costs assistance, direct lending or interest subsidies, housing counseling, payments to prevent foreclosures on homes, tenant-based rental assistance, and safety and security activities.

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED

Title I of the Housing and Community Development Act of 1974 was amended in 1977 to authorize grant funds for improvement and development activities in Indian communities and Alaska Native villages.

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Indian Community Development Block Grant Program (ICDBG) Single Purpose Grants

The Indian Community Development Block Grant Program (ICDBG) Single-Purpose Grant Program is a competitive program under which grants can be awarded to tribes for viable economic and community development projects. It provides eligible recipients with direct grants for use in developing viable Indian and Alaska Native communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low- and moderate-income persons. Regulations are published at 24 CFR Part 1003, Subpart D.

Eligible applicants for assistance include any Indian tribe, band, group, or nation or Alaska Native village that has established a relationship with the federal government as defined in the program regulations. In certain instances, tribal organizations may be eligible to apply.

Eligible activities (set forth in Subpart C of Part 1003) include those related to housing, community facilities, and economic development. Housing activities include housing rehabilitation, land acquisition to support new housing construction, and under limited circumstances new housing construction. Community facilities include single or multipurpose community buildings, and funds also may be used for infrastructure construction (e.g., roads, water and sewer facilities). Economic development activities include a wide variety of commercial, industrial, and agricultural projects, which may be recipient owned and operated or which may be owned and/or operated by a third party.

ICDBG Imminent Threat Grants

ICDBG Imminent Threat Grants are provided from an annual set-aside (that can be made by the Secretary of HUD) of ICDBG funds for emergency actions undertaken by the tribe. However, this set-aside is not guaranteed to occur each year. The maximum amount of the grant varies from year-to-year. Regulations are published at 24 CFR Part 1003, Subpart E.

This is not a competitive funding program; funds are provided on a first-come, first-served basis, subject to availability. The same environmental review requirements apply to these grants as to ICDBG Single Purpose Grants.

Funds may only be used to address or ameliorate imminent threats to public health or safety. The threat must represent a unique and unusual circumstance and must affect an entire service

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area. It may not, however, be a reoccurring threat or a threat for which other federal funding sources are available (Section 1003.400).

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992

Section 184 – Loan Guarantee Program

This program allows HUD to guarantee loans secured by Indian families, Indian Housing Authorities (IHAs), TDHEs, or tribes to buy or construct single family (1-4 units) properties located in Indian Country, tribally designated areas, and reservations. Regulations are published at 24 CFR Part 1005.

Trust land is not the only land eligible for a Section 184 loan. Land located in an Indian area or Alaska Native area are eligible locations for a 184 guaranteed home loan, and fee simple lands within an approved Indian area (see PIH Notice 2004-19) are allowed under Section 184.

THE ENVIRONMENTAL REVIEW

To understand why the federal government requires environmental reviews for projects and activities that are funded with federal funds, it helps to understand the federal laws and regulations and other authorities that address environmental requirements.

NEPA

The National Environmental Policy Act (NEPA) of 1969 established national policy addressing the effect of human activities on the environment, and it created the Council on Environmental Quality (CEQ). One of NEPA's goals was to promote efforts that would prevent or eliminate damage to the environment and biosphere. NEPA requires a formal process of review that examines the potential negative or beneficial environmental effects that will result from an activity. Depending on the project, this review process may be very simple or quite involved.

The ideas set forth in NEPA initiated the support given to local involvement and responsibility, sustainable development, and government accountability that the federal government supports today.

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24 CFR Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

Each federal agency has established its own regulations implementing NEPA. Part 58 is one of HUD's regulations that implement the policies of NEPA as well as other federal and departmental environmental requirements. It is the regulation that specifically discusses and identifies the requirements and procedures to be used when an entity other than HUD (e.g., a tribe) conducts an environmental review for an activity assisted with funds provided by HUD. This training manual provides tribes with specific instructions and guidelines for carrying out their responsibilities under the environmental review process according to Part 58.

24 CFR Part 50: Protection and Enhancement of Environmental Quality

24 CFR Part 50: Protection and Enhancement of Environmental Quality is another parallel HUD regulation implementing NEPA as well as other federal and departmental environmental requirements. This regulation identifies the requirements and procedures to be used when HUD retains responsibility and conducts environmental reviews for activities assisted with funds provided (or guaranteed) by HUD.

Other Laws and Authorities

The NEPA process requires that you look at and take into consideration **ALL** federal laws that address the environment. These include the laws identified in Part 58, which include but are not limited to the National Historic Preservation Act, Clean Water Act, Coastal Zone Management Act, Safe Drinking Water Act, Endangered Species Act, Wild and Scenic Rivers Act, Clean Air Act, and Farmland Protection Policy Act. Part 58 also identifies relevant, applicable Executive Orders and HUD environmental standards and requirements. These laws and authorities will be discussed at greater length in Chapter 2 on environmental basics, Chapter 6 on exclusions subject to Part 58.5, and Chapter 7 on environmental assessments.

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TRAINING MANUAL ORGANIZATION

This training manual contains the information needed to conduct and document a complete environmental review for each level of review under Part 58. It is divided into the following chapters:

- ❑ **Chapter 2: Environmental Review Basics** provides an overview of the environmental review and its role in the process of project development. It explains how HUD implements the National Environmental Policy Act (NEPA) and the options that tribes have within this structure. This chapter also describes the roles and responsibilities of recipients, responsible entities, and ONAP staff.
- ❑ **Chapter 3: Environmental Review Procedures** provides an overview of specific aspects of the environmental review process, including limitations pending environmental clearance, aggregation, the various categories of environmental review, and sources of documentation that HUD has identified as appropriate for demonstrating compliance with environmental review requirements.
- ❑ **Chapter 4: Exempt Activities** discusses ONAP activities that are exempt from environmental regulations and requirements as well as the steps a tribe must take to document that an ONAP-funded activity is exempt. The environmental review record (ERR) must also include documenting the applicability (or inapplicability) of other federal requirements regarding flood insurance, coastal barriers, and disclosure of properties located in airport or runway clear zones.
- ❑ **Chapter 5: Categorical Exclusions NOT Subject to § 58.5** describes the activities that are excluded from preparing a NEPA-level review as well as not being subject to any of the other federal environmental statutes and authorities listed at 24 CFR 58.5. This chapter also reviews the steps a tribe must take to prepare a written determination (i.e., ERR) designating a project as categorically excluded not subject to § 58.5 as well as documenting the applicability (or inapplicability) with HUD and other federal environmental requirements regarding flood insurance, coastal barriers, and disclosure of properties located in airport or runway clear zones.
- ❑ **Chapter 6: Categorical Exclusions Subject to § 58.5** discusses the activities that, while excluded from preparing a NEPA-level environmental review, are still subject to the federal

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environmental statutes and authorities listed at 24 CFR 58.5. These are described in detail, and references are provided to sources of additional information.

- ❑ **Chapter 7: Preparing an Environmental Assessment** describes the activities that could potentially result in a significant impact on the human environment (i.e., natural or physical, social and economic). The environmental assessment aids the tribe with compliance with NEPA and briefly provides sufficient evidence and analysis as to whether activities are subject to a higher level of environmental scrutiny under NEPA. Sample formats and checklists are provided to help standardize the process of documenting compliance with the requirements of this category.
- ❑ **Chapter 8: Overview of Environmental Impact Statements** describes the activities whereby a tribe has determined the activities will result in a significant impact on the human environment. This chapter provides an overview of the Environmental Impact Statement (EIS) process, including the preparation of environmental compliance documentation, managing the public notification process, and seeking HUD authorization to use grant funds.
- ❑ **Chapter 9: HUD Approval and the Release of Funds** describes the public notification process and when it's required in the environmental review process. This chapter also discusses the requirement for submitting a request for release of funds and getting HUD approval before committing or spending funds.
- ❑ **Chapter 10: Other Environmental Guidance** provides additional guidance that pertains to all levels of environmental review. Topics covered include:
 - Projects in progress;
 - Emergency actions;
 - Tiered environmental reviews;
 - “Other” environmental review documents; and
 - Lead/cooperating agency partnerships
- ❑ **Chapter 11: Program Administration and Monitoring** describes the requirements for basic administration of the environmental review process. These requirements help ensure that the Responsible Entity (RE) will comply with NEPA and Part 58.

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CHAPTER 2 – ENVIRONMENTAL REVIEW BASICS: HUD’S PROCESS

This chapter describes the regulations and procedures that guide HUD’s environmental review process. It also explains the circumstances in which ONAP may be responsible for the environmental review. After completing this chapter, you will:

- Understand the environmental roles and responsibilities of the tribe under Part 50 and Part 58.
- Understand the roles that tribes and their program partners (e.g., TDHE, non-profit and for-profit developers) play in this process; and
- Understand the environmental considerations that are taken into account

WHY CONDUCT AN ENVIRONMENTAL REVIEW: NEPA, PART 58, AND MORE

To understand why HUD, or any federal agency or department, requires environmental reviews for projects and activities that are funded with federal funds, it helps to understand the laws and regulations that address environmental requirements.

NEPA

The National Environmental Policy Act (NEPA) of 1969 established national policy addressing the effect of human activities on the natural environment, particularly the influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, while also recognizing the vital importance of restoring and maintaining environmental quality. In addition, the law created the Council on Environmental Quality (CEQ) to work with federal agencies in the development of environmental policy, oversee the implementation of NEPA by federal agencies, and report to the President on the state of the environment. CEQ developed regulations to instruct federal agencies on compliance with NEPA (40 CFR 1500-1508). These regulations outline a formal review process

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for examining the potential negative or beneficial environmental effects that will result from an activity. Depending on the project, this review process may be very simple or quite involved.

The ideas set forth in NEPA initiated the support given to local involvement and responsibility, sustainable development, and government accountability that the federal government supports today.

Each federal agency, including HUD, established its own regulations for incorporating the provisions of NEPA into its existing policies, procedures and regulations. HUD has two environmental review regulations that apply to its programs – 24 CFR Parts 50 and 58. The regulation used depends on whether HUD retains review responsibilities or if an entity other than HUD assumes these responsibilities.

GOALS OF ENVIRONMENTAL REVIEW

The goals of environmental review are to:

- Ensure that activities undertaken with HUD assistance and program income are in compliance with NEPA and the related federal laws and authorities.
- Ensure that environmental concerns are identified and addressed before a project is undertaken.
- Provide the public and government entities opportunity for input on the findings of the environmental review.
- Protect residents, neighborhoods, and communities and land, air, and water.

PART 50: PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Under this rule, HUD (in this case ONAP) has direct responsibility for environmental reviews. This regulation mandates that environmental reviews be carried out according to NEPA and related federal laws and authorities for every applicable HUD program. NAHASDA allows tribes to choose whether to assume the federal environmental review responsibilities. This choice may

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be made for programs authorized by NAHASDA: IHBG, and Title VI Loan Guarantee and the Section 184 program. In choosing the option to have HUD retain environmental review responsibilities according to Part 50, the tribe must request assistance under Part 50 in writing. Part 50 also applies to loan guarantees authorized by Section 184, when the borrowers are members of the tribe but the guarantee is for properties that are not located on tribal lands. This should also be indicated in the tribe’s IHP.

In very rare circumstances, HUD may decide to retain the environmental compliance responsibilities for other ONAP programs as well. However, this would only occur if ONAP approves a tribe’s claim that it does not have the legal capacity to assume responsibilities under Part 58 or if, as a result of monitoring, HUD finds that the tribe lacks the administrative capability to assume such responsibilities.

Part 50 provides the compliance requirements when environmental reviews are conducted by ONAP. In retaining the environmental review responsibilities, the ONAP Administrator is required to (§§ 50.3 and 50.11):

- Consider environmental and other Departmental objectives in the decision-making process;
- Make an independent evaluation of the environmental issues; and
- Take responsibility for the scope and content of the compliance finding. It is the policy of the Department to reject proposals that have a significant adverse environmental impact.

HUD guidance on how to implement Section 106 of NAHASDA has been prepared for ONAP administrators, Field Environmental Officers, and IHBG Recipients. This guidance, Notice PIH-2015-01, is included in the CD in Appendix G. The guide stipulates that the tribe (or TDHE) shall:

- Provide an environmental assurance in the IHP that it will assist HUD with Part 50 compliance according to the requirements of § 50.3(h), including supplying HUD will available, relevant information, and carrying out mitigation measures or selecting an alternate eligible property.
- Not acquire, repair rehabilitate, convert, demolish, or lease properties or undertake construction prior to receiving approval from HUD.

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As soon as the tribe (or TDHE) identifies a project it wants to undertake with program funds, it should request ONAP to complete an environmental review according to Part 50. Along with this request, the tribe (or TDHE) should submit a completed Threshold Review for Proposed Activities - Indian Housing Block Grant (IHBG) Program to ONAP (See Appendix C of Notice PIH-2015-01). Essentially, this Threshold Review asks for a description of the project and its related activities, the location of the project (including maps), and photographs of the project site and adjacent properties. The Threshold Review also requires the tribe (or TDHE) to submit information that will facilitate compliance with NEPA and federal laws and authorities (cited in § 50.4). The notice describes the relevant information that is needed by HUD.

After receiving this request and the accompanying Threshold Review, ONAP will notify the tribe (or TDHE) as follows:

- It may proceed;
- It may proceed under specified conditions;
- It must submit additional information requested by ONAP to complete the environmental compliance review; or
- The project is not approved because of environmental conditions.

PART 58: ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

Part 58 identifies the legislative framework for tribes to assume environmental responsibility for a project. Assumption of the federal responsibilities is authorized by specific statutory authority (i.e., §§ 105 and 806 of NAHASDA and § 104(g) of the Housing and Community Development Act of 1974, as amended).

For the NAHASDA programs, tribes may choose whether to assume the federal environmental review responsibilities. This applies to IHBG, NHHBG, Titles VI, and Section 184 loan guarantees. In choosing the option where the tribe assumes environmental responsibilities according to Part 58, the tribe agrees to accept Part 58 responsibilities by executing a grant agreement with HUD.

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Tribes do not have a similar choice with ICDBG funds. The tribe must assume federal environmental review responsibilities laid out in Part 58.

Part 58 implements the policies of NEPA as well as other federal and departmental environmental requirements. The NEPA process requires that you look at ALL federal laws and authorities that address the environment. These include the following, which are identified in § 58.5:

- National Historic Preservation Act
- Floodplain Management (Executive Order 11988)
- Wetlands Protection (Executive Order 11990)
- Clean Water Act
- Coastal Zone Management Act
- Sole Source Aquifers (Safe Drinking Water Act)
- Endangered Species Act
- Wild and Scenic Rivers Act
- Clean Air Act
- Farmland Protection Policy Act
- Environmental Justice (Executive Order 12898)
- HUD environmental standards and requirements:
 - ⇒ Subpart 51B - Noise Abatement and Control
 - ⇒ Subpart C - Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

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- ⇒ Subpart D - Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields
- ⇒ 24 CFR 58.5(i)(2) - HUD policy regarding toxic chemicals, hazardous substances and radioactive materials.

Part 58 provides instructions to the tribes for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds (RROF) whenever required. Subsequent chapters of this manual discuss the various levels of environmental review identified in Part 58 and the content of the environmental review record (ERR) for each of the levels. This training manual also provides tribes and their project partners with specific instructions and guidelines for carrying out the environmental review process according to Part 58.

In later chapters there will be a discussion of the roles and responsibilities of the ONAP Area Office Administrators and staff authorized by Section 106(b)(2) of NAHASDA (and the program regulations which implement this section—24 CFR 1000.18-20) and Section 104(g) of Title I of the Housing and Community Development Act of 1974, as amended (and the Program Regulations for the Indian Community Development Block Grant (ICDBG) Program which implement this section—24 CFR 1003.605). This training manual will be a quick reference for HUD personnel in guiding the RE and its partners.

ROLES AND RESPONSIBILITIES OF THE TRIBE AND ITS PARTNERS

HUD’s environmental review regulations (24 CFR 58) identify tribes as the “responsible entity” (RE)—the entities having legal authority to assume this role because they exercise control over planning, permitting, and supplying infrastructure to support HUD-assisted projects for their jurisdictions. In other words, the RE is the government entity that exercises land use responsibility. For example, if the tribe proposes to undertake a project, then the tribe is the RE. However, if the TDHE proposes to undertake a project, it must ask the tribe with land use responsibility (including jurisdictional responsibility for an Indian area or Alaska Native area) to perform the environmental compliance review for that project.

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In the role of RE, the tribe not only assumes the responsibility for environmental review, decision-making, documentation, and mitigation (if necessary) but also the legal responsibility for compliance with NEPA and all other applicable laws, regulations, and authorities.

ENVIRONMENTAL REVIEWS

Environmental responsibility under NEPA includes responsibility for environmental reviews, decision making, and action. The RE can conduct the environmental review using a combination of in-house resources, outside environmental consultants, and the tribally designated housing entity’s (TDHE) own resources. Within its organization, the RE must have a Certifying Officer, who will be legally responsible for the content of the environmental review, for implementation of the subsequent action and, if necessary, who will represent the RE in federal court. The Certifying Officer should be the chief executive officer of the jurisdiction (i.e., Tribal Chairperson) or another officer of the tribe formally delegated this responsibility by a resolution of the tribal governing body or written delegation by the Tribal Chairperson. Finally, the RE must have the ability to prepare and maintain a full set of the documents associated with the environmental review. See the ONAP Program Guidance 2017-03: “Certifying Officers for Environmental Review” in Appendix B of the printed training materials.

The RE must have staff resources qualified to perform an environmental review or be able to contract the performance of the environmental review to a qualified consultant. The RE’s Certifying Officer will sign the Request for Release of Funds and Certification (form HUD 7015.15, which can be found in Appendix I) attesting to the content of the environmental review and its compliance with NEPA and HUD regulations.

The Certifying Officer should have either direct knowledge of the performance of the environmental review or have in place a system that ensures accurate and compliant performance. The Certifying Officer must also ensure that the RE reviews and comments on all Environmental Impact Statements (EIS) prepared for any federal projects that may have an impact on the recipient’s project.

ENVIRONMENTAL REVIEW RECORD (ERR) AND DOCUMENTATION

The RE must ensure that the activities or projects that are funded by ONAP program assistance, in total or in part, are in compliance with NEPA and Part 58 requirements. This means creating a written environmental review record (ERR) for every activity and project

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regardless of the level of review (§ 58.38). Chapters 4 through 8 provide details as to the appropriate levels of environmental review for every type of ONAP-assisted activity or project.

The ERR is a type of “environmental diary” that the RE uses to support its decisions and conclusions concerning protection and enhancement of the environment as a result of approving the project. Keeping good records and having complete documentation is necessary to fulfill the RE’s environmental review obligations. This is a public record. Legal challenges to the project’s environmental compliance may be won or lost over how complete or incomplete the RE’s ERR documentation is; therefore, this administrative record is important. HUD’s periodic monitoring of the RE’s environmental records relies upon this same kind of attention to the ERR content and will determine whether HUD deems corrective actions or sanctions are necessary.

In addition to ensuring that each ERR contains the appropriate forms of documentation, the RE is required to maintain technical capacity and administrative capability to ensure compliance with NEPA and Part 58 is achieved (§ 58.12). With regard to technical capacity, the RE’s staff needs to have sufficient knowledge of the federal laws and authorities as well as an understanding of Part 58 requirements in order to make informed decisions about whether:

- The appropriate level of review has been completed;
- Compliance with federal laws and authorities has been achieved;
- The public notification requirements have been met (if required); and
- HUD approval is necessary.

This is true whether environmental reviews are completed by tribal staff, prepared by a TDHE, or prepared by a hired consultant. The RE is still responsible for the content of the ERR and must make an independent evaluation of the environmental issues, take responsibility for scope and content of the compliance findings, and make the final environmental decision concerning project approval.

With regard to administrative capability, the RE’s staff should have sufficient knowledge about the Part 58 procedures to understand when funds may be committed and spent, the time periods for the public notification and release of funds process, and the minimum content of the ERR (Refer to Chapters 4 through 8).

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ENVIRONMENTAL DECISION-MAKING

For the purposes of compliance with NEPA and Part 58, the chief executive officer of the RE is the Certifying Officer (CO) (§§ 105 and 806 of NAHASDA and § 104(g) of HCDA). The CO is recognized as the “responsible federal official” under NEPA” (§ 58.13, 40 CFR 1508.12) and, therefore, the decision-maker concerning whether a project is approved or rejected on the basis of the environmental review findings. This is a federal legal responsibility. As such, if a tribal officer other than the chief executive officer for the RE is designated to fulfill this role, HUD requires there be a formal designation by the governing body or written delegation identifying this officer. (In making such designations, the RE may want to consider assigning the CO authority to the office being held rather than to a particular person as personnel will generally change.)

The CO represents the RE in federal court if there is legal challenge to the content of the environmental review record and the RE’s decision based upon that record [§ 58.13(a)]. The CO is also the only person with the legal authority to sign the *Request for Release of Funds and Certification* (HUD form 7015.15).

Other responsibilities required of the CO are:

- To ensure that the RE reviews and comments on all EIS document prepared for any federal projects that may have an impact on the ONAP-funded program [§ 58.13(b)];
- Making health and safety decisions related to whether to approve residential construction projects that are exposed to high levels of noise from major roadways, railroads, and/or military or civilian airports [HUD regulation on Noise Abatement and Control, 24 CFR 51.104(a)(2) and (b)(2)]; and
- Making health and safety decisions related to the construction, rehabilitation, or conversion of buildings exposed to blast overpressure or thermal radiation from above-ground storage tanks within line-of-site of the project (HUD regulation on placement of HUD-assisted projects in the vicinity of explosive and/or flammable operations, 24 CFR 51.206).

ENVIRONMENTAL ACTION

The RE is also responsible for ensuring that any environmental conditions or safeguards resulting from completion and approval of the environmental review document are implemented.

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If necessary, the RE should develop an implementation/monitoring plan to ensure that conditions that were identified as necessary for protecting and enhancing environmental quality or minimizing adverse environmental impacts are included in agreements or other relevant documents and implemented during completion of the project.

In addition, the RE must reevaluate its environmental findings and decision if:

- Substantial changes in the nature, magnitude, or extent of the project are proposed by the project proponent (e.g., new activities not anticipated in the original project scope, the project area is enlarged);
- New circumstances and environmental conditions arise that were not previously considered or evaluated for effect (e. g, conditions discovered during implementation of the project, such as archeological resources, asbestos containing materials, endangered species, underground storage tanks, dry wells, etc); or
- The project proponent proposes selection of an alternative not previously considered.

Upon reevaluating its original findings and conclusions, the RE must decide whether its original determination is still valid or if a new environmental review document must be prepared instead. If the original findings are still valid, this should be documented in writing in the ERR.

RECIPIENT

The recipient is the entity receiving funding or assistance directly from HUD. The ICDBG and NHHBG program regulations identify the tribe as the recipient of program funds. However, for IHBG the recipient of program funds may be the tribe and also a tribally designated housing entity (TDHE) --- e.g., an Indian housing authority for a particular tribe or regional housing authority that serves more than one tribe.

Although NAHASDA program rules allow the recipient to be the tribe or TDHE, **for the purposes of Part 58 only**, only the tribe is assigned the role of recipient (in addition to its role of RE). This is because the law (i.e., NAHASDA) designates tribes as the recipients that are authorized to receive grant funds. Part 58 mirrors this legal assignment to the tribe. Therefore, whenever Part 58 mentions the term recipient, this should be understood to mean **the tribe**.

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Part 58 has assigned the recipient specific responsibilities in the environmental review process, including:

- Ensuring HUD funds and local funds are not committed or spent prior to the environmental review process being completed [§ 58.22(a)]
- Ensuring applicants and beneficiaries of program assistance or program income do not take actions until authorized by the RE [§ 58.22(c)]
- Carrying out any mitigation and/or conditions associated with project approval [§ 58.77(c)];
- Ensuring any applicable requirements of § 58.6 are carried out---i.e., obtaining and maintaining flood insurance, not expending federal funds in designated coastal barrier areas, and disclosing the location of properties in airport/runway clear zones.
- Informing the RE of any substantial changes to the project, new circumstances or environmental conditions that arise, or any proposal to select alternative course of action [§ 58.47(b)(3)]
- Submitting a Request for Release of Funds and Certification (HUD form 7015.15) to HUD, when required (§ 58.71)

These responsibilities will be discussed further in subsequent chapters of this manual.

PROJECT PARTNERS

From the reference of Part 58, all other individuals and entities that utilize ONAP program assistance fall into the category of other project participants. This includes Indian housing authorities, tribally designated housing entities (TDHE), public or private nonprofit or for profit entities, contractors, and individual borrowers associated with Section 184 loan guarantees.

Responsibilities of these partners are to:

- Not acquire, repair, rehabilitate, convert, demolish, or lease properties or undertaking construction prior to receiving approval from the RE.

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- Not commit non-HUD funds to project activities that would have an adverse environmental impact or limit the choice of project alternatives. (These prohibited actions will be discussed in the next chapter.)
- Carry out any mitigation and/or conditions associated with approval of the project.
- Provide the RE with information about the project.
- Notify the tribe immediately about any changes to the proposed action.

TDHEs may also be requested by the RE (or required by executed agreement) to supply available, relevant information necessary for the RE to perform the environmental compliance review. This could mean that the TDHE submits certain types of information to the RE, that the TDHE prepares the environmental compliance review for submission to the RE for its review and adoption, or that the TDHE can hire a consultant to prepare the environmental review for the RE’s review and adoption.

CHOOSING BETWEEN PART 50 AND 58:

As mentioned previously, NAHASDA and Section 184 allow tribes to choose whether to assume the federal environmental review responsibilities.

A tribe might find it appealing not to choose to assume the federal environmental responsibilities and instead have HUD conduct the environmental reviews. However, there are several tradeoffs to be aware of that will affect the planning and timing for completing a project. A significant tradeoff is that the tribe loses control of the decision-making process. Whether the project as proposed by the tribe or TDHE is approved will be dependent upon the outcome of HUD’s environmental investigation. The ONAP Administrator will make his/her decision based upon the environmental findings, which may include requiring the tribe to select an alternate project site. A tribe will generally have some latitude and local authority for applying mitigation requirements or conditions for approval, whereas HUD may decide that a stricter mitigation standard is warranted.

In addition, the tribe will not have control over when the environmental review is completed. While it may be the desire of ONAP to expedite the environmental review in a timely manner, any projects being proposed by a tribe or TDHE will be factored in with completing other

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Departmental goals and objectives. Part 50 advises the reviews will take place at the earliest time feasible.

Finally, Part 50 requires applicants (i.e., tribe or TDHE) to supply HUD with all available, relevant information necessary for HUD to perform the environmental review required. PIH-2015-01 describes the information that must be submitted to HUD. A copy of this notice can be found in the Appendix G of this manual.

A tribe’s choice to assume the environmental responsibilities according to Part 58 is consistent with the objectives of NAHASDA in recognizing the right of tribal self-governance.

There are some tradeoffs in taking on federal environmental compliance responsibilities. The chief executive officer for the tribe, or other tribal officer formally designated this responsibility by the tribal governing body, must assume the role of “responsible federal official” (§ 58.13). The responsibilities of the Certifying Officer were discussed earlier in this chapter. The Certifying Officer is the one who would defend the content and findings of environmental record if there is a challenge in federal court. Cases are won or lost on the environmental records. If good records are kept, including documentation that supports and verifies the environmental findings, then a tribe will be able to prove that its decisions were not arbitrary and that the conclusions of the environmental review were based upon fact or some reasoning.

In addition to assuming the federal decision-making role, a tribe must also ensure that the tribal staff has sufficient knowledge about the requirements of Part 58 to understand when compliance has been achieved (§ 58.12). The RE must have staff resources qualified to perform an environmental review or be able to contract the performance of the environmental review to a qualified consultant.

However, in assuming the federal decision-making role, the tribe will be able to manage the timeliness of its environmental reviews so that projects are completed according to the tribe’s timetable. Also, the tribe is in control of the outcome of decisions related to the environmental findings.

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CHAPTER 3 – ENVIRONMENTAL REVIEW PROCEDURES

This chapter describes some of the primary operating principles that guide the environmental review process. After completing this chapter, you will:

- Understand environmental review terms such as *aggregation* and *conditional commitment*;
- Be familiar with the various levels of environmental review; and
- Understand what types of documentation are required for the environmental review record (ERR).

ACTIONS TRIGGERING THE REQUIREMENTS AT PART 58

Once a project participant (e.g., TDHE, subrecipients, developers, owners, sponsors of housing, third party contractors, etc.) has submitted an application for NAHASDA, ICDBG, or Section 184 assistance to the tribe (including Alaska Native village or Regional Corporation, or Department of Hawaiian Home Lands) or the tribe has designated funds (including program income) for a specific project in its Indian Housing Plan (IHP) or annual action plan, Part 58 requirements are applicable to the project. At this point the RE must advise the participant to cease all project activity until the environmental review process has been completed. Part 58 prohibits further project activities and actions from being undertaken prior to completion of the environmental review and the determination of environmental clearance. Projects in violation of this prohibition risk the denial of NAHASDA, ICDBG, or Section 184 assistance.

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58. For example, the act of hiring a consultant to complete an engineering design study or plan using local (non-HUD) funds.

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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 HUD funds. This process may include public notification and approval from HUD. If prohibited activities are undertaken prior to receiving approval from the RE, the applicant is at risk for the denial of NAHASDA, ICDBG, or Section 184 assistance.

Such actions include:

- Purchasing real estate;
- Demolishing structures or buildings;
- Excavating or dredging soils;
- Placing fill dirt on the site;
- Rehabilitation or converting a building to a new use; and
- New construction.

The reason is that these actions interfere with the RE'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 NEPA regulations (40 CFR 1500-1508) and Part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. The RE may not commit or expend resources, either public or private funds (HUD, other federal, or non-federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. In other words, the RE must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made—that decision should be 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).

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To achieve this objective, Part 58 prohibits the commitment of NAHASDA, ICDBG, or Section 184 assistance by the RE or project participant until the environmental review process has been completed and HUD release of funds approval, when required, has been received. (See Chapters 6-8 of this manual—Categorical Exclusions Subject to § 58.5, Environmental Assessments, and Environmental Impact Statements.)

Moreover, until the RE has completed the environmental review process (and until receipt of HUD approval, when necessary), neither the RE 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;
- Expenditure of NAHASDA, ICDBG, or Section 184 program funds;
- Use of non-HUD funds on actions that would have an adverse impact—e.g., demolition, dredging, filling, excavating; and
- Use of non-HUD funds on actions that would be “choice limiting”—e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

Other types of actions that are not considered a commitment of funds for purposes of Part 58 compliance are statements of funding reservation, e.g., approval of Indian Housing Plan or annual action plan, an option agreement on a proposed site or property, or hiring a consultant to prepare a feasibility study or soils report.

If the RE is considering an application from a prospective project participant and is aware that the participant is about to take an action within the jurisdiction of the RE that is prohibited by Part 58, then the RE must take appropriate action to ensure that the objectives and procedures of NEPA and Part 58 are achieved [§ 58.22(c)]. The RE is ultimately responsible for establishing internal controls to enforce compliance with NEPA and Part 58.

Exhibit 3.1 below provides a fuller description of both “contemplate” and “commitment” as these terms apply to the environmental review process (For purposes of Part 58, the tribe is both the RE and recipient.):

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Exhibit 3.1: Defining “Contemplate” and “Commitment” for the Environmental Review

Once the RE *contemplates* assisting a project or activity with HUD funds, (§ 58.32), neither HUD funds nor non-HUD funds may be *committed* (§ 58.22) until compliance with Part 58 has been achieved and documented. The following guidance is provided to clarify the meaning of the terms *contemplate* and *commitment* as these apply to the environmental review process.

What is a contemplated HUD-assisted action?

1. A recipient is considering an application from a prospective subrecipient or beneficiary.
2. A recipient has identified a specific activity or project in its Indian Housing Plan or annual action plan.

What *is* a commitment of funds?

1. Execution of a legally binding agreement—e.g., awarding construction contracts, entering into project agreements with the developer or subrecipient, etc.
2. Expenditure of HUD funds---e.g., purchase of materials by a force account crew, hiring a consultant to prepare a Phase I Environmental Site Assessment, etc.
3. Use of HUD funds or non-HUD funds on “choice limiting actions”:
 - a. Actions having an adverse impact---e.g., demolition, dredging, filling, and excavation.
 - b. Actions limiting the choice of reasonable alternatives---e.g., real property acquisition, leasing, rehabilitation, demolition, related site improvements, relocating buildings or structures, conversion of land or buildings/structures.

What *is not* a commitment of funds?

1. Statements of funding reservation—e.g., approval of an Indian Housing Plan or annual action plan, planning for and reservation of non-HUD funds (including tax

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credits for the project for HUD funding).

2. Options and Conditional Contracts, as specified in HUD policy (See Appendix A.4)

PROJECT DESCRIPTION

The first step in the environmental review is describing the project. A complete project description encompasses all parts of the project, regardless of which components are assisted by HUD or other federal funding.

The project description should capture the maximum anticipated scope of the proposal, not just a single activity that the money is going toward. It should include all contemplated actions that are a composite part of the project. Activities should be aggregated according to the regulations at 58.32, which says that a responsible entity must group together and evaluate as a single project all individual activities which are related either on the geographical or functional basis, or both, or are logical parts of a composite of contemplated actions.

The project description for the environmental review may not be identical to the description of the project and activities used by the funding program, as the project description in the environmental review may consider activities not financed by HUD.

If the project or environmental review contains information that can be considered sensitive, such as the location of a domestic violence shelter, sacred site, or endangered species habitat, you should omit that information from the publicly reviewable environmental review record.

AGGREGATION OF PROJECT ACTIVITIES

To determine the appropriate level of environmental review for a project, the RE must group together (*aggregate*) all related project activities, whether the project is funded entirely by NAHASDA, ICDBG, or Section 184 assistance or only certain portions of the project will be

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funded by NAHASDA, ICDBG, or Section 184 assistance.¹ An environmental review must evaluate all activities that are geographically or functionally related, or part of a multi-year project. The appropriate level of environmental review for an aggregated project will be determined by whichever activity or activities being undertaken by the RE or its partners will have the greatest environmental impact. For instance, real property acquisition will have less of a physical impact on the human environment than newly constructing 30 units of affordable housing.

“Functionally related” describes a specific type of activity that will be undertaken in several locales or jurisdictions. The environmental impacts will be the same or similar no matter where the project is located. For example, rehabilitation of single family units and tenant-based rental assistance are two such types of activities. All single family rehabilitation projects are functionally the same, as are all tenant-based rental assistance projects. Consequently, the scope and nature of environmental impacts associated with them does not vary from project site to project site.

Geographically related project activities, for example, might include a proposal to acquire four units for rehabilitation and resale to first time homebuyers. All of the related activities are occurring on a single site. In aggregation, all of these activities must be evaluated in a single review, regardless of the fact that NAHASDA, ICDBG, or Section 184 assistance may only be used for rehabilitation. One activity cannot occur without the others, and therefore all the associated environmental impacts must be evaluated together. The environmental review for the acquisition of the properties cannot be separated from the environmental review for the rehabilitation of the properties.

Multi-year aggregation is a process that addresses phased project activities. For instance, consider a three-year project during which real property will be acquired in the first year, and infrastructure improvements will be installed in years two and three along with several phases of affordable housing construction. Again, a single environmental review must be completed for all

¹ Despite the fact that Title VI and Section 184 are loan guarantee programs, the RE must conduct its environmental review based upon the activities the guarantee will cover. For example, if a borrower is seeking a loan guarantee for purchase and rehabilitation of a single family home, then the environmental review must address the environmental effects related to those activities. Similarly, if a borrower wants to utilize Title VI to cover construction of a single family subdivision with affordable housing, the environmental review must address housing construction, as well as construction of roads and utilities to support the subdivision.

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phases of the project before any of the activities may be undertaken. Only a single request for release of funds (covering all project phases) needs to be submitted to HUD for approval. After HUD approval is received, no other approval or environmental action is required by the RE unless circumstances arise that require the RE to reevaluate its original environmental findings.

OVERVIEW OF THE CATEGORIES OF ENVIRONMENTAL REVIEW

One of the primary purposes that the environmental review process serves is to require tribes to include environmental impacts as part of the overall deliberation process surrounding proposed projects. The HUD environmental review requirements at Part 58 were written so as to best strike a balance between the imposition of reasonable requirements upon the RE (i.e., expediting the decision process for activities that clearly have no physical impact and requiring sufficient analysis for those that will alter environmental conditions) while ensuring that project decisions are well-documented. Therefore, the environmental review requirements are divided on the basis of the level of impact that a proposed project might be anticipated to have were the RE to go through with funding approval. There are four (4) levels of environmental review identified in Part 58. The criteria for these levels span the range of possible impacts, from none whatsoever to significant physical impact. The levels under Part 58 include:

- Exempt (§ 58.34);**
- Categorically Excluded (§ 58.35);**
- Environmental Assessment (§ 58.36 and Subpart E); and**
- Environmental Impact Statement (§ 58.37 and Subparts F and G).**

NEPA and the implementing regulations at 40 CFR 1500-1508 establish direction for these review levels. The basis for these review levels and categorizing various NAHASDA, ICDBG, or Section 184 assisted activities into the review levels is to determine if there is potential to cause significant impact on the human environment (i.e., natural resources, ecosystems, aesthetic, historic, cultural, social, economic, health, etc.). A basic description of each level is provided below.

Exempt: HUD has determined that exempt activities will have neither a physical impact nor a potential for altering any environmental conditions. Therefore, these actions are exempt from compliance with NEPA and the federal laws and authorities.

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Categorical Exclusion: This term refers to a category of actions that do not individually or cumulatively have potential for significant effect on the environment (40 CFR 1508.4). Therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required to comply with NEPA.

Although these actions are categorically excluded under NEPA, a determination must still be made as to whether they would alter any environmental conditions that would require a review or compliance determination under the federal laws and authorities cited in § 58.5. The laws and authorities cited in § 58.5 are freestanding from NEPA, such as the National Historic Preservation Act of 1966, the Executive Orders on Floodplain Management and Wetlands Protection, and several regulations specific to HUD concerning the health and safety of project occupants, to name a few. The RE must certify that it has complied with the requirements under these laws and consider the criteria, standards, policies and regulations of these laws and authorities. Chapter 6 of this manual provides a detailed discussion of these federal laws and authorities.

However, HUD has determined that certain kinds of categorical exclusions, because of the nature of the actions, would never alter any environmental conditions to create circumstances requiring compliance with these laws and authorities. Hence, § 58.35 identifies two types of categorical exclusions: **categorical exclusions not subject to § 58.5 (CENST)** and **categorical exclusions subject to § 58.5 (CEST)**. These categories are described in detail in Chapters 5 and Chapter 6 of this manual.

Activities not listed as either exempt or categorically excluded must be presumed by the RE to have potential for significant impact and therefore will require the preparation of either an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Environmental Assessment and Environmental Impact Statement: Only projects that require an EA or EIS are subject to compliance with the National Environmental Policy Act (NEPA) and the related regulatory provisions of 40 CFR 1500-1508 in addition to the federal laws and authorities listed in § 58.5 and 58.6. Part 58 identifies projects requiring completion of an EA or EIS under §§ 58.36 and 58.37, respectively. These levels of review are described in detail in Chapters 7 and 8 of this manual.

In addition to compliance with NEPA, the RE must also establish compliance with the federal laws and authorities cited in § 58.5. Chapter 7 of this manual provides a detailed discussion of these federal laws and authorities.

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CATEGORIZING NAHASDA, ICDBG, OR SECTION 184 PROJECTS AND ACTIVITIES

An environmental review must be conducted for each project and activity assisted with NAHASDA, ICDBG, or Section 184. However, the level of review that is required, along with the corresponding amount of documentation, will vary depending upon the type of project for which the RE is using the NAHASDA, ICDBG, or Section 184 funds. Exhibit 3.2 will help the RE determine what level of review is required for a few of the projects it may be funding. Regardless of the level of environmental review required, ALL ERRs must contain a comprehensive and complete project description. Without it, an ERR is not valid.

NOTE: In cases where NAHASDA, ICDBG, or Section 184 funds are used to assist more than one component of a project, the RE must apply the level of review required for the activity with the greatest environmental impact to cover all funding sources combined. For example, as Exhibit 3.2 demonstrates below, stand-alone homebuyer assistance activities are categorically excluded, not subject to § 58.5. However, if the RE uses NAHASDA, ICDBG, or Section 184 assistance to both acquire a unit of housing and provide a low-income homebuyer with downpayment and closing cost assistance to purchase that unit from the TDHE, the use of all funds pertaining to this unit is categorically excluded, subject to § 58.5.

Part 58 contains the full range of projects described for the various levels of environmental review.

Activity	Level of Environmental Review
Tenant-Based Rental Assistance (TBRA)	§ 58.35(b)(1)- Categorically Excluded, not subject to § 58.5.
Homebuyer Assistance	§ 58.35(b)(5)- Categorically Excluded, not subject to § 58.5: <ul style="list-style-type: none"><li data-bbox="548 1465 1328 1562">• Activities to assist homeownership of existing or dwelling units under construction, including closing costs and downpayment assistance to homebuyers, interest rate buy downs, or other

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Activity	Level of Environmental Review
	actions resulting in transfer of title.
Operating Costs	§ 58.35(b)(3)- Categorically Excluded, not subject to § 58.5: <ul style="list-style-type: none"> • Costs related to maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs
Economic development activities	§ 58.35(b)(4)- Categorically Excluded, not subject to § 58.5 IF: <ul style="list-style-type: none"> • Activities are limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar activities; and • Activities are not associated with construction or expansion of the existing operations.
Rehabilitation of Multifamily Housing (5 or more units in a building)	§ 58.35(a)(3)(ii)- Categorically Excluded, subject to § 58.5 IF: <ul style="list-style-type: none"> • Unit density is not changed more than 20 percent; • Project does not involve changes in land use from residential to non-residential; and • Estimated cost of rehabilitation is less than 75 % of the total estimated cost of replacement after rehabilitation.

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Activity	Level of Environmental Review
Rehabilitation of Single Family Homeownership Housing (one-to-four unit structures)	§ 58.35(a)(3)(i)- Categorically Excluded, subject to § 58.5 IF: <ul style="list-style-type: none"> • The density is not increased above four (4) units; and • The land use is not changed.
“Individual Action”	§ 58.35(a)(4) - Categorically Excluded, subject to § 58.5. <ul style="list-style-type: none"> • Individual Action (e.g., disposition, new construction, demolition, acquisition) on a 1 to 4 family dwelling; or • Individual action on a project of 5 or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any site.

TIMEFRAMES FOR PERFORMING ENVIRONMENTAL REVIEWS

To ensure compliance is achieved, the environmental review should begin as early as possible. The RE needs to anticipate the time required to prepare a project review, and plan accordingly. Below are estimates for the time required to prepare and complete each level of environmental review in Part 58:

- Exemptions – an hour or less to complete. Requires a project description and simple written determination.
- Categorical exclusions not subject to § 58.5 – an hour or less to complete. Requires a project description and simple written determination.

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- Categorical exclusions subject to § 58.5 – 45 to 75 days to complete. Some of the federal laws and authorities trigger consultation with other federal agencies. This estimate also factors in that some projects will require public notification and approval from HUD.
- Environmental Assessment – 75 to 110 days to complete. This estimate takes into account more environmental issues to be addressed, and a longer public comment period that is required. It also factors in time required to receive HUD approval.
- Environmental Impact Statement – 1-1/2 to 2 years to complete. This level of review requires intensive study and evaluation of the environmental impacts. It also requires public hearings and multiple public notices (including three that must appear in the federal Register).

Tribes should solicit as much assistance or information as possible from the project participant (e.g., TDHE) to facilitate the environmental review process. The RE should determine whether there is any other assistance being provided from HUD or other agencies (federal, state, or local). If so, the RE may utilize another agency's review to facilitate its environmental review. Or, if this information is timely, the RE may be able to coordinate the Part 58 review with the other agency's review process.

USING IHBG, NHHBG, AND ICDBG FUNDS TO PAY FOR ENVIRONMENTAL REVIEW COSTS

If necessary, IHBG, NHHBG, and ICDBG funds may be used to prepare the environmental review and also to pay for mitigation measures that may be required by the RE as conditions for project approval. These are eligible project costs, according to §§ 1000.22, 1006.230(f), and 1003.205, respectively.

ACCEPTABLE SOURCES OF COMPLIANCE DOCUMENTATION

HUD has identified several types of resources necessary for demonstrating compliance with NEPA and the federal laws and authorities. These resources provide written documentation in the environmental review record that is credible, traceable, and supportive of the conclusions reached by the RE. There are five sources of information that should be used to document compliance. These are outlined in Exhibit 3.3 below.

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Exhibit 3.3: Source Documentation for Environmental Reviews

Field Observation – Visit to the project site to make observations of the general site conditions. There should be written documentation of the conditions observed. Also include the name and title of the observer and the date of the site visit.

Personal Contact – Personal contacts are useful only when the individual contacted is an accepted authority on the subject or subjects. Documentation should include the name and title of the person contacted, the date of the conversation, and brief notes of the key points. Whenever the person that was contacted cites reports, records, or other documents, the title, date and source of the report should be noted. Contacts can include staff experienced in a particular area (e.g., engineer, planner, historian, etc.).

Printed Materials – Printed materials such as comprehensive land use plans, maps, statistical surveys, and studies are useful sources of detailed information. The material must be current and reflect accepted methodologies. Environmental reviews that were completed by another governmental entity may also be used if the information is relevant. Complete citations for all material must be included.

Reviewer's Experience – Professional judgment by staff is acceptable if their expertise is relevant to the compliance issue. For example, the reviewer may have knowledge from reviewing previous projects in the same area. Another type of relevant experience is the professional finding of the reviewer in subjects where he or she has the background to make judgments about a specific factor. Some reviewers have the expertise to evaluate soil conditions, while others will need to consult an engineer or other specialist.

Special Study – This is a study conducted for a particular project performed by qualified personnel using accepted methodologies. Some tests are relatively simple to perform but others may require elaborate equipment or personnel with additional expertise. The reviewer is responsible for obtaining assistance from others in order to have the appropriate tests or studies conducted. Examples include archeological reconnaissance surveys, biological assessment concerning threatened and endangered species, or Phase I Site Assessments to determine site contamination.

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CHAPTER 4 – EXEMPT ACTIVITIES

This chapter covers activities that are exempt from federal environmental statutes. While activities that qualify as exempt do not have a physical impact on the environment, it is still necessary to complete the environmental review record and document the basis for designating an activity as exempt. After completing this chapter you will:

- Understand how to identify exempt activities;
- Understand how to document your determination in the environmental review record (ERR); and
- Understand how to document compliance with environmental requirements at § 58.6.

TYPES OF ACTIVITIES

HUD has determined that exempt activities will have neither a physical impact nor the potential to alter any environmental conditions. Therefore, these actions are exempt from compliance with NEPA and the federal laws and authorities.

According to 24 CFR 58.34, the following types of activities have been categorized as exempt from NEPA and other environmental laws and authorities:

- Environmental and other studies, resource identification, and the development of plans and strategies;
- Information and financial services;
- Administrative and management activities;
- Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, and welfare or recreation needs;

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Chapter 4 – Exempt Activities

- Inspections and testing of properties for hazards or defects;
- Purchase of insurance;
- Purchase of tools;
- Engineering or design costs;
- Technical assistance and training;
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threat to public safety including those resulting from physical deterioration (See Chapter 9 for further discussion);
- Payment of principal and interest on loans made or obligations guaranteed by HUD (e.g., Section 184 or Title VI Loan Guarantee Programs); and
- Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances that require compliance with any other federal laws and authorities cited in § 58.5 (see Chapter 6 for further discussion).

COMPLIANCE DOCUMENTATION

The RE must document in writing its determination that an activity meets the conditions for exemption. Attachment 4.1 provides a HUD-recommended format for documenting the designation of a NAHASDA, ICDBG, or Section 184 project or activity as exempt. The RE does not have to issue a public notice or request a release of funds (RROF) from HUD [§ 58.34(b)].

Attachment 4.2 provides an example of a completed ERR for IHBG program administration costs anticipated in a current IHP.

COMPLIANCE WITH THE REQUIREMENTS AT § 58.6

In addition to making a written determination of exemption, the RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster

NOTES

Chapter 4 – Exempt Activities

Protection Act, the Coastal Barriers Resources Act, and HUD's requirement for disclosure of properties located in airport runway clear zones.

While it is highly unlikely that any of these requirements will be triggered by an exempt activity, ONAP still requires the RE to make a negative declaration in writing of this fact. Attachment 4.1 should be used by the RE to provide this written declaration.

- The Flood Disaster Protection Act** applies whenever the activity or project proposes to acquire, rehabilitate, convert, or construct a building located within a special flood hazard area (i.e., 100-year floodplain) designated by the Federal Emergency Management Agency (FEMA). It also applies to the use of federal funds for the purchase of equipment for buildings located within a FEMA-designated floodplain.
- The Coastal Barrier Resources Act** applies whenever the activity or project is located in a community listed in the Coastal Barrier Resources System. The use of federal funding is prohibited for activities or projects within a coastal barrier area designated by the U.S. Congress.
- The Disclosure of Properties Being Located in a Runway Clear Zone or Clear Zone** applies to projects proposing the purchase or sale of properties in a Runway Clear Zone (RCZ) or Clear Zone (CZ). Whenever HUD assistance is used for sale or purchase of an existing property located in a RCZ or CZ, the buyer must be notified of this in writing and that the property may be acquired by the airport at a later date. The buyer must acknowledge receipt of this information [§51.303(a)(3)]. [See the sample "Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones" located in Appendix M.]

Action Following Completion of the ERR

Once the environmental review record (ERR) is completed and signed, funds may be committed and spent.

NOTES

Attachment 4.1 – ERR Example, Exempt [§ 58.34(a)(3)]

**Environmental Review
for Activity/Project that is Exempt or
Categorically Excluded Not Subject to Section 58.5
Pursuant to 24 CFR Part 58.34(a) and 58.35(b)**

Project Information

Project Name:

Responsible Entity:

Grant Recipient (if different than Responsible Entity):

State/Local Identifier:

Preparer:

Certifying Officer Name and Title:

Consultant (if applicable):

Project Location:

Attachment 4.1 – ERR Example, Exempt [§ 58.34(a)(3)]

Description of the Proposed Project [24 CFR 58.32; 40 CFR 1508.25]:

Level of Environmental Review Determination:

Activity/Project is Exempt per 24 CFR 58.34(a): _____

Activity/Project is Categorical Exclusion Not Subject To §58.5 per 24 CFR 58.35(b):

Funding Information

Grant Number	HUD Program	Funding Amount

Estimated Total HUD Funded Amount:

This project anticipates the use of funds or assistance from another Federal agency in addition to HUD in the form of (if applicable):

Attachment 4.1 – ERR Example, Exempt [§ 58.34(a)(3)]

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]:

COMPLIANCE WITH 24 CFR §50.4 AND §58.6 LAWS AND AUTHORITIES

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits or approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR 50.4 and 58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR §58.6		
Airport Runway Clear Zones and Accident Potential Zones 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	Yes No <input type="checkbox"/> <input type="checkbox"/>	

Attachment 4.1 – ERR Example, Exempt [§ 58.34(a)(3)]

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure

Preparer Signature: _____ Date: _____

Name/Title/Organization: _____

Responsible Entity Agency Official Signature:

_____ Date: _____

Name/Title: _____

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s)

Attachment 4.2: ERR Example, Exempt [§ 58.34(a)(3)]

**Environmental Review
for Activity/Project that is Exempt or
Categorically Excluded Not Subject to Section 58.5
Pursuant to 24 CFR Part 58.34(a) and 58.35(b)**

Project Information

Project Name: IHBG Program Administration for YR 2016 to YR 2020

Responsible Entity: Twain Harte Rancheria

Grant Recipient (if different than Responsible Entity):

State/Local Identifier: 2016-01A of Annual IHP (Program Administration)

Preparer: Annabelle Lee Jones, Housing Specialist, CEDD Housing Division, Twain Harte Rancheria

Certifying Officer Name and Title: Winston Blackbird, Tribal Chairman

Consultant (if applicable):

Project Location: Housing Division, CEDD, Twain Harte Rancheria, 104 Main St., Wisteria, CA

Description of the Proposed Project [24 CFR 58.32; 40 CFR 1508.25]:

Activities include payment of staff salaries and training, planning activities (i.e., costs for data gathering, studies, analysis and preparation of plans), administration of approved plans (i.e., IHP, relocation, and Section 504 requirements), and development of health and safety codes.

Estimated IHBG expenditure is \$500,000 per year.

Level of Environmental Review Determination:

Activity/Project is Exempt per 24 CFR 58.34(a): (3)

Activity/Project is Categorical Excluded Not Subject To §58.5 per 24 CFR 58.35(b):

Funding Information

Grant Number	HUD Program	Funding Amount
55IH9999000	IHBG	\$500,000/year

Estimated Total HUD Funded Amount: \$2,500,000 over 5 years

This project anticipates the use of funds or assistance from another Federal agency in addition to HUD in the form of (if applicable): No

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]: \$2,500,000

COMPLIANCE WITH 24 CFR §50.4 AND §58.6 LAWS AND AUTHORITIES

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits or approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR 50.4 and 58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR §58.6		
Airport Runway Clear Zones and Accident Potential Zones 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The activity does not involve the sale or acquisition of an existing building or structure; therefore, the project is in compliance with this section.
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The project does not involve federal assistance for acquisition, construction, repair, improvement or rehabilitation of public facilities; acquisition, construction, repair, improvement or rehabilitation of residential or non-residential structures; flood insurance for new or substantially improved structures; or erosion control or stabilization of inlet, shoreline or inshore areas. Therefore, this project is in compliance with this section.
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The project does not involve acquisition, construction, or rehabilitation of structures, buildings, mobile homes. Therefore, flood insurance is not required or applicable.

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure
	None required.

Preparer Signature: _____ Date: 9/6/2016

Name/Title/Organization: Annabelle Lee Jones, Housing Specialist, Housing Division, CEDD

Responsible Entity Agency Official Signature: _____ Date: 9/6/2016

Name/Title: Winston Blackbird, Tribal Chairman, Twain Harte Rancheria

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

CHAPTER 5 – CATEGORICAL EXCLUSIONS NOT SUBJECT TO § 58.5

This chapter covers activities that are categorically excluded from NEPA requirements and that are not subject to the environmental authorities listed at § 58.5 (CENST). These activities do not alter environmental conditions that would require a review or compliance determination under the federal laws and authorities cited in § 58.5. However, a written determination is required. After completing this chapter you will:

- Understand which activities are categorically excluded from NEPA requirements and that do not trigger the laws and authorities at § 58.5;
- Understand how to document your determination in the environmental review record (ERR); and
- Understand how to document compliance with environmental requirements at § 58.6.

TYPES OF ACTIVITIES [§ 58.35(B)]

The term “categorically excluded” refers to a category of actions that do not individually or cumulatively have potential for significant effect on the environment (40 CFR 1508.4). Therefore, compliance with NEPA is not required. Furthermore, the activities that are categorically excluded not subject to § 58.5 have also been determined by HUD to not have a potential for altering any environmental conditions where a review or determination of compliance with the other federal laws and authorities would be required (i.e., National Historic Preservation Act, Coastal Zone Management Act, Executive Orders on Floodplain Management and Wetlands Protection, etc.). The actions in this category include:

- Tenant-based rental assistance;

NOTES

Chapter 5 – Categorical Exclusions Not Subject to § 58.5

- Supportive services—e.g., health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent, mortgage, or utility costs, and assistance in gaining access to local, state, and federal government benefits and services;
- Operating costs—e.g., maintenance¹, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs;
- Economic development activities—e.g., equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations.
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction—e.g., closing costs, down payment assistance, interest buydowns, and similar activities that result in the transfer of title;
- Affordable housing pre-development costs with no physical impact—e.g., 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; and
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under Part 58, if the approval is made by the same RE that conducted the environmental review on the original project and reevaluation of the environmental findings is not required under § 58.47.

COMPLIANCE DOCUMENTATION

The ERR must contain a written determination of the RE's finding that a given activity or program is categorically excluded, not subject to § 58.5. When these kinds of activities are undertaken, the RE does not have to issue a public notice or submit a request for release of funds (RROF) to HUD [§ 58.35(b)].

¹ In general, maintenance activities slow or halt deterioration of a building and do not materially add to its value or adapt it to new uses. Refer to CPD Notice 16-02, "Guidance for Categorizing an Activity as Maintenance for Compliance with HUD Environmental Regulations, 24 CFR Parts 50 and 58." (Appendix A)

NOTES

Chapter 5 – Categorical Exclusions Not Subject to § 58.5

Attachment 5.1 is a HUD-recommended format containing the type of written documentation that would qualify as an adequate ERR for a categorically excluded activity, not subject to § 58.5.

COMPLIANCE WITH OTHER REQUIREMENTS AT § 58.6

In addition to making a written determination of categorical exclusion, subject to § 58.5, the RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act, the Coastal Barriers Resources Act, and HUD's requirement for disclosure of properties located in airport runway clear zones.

- The Flood Disaster Protection Act** applies whenever the activity or project involves mortgage insurance, refinance, acquisition, repairs, rehabilitation, or construction of a structure, mobile home, or insurable personal property located within a Special Flood Hazard Area (i.e., 100-year floodplain) designated by the Federal Emergency Management Agency (FEMA). It also applies to the use of federal funds for the purchase of equipment for buildings located within a FEMA-designated floodplain. The most common CENST activities this applies to would be equipment purchase, maintenance, and down payment assistance.
 - Use Flood Insurance Rate Maps (FIRM) to determine your project's location in relation to Special Flood Hazard Areas (SFHAs: Zones A or V). If your project is in Zone D (unmapped areas), then flood insurance is optional.
 - For projects in the SFHA, flood insurance may not be necessary if the aggregate federal assistance is \$5,000 or less. Thus, one-time down payment assistance of \$5,000 would not trigger mandatory flood insurance.
 - When flood insurance is required, it must be purchased and maintained for the period of the loan or for the life of the property (regardless of transfer of ownership) for grants. Because this can ultimately result in a financial burden to the homeowner, in some cases it may be advisable to not assist homes in a 100-year floodplain.
 - To track the status of a flood insurance policy, select the option to notify the tribe or TDHE of any changes to the policy on the form for purchasing flood insurance.
- The Coastal Barrier Resources Act** applies whenever the activity or project is located in a community listed in the Coastal Barrier Resources System. The use of federal funding is

NOTES

Chapter 5 – Categorical Exclusions Not Subject to § 58.5

prohibited for activities or projects within a coastal barrier area designated by Congress. Attach a map showing that the project is outside of any Coastal Barrier Resource System units, which can be found on a website maintained by the U.S. Fish and Wildlife Service.

- The Disclosure of Properties Being Located in a Runway Clear Zone or Clear Zone** applies to projects proposing the purchase or sale of properties in a Runway Clear Zone (RCZ) or Clear Zone (CZ). Whenever HUD assistance is used for sale or purchase of an existing property located in a RCZ or CZ, the buyer must be notified of this in writing and that the property may be acquired by the airport at a later date. The buyer must acknowledge receipt of this information [§51.303(a)(3)]. [See the sample “Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones” located in Appendix M.] This would apply to down payment assistance.
- For activities such as down payment assistance, check the straight-line distance from the property to the nearest civilian (regulated by the Federal Aviation Administration) and military (regulated by the Department of Defense) airport.
- If there is a civilian airport within 2,500 feet or a military airport within 15,000 feet of the airport, determine the property’s location in relation to the Runway Clear Zone or Clear Zone. If such a map cannot be obtained from the airport, these zones can be approximated from the locations of the runways.

Action Following Completion of the ERR

Once the environmental review record (ERR) is completed (i.e., a determination the activity meets the conditions for exemption, and documentation whether or not the “Other Requirements”, § 58.6, are applicable), funds may be committed and spent.

NOTES

**Attachment 5.1 – Environmental Review Record for
Categorical Exclusions Not Subject To § 58.5 [§ 58.35(b)]**

Environmental Review

for Activity/Project that is Exempt or

Categorically Excluded Not Subject to Section 58.5

Pursuant to 24 CFR Part 58.34(a) and 58.35(b)

Project Information

Project Name:

Responsible Entity:

Grant Recipient (if different than Responsible Entity):

State/Local Identifier:

Preparer:

Certifying Officer Name and Title:

Consultant (if applicable):

Project Location:

Attachment 5.1 – Environmental Review Record for Categorical Exclusions Not Subject To § 58.5 [§ 58.35(b)]

Description of the Proposed Project [24 CFR 58.32; 40 CFR 1508.25]:

Level of Environmental Review Determination:

Activity/Project is Exempt per 24 CFR 58.34(a): _____

Activity/Project is Categorically Excluded Not Subject To §58.5 per 24 CFR 58.35(b):

Funding Information

Grant Number	HUD Program	Funding Amount

Estimated Total HUD Funded Amount:

Attachment 5.1 – Environmental Review Record for Categorical Exclusions Not Subject To § 58.5 [§ 58.35(b)]

This project anticipates the use of funds or assistance from another Federal agency in addition to HUD in the form of (if applicable):

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]:

COMPLIANCE WITH 24 CFR §50.4 AND §58.6 LAWS AND AUTHORITIES

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR 50.4 and 58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR §58.6		
Airport Runway Clear Zones and Accident Potential Zones 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42	Yes No <input type="checkbox"/> <input type="checkbox"/>	

Attachment 5.1 – Environmental Review Record for Categorical Exclusions Not Subject To § 58.5 [§ 58.35(b)]

USC 5154a]		
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Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure

Preparer Signature: _____ Date: _____

Name/Title/Organization: _____

Responsible Entity Agency Official Signature:

_____ Date: _____

Name/Title: _____

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

**Attachment 5.2 – Example of an Environmental Review
Record for Categorical Exclusions Not Subject to § 58.5 [§
58.35(b)]**

**Environmental Review
for Activity/Project that is Exempt or
Categorically Excluded Not Subject to Section 58.5
Pursuant to 24 CFR Part 58.34(a) and 58.35(b)**

Project Information

Project Name: IHBG Down payment Assistance, YRS 2016-2020

Responsible Entity: Tularosa Tribe

Grant Recipient (if different than Responsible Entity):

State/Local Identifier: 2016-07 of IHP (Homeowner Assistance Program)

Preparer: Michael Garcia, Environmental Planner, Tribal Planning Dept

Certifying Officer Name and Title: Suzanne Smith, President

Consultant (if applicable):

Project Location: Caddo County, OK

Attachment 5.2 – Example of an Environmental Review Record for Categorical Exclusions Not Subject to § 58.5 [§ 58.35(b)]

Description of the Proposed Project [24 CFR 58.32; 40 CFR 1508.25]:

The Tularosa Tribe is providing down payment assistance to qualified first time homebuyers for existing residential units within the Tribe's service area (Caddo County, OK).

Level of Environmental Review Determination:

Activity/Project is Exempt per 24 CFR 58.34(a): _____

Activity/Project is Categorically Excluded Not Subject To §58.5 per 24 CFR 58.35(b): (5)

Funding Information

Grant Number	HUD Program	Funding Amount
55IH9999111	IHBG	\$500,000

Estimated Total HUD Funded Amount: \$500,000

This project anticipates the use of funds or assistance from another Federal agency in addition to HUD in the form of (if applicable):

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]: \$500,000

Attachment 5.2 – Example of an Environmental Review Record for Categorical Exclusions Not Subject to § 58.5 [§ 58.35(b)]

COMPLIANCE WITH 24 CFR §50.4 AND §58.6 LAWS AND AUTHORITIES

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits or approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR 50.4 and 58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR §58.6		
Airport Runway Clear Zones and Accident Potential Zones 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no FAA-regulated airports in Caddo County. The nearest airport is Will Rogers Airport in Oklahoma City, more than 30 miles away.
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	Oklahoma is a landlocked state, so there are no coastal barrier resources. This project is in compliance. See area map.
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The Tribe will verify from appraisal reports that units are not located within a special flood hazard area (SFHA) (i.e., 100-year floodplain). Any properties within a SFHA will not be approved for assistance. This review will be updated with the FEMA floodplain maps for each assisted house.

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Attachment 5.2 – Example of an Environmental Review Record for Categorical Exclusions Not Subject to § 58.5 [§ 58.35(b)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure
	None required.

Preparer Signature: _____ Date: 9/27/2016

Name/Title/Organization: Michael Garcia, Environmental Planner, Tularosa Planning Dept.

Responsible Entity Agency Official Signature: _____ Date: 9/28/2016

Name/Title: Suzanne Smith, President, Tularosa Tribe

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

CHAPTER 6 – CATEGORICAL EXCLUSIONS SUBJECT TO § 58.5

This chapter covers activities that, while categorically excluded from NEPA requirements, are subject to the environmental authorities listed at § 58.5. While such activities have more of a physical impact on the environment than those described in Chapters 4 and 5, they do not trigger compliance with NEPA because they do not have potential for significant impact on the environment. After completing this chapter, you will:

- Understand which activities are categorically excluded from NEPA requirements, and how these may trigger any of the environmental laws and authorities at § 58.5;
- Understand how to document your determination in the environmental review record (ERR);
- Understand the steps and requirements involved in the public notification and release of funds process; and
- Understand how to document compliance with environmental requirements at §58.6.

TYPES OF ACTIVITIES

Categorical exclusions subject to § 58.5 are excluded from compliance with NEPA but must comply with the other related federal laws and authorities. It is generally evident from the nature and magnitude of such activities they do not have the potential to have a significant impact on the human environment; however, these types of activities are physical in nature and will alter environmental conditions that could, for example, affect historic properties, floodplains, wetland areas, and endangered species. Actions in this category include:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities other than buildings (e.g., replacement of water or sewer lines where the capacity is not changed more than 20 percent, reconstruction of curbs and sidewalks, and repaving of streets);

NOTES

Chapter 6 – Categorical Exclusions Subject to § 58.5

- Removal of material and architectural barriers restricting the mobility of and accessibility to elderly and disabled persons;
- Rehabilitation and improvement of single family (one-to-four unit) dwellings provided the unit density is not increased beyond four units and the land use is not changed;
- Rehabilitation and improvement of multifamily dwellings provided the unit density is not increased more than 20 percent, it does not change residential use to non-residential use, and the estimated cost of rehabilitation is less than 75 percent of the replacement cost;
- Rehabilitation and improvement of non-residential structures (commercial, industrial, and public buildings) provided the size and capacity of the facilities will not change more than 20 percent, and the use will not be changed;
- An individual action on one to four dwelling units where there is a maximum of four units on any one site;

“Individual action” refers to new construction, development, demolition, acquisition, disposition, or refinancing. It does not apply to rehabilitation of a building with one to four dwelling units, which is covered elsewhere in this section;

- An individual action on 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 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 the structure or land acquired, financed, or disposed of will be retained for the same use; and
- Any combinations of the above activities.

COMPLIANCE DOCUMENTATION

The ERR must contain a written determination of the RE's finding that a given activity or program is categorically excluded, subject to § 58.5. This determination should:

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Chapter 6 – Categorical Exclusions Subject to § 58.5

- Include a description of the project (including all the related activities, even though NAHASDA, ICDBG, or Section 184 funds may not be used for all of them);
- Cite the applicable subsection of § 58.35(a);
- Provide the total estimated project cost; and
- Provide written documentation as to whether or not there were any circumstances which required compliance with any of the federal laws and authorities cited in § 58.5.

The RE may utilize the HUD-recommended (Attachment 6.1), or an equivalent format, to document its environmental findings. The RE's documentation must support its determinations related to compliance with the federal laws and authorities cited in § 58.5. (See Exhibit 3.3, Source Documentation for Environmental Reviews). Upon completion of the checklist, the RE will make one of three environmental findings:

- The project converts to exempt [§ 58.34(a)(12)];
- The project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from HUD; or
- The unusual circumstances of the project may result in a significant environmental impact and, therefore, compliance with NEPA is required.

The following is detailed guidance for completing the checklist and documenting compliance determinations. Attachment 6.1 is a sample of a checklist. Attachment 6.2 is an example of a completed checklist. All sample forms and checklists may be found at the end of the chapter.

COMPLIANCE WITH THE FEDERAL LAWS AND AUTHORITIES AT § 58.5

NOTE: These instructions do not replace applicable regulations. Applicable regulations take precedence over these brief instructions.

The RE must certify that projects it has designated as categorically excluded under § 58.35(a) are in compliance with the following federal laws and authorities listed in § 58.5, Related

NOTES

Chapter 6 – Categorical Exclusions Subject to § 58.5

Federal Laws and Authorities. The following guidance is provided to assist in determining compliance for each environmental statute and authority listed at § 58.5.

HISTORIC PRESERVATION (36 CFR PART 800)

Section 106 of the National Historic Preservation Act requires federal agencies to:

- Consider the effects of their undertakings on historic properties; and
- Provide the Advisory Council on Historic Preservation with a reasonable opportunity to comment with regard to such undertakings.

Compliance with Section 106 is achieved by initiating the procedures the Advisory Council on Historic Preservation has outlined at 36 CFR Part 800. Section 800.2(a) recognizes the RE's certifying officer as having the authority to carry out these procedural responsibilities.

The focus of Part 800 is on the RE making a determination whether a proposed project will affect buildings, structures, or places that are listed on or are eligible for listing on the National Register of Historic Places (NR). In making this determination, the RE must follow a detailed review process in consultation with the State Historic Preservation Officer or Tribal Historic Preservation Officer (SHPO/THPO). This process also provides an opportunity for interested persons and agencies to be part of the RE's decision concerning historic properties that may be affected. The current listing of SHPO/THPOs may be found in at the Advisory Council's Website (www.achp.gov).

It is important to remember that before approval is given to proceed with NAHASDA, ICDBG, OR Section 184 projects, the environmental review record must show the Part 800 consultation process was completed. (See Appendix E for a flowchart of Section 106 Process.)

Basic Steps for Compliance with the Section 106 Review Process (36 CFR Part 800)

1. Determine whether the project is an undertaking or has no potential to cause effects on historic properties.

The definition of an "undertaking" is comprehensive in scope. It is:

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“a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval [§ 800.16(y)].”

The RE must look at the nature of the undertaking when judging whether it has the potential to affect historic properties. Activities that can be considered undertakings include those that:

- Cause physical change (e.g., demolition, construction, reconstruction, rehabilitation, relocating a structure, excavation, dredging and filling, façade improvements, graffiti removal, etc.); and/or
- Have potential to cause changes in the character or use of historic properties (e.g., property disposition, leasing, installation of equipment, converting a building to an alternate use, etc.).

HUD has determined that certain types of projects have no potential to cause effects, such as acquisition of a home to resell it to a third-party homebuyer for continued use as a residence without any repair or rehabilitation activities (routine maintenance is acceptable). Activities that qualify as “No Potential to Cause Effects” are outlined in HUD memoranda on HUD’s website.

If the project is determined to be an undertaking, the RE must continue the consultation process or refer to a Programmatic Agreement if one has been executed with the State Historic Preservation Officer or Tribal Historic Preservation Officer (SHPO/THPO). Consultation with the SHPO/THPO must be documented in writing. The SHPO/THPO has 30 days from the date it receives written correspondence with adequate supporting documentation to provide its comments (§ 800.11). Section 800.3(g) allows the RE to address multiple steps in its correspondence with the SHPO/THPO to expedite consultation if the SHPO/THPO agrees. However, the public must have an adequate opportunity to express their views on the effects to historic properties.

- On tribal lands, the THPO should be consulted. If there is no THPO, then the SHPO and the tribe should be consulted.
- On non-tribal lands, both the THPO and the SHPO (and other tribes as appropriate) should be consulted.

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2. Define the area of potential effects for the undertaking.

This is the first step in the consultation process and comes before any consideration is given to project effects. The area of potential effects (APE) is a geographic area identified by the RE (using photographs, maps or drawings) in consultation with SHPO/THPO. The size of the APE is typically influenced by the mass, scale, and nature of the proposed project. REs should consider whether the project could cause a direct or indirect change in the character or use of historic properties that may be present in the area. For example, a four-story apartment building has the potential to affect adjacent single family houses because it is significantly larger in size and is also likely to cast shadows on adjacent units. In addition, should modern building materials be used (such as concrete), they may be visually incompatible with adjacent homes.

Examples of approaches to defining an APE:

- Housing rehabilitation, where the property boundary is also the APE boundary.
- New construction where the building height will be the same as immediately adjacent buildings. The APE includes the project site plus immediately adjacent buildings.
- New construction where the building height will be greater than the immediately adjacent buildings. The APE includes the project site plus two or more rows of buildings/structures beyond the project site, depending upon the visual impact.
- New construction with no adjacent buildings/structures present. The APE includes the project site plus immediately adjacent vacant land.

3. Identify and evaluate historic properties in the APE.

The following are suggested methods for acquiring pertinent information about APE structures located in proposed project zones.

- Review existing information by searching the National Register of Historic Places (NR) for listed buildings, structures and places. The NR is a list of districts, sites, buildings, structures, and objects that, in a formal review process by the Keeper of the National Register, were determined significant in American history, architecture, archeology, engineering, and culture. The NR is maintained by the Keeper of the National Register, U.S.D.I. National Park Service.

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- Consult with local historic commissions or boards, or certified local governments, if available, and search any state or local inventory lists for properties determined eligible for NR listing.
- Consult with tribal governments whose lands may have once included the project location. Refer to HUD guidance, “Process for Tribal Consultation in Projects That Are Reviewed Under 24 CFR Part 58” (Notice CPD-12-006, June 15, 2012).
- Survey the APE by taking photographs of buildings or structures that are 50 years of age or older. Note any distinctive architectural features, as well as modifications to buildings and structures.
- Seek Information – Contact local governments or organizations likely to have knowledge about historic properties or concerns about historic properties in the local area regarding. For buildings and structures in the APE, determine the date of construction. If 50 years of age or older, determine:
 - The time of its architectural design.
 - Whether it is associated with a person or event significant to history.
 - Whether the building or structure is in its original location and/or whether any of its original design features have been altered.
- Determine whether archeological sites (on vacant land) are present within the APE.
 - Document past land uses that may have significantly altered the land (e.g., aerial photographs showing past land use, building permits issued, evidence of fill dirt or excavation).
 - Request a search of existing databases maintained by SHPO/THPO. If the site is known to contain archeological artifacts, consult with the SHPO/THPO about their significance and how to proceed. If there is a high probability that artifacts are present, conduct a reconnaissance survey.
 - Use a professional archeologist (who meets the National Park Service’s Professional Qualification Standards) to perform a reconnaissance survey of the APE. If the survey

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report identifies that artifacts are present, consult with the SHPO/THPO concerning performing an intensive survey to classify the number, type, location, and distribution of historic resources, and record the artifacts found. [NOTE: REs are required to make a “reasonable and good faith effort” to identify tribes that might attach religious and cultural significance to historic properties within the APE, and invite them to be consulting parties [§ 800.3(f)(2)].]

- Evaluate the Significance of Properties That May Be Eligible for Listing on the National Register of Historic Places (NR): A building, structure, or place is determined eligible for NR listing when the RE, in consultation with the SHPO/THPO, finds it meets the criteria for listing. These criteria are:
 - Events significant in the broad patterns of our history.
 - Persons significant in our past.
 - Distinctive characteristics of type, period, method of construction, or the work of a master, or possessing high artistic values.
 - Yielding information important to history or prehistory.

For a property to be determined eligible on the basis of one or more of these criteria, it must possess integrity of location, design, setting, materials, workmanship, feeling and association. The integrity of a property may be adversely affected by alterations, modifications, and relocation of buildings or structures from the original site. Properties that are determined as eligible will not be listed on the NR unless they are nominated for listing by the RE (or individuals), and have undergone a formal review process by the Keeper of the National Register. The RE should request the views of the SHPO/THPO concerning any further information gathering that may be necessary.

4. Determine the Effect of the Undertaking.

The RE must make a determination, in consultation with the SHPO/THPO, that:

- No historic properties will be affected, which generally means there are no eligible or NR listed properties within the APE, but it can also mean that historic properties are present but the undertaking will have no effect; OR

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Historic properties will be affected by the undertaking.

5. Assess the Effects on Listed and/or Eligible Properties.

When historic properties are affected by the undertaking the RE, in consultation with the SHPO/THPO, determines whether there will be an adverse effect on historic properties. The RE must also consider the views of consulting parties and the public. The Advisory Council may also be involved in the decision. Consult 36 CFR 800.5 and 800.6, and the Section 106 flowchart (Appendix E) concerning the appropriate procedures.

Making a Finding on Historic Preservation

DIRECTIONS - Once the review process for Historic Preservation has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Section 58.5 Checklist and included in the ERR.

- No:** The RE and SHPO/THPO agree that there are No Historic Properties Affected (36 CFR 800.4(d)(1)), or the SHPO/THPO (and other tribes if consulted) has not objected within 30 days to such fully documented determinations. [Refer to HUD “Revised - Advisory Guidance for Converting Projects Subject to Historic Preservation Requirements to “Exempt Activities” under 58.34(a)(12), February 23, 2004, posted on HUD Exchange- Environmental Review, [https://www.hudexchange.info/environmental-review/.](https://www.hudexchange.info/environmental-review/)]
- Yes:** The proposal has an effect on historic properties (i.e., No Adverse Effect or Adverse Effect). Consultation with SHPO/THPO is required to resolve or mitigate adverse effects (§ 800.5).

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Historic Preservation Assessment Questions

- Does the project involve physical changes or could it cause changes in the character or use of historic properties in the area (e.g., demolition, construction, rehabilitation, excavation, filling, property disposition, relocation of structures, etc.)?
- Does the project area and environs contain any properties listed on or eligible for the National Register of Historic Places? Is there an inventory of historic properties (e.g., buildings, structures, archeology sites) that is maintained by the state?
- Is there a local historic commission that can provide historic information? What information is available from the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), and has a survey of local historic properties been conducted?
- Should other tribes have been consulted (triggered by ground disturbance and other activities that could have an effect on cultural resources), and were they consulted?
- Are other properties present within the project boundaries or in the vicinity of the project that appear to be historic? If so, consult with the SHPO/THPO as to their eligibility for listing on the National Register (NR).
- Has the Advisory Council on Historic Preservation been given an opportunity to comment on any adverse effects the project will have on properties listed on NR or eligible for listing?

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Sources and References

- 36 CFR Part 60 CFR, National Register of Historic Places, U.S.D.I. National Park Service.
- How to Apply National Register Criteria for Evaluation, National Register Bulletin #15, U.S.D.I. National Park Service.
- Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines, U.S.D.I. National Park Service.
- Historical Archeological Sites and Districts, National Register Bulletin #36, U.S.D.I. National Park Service.
- Recommended Approach for Consultation Recovery of Significant Information from Archeological Sites, Advisory Council on Historic Preservation.
- Consulting with Indian REs in the Section 106 Review Process, Advisory Council on Historic Preservation.
- Final Advisory Council on Historic Preservation Policy Statement on Affordable Housing and Historic Preservation, Federal Register, Vol. 72, No. 31, pages 7387 – 7389.

FLOODPLAIN MANAGEMENT (EXECUTIVE ORDER 11988, MAY 24, 1977; 24 CFR PART 55)

The purpose of Executive Order 11988 is to require federal agencies and REs to consider alternatives to developing projects in floodplains when other alternatives are available that achieve the same objective.

This requirement is to avoid risking lives and loss of property that results from occupying a floodplain, and to avoid losing the beneficial values of floodplains. Naturally vegetated floodplains can provide a broad area to spread and slow floodwaters, thereby reducing velocities and flood peaks. Slower floodwaters also helps maintain water quality and to recharge groundwater because the slowed runoff allows sediments to be deposited, and water infiltrates through the generally porous soil of the floodplain into the groundwater.

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Federal agencies are required to avoid floodplain development whenever there are practicable alternatives to development in the floodplain. According to HUD regulation 24 CFR Part 55, floodplains are those land areas identified on maps published by FEMA as 100-year floodplain (Zones A or V) ---i.e., a one percent (1%) chance of a flood event occurring in any given year. If the project is a “critical action” (e.g., emergency facilities, facility for mobility-impaired persons, etc.), the regulation also applies to areas in the 500-year floodplain (Zone B)--i.e., a 0.2% chance of a flood event occurring in any given year. Coastal high hazard areas are subject to high velocity waters, such as hurricane wave wash. FEMA maps designate these as Zones V1-30, VE, or V.

NOTE: Federal assistance may not be used in a *floodway*, except for functionally dependent uses (e.g., marinas, bridge piers or pilings). The floodway is defined as “the channel of a river or other watercourse that must remain open to permit passage of the base flood without cumulatively increasing the water elevation more than a designated height (usually one foot). (Refer to National Flood Insurance Program regulations and U.S. Water Resources Council guidelines, 43 FR 6030, February 10, 1978.)

Most, if not all, communities in the U.S. have been mapped by FEMA. However, if a community has not been mapped by FEMA, the RE must establish whether or not the area is subject to one percent or greater chance of flooding in any given year [Section 6(c) of the Executive Order]. The RE must research the best available information to determine whether buildings or structures could be damaged by floodwaters because of their location. Sources of information may include: U.S. Corps of Engineers, Community Flood Administrators; U.S. Geological Survey Maps; U.S.D.A. Natural Resources Conservation Service (formerly Soil Conservation Service); state departments of water resources; county public works; or local flood control or levee districts. The RE may also contract to have a special study completed.

Basic Steps for Compliance with Floodplain Management Requirements

Actions for which the decision-making process is not applicable that are cited in § 55.12 (b) and (c). Among the actions listed in § 55.12(b) is acquisition and/or “minor repairs and improvements” to existing single family residential buildings (building with 1-4 dwelling units). “Minor repairs and improvements” means the cost is less than 50% of the market value before rehabilitation or damage from a declared disaster occurred.

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All other actions are subject to completion of the decision making process cited in § 55.20. Section 55.20 identifies the “eight-step” decision-making process REs must follow to comply with Executive Order 11988. This applies to any new construction or “substantial repair or improvement to structures located within the floodplain. “Substantial repair and improvement” means the cost is 50% or more of the market value before rehabilitation or damage from a declared disaster occurred (§ 55.2(b)(10)). The 8-Step process includes the following:

- Step 1 – Determine whether the proposed action is located in a 100-year floodplain.
- Step 2 – If the project is in a floodplain, publish notice of the proposal to consider an action in the floodplain (15 calendar day comment period).
- Step 3 – Evaluate practicable alternatives to locating the proposed action in a floodplain (practicable means capable of being done within existing constraints).
- Step 4 – Identify the potential impacts associated with occupancy and modification of the floodplain.
- Step 5 – Design or modify the action to minimize adverse impacts and preserve the beneficial values of the floodplain.
- Step 6 – Reevaluate whether the proposed action is practicable.
- Step 7 – If the RE decides to proceed with the project, it must publish a notice of the decision, addressing why there is “no practicable alternative,” the alternatives that were considered, and the mitigation measures being adopted. (Seven calendar day comment period.)
- Step 8 – Implement the proposed action with mitigation measures.

HUD has determined that certain activities are excluded from the 8-step decision-making process, including HUD assistance for purchasing, mortgaging or refinancing one-to four-family properties, and minor repairs or improvements on one-to four-family properties [§ 55.12]. Steps 2, 3, and 7 do not apply to certain projects as listed in § 55.12(a). In addition, Part 55 is not

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applicable if FEMA has issued a Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) for the subject site in a floodplain.

NOTE: Buildings and structures located within any floodplains mapped by FEMA must have flood insurance coverage in accordance with the National Flood Insurance Program requirements. If communities are mapped by FEMA, then NAHASDA, ICDBG, or SECTION 184 funds may only be used for projects in a floodplain if the community is a participant of the National Flood Insurance Program (NFIP) AND the assisted unit(s) obtains and maintains flood insurance.

Making a Finding on Floodplain Management

DIRECTIONS - Once the review process for Floodplain Management has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration ("No") or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation ("Yes"). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project does not involve property acquisition, management, construction or improvements within a 100-year floodplain (Zones A or V) identified by FEMA maps, or does not involve a "critical action" (e.g., emergency facilities, facility for mobility impaired persons, etc.) within a 500-year floodplain (Zone B). If FEMA has not published flood maps, the RE must make a finding based on best available data, e.g. from the City/County Engineer, or state or local Flood Control Agency, results of a special study completed.
- Yes:** The 8-step decision making process must be completed, according to 24 CFR Part 55.20, to document that there are no practicable alternatives to the proposal and to mitigate effects of the project in a floodplain.

All documents related to this compliance determination must be included in the ERR for the project.

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Floodplain Management Assessment Questions

- Does the project involve acquisition, construction, improvement, disposition, or financial assistance?
- Is the project located in the 100-year floodplain (Zones A or V) mapped by the Federal Emergency Management Agency (FEMA)? Is the project a “critical action” located in the 500-year floodplain (Zone B or shaded Zone X) mapped by FEMA?
- Is the project located in a coastal high hazard area mapped by FEMA?
- Is the project affected by local flooding?
- Will the project involve substantial increase in impervious surface area? If so, does the project design include measures to control water runoff?
- Does the project only involve “minor” repair or improvements to single family (1-4 units) housing? If so, the 8-step process does not apply.

Sources and References

- Map Service Center, Federal Emergency Management Agency (FEMA).
- National Flood Insurance Program Community Status List, FEMA (States’ listings of the cities and counties that have been mapped by FEMA and that are participants of the NFIP).
- Floodplain Management Guidelines for Implementing E.O. 11988, U.S. Water Resources Council, February 10, 1978, Federal Register (43 FR 6030).
- Further Advice on Executive Order 11988 Floodplain Management, Interagency Task Force on Floodplain Management, Federal Emergency Management Agency.

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WETLANDS PROTECTION (EXECUTIVE ORDER 11990, MAY 24, 1977; 24 CFR PART 55)

The purpose of the Executive Order 11990 (Wetlands Protection, May 24, 1977) is to:

- Avoid, if possible, any long and short-term adverse impacts associated with destruction or modification of wetlands; and
- To avoid direct or indirect support of new construction in wetlands whenever there is a practicable alternative.

Basic Steps for Compliance with Wetlands Protection Requirements

If new construction, conversion of vacant land, expansion of a project footprint, or ground disturbance that could affect hydrology is being proposed, the RE must determine whether or not designated wetlands will be impacted as a result and document its findings. New construction for the purposes of Executive Order 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities.

Executive Order 11990 describes wetlands as those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. Further information on wetland identification can be found in the Fish and Wildlife Service's (FWS) *Classification of Wetlands and Deep Water Habitats of the United States* (Cowardin, et al., 1977).

Wetlands maps are maintained by U.S. Fish & Wildlife Service (FWS), U.S. Natural Resource Conservation Service, and the U.S. Army Corps of Engineers. The FWS maintains the National Wetland Inventory, with maps available online using its Wetlands Mapper Tool. These maps do not contain all wetlands. Because of this, FWS staff should be contacted if a project includes filling or adversely impacting potential wetlands. The Wetlands Mapper Tool and FWS Regional Wetlands Coordinators may be located by referring to the U.S. Fish and Wildlife Service website (See "Environmental Internet and Government Agency Reference Guide" in Appendix D.3).

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Tribal or state natural resources agencies may have also identified wetland areas for preservation.

If wetlands will be affected, the RE should follow the decision-making process in § 55.20 (24 CFR Part 55) and conclude whether there is a practicable alternative to destroying or modifying the wetland.

In situations where the only activity being proposed in a wetland includes directional boring or drilling for installation of utility lines or other infrastructure, HUD has issued a policy stating that completion of the 8-step decision making process (outlined in § 55.20) is not required. However, this policy only applies if the strata and hydrology associated with the wetland allow the wetland to be sufficiently preserved, and with the following conditions being required:

- Dredging and/or filling of a wetland is not proposed;
- A qualified professional engineer verifies the wetland will not be drained nor will water be impounded as a result of installation of utilities and/or infrastructure;
- A qualified professional engineer has determined that the boring or drilling is of sufficient depth below the wetland and the entry and exit points are of sufficient distance laterally from the wetland to avoid puncturing the wetland pan, draining the wetland, or causing similar adverse impacts to the wetland (e.g., at least 6 feet below the water table when wetland are groundwater dependent);
- All staging areas are located outside the wetland area;
- Construction will not occur during sensitive times of the year that will impact fish spawning and bird nesting habitats;
- Erosion control measures will be implemented (specify the measures to be used);
- The project area will be restored to preconstruction conditions;
- Vegetative buffers will be planted and re-established in coordination with an invasive species control plan;
- The RE must document and certify that all these conditions have been met.

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If the boring or drilling is unsuccessful in preserving the wetland, the wetland must be restored within six (6) months or the 8-step decision making process must be prepared.

For the complete text of this HUD policy on directional wetlands boring, please refer to the HUD Office of Environment and Energy memorandum dated November 15, 2011 (Refer to Appendix I.4).

NOTE: A permit from the U.S. Army Corps of Engineers is required if the wetland is within or adjacent to navigable waters of the U.S. or within the jurisdiction of the Corps.

Making a Finding on Wetlands Protection

DIRECTIONS - Once the review process for Wetlands Protection has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project does not involve new construction or expansion of a footprint within or adjacent to wetlands, marshes, wet meadows, mud flats or natural ponds per field observation and maps issued by the USDI Fish & Wildlife Service or U.S. Corps of Engineers or any ground disturbance that could impact an on-site or off-site wetland.
- Yes:** The 8-step decision-making process has been completed, according to 24 CFR 55.20, to document there are no practicable alternatives and to mitigate effects of the project on wetlands. Such action also requires obtaining a permit from the U.S. Corps of Engineers under Section 404 of the Clean Water Act for wetlands within the Corps’ jurisdiction.

All documents related to this compliance determination must be included in the ERR for the project.

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Wetlands Protection Assessment Questions

- Does the project involve new construction, expansion of a project footprint, ground disturbance that could affect an on-site or off-site wetland, or conversion of vacant land to another use?
- Has the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, or U.S. Natural Resources Conservation Service identified wetlands on the project site?
- Are there alternatives available to locating the project or activity in the wetland?

Sources and References

- National Wetlands Inventory, U.S. Fish and Wildlife Service.
- U.S. Army Corps of Engineers, Section 404 Permits (Clean Water Act) (re: permits for discharges of dredge and fill materials into waters of the United States).
- 24 CFR Part 55, Sec. 55.20, Floodplain Management, U.S. Department of Housing and Urban Development.

COASTAL ZONE MANAGEMENT ACT (16 U.S.C. 1451, §§ 307(C), (D))

The Coastal Zone Management Act provides national policy concerning development and protection of the Nation's coastal environment.

A few of goals of the Act include:

- Preserve, protect, develop, and when possible, to restore or enhance the coastal resources;
- Encourage and assist states in implementing their coastal management programs, including:

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- Manage coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard and erosion-prone areas and in areas “likely to be affected” by sea level rise, land subsidence, saltwater intrusion; and destruction of natural protective features such as beaches, dunes wetlands and barrier islands; and
- Provide for public access to the coasts for recreation purposes.

Basic Steps for Compliance with Coastal Zone Management Requirements

When NAHASDA, ICDBG, or SECTION 184 funds will be used for projects proposing physical changes to properties or land within or adjacent to the coastal zone, the RE must make a determination whether the project is consistent with the state’s approved coastal management program. If the project is found to be consistent, the RE must certify to its consistency and submit a copy of the certification and supporting information to the state for approval. The state will provide the public an opportunity to comment on the certification.

The RE must receive concurrence from the state (or its designated agency) before the environmental review can be completed or the decision of compliance with Part 58 is made. If the state (or its designated agency) fails to notify the RE within six months after receiving its copy of the certification, the state’s concurrence with the certification shall be conclusively presumed [§ 307(c)(3)].

The RE must not approve the project for environmental clearance if it is found to be inconsistent with the state’s management plan. The only exception is if the U.S. Secretary of Commerce, who has oversight responsibilities for federal consistency determinations, finds the project is consistent with the purposes of the Act.

NOTE: Trust lands are excluded from the coastal zone; however, the RE must still document that non-trust lands in the coastal zone would not be affected by a project on the coast on trust land.

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Making a Finding on Coastal Zone Management

DIRECTIONS - Once the review process for Coastal Zone Management has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project does not involve the placement, erection or removal of materials, or an increase in the intensity of use in the Coastal Zone (CZ) per certified local coastal plan, or State Coastal Commission, etc.
- Yes:** Secure concurrence from the CZ Commission or delegated local planning commission with your determination of consistency with the applicable CZ Plan, or obtain coastal zone permit.

All documents related to this compliance determination must be included in the ERR for the project.

Coastal Zone Management Act Assessment Questions

- Does the project involve acquisition, rehabilitation, construction, or a change of use in or adjacent to a coastal area administered by the state under an approved management program?
- Has the RE certified the project is consistent with the state’s coastal zone management program? Has the state received a copy of the certification and supporting documentation?
- Has the RE received concurrence from the state on its certification?

Sources and References

- Office of Ocean and Coastal Resources Management, National Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

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- State and Territory Coastal Management Program Summaries.

SOLE SOURCE AQUIFERS (40 CFR PART 149)

Aquifers are underground geological formations that yield a significant amount of water to a well or spring. The regulations at 40 CFR Part 149 requires the RE to:

- Determine whether a project is within a Critical Aquifer Protection Area designated by EPA; and
- Whether project activities have the potential to contaminate the aquifer. For example, drilling water wells and constructing water treatment and industrial facilities have the potential of contaminating aquifers.

Basic Steps for Compliance with Sole Source Aquifers Requirements

The RE may refer to the EPA Web site to determine if there is a designated sole source aquifer in its community. If there is, the RE should contact the Office of Water for the EPA Regional Office having jurisdiction for that area to request a boundary map of the aquifer, a list of regulated activities, and a description of the compliance steps that are required. EPA must be given the opportunity to review and make recommendations on projects that have the potential to contaminate the aquifer.

Making a Finding on Sole Source Aquifers

DIRECTIONS - Once the review process for Sole Source Aquifers has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

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- No:** The project is not located within a U.S. EPA-designated sole source aquifer (SSA) watershed area per EPA Ground Water Office or the list of designated aquifers on the EPA Website; or the project is located within an EPA-designated SSA area but, in consultation with EPA, will not have an effect of the aquifer.
- Yes:** Consult with the Water Management Division of EPA to design mitigation measures to avoid contaminating the aquifer and implement appropriate mitigation measures.

All documents related to this compliance determination must be included in the ERR for the project.

Sole Source Aquifers Assessment Questions

- Is the project included within the boundaries of a sole or principal source aquifer (SSA) designated by the U.S. Environmental Protection Agency?
- Does the project have the potential to contaminate the designated sole source aquifer?

Sources and References

- Sole Source Aquifer Designations, EPA Sole Source Aquifer Protection Program, Office of Ground Water and Drinking Water, Office of Water, U.S. Environmental Protection Agency.

ENDANGERED SPECIES ACT (50 CFR PART 402)

Compliance with the Endangered Species Act generally concerns new construction and conversion of vacant land.

The Endangered Species Act uses the following classifications:

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- Endangered* – Species in danger of extinction.
- Threatened* – Any species likely to become endangered in the foreseeable future throughout all or a significant portion of its range.
- Critical Habitat* – Specific geographic areas determined to be essential to the conservation of endangered or threatened species.

Another classification, according to Fish and Wildlife Service regulations (50 CFR 402), is as follows:

- Proposed* – A species of fish, wildlife, or plant that appears in the Federal Register as being proposed for listing as endangered or threatened. As well as proposals to designate Critical Habitats appearing in the Federal Register.

Basic Steps for Compliance with Endangered Species Act Requirements

Section 7 of the Endangered Species Act requires that, when federal assistance is used for a project, a determination must be made whether continued existence of federally listed endangered or threatened species is likely to be affected, and whether it will result in their Critical Habitats being destroyed or adversely modified.

To ensure compliance with Section 7, consultation with the U.S. Fish and Wildlife Service is required (pursuant to 50 CFR 402) when the RE proposes a major construction action (requires preparation of an EIS)¹. The RE then follows a formal consultation process in such cases. When the RE determines the project may affect listed species, species proposed for listing, or their Critical Habitats, there is an informal consultation process that must be followed. Below is a summary of compliance steps the RE must follow:

¹ The U.S. National Marine Fisheries Service (NMFS) has responsibility for management and preservation of federally listed marine and anadromous species. They must also be consulted if species within their jurisdiction could be affected.

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- Make a determination whether the proposed action will alter or destroy habitat, or could have an effect on listed or proposed species or Critical Habitat.
- Request a species list from FWS (optional) or utilize other resource information available to develop a list of species that inhabit the project area.
- Determine the potential impact of the action on species and/or their habitat. This requires consulting with resource experts, such as state or local fish and wildlife agencies, or hiring a professional biologist/botanist to prepare a *biological assessment*², or reviewing other environmental documents for current and relevant information.
- Initiate informal consultation with FWS if a determination is made that species or their Critical Habitat may be affected by the project.
- Implement any necessary mitigation measures.

Making a Finding on the Endangered Species Act

DIRECTIONS - Once the review process for the Endangered Species Act has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The RE determines that the proposal will have “no effect” or “is not likely to adversely affect” any federally protected (listed or proposed) Threatened or Endangered Species (i.e., plants or animals, fish, or invertebrates), nor adversely modify critical habitats. This finding is to be based on contact made with the U.S. Fish and Wildlife Service, State Department of Fish and Wildlife, or by special study completed by a professional biologist or botanist. (If

² Information prepared concerning listed and proposed species and critical habitat that may be present and an evaluation of potential effects.

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anadromous fish---i.e., ascend rivers from the sea to breed---or ocean species may be affected, then the U.S. National Marine Fisheries Service (NMFS) must be consulted. Only a determination of “no effect” does not require being sent to U.S. FWS (or NMFS, if applicable) for concurrence.

- Yes:** Consult with the U.S. FWS or with the U.S. National Marine Fisheries Service, in accordance with procedural regulations contained in 50 CFR Part 402. Formal consultation with FWS or NMFS is always required for federally funded “major construction” activities and anytime a “likely to adversely affect” determination is made.

All documents related to this compliance determination must be included in the ERR for the project.

Endangered Species Act Assessment Questions

- Will the project disturb or alter existing vegetation, or create conditions which might threaten the survival of native plant communities?
- Will it impact water resources on or adjacent to the project site?
- Will it damage or destroy trees?
- Will the project create conditions that are favorable to nuisance species?

Sources and References

- 50 CFR – Interagency Cooperation Endangered Species Act of 1973, As Amended
- Endangered Species Program, Division of Endangered Species, U.S.D.I. Fish and Wildlife Service.
- Threatened and Endangered Wildlife and Plants (Listed species and Critical Habitat).

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- U.S.D.C. National Marine Fisheries Service, Office of Protected Resources (Marine and anadromous species protected by the Endangered Species Act).

WILD AND SCENIC RIVERS ACT (16 U.S.C. 1271, §§ 7(B), (C))

A wild, scenic or recreational river area is included in the National Wild and Scenic Rivers System (NWSRS) either by an Act of Congress, or may be designated by a state or states if the U.S. Secretary of Interior finds it meets the criteria established by the Act.

A river or segment of a river may be designated as wild if it is free of impoundment, has little or no evidence of human activity and is generally accessible only by trail. To be classified scenic, a river (or river segment that has been designated) must be free of impoundment, there is no substantial evidence of human activity, and in some places it is accessible by road. Classification as recreational means the river (or a river segment) has some impoundment or diversion, there is substantial evidence of human activity, and it is readily accessible by road or railroad.

Basic Steps for Compliance with Wild and Scenic Rivers Act Requirements

In order to be in compliance, the RE must:

- Determine whether any river listed in the NWSRS designated for inclusion in the NWSRS, would be directly and adversely affected by development activities associated with the project; and
- If the project is located above or below a listed river, the RE must determine whether the project will impact the river management area or could unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

Making a Finding on the Wild and Scenic Rivers Act

DIRECTIONS - Once the review process for the Wild and Scenic Rivers Act has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity

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triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project is not located within one mile of a listed Wild and Scenic River, OR the project will have no effects on the natural, free flowing or scenic qualities of a river in the National Wild and Scenic Rivers system.
- Yes:** Consult with the federal or state agency having administrative jurisdiction to manage the river for impact resolution and mitigation---U.S. National Park Service, U.S. Forest Service, U.S. Bureau of Land Management, or state agency.

All documents related to this compliance determination must be included in the ERR for the project.

Wild and Scenic Rivers Act Assessment Questions

- Does the project include development activities?
- Is the project located near a river or river segment that is listed on or designated for inclusion in the National Wild and Scenic Rivers System?

Sources and References

- Wild and Scenic Rivers Home Page, Rivers, Trails and Conservation Assistance Program, U.S.D.I. National Park Service.
- Wild & Scenic Rivers- State-By-State Lists, Rivers, Trails and Conservation Assistance Program, U.S.D.I. National Park Service.

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AIR QUALITY (40 CFR PARTS 6, 51, AND 93)

The Clean Air Act is a federal law, but the states do much of the work to carry out most of the Act. Each state develops state implementation plans (SIP) that contain its objectives and regulations for carrying out the Clean Air Act. The U.S. Environmental Protection Agency reviews and approves states' implementation plans.

The purpose of an implementation plan is to ensure that ambient concentrations of any of six air pollutants are within the established levels of the National Ambient Air Quality Standards (NAAQS). The six pollutants are ozone, carbon monoxide, particulate matter, sulfur dioxide, lead, and nitrogen dioxide. Sources for pollutants include transportation vehicles, industrial facilities, and farming operations. (NOTE: Removal or disturbance of regulated asbestos containing materials is regulated under this Act. Consult regulation 41 CFR 61, Subpart M for compliance requirements).

Based upon the NAAQS in the SIP, local areas or regions will be identified as either in *attainment* or *nonattainment* with one or more of the regulated pollutants. If the project is within a *nonattainment area*, then a determination must be made as to whether the project is in conformance with the SIP.

Making a Clean Air Act Finding

DIRECTIONS - Once the review process for the Clean Air Act has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project is located within an “attainment” area, OR, if within a “non-attainment” area, conforms with the EPA-approved State Implementation Plan (SIP), per contact with the State Air Quality Management District or Board, AND the project requires no individual NESHAP permit or notification;

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- Yes:** Negotiate suitable mitigation measures with the Air Quality Management District or Board, obtain necessary permits, and issue required notices. (For example, 40 CFR §61.145 requires 10-day prior notification to the Air Quality District Administrator whenever either 260 linear ft., 160 sq. ft., or 35 cubic ft., of asbestos containing material is to be disturbed during rehabilitation/demolition activities in multifamily properties).

All documents related to this compliance determination must be included in the ERR for the project.

Air Quality Assessment Questions

- Is the project located in a geographic area in attainment or non-attainment with the National Ambient Air Quality Standard?
- If in a non-attainment area, does the project conform to the EPA approved state implementation plan (SIP)?

Sources and References

- Office of Air and Radiation, U.S. Environmental Protection Agency, www.epa.gov/oar. (Use this Website for a listing of State air quality boards and commissions.)
- Non-attainment Areas Maps – Criteria Air Pollutants, Air Data Home Page, U.S. Environmental Protection Agency.
- 40 CFR 61, Subpart M, National Emission Standards for Hazardous Air Pollutants (NESHAP)

FARMLAND PROTECTION (7 CFR PART 658)

The purpose of the Farmland Protection Policy Act is to minimize the effect of federal programs on the unnecessary and irreversible conversion of farmland to nonagricultural uses. The Act does not apply to lands already in, or committed to, urban development (i.e., 30 structures per 40 acres or water impoundment). However, land that meets the definition of prime or unique

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farmlands, or is determined to be of statewide or local significance (with concurrence by the U.S. Secretary of Agriculture) is subject to the Act.

The U.S.D.A. Natural Resource Conservation Service is the federal agency tasked with identifying prime and unique agricultural lands, and developing regulations to administer provisions of the Act.

- Prime farmland** has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. The land must also be available for these uses (cropland, pastureland, forestland, or other land, but not water or urban built-up land).

- Unique farmland** is land other than prime farmland that is used for production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or yields of specific crops.

If the RE cannot determine whether or not the land is classified as prime or unique, it should request the USDA Natural Resources Conservation Service (NRCS) to make the determination by submitting Form AD-1006, the Farmland Conversion Impact Rating form. These forms are available at NRCS offices or the Internet.

Should the project site (or any part of it) contain farmland that will be converted to another use, the RE must identify and take into account the adverse effects of its conversion, and consider alternatives that would lessen the impact. Similar consideration should be given to land of statewide or local significance.

Basic Steps for Compliance with Farmland Protection Requirements

In order to analyze the effects of converting the farmland, the RE must apply the site assessment criteria in §§ 658.5(b) and (c) and record its findings on Form AD-1006. If there is a decision to approve conversion of the site, a copy of the completed Form AD-1006 should be submitted to NRCS for its data collection purposes.

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Making a Farmland Protection Policy Act Finding

DIRECTIONS - Once the review process for the Farmland Protection Policy Act has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project site does not include prime or unique farmland, or other farmland of statewide or local importance as identified by the U.S. Department of Agriculture, Natural Resources Conservation Service NRCS (formerly the Soil Conservation Service, OR the project site includes prime or unique farmland, but is located in an area committed to urban uses;
- Yes:** Request evaluation of land type from the NRCS using Form AD-1006, and consider the resulting rating in deciding whether to approve the proposal, as well as mitigation measures (including measures to prevent adverse effects on adjacent farmlands).

All documents related to this compliance determination must be included in the ERR for the project.

Farmland Protection Assessment Questions

- Will land be developed because of the project?
- Has the land been determined to be prime or unique farmland by the USDA Natural Resources Conservation Service?
- Has the state or local government identified the project area as prime or unique agricultural land?

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- Soil Survey Division, U.S.D.A. Natural Resources Conservation Service, 14th & Independence Ave., SW, Room 4250-S, Washington, D.C. 20013, (202) 720-1820, Fax: (202) 720-4593.
- State and Regional Offices of the USDA Natural Resource Conservation Service.
- 7 CFR 658, Farmland Protection Policy Act
- Form AD-1006, "Farmland Conversion Impact Rating."

ENVIRONMENTAL JUSTICE (EXECUTIVE ORDER 12898, FEBRUARY 11, 1994)

The Executive Order on Environmental Justice directs each federal agency to make achieving environmental justice part of its mission by "identifying and addressing as appropriate disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Presently, there aren't any regulations for implementing the Executive Order. However, HUD has issued a Strategy Plan for Implementing Environmental Justice, which it uses as guiding principle in deciding whether the project could result in disproportionate high and adverse effects on these populations.

Basic Steps for Compliance with Environmental Justice Requirements

During the environmental review process, health and environmental issues may arise concerning the suitability of the project site for its intended use, particularly its suitability for human habitation. The RE should document how the Executive Order was given consideration in its final decision.

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Making a Finding on Environmental Justice

DIRECTIONS - Once the review process for Environmental Justice has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The proposed site is suitable for its proposed use and will NOT be adversely impacted by adverse environmental conditions;
- Yes:** Site suitability is a concern; the proposal is adversely affected by environmental conditions impacting low income or minority populations. Avoid such impacts or mitigate them to the extent practicable. Address and mitigate the disproportional human health or environmental effects adversely affecting the low income or minority populations OR reject the proposal.

All documents related to this compliance determination must be included in the ERR for the project.

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Environmental Justice Assessment Questions

- Is the project site suitable for its proposed use?
- Are there high and adverse health and environmental conditions that could affect the project because of its proposed location?
- Can these conditions be mitigated?
- If the project is approved as proposed, are minority and low income persons being disproportionately affected in comparison to the rest of the population?

Sources and References

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
- Achieving Environmental Justice – A Department Strategy, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, March 24, 1995.

NOISE ABATEMENT AND CONTROL (24 CFR PART 51, SUBPART B)

Noise is unwanted sound that interferes with our normal activities such as sleeping, conversation or recreation. It can also cause hearing loss and have an adverse effect on mental health. The purpose of HUD's regulation concerning noise is to encourage suitable separation between noise sensitive lands uses (i.e., housing and/or other noise sensitive activities) and major noise sources (i.e., roadways, railroads, and military and civilian airports).

Section 51.101(a)(2) applies specifically to those activities subject to environmental review under Part 58, and, in particular, to the construction of housing.

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Basic Steps for Compliance with Noise Abatement and Control Requirements

The RE must determine whether there are any major roadways within 1,000 feet, railroads within 3,000 feet, and military or civilian airports within 15 miles of the housing project.

Because sound waves travel in a straight line, a solid barrier or structure between the project site and a roadway or railroad will attenuate noise being generated by these sources. Examples of noise barriers are noise walls, natural terrain, and buildings that obstruct the line of sight between the project and the noise source. Vegetation is not a suitable barrier for attenuating noise.

However, if the development is within line-of-sight of either the roadway or railroad, further investigation is required to determine the level of noise exposure. Doing this requires completing a noise calculation for roadways and railroads according to guidelines provided in The Noise Guidebook [HUD-953-CPD(1)]. This guidebook is issued by and available from HUD online. The RE must determine whether the exterior noise level at the project site is within HUD's standard for acceptability, or whether noise attenuation is required or another site should be selected for the project.

Noise from airplanes is more difficult to attenuate. If there are airports within 15 miles of the project, the RE should consult with the operations supervisor for the civilian airport, and the FAA Area Office or military base concerning a military airfield. The RE should obtain information on whether or not there are flights over the project area, and the level of noise produced by scheduled flights. There are maps available to show noise contours around airfields. The highest noise levels are adjacent to runways. Airplane noise diminishes the farther away the project is from an airfield. The noise contour maps for military airfields are published in the Air Installation Compatible Use Zone (AICUZ) for the base.

For other noise generators in the area, 8 decibels should be added to the calculation.

HUD's noise standards are based on the Day-Night Average (DNL) Sound Level System---a system of calculating noise exposure instead of measuring it with instruments. This system is a 24 hour average sound level (expressed in decibels), with an additional 10 decibels added for nighttime noise. The calculation is based upon projected conditions that are expected at least 10 years beyond the project approval date. Noise is considered Acceptable when the exterior noise level is 65 DNL or less. Otherwise, attenuation measures must be incorporated into

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construction plans. If the exterior noise level is above 75 DNL (Unacceptable), the project requires special approval from the certifying officer, or it should be disapproved [24 CFR 51.104(a)(2)].

Making a Noise Abatement Finding

DIRECTIONS - Once the review process for Noise Abatement and Control has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project does not involve the development of noise-sensitive uses, OR the project is not within line-of-sight of a major or arterial roadway or railroad, OR ambient noise level is documented to be 65 DNL or less, based upon the HUD Noise Assessment Guidelines (NAG) for calculating noise levels and Airport Noise Contour map;
- Yes:** Apply the noise standard, per 24 CFR §51.101, to the decision whether to approve the proposal (see §51.104), and implement noise attenuation measures (NAG page 39-40) as applicable.

All documents related to this compliance determination must be included in the ERR for the project.

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Noise Abatement and Control Assessment Questions

- Is a noise-sensitive land development proposed (e.g., housing construction or other noise-sensitive activity)?
- Is it within 1,000 feet of a roadway, 3,000 feet of a railroad, or 15 miles of a military airfield or civilian airport?
- Is the calculated DNL in the Acceptable range (<65)? If not, is noise attenuation required?
- Does the project require special approval from the certifying officer or should it be disapproved because of high noise levels (i.e., exceeds 75 DNL)?

Sources and References

- The Noise Guidebook (HUD-953-CPD(1)), Office of Community Planning and Development, U.S. Department of Housing and Urban Development, September 1991. This guidebook is available online at the HUD Environment/Energy website.
- Contact the local airport or military airfield for information and maps.

EXPLOSIVE OR FLAMMABLE OPERATIONS (24 CFR PART 51, SUBPART C)

The purpose of this regulation is to ensure there is an acceptable separation distance between people and buildings from stationary aboveground storage tanks more than 100 gallons in size and that contain materials that are explosive or flammable in nature (e.g., gasoline, fuel oil, kerosene, crude oil, propane). This requirement is to prevent injury to people and damage to property from industrial accidents. The RE must determine if there are hazardous liquids and gases being stored within one mile of the project.

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Some hazardous liquids or gases can cause explosive blasts. A 100-gallon tank can injure people and damage buildings within 115 feet; and a tank that holds 1,000,000 gallons is destructive within 2,150 feet. A railroad tank car holds approximately 40,000 gallons of liquid. An explosion from a single 40,000 tank can injure people and damage buildings within a 750- foot radius.

Other hazardous liquids and gases are prone to fire. Thermal radiation from a 100-gallon tank can injure people within 107 feet; and a tank that holds 1,000,000 gallons can injure anyone within 5,000 feet, or nearly one mile.

The regulation applies to projects proposing development, construction, conversion to another use, as well as rehabilitation or modernization of buildings which increases residential densities, converts buildings for habitation, or makes vacant buildings habitable.

The regulation does not apply to the following:

- High pressure gas and petroleum transmission pipelines;
- Mobile conveyances such as barges, ships, railroad tankers and tank trucks;
- Buried tanks or containers;
- High pressure natural gas transmission and liquid petroleum pipelines;
- Employees of facilities which manage, store, or process explosive or flammable materials (U.S. Department of Labor, Occupational Safety and Health Administration covers employee safety); or
- Individual fuel supply for one-to-four-unit, FHA-insured properties.

Basic Steps for Compliance with Explosives or Flammable Operations Requirements

HUD Guidebook 1060-CPD, Siting of HUD-Assisted Project Near Hazardous Facilities, provides the necessary guidance for determining safe distances from aboveground storage tanks, and necessary mitigation measures. This guidebook is available online at the HUD Environment/Energy website.

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The RE's certifying officer is responsible for any approval or disapproval of projects that are affected by the presence of aboveground storage tanks (24 CFR 51.206).

Making A Finding on Explosive or Flammable Operations

DIRECTIONS - Once the review process for Explosive or Flammable Operations has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration ("No") or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation ("Yes"). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project is located at an Acceptable Separation Distance (ASD) from any above-ground explosive or flammable fuels or chemicals containers according to "Siting of HUD-Assisted Projects Near Hazardous Facilities" (Appendices F & G, pp. 51-52), OR the project does not include development, construction, rehabilitation that will increase residential densities, or conversion.
- Yes:** Mitigate the blast overpressure or thermal radiation hazard with the construction of a barrier of adequate size and strength to protect the project (per 24 CFR 51.205).

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Explosive or Flammable Operations Assessment Questions

- Does the project include development, construction, or conversion of the site or building to another use?
- Does the project include rehabilitation or modernization of a building that increases residential densities, converts a building for habitation, or makes a vacant building habitable?
- Are there aboveground storage tanks (more than 100 gallons in size) within one mile of the project site?
- Are the tanks within line of sight or is there a barrier (natural or manmade) between them and the project site (consult a licensed engineer)?
- Does the project require a decision by the RE's certifying officer because there is not sufficient separation between the tanks and the project site?

Sources and References

- Siting or HUD-Assisted Project Near Hazardous Facilities: A Guidebook—Acceptable Separation Distances From Explosive and Flammable Hazards, Office of Environmental and Energy, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, September 1996, HUD-1060-CPD. This guidebook is available online at the HUD Environment/Energy website.
- Local fire department or public safety officer.

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HAZARDOUS MATERIALS, CHEMICALS, AND RADIOACTIVE SUBSTANCES [24 CFR PART 58, § 5(i)(2)]

Section 58.5(i)(2) states that all properties receiving HUD assistance must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances that “could affect the health and safety of the occupants of conflict with the intended utilization of the property.” Properties having clear health risks for the occupants or inhabitants should be rejected. For multifamily housing (five or more dwelling units) and non-residential properties, compliance with this policy requires efforts to identify any hazardous substances and radioactive materials that may be on site or off site that could harm inhabitants, as well as an evaluation of previous uses of the properties.

Basic Steps for Compliance with Hazardous Materials, Chemicals, and Radioactive Substances Requirements

In order to make the best possible determination as to the presence of hazardous materials, the RE must use the best available information (including federal, state, and local hazardous sites data) during the identification process, and also consult with U.S. EPA, as necessary. If necessary, the RE should hire qualified professionals to use accepted investigative techniques to determine if health risks are present.

The U.S. EPA recognizes four pathways for human exposure to toxic and hazardous substances and radioactive materials:

- Surface water;
- Ground water;
- Soil; and
- Air.

If it is discovered hazards are present on site, or from off site sources, determinations should be made on the following bases:

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- Can people come into physical contact with the contaminants (e.g., floodwaters, wetlands, outdoor recreational areas, dust, soils, school grounds, fill dirt, mill tailings)?
- Can contaminants be ingested (e.g., drinking water, commercial food crops)?
- Can people inhale the contaminants (e.g., vapors, gases, radioactive gases (radon), airborne dust, asbestos and other particulates)?

Regulated hazardous substances lists that are maintained by the U.S. EPA include:

- Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA or “Superfund”).
- Emergency Planning and Community Right-to-Know Act (Superfund Amendments Reauthorization Act or SARA).
- Extremely Hazardous Substances (EHS).
- Resources Conservation Recovery Act (RCRA).

NOTE: The American Society for Testing and Materials (ASTM) has developed standards for investigation and discovery of “environmental site conditions” (e.g. hazardous materials and radioactive substances) that are recognized in court cases concerning landowner liability (i.e., “all appropriate inquiry” into known environmental hazards). One of these standards is the Phase I Environmental Site Assessment, a protocol to investigate site contamination. Generally, a Phase I Environmental Site Assessment includes a visual inspection of the project site and an investigation of its past uses, a search for permits issued by government entities, and environmental conditions present on adjacent sites that could affect the project. A Phase I helps owners to satisfy the requirements for the “innocent landowner defense” in cases of CERCLA liability. A Phase I site assessment must be completed by a qualified professional, and the information must be current. The U.S. EPA’s final rule 40 CFR 312, published in the Federal Register on November 1, 2005, states “Certain types of information collected more than 180 days prior to the date of acquisition must be updated for the current all appropriate inquiries.” (§ 312.20(b)). Copies of the Phase I Environmental Site Assessment standards may be ordered for a minimal fee by contacting the ASTM. See Appendix R on the CD for guidance on using a Phase I to evaluate compliance with HUD standards on contamination.

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Making a Finding on Hazardous Materials, Chemicals and Radioactive Substances

DIRECTIONS - Once the review process for Hazardous Materials, Chemicals and Radioactive Substances has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The subject and adjacent properties are free of hazardous materials, contamination, toxic chemicals, gasses and radioactive substances which could affect the health or safety of occupants or conflict with the intended use of the subject property. Particular attention should be given to nearby dumps, landfills, industrial sites and other operations with hazardous wastes;
- Yes:** Mitigate the adverse environmental condition by removing, stabilizing or encapsulating the toxic substances in accordance with the requirements of the appropriate federal, state or local oversight agency; OR reject the proposal.

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Chapter 6 – Categorical Exclusions Subject to § 58.5

Hazardous Materials, Chemicals, and Radioactive Substances Assessment Questions

- Is the site contaminated with hazardous substances and/or radioactive materials that could affect the health and safety of the occupants or conflict with the intended utilization of the property?
- Is the project within one mile of a National Priority List (NPL) “Superfund” site; or 2,000 feet of a State hazardous materials site, landfill, other known toxic site, or facilities that treat, store and dispose of hazardous substances? What is the nature of the hazardous material? What is the pathway for human exposure? (i.e., surface water, soil, air, ground water)
- Is mitigation required?

Sources and References

- U.S. EPA, Envirofacts Data Warehouse.
- State Emergency Response Commissions and Tribal Emergency Response Commissions (Establishment of the commissions is authorized by the Emergency Planning and Community Right-to-Know Act (Superfund Amendments Reauthorization Act or SARA).
- Environmental protection agency for states.
- Choosing an Environmentally “Safe” Site, Office of Community Viability, Community Planning and Development, U.S. Department of Housing and Urban Development. This document is available online at the HUD Environment/Energy website.

AIRPORT CLEAR ZONES AND ACCIDENT POTENTIAL ZONES (24 CFR PART 51, SUBPART D)

Clear Zones, Runway Clear Zones, and Accident Potential Zones are designated areas at the end of airport runways where the greatest number of airplane accidents occur (about 75%).

NOTES

Chapter 6 – Categorical Exclusions Subject to § 58.5

HUD regulation 24 CFR 51, Subpart D prohibits using HUD assistance for the following activities:

- New construction; and
- Major or substantial rehabilitation and modernization activities if projects are located within a Clear Zone or Runway Clear Zone (also known as Runway Protection Zone).

It also discourages using HUD assistance for these activities in an Accident Potential Zone (also known as Approach Protection Zone), if such activities would:

- Change the current use of the facility;
- Significantly increase the density or number of people at the site; or
- Introduce explosive, flammable, or toxic materials to the area.

However, this prohibition does not apply to the purchase, sale or rental of existing properties, nor to minor rehabilitation/modernization or emergency assistance activities. (Minor rehabilitation/modernization would mean, for Clear Zones and Runway Clear Zones, it does not significantly prolong the physical or economic life of a building. For Accident Potential Zones, it does not change its use, increase density, or introduce explosive, flammable, or toxic materials. See § 51.302.)

Basic Steps for Compliance with Airport Clear Zones and Accident Potential Zones Requirements

Whenever HUD assistance is used for sale or purchase of an existing property located in a Runway Clear Zone or Clear Zone, the buyer must be notified of this in writing and that the property may be acquired by the airport at a later date. The buyer must acknowledge receipt of this information [§ 51.303(a)(3)]. [See the sample “Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones” located in Appendix M.]

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Chapter 6 – Categorical Exclusions Subject to § 58.5

Making a Finding on Airport Clear Zones and Accident Potential Zones

DIRECTIONS - Once the review process for Airport Clear Zones, Clear Zones and Accident Potential Zones has been completed, the Section 58.5 Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (“No”) or if the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (“Yes”). The Compliance Documentation column of the Section 58.5 Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- No:** The project is not within an FAA-designated civilian airport Runway Clear Zone (RCZ) (also known as a Runway Protection Zone), or within a military airfield Clear Zone (CZ) or Accident Potential Zone (APZ) (also known as an Approach Protection Zone), based upon information from the airport or military airfield administrator identifying the boundaries of such zones, OR the project involves only minor rehabilitation, OR the project involves only the sale or purchase of an existing property in the RCZ or CZ;
- Yes:** It is HUD policy not to provide any development assistance, subsidy or insurance in RCZs or CZs unless the project will not be frequently used or occupied by people and the airport operator provides written assurances that there are no plans to purchase the project site.

Airport Clear Zones and Accident Potential Zones Assessment Questions

- Is the project within 2,500 feet of a civilian airport that is regulated by the Federal Aviation Administration (FAA), or 15,000 feet of a military airfield?
- Is the project located within a designated Airport Clear Zone or Runway Clear Zone?
- Is a disclosure notice required?

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Chapter 6 – Categorical Exclusions Subject to § 58.5

Sources and References

- Airport Clear Zones - Civil Airport defined by FAA rule 14 CFR Part 152, military airfields DOD Instruction 4165.57 and 32 CFR Part 256.
- A Guide to HUD Environmental Criteria and Standards Contained in 24 CFR Part 51, (Handbook 1390.4), Office of Community Planning and Development, U.S. Department of Housing and Urban Development, August 1984
- Sources of AICUZ Data include: AICUZ study for the military air installation, Map F- Air Installation Compatible Use Zones, local planning department, Council of Governments planning agency, contact the Installation Commander.

PROJECTS THAT CONVERT TO EXEMPT [§ 58.34(a)(12)]

If none of the federal laws and authorities is triggered, the project may be converted to exempt under the following conditions and documentation procedures:

- The RE completes a Categorically Excluded Subject to Section 58.5 environmental review including the federal laws and authorities cited in § 58.5 for the proposed project.
- The RE concludes that no circumstances exist where any of the federal laws and authorities requires compliance (according to the established review procedures for each law and authority) and documents this finding.
- The RE documents its determination that the project converts to exempt in the ERR.

The RE does not need to issue a public notice or request release of funds from HUD.

PUBLIC NOTIFICATION PROCESS

If upon completing the environmental review document, the RE determines compliance is required for one or more of the federal laws and authorities listed in § 58.5, then the RE must disseminate a public notice (Notice of Intent to Request Release of Funds) and request release

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Chapter 6 – Categorical Exclusions Subject to § 58.5

for funds from HUD. Before committing or expending project funds, the RE must receive approval from HUD.

The public notification process allows the public, interested persons and agencies to voice their opinions about the project's potential environmental impact and the RE's environmental findings.

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

If the proposed activity triggers compliance with any of the federal laws and authorities, and there is documentation supporting this finding, the RE must then:

1. Publish or disseminate all notices related to any specific federal law and authority review – e.g., notice of approval of a project located in a floodplain, notice of proposal of improvements and development in a wetland, notice of adverse effects of an undertaking on historic properties, etc. Follow notice requirements set forth by the applicable federal law or agency.
2. Publish or post/mail a Notice of Intent to Request Release of Funds (NOI/RROF).

A minimum of 7 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community, or a minimum of 10 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures. (NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 7 days of the comment period. If the notice is posted it must remain posted until the last day of the comment period has expired.) The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/ mailing date of the notice (§ 58.21). Attachment 6.4 provides a sample NOI/RROF with the minimum content required for this legal notice.

3. Consider and respond to comments received, evaluate and analyze any concerns raised that have merit, and resolve outstanding issues. If the RE does not receive any comments, or after there has been consideration and response to comments received, the CO may sign the RROF for submission (with a copy of the notice attached) to the Administrator of the ONAP Field Office. (NOTE: The RE should indicate in its

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Chapter 6 – Categorical Exclusions Subject to § 58.5

submission letter to ONAP how the notice was dispersed. Was the notice was posted or mail.)

4. Also, disseminate the notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, state and federal agencies; to the Regional Office of the U.S. Environmental Protection Agency, and to the HUD ONAP (§§ 58.43 and 58.70). (NOTE: Consult with ONAP Grants Management to determine whether they would like to receive a copy of the notice prior to the tribe submitting their Request for Release of Funds and Certification (HUD form 7015.15) with a copy of the notice attached.)
5. Sign the Request for Release of Funds and Certification (RROF). This can only be done by the Certifying Officer (CO) of the RE. (Refer to Appendix B.)
6. Submit the RROF with a copy of the public notice to HUD.
7. Wait to receive a HUD form 7015.16, Authority to Use Grant Funds, from the ONAP Field Office before initiating work or committing funds

HUD APPROVAL

ONAP has 15 calendar days from the date it receives the request, or the date that appears in the notice (indicating when the RE intends to submit its request), whichever is later, to receive objections to its releasing funds from the public, interested persons or agencies. The objections must be based upon procedural errors committed by the RE (e.g., not preparing the correct level of environmental review, not following the requirements for compliance with federal laws and authorities, committing funds prior to completing the environmental review process, etc.) Objections must be submitted to ONAP in writing. ONAP will approve the RE's request if no objections are received or after objections have been satisfactorily resolved. The RE will receive a HUD form 7015.16 (Authority to Use Grant Funds) or equivalent letter from ONAP. Once approval is received from ONAP, project funds may be committed and work initiated.

COMPLIANCE WITH OTHER REQUIREMENTS AT § 58.6

In addition to making a written determination of categorical exclusion, subject to § 58.5, the RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6,

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Chapter 6 – Categorical Exclusions Subject to § 58.5

which are the Flood Disaster Protection Act, the Coastal Barriers Resources Act, and HUD's requirement for disclosure of properties located in airport runway clear zones.

- The Flood Disaster Protection Act** applies whenever the activity or project proposes to acquire, rehabilitate, convert or construct a building located within a special flood hazard area (i.e., 100-year floodplain) designated by the Federal Emergency Management Agency (FEMA). It also applies to the use of federal funds for the purchase of equipment for buildings located within a FEMA-designated floodplain.
- The Coastal Barrier Resources Act** applies whenever the activity or project is located in a community listed in the Coastal Barrier Resources System. The use of federal funding is prohibited for activities or projects within a coastal barrier area designated by the U.S. Congress.
- The Disclosure of Properties Being Located in a Runway Clear Zone or Clear Zone** applies to projects proposing the purchase or sale of properties in a Runway Clear Zone (RCZ) or Clear Zone (CZ). Whenever HUD assistance is used for sale or purchase of an existing property located in a RCZ or CZ, the buyer must be notified of this in writing and that the property may be acquired by the airport at a later date. The buyer must acknowledge receipt of this information [§51.303(a)(3)]. [See the sample "Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones" located in Appendix M.]

REEVALUATION OF ENVIRONMENTAL FINDINGS (§ 58.47)

The RE will need to reevaluate its original environmental findings if it finds that, during project construction, changes or new circumstances arise that were not previously considered during the environmental review process or in the RE's decision (e.g., new activities are added to the scope and magnitude of the project, or concealed or unexpected conditions are discovered, such as archeological sites, underground storage tanks, and similar environmental conditions). If, before project construction is initiated, the project developer proposes a different course of action that was not previously considered in the RE's environmental review, this also triggers the requirement for re-evaluation of the RE's original environmental findings.

An approved NAHASDA or ICDBG-funded project may receive additional federal funds after the RE has received approval from ONAP, but before the project itself is completed. In such cases,

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Chapter 6 – Categorical Exclusions Subject to § 58.5

the RE may be required to initiate a reevaluation of the original environmental determination in accordance with § 58.47. Generally, approval of supplemental assistance to cover minor shortfalls in funding and to help complete a project previously approved is excluded from the environmental review requirements of NEPA and the § 58.5 authorities, if approval is made by the same RE.

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Attachment 6.1 – Sample Format for Activity that is Categorically Excluded Subject to Section 58.5

Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5

Pursuant to 24 CFR 58.35(a)

Project Information

Project Name:

Responsible Entity:

Grant Recipient (if different than Responsible Entity):

State/Local Identifier:

Preparer:

Certifying Officer Name and Title:

Grant Recipient (if different than Responsible Entity):

Consultant (if applicable):

Direct Comments to:

Project Location:

Attachment 6.1 – Sample Format for Activity/Project that is Categorically Excluded Subject to Section 58.5

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

Level of Environmental Review Determination:

Categorically Excluded per 24 CFR 58.35(a), and subject to laws and authorities at §58.5: _____

Funding Information

Grant Number	HUD Program	Funding Amount

Estimated Total HUD Funded Amount:

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]:

Attachment 6.1 – Sample Format for Activity/Project that is Categorically Excluded Subject to Section 58.5

COMPLIANCE WITH 24 CFR 50.4, 58.5, AND 58.6 LAWS AND AUTHORITIES

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits or approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	Yes No <input type="checkbox"/> <input type="checkbox"/>	
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.5		

Attachment 6.1 – Sample Format for Activity/Project that is Categorically Excluded Subject to Section 58.5

<p>Clean Air</p> <p>Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Coastal Zone Management</p> <p>Coastal Zone Management Act, sections 307(c) & (d)</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Contamination and Toxic Substances</p> <p>24 CFR Part 50.3(i) & 58.5(i)(2)</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Endangered Species</p> <p>Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Explosive and Flammable Hazards</p> <p>24 CFR Part 51 Subpart C</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Farmlands Protection</p> <p>Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Floodplain Management</p> <p>Executive Order 11988, particularly section 2(a); 24 CFR Part 55</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Historic Preservation</p> <p>National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	

Attachment 6.1 – Sample Format for Activity/Project that is Categorically Excluded Subject to Section 58.5

Noise Abatement and Control Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Sole Source Aquifers Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Wetlands Protection Executive Order 11990, particularly sections 2 and 5	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Wild and Scenic Rivers Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)	Yes No <input type="checkbox"/> <input type="checkbox"/>	
ENVIRONMENTAL JUSTICE		
Environmental Justice Executive Order 12898	Yes No <input type="checkbox"/> <input type="checkbox"/>	

Field Inspection (Date and completed by):

Summary of Findings and Conclusions:

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff

Attachment 6.1 – Sample Format for Activity/Project that is Categorically Excluded Subject to Section 58.5

responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure

Determination:

- This categorically excluded activity/project converts to Exempt, per 58.34(a)(12) because there are no circumstances which require compliance with any of the federal laws and authorities cited at §58.5. **Funds may be committed and drawn down after certification of this part** for this (now) EXEMPT project; OR
- This categorically excluded activity/project cannot convert to Exempt because there are circumstances which require compliance with one or more federal laws and authorities cited at §58.5. Complete consultation/mitigation protocol requirements, **publish NOI/RROF and obtain “Authority to Use Grant Funds”** (HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds; OR
- This project is now subject to a full Environmental Assessment according to Part 58 Subpart E due to extraordinary circumstances (Section 58.35(c)).

Preparer Signature: _____ Date: _____

Attachment 6.1 – Sample Format for Activity/Project that is Categorically Excluded Subject to Section 58.5

Name/Title/Organization: _____

Responsible Entity Agency Official Signature:

_____ Date: _____

Name/Title: _____

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

**Attachment 6.2. Environmental Review for Activity/Project
that is Categorical Excluded Subject to Section 58.5
[Converts to Exempt]**

**Environmental Review for Activity/Project that is
Categorical Excluded Subject to Section 58.5**

Pursuant to 24 CFR 58.35(a)

Project Information

Project Name: Cedar Ridge Single Family Units

Responsible Entity: Narragosa Tribe

Grant Recipient (if different than Responsible Entity): Kinnikinnick Regional Housing Authority

State/Local Identifier: 2016-10C of IHP (Affordable Housing Program)

Preparer: Allan Shephard, Planner, Tribal Planning Department

Certifying Officer Name and Title: Elaine Nighthawk, Tribal Chairwoman, Narragosa Tribe

Consultant (if applicable):

Direct Comments to: Mary Chin, Housing Specialist, Kinnikinnick Regional Housing Authority, 55 Main St., Cordova, MN 49802

Attachment 6.2. Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Converts to Exempt]

Project Location: 3122 Visalia Ct., 5555 Valley View Dr., 1466 Adobe St., and 1975 Fiske St., Cordova, Doubletree County, MN

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

Cedar Ridge Single Family Units

IHBG funds will be used to acquire 4 vacant lots within the Cedar Ridge residential neighborhood to construct a single family unit on each lot. Each unit will be 1900 sq. ft., with 3 bedrooms and 2 baths. The lots are located at 3122 Visalia Ct., 5555 Valley View Dr., 1466 Adobe St., and 1975 Fiske St., in Cordova, MN. ICDBG funds will be used for connecting the units to existing City sewer, water, and storm drainage systems. The units will be sold to qualified first-time homebuyers. Total estimated cost of the project is \$2,350,000.

Level of Environmental Review Determination:

Categorically Excluded per 24 CFR 58.35(a), and subject to laws and authorities at §58.5: (a)(4)(i)

Funding Information

Grant Number	HUD Program	Funding Amount
55IH9999111	IHBG	\$2,000,000

Estimated Total HUD Funded Amount: \$2,000,000

Attachment 6.2. Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Converts to Exempt]

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]: \$2,350,000

COMPLIANCE WITH 24 CFR 50.4, 58.5, AND 58.6 LAWS AND AUTHORITIES

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no FAA-designated airports within 3,000 feet or DOD military airfields within 2-1/2 miles of the project sites. (See attached general location map of the city)
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no coastal barrier resource units in the state. See general location map of the city.

Attachment 6.2. Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Converts to Exempt]

<p>Flood Insurance</p> <p>Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]</p>	<p>Yes No <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The properties are not within a special flood hazard area. According to the Flood Insurance Rate Map, they are located within Zone C (see attached photocopy of Community Panel 155166-0880 C, September 16, 1988.) Therefore, this project is in compliance with flood insurance requirements.</p>
<p>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.5</p>		
<p>Clean Air</p> <p>Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93</p>	<p>Yes No <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The City of Cordova is in attainment with the National Ambient Air Quality Standards. (See attached letter from Matthew Brown, Senior Planner, City Planning Department, Cordova, MN, June 28, 2016)</p>
<p>Coastal Zone Management</p> <p>Coastal Zone Management Act, sections 307(c) & (d)</p>	<p>Yes No <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The City of Cordova is 200 miles from the Great Lakes and hundreds of miles from the Atlantic Ocean. (See attached general location map.)</p>
<p>Contamination and Toxic Substances</p> <p>24 CFR Part 50.3(i) & 58.5(i)(2)</p>	<p>Yes No <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project sites are not affected by hazardous facilities or substances. (See the attached Environmental Assessment for the Cedar Ridge subdivision, November 18, 2012.). The findings of the Environmental Assessment have been re-certified by the City Planning Department. (See attached letter from Matthew Brown, Senior Planner, City Planning Department, Cordova, MN, July 28, 2016)</p>
<p>Endangered Species</p> <p>Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402</p>	<p>Yes No <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>There are no endangered species in the county. (See attached listing from the U.S. Fish and Wildlife Service,, July 8, 2016)</p>
<p>Explosive and Flammable Hazards</p> <p>24 CFR Part 51 Subpart C</p>	<p>Yes No <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>There are no aboveground storage tanks more than 100 gallons in size within line-of-sight of the project. (See attached Field Notes: Mary Chin, Housing Specialist, Cordova, MN, July 8, 2016)</p>
<p>Farmlands Protection</p>	<p>Yes No</p>	<p>The project sites are zoned SF-1 (single</p>

Attachment 6.2. Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Converts to Exempt]

<p>Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>family residential). (See attached telephone notes: Andy Knapp, Enforcement Officer, City Building Permits and Zoning Dept., (617) 895-1500, June 2, 2016)</p>
<p>Floodplain Management Executive Order 11988, particularly section 2(a); 24 CFR Part 55</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	<p>The properties are not within a special flood hazard area. According to the Flood Insurance Rate Map, they are located within Zone C (see attached photocopy of Community Panel 155166-0880 C, September 16, 1988.)</p>
<p>Historic Preservation National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	<p>“No historic properties affected”, according to 36 CFR 800.4(d)(1). (See attached SHPO letter dated, July 22, 2016)</p>
<p>Noise Abatement and Control Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	<p>The project sites are more than 1,000 feet from a major roadway, 3,000 feet from a railroad, and 15 miles of military and civil airfields. (See attached general location map of the City.)</p>
<p>Sole Source Aquifers Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	<p>There a no sole source aquifers designated by U.S. Environmental Protection Agency within the City of Cordova. (See attached photocopy of U.S. EPA, Region V aquifers, July 18, 2016.</p>
<p>Wetlands Protection Executive Order 11990, particularly sections 2 and 5</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	<p>The project sites have not been classified as wetlands, nor are they within the vicinity of any designated wetland areas. (Judith Kramer, Field Biologist, Minnesota Dept. of Fish and Game, (617) 895-4342, July 13, 2016, See attached telephone record.)</p>
<p>Wild and Scenic Rivers Wild and Scenic Rivers Act of</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	<p>There are no designated wild, scenic, or recreation rivers within the City of Cordova. (See attached copy of the U.S. National</p>

Attachment 6.2. Environmental Review for Activity/Project that is Categorical Excluded Subject to Section 58.5 [Converts to Exempt]

1968, particularly section 7(b) and (c)	<input type="checkbox"/> <input checked="" type="checkbox"/>	Park Service, state-by-state list of designated rivers, July 11, 2016)
ENVIRONMENTAL JUSTICE		
Environmental Justice Executive Order 12898	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The project sites are compatible with the surrounding residential use, and the area is not adversely affected by environmental hazards. (See the attached Environmental Assessment for the Cedar Ridge subdivision, November 18, 2012.)

Field Inspection (Date and completed by): Mary Chin, Housing Specialist, July 8, 2016

Summary of Findings and Conclusions: This project is compliant with all federal laws and authorities at 24 CFR 58.5 and 58.6 and does not require any mitigation measures. This project will provide a benefit to the community by converting vacant lots to single family residential homes, thus providing housing to families in need and preventing blight from the vacant properties.

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure
	None required

Determination:

Attachment 6.2. Environmental Review for Activity/Project that is Categorical Excluded Subject to Section 58.5 [Converts to Exempt]

- This categorically excluded activity/project converts to Exempt, per 58.34(a)(12) because there are no circumstances which require compliance with any of the federal laws and authorities cited at §58.5. **Funds may be committed and drawn down after certification of this part** for this (now) EXEMPT project; OR
- This categorically excluded activity/project cannot convert to Exempt because there are circumstances which require compliance with one or more federal laws and authorities cited at §58.5. Complete consultation/mitigation protocol requirements, **publish NOI/RROF and obtain “Authority to Use Grant Funds”** (HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds; OR
- This project is now subject to a full Environmental Assessment according to Part 58 Subpart E due to extraordinary circumstances (Section 58.35(c)).

Preparer Signature: _____

Date: 7/27/2016

Name/Title/Organization: Allan Shepherd, Planner, Tribal Planning Dept.

Responsible Entity Agency Official Signature: _____

Date: 8/2/2016

Name/Title: Elaine Nighthawk, Tribal Chairwoman, Narragosa Tribe

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

Attachment 6.3 – Environmental Review for Activity/Project that is Categoricaly Excluded Subject to Section 58.5 [Does Not Convert to Exempt]

Environmental Review for Activity/Project that is Categoricaly Excluded Subject to Section 58.5
Pursuant to 24 CFR 58.35(a)

Project Information

Project Name: Cedar Ridge Single Family Units

Responsible Entity: Narragosa Tribe

Grant Recipient (if different than Responsible Entity): Kinnikinnick Regional Housing Authority

State/Local Identifier: 2016-005

Preparer: Allan Shephard, Planner, Tribal Planning Department_

Certifying Officer Name and Title: Elaine Nighthawk, Tribal Chairwoman, Narragosa Tribe

Consultant (if applicable):

Direct Comments to: Mary Chin, Housing Specialist, Kinnikinnick Regional Housing Authority, 55 Main St., Cordova, MN 49802

Project Location: 3122 Visalia Ct., 5555 Valley View Dr., 1466 Adobe St., and 1975 Fiske St., Cordova, Doubletree County, MN

Attachment 6.3 – Environmental Review for Activity/Project that is Categorical Excluded Subject to Section 58.5 [Does Not Convert to Exempt]

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

Cedar Ridge Single Family Units

IHBG funds will be used to acquire 4 vacant lots within the Cedar Ridge residential neighborhood to construct a single family unit on each lot. Each unit will be 1900 sq. ft., with 3 bedrooms and 2 baths. The lots are located at 3122 Visalia Ct., 5555 Valley View Dr., 1466 Adobe St., and 1975 Fiske St., in Cordova, MN. ICDBG funds will be used for connecting the units to existing City sewer, water, and storm drainage systems. The units will be sold to qualified first-time homebuyers. Total estimated cost of the project is \$2,350,000.

Level of Environmental Review Determination:

Categorically Excluded per 24 CFR 58.35(a), and subject to laws and authorities at §58.5: (a)(4)(i)

Funding Information

Grant Number	HUD Program	Funding Amount
55IH9999111	IHBG	\$2,000,000

Estimated Total HUD Funded Amount: \$2,000,000

Attachment 6.3 – Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Does Not Convert to Exempt]

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]: \$2,350,000

COMPLIANCE WITH 24 CFR 50.4, 58.5, AND 58.6 LAWS AND AUTHORITIES

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no FAA-designated airports within 3,000 feet or DOD military airfields within 2-1/2 miles of the project sites. (See attached general location map of the city)
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no coastal barrier resource units in the state. See general location map of the city.
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The properties are not within a special flood hazard area. According to the Flood Insurance Rate Map, they are located within Zone C (see attached photocopy of

Attachment 6.3 – Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Does Not Convert to Exempt]

Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]		Community Panel 155166-0880 C, September 16, 1988.) Therefore, this project is in compliance with flood insurance requirements.
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.5		
Clean Air Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The City of Cordova is in attainment with the National Ambient Air Quality Standards. (See attached letter from Matthew Brown, Senior Planner, City Planning Department, Cordova, MN, June 28, 2016)
Coastal Zone Management Coastal Zone Management Act, sections 307(c) & (d)	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The City of Cordova is 200 miles from the Great Lakes and hundreds of miles from the Atlantic Ocean. (See attached general location map.)
Contamination and Toxic Substances 24 CFR Part 50.3(i) & 58.5(i)(2)	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The project sites are not affected by hazardous facilities or substances. (See the attached Environmental Assessment for the Cedar Ridge subdivision, November 18, 2012.). The findings of the Environmental Assessment have been re-certified by the City Planning Department. (See attached letter from Matthew Brown, Senior Planner, City Planning Department, Cordova, MN, July 28, 2016)
Endangered Species Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	The endangered Indiana bat occurs in this county (see attached list from the U.S., and trees that are suitable habitat for the bats are present at the property on 3122 Visalia Ct. Fish and Wildlife service, July 8, 2016). Based on an informal consultation with U.S. FWS biologist Anne Stark on July 10, 2016 (see attached email), adverse impacts to the Indiana bat can be avoided if all construction activities occur between November and March.
Explosive and Flammable Hazards 24 CFR Part 51 Subpart C	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no aboveground storage tanks more than 100 gallons in size within line-of-sight of the project. (See attached Field Notes: Mary Chin, Housing Specialist, Kinnikinnick Regional Housing Authority,

Attachment 6.3 – Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Does Not Convert to Exempt]

		Cordova, MN, July 8, 2016)
<p>Farmlands Protection</p> <p>Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project sites are zoned SF-1 (single family residential). (See attached telephone notes: Andy Knapp, Enforcement Officer, City Building Permits and Zoning Dept., (617) 895-1500, June 2, 2016)</p>
<p>Floodplain Management</p> <p>Executive Order 11988, particularly section 2(a); 24 CFR Part 55</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The properties are not within a special flood hazard area. According to the Flood Insurance Rate Map, they are located within Zone C (see attached photocopy of Community Panel 155166-0880 C, September 16, 1988.)</p>
<p>Historic Preservation</p> <p>National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>“No historic properties affected”, according to 36 CFR 800.4(d)(1). (See attached SHPO letter dated, July 22, 2016)</p>
<p>Noise Abatement and Control</p> <p>Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project sites are more than 1,000 feet from a major roadway, 3,000 feet from a railroad, and 15 miles of military and civil airfields. (See attached general location map of the City.)</p>
<p>Sole Source Aquifers</p> <p>Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>There a no sole source aquifers designated by U.S. Environmental Protection Agency within the City of Cordova. (See attached photocopy of U.S. EPA, Region V aquifers, July 18, 2016.</p>
<p>Wetlands Protection</p> <p>Executive Order 11990, particularly sections 2 and 5</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project sites have not been classified as wetlands, nor are they within the vicinity of any designated wetland areas. (Judith Kramer, Field Biologist, Minnesota Dept. of Fish and Game, (617) 895-4342, July 13, 2016, See attached telephone record.)</p>

Attachment 6.3 – Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Does Not Convert to Exempt]

Wild and Scenic Rivers Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no designated wild, scenic, or recreation rivers within the City of Cordova. (See attached copy of the U.S. National Park Service, state-by-state list of designated rivers, July 11, 2016)
ENVIRONMENTAL JUSTICE		
Environmental Justice Executive Order 12898	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The project sites are compatible with the surrounding residential use, and the area is not adversely affected by environmental hazards. (See the attached Environmental Assessment for the Cedar Ridge subdivision, November 18, 2012.)

Field Inspection (Date and completed by): Field Notes: Mary Chin, Housing Specialist, Kinnikinnick Regional Housing Authority, Cordova, MN, July 8, 2016)

Summary of Findings and Conclusions: Upon completion of this project review it was determined that only compliance with the Endangered Species Act was invoked and requires mitigation to prevent any potential adverse effects on the Federal endangered Indiana bat. The project is compliant with all the other federal laws and authorities at 24 CFR 58.5 and 58.6.

Implementation of this project will provide a benefit to the community by converting vacant lots to single family residential homes, thus providing housing to families in need and preventing blight from the vacant properties.

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Attachment 6.3 – Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Does Not Convert to Exempt]

Law, Authority, or Factor	Mitigation Measure
Endangered Species Act	Construction activity on 3122 Visalia Ct will occur only between the months of November and March to avoid adverse impacts to the Indiana bat.

Determination:

- This categorically excluded activity/project converts to Exempt, per 58.34(a)(12) because there are no circumstances which require compliance with any of the federal laws and authorities cited at §58.5. **Funds may be committed and drawn down after certification of this part** for this (now) EXEMPT project; OR
- This categorically excluded activity/project cannot convert to Exempt because there are circumstances which require compliance with one or more federal laws and authorities cited at §58.5. Complete consultation/mitigation protocol requirements, **publish NOI/RROF and obtain “Authority to Use Grant Funds”** (HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds; OR
- This project is now subject to a full Environmental Assessment according to Part 58 Subpart E due to extraordinary circumstances (Section 58.35(c)).

Preparer Signature:

Date: 7/27/2016

Attachment 6.3 – Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Does Not Convert to Exempt]

Name/Title/Organization: Allan Shephard, Environmental Planner, Tribal Planning Department

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Responsible Entity Agency Official Signature:

_____ Date: 8/2/2016

Name/Title: Elaine Nighthawk, Tribal Chairwoman, Narragosa Tribe

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

Attachment 6.4 – Notice of Intent to Request Release of Funds

(DATE OF NOTICE)

(NAME OF RESPONSIBLE ENTITY [RE])

(ADDRESS)

(CITY, STATE, ZIP CODE)

(TELEPHONE NUMBER OF RE PREPARER AGENCY)

On or about (AT LEAST ONE DAY AFTER THE END OF THE COMMENT PERIOD) the (NAME OF RE) will [IF THE RE IS NOT ALSO THE GRANTEE INSERT THE FOLLOWING LANGUAGE HERE--"AUTHORIZE THE (NAME OF GRANTEE) TO"] submit a request to the (HUD/STATE ADMINISTERING AGENCY) for the release of (NAME OF GRANT PROGRAM) funds under [Title/Section ()] of the (NAME OF THE ACT) of (DATE OF ACT), as amended, to undertake a project known as (PROJECT TITLE), for the purpose of (NATURE/SCOPE OF PROJECT, AND PROJECT ADDRESS/LOCATION IF APPLICABLE, TOTAL ESTIMATED PROJECT COST).

The activities proposed [ALTERNATIVE #1: ARE CATEGORICALLY EXCLUDED UNDER HUD REGULATIONS AT 24 CFR PART 58 FROM NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS--ALTERNATIVE #2: COMPRISE A PROJECT FOR WHICH A FINDING OF NO SIGNIFICANT IMPACT ON THE ENVIRONMENT WAS (PUBLISHED/POSTED) ON (DATE OF FINDING PUBLICATION/POSTING)]. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at (NAME AND ADDRESS OF RE OFFICE WHERE ERR CAN BE EXAMINED AND NAME AND ADDRESS OF OTHER LOCATIONS WHERE THE RECORD IS AVAILABLE FOR REVIEW) and may be examined or copied weekdays () A.M. to () P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the (RE DESIGNATED OFFICE RESPONSIBLE FOR RECEIVING AND RESPONDING TO COMMENTS). All comments received by (IF NOTICE IS PUBLISHED: NOTICE DATE PLUS SEVEN DAYS--IF NOTICE IS POSTED: POSTING DATE PLUS TEN DAYS) will be considered by the (NAME OF RE) prior to authorizing submission of a request for release of funds.

RELEASE OF FUNDS

The (NAME OF RE) certifies to (HUD/STATE) that (NAME OF CERTIFYING OFFICER) in (HIS/HER) capacity as (OFFICIAL TITLE) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. (HUD'S/STATE'S) approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the (NAME OF GRANTEE) to use Program funds.

Attachment 6.4 – Notice of Intent to Request Release of Funds

OBJECTIONS TO RELEASE OF FUNDS

(HUD/STATE) will consider objections to its release of funds and the (RE'S NAME) certification received by (FIFTEEN DAYS FROM THE TIME OF RECEIPT FROM HUD/STATE) or for a period of fifteen days following its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the (NAME OF RE); (b) the (RE) has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by (HUD/STATE); or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to (HUD/STATE GRANT ADMINISTRATION OFFICE) at (ADDRESS OF THAT OFFICE). Potential objectors should contact (HUD/STATE) to verify the actual last day of the objection period.

(NAME AND TITLE OF RE CERTIFYING OFFICER/DATE)

Attachment 6.5. Sample Notice of Intent to Request a Release of Funds

August 8, 2016

Narragosa Tribe

29533 Woodland Drive

Apton, AZ 85443

(612) 455-1900

On or about August 16, 2016, the Narragosa Tribe will submit a request to the U. S. Department of Housing and Urban Development for the release of Indian Housing Block Grant Funds under Title I of the Native American Housing Assistance and Self-Determination Act of 1996, as amended, to undertake a project known as Ironwood Townhomes, for the purpose of acquiring and rehabilitating 14 townhomes for resale to first time homebuyers. The units are located at 9450 through 9455 W. Sherman Ave., 3122 through 3125 Cedar Way, and 1416 through 1419 Trapp Ave., Apton, AZ. Total estimated cost of the project is \$1,500,000.

The activities proposed are categorically excluded under HUD regulations at 24 CFR 58 from National Environmental Policy Act requirements. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at the Tribal Planning Department, 29533 Woodland Drive, Apton, AZ, and may be examined or copied weekdays 8 A.M. to 5 P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the Tribal Planning Department. All comments received by August 15, 2016 will be considered by the Tribe prior to authorizing submission of a request for release of funds.

RELEASE OF FUNDS

The Narragosa Tribe certifies to HUD that Elaine Nighthawk in her capacity as Tribal Chairwoman consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the Tribe to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

Attachment 6.5. Sample Notice of Intent to Request a Release of Funds

HUD will consider objections to its release of funds and the Tribe's certification received by August 30, 2016 or for a period of fifteen days following its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the Tribe; (b) the Tribe has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by HUD; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to Carolyn J. O'Neil, Administrator, HUD Southwest of Native American Programs, Phelps Dodge Tower, One N. Central Avenue, Suite 600, Phoenix, AZ, 85004. Potential objectors should contact HUD to verify the actual last day of the objection period.

Elaine Nighthawk, Tribal Chairwoman
City of Apton, AZ

(NOTE: If the notice is posted/mailed, the minimum comment period is 10 days following the posting and mailing date)

CHAPTER 7 – PREPARING AN ENVIRONMENTAL ASSESSMENT

This chapter covers activities that rise above the level of environmental scrutiny required for exempt and categorically excluded activities. These activities require an Environmental Assessment, according to NEPA, to determine their impact on the environment and the impact of the surrounding environment on the activity. After completing this chapter, you will:

- Understand which activities trigger the requirement for an Environmental Assessment under § 58.36;
- Understand how to complete the prescribed Environmental Assessment format and document your determination in the environmental review record (ERR); and
- Understand how to fulfill the public notification and release of funds requirements.

CONDUCTING AN ENVIRONMENTAL ASSESSMENT

Environmental Assessment refers to a category of actions which, either individually or cumulatively, have potential for significant effect on the environment (40 CFR 1508.4). Therefore, the potential environmental impacts on the human environment resulting from the proposed activity must be analyzed and evaluated according to NEPA procedures, as well as the other federal laws and authorities.

TYPES OF ACTIVITIES (§ 58.36)

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, then an Environmental Assessment must be prepared in accordance with NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508 (§ 58.36). Actions that may be funded by NAHASDA, ICDBG, or Section 184 and that fall into the category requiring an Environmental Assessment (EA) would include, but are not limited to:

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Chapter 7 – Preparing an Environmental Assessment

- New construction of five or more residential units on a single site;
- New construction of five or more single family units on scattered sites that are less than 2,000 feet apart;
- Major rehabilitation or reconstruction of residential units that either increases or decreases the unit density more than 20 percent;
- Expanding the footprint of a single family unit into the floodplain or wetland area;
- Conversion of a non-residential structure to create a residential use;
- Acquisition of land for development of a housing subdivision; and
- Categorical exclusions with “extraordinary circumstances”—i.e. , actions that are unique or without precedent, actions that are substantially similar to those that normally require an Environmental Impact Statement (EIS), actions that are likely to alter existing HUD policy or HUD mandates, or action that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

COMPLIANCE DOCUMENTATION

In the previous chapter, environmental compliance focused on those issues and resources of national importance beyond that of just regional or local concerns (i.e., federal laws and authorities listed in § 58.5). However, in this chapter regional and locally important issues are also incorporated into the environmental review by identifying, analyzing and evaluating the effects a proposed project may have, either positively or negatively, on such things as the character of the area (e.g., land use patterns and compatibility, employment, demographics, etc.), features (e.g., availability and capacity of services, transportation, etc.) and resources (e.g., wildlife, vegetation, parks, water, etc.).

There must be a written determination of the RE’s finding that the activity or program falls within this level of review. The EA addresses the same federal laws and authorities as activities that are subject to § 58.5 (see section in this chapter on “Completing the EA Format 58.5

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Chapter 7 – Preparing an Environmental Assessment

Checklist—Compliance with Federal Laws and Authorities”), and also includes the following analyses:

- Determination of existing conditions;
- Identification, analysis, and evaluation of all potential environmental impacts (social, economic and natural resources);
- Examination and recommendation of feasible ways to eliminate or minimize adverse environmental impacts;
- Examination of alternatives to the proposed action;
- Compliance determination for §58.6 (“Other Requirements”); and
- Determination as to a finding of no significant impact (FONSI) or a finding of significant impact (FSI), which requires the execution of an Environmental Impact Statement (EIS).

The RE must follow the HUD-recommended format for the Environmental Assessment, or an equivalent format. Attachment 7.1 is the HUD recommended EA Format. Following the EA Format is detailed guidance on how to complete and document each portion of the EA. Following that text is Attachment 7.2, which is a sample completed EA Format.

COMPLETING THE EA FORMAT – PROJECT AND RESPONSIBLE ENTITY INFORMATION

Project and Responsible Entity Data

The environmental assessment (EA) is a public record that, upon completion, documents the RE’s findings and conclusions about environmental effects, and the reasons for its decision concerning those effects and its compliance with federal laws and authorities. This record will also be made available for public review and comment. Therefore, the RE needs to provide information concerning the project proposal, including basic information such as:

- Contact information for the RE;

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Chapter 7 – Preparing an Environmental Assessment

- Name of the “responsible federal official” (i.e., RE’s certifying officer);
- Where the project is located;
- Total estimated project cost (including both HUD funds and non-HUD funds) as an indication of the mass and scale of the proposal;
- The entity that is proposing the project with HUD funds (i.e., recipient); and
- Who the RE has assigned as the contact person for the project and how they may be reached.

Conditions for Approval and Record of Decision

Based upon the environmental findings of the EA, the RE must decide whether the project has potential for significant impact on the environment. If the decision is “yes”, the RE makes a finding of significant impact (FSI) and must either begin preparation of an environmental impact statement (EIS) or decide not to proceed with the project. If the decision is “no”, the RE makes a finding of no significant impact (FONSI), and proceeds to the public notification process.

While it is not a requirement that the certifying officer sign as RE approving official (indicated on the form), the RE may want to consider having the certifying officer sign since they are the “responsible federal official.” At the very least, it should be the head of a department or another decision making official for the RE that signs as RE approving official.

As a result of the EA being completed, the RE may determine that it is necessary to incorporate conditions for approval (mitigation, monitoring, and enforcement actions) into the project. This may include selecting alternative construction materials to retain the architectural features of a historic building, or to provide attenuation for high levels of noise or perhaps using materials that will provide additional earthquake or fire protection. It could include the removal of hazardous materials, or importing soils more structurally suited for buildings than that of the native soils. Whatever these measures may be, they are the reason the RE decides whether to approve the project or not. By deciding to approve the project, the RE is adopting these conditions and is responsible for ensuring they are implemented as part of the project.

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Chapter 7 – Preparing an Environmental Assessment

Project Proposal and Purpose

The Council on Environmental Quality's (CEQ) regulations require that the EA include a brief discussion of the purpose and need for the proposal [NEPA at 40 CFR §1508.9(b)]. For NAHASDA, ICDBG, or Section 184 activities, this information is more than likely contained in the RE's Indian Housing Plan. In addition, some projects may have specific plans or other documents such as market studies that could be used to complete this portion of the EA.

In addition, the EA should provide a concise but thorough description of all the related activities. A thorough project description is important so that anyone reviewing the EA document can clearly understand the scope of the proposal. It also ensures the RE does not inadvertently omit addressing all related environmental impacts. A project description would include, for instance, identifying the number of units to be constructed, as well as any road access, sewer and water lines, or storm systems that need to be installed to support those units. General location maps and plat maps (showing the features of the project site and layout of the units on the property) are also useful.

There should also be a summary of existing environmental conditions of the project site and the surrounding area, and identification of land use trends. This summary will set the context for the analysis of potential environmental changes. Of particular interest could be the following: future increases or changes in land development; expansion of road systems or airport and railroad operations; air quality issues; availability of community facilities and services; existing visual quality (e.g., compatibility of building styles, scale, colors, and set-back, streets and streetscapes, etc.); existing historic values; and future changes in natural features.

COMPLETING THE EA FORMAT § 58.5 CHECKLIST –

COMPLIANCE WITH OTHER REQUIREMENTS AT § 58.6

In addition to making a written determination of categorical exclusion, subject to § 58.5, the RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act, the Coastal Barriers Resources Act, and HUD's requirement for disclosure of properties located in airport runway clear zones.

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Chapter 7 – Preparing an Environmental Assessment

- The Flood Disaster Protection Act** applies whenever the activity or project proposes to acquire, rehabilitate, convert or construct a building located within a special flood hazard area (i.e., 100-year floodplain) designated by the Federal Emergency Management Agency (FEMA). It also applies to the use of federal funds for the purchase of equipment for buildings located within a FEMA-designated floodplain.
- The Coastal Barrier Resources Act** applies whenever the activity or project is located in a community listed in the Coastal Barrier Resources System. The use of federal funding is prohibited for activities or projects within a coastal barrier area designated by the U.S. Congress.

COMPLIANCE WITH FEDERAL LAWS AND AUTHORITIES

The first checklist in the EA Format addresses compliance with the federal laws and authorities listed at §58.5. Compliance with these laws and authorities is an integral part of the RE's review and analysis of environmental impacts related to the project and must be documented in the EA. The following section of this chapter provides guidance to assist REs with determining compliance with each environmental statute and authority listed in § 58.5. REs must record their determination, provide appropriate source documentation (refer to Exhibit 3.3 in Chapter 3) and note conditions, attenuation or mitigation measures required in the 58.5 portion of the EA, which will be part of the ERR.

HISTORIC PRESERVATION (36 CFR PART 800)

Section 106 of the National Historic Preservation Act requires federal agencies to:

- Consider the effects of their undertakings on historic properties; and
- Provide the Advisory Council on Historic Preservation with a reasonable opportunity to comment with regard to such undertakings.

Compliance with Section 106 is achieved by initiating procedures the Advisory Council on Historic Preservation has outlined at 36 CFR Part 800. Section 800.2(a) recognizes the RE's certifying officer as having authority to carry out these procedural responsibilities.

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The focus of Part 800 is on the RE making a determination whether a proposed project will affect buildings, structures, or places that are listed on or are eligible for listing on the National Register of Historic Places (NR). In making this determination, the RE must follow a detailed review process in consultation with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO). This process also provides an opportunity for interested persons and agencies to be part of the RE's decision concerning historic properties that may be affected. The current listing of SHPOs/THPOs may be found in at the Advisory Council's Website (www.achp.gov).

It is important to remember that before approval is given to proceed with NAHASDA, ICDBG, or Section 184 projects, the environmental review record must show the Part 800 consultation process was completed. (See Appendix E for a flowchart of The Basic Steps of the Section 106 Review.)

Basic Steps for Compliance with the Section 106 Review Process (36 CFR Part 800)

1. *Determine whether the project is an undertaking, or has no potential to cause effects on historic properties.*

The definition of an “undertaking” is comprehensive in scope. It is “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval. [§ 800.16(y)].”

There will be few situations when the RE may determine a project is not an undertaking or has no potential to cause effects. The RE must look at the nature of the undertaking when judging whether it has the potential to affect historic properties. Activities that can be considered undertakings include those that:

- Cause physical change (e.g., demolition, construction, reconstruction, rehabilitation, relocating a structure, excavation, dredging and filling, façade improvements, graffiti removal, etc.); and/or
- Have potential to cause changes in the character or use of historic properties is also an undertaking (e.g., property disposition, leasing, installation of equipment, converting a building to an alternate use, etc.).

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There may be situations where the RE makes a determination that the project is not an undertaking or has no potential to cause effects. One example of “no potential to cause effects” may be the sensitive, non-abrasive preparation of exterior surfaces on a building that is being repainted, whether or not the building may be a historic property. The RE must document these findings in the ERR before determining that no further compliance is required.

If the project is determined to be an undertaking having the potential to affect historic properties, the RE must continue the consultation process or refer to a Programmatic Agreement if one has been executed with the SHPO/THPO. Consultation with the SHPO/THPO must be documented in writing. The SHPO/THPO has 30 days from the date it receives written correspondence to provide its comments. Section 800.3(g) allows the RE to address multiple steps in its correspondence with the SHPO/THPO to expedite consultation if the SHPO/THPO agrees. However, the public must have an adequate opportunity to express their views on the effects to historic properties.

2. Define the area of potential effect for the undertaking.

This is the first step in the consultation process and comes before any consideration is given to project effects. The area of potential effects (APE) is a geographic area identified by the RE (using photographs, maps or drawings) in consultation with SHPO/THPO. The size of the APE is typically influenced by the mass, scale, and nature of the proposed project. REs should consider whether the project could cause a direct or indirect change in the character or use of historic properties that may be present in the area. For example, a four-story apartment building has potential to effect adjacent single family houses because it is significantly larger in size and is also likely to cast shadows on adjacent units. In addition, should modern building materials be used (such as concrete), they may be visually incompatible with adjacent homes.

Examples of approaches to defining an APE:

- Housing rehabilitation, where the property boundary is also the APE boundary.
- New construction, where the building height will be the same as immediately adjacent buildings. The APE includes the project site plus immediately adjacent buildings.
- New construction, where the building height will be greater than the immediately adjacent buildings. The APE includes the project site plus two or more rows of buildings/structures beyond the project site, depending upon the visual impact.

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- New construction, with no adjacent buildings/structures present. The APE includes the project site plus immediately adjacent vacant land.

3. *Identify and evaluate historic properties in the APE.*

The following are suggested methods for acquiring pertinent information about APE structures located in proposed project zone.

- Review existing information by searching the National Register of Historic Places (NR) for listed buildings, structures and places. The NR is a list of districts, sites, buildings, structures, and objects that, in a formal review process by the Keeper of the National Register, were determined significant in American history, architecture, archeology, engineering, and culture. The NR is maintained by the Keeper of the National Register, U.S.D.I. National Park Service.
- Consult with local historic commissions or boards, or certified local governments, if available, and search any state or local inventory lists for properties determined eligible for NR listing.
- Consult with tribal governments whose lands may have once included the project location. Refer to HUD guidance, “Process for Tribal Consultation in Projects That Are Reviewed under 24 CFR Part 58” (Notice CPD-12-006, June 15, 2012).
- Survey the APE by taking photographs of buildings or structures that are 50 years of age or older. Note any distinctive architectural features, as well as modifications to buildings and structures.
- Seek Information – Contact local governments or organizations likely to have knowledge about historic properties or concerns about historic properties in the local area regarding buildings and structures in the APE. Next, determine the date of construction. If 50 years of age or older, determine:
 - The time of its architectural design.
 - Whether it is associated with a person or event significant to history.

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- Whether the building or structure is in its original location and/or whether any of its original design features have been altered.
- ☐ Determine whether archeological sites (on vacant land) are present within the APE.
- Document past land uses that may have significantly altered the land (e.g., aerial photographs showing past land use, building permits issued, evidence of fill dirt or excavation).
 - Request a search of existing databases maintained by SHPO/THPO. If the site is known to contain archeological artifacts, consult with the SHPO/THPO about their significance and how to proceed. If there's a high probability that artifacts are present, conduct a reconnaissance survey.
 - Use a professional archeologist (who meets the National Park Service's Professional Qualification Standards) to perform a reconnaissance survey of the APE. If the survey report identifies that artifacts are present, consult with the SHPO/THPO concerning performing an intensive survey to classify the number, type, location, and distribution of historic resources, and record the artifacts found. [NOTE: REs are required to make a "reasonable and good faith effort" to identify tribes that might attach religious and cultural significance to historic properties within the APE, and invite them to be consulting parties. [§ 800.3(f)(2)]]
- ☐ Evaluate the Significance of Properties That May Be Eligible for Listing on the National Register of Historic Places (NR). A building, structure, or place is determined eligible for NR listing when the RE, in consultation with the SHPO/THPO, finds it meets the criteria for listing. These criteria are:
- Events significant in the broad patterns of our history. Persons significant in our past.
 - Distinctive characteristics of type, period, method of construction, or the work of a master, or possessing high artistic values.
 - Yielding information important to history or prehistory.

In order for a property to be determined eligible on the basis of one or more of these criteria, it must possess integrity of location, design, setting, materials, workmanship, feeling and

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association. The integrity of a property may be adversely affected by alterations, modifications, and relocation of buildings or structures from the original site. Properties that are determined eligible will not be listed on the NR unless they are nominated for listing by the RE (or individuals), and have undergone a formal review process by the Keeper of the National Register. The RE should request the views of the SHPO/THPO concerning any further information gathering that may be necessary.

4. Determine the Effect of the Undertaking.

The RE must make a determination, in consultation with the SHPO/THPO, that:

- No historic properties will be affected, which generally means there are no eligible or NR listed properties within the APE, but can also mean that historic properties are present but the undertaking will have no effect; OR
- Historic properties will be affected by the undertaking.

5. Assess the Effects on Listed and/or Eligible Properties.

When historic properties are affected by the undertaking the RE, in consultation with the SHPO/THPO, determines whether there will be an adverse effect on historic properties. The RE must also consider the views of consulting parties and the public. The Advisory Council may also be involved in the decision. Consult 36 CFR 800.5 and 800.6, and the Section 106 flowchart (Appendix E) concerning the appropriate procedures.

Making a Finding on Historic Preservation

DIRECTIONS - Once the review process for Historic Preservation has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- Letter from the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) concurring with the RE's determination that no historic properties will be affected.
- The SHPO/THPO does not object within 30 days of receipt of an adequately documented finding by the RE's of "no historic affected." [see §§ 800.4(d)(1)(i) and 800.11(d)]

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- An executed Programmatic Agreement between the RE and the SHPO/THPO that verifies one or more of the non-consultation stipulations in that agreement have been met.
- An executed Memorandum of Agreement between the RE and the SHPO/THPO regarding mitigation measures that will be implemented to protect historic properties.

All documents related to this compliance determination must be included in the ERR for the project.

Historic Preservation Assessment Questions

- Does the project involve physical changes or could it cause changes in the character or use of historic properties in the area (e.g., demolition, construction, rehabilitation, excavation, filling, property disposition, relocation of structures, etc.)?
- Does the project area and environs contain any properties listed on or eligible for the National Register of Historic Places? Is there an inventory of historic properties (e.g., buildings, structures, archeology sites) that is maintained by the state?
- Is there a local historic commission that can provide historic information? What information is available from the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and has a survey of local historic properties been conducted?
- Are other properties present within the project boundaries or in the vicinity of the project that appear to be historic? If so, consult with the SHPO/THPO as to their eligibility for listing on the National Register (NR)?
- Has the Advisory Council on Historic Preservation been given an opportunity to comment on any adverse effects the project will have on properties listed on NR or eligible for listing?

Is SHPO/THPO consultation completed? If a Memorandum of Agreement (MOA) or Programmatic Agreement (PA) is required, has the SHPO/THPO signed the agreement? Has the project participant signed the MOA? Has the agreement been filed with the ACHP?

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Sources and References

- 36 CFR Part 60 CFR, National Register of Historic Places, U.S.D.I. National Park Service.
- How to Apply National Register Criteria for Evaluation, National Register Bulletin #15, U.S.D.I. National Park Service.
- Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines, U.S.D.I. National Park Service.
- Historical Archeological Sites and Districts, National Register Bulletin #36, U.S.D.I. National Park Service.
- Recommended Approach for Consultation Recovery of Significant Information from Archeological Sites, Advisory Council on Historic Preservation.
- Consulting with Indian REs in the Section 106 Review Process, Advisory Council on Historic Preservation.
- Final Advisory Council on Historic Preservation Policy Statement on Affordable Housing and Historic Preservation, Federal Register, Vol. 72, No. 31, pages 7387 – 7389.

FLOODPLAIN MANAGEMENT (EXECUTIVE ORDER 11988, MAY 24, 1977; 24 CFR PART 55)

The purpose of Executive Order 11988 is to require federal agencies and REs to consider alternatives to developing projects in floodplains when other alternatives are available that achieve the same objective.

This requirement is to avoid risking lives and loss of property that results from occupying a floodplain, and to avoid losing the beneficial values of floodplains. Naturally vegetated floodplains can provide a broad area to spread and slow floodwaters, thereby reducing velocities and flood peaks. Slower floodwaters also helps maintain water quality and to recharge

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groundwater because the slowed runoff allows sediments to be deposited, and water infiltrates through the generally porous soil of the floodplain into the groundwater.

Federal agencies are required to avoid floodplain development whenever there are practicable alternatives to development in the floodplain. According to HUD regulation 24 CFR Part 55, floodplains are those land areas identified on maps published by FEMA as 100-year floodplain (Zones A or V)--i.e., a one percent (1%) chance of a flood event occurring in any given year. If the project is a “critical action,” the regulation also applies to areas in the 500-year floodplain (Zone B)--i.e., a 0.2% chance of a flood event occurring in any given year. Coastal high hazard areas are subject to high velocity waters, such as hurricane wave wash. FEMA maps designate these as Zones V1-30, VE, or V.

NOTE: Federal assistance may not be used in a *floodway*, except for functionally dependent uses (e.g., marinas, bridge piers or pilings). The floodway is defined as “the channel of a river or other watercourse that must remain open to permit passage of the base flood without cumulatively increasing the water elevation more than a designated height (usually one foot). (Refer to National Flood Insurance Program regulations and U.S. Water Resources Council guidelines, 43 FR 6030, February 10, 1978)

Most, if not all, communities in the U.S. have been mapped by FEMA. However, if a community has not been mapped by FEMA, the RE must establish whether or not the area is subject to one percent or greater chance of flooding in any given year [Section 6(c) of the Executive Order]. The RE must research the best available information to determine whether buildings or structures could be damaged by floodwaters because of their location. Sources of information may include: U.S. Corps of Engineers, Community Flood Administrators; U.S. Geological Survey Maps; U.S.D.A. Natural Resources Conservation Service (formerly Soil Conservation Service); state departments of water resources; county public works; or local flood control or levee districts. The RE may also contract to have a special study completed.

Basic Steps for Compliance with Floodplain Management Requirements

Section 55.20 identifies the “eight-step” decision making process REs must follow to comply with Executive Order 11988:

- Step 1 – Determine whether the proposed action is located in a 100-year floodplain.

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- Step 2 – If the project is in a floodplain, publish notice of the proposal to consider an action in the floodplain (15 calendar day comment period).
- Step 3 – Evaluate practicable alternatives to locating the proposed action in a floodplain (practicable means capable of being done within existing constraints).
- Step 4 – Identify the potential impacts associated with occupancy and modification of the floodplain.
- Step 5 – Design or modify the action to minimize adverse impacts and preserve the beneficial values of the floodplain.
- Step 6 – Reevaluate whether the proposed action is practicable.
- Step 7 – If the RE decides to proceed with the project, it must publish a notice of the decision, addressing why there is “no practicable alternative,” the alternatives that were considered, and the mitigation measures being adopted. (Seven calendar day comment period.)
- Step 8 – Implement the proposed action with mitigation measures.

HUD has determined that certain activities are excluded from the 8-step decision-making process, including HUD assistance for purchasing, mortgaging or refinancing one-to four-family properties, and minor repairs or improvements on one-to four-family properties [§ 55.12]. Steps 2, 3, and 7 do not apply to certain activities listed at § 55.12a. In addition, Part 55 is not applicable if FEMA has issued a Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) for the subject site in a floodplain.

NOTE: Buildings and structures located within any floodplains mapped by FEMA must have flood insurance coverage in accordance with the National Flood Insurance Program requirements. If communities are mapped by FEMA, the NAHASDA, ICDBG, or SECTION 184 funds may only be used for projects in a floodplain if the community is a participant of the National Flood Insurance Program (NFIP) AND the assisted unit(s) obtains and maintains flood insurance.

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Making a Finding on Floodplain Management

DIRECTIONS - Once the review process for Floodplain Management has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- FEMA Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) that verifies the proposed activity is not within the 100 year floodplain (or 500 year floodplain for critical actions);
- The 8-step decision making process is not applicable, according to sec. 55.12; or
- There is no practicable alternative, according to the completed 8-step decision making process.

All documents related to this compliance determination must be included in the ERR for the project.

Floodplain Management Assessment Questions

- Does the project involve acquisition, construction, improvement, disposition, or financial assistance?
- Is the project located in the 100-year floodplain (Zones A or V) mapped by the Federal Emergency Management Agency (FEMA)? Is the project a “critical action” located in the 500 year floodplain (Zone B) mapped by FEMA?
- Is the project located in a coastal high hazard area mapped by FEMA?
- Is the project affected by local flooding?
- Will the project involve substantial increase in impervious surface area? If so, does the project design include measures to control water runoff?

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Sources and References

- Map Service Center, Federal Emergency Management Agency (FEMA).
- National Flood Insurance Program Community Status List, FEMA (States' listings of the cities and counties that have been mapped by FEMA and that are participants of the NFIP).
- Floodplain Management Guidelines for Implementing E.O. 11988, U.S. Water Resources Council, February 10, 1978, Federal Register (43 FR 6030).
- Further Advice on Executive Order 11988 Floodplain Management, Interagency Task Force on Floodplain Management, Federal Emergency Management Agency.

WETLANDS PROTECTION (EXECUTIVE ORDER 11990, MAY 24, 1977; 24 CFR PART 55)

The purpose of the Executive Order 11990 (Wetlands Protection, May 24, 1977) is to:

- Avoid, if possible, any long and short-term adverse impacts associated with destruction or modification of wetlands; and
- To avoid direct or indirect support of new construction in wetlands whenever there is a practicable alternative.

Basic Steps for Compliance with Wetlands Protection Requirements

If new construction or conversion of vacant land is being proposed, the RE must determine whether or not designated wetlands will be impacted as a result and document its findings. New construction for purposes of Executive Order 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities.

Executive Order 11990 describes wetlands as those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps,

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marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. Further information on wetland identification can be found in the Fish and Wildlife Service's (FWS) *Classification of Wetlands and Deep Water Habitats of the United States* (Cowardin, et al., 1977).

Wetlands maps are maintained by U.S. Fish & Wildlife Service (FWS), U.S. Natural Resource Conservation Service, and the U.S. Army Corps of Engineers. The FWS maintains the National Wetland Inventory, with maps available online using its Wetlands Mapper Tool. These maps do not contain all wetlands. Because of this FWS staff should be contacted if a project includes filling or adversely impacting potential wetlands. The Wetlands Mapper Tool and FWS Regional Wetlands Coordinators may be located by referring to the U.S. Fish and Wildlife Service web page (See "Environmental Internet and Government Agency Reference Guide" in Appendix D.3). Tribal or state natural resources agencies may have also identified wetland areas for preservation.

If wetlands will be affected, the RE should follow the decision making process in § 55.20 (24 CFR Part 55) and conclude whether there is a practicable alternative to destroying or modifying the wetland.

In situations where the only activity being proposed in a wetland includes directional boring or drilling for installation of utility lines or other infrastructure, HUD has issued a policy stating that completion of the 8-step decision making process (outlined in § 55.20) is not required. However, this policy only applies if the strata and hydrology associated with the wetland allow the wetland to be sufficiently preserved, and with the following conditions being required:

- Dredging and/or filling of a wetland is not proposed;
- A qualified professional engineer verifies the wetland will not be drained nor will water be impounded as a result of installation of utilities and/or infrastructure;
- A qualified professional engineer has determined that the boring or drilling is of sufficient depth below the wetland and the entry and exit points are of sufficient distance laterally from the wetland to avoid puncturing the wetland pan, draining the wetland, or causing similar adverse impacts to the wetland (e.g., at least 6 feet below the water table when wetland are groundwater dependent);
- All staging areas are located outside the wetland area;

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- Construction will not occur during sensitive times of the year that will impact fish spawning and bird nesting habitats;
- Erosion control measures will be implemented (specify the measures to be used);
- The project area will be restored to preconstruction conditions;
- Vegetative buffers will be planted and re-established in coordination with an invasive species control plan;
- The RE must document and certify that all these conditions have been met.

If the boring or drilling is unsuccessful in preserving the wetland, the wetland must be restored within six (6) months or the 8-step decision making process must be prepared.

For the complete text of this HUD policy on directional wetlands boring, please refer the HUD Office of Environment and Energy memorandum dated November 15, 2011 (Refer to Appendix I.4).

NOTE: A permit from the U.S. Army Corps of Engineers is required if the wetland is within or adjacent to navigable waters of the U.S. or within the jurisdiction of the Corps.

Making a Finding on Wetlands Protection

DIRECTIONS - Once the review process for Wetlands Protection has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- The proposed action does not include new construction or expand the footprint of a building;
or
- New construction will not occur in a designated wetland.
- There is no practicable alternative, according to the completed 8-step decision making process. The U.S. Army Corps of Engineers issued a permit (if they have jurisdiction over the wetland.)

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All documents related to this compliance determination must be included in the ERR for the project.

Wetlands Protection Assessment Questions

- Does the project involve new construction, or conversion of vacant land to another use?
- Has the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, or U.S. Natural Resources Conservation Service identified wetlands on the project site?
- Are there alternatives available to locating the project or activity in the wetland?
- Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

Sources and References

- National Wetlands Inventory, U.S. Fish and Wildlife Service.
- U.S. Army Corps of Engineers, Section 404 Permits (Clean Water Act) (re: permits for discharges of dredge and fill materials into waters of the United States).
- 24 CFR Part 55, Section 55.20, Floodplain Management, U.S. Department of Housing and Urban Development.

COASTAL ZONE MANAGEMENT ACT [16 U.S.C. 1451, §§ 307(C), (D)]

The Coastal Zone Management Act provides national policy concerning development and protection of the Nation's coastal environment.

A few of goals of the Act include:

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- ❑ Preserve, protect, develop, and when possible, to restore or enhance the coastal resources;
- ❑ Encourage and assist states in implementing their coastal management programs, including:
 - Manage coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard and erosion-prone areas and in areas “likely to be affected” by sea level rise, land subsidence, saltwater intrusion; and destruction of natural protective features such as beaches, dunes wetlands and barrier islands; and
 - Provide for public access to the coasts for recreation purposes.

Basic Steps for Compliance with Coastal Zone Management Requirements

When NAHASDA, ICDBG, or Section 184 funds will be used for projects proposing physical changes to properties or land within or adjacent to the coastal zone, the RE must make a determination whether the project is consistent with the state’s approved coastal management program. If the project is found to be consistent, the RE must certify to its consistency and submit a copy of the certification and supporting information to the state for approval. The state will provide the public an opportunity to comment on the certification.

The RE must receive concurrence from the state (or its designated agency) before the environmental review can be completed or the decision of compliance with Part 58 is made. If the state (or its designated agency) fails to notify the RE within six months after receiving its copy of the certification, the state’s concurrence with the certification shall be conclusively presumed [§ 307(c)(3)].

The RE must not approve the project for environmental clearance if it is found to be inconsistent with the state’s management plan. The only exception is if the U.S. Secretary of Commerce, who has oversight responsibilities for federal consistency determinations, finds the project is consistent with the purposes of the Act.

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NOTE: Trust lands are excluded from the coastal zone; however, the RE must still document that non-trust lands in the coastal zone would not be affected by a project on the coast on trust land.

Making a Finding on Coastal Zone Management

DIRECTIONS - Once the review process for Coastal Zone Management has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- General location map or Coastal Zone Management map establishes the project is not in a Coastal Zone; or
- The State Coastal Commission verifies the proposed action is consistent with the Coastal Zone Management Plan.

All documents related to this compliance determination must be included in the ERR for the project.

Coastal Zone Management Act Assessment Questions

- Does the project involve acquisition, rehabilitation, construction, or a change of use in or adjacent to a coastal area administered by the state under an approved management program?
- Has the RE certified the project is consistent with the state's coastal zone management program? Has the state received a copy of the certification and supporting documentation?
- Has the RE received concurrence from the state on its certification?

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Sources and References

- Office of Ocean and Coastal Resources Management, National Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.
- State and Territory Coastal Management Program Summaries.

SOLE SOURCE AQUIFERS (40 CFR PART 149)

Aquifers are underground geological formations that yield a significant amount of water to a well or spring. The regulations at 40 CFR Part 149 require the RE to:

- Determine whether a project is within a Critical Aquifer Protection Area designated by EPA; and
- Whether project activities have the potential to contaminate the aquifer. For example, drilling water wells and constructing water treatment and industrial facilities have the potential of contaminating aquifers.

Basic Steps for Compliance with Sole Source Aquifers Requirements

The RE may refer to the EPA Web site to determine if there is a designated sole source aquifer in its community. If there is, the RE should contact the Office of Water for the EPA Regional Office having jurisdiction for that area to request a boundary map of the aquifer, a list of regulated activities, and a description of the compliance steps that are required. EPA must be given the opportunity to review and make recommendations on projects that have the potential to contaminate the aquifer.

Making a Finding on Sole Source Aquifers

DIRECTIONS - Once the review process for Sole Source Aquifers has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- The proposed action is not within the boundaries of an EPA designated sole source aquifer;

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- The proposed action is within the boundaries of a designated sole source aquifer, but it is not an activity that is regulated; or
- The proposed action is within the boundaries of a designated sole source aquifer, and EPA has reviewed and commented on the proposed action. Any mitigation measures that are recommended by EPA should become conditions for approval and implemented.

All documents related to this compliance determination must be included in the ERR for the project.

Sole Source Aquifers Assessment Questions

- Is the project included within the boundaries of a sole or principal source aquifer (SSA) designated by the U.S. Environmental Protection Agency?
- Does the project have the potential to contaminate the designated sole source aquifer?

Sources and References

- Sole Source Aquifer Designations, EPA Sole Source Aquifer Protection Program, Office of Ground Water and Drinking Water, Office of Water, U.S. Environmental Protection Agency.

ENDANGERED SPECIES ACT (50 CFR PART 402)

Compliance with the Endangered Species Act generally concerns new construction and conversion of vacant land.

The Endangered Species Act uses the following classifications:

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- Endangered* – Species in danger of extinction.
- Threatened* – Any species likely to become endangered in the foreseeable future throughout all or a significant portion of its range.
- Critical Habitat* – Specific geographic areas determined to be essential to the conservation of endangered or threatened species.

Another classification, according to Fish and Wildlife Service regulations (50 CFR 402), includes:

- Proposed* – A species of fish, wildlife, or plant that appears in the Federal Register as being proposed for listing as endangered or threatened. As well as proposals to designate Critical Habitats appearing in the Federal Register.

Basic Steps for Compliance with Endangered Species Act Requirements

Section 7 of the Endangered Species Act requires that when federal assistance is used for a project, a determination must be made whether continued existence of federally listed endangered or threatened species is likely to be affected, and whether it will result in their critical habitats being destroyed or adversely modified.

To ensure compliance with Section 7, consultation with the U.S. Fish and Wildlife Service is required (pursuant to 50 CFR 402) when the RE proposes a major construction action (requires preparation of an EIS).¹ The RE then follows a formal consultation process in such cases. When the RE determines the project may affect listed species, species proposed for listing, or their Critical Habitats, there is an informal consultation process that must be followed. Below is a summary of compliance steps the RE must follow:

¹ The U.S. National Marine Fisheries Service (NMFS) has responsibility for management and preservation of federally listed marine and anadromous species. They must also be consulted if species within their jurisdiction could be affected.

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- Make a determination whether the proposed action will alter or destroy habitat, or could have an effect on listed or proposed species or critical habitat.
- Request a species list from FWS (optional) or utilize other resource information available to develop a list of species that inhabit the project area.
- Determine the potential impact of the action on species and/or their habitat. This requires consulting with resource experts, such as state or local fish and wildlife agencies, or hiring a professional biologist/botanist to prepare a *biological assessment*², or reviewing other environmental documents for current and relevant information.
- Initiate informal consultation with FWS if a determination is made that species or their Critical Habitat may be affected by the project.
- Implement any necessary mitigation measures.

Making a Finding on the Endangered Species Act

DIRECTIONS - Once the review process for the Endangered Species Act has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- Native habitat will not be altered nor species affected, according to a resource expert, existing documents and plans that include the project site (e.g., local management plan), biological assessment, state fish and game biologist, etc.
- U.S. Fish & Wildlife Service (USFWS) reviews the biological assessment and agrees with the RE's finding that species and habitat would not be affected.

² Information prepared concerning listed and proposed species and critical habitat that may be present and an evaluation of potential effects.

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- USFWS issues a *biological opinion*³ that the action would likely jeopardize species and/or habitat, and provides alternatives to avoid the adverse impacts. Any mitigation measures recommended by USFWS should become conditions for approval and implemented.

All documents related to this compliance determination must be included in the ERR for the project.

Endangered Species Act Assessment Questions

- Will the project disturb or alter existing vegetation, or create conditions which might threaten the survival of native plant communities?
- Will it impact water resources on or adjacent to the project site?
- Will it damage or destroy trees?
- Will the project create conditions that are favorable to nuisance species?

Sources and References

- 50 CFR – Interagency Cooperation Endangered Species Act of 1973, As Amended
- Endangered Species Program, Division of Endangered Species, U.S.D.I. Fish and Wildlife Service.
- Threatened and Endangered Wildlife and Plants (Listed species and Critical Habitat).

³ A document stating the opinion of the FWS and/or NMFS as whether or not the proposed action is likely to jeopardize the continued existence of species or destroy or adversely modify critical habitat.

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- U.S.D.C. National Marine Fisheries Service, Office of Protected Resources (Marine and anadromous species protected by the Endangered Species Act.)

WILD AND SCENIC RIVERS ACT (16 U.S.C. 1271, §§ 7(B), (C))

A wild, scenic or recreational river area is included in the National Wild and Scenic Rivers System (NWSRS) either by Act of Congress, or may be designated by a state or states if the Secretary of Interior finds it meets the criteria established by the Act.

A river or segment of a river may be designated as wild if it is free of impoundment, has little or no evidence of human activity and is generally accessible only by trail. In order to be classified scenic, a river (or river segment that has been designated) is free of impoundment, there is no substantial evidence of human activity, and in some places it is accessible by road. Classification as recreational means the river (or a river segment) has some impoundment or diversion, there is substantial evidence of human activity, and it is readily accessible by road or railroad.

Basic Steps for Compliance with Wild and Scenic Rivers Act Requirements

In order to be in compliance with the U.S.C., the RE must:

- Determine whether any river listed in the NWSRS, or that is designated for inclusion in the NWSRS, would be directly and adversely affected by development activities associated with the project; and
- If the project is located above or below a listed river, the RE must determine whether the project will impact the river management area or could unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

Making a Finding on the Wild and Scenic Rivers Act

DIRECTIONS - Once the review process for the Wild and Scenic Rivers Act has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

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- The National Park Service Web site indicates there is no designated Wild, Scenic, or Recreational River within the city, county, or state where the proposed activity will occur.
- The proposed action is not within one mile of a designated Wild, Scenic, or Recreational River, according to a local map, or the federal (or state) agency that has management responsibility for the river.
- The federal (or state) agency that manages the river verifies the project will not affect the river's designation. Any mitigation measures recommended by federal (or state) agency should become conditions for approval and implemented.

All documents related to this compliance determination must be included in the ERR for the project.

Wild and Scenic Rivers Act Assessment Questions

- Does the project include development activities?
- Is the project located near a river or river segment that is listed on or designated for inclusion in the National Wild and Scenic Rivers System?

Sources and References

- Wild and Scenic Rivers Home Page, Rivers, Trails and Conservation Assistance Program, U.S.D.I. National Park Service.
- Wild & Scenic Rivers- State-By-State Lists, Rivers, Trails and Conservation Assistance Program, U.S.D.I. National Park Service.

AIR QUALITY (40 CFR PARTS 6, 51, AND 93)

The Clean Air Act is a federal law; but the states do much of the work to carry out most of the Act. Each state develops state implementation plans (SIP) that contain its objectives and

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regulations for carrying out the Clean Air Act. The U.S. Environmental Protection Agency reviews and approves states' implementation plans.

The purpose of an implementation plan is to ensure that ambient concentrations of any of six air pollutants are within the established levels of the National Ambient Air Quality Standards (NAAQS). The six pollutants are ozone, carbon monoxide, particulate matter, sulfur dioxide, lead, and nitrogen dioxide. Sources for pollutants include transportation vehicles, industrial facilities, and farming operations. (NOTE: Removal or disturbance of regulated asbestos containing materials is regulated under this Act. Consult regulation 41 CFR 61, Subpart M for compliance requirements).

Based upon the NAAQS in the SIP, local areas or regions will be identified as either in *attainment* or *nonattainment* with one or more of the regulated pollutants. If the project is within a *nonattainment area* then a determination must be made as to whether the project is in conformance with the SIP.

Making a Clean Air Act Finding

DIRECTIONS - Once the review process for the Clean Air Act has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- The project is in an attainment area; or
- The project is in a non-attainment area and is in conformance with the State Implementation Plan.

All documents related to this compliance determination must be included in the ERR for the project.

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Air Quality Assessment Questions

- Is the project located in a geographic area in attainment or non-attainment with the National Ambient Air Quality Standard?
- If in a non-attainment area, does the project conform to the EPA approved state implementation plan (SIP)?

Sources and References

- Office of Air and Radiation, U.S. Environmental Protection Agency, www.epa.gov/oar. (Use this Website for a listing of State air quality boards and commissions.)
- Nonattainment Areas Maps – Criteria Air Pollutants, Air Data Home Page, U.S. Environmental Protection Agency.
- 40 CFR 61, Subpart M, National Emission Standards for Hazardous Air Pollutants (NESHAP)

FARMLAND PROTECTION (7 CFR PART 658)

The purpose of the Farmland Protection Policy Act is to minimize the effect of federal programs on the unnecessary and irreversible conversion of farmland to nonagricultural uses. The Act does not apply to lands already in, or committed to, urban development (i.e., 30 structures per 40 acres or water impoundment). However, land that meets the definition of prime or unique farmlands, or is determined to be of statewide or local significance (with concurrence by the U.S. Secretary of Agriculture) is subject to the Act.

The U.S.D.A. Natural Resource Conservation Service is the federal agency tasked with identifying prime and unique agricultural lands, and developing regulations to administer provisions of the Act.

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- Prime farmland** has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. The land must also be available for these uses (cropland, pastureland, forestland, or other land, but not water or urban built-up land).
- Unique farmland** is land other than prime farmland that is used for production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or yields of specific crops.

If the RE cannot determine whether or not the land is classified as prime or unique, it should request the USDA Natural Resources Conservation Service (NRCS) to make the determination by submitting Form AD-1006, the Farmland Conversion Impact Rating form. These forms are available at NRCS offices or the Internet.

Should the project site (or any part of it) contain farmland that will be converted to another use, the RE must identify and take into account the adverse effects of its conversion, and consider alternatives that would lessen the impact. Similar consideration should be given to land of statewide or local significance.

Basic Steps for Compliance with Farmland Protection Requirements

In order to analyze the effects of converting the farmland, the RE must apply the site assessment criteria in §§ 658.5(b) and (c) and record its findings on Form AD-1006. If there is a decision to approve conversion of the site, a copy of the completed Form AD-1006 should be submitted to NRCS for its data collection purposes.

Making a Farmland Protection Policy Act Finding

DIRECTIONS - Once the review process for the Farmland Protection Policy Act has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- Current zoning classification is for non-farmland uses;

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- Information from the NRCS indicates the site is not classified as prime or unique agricultural land; or
- The site is classified as prime or unique agricultural land. The RE completed and submitted form AD-1006 to NRCS for comment. Any mitigation measures recommended by NRCS should become conditions for approval and implemented.

All documents related to this compliance determination must be included in the ERR for the

Farmland Protection Assessment Questions

- Will land be developed because of the project?
- Has the land been determined to be prime or unique farmland by the USDA Natural Resources Conservation Service?
- Has the state or local government identified the project area as prime or unique agricultural land?

project.

Sources and References

- Soil Survey Division, U.S.D.A. Natural Resources Conservation Service, 14th & Independence Ave., SW, Room 4250-S, Washington, D.C. 20013, (202) 720-1820, Fax: (202) 720-4593.
- State and Regional Offices of the USDA Natural Resource Conservation Service.
- 7 CFR 658, Farmland Protection Policy Act
- Form AD-1006, “Farmland Conversion Impact Rating.”

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ENVIRONMENTAL JUSTICE (EXECUTIVE ORDER 12898, FEBRUARY 11, 1994)

The Executive Order on Environmental Justice directs each federal agency to make achieving environmental justice part of its mission by "identifying and addressing as appropriate disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Presently, there aren't any regulations for implementing the Executive Order. However, HUD has issued a Strategy Plan for Implementing Environmental Justice, which it uses as guiding principle in deciding whether the project could result in disproportionate high and adverse effects on these populations.

Basic Steps for Compliance with Environmental Justice Requirements

During the environmental review process, health and environmental issues may arise concerning the suitability of the project site for its intended use, particularly its suitability for human habitation. The RE should document how the Executive Order was given consideration in its final decision.

Making a Finding on Environmental Justice

DIRECTIONS - Once the review process for Environmental Justice has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- The proposed action is compatible with the surrounding land uses;
- The project site and/or surrounding neighborhood does not suffer from adverse environmental conditions; or
- The proposed action would not create a negative environmental impact or aggravate and existing impact.

All documents related to this compliance determination must be included in the ERR for the project.

Environmental Justice Assessment Questions

- N**
- Is the project site suitable for its proposed use?
 - Are there high and adverse health and environmental conditions that could affect the project because of its proposed location?
 - Can these conditions be mitigated?
 - If the project is approved as proposed, are minority and low income persons being disproportionately affected in comparison to the rest of the population?

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Sources and References

- ❑ Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
- ❑ Achieving Environmental Justice – A Department Strategy, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, March 24, 1995.

NOISE ABATEMENT AND CONTROL (24 CFR PART 51, SUBPART B)

Noise is unwanted sound that interferes with our normal activities such as sleeping, conversation or recreation. It can also cause hearing loss and have an adverse effect on mental health. The purpose of HUD's regulation concerning noise is to encourage suitable separation between noise sensitive land uses (i.e., housing and/or other noise sensitive activities) and major noise sources (i.e., roadways, railroads, and military and civilian airports). Section 51.101(a)(2) applies specifically to those activities subject to environmental review under Part 58, and, in particular, to the construction of housing.

Basic Steps for Compliance with Noise Abatement and Control Requirements

The RE must determine whether there are any major roadways with 1,000 feet, railroads within 3,000 feet, and military or civilian airports within 15 miles of the housing project.

Because sound waves travel in a straight line, a solid barrier or structure between the project site and a roadway or railroad will attenuate noise being generated by these sources. Examples of noise barriers are noise walls, natural terrain, and buildings that obstruct the line of sight between the project and the noise source. Vegetation is not a suitable barrier for attenuating noise.

However, if the development is within line-of-sight of either the roadway or railroad, further investigation is required to determine the level of noise exposure. Doing this requires completing a noise calculation for roadways and railroads according to guidelines provided in The Noise Guidebook [HUD-953-CPD(1)]. This guidebook is issued by and available from HUD online. The RE must determine whether the exterior noise level at the project site is within HUD's standard

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for acceptability, or whether noise attenuation is required or another site should be selected for the project.

Noise from airplanes is more difficult to attenuate. If there are airports within 15 miles of the project, the RE should consult with the operations supervisor for the civilian airport, and the FAA Area Office or military base concerning a military airfield. The RE should obtain information on whether or not there are flights over the project area, and the level of noise produced by scheduled flights. There are maps available to show noise contours around airfields. The highest noise levels are adjacent to runways. Airplane noise diminishes the farther away the project is from an airfield. The noise contour maps for military airfields are published in the Air Installation Compatible Use Zone (AICUZ) for the base.

For other noise generators in the area, 8 decibels should be added to the calculation.

HUD's noise standards are based on the Day-Night Average (DNL) Sound Level System – a system of calculating noise exposure instead of measuring it with instruments. This system is a 24 hour average sound level (expressed in decibels), with an additional 10 decibels added for nighttime noise. The calculation is based upon projected conditions that are expected at least 10 years beyond the project approval date. Noise is considered Acceptable when the exterior noise level is 65 DNL or less. Otherwise, attenuation measures must be incorporated into construction plans. If the exterior noise level is above 75 DNL (Unacceptable), the project requires special approval from the certifying officer, or it should be disapproved [24 CFR 51.104(a)(2)].

Making a Noise Abatement Finding

DIRECTIONS - Once the review process for Noise Abatement and Control has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- The action is not a noise sensitive land use [sec. 51.101(a)(2)];
- The action is not within 1,000 feet of a major roadway, 3,000 feet of a railroad, nor 15 miles of a military airfield or civil airport;
- The project is within these distances of one or more of these noise generators, but there is an effective noise barrier;

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- The project is within these distances of one or more of these noise generators, and the noise level is Acceptable (at or below 65 DNL);
- The noise generated by the noise source(s) is Normally Unacceptable (66-75 DNL). Noise attenuation measures are required and should become conditions for approval and implemented; or
- The noise generated by the noise source(s) is Unacceptable (76+ DNL). Because unacceptable noise is a significant impact, the RE's certifying officer must decide whether to waive the environmental impact statement requirement, and whether or not to approve the project.

All documents related to this compliance determination must be included in the ERR for the project.

Noise Abatement and Control Assessment Questions

- Is a noise sensitive land development proposed (e.g., housing construction or other noise sensitive activity)?
- Is it within 1,000 feet of a roadway, 3,000 feet of a railroad, or 15 miles of a military airfield or civilian airport?
- Is the calculated DNL in the Acceptable range (<65)? If not, is noise attenuation required?
- Does the project require special approval from the certifying officer or should it be disapproved because of high noise levels (i.e. exceeds 75 DNL)?

Sources and References

- The Noise Guidebook (HUD-953-CPD(1)), Office of Community Planning and Development, U.S. Department of Housing and Urban Development, September 1991. This guidebook is available online at the HUD Environment/Energy website.

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- Contact the local airport or military airfield for information and maps.

HAZARDOUS MATERIALS, CHEMICALS, AND RADIOACTIVE SUBSTANCES [24 CFR PART 58, § 5(i)(2)]

Section 58.5(i)(2) states that all properties receiving HUD assistance must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances that “could affect the health and safety of the occupants of conflict with the intended utilization of the property.” Properties having clear health risks for the occupants or inhabitants should be rejected. For multifamily housing (five or more dwelling units) and non-residential properties, compliance with this policy requires efforts to identify any hazardous substances and radioactive materials that may be on site or off site that could harm inhabitants, as well as an evaluation of previous uses of the properties.

Basic Steps for Compliance with Hazardous Materials, Chemicals, and Radioactive Substances Requirements

In order to make the best possible determination as to the presence of hazardous materials, the RE must use the best available information (including federal, state, and local hazardous sites data) during the identification process, and also consult with U.S. EPA, as necessary. If necessary, the RE should hire qualified professionals to use accepted investigative techniques to determine if health risks are present.

The U.S. EPA recognizes four pathways for human exposure to toxic and hazardous substances and radioactive materials:

- Surface water;
- Ground water;
- Soil; and
- Air.

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If it is discovered hazards are present on site, or from off site sources, determinations should be made on the following bases:

- Can people come into physical contact with the contaminants (e.g., floodwaters, wetlands, outdoor recreational areas, dust, soils, school grounds, fill dirt, mill tailings)?
- Can contaminants be ingested (e.g., drinking water, commercial food crops)?
- Can people inhale the contaminants (e.g., vapors, gases, radioactive gases (radon), airborne dust, asbestos and other particulates)?

Regulated hazardous substances lists that are maintained by the U.S. EPA include:

- Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA or “Superfund”).
- Emergency Planning and Community Right-to-Know Act (Superfund Amendments Reauthorization Act or SARA).
- Extremely Hazardous Substances (EHS).
- Resources Conservation Recovery Act (RCRA).

NOTE: The American Society for Testing and Materials (ASTM) has developed standards for investigation and discovery of “environmental site conditions” (e.g. hazardous materials and radioactive substances) that are recognized in court cases concerning landowner liability. One of these standards is the Phase I Environmental Site Assessment, a protocol to investigate site contamination. Generally, a Phase I Environmental Site Assessment includes a visual inspection of the project site and an investigation of its past uses, a search for permits issued by government entities, and environmental conditions present on adjacent sites that could affect the project. A Phase I helps owners to satisfy the requirements for the “innocent landowner defense” in cases of CERCLA liability. A Phase I site assessment must be completed by a qualified professional, and the information must be current. The U.S. EPA’s final rule 40 CFR 312, published in the Federal Register on November 1, 2005, states “Certain types of information collected more than 180 days prior to the date of acquisition must be updated for the current all appropriate inquiries.” (§ 312.20(b)). Copies of the Phase I Environmental Site Assessment standards may be ordered for a minimal fee by contacting the ASTM. See

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Appendix R on the CD for guidance on using a Phase I to evaluate compliance with HUD standards on contamination.

NOTE: A Phase I Environmental Site Assessment (Phase I ESA) is not the same thing as nor should it be confused with an Environmental Assessment (EA) completed in accordance with NEPA and the CEQ regulations contained in parts 1500 through 1508.

Making a Finding on Hazardous Materials, Chemicals, and Radioactive Substances

DIRECTIONS - Once the review process for Hazardous Materials, Chemicals and Radioactive Substances has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- Evidence the area is not contaminated with hazardous or toxic materials, substances, chemicals or gases; or
- Evidence supporting a determination the hazard will not affect health and safety of the occupants, or conflict with the intended use of the site.

All documents related to this compliance determination must be included in the ERR for the project.

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Hazardous Materials, Chemicals, and Radioactive Substances Assessment Questions

- Is the site contaminated with hazardous substances and/or radioactive materials that could affect the health and safety of the occupants or conflict with the intended utilization of the property?
- Is the project within one mile of a National Priority List (NPL) “Superfund” site; or 2,000 feet of a State hazardous materials site, landfill, other known toxic site, or facilities that treat, store and dispose of hazardous substances? What is the nature of the hazardous material? What is the pathway for human exposure? (i.e., surface water, soil, air, ground water)
- Is mitigation required?

Sources and References

- U.S. EPA, Envirofacts Data Warehouse.
- State Emergency Response Commissions and Tribal Emergency Response Commissions (Establishment of the commissions is authorized by the Emergency Planning and Community Right-to-Know Act (Superfund Amendments Reauthorization Act or SARA).
- Environmental protection agencies for states.
- Choosing An Environmentally “Safe” Site, Office of Community Viability, Community Planning and Development, U.S. Department of Housing and Urban Development. This document is available online at the HUD Environment/Energy website.

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SITING OF HUD-ASSISTED PROJECTS NEAR HAZARDOUS OPERATIONS (24 CFR PART 51, SUBPART C)

The purpose of this regulation is to ensure there is an acceptable separation distance between people and buildings from stationary aboveground storage tanks more than 100 gallons in size and that contain materials that are explosive or flammable in nature (e.g., gasoline, fuel oil, kerosene, crude oil, propane). This requirement is to prevent injury to people and damage to property from industrial accidents. The RE must determine if there are hazardous liquids and gases being stored within one mile of the project.

Some hazardous liquids or gases can cause explosive blasts. A 100-gallon tank can injure people and damage buildings within 115 feet; and a tank that holds 1,000,000 gallons is destructive within 2,150 feet. A railroad tank car holds approximately 40,000 gallons of liquid. An explosion from a single 40,000 tank can injure people and damage buildings within a 750- foot radius.

Other hazardous liquids and gases are prone to fire. Thermal radiation from a 100-gallon tank can injure people within 107 feet; and a tank that holds 1,000,000 gallons can injure anyone within 5,000 feet, or nearly one mile.

The regulation applies to projects proposing development, construction, conversion to another use, as well as rehabilitation or modernization of buildings which increases residential densities, converts buildings for habitation, or makes vacant buildings habitable.

The regulation does not apply to the following:

- High pressure gas and petroleum transmission pipelines;
- Mobile conveyances such as barges, ships, railroad tankers and tank trucks;
- Buried tanks or containers;
- High pressure natural gas transmission and liquid petroleum pipelines;
- Employees of facilities which manage, store, or process explosive or flammable materials (U.S. Department of Labor, Occupational Safety and Health Administration covers employee safety); or

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- Individual fuel supply for one-to-four family, FHA-insured housing units.

Basic Steps for Compliance with Siting HUD-Assisted Projects Near Hazardous Operations Requirements

HUD Guidebook 1060-CPD, Siting of HUD-Assisted Project Near Hazardous Facilities, provides the necessary guidance for determining safe distances from aboveground storage tanks, and necessary mitigation measures. This guidebook is available online at the HUD Environment/Energy website.

The RE's certifying officer is responsible for any approval or disapproval of projects that are affected by the presence of aboveground storage tanks (24 CFR 51.206).

Making a Finding on Siting HUD-Assisted Projects Near Hazardous Operations

DIRECTIONS - Once the review process for Explosive or Flammable Operations has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- The project does not meet the definition of a HUD-Assisted Project (sec. 51.201).
- As a result of a field review of the project site, no aboveground storage tanks more than 100 gallons in size are present within one mile of the project. (Field observations must be documented in writing.)
- Documented field observation showed the tanks were within one mile, but:
 - There is an effective barrier (i.e., natural barrier was present, other man-made structures provided an effective barrier), or
 - There is an acceptable separation distance for people and buildings
- People and buildings can be protected with mitigation measures. The RE's certifying officer has approved the project (24 CFR 51.206). Mitigation measures should become conditions for approval and implemented.

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All documents related to this compliance determination must be included in the ERR for the project.

Siting HUD-Assisted Projects Near Hazardous Operations Assessment Questions

- Does the project include development, construction, or conversion of the site or building to another use?
- Does the project include rehabilitation or modernization of a building that increases residential densities, converts a building for habitation, or makes a vacant building habitable?
- Are there aboveground storage tanks (more than 100 gallons in size) within one mile of the project site?
- Are the tanks within line of sight or is there a barrier (natural or manmade) between them and the project site?
- Does the project require a decision by the RE's certifying officer because there is not sufficient separation between the tanks and the project site?

Sources and References

- "Siting or HUD-Assisted Project Near Hazardous Facilities: A Guidebook- Acceptable Separation Distances From Explosive and Flammable Hazards", Office of Environmental and Energy, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, September 1996, HUD-1060-CPD. This guidebook is available online at the HUD Environment/Energy website.
- Local fire department or public safety officer.

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AIRPORT CLEAR ZONES AND ACCIDENT POTENTIAL ZONES (24 CFR PART 51, SUBPART D)

FAA-designated civilian airport Runway Clear Zones (RCZ) (also known as a Runway Protection Zone), or military airfield Clear Zones (CZ) and Accident Potential Zones (APZ) (also known as an Approach Protection Zone) are designated areas at the end of airport runways where the greatest number of airplane accidents occur (about 75%). HUD regulation 24 CFR 51, Subpart D prohibits using HUD assistance in these areas for the following activities:

- New construction; and
- Major or substantial rehabilitation and modernization activities if projects are located within a Clear Zone or Runway Clear Zone.

It also prohibits using HUD assistance for these activities in an Accident Potential Zone, if such activities would:

- Change the current use of the facility;
- Significantly increase the density or number of people at the site; or
- Introduce explosive, flammable, or toxic materials to the area.

However, this prohibition does not apply to the purchase, sale or rental of existing properties, nor to minor rehabilitation/modernization or emergency assistance activities. (*Minor rehabilitation/modernization* would mean, for Clear Zones and Runway Clear Zones, the activity does not significantly prolong the physical or economic life of a building. For Accident Potential Zones, it does not change its use, increase density, or introduce explosive, flammable, or toxic materials. See § 51.302.)

Basic Steps for Compliance with Airport Clear Zones and Accident Potential Zones Requirements

Whenever HUD assistance is used for sale or purchase of an existing property located in a Runway Clear Zone or Clear Zone, the buyer must be notified of this in writing and that the property may be acquired by the airport at a later date. The buyer must acknowledge receipt of

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this information [§ 51.303(a)(3)]. [See the sample “Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones” located in Appendix K.]

Making a Finding on Airport Clear Zones and Accident Potential Zones

DIRECTIONS - Once the review process for Airport Clear Zones and Accident Potential Zones has been completed, the Section 58.5 Checklist must then cite one of the following sources as evidence of compliance:

- The project is more than 2,500 feet from any FAA-designated airport (list is issued by HUD annually), and more than 15,000 feet from any DOD military airfields.
- The proposed action is within these distances, but this rule is not applicable to the proposed action.

All documents related to this compliance determination must be included in the ERR for the project.

Airport Clear Zones and Accident Potential Zones Assessment Questions

- Is the project within 2,500 feet of a civilian airport that is regulated by the Federal Aviation Administration (FAA) or 15,000 feet of a military airfield?
- Is the project located within a designated Airport Clear Zone or Runway Clear Zone?
- Is a disclosure notice required?

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Sources and References

- Airport Clear Zones - Civil Airport defined by FAA rule 14 CFR Part 152, military airfields DOD Instruction 4165.57 and 32 CFR Part 256.
- A Guide to HUD Environmental Criteria and Standards Contained in 24 CFR Part 51, (Handbook 1390.4), Office of Community Planning and Development, U.S. Department of Housing and Urban Development, August 1984.
- Sources of AICUZ Data include: AICUZ study for the military air installation, Map F- Air Installation Compatible Use Zones, local planning department, Council of Governments planning agency, contact the Installation Commander.

COMPLETING THE ENVIRONMENTAL ASSESSMENT CHECKLIST – COMPLIANCE WITH NEPA

The second checklist in the EA Format is the Environmental Assessment Checklist. This section requires the RE to determine the effects of the proposed project on the character, features and resources of the project area. Determinations of impact must be based on site observations or correspondence with the appropriate government agencies.

RE should visit the project site to assess or determine the presence/absence of the following factors included on the checklist:

- Unique and natural features;
- Site suitability, access, and compatibility with the surrounding environment;
- Soil stability, erosion, and drainage;
- Nuisances and hazards (manmade or built); and
- Commercial/retail and transportation.

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In addition, RE must contact the appropriate local agencies to assess the impact that the project will have on the areas listed in the checklist. Detailed guidance is provided in Appendix M: Assessment Techniques at the end of this manual. This document is an excerpt from the HUD publication entitled Environmental Review Guide For Community Development Block Grant Programs under Title I of the Housing and Community Development Act of 1974, as amended (HUD-CPD-782(2), September 1991).

A summary of some of this guidance is provided below.

- Unique and natural features.** To supplement the determination of unique and natural features, contact your state agency that deals with natural resources to determine if any designated Natural Areas or Rare Species Habitats will be affected by the project.
- Site suitability, access and compatibility with the surrounding environment.** To supplement the determination of site suitability, access and compatibility with the surrounding environment, contact the local planning agency or board.
- Soil stability, erosion and drainage.** To supplement the determination of soil stability, erosion and drainage, refer to the Natural Resource Conservation Service (NRCS) County Soil Survey to determine if engineering restraints are indicated. The Soil Survey may be obtained by contacting the local NRCS office. Provide comments from the site engineer or local development department if engineering restraints are indicated based on the Soil Survey. Where applicable, a review of a geologic map produced by the state geological surveys may be required.
- Water supply/sanitary sewers.** To assess water supply/sanitary sewers, contact the local public works department.
- Solid waste disposal.** To assess solid waste disposal, contact the local public works department.
- School services.** To assess school services, contact the local school board.
- Parks, recreation, and social services.** To assess parks, recreation, and social services contact the local planning department, parks and recreation department, and social services department.

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- Emergency health care, fire and police services.** To assess emergency health care, fire, and police services contact the local fire department, police department, and emergency management organization.
- Transportation.** To assess transportation contact the state or city transportation department.

Once determinations have been made, the appropriate impact code must be entered from the list provided on the EA Checklist⁴:

- 1) No impact anticipate (Impact Code “1”)- Entering this impact code indicates no more analysis or mitigation effort is needed. Clear and specific documentation is essential, referencing the factual conditions or specific circumstances that support the finding. Mere conclusions are not sufficient.
- 2) Potentially beneficial (Impact code “2”)- Beneficial impacts should be indicated with code “2”. Notations supporting that finding can be attached. A more detailed analysis is not necessary.
- 3) Potentially adverse (Impact code “3”)- In some cases, potentially adverse impacts may only require documentation because that is all that is needed to evaluate such impacts. They may be too small to require more study; they may be construction effects only for which standard mitigation procedures have been established; or they may have been analyzed for previous environmental reviews in a fully comparable situation. Documentation here is particularly important and will require attached notes outlining sources explaining factual basis of the impact finding and describing any mitigation efforts.

In other situations, potentially adverse impacts will be subject to further review (site visits, detailed review data, consultations with experts, etc.). The points to remember are that: a) only those environmental categories on the EA Checklist with impact code “3”

⁴ Descriptions of the impact codes are adapted from “Environmental Review Guide for Community Development Block Grant Programs, U.S. Department of Housing and Urban Development, HUD-CPD-782, January 1985, page 25.

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are subject to a detailed review, and b) this is not a decision about preparing an environmental impact statement (EIS) but only a decision to investigate further.

- 4) Requires mitigation (Impact code “4”)- This code should be used in combination with impact code “3” indicating some type of potential adverse impact. In some cases, specific measures to reduce adverse effects on a community cannot be discussed in full detail right away. Instead, such measures are subject to review and development, along with identification as to who will be responsible for implementing such measures. All are a part of a more detailed analysis that follows identification of there being an adverse impact. In other cases, appropriate mitigation measures to alleviate the adverse impact may already be known, and recorded. Mitigation measures or safeguards should be listed within the relevant impact categories, and repeated again on the Environmental Assessment form under both “Mitigation Measures Recommended” (last page) and “Conditions for Approval” (second page); and
- 5) Requires project modification (Impact code “5”)- Completing the Environmental Assessment early in the project planning and development process affords a special opportunity to identify needed changes in the project itself before either project plans or site selection are finalized. Often such changes can eliminate the need for further analysis by eliminating the source of the problem. It is also possible that changes (such as moving a project to a different site outside a high noise zone, or combining it with a new project to provide needed sewer or water lines) could be identified at this time.

The RE must note names, dates of contact, telephone numbers and page references as well as any mitigation measures required. Attach additional source documentation to the EA Format as appropriate.

COMPLETING THE OTHER EA FORMAT ITEMS

Summary of Findings and Conclusions

The CEQ regulations state that there shall be a brief discussion of the environmental impacts of the proposed action [40 CFR §1508.9(b)]. The RE should base its findings and conclusions about such impacts on the results of having completed both the Section 58.5 Checklist and the

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Environmental Assessment Checklist. These checklists analyze both beneficial and adverse impacts of the project.

In this section of the EA format, the RE provides a synopsis of the results of these checklists. It should be noted that not every item in the checklists need to be included in the summary. Only those issues that stand out as having beneficial or adverse impacts need be addressed here.

Alternatives Considered

Although the EA format is a detailed analysis of the preferred alternative, NEPA also requires consideration of alternative courses of action and a brief discussion of environmental impacts of those alternatives [40 CFR §1508.9(b)]. At minimum, this includes the consideration of taking “no action,” as well as identifying other reasonable courses of action that were considered but not selected. Other courses of action might include other sites, modifications of the preferred alternative, and other uses of the subject site.

The “no action” alternative means the proposed activity would not take place. This alternative serves as a baseline for comparing its environmental effects with the environmental effects that would occur from permitting the preferred alternative or another alternative to go forward. For instance, if residential units were not built with NAHASDA, ICDBG, or Section 184 funds, then the property might be used for retail development (with non-NAHASDA, ICDBG, or Section 184 funds).

With regard to other reasonable courses of action the RE considered, perhaps the RE looked at other sites but they were not affordable, or there were environmental problems with those sites that were unacceptable. Another example would be a project that was first planned to include more units on the project site, but not all of the property was found suitable for housing (e.g., steep slope, erosion problems or problems with a high water table).

Mitigation Measures

Whenever adverse environmental impacts are identified during preparation of the Section 58.5 Checklist and Environmental Assessment Checklist, it is necessary to arrive at feasible solutions for eliminating or minimizing the impacts. This could mean:

- Avoiding the impact altogether by not taking a certain action or parts of an action—e.g., preserving a wetland area;

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- Minimizing impacts by limiting the degree or magnitude of the action and its implementation—e.g., raising the first floor of a building above the special flood hazard area;
- Rectifying the impact by repairing, rehabilitating or restoring the affected environment—e.g., “clean-up” of site contamination;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action—e.g., using a deed restriction to protect a historic building; and
- Compensating for the impact by replacing or providing substitute resources or environment—e.g., relocating endangered plant species, providing funds to an approved land bank for purchase of replacement habitat for endangered species.

Studies and Contacts

All sources of information used in preparation of the EA should be identified. Copies of written information should be included in the ERR (e.g., databases, plans, reports, correspondence, telephone records, etc.). This includes listing any special studies completed for the project. If information from other environmental review documents is used for compliance documentation, such information must pertain to the project site and must also be current and relevant to the environmental issues being addressed.

CEQ regulations also require agencies or persons consulted in preparation of the EA be listed in the record [40 CFR §1508.9(b)]. This requirement includes any persons or agencies that were contacted but may not have turned out to be a key contact for compliance documentation. Include their name, title, agency, contact information and date contacted in the EA Format.

RELEASE OF FUNDS PROCESS

Prior to the RE making its environmental finding, it should be certain to publish any public notices related to the specific federal law and authority review (e.g., notice of approval of a project located in a floodplain, notice of proposal of improvements and development in a wetland, notice of adverse effects of an undertaking on historic properties).

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Upon completion of the environmental assessment, the RE will make either a finding of no significant impact (FONSI), or a finding of significant impact (FOSI) determination. In the event that a FONSI is made, the RE will do all of the following:

- Certifying officer (CO) or other RE approving official executes the environmental finding for the environmental assessment (page 3 of the EA format).
- Publish or post/mail a combined Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF), in accordance with §58.43 and §58.45. (The RE may also issue these notices separately).
- Consider and respond to comments received, evaluate and analyze any concerns raised that have merit, and resolve outstanding issues.
- Also, disseminate the combined notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, state and federal agencies; to the regional office of the U.S. Environmental Protection Agency, and to the HUD ONAP (§ 58.43). (NOTE: Consult with ONAP Grants Management to determine whether they would like to receive a copy of the notice prior to the tribe submitting their Request for Release of Funds and Certification (HUD form 7015.15) with a copy of the notice attached.)
- Certifying officer (CO) signs the Request for Release of Funds and Certification (RROF) (HUD form 7015.15).
- RE submits the RROF with a copy of the public notice to the Administrator of the ONAP Field Office.
- Wait to receive a HUD form 7015.16, Authority to Use Grant Funds or equivalent letter from the Administrator of the ONAP Field Office before initiating work or committing funds.

Attachment 7.3 is the combined FONSI and NOI/RROF with the minimum content required for this legal notice. Attachment 7.4 is an example of a completed FONSI and NOI/RROF for the project that was described in the Example EA Format in Attachment 7.2.

A minimum of 15 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community, or a minimum of 18 calendar days

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if the notice is posted and/or mailed, according to established citizen participation procedures. (NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 15 days of the comment period.) The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/ mailing date of the notice (§ 58.21).

In the event that a FOSI is made, the RE must initiate an Environmental Impact Statement (EIS) in accordance with Subparts F and G of Part 58. Refer to Chapter 8, Environmental Impact Statements, for more information.

SUBMITTING THE REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION

If the RE does not receive any comments, or after there has been consideration and response to comments received, the Certifying Officer may sign the RROF for submission (with a copy of the public notice attached) to the ONAP Field Office. (NOTE: If the notice was posted or mailed, the RE should indicate in its submission letter to ONAP as to how the notice was dispersed.) Form 7015.5 is provided in Appendix B of this manual. Instructions for completing HUD form 7015.15 are also provided there as well.

HUD APPROVAL

ONAP must withhold release of funds for a minimum of 15 calendar days from the date it receives the request, or from the date that appears in the notice (indicating when the RE intends to submit its request), whichever is later, to receive objections from the public, interested persons or agencies. To be considered permissible, according to 24 CFR 58.75, the objections must be based upon procedural errors committed by the RE (e.g., omitting a step in the environmental review process, committing funds prior to completing the environmental review process, etc.). Objections must be submitted to Administrator for the ONAP Field Office in writing.

ONAP will approve the RE's request if no objections are received or after objections have been satisfactorily resolved. The RE will receive a HUD form 7015.16, Authority to Use Grant Funds, or an equivalent letter from ONAP. Once approval is received from ONAP, project funds may be committed and work initiated. A copy of the HUD Form 7015.16 is provided in Appendix C.

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REEVALUATION OF ENVIRONMENTAL FINDINGS (§ 58.47)

The RE will need to reevaluate its original environmental findings if it finds that, during project construction, changes or new circumstances arise that were not previously considered during the environmental review process or in the RE's decision (e.g., new activities are added to the scope and magnitude of the project, or concealed or unexpected conditions are discovered, such as archeological sites, underground storage tanks, and similar environmental conditions). If, before project construction is initiated, the project developer proposes a different course of action that was not previously considered in the RE's environmental review, this also triggers the requirement for re-evaluation of the RE's original environmental findings.

An approved NAHASDA or ICDBG-funded project may receive additional federal funds after the RE has received approval from ONAP, but before the project itself is completed. In such cases, the RE may be required to initiate a re-evaluation of the original environmental determination in accordance with § 58.47. Generally, approval of supplemental assistance to cover minor shortfalls in funding and to help complete a project previously approved is excluded from the environmental review requirements of NEPA and the § 58.5 authorities, if approval is made by the same RE.

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Attachment 7.1 – Environmental Assessment

Environmental Assessment

Determinations and Compliance Findings for HUD-assisted Projects

24 CFR Part 58

Project Information

Project Name:

Responsible Entity:

Grant Recipient (if different than Responsible Entity):

State/Local Identifier:

Preparer:

Certifying Officer Name and Title:

Grant Recipient (if different than Responsible Entity):

Consultant (if applicable):

Direct Comments to:

Attachment 7.1 – Environmental Assessment

Project Location:

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

Statement of Purpose and Need for the Proposal [40 CFR 1508.9(b)]:

Existing Conditions and Trends [24 CFR 58.40(a)]:

Funding Information

Grant Number	HUD Program	Funding Amount
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Attachment 7.1 – Environmental Assessment

Estimated Total HUD Funded Amount:

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]:

Compliance with 24 CFR 50.4, 58.5, and 58.6 Laws and Authorities

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits or approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Flood Insurance	Yes No	

Attachment 7.1 – Environmental Assessment

Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	<input type="checkbox"/> <input type="checkbox"/>	
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.5		
Clean Air Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Coastal Zone Management Coastal Zone Management Act, sections 307(c) & (d)	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Contamination and Toxic Substances 24 CFR Part 50.3(i) & 58.5(i)(2)	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Endangered Species Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Explosive and Flammable Hazards 24 CFR Part 51 Subpart C	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Farmlands Protection Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Floodplain Management Executive Order 11988, particularly section 2(a); 24 CFR Part 55	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Historic Preservation National Historic Preservation	Yes No <input type="checkbox"/> <input type="checkbox"/>	

Attachment 7.1 – Environmental Assessment

Act of 1966, particularly sections 106 and 110; 36 CFR Part 800		
Noise Abatement and Control Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Sole Source Aquifers Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Wetlands Protection Executive Order 11990, particularly sections 2 and 5	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Wild and Scenic Rivers Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)	Yes No <input type="checkbox"/> <input type="checkbox"/>	
ENVIRONMENTAL JUSTICE		
Environmental Justice Executive Order 12898	Yes No <input type="checkbox"/> <input type="checkbox"/>	

Environmental Assessment Factors [24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27]
 Recorded below is the qualitative and quantitative significance of the effects of the proposal on the character, features and resources of the project area. Each factor has been evaluated and documented, as appropriate and in proportion to its relevance to the proposed action. Verifiable source documentation has been provided and described in support of each determination, as appropriate. Credible, traceable and supportive source documentation for each authority has been provided. Where applicable, the necessary reviews or consultations have been completed and applicable permits of approvals have been obtained or noted. Citations, dates/names/titles of contacts, and page references are clear. Additional documentation is attached, as appropriate. **All conditions, attenuation or mitigation measures have been clearly identified.**

Attachment 7.1 – Environmental Assessment

Impact Codes: Use an impact code from the following list to make the determination of impact for each factor.

- (1) Minor beneficial impact
- (2) No impact anticipated
- (3) Minor Adverse Impact – May require mitigation
- (4) Significant or potentially significant impact requiring avoidance or modification which may require an Environmental Impact Statement

Environmental Assessment Factor	Impact Code	Impact Evaluation
LAND DEVELOPMENT		
Conformance with Plans / Compatible Land Use and Zoning / Scale and Urban Design		
Soil Suitability/ Slope/ Erosion/ Drainage/ Storm Water Runoff		
Hazards and Nuisances including Site Safety and Noise		
Energy Consumption		

Environmental Assessment Factor	Impact Code	Impact Evaluation
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Attachment 7.1 – Environmental Assessment

SOCIOECONOMIC		
Employment and Income Patterns		
Demographic Character Changes, Displacement		

Environmental Assessment Factor	Impact Code	Impact Evaluation
COMMUNITY FACILITIES AND SERVICES		
Educational and Cultural Facilities		
Commercial Facilities		
Health Care and Social Services		
Solid Waste Disposal / Recycling		
Waste Water / Sanitary Sewers		
Water Supply		
Public Safety - Police, Fire and Emergency Medical		
Parks, Open Space		

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and Recreation		
Transportation and Accessibility		

Environmental Assessment Factor	Impact Code	Impact Evaluation
NATURAL FEATURES		
Unique Natural Features, Water Resources		
Vegetation, Wildlife		
Other Factors		

Additional Studies Performed:

Field Inspection (Date and completed by):

List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]:

Attachment 7.1 – Environmental Assessment

List of Permits Obtained:

Public Outreach [24 CFR 50.23 & 58.43]:

Cumulative Impact Analysis [24 CFR 58.32]:

Alternatives [24 CFR 58.40(e); 40 CFR 1508.9]

No Action Alternative [24 CFR 58.40(e)]:

Summary of Findings and Conclusions:

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Attachment 7.1 – Environmental Assessment

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure

Determination:

Finding of No Significant Impact [24 CFR 58.40(g)(1); 40 CFR 1508.27]

The project will not result in a significant impact on the quality of the human environment.

Finding of Significant Impact [24 CFR 58.40(g)(2); 40 CFR 1508.27]

The project may significantly affect the quality of the human environment.

Preparer Signature: _____ Date: _____

Name/Title/Organization: _____

Attachment 7.2 – Example Environmental Assessment

Environmental Assessment

Determinations and Compliance Findings for HUD-assisted Projects

24 CFR Part 58

Project Information

Project Name: Sunnyland Affordable Housing Development

Responsible Entity: Mintum Tribe

Grant Recipient (if different than Responsible Entity): Mintum Housing Authority

State/Local Identifier: 2016-25 of IHP (Affordable Housing Development)

Preparer: Anita Sheridan, Housing Manager, Mintum Housing Authority

Certifying Officer Name and Title: Warren Coates, Tribal Chairman

Consultant (if applicable): Sandra Atwood, Senior Planner, Walden Consulting, Wintergarden, Florida

Direct Comments to: Anita Sheridan, Housing Manager, Mintum Housing Authority, 900 W. Orion Dr., Blaine, FL, 19222, (808) (808) 979-1401

Attachment 7.2 – Example Environmental Assessment

Project Location: Lots 2 and 3 of King Terrace Addition to the City of Blaine, Florida, according to the plat thereof, as recorded in Plat Book 3, page 14, Public Records of Canton County, FL.

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

The Mintum Tribe will use local funds to purchase 7 acres of vacant land at the city limits of Blaine in Canton County, Florida. The land will then be brought into trust status. IHBG funds will be used by the Mintum Housing Authority to construct 20 units of single family housing for lease to low-income tribal members and connect the units to City service systems. The development will comprise single-story units with 3-bedrooms and 2 baths (1300 sq. ft.) and two-story units with 4-bedrooms and 2-1/2 baths (1535 sq. ft.). The attached general location map indicates where the project is located, and the attached Plat map shows the layout of streets, lots, units and service connections.

The project site is accessible by four roads, Grove Drive, Cypress Street, Flamingo Blvd., and Kendall Road. Kendall Rd. is a main thoroughfare to commercial and retail services, and borders the south side of the project site. Flamingo Blvd. is also a main thoroughfare that provides a secondary route to the project site through adjacent residential developments. The homes will be connected to existing City sewer and water systems, storm drains, and utility services by agreement of the City.

Statement of Purpose and Need for the Proposal [40 CFR 1508.9(b)]:

There is an increased demand for affordable housing by tribal members. A housing needs survey from the previous year showed that 60% of tribal members were living in overcrowded homes. Additionally, the waiting list for housing includes 40 families.

Existing Conditions and Trends [24 CFR 58.40(a)]:

Attachment 7.2 – Example Environmental Assessment

The land has been zoned by Canton County for single family (SF-1) and multifamily (SF-2) residential development, with commercial and retail zoning along main road systems, including Kendall Road, Ventura Blvd., Starr Rd., Patterson Avenue, and Spring Ave. Development of this area was sparse until 2010 when the City extended sewer, water, and storm services to connect existing developments in the area to its infrastructure systems. These improvements made by the City also create sufficient capacity for additional development. The purpose was to eliminate the use of individual wells systems and septic tanks to protect the local aquifer and to control storm water runoff and remedy local flooding problems. Since these improvements were made, managed development is continuing to occur in the general area.

The site is currently undeveloped and fenced off. The site will require clearing of several trees and shrubs.

Funding Information

Grant Number	HUD Program	Funding Amount
55IH9999111	IHBG	\$2,500,000

Estimated Total HUD Funded Amount: \$2,500,000

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]: \$4,800,000

Compliance with 24 CFR 50.4, 58.5, and 58.6 Laws and Authorities

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits or approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Attachment 7.2 – Example Environmental Assessment

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no civil airports within 2500 feet, nor military airfields within 15,000 feet of the project site. Canton Regional Airport is 10 miles from the project. (See attached general location map of the Canton County, FL, dated April 12, 2016)
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The project is not located in a designated Coastal Barrier Resources Area. (See attached map for Canton County, Flood Insurance Rate Map no. 120067058E, 8/3/92, page 16.)
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	One-half acre of the project site is within in a special flood hazard area, Zone AE, and is subject to 0.5 feet of flooding, according to F.I.R.M. panel number 1200670383 D, 11-16-89. No homes will be built in that area of the project site. See attached site map.
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.5		
Clean Air Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The project is in conformance with the State Implementation Plan. (See letter from South District Air Resources, dated July 13, 2016)
Coastal Zone Management Coastal Zone Management Act, sections 307(c) & (d)	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The project is within the Florida coastal zone management area. The Tribe submitted its request for a consistency determination to the Florida State Clearinghouse (See attached request dated June 1, 2016). The Florida Department of Environmental Protection has issued a “determination of consistency” with the Florida Coastal Management Program (See attached determination, dated July 5, 2016)
Contamination and Toxic Substances 24 CFR Part 50.3(i) &	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	There are no known environmental conditions, either one-site nor off-site, that will adversely affect using this site for residential housing or could affect the health and safety of the

Attachment 7.2 – Example Environmental Assessment

58.5(i)(2)		occupants. (See attached Phase I ESA, dated June 1, 2016)
<p>Endangered Species</p> <p>Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>A biological assessment was prepared to determine whether the native vegetation on the project site is habitat for any federally listed threatened or endangered species, or species proposed for listing, or is designated as critical habitat. The conclusion of the assessment was the flatwoods salamander, a threatened species, and the Florida golden aster, an endangered species, may be affected. In consultation with the U.S. Fish and Wildlife Service, it was concluded there would be “no effect” on either of these species. (See attached Sunnyland Subdivision Biological Assessment, dated June 6, 2016, and letter from the U.S. Fish and Wildlife Service, dated July 11, 2016)</p>
<p>Explosive and Flammable Hazards</p> <p>24 CFR Part 51 Subpart C</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>As a result of a field inspection of the project site and general vicinity, a Google Earth search of the area, and contact with the local fire department, it was determined there are no stationary aboveground storage tanks more than 100 gallons in size within one mile of the project. (See attached notes, Sandra Atwood, Waldon Consulting, May 15, 2016.)</p>
<p>Farmlands Protection</p> <p>Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project site has not been designated as prime or unique agricultural land. It is zoned R-1 (single family residential) (See attached soil designation map from the NRCS.)</p>
<p>Floodplain Management</p> <p>Executive Order 11988, particularly section 2(a); 24 CFR Part 55</p>	<p>Yes No</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p>One-half acre of the project site is within in a special flood hazard area, Zone AE, and is subject to 0.5 feet of flooding, according to F.I.R.M. panel number 1200670383 D, 11-16-89. Upon completion of the 8-step decision making process, in accordance with 24 CFR 55.20, the Tribe has determined there is no practicable alternative to locating the project in the floodplain. However, no homes will be built in the floodplain. (See attached <i>Soils and Geological Report</i>, Geo-Design Corp., May 16, 2016, the site map, and also the 8-step decision document containing mitigation requirements.)</p>
<p>Historic Preservation</p> <p>National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>No historic properties would be affected. (See attached correspondence and letter of concurrence for the State Historic Preservation Officer, Division of Historical Resources, Florida State Dept., dated July 11, 2016, as well as correspondence with 6 tribes with a historic interest in the area that were contacted.)</p>

Attachment 7.2 – Example Environmental Assessment

<p>Noise Abatement and Control</p> <p>Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B</p>	<p>Yes No</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p>There are no railroad lines within 3,000 feet or military or civil airfields within 15 miles of the project site. Flamingo Blvd. is 1,760 feet away and not within the 1,000 feet threshold. However, Kendall Road is a major roadway that borders the south side of the project site. It has been determined that the noise level of this roadway is 69 DNL (<i>Normally Unacceptable</i>). Five (5) decibels of attenuation will be incorporated into construction of the units adjacent to Kendall Road. This means that, since the homes along Kendall Rd. are laid out so the backyards are immediately adjacent to the road, a noise wall will be constructed to make the exterior noise level <i>Acceptable</i> (65DNL). Two-story units will require additional attenuation for the upper floor. (See attached noise calculation, according to the 24 CFR 51B and the HUD Noise Guidebook.) Information about road classifications and traffic counts were provided by George Colson, Engineer, Traffic Engineering Division, Canton County Public Works Dept., (808) 979-7075, June 1, 2016.</p>
<p>Sole Source Aquifers</p> <p>Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>Canton County does not have a U.S. EPA designated sole source aquifer (See attached print out of the EPA, Region IV, designated aquifer map, July 5, 2016)</p>
<p>Wetlands Protection</p> <p>Executive Order 11990, particularly sections 2 and 5</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The Tribe submitted a "Request for Wetlands Determination for Canton County" to the Florida Department of Environmental Protection. The Department's determination is that wetlands would not be affected by the project (See attached request, and letter from the Department, dated July 7, 2016)</p>
<p>Wild and Scenic Rivers</p> <p>Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>There are no federally designated rivers in Canton County. (See attached National Wild and Scenic Rivers System listing for the State of Florida, June 6, 2016)</p>
<p>ENVIRONMENTAL JUSTICE</p>		
<p>Environmental Justice</p> <p>Executive Order 12898</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project site is suitable for the proposed use and is compatible with the surrounding land uses. In addition, based upon the environmental findings of this assessment, the project will not be adversely affected by hazardous materials, unacceptable levels of noise, nor dangers to life and property from flooding. [See attached Phase I Environmental Site Assessment (ESA), dated June 1, 2016, and documentation on noise</p>

Attachment 7.2 – Example Environmental Assessment

		abatement and floodplain management.]
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Environmental Assessment Factors [24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27] Recorded below is the qualitative and quantitative significance of the effects of the proposal on the character, features and resources of the project area. Each factor has been evaluated and documented, as appropriate and in proportion to its relevance to the proposed action. Verifiable source documentation has been provided and described in support of each determination, as appropriate. Credible, traceable and supportive source documentation for each authority has been provided. Where applicable, the necessary reviews or consultations have been completed and applicable permits of approvals have been obtained or noted. Citations, dates/names/titles of contacts, and page references are clear. Additional documentation is attached, as appropriate. **All conditions, attenuation or mitigation measures have been clearly identified.**

Impact Codes: Use an impact code from the following list to make the determination of impact for each factor.

- (1) Minor beneficial impact
- (2) No impact anticipated
- (3) Minor Adverse Impact – May require mitigation
- (4) Significant or potentially significant impact requiring avoidance or modification which may require an Environmental Impact Statement

Environmental Assessment Factor	Impact Code	Impact Evaluation
LAND DEVELOPMENT		
Conformance with Plans / Compatible Land Use and Zoning / Scale and Urban Design	2	<p>The proposed development is in conformance with the Canton County Comprehensive Zoning Plan, adopted July 2000, which designates the property area as R-1 (Single Family Residential). (See attached map M-14, from the <i>Canton County 2020: A Comprehensive Land Management Plan</i>, July 2014.)</p> <p>The housing project is compatible with the surrounding land uses. The general area is composed of mixed residential uses (R-1 and R-2---single family and multifamily units). Residential buildings in the area are one-, two- and three-stories in height. Houses constructed on the project site will be one-and two-stories in height. Land use along major roadways in the area includes offices and commercial/retails services. The findings of the Phase I ESA were that there are no environmental hazards</p>

Attachment 7.2 – Example Environmental Assessment

		affecting the project area. [Rober Truwood, Senior Planner, Canton County Planning Dept, (808) 979-1822, June 4, 2016. See attached telephone record. Also, see attached map M-14, from the <i>Canton County 2020: A Comprehensive Land Management Plan</i> , July 2014) and Phase I ESA, dated June 1, 2016)]
Soil Suitability/ Slope/ Erosion/ Drainage/ Storm Water Runoff	3	<p>The project area has sandy soils; therefore, the specifications that are recommended by the engineering report for fill dirt and foundation construction will be followed. Fill dirt imported to the project site will be certified as “clean” to ensure ground water is protected from any contaminants leaching through the soils. (See attached <i>Soils and Geological Report</i>, Geo-Design Corp., May 16, 2016).</p> <p>The project area is level, and slopes will not be created by cut and fill of the site. (See attached <i>Soils and Geological Report</i>, Geo-Design Corp., May 16, 2016)</p> <p>The project area does not have any indication of erosion problems. Off-site drainage is directed to existing storm systems, and on-site drainage will be connected to those systems. (See attached <i>Soils and Geological Report</i>, Geo-Design Corp., May 16, 2016)</p>
Hazards and Nuisances including Site Safety and Noise	2	<p>The project area is not adversely affected by on-site or off-site hazards or nuisances. There will be adequate off-street parking for residents, and street lighting and turning lanes are present at the major intersections entering the project site. According to the U.S. EPA <i>Map of Radon Zones</i>, Canton County is in Zone 3 (Low Potential) for radon (See attached map, as of October 25, 2015)</p> <p>The proposed housing construction in this established residential area will not generate substantial noise. Construction activities are restricted by County Code (Code 13111) to the hours of 7 AM and 6PM. Increased noise from construction activities will be temporary. [Robert Truwood, Senior Planner, Canton County Planning Dept., (808) 979-1822, June 4, 2016, See attached telephone record.]</p>
Energy Consumption	2	The area is already served by electrical and gas utilities operated by AVISTA Utilities. There is adequate capacity to serve the additional 20 units of housing. The units will be constructed according to the County’s Energy Conservation Code (Code 15542). In addition, the Mintum Housing Authority will procure construction materials that are Energy Star approved. (See letter from Burke Brown, Senior Manager, Residential Services, AVISTA Utilities, dated July 12, 2016)

Environmental Assessment Factor	Impact Code	Impact Evaluation
SOCIOECONOMIC		

Attachment 7.2 – Example Environmental Assessment

Employment and Income Patterns	1	There will be a temporary increase in jobs for construction workers a result of this project. Other than this, it is not expected that employment and income patterns will change. The project could be beneficial to businesses in the vicinity of subdivision because there will be additional households requiring their services. [Anita Sheridan, Mintum Housing Authority, (808) 979-1401. See attached project description and proposal, April 1, 2016]]
Demographic Character Changes, Displacement	2	The project will not change the demographics of the general area. More affordable housing will be created to serve Tribal members currently living in rental housing within the City of Blaine. [Anita Sheridan, Housing Manager, Mintum Housing Authority, (808) 979-1401, May 16, 2016. See attached contact record.]

Environmental Assessment Factor	Impact Code	Impact Evaluation
COMMUNITY FACILITIES AND SERVICES		
Educational and Cultural Facilities	2	<p>There are several schools that serve the project area---Fruitvale Elementary School, Summit and Plains Middle Schools, and Taft and Palm Tree High Schools. All the schools are part of the Mayfly School District. The additional housing units will not impact the capacity of any of these schools. [Christine Chow, District Administrator, Mayfly School District, (808) 979-4444]. See attached letter dated June 15, 2016]</p> <p>There is a public library that serves the project area, which occasionally hosts art and history exhibits. The City has several community theatres for symphonies and plays. The County fairground hosts numerous special events throughout the year. All these facilities are accessible by public transportation. [Sandra Atwood, Waldon Consulting, (808) 979-1822. See attached Field Observations, May 15, 2016.]</p>
Commercial Facilities	2	The project area is served by a large variety of commercial and retails services within 1/2 to 5 miles. The project site is within a 1 miles of shopping, services and schools. Bus transit service is available throughout the City of Blaine and the County. (See attached Field Observation notes, Sandra Atwood, Walden Consulting, May 15, 2016)
Health Care and Social Services	2	<p>The project area is served by a full range of health care professionals (general physicians, dental, optometrists, and medical specialist), within a 5 mile radius. The City Health Clinic is located 5 miles from the project site. (See attached Field Observation notes, Sandra Atwood, Waldon Consulting, May 15, 2016)</p> <p>The project area is served by many social service providers---i.e., job placement, public welfare, family counseling, and day care---within 2 to 6 miles of the project area. (See attached Field Observation notes, Sandra Atwood, Walden Consulting, May 15, 2016)</p>

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<p>Solid Waste Disposal / Recycling</p>	<p>2</p>	<p>The project area is served by Waste Management Service, Inc., that provides curbside services throughout the County. The additional housing units being constructed in the subdivision will not impact the service provider or the capacity of the existing County landfill. [Don Rogers, Sanitary Engineer, Canton County Public Works Dept., (808) 979-7070, June 6, 2016. See attached telephone record.]</p> <p>The Tribe has entered into an agreement with the County for solid waste services. (See attached agreement executed May 29, 2016)</p>
<p>Waste Water / Sanitary Sewers</p>	<p>2</p>	<p>The project area is served by City sewer systems and will not impact the existing sewer capacity. In 2010, the City extended its sewer system to the project area to provide sufficient capacity for additional development in the area. [Sam Davenport, Engineer, Water and Sewer Division, City Public Works Dept., Blaine, FL, (808) 979-7071, June 6, 2016. See attached telephone record.]</p> <p>The Tribe has entered into an agreement with the City for waste water, storm water and drinking water services, (See attached agreement executed, April 20, 2016)</p>
<p>Water Supply</p>	<p>2</p>	<p>Drinking water for the project area is provided and maintained by the City. The additional housing units will not impact the current capacity of this system. In 2010, the City extended its water supply lines to the project area in order to eliminate the use of individual wells so that the water quality of the local aquifer would be protected. There is sufficient water capacity for the project, as well as additional development in the area. [Sam Davenport, Engineer, Water and Sewer Division, Public Works Dept., (808) 979-7071, June 6, 2016. See attached telephone record.]</p> <p>The Tribe has entered into an agreement with the City for waste water, storm water and drinking water services, (See attached agreement executed, April 20, 2016)</p>
<p>Public Safety - Police, Fire and Emergency Medical</p>	<p>2</p>	<p>There are three substations serving this area---Highland Street, Key Street, and Orange Street. The response time to the project site from each of the substations is 10 minutes. The additional housing units will not impact the ability of the County Sheriffs Dept. to respond, nor cause additional burden on existing staff. [Samuel Gonzales, Sheriff, Canton County Sheriffs Dept., (808) 979-9922, June 21, 2016. See attached telephone record.]</p> <p>There are two fire stations serving the project area---Harbor Street and Kendall Road. Another station will be completed in 2015. The response time from the Kendall Road station is 5 minutes, and 10 minutes from the Harbor Station. The additional housing units will not impact the ability of the City Fire Department to respond, or cause additional burden on existing staff. (See attached letter from Alan Williams, Chief, Canton County Fire and Rescue Department, June 30, 2016.)</p> <p>Sacred Heart Hospital and Mercy Regional Hospital provide emergency services to the project area.</p>

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Parks, Open Space and Recreation	2	<p>There are two community parks in the project area---Tamini Park is 3 acres and Barton Regional Park is 60 acres. [Sandra Atwood, Waldon Consulting, (808) 979-1822. See attached Field Observations, May 15, 2016.]</p> <p>Schools in the project area provide after school events and sports programs. The schools also have baseball, tennis, and outdoor basketball courts that are available for community use. There is also a bicycle path that runs along Hardee Creek, which flows from the eastside to the west side of the City. (Sandra Atwood, Waldon Consulting, (808) 979-1822. Also, see attached location map of City recreational facilities, map M-20, <i>Canton County 2020: A Comprehensive Land Management Plan</i>, July 2014.</p>
Transportation and Accessibility	2	<p>The project site is accessible from several access roads. Public transportation (City Rapid Transit and County Connection) are also available in the project area, as well as throughout the City and County. [Sandra Atwood, Waldon Consulting, (808) 979-1822. See attached Field Observations, May 15, 2016.]</p> <p>The project site is within 1 mile of shopping, services and schools. Bus transit service is available throughout the City of Blaine and the County. (See attached Field Observation notes, Sandra Atwood, Walden Consulting, May 15, 2016)</p>

Environmental Assessment Factor	Impact Code	Impact Evaluation
NATURAL FEATURES		
Unique Natural Features, Water Resources	2	<p>The project site does not contain any unique landforms considered to be local landmarks nor important for information concerning natural history. Neither are there any rare or unique vegetative resources present on the site. (See the chapter on <i>Natural Resources, Canton County 2020: A Comprehensive Land Management Plan</i>, July 2014, page 6-15)</p> <p>Groundwater will not be affected by the housing project. In 2010, the City extended its water supply lines to the project area in order to eliminate the use of individual wells so that the water quality of the local aquifer would be protected. [Sam Davenport, Engineer, Public Works Dept., (808 979-7071, June 6, 2016. See attached telephone record.]</p> <p>There are no rivers, creeks, or open bodies of water in the area that could be affected by water runoff or sedimentation from the project site. Furthermore, storm water will be managed by the City's system. Fill dirt imported to the project site will be certified as "clean" to ensure ground water is protected from any contaminants leaching through the soils. (See attached Field Observation notes, Sandra Atwood, Waldon Consulting, May 15,</p>

Attachment 7.2 – Example Environmental Assessment

		2016)
Vegetation, Wildlife	2	<p>The project will destroy native vegetation and replace it with non-native species. There are no State listed rare or threatened species, or game animals that would be affected by this change. Animals principally affected by removal of native habitat would common species, such as field mice, garter snakes, sparrows, and a variety of insects.</p> <p>(See attached Sunnyland Subdivision Biological Assessment, dated June 6, 2016, and letter from the U.S. Fish and Wildlife Service, dated July 11, 2016)</p>
Other Factors	2	<p>A traffic study was completed according the planning code requirements of the City of Blaine (City code 1188.12). The study concluded that additional traffic from the proposed housing development would not affect the capacity of the existing road systems nor would traffic entering and leaving the development create danger of collisions. (See attached Vehicle Transportation Study and Access Design, EOR Engineering & Designs, 6/30/16.)</p>

Additional Studies Performed:

1. Sunnyland Subdivision Biological Assessment, Avery, Chatsworth and Associates, 2929 E. Firewood Court, Orion. Florida, 32399, (808) 893-2020
2. Noise calculation for the Sunnyland Subdivision, Blaine Planning Department, June 5, 2016.
3. Phase I Environmental Site Assessment (ESA), Sunnyland Affordable Housing Project, EarthTec, Inc., 54678 Beach Front St., Naples, FL 32387, (808) 979-2300. dated June 1, 2016,
4. *Soils and Geological Report for the Sunnyland Subdivision*, Geo-Design Corp., 14142 Westland St., Cocoa Beach, FL, 32494, (808) 979-0022.
5. Eight-step decision-making process for Sunnyland Development.

Field Inspection (Date and completed by): May 15, 2016 by Sandra Atwood

List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]:

1. Frederick Gaske, Deputy State Historic Preservation Officer, Division of Historical Resources, Department of State, 500 South Bronough St., Rm. 305, Tallahassee, FL, 32399-0250, (850) 245-6300
2. U.S. Fish and Wildlife Service, Region 4, 1875 Century Blvd., Suite 200, Atlanta, GA 30345
3. Blaine Historical Commission, 530 Pelican Dr., Ste. 330, Blaine, FL 19222, (808) 979-0001
4. Florida Dept. of Environmental Protection, 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2161
5. Florida State Clearinghouse, Office of Intergovernmental Programs, Dept. of Environmental Protection, , 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2161
6. South District Air Resources, Florida Dept. of Environmental Protection, 2295 Victoria Ave., Fort Meyers, FL, 33901, (839) 332-6975

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7. Sherry Black, Planner, Building and Zoning Division, Canton County Planning Dept., 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 979-1125
8. Robert Truwood, Senior Planner, Canton County, Planning Dept., 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 979-1822
9. *Canton County 2020: A Comprehensive Land Management Plan*, adopted July 2012
10. U.S. EPA Map of Radon Zones, Canton County, FL,
<http://www.epa.gov/radon/states/florida.html#zone%20map>
11. Burke Brown, Senior Manager, Southern Region, AVISTA Utilities, 2800 S. Horseshoe Dr., Cocoa Beach, FL, 32388, (808) 979-5738
12. Eric Washburn, Construction Manager, Mintum Housing Authority, 2020 N. Teal Rd., Blaine, FL, 19222, (808) 979-1402
13. Anita Sheridan, Housing Manager, Mintum Housing Authority, 2020 N. Teal Rd., Blaine, FL, 19222, (808) 979-1401
14. Christine Chow, District Administrator, Mayfly School District, 25055 Channel St., Blaine, FL, 19222, (808) 979-4444
15. Don Rogers, Sanitary Engineer, Waste Management Division, City Public Works Dept., 295 Riverside Circle, Blaine, FL, 19222, (808) 979-7070.
16. Sam Davenport, Engineer, Water and Sewer Division, City Public Works Dept., 295 Riverside Cr., Blaine, FL, 19222, (808) 979-7071
17. George Colson, Engineer, Traffic Engineering Division, Canton County Public Works Dept., 295 Riverside Cr., Blaine, FL, 19222, (808) 979-7075.
18. Samuel Gonzales, Sheriff, Canton County Sheriffs Dept., 9090 S. Ravenwood Dr., Laine, FL, 19222, (808) 979-9922
19. Alan Williams, Chief, Canton County Fire and Rescue Dept., 5544 Cypress Ave., Blaine, FL, 19222, (808) 979-1515
20. Canton County, Flood Insurance Rate Map (F.I.R.M.), Coastal Barrier Resources Act Zones, Map Panel no. 120067058E, 8/3/92
21. Canton County, Flood Insurance Rate Map (F.I.R.M.), Map Panel no. 1200670383, 11/16/89
22. Florida Coastal Management Program, Dept. of Environmental Protection, 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2163
23. Frederick Gaske, Deputy State Historic Preservation Officer, Division of Historical Resources, Department of State, 500 South Bronough St., Rm. 305, Tallahassee, FL, 32399-0250, (850) 245-6300
24. U.S. Fish and Wildlife Service, Region 4, 1875 Century Blvd., Suite 200, Atlanta, GA 30345
25. Blaine Historical Commission, 530 Pelican Dr., Ste. 330, Blaine, FL 19222, (808) 979-0001
26. Florida Dept. of Environmental Protection, 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2161
27. Florida State Clearinghouse, Office of Intergovernmental Programs, Dept. of Environmental Protection, , 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2161
28. South District Air Resources, Florida Dept. of Environmental Protection, 2295 Victoria Ave., Fort Meyers, FL, 33901, (839) 332-6975
29. Sherry Black, Planner, Building and Zoning Division, Canton County Planning Dept., 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 979-1125
30. Robert Truwood, Senior Planner, Canton County, Planning Dept., 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 979-1822
31. *Canton County 2020: A Comprehensive Land Management Plan*, adopted July 2012
32. U.S. EPA Map of Radon Zones, Canton County, FL,
<http://www.epa.gov/radon/states/florida.html#zone%20map>

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33. Burke Brown, Senior Manager, Southern Region, AVISTA Utilities, 2800 S. Horseshoe Dr., Cocoa Beach, FL, 32388, (808) 979-5738
34. Eric Washburn, Construction Manager, Mintum Housing Authority, 2020 N. Teal Rd., Blaine, FL, 19222, (808) 979-1402
35. Anita Sheridan, Housing Manager, Mintum Housing Authority, 2020 N. Teal Rd., Blaine, FL, 19222, (808) 979-1401
36. Christine Chow, District Administrator, Mayfly School District, 25055 Channel St., Blaine, FL, 19222, (808) 979-4444
37. Don Rogers, Sanitary Engineer, Waste Management Division, City Public Works Dept., 295 Riverside Circle, Blaine, FL, 19222, (808) 979-7070.
38. Sam Davenport, Engineer, Water and Sewer Division, City Public Works Dept., 295 Riverside Cr., Blaine, FL, 19222, (808) 979-7071
39. George Colson, Engineer, Traffic Engineering Division, Canton County Public Works Dept., 295 Riverside Cr., Blaine, FL, 19222, (808) 979-7075.
40. Samuel Gonzales, Sheriff, Canton County Sheriffs Dept., 9090 S. Ravenwood Dr., Laine, FL, 19222, (808) 979-9922
41. Alan Williams, Chief, Canton County Fire and Rescue Dept., 5544 Cypress Ave., Blaine, FL, 19222, (808) 979-1515
42. Canton County, Flood Insurance Rate Map (F.I.R.M.), Coastal Barrier Resources Act Zones, Map Panel no. 120067058E, 8/3/92
43. Canton County, Flood Insurance Rate Map (F.I.R.M.), Map Panel no. 1200670383, 11/16/89
44. Florida Coastal Management Program, Dept. of Environmental Protection, 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2163
45. Frederick Gaske, Deputy State Historic Preservation Officer, Division of Historical Resources, Department of State, 500 South Bronough St., Rm. 305, Tallahassee, FL, 32399-0250, (850) 245-6300
46. U.S. Fish and Wildlife Service, Region 4, 1875 Century Blvd., Suite 200, Atlanta, GA 30345
47. Blaine Historical Commission, 530 Pelican Dr., Ste. 330, Blaine, FL 19222, (808) 979-0001
48. Florida Dept. of Environmental Protection, 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2161
49. Florida State Clearinghouse, Office of Intergovernmental Programs, Dept. of Environmental Protection, , 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2161
50. South District Air Resources, Florida Dept. of Environmental Protection, 2295 Victoria Ave., Fort Meyers, FL, 33901, (839) 332-6975
51. Sherry Black, Planner, Building and Zoning Division, Canton County Planning Dept., 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 979-1125
52. Robert Truwood, Senior Planner, Canton County, Planning Dept., 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 979-1822
53. *Canton County 2020: A Comprehensive Land Management Plan*, adopted July 2012
54. U.S. EPA Map of Radon Zones, Canton County, FL, <http://www.epa.gov/radon/states/florida.html#zone%20map>
55. Burke Brown, Senior Manager, Southern Region, AVISTA Utilities, 2800 S. Horseshoe Dr., Cocoa Beach, FL, 32388, (808) 979-5738
56. Eric Washburn, Construction Manager, Mintum Housing Authority, 2020 N. Teal Rd., Blaine, FL, 19222, (808) 979-1402
57. Anita Sheridan, Housing Manager, Mintum Housing Authority, 2020 N. Teal Rd., Blaine, FL, 19222, (808) 979-1401

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58. Christine Chow, District Administrator, Mayfly School District, 25055 Channel St., Blaine, FL, 19222, (808) 979-4444
59. Don Rogers, Sanitary Engineer, Waste Management Division, City Public Works Dept., 295 Riverside Circle, Blaine, FL, 19222, (808) 979-7070.
60. Sam Davenport, Engineer, Water and Sewer Division, City Public Works Dept., 295 Riverside Cr., Blaine, FL, 19222, (808) 979-7071
61. George Colson, Engineer, Traffic Engineering Division, Canton County Public Works Dept., 295 Riverside Cr., Blaine, FL, 19222, (808) 979-7075.
62. Samuel Gonzales, Sheriff, Canton County Sheriffs Dept., 9090 S. Ravenwood Dr., Laine, FL, 19222, (808) 979-9922
63. Alan Williams, Chief, Canton County Fire and Rescue Dept., 5544 Cypress Ave., Blaine, FL, 19222, (808) 979-1515
64. Canton County, Flood Insurance Rate Map (F.I.R.M.), Coastal Barrier Resources Act Zones, Map Panel no. 120067058E, 8/3/92
65. Canton County, Flood Insurance Rate Map (F.I.R.M.), Map Panel no. 1200670383, 11/16/89
66. Florida Coastal Management Program, Dept. of Environmental Protection, 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2163

List of Permits Obtained:

Building permit, City of Blaine

Public Outreach [24 CFR 50.23 & 58.43]:

Will send the notice to Blaine Tribune Eagle. The notice will be posted on the City of Blaine website and forwarded to an email list of over 200. See attached list of recipients.

Cumulative Impact Analysis [24 CFR 58.32]:

Four mitigation actions were found to be required. The cumulative impact of developing housing for low income families will provide much needed affordable housing. The impact of traffic will be minimal, and schools will not be overburdened. There are adequate services, utilities and transit for the intended residents of the project.

There are no other planned developments in the immediate vicinity by other developers which would cumulatively impact air quality, noise, traffic, or the capacity of various community services.

Alternatives [24 CFR 58.40(e); 40 CFR 1508.9]

Consideration had been given to developing the housing units on scattered sites throughout the City of Blaine. However, the higher cost of individual parcels available for purchase within the City limited the number of affordable units that could be constructed for low income families. In addition, some of the more affordable parcels had less desirable environmental conditions---- e.g., close proximity to freeways, light industrial facilities, and the City treatment plant.

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No Action Alternative [24 CFR 58.40(e)]:

The no action alternative was considered; however, it would not meet the demand by low income tribal members for affordable housing. The demand for affordable housing has increased 20 percent since 20010. The concern is that low income households would then be required to rely more and more upon the Tribe's tenant-based housing program, and would not be able to meet their household needs on their own. In addition, their only choices may be substandard housing.

Summary of Findings and Conclusions:

The proposed housing construction project will not adversely impact the neighborhood. This activity is compatible with the existing uses in the area, and will have minimal impact on housing density in the area. Neither will there be any impact on existing resources or services to the area.

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure
Floodplain Management	The one-half acre of the site that is located within Zone AE and subject to 0.5 feet of flooding. This portion of the site will be elevated above the base flood elevation, and the tribe will submit a request for a <i>Letter of Map Revision</i> (LOMR) to FEMA for approval. Prior to the Tribe's submission of the request to FEMA, County Engineers will review and approve the design plans submitted by the Mintum Housing Authority.
Noise Abatement	Seven of the parcels are adjacent to Kendall Road. A noise barrier will be constructed along the Kendall Road side of these parcels to achieve an <i>Acceptable</i> (65DNL) exterior noise level on the first floor. In addition, the Housing Authority will advise the Tribe, in writing, as to which units have a second story level, and how attenuation measures (including mechanical ventilation) will achieve an interior noise level of 45 DNL.

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Soil Suitability	Fill dirt and foundation construction specifications and recommendations contained in the <i>Soil and Geological Report</i> will be followed. Fill dirt imported to the project site will be certified as “clean”.
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Determination:

Finding of No Significant Impact [24 CFR 58.40(g)(1); 40 CFR 1508.27]

The project will not result in a significant impact on the quality of the human environment.

Finding of Significant Impact [24 CFR 58.40(g)(2); 40 CFR 1508.27]

The project may significantly affect the quality of the human environment.

Preparer Signature: _____ Date: 7/20/16

Name/Title/Organization: _____ Sandra Atwood, Senior Planner, Walden Consulting

Certifying Officer Signature: _____ Date: 7/25/16

Name/Title: _____ Warren Coates, Tribal Chairman, Mintum Tribe

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

Attachment 7.3 – Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds

(DATE OF NOTICE)

(NAME OF RESPONSIBLE ENTITY [RE])

(ADDRESS)

(CITY, STATE, ZIP CODE)

(TELEPHONE NUMBER OF RE PREPARER AGENCY)

This Notice shall satisfy the above-cited two separate but related procedural notification requirements.

REQUEST FOR RELEASE OF FUNDS

On or about (AT LEAST ONE DAY AFTER THE END OF THE COMMENT PERIOD) the (NAME OF RE) will [IF THE RE IS NOT ALSO THE GRANTEE INSERT THE FOLLOWING LANGUAGE HERE--"AUTHORIZE THE (NAME OF GRANTEE) TO"] submit a request to the (HUD/STATE ADMINISTERING AGENCY) for the release of (NAME OF GRANT PROGRAM) funds under [Title/Section ()] of the (NAME OF THE ACT) of (DATE OF ACT), as amended, to undertake a project known as (PROJECT TITLE), for the purpose of (NATURE/SCOPE OF PROJECT, AND PROJECT ADDRESS/LOCATION IF APPLICABLE, AND TOTAL ESTIMATED PROJECT COST.).

FINDING OF NO SIGNIFICANT IMPACT

The (NAME OF RE) has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at (NAME AND ADDRESS OF RE OFFICE WHERE ERR CAN BE EXAMINED AND NAME AND ADDRESS OF OTHER LOCATIONS WHERE THE RECORD IS AVAILABLE FOR REVIEW) and may be examined or copied weekdays () A.M. to () P.M.

PUBLIC COMMENTS

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments to the (RE DESIGNATED OFFICE RESPONSIBLE FOR RECEIVING AND RESPONDING TO COMMENTS). All comments received by (IF NOTICE PUBLISHED: NOTICE DATE PLUS FIFTEEN DAYS--IF NOTICE POSTED: POSTING DATE PLUS EIGHTEEN DAYS) will be considered by the (NAME OF RE) prior to authorizing submission of a request for release of funds. Commentators should specify which part of this Notice they are addressing.

Attachment 7.3 – Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds

RELEASE OF FUNDS

The (NAME OF RE) certifies to (HUD/STATE) that (NAME OF CERTIFYING OFFICER) in (HIS/HER) capacity as (OFFICIAL TITLE) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. (HUD'S/STATE'S) approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the (NAME OF GRANTEE) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

(HUD/STATE) will consider objections to its release of funds and the (RE's NAME) certification received by (FIFTEEN DAYS FROM THE TIME OF RECEIPT FROM HUD/STATE) or a period of fifteen days from its receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer or other officer of the (NAME OF RE) approved by (HUD/STATE); (b) the (RE) has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by (HUD/STATE); or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to (HUD/STATE GRANT ADMINISTRATION OFFICE) at (ADDRESS OF THAT OFFICE). Potential objectors should contact (HUD/STATE) to verify the actual last day of the objection period.

(NAME AND TITLE OF RE CERTIFYING OFFICER)

Attachment 7.4 – Example Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds

August 1, 2016

Mintum Tribe
900 W. Orion Dr.
Blaine, Florida 19222
(808) 979-1500

This Notice shall satisfy the above-cited two separate but related procedural notification requirements.

REQUEST FOR RELEASE OF FUNDS

On or about August 17, 2016 the Mintum Tribe will submit a request to HUD for the release of Indian Housing Block Grant funds under Title I of the Native American Housing Assistance and Self-Determination Act 1996, as amended, to undertake a project known as Sunnyland Affordable Housing Subdivision, for the purpose of acquiring seven acres of vacant land to construct 20 units of single family housing for sale to members of the Mintum Tribe who are first time homebuyers. The land will be put into trust land status. The project is located at the northwestern corner of the junction of Grove Drive and Kendall Road in Canton County. The total estimated cost of the project is \$2,800,000.

FINDING OF NO SIGNIFICANT IMPACT

The Tribe has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at the Mintum Housing Authority, 2020 N. Teal Rd., Blaine, FL, and may be examined or copied weekdays 8 A.M. to 4:30 P.M.

PUBLIC COMMENTS

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments to the Director, Tribal Planning Department, Tribal Headquarters. All comments received by August 16, 2016 will be considered by the Tribe prior to authorizing submission of a request for release of funds. Commentators should specify which part of this Notice they are addressing.

RELEASE OF FUNDS

The Tribe certifies to HUD that Warren Coates in his capacity as Tribal Chairman consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce

Attachment 7.4 – Example Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds

responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the Tribe to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

HUD will consider objections to its release of funds and the Tribe's certification received by September 1, 2016 or a period of fifteen days from its receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer or other officer of the Tribe approved by HUD; (b) the Tribe has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by HUD; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to Kevin Fitzgibbons, Administrator, HUD Eastern/Woodlands Office of Native American Programs, Ralph H. Metcalf Federal Building, 77 West Jackson Blvd., Room 2404, Chicago, IL, 60604-3501. Potential objectors should contact HUD to verify the actual last day of the objection period.

Warren Coates, Tribal Chairman
Mintum Tribe

CHAPTER 8 – OVERVIEW OF ENVIRONMENTAL IMPACT STATEMENTS

Preparation of an Environmental Impact Statement (EIS) represents the highest level of environmental review an RE can conduct for a proposed project. More so than any other type of project or activity, those that trigger the EIS requirement have the greatest potential to significantly impact the human environment. Preparation of an EIS will tell the RE if this impact is acceptable under existing environmental statutes and authorities. After completing this chapter you will:

- Understand what specific types of projects trigger the requirement for an EIS; and
- Have a basic understanding of the EIS process and how to document the ERR.

TYPES OF ACTIVITIES (§ 58.37)

An environmental impact statement (EIS) is a complex analysis required for the proposed activities that would have significant impact on the human environment in accordance with Section 102(2)(C) of the National Environmental Policy Act.

The EIS thresholds stated at §§ 58.37(a) and (b)(2) include:

- Projects determined to have a potentially significant impact on the human environment (See 40 CFR 1508, § 1508.27 in Appendix F.2);
- Projects determined, by a previously written environmental assessment, to have a potentially significant impact on the human environment (i.e, finding of significant impact determination); and
- Projects involving 2,500 or more units being removed, demolished, converted, rehabilitated, or constructed.

NOTE: It is not typical for a NAHASDA, ICDBG, or Section 184 project to trigger the Environmental Impact Statement requirements. If an RE believes that a project it is contemplating as a possible NAHASDA, ICDBG, or Section 184 project may in fact trigger these requirements, it should consult an ONAP Grant Management Specialist immediately before taking any further action.

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Chapter 8 – Overview of Environmental Impact Statements

COMPLIANCE DOCUMENTATION

The RE must use the EIS format recommended by the Council on Environmental Quality (CEQ) regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such cases, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10 (Refer to Appendix F.2 for regulation). The following is the standard format for an environment impact statement (EIS):

- Cover sheet.
- Summary.
- Table of contents.
- Purpose of and need for action.
- Alternatives including the proposed action.
- Affected environment.
- Environmental consequences.
- List of preparers.
- List of Agencies, organizations, and persons to whom copies of the statement are sent.
- Index.
- Appendices (if any).

HUD REQUIREMENTS (§ 58.6 AND 58.5)

Within the EIS, the sections on the affected environmental and environmental consequences should include addressing the federal laws and authorities cited in 24 CFR 58.6 and 58.5.

PUBLIC NOTIFICATION PROCESS

Several notices related to the preparation and completion of an EIS are required to appear in the Federal Register. They are the Notice of Intent to Prepare an EIS (NOI), Notice of Availability of a Draft EIS, and Notice of Availability of a Final EIS. Because only federal agencies may submit notices to the U.S. Environmental Protection Agency (EPA) for publication

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Chapter 8 – Overview of Environmental Impact Statements

in the Federal Register, the RE will need to coordinate this effort through their ONAP Field Office. The comment periods required for each of these notices are as follows:

- Notice of Intent to Prepare an EIS: A simple announcement in the Federal Register;
- Notice of Availability of a Draft EIS: 45-90 days; and
- Notice of Availability of a Final EIS: 30 days.

In addition, there are public hearings and scoping meetings also associated with the EIS review process.

Upon completion of the EIS, and once the 30-day comment period has expired for the Final EIS notice, the RE must issue a Notice of Intent to Request Release of Funds (NOI/RROF) prior to submitting its request for release of funds to ONAP. The RE will do all of the following:

- Publish or post/mail the Notice of Intent to Request Release of Funds (NOI/RROF), in accordance with §§ 58.45 and 58.70;
- Have the Certifying officer (CO) signs the Request for Release of Funds and Certification (RROF) (HUD form 7015.15);
- Submit the RROF with a copy of the public notice to ONAP; and
- Wait to receive HUD form 7015.16, Authority to Use Grant Funds, from ONAP before initiating work or committing funds.

A sample copy of the NOI/RROF form is provided as Attachment 6.4 in Chapter 6, Categorical Exclusions Subject to § 58.5.

HUD Approval

ONAP has 15 days from the date it receives the request or the date that appears in the notice (indicating when the RE intends to submit its request), whichever is later, to receive objections to releasing funds from the public, interested persons or agencies. The objections must be based upon procedural errors committed by the RE (e.g., not preparing the correct level of environmental review, not following the requirements for compliance with federal laws and authorities, committing funds prior to completing the environmental review process, etc.). Objections must be submitted to the Administrator of the ONAP Office in writing.

ONAP will approve the RE's request if no objections are received or after objections have been satisfactorily resolved. The RE will then receive a HUD form 7015.16 from ONAP. Once approval is received from ONAP, work may be initiated and project funds may be committed.

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CHAPTER 9 – HUD APPROVAL AND RELEASE OF FUNDS PROCESS

This chapter covers activities that are categorically excluded subject to § 58.5 and cannot convert to exempt, or require preparation of an Environmental Assessment or Environmental Impact Statement to determine their impact on the environment and the impact of the surrounding environment on the activity. After completing this chapter, you will:

- Understand when public notices are required in the environmental review process;
- Understand the minimum content of notices, as required by HUD;
- Understand the steps in completing a request for release of funds (RROF); and
- Understand how to obtain HUD approval so that NAHASDA and/or ICDBG funds may be committed and spent.

PUBLIC NOTIFICATION AND RELEASE OF FUNDS PROCESS

The public notification process is an integral part of the environmental review process that allows the public, interested persons, and agencies to voice their opinions about the project's potential environmental impact and the RE's environmental findings. Public notices are required when the RE determines that a project which is categorically excluded subject to § 58.5 cannot convert to exempt or when the RE prepares an environmental assessment (EA) or environmental impact statement (EIS).

Consideration should be given to having a procedure in place for managing any comments received concerning the environmental review record (ERR). The ERR is a public document that must be made available to the public. Consequently, it would be prudent to develop a method for documenting the comments that were received and considered, as well as the outcome (e.g., further investigation was warranted, information was incorporated into the environmental finding, comments did not have substantive or factual merit and did not receive further consideration). All comments received, and responses by the RE become part of the ERR.

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Chapter 9 – HUD’s Approval and Release of Funds Process

CATEGORICAL EXCLUSIONS THAT DO NOT CONVERT TO EXEMPT

If the proposed activity triggers compliance with any of the federal laws and authorities, and there is documentation supporting this finding, the RE must then:

1. Publish or disseminate all notices related to any specific federal law and authority review (e.g., notice of approval of a project located in a floodplain, notice of proposal of improvements and development in a wetland, notice of adverse effects of an undertaking on historic properties, etc.). Follow notice requirements set forth by the applicable federal regulation or agency.
2. Publish or post/mail a Notice of Intent to Request Release of Funds (NOI/RROF), according to §§ 58.45 and 58.70. A minimum of 7 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community, or a minimum of 10 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures.

NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 7 days of the comment period. If posted, the notice must be maintained in place until after the public comment period has expired.

The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/ mailing date of the notice (§ 58.21). **Attachment 6.4** provides the minimum content required for this legal notice. **Attachment 6.5** is an example of a completed NOI/RROF.

3. In addition to publishing or posting/ mailing the notice, the tribe must also disseminate a copy of the notice, at minimum, to individuals and groups known to be interested in the project/activities, to the local news media, to the appropriate tribal, local, state and federal agencies, to regional office of the Environmental Protection Agency having jurisdiction, and to the ONAP field office.

NOTE: By sending a copy of the notice to the ONAP field office prior to the tribe submitting its request for release of funds, it allows the ONAP field office to determine if all the required information appears in the notice as it should. This action determination can prevent delays later should ONAP decide that required information is missing.

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4. Consider and respond to comments received, evaluate and analyze any concerns raised that have merit, and resolve outstanding issues. If the RE does not receive any comments, or after there has been consideration and response to comments received, the CO may sign the RROF (HUD form 7015.15) for submission (with a copy of the notice attached) to the ONAP Field Office. (NOTE: The RE should indicate in its letter of submission to the ONAP Field Office how the notice was distributed. Was it posted or mailed?)
5. Also, disseminate the combined notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, state and federal agencies; to the regional office of the U.S. Environmental Protection Agency, and to the HUD ONAP (§§ 58.43 and 58.70). (NOTE: Consult with ONAP Grants Management to determine whether they would like to receive a copy of the notice prior to the tribe submitting their Request for Release of Funds and Certification (HUD form 7015.15) with a copy of the notice attached.)
6. Sign the Request for Release of Funds and Certification (RROF). (See details in next section.) This can only be done by the Certifying Officer (CO) of the RE. (Refer to the HUD form 7015.15 in Appendix B.)
7. Submit the RROF with a copy of the public notice to the ONAP field office.
8. Wait to receive a HUD form 7015.16, Authority to Use Grant Funds, from the ONAP field office before initiating work or committing funds. (Appendix C)

ENVIRONMENTAL ASSESSMENT

Prior to the RE making its environmental finding---finding of no significant impact (FONSI) or a finding of significant impact (FOSI), it should be certain to publish any public notices related to the *specific federal law and authority review* (e.g., notice of approval of a project located in a floodplain, notice of proposal of improvements and development in a wetland, notice of adverse effects of an undertaking on historic properties).

Upon completion of the environmental assessment, the RE will make either a *finding of no significant impact* (FONSI), or a *finding of significant impact* (FOSI) determination. In the event that a FONSI is made, the RE will do all of the following:

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Chapter 9 – HUD’s Approval and Release of Funds Process

- Certifying officer (CO) or other RE approving official executes the environmental finding for the environmental assessment (last page of the EA format).
- Publish or post/mail a combined Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF), in accordance with §§ 58.43 and 58.45. The RE may also issue these notices separately.
- Also, disseminate the combined notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, state and federal agencies; to the regional office of the U.S. Environmental Protection Agency, and to the HUD ONAP (§ 58.43). (NOTE: Consult with ONAP Grants Management to determine whether they would like to receive a copy of the notice prior to the tribe submitting their Request for Release of Funds and Certification (HUD form 7015.15) with a copy of the notice attached.)
- Consider and respond to comments received, evaluate and analyze any concerns raised that have merit, and resolve outstanding issues.
- Certifying officer (CO) signs the Request for Release of Funds and Certification (RROF) (Refer to HUD form 7015.15 in Appendix B).
- RE submits the RROF with a copy of the public notice to ONAP field office.
- Wait to receive a HUD form 7015.16, Authority to Use Grant Funds, from the ONAP Field Office before initiating work or committing funds. (Appendix C)

Attachment 7.3 is the combined FONSI and NOI/RROF with the minimum content required for this legal notice. **Attachment 7.4** is an example of a completed FONSI and NOI/RROF.

A minimum of 15 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community, or a minimum of 18 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures.

NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 15 days of the comment period. If the notice is posted, it must be maintained in place until after the public comment period has expired.

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Chapter 9 – HUD’s Approval and Release of Funds Process

The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/ mailing date of the notice (§ 58.21).

In the event that a FOSI is made, the RE must initiate an Environmental Impact Statement (EIS) in accordance with Subparts F and G of Part 58. An EIS has additional public involvement and notification requirements. See the Environmental Impact Statement section below.

ENVIRONMENTAL IMPACT STATEMENT

There are several notices related to preparation and completion of an EIS that are required to appear in the Federal Register. They are the Notice of Intent to Prepare an EIS (NOI), Notice of Availability of a Draft EIS, and Notice of Availability of a Final EIS. Because only federal agencies may submit notices to the U.S. Environmental Protection Agency (EPA) for publication in the Federal Register, the RE will need to coordinate this effort through their ONAP Field Office. The comment periods required for each of these notices are listed below:

- Notice of Intent to Prepare an EIS: A simple announcement in the Federal Register.
- Notice of Availability of a Draft EIS: 45-90 days.
- Notice of Availability of a Final EIS: 30 days.

In addition, there are public hearings and scoping meetings also associated with the EIS review process.

Upon completion of the EIS, and once the 30 day comment period has expired for the Final EIS notice, the RE must issue a Notice of Intent to Request Release of Funds (NOI/RROF) prior to submitting its request for release of funds to the ONAP Field Office. The RE will do all of the following:

- Publish or post/mail the Notice of Intent to Request Release of Funds (NOI/RROF) in accordance with §§ 58.45 and 58.70. (The content of the NOI/RROF is provided in Attachment 6.4)
- Certifying officer (CO) signs the Request for Release of Funds and Certification (RROF) (Refer to HUD form 7015.15 in Appendix B.)

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Chapter 9 – HUD’s Approval and Release of Funds Process

- Submit the RROF with a copy of the public notice to ONAP.
- Wait to receive a HUD form 7015.16, Authority to Use Grant Funds, from the ONAP Field Office before initiating work or committing funds.

PREPARE AND SUBMIT REQUEST FOR RELEASE OF FUNDS (§ 58.71)

Upon the expiration of the public comment period specified in the public notice and the RE resolving any comments it has received, the RE may submit the release of funds request to HUD. This is accomplished by completing a HUD form 7015.15, Request for Release of Funds and Certification, and attaching a copy of the public notice that was published or posted/mailed. The HUD form 7015.15 has three parts. Only Parts 1 and 2 need to be completed by the RE (tribe). Part 1 requires providing information about the project, the RE and the type of HUD funds being used (i.e. NAHASDA, ICDBG, Title VI Loan Guarantee, etc.). Instructions for completing HUD form 7015.15 are provided in Appendix I.

Part 2 is the RE’s certification that all its Part 58 responsibilities have been met. In executing the certification, the RE’s certifying officer assumes the role of "responsible federal official" as defined by section 102 of NEPA. As such the certifying officer:

- Is responsible for all of the requirements of NEPA, the provisions in 40 CFR Parts 1500 - 1508, the related authorities in § 58.5, and the provisions of 24 CFR Part 58
- Is responsible to all persons or agencies seeking redress in relation to activities covered by the certification
- Represents the Responsible Entity in federal court

1. Prepare certification (§ 58.71): This is a key aspect of the environmental review process under 24 CFR Part 58. The Responsible Entity must complete the Part 2, Environmental Certification, side of HUD Form 7015.15. (Appendix B). The RE’s Certifying Officer must sign the certification, attesting to the accuracy and completeness of the environmental review and assuming environmental responsibility for the project. The Certifying Officer, not HUD, will be legally responsible for environmental issues related to the project.

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Chapter 9 – HUD’s Approval and Release of Funds Process

2. *Submit certification and RROF to HUD:* The completed HUD Form 7015.15 is sent by the tribe to the ONAP Administrator, with a copy of the Notice attached. Submission of the certification and RROF does not constitute approval to commit funds for the project or its related activities. Only when HUD approves the request may project funds (both HUD funds and non-HUD funds) be committed and spent.

NOTE: The tribe must ensure that any special environmental mitigation actions or considerations prescribed in the RE’s environmental review are implemented.

When the RE is not the recipient of NAHASDA funds, then the recipient of the NAHASDA funds must sign Part 3 of the 7015.15. It must be the “Authorized Officer” of the NAHASDA recipient that signs. In doing so, they thereby agree to implement any mitigation measures and/or conditions for project approval specified in the environmental review. They also agree to notify the RE of any changes in scope of the project or any change in environmental conditions. They further agree not to implement any of those changes without prior concurrence from the RE and, if deemed necessary by the RE, a supplemental release of funds from HUD.

The NAHASDA recipient is responsible for submitting the completed 7015.15 form, with a copy of the posted/mailed or published public notice, to the appropriate HUD Office Division Director for approval. The recipient maintains a copy of the environmental review record (including the 7015.15 and HUD approval) in its official project files.

HUD’S OBJECTION PERIOD (§§ 58.73, 58.74, AND 58.76)

After the RE’s request for release of funds is received by the ONAP Field Office, there is an objection period (15 calendar days) before ONAP approves the request. Any individual or agency may raise objections regarding the performance of the review, adherence to regulations, or violations of any restrictions.

The RE should carefully plan the timing of the HUD objection period in its notices. The start date for the objection period is determined by the date specified in the NOI/RROF notice (or the combined FONSI and NOI/RROF) as to when ONAP will receive the RE’s request. The public has 15 calendar days from the date specified in the Notice to make written objections to ONAP regarding approval of the RROF and Certification.

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If ONAP receives the RE’s RROF and Certification at a date later than the one specified in the Notice, then ONAP will begin the objection period on the day it receives the RROF and Certification. This situation will likely occur when the RE receives comments on the findings of its environmental review, and must resolve the outstanding issues before it can submit the RROF to ONAP.

HUD’S ACTION ON RROF (§§ 58.72 AND 58.73)

ONAP must wait at least 15 calendar days in which to receive objections to before approving the RE’s request RROF and Certification. Objections to the RROF and certification must be submitted to ONAP in writing. The form required by HUD for its receiving objections includes:

- Name, address, telephone number of the individual or agency submitting the objection;
- Signature of the individual or authorized agency official;
- Date of signature;
- Description of the basis for objection and the facts or legal authority that support the objection; and
- Time and date when a copy of the objection was delivered or mailed to the Responsible Entity’s Certifying Officer.

During this time, the ONAP Administrator will review the written objections that have been received and decide if the objections point to possible noncompliance with Part 58. If there appear to be valid bases for objection, the ONAP Administrator will proceed to request information from the RE. The ONAP Administrator may request all or part of the ERR from the RE to assist with its final determination and subsequent response to objections.

The following are procedural violations are valid objections regarding the RE’s compliance with § 58.75 and ONAP’s denial of their request.

- The Certification was not executed by a qualified certifying officer.

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- The RE did not make a Finding of No Significant Impact or a finding of significant impact through the environmental assessment but also made no written determination that the project was exempt or excluded from this requirement.
- The RE failed to complete all of the necessary phases set forth for preparation, publication, and completion of the Environmental Assessment.
- The RE failed to complete all of the necessary phases set forth for preparation, publication, and completion of the Environmental Impact Statement.
- The RE committed funds or engaged in activities that are restricted prior to the approval of certification and RROF.
- Another federal agency has submitted a written finding that the project will be unsatisfactory based on environmental quality.

ONAP will either approve or disapprove the RROF and Certification based on the objections from the public or on its own knowledge about inaccuracy or noncompliance with Part 58 requirements.

APPROVAL OR DISAPPROVAL OF THE CERTIFICATION (§§ 58.72 AND 58.77)

The Administrator for the ONAP Field Office will disapprove the environmental certification and RROF under the following circumstances:

- ONAP has knowledge that the Responsible Entity has not complied with applicable requirements of Part 58 for conducting the environmental review.
- ONAP has knowledge that the certification or RROF are inaccurate.
- ONAP receives valid public objections from an individual or agency attesting to the Responsible Entity’s non-compliance or to the inaccuracy of the certification and RROF.

If no objections are raised and ONAP has no reason to believe the certification and RROF are in error, ONAP will assume their validity. The ONAP Administrator will then execute HUD form

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7015.16, Authority to Use Grant Funds. Execution of this form releases the allocated funds. Project funds may now be committed and spent.

If ONAP has approved an RROF and certification but later learns of a violation of 24 CFR Part 58 or of any applicable statutes, ONAP shall impose sanctions or remedies in accord with the law and regulations for the program under which the violation was found. Violations on the part of either the Responsible Entity or project participants with the knowledge of the tribe [§ 58.22(c)] are subject to sanction by ONAP. The actions taken by ONAP may include:

- Requiring Responsible Entity staff to attend HUD sponsored or approved training, which will be provided periodically at various locations across the nation;
- Refusal to accept environmental compliance certifications from the Responsible Entity on subsequent grants;
- Suspension or termination of the Responsible Entity’s assumption of review responsibilities; or
- Initiation of other sanctions, corrective actions, or remedies specified in program regulations or agreements.

ENVIRONMENTAL WAIVERS AND EXCEPTIONS

There are limited circumstances under which HUD may approve waivers or exceptions to compliance with the Part 58 environmental requirements, which are established in law (i.e., NAHASDA and the Housing and Community Development Act).

24 CFR § 58.1(d) authorizes the HUD Assistant Secretary for the Office Community Planning and Development to waive or make exceptions to compliance with the requirements of Part 58 if there is good cause for doing so, valid reasons for making such a waiver or exception, and it is determined by HUD to be permissible according to the applicable laws, as well as the regulations of the Council on Environmental Quality. This waiver/exception provision in Part 58 applies to any HUD programs where 24 CFR Part 58 applies.

In addition, §105(d) of NAHASDA also provides HUD with statutory authority to waive the

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environmental review requirements for the Indian Housing Block Grant (IHBG) program. But, once again, this waiver authority is limited in scope. HUD issued a notice describing the procedures involved when an RE requests HUD to waive statutory or regulatory environmental review requirements (Refer to Appendix L, Notice CPD-11-010, issued December 15, 2011).

On its own, HUD cannot waive any of the federal laws passed by the U.S. Congress, nor any of the authorities issued by the President (cited in § 58.5). Neither can HUD waive compliance with NEPA. It can, however, decide to waive or make exceptions for the RE’s failure to undertake certain procedures required by Part 58, such as public notification and securing HUD approval whenever these actions are required prior to committing or spending project funds. But, there must be good cause and valid reasons for HUD to do so.

There may also be circumstances whereby the federal laws and NEPA regulations provide avenues for waivers and exceptions; but HUD will make these determinations on a case-by-case basis. The basis for its determinations will be that there is good cause and valid reasons to approve the waivers or exceptions.

HUD’s decision whether or not to approve a waiver request or make an exception will be based upon whether the RE’s failure to act according to the Part 58 requirements had an adverse impact; threatened the health or safety of the community; posed an immediate or long-term hazard to residents of the community, violated federal laws, authorities and applicable regulations; did not give the public an opportunity for involvement in RE’s environmental decision making that is afforded to them in the laws and regulations; and/or the recipient’s actions cannot be corrected because they are not solely within control of the recipient.

The time needed for HUD to make a decision about whether or not to approve the RE’s waiver/exception request has a significant impact on implementation of the recipient’s or subrecipient’s project. The RE must submit their entire ERR to HUD, at which point HUD will conduct its own environmental review under Part 50. The RE may also be requested by HUD to submit additional documentation. The Part 50 ERR must receive concurrence from the HUD Office of Environment and Energy, as well as the HUD Office of General Counsel, before both the Assistant Secretary for Community Planning and Development and the Assistant Secretary of the Office of Public and Indian Housing decide to grant the waiver.

If the waiver is not granted, the recipient will be required to repay the HUD funds, use non-HUD funds to pay for any financial liabilities that resulted as a consequence of obligating HUD funds, will be prohibited from using any HUD funds for either the project or for the same purpose on

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Chapter 9 – HUD’s Approval and Release of Funds Process

the project site, and the Tribe will be required to implement corrective or remedial actions stipulated by HUD in order to prevent any future noncompliance actions.

The best preventative measures available to a tribe for having to request a waiver is to ensure: all persons responsible for compliance with Part 58 understand the requirements and can successfully implement them; there is regular communication with project partners throughout the process so prohibited actions are not taken; the ERR is up to date (particularly for multi-year projects) and that environmental conditions or circumstances have not change; and there’s a mechanism in place for tracking the project through the various steps outlined in Part 58, including implementation of any mitigation measures or conditions for project approval.

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CHAPTER 10 – OTHER ENVIRONMENTAL GUIDANCE

This chapter provides additional guidance that pertains to all levels of environmental review, from exempt activities to the preparation of an environmental impact statement. After completing this chapter you will have a better understanding of the following environmental review terms and actions:

- Projects in progress;
- Emergency actions;
- Tiered environmental reviews;
- Using/adopting “other” environmental review documents;
- Establishing lead/cooperating agency partnerships; and
- Public notification and release of funds.

PROVIDING ASSISTANCE TO PROJECTS IN PROGRESS

An approved NAHASDA funded project may receive supplemental assistance after the original Request for Release of Funds and Certification (HUD form 7015.15) [where required] had been approved by HUD. Approval of supplemental assistance to cover shortfalls in funding and to help complete a project previously approved under Part 58 is excluded from the environmental review requirements of NEPA and also not subject to compliance with the federal laws and authorities, if approval is made by the same RE and re-evaluation of the environmental findings is not required under § 58.47 [§ 58.35(b)(7)].

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Example: A TDHE received notification from the RE (tribe) to proceed with their IHBG project [based upon the RE's receipt of approval from HUD (HUD form 7015.16, Authority to Use Grant Funds)]. However, unanticipated cost overruns occur related to site preparation work causing the project to go over budget. The TDHE notifies the tribe and requests additional IHBG funds to complete the work. If the RE determines the supplemental assistance does not necessitate reevaluation, the RE simply documents this determination in the project ERR and notifies the TDHE of its finding. This documentation should take an hour or less to complete. (NOTE: If the RE determines reevaluation is necessary, the TDHE must stop work on the project and provide information requested by the RE to aid its analysis of environmental effects. Work on the project may recommence only after the RE has completed its review and authorizes the TDHE to proceed).

NOTE: If supplemental ICDBG funds are required for a previously approved project, the tribe will need to submit another application and compete with other tribes nationwide for those funds.

EMERGENCY ACTIONS [§§ 58.33, 58.34(a)(10)]

When there is a Presidentially declared disaster, a local emergency declared by the chief elected official of the jurisdiction who has proclaimed there is an immediate need for public action to protect public safety, or an imminent threat to health and safety is declared, the RE must still complete an environmental review based upon whether the actions are determined to be exempt, categorically excluded, or requiring compliance with NEPA.

For projects that require the RE to issue a public notice, the public notification process may be expedited. Specifically, for the combined Notice of FONSI and NOI/RROF (related to an environmental assessment), the public comment period and HUD's time period for receiving objections may run simultaneously. Once the notice is published, the RE may submit the Request for Release of Funds and Certification (along with a copy of the notice that was published or posted/mailed). However, if the RE receives comments, HUD will withhold approval of the request until the RE considers and resolves those comments.

In similar fashion, if a NOI/RROF is published for a categorically excluded project (which cannot convert to exempt), the public comment period and HUD's time period for receiving objections may run simultaneously. Again, the RE may submit the Request for Release of Funds and

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Certification as soon as the notice is published (along with a copy of the notice that was published or posted/mailed), but HUD will not release funds until the comments the RE may receive are considered and resolved.

The notice shall state the nature of the emergency or disaster, advise those submitting comments that the comment periods have been combined, and invite them to submit their written comments to both the RE and HUD to ensure these comments receive full consideration.

On occasion, there may be situations of imminent threats to public safety that are not related to a declared disaster. Certain actions to resolve these threats, or to control or arrest the effects from disasters, may qualify as exempt under the provision of § 58.34(a)(10). However, the RE should consult with their ONAP Grants Management Specialist to ensure the proposed action is eligible under NAHASDA regulations and to determine if the situation at hand qualifies as an “imminent threat to public safety.” Under this exemption, the RE may only do what is necessary to arrest or control the threat until a permanent resolution can be implemented. (Refer to HUD Office of Environment and Energy memorandum, “Environmental Review Processing During Emergencies and Following Disasters under 24 CFR Part 58”, December 11, 2012. Available on HUD Exchange web page.) (If NAHASDA funds will be used to permanently fix the problem, an environmental review according to Part 58 requirements must be completed first.) Exempt actions only require a written record of determination that they meet the conditions for exemption (Refer to Chapter 4). Neither public notification, nor approval from HUD or state is required.

The Part 58 requirements are also applicable to ICDBG Imminent Threat Grant funds. The level of environmental review required is dependent upon the types of activities the RE is proposing with these funds.

TIERED ENVIRONMENTAL REVIEWS (§ 58.15)

Tiered reviews streamline the environmental review process for repetitive actions in a geographic area when specific project sites are still unknown. The process is simplified because tiering prevents duplication of effort. It allows environmental analysis to be completed on a geographic area to address those impacts typical of a proposed action so they need not be repeated on a site specific basis. A tiered approach can be used for meeting environmental requirements in areas designated for special focus in local Indian Housing Plans. Tiered reviews are typically used for activities that are categorically excluded subject to § 58 (CEST).

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Consideration of the tiered approach is appropriate when the tribe has identified a specific type of activity that will take place in several locales or jurisdictions, will serve the same function, and have the same level of environmental impact regardless of where a project site is located. For example, NAHASDA funds will be used throughout the reservation or village (or even county-wide within a tribe's service area) to purchase substandard housing for rehabilitation and resale to first time homebuyers (see Attachments 10.1 and 10.2 for the recommended format for tiered rehabilitation activities).

All environmental review documents begin with a clear and concise description of the proposed action and its related activities. The same is true for tiered reviews, despite the fact that the focus of the review is on a geographic area (e.g., target neighborhood, census tract, reservation, village, city or county jurisdiction) with many potential sites not yet identified, instead of just a single project location. A thorough project description is necessary to ensure an environmental review addresses environmental impacts, analyzes the effects of those impacts, and recommends modification and mitigation measures, as necessary.

The tiered approach has two parts: the broad scale environmental review that focuses on a targeted geographic area, and the unspecified site review (the exact physical location of the project is not presently known). The broad scale environmental review addresses and analyzes those environmental impacts related to the proposed action that might occur on a typical site within the geographic area (e.g., floodplain, coastal zone, wetlands, aboveground storage tanks, etc).

The unspecified site review requires identification of those environmental impacts that will vary by site and may only be resolved when specific project locations are known (e.g. historic preservation, hazardous materials, noise abatement, asbestos removal, etc.). The RE must establish standards for determining site acceptability (including mitigation) that will anticipate all special conditions that must be met and carried out when project sites are identified, without further review and release of funds (ROF) clearance. These standards will be used to judge impact, as well as help choose appropriate sites and to mitigate site specific problems. Sites that do not comply with the established acceptability standards should either be screened out or, where the scope of the project (or environmental conditions) has changed, the RE should amend the tiered review according to § 58.47.

The basic components of a tiered review should be:

- A clear statement of all the related activities (i.e. aggregation) and funding sources (if several sources of HUD assistance will be used);

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- Identification of the targeted geographic area;
- Identification and evaluation of the environmental factors and effects that can be decided upon immediately;
- Specific written strategies for addressing the environmental effects that can only be determined when specific sites become known (i.e., site acceptability criteria and standards, including mitigation measures);
- Publishing and disseminating notice for the entire action; and
- Submit a Request for Release of Funds for the entire action.

In summary, the tiered approach may be used for functionally related activities that may be classified as categorically excluded. It may also be used for functionally related activities that require preparation of an environmental assessment (see Attachments 9.3 and 9.4, for an example). Be certain to follow the environmental review requirements that are described in Chapter 6 (categorically excluded subject to § 58.5) and Chapter 7 (Environmental Assessment) as applicable.

On the bases of what is known about the geographic area, the written strategies for addressing environmental issues later on for specific project sites, and the conditions for approval, the RE may approve the tiered review and request release for funds from the ONAP Field Office.

Subsequent site-specific reviews will not require notices or approval from the ONAP Field Office, 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.

If any project sites should deviate from the tiered review (and the approved site-specific compliance strategies), then separate environmental reviews should be prepared for those projects.

HUD advises that tiered reviews are valid for up to five years, unless conditions or circumstances change.

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Chapter 10 – Other Environmental Guidance

USING OTHER FEDERAL ENTITIES' ENVIRONMENTAL REVIEW DOCUMENTS

Sometimes the RE may find that, in addition to NAHASDA funds being used for a project, there are other federal funds (e.g. HUD, Bureau of Indian Affairs (BIA), Rural Utilities Service (RUS), etc.) also covering portions of the project costs. In these circumstances the RE may either want to use another federal entity's environmental review document, or establish a cooperative agreement with them to combine efforts to complete the environmental review.

USING ANOTHER FEDERAL ENTITY'S ENVIRONMENTAL REVIEW FOR DOCUMENTATION

The project developer may advise the RE that other public funds are being used for the project and that an environmental review has already been completed according to federal environmental law. It is acceptable to use another entity's environmental review, in whole or in part, as supporting documentation for the Part 58 environmental review. However, the information in that existing review must be current and relevant in order for it to be used as evidence of compliance with federal requirements. The RE must also be cognizant of whether or not the existing review provides the same context for compliance. For example, the levels of environmental review that are required for specific actions will vary among federal agencies or departments (i.e., definitions of exempt, categorically excluded, environmental assessment). In addition, environmental regulations and policy guidance may vary among federal agencies and departments. For instance, HUD has specific regulations on four issues affecting health and safety, including hazardous chemicals, materials and radioactive substances, noise abatement and control, explosive/flammable operations, and airport clear zones and accident potential zones. It's crucial that the RE knows when compliance with federal requirements, and specifically Part 58, is achieved.

NOTE: A Phase I Environmental Site Assessment, which specifically addresses the issue of site hazards, does not meet the compliance requirements of NEPA and Part 58. The Phase I may be used to provide some information needed for the Part 58 environmental review, if the information is current and relevant to the RE's project. For the Phase I, the information is considered current if the documentation was completed less than 180 days previously (Refer to HUD guidance on the use of Phase I ESAs, Appendix R).

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Chapter 10 – Other Environmental Guidance

“ADOPTING” AN EXISTING ENVIRONMENTAL REVIEW DOCUMENT

The RE may choose to “adopt” another entity’s environmental review document—generally when it’s another federal agency that has completed the review for the same project (e.g., Rural Development or HUD, when it has completed the project review itself according to 24 CFR Part 50). However, the RE may only “adopt” the review after independently evaluating the information and then taking responsibility for its scope and content. It must also be certain that, at minimum, the environmental issues and compliance factors contained in HUD’s recommended format are, in fact, addressed in the “adopted” review. If not, it is the RE’s responsibility to amend the “adopted” review document to incorporate these additional requirements.

NOTE: The requirements of Part 58 vary slightly from those of Part 50, and so will the content of the environmental review document.

ESTABLISHING A LEAD/COOPERATING AGENCY PARTNERSHIP

As previously discussed in the section on Aggregation, all related project activities must be evaluated by the RE in a single review document, even though NAHASDA funds may only be used for a portion of the project. If the RE is made aware that another federal entity intends to prepare an environmental review document for the same project, it may enter into an agreement with that entity to establish a lead agency/cooperating agency or multiple lead agency relationship. For example, a partnership may be established with HUD or another federal agency or department. This allows for the environmental review document to be prepared in sync with the other entity, and will cover all the federal environmental requirements (regulatory and policy guidance) in one document. This kind of cooperative partnership is encouraged by NEPA and Part 58 (§ 58.14). Note that the RE may find the other entity has classified the proposed project differently with regard to the required level of environmental review. For instance, the RE may classify the project as requiring an “environmental assessment,” according to Part 58, but another federal agency or department may classify the project as “categorically excluded.” One environmental review document may still be prepared by the two.

Such coordination can eliminate duplication of paperwork, as well as reduce potential delays resulting from conflicts between agency or departmental processes and compliance requirements. It also ensures that decisions reflect consideration of all the key issues, as well as the range of environmental values early on in the process.

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Chapter 10 – Other Environmental Guidance

The role of the *lead agency* is to:

- Supervise preparation of the environmental review;
- Request participation of each cooperating agency early in the environmental review process; and
- Use the analyses and proposals of cooperating agencies having jurisdiction by law or special expertise.

The role of the *cooperating agency* is to:

- Participate in the environmental review process at the earliest possible time;
- Assume responsibility for information gathering and environmental analyses where it has special expertise; and
- Make staff support available at the lead agency's request to enhance interdisciplinary capability.

NEPA directs agencies to use an interdisciplinary approach in the environmental review process. That is, to use whatever expertise is necessary to address relevant environmental issues and factors, and make its findings based upon the derived results. For example, if the tribe has a Tribal Historic Preservation Officer (THPO), wildlife biologist, and/or housing construction specialist, these experts would be expected to have a role in developing the environmental review document. Similarly, a cooperating federal agency may have staff with expertise in hydrology, fisheries, or real estate, and who would be called upon to provide their expert analyses and recommendations. Or, consultants may need to be hired to conduct a Phase I Environmental Site Assessment, soil and engineering studies, or traffic study in order to address these environmental effects and concerns.

Whether the RE assumes the role of lead agency or cooperating agency, it should execute a written agreement with the other participating entity or entities. The RE must ensure the environmental compliance requirements of Part 58 are reflected in the final document. Also, at the start, the RE should agree on format and content of the review document. The RE needs to stay engaged throughout the entire process—i.e., ensure NEPA and Part 58 compliance is achieved, review and comment on both draft and final environmental review documents in a

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Chapter 10 – Other Environmental Guidance

timely manner, ensure critical timelines are met, and keep the project developer informed throughout the process.

To receive technical assistance on coordinating these partnerships, the RE should contact the environmental staff for the federal agency or department:

- U.S. Dept. of Housing and Urban Development (HUD): Regional and Field Environmental Officers.
- U.S. Dept. of Health and Human Services, Indian Health Services (IHS): Director of Sanitation and Facilities Construction in each of the Area Offices to get the name of the Senior Engineer.
- U.S. Dept. of Interior, Bureau of Indian Affairs (BIA): Regional Environmental Officer or Environmental Scientist.
- U.S. Dept. of Agriculture, Rural Utilities Service (RUS): State Environmental Coordinators.

PUBLIC NOTIFICATION AND RELEASE OF FUNDS

For each of the scenarios above, the RE needs to remain aware of its responsibilities for completing any required public notices and of getting approval from HUD, according to Part 58. Once approval is received, funds may be committed to the project.

When the RE enters into a partnership with another federal entity, the public comment period related to NAHASDA funds should coincide with the other entity's comment period, so long as the minimum time period required by HUD for commenting is attained (see § 58.45). A notice that is required for NAHASDA funds, may also be issued with the other entity's notice, but it should be clearly evident that the two notices are intended to meet separate procedural requirements. The content of the NAHASDA environmental review notice should be nothing less than what is provided in the sample HUD notices. See the Chapters 6 and 7 on Categorical Exclusions and Environmental Assessment, respectively.

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Exhibit 10.1 – Tiered Environmental Review Format



U.S. Department of Housing and Urban
Development

451 Seventh Street, SW
Washington, DC 20410
www.hud.gov

espanol.hud.gov

Broad-Level Tiered Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Pursuant to 24 CFR Part 58.35(a)

Project Information

Project Name:

Responsible Entity (RE):

State/Local Identifier:

RE Preparer:

Certifying Officer:

Grant Recipient (if different than Responsible Entity):

Point of Contact:

Consultant (if applicable):

Point of Contact:

Project Location:

Additional Location Information:

Direct Comments to:

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

Exhibit 10.1 – Tiered Environmental Review Format

Approximate size of the project area:

Length of time covered by this review:

Maximum number of dwelling units or lots addressed by this tiered review:

Level of Environmental Review Determination:

Categorically Excluded per 24 CFR 58.35(a), and subject to laws and authorities at §58.5: _____

Funding Information

Grant Number	HUD Program	Program Name	Funding Amount

Estimated Total HUD Funded Amount:

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]:

Exhibit 10.1 – Tiered Environmental Review Format

Compliance with 24 CFR 50.4, 58.5, and 58.6 Laws and Authorities and Written Strategies

<p>Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR 50.4, 58.5, and 58.6</p>	<p>Was compliance achieved at the broad level of review?</p>	<p>If Yes: Describe compliance determinations made at the broad level. If No: Describe the policy, standard, or process to be followed in the site-specific review.</p>
<p>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.6</p>		
<p>Airport Hazards 24 CFR Part 51 Subpart D</p>	<p>Yes No <input type="checkbox"/> <input type="checkbox"/></p>	
<p>Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]</p>	<p>Yes No <input type="checkbox"/> <input type="checkbox"/></p>	
<p>Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]</p>	<p>Yes No <input type="checkbox"/> <input type="checkbox"/></p>	
<p>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR §58.5</p>		
<p>Clean Air Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93</p>	<p>Yes No <input type="checkbox"/> <input type="checkbox"/></p>	
<p>Coastal Zone Management Coastal Zone Management Act, sections 307(c) & (d)</p>	<p>Yes No <input type="checkbox"/> <input type="checkbox"/></p>	
<p>Contamination and Toxic</p>	<p>Yes No <input type="checkbox"/> <input type="checkbox"/></p>	

Exhibit 10.1 – Tiered Environmental Review Format

<p>Substances</p> <p>24 CFR Part 50.3(i) & 58.5(i)(2)]</p>		
<p>Endangered Species</p> <p>Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Explosive and Flammable Hazards</p> <p>24 CFR Part 51 Subpart C</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Farmlands Protection</p> <p>Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Floodplain Management</p> <p>Executive Order 11988, particularly section 2(a); 24 CFR Part 55</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Historic Preservation</p> <p>National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Noise Abatement and Control</p> <p>Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p>Sole Source Aquifers</p> <p>Safe Drinking Water Act of 1974, as amended, particularly section 1424(e);</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	

Exhibit 10.1 – Tiered Environmental Review Format

40 CFR Part 149		
Wetlands Protection Executive Order 11990, particularly sections 2 and 5	Yes No <input type="checkbox"/> <input type="checkbox"/>	
Wild and Scenic Rivers Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)	Yes No <input type="checkbox"/> <input type="checkbox"/>	
ENVIRONMENTAL JUSTICE		
Environmental Justice Executive Order 12898	Yes No <input type="checkbox"/> <input type="checkbox"/>	

Attach supporting documentation as necessary, including a site-specific checklist.

Determination:

- Extraordinary circumstances exist and this project may result in significant environmental impact. This project requires preparation of an Environmental Assessment (EA); OR
- There are no extraordinary circumstances which would require completion of an EA, and this project may remain CEST.

Preparer Signature: _____ Date: _____

Name/Title/Organization: _____

Exhibit 10.1 – Tiered Environmental Review Format

Responsible Entity Agency Official Signature:

_____ Date: _____

Name/Title:

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

This document represents the Tier 1 or Broad-Level review *only*. As individual sites are selected, this review must be supplemented by individual Tier 2 or Site-Specific reviews for each site. All laws and authorities requiring site-specific analysis will be addressed in these individual reviews.

CHAPTER 11 – PROGRAM ADMINISTRATION AND MONITORING

This section describes the requirements for basic administration of the environmental review process. These requirements ensure that compliance with NEPA and Part 58 is achieved by the RE as well as other subrecipients of HUD assistance. After completing this chapter, you will:

- Understand HUD's oversight responsibilities and who to contact at the Area ONAP office;
- Understand staffing and resource needs to complete environmental reviews;
- Know the key concepts behind developing a successful strategy to monitor for environmental compliance; and
- Understand the importance of establishing a good record-keeping system.

HUD OVERSIGHT RESPONSIBILITIES

As a continuation of HUD's partnership with the community, the ONAP Area Office staff assumes monitoring and training responsibilities under 24 CFR Part 58. Under Part 58 the Area ONAP Administrator is responsible for ensuring the environmental compliance procedures are performed as required. The Administrators' responsibilities include:

- Approving the release of program funds for a particular project on the basis of the RE's certification that Part 58 requirements were achieved (§ 105 of NAHASDA and § 104(g) of Title I of the Housing and Community Development Act);
- Receiving and responding to objections from interested persons and groups, and government entities regarding HUD's approval of a release of funds request;
- Requiring ONAP staff to conduct post-review monitoring to assure that decisions adopted by the RE through the environmental review process complied with Part 58 and were carried out during project implementation;

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Chapter 11 – Program Administration and Monitoring

- Exercising quality control over the environmental activities performed by the RE through training and consultation; and
- Taking action on any environmental deficiencies ONAP becomes aware of through monitoring or other means.

The ONAP Area Office is divided into two divisions: Grants Management and Grants Evaluation.

The Grants Management (GM) staff administers and manages grants. This staff is involved in the environmental review process because they are responsible for making sure that REs and grant recipients meet regulatory requirements. The purpose of this role is to ensure that the REs have accurate, up-to-date information on HUD environmental requirements and are aware of the issues and resources that most affect HUD projects. The RE can contact its assigned GM representative to receive current written guidance and policy information, HUD forms, as well as current regulations related to environmental compliance. GM staff will also provide one-one-one technical assistance to the RE and sponsor environmental compliance training. These are all tools for assisting the RE in meeting its environmental responsibilities.

Grants Evaluation (GE) staff become involved after a grant has been awarded. This staff monitors the RE to ensure the grant money is being used properly and as stated in the Indian Housing Plan (IHP) or application for assistance. The ONAP Area Office Grant Evaluation staff is responsible for exercising quality control by conducting periodic monitoring of the RE's environmental records. This monitoring may either be limited in scope, or an in-depth review of the RE's environmental records and decisions. Limited reviews include determining whether the ERR contains all the required information for a particular level of review, the appropriate level of review was completed, commitments were not made prior to completion of the environmental review process, and other Part 58 procedural requirements. In-depth monitoring is an investigation of the content and substance of the environmental record and resulting environmental compliance finding—e.g., evidence that compliance with NEPA and federal laws and authorities was achieved. ONAP's monitoring can highlight deficiencies in the RE's current practice that might otherwise have legal ramifications for the RE. Additionally, although a cooperative approach toward improvement will be encouraged, HUD has the authority under 24 CFR Part 58.77(d) to enact sanctions against an RE that fails to comply with HUD regulations for conducting and processing environmental reviews.

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Chapter 11 – Program Administration and Monitoring

If the GE staff becomes aware of environmental deficiencies in the RE's compliance record, then corrective actions or sanctions will be imposed. These measures are to ensure the REs are consistently performing complete and accurate environmental reviews within their jurisdictions.

HUD's monitoring role is described in 24 CFR Part 58.77(d). The RE's Certifying Officer will be accountable for conducting the environmental review in accordance with NEPA and CEQ guidelines, and Part 58. The Certifying Officer's liability can be limited by strict compliance with the environmental review activities prescribed by Part 58 as well as through proper documentation of the entire process

RESPONSIBLE ENTITY PROGRAM ADMINISTRATION

Program Administration

The RE is responsible conducting the environmental review, for decisions about environmental compliance, and for maintaining a written record of the environmental review undertaken for each project (§§ 58.4 and 58.38). The RE is also responsible for ensuring that mitigation measures and conditions for project approval are implemented.

To facilitate the environmental review process and ensure that compliance with Part 58 and NEPA is achieved, the RE should consider the following actions for administrating its NAHASDA, ICDBG, and Section 184 programs:

- Utilize the RFP stage to begin collecting information to facilitate the environmental review by requiring applicants to address environmental issues in their proposals---e.g., floodplains, hazardous substances, photos of the site and surrounding properties that might indicate historic significance, proximity to major roads, railroads and airports, etc.;
- Incorporate language into the agreements with its partners stating that environmental compliance is required for program income generated by projects and programs;
- Incorporate language into the agreements with its partners that funds may not be committed or spent on prohibited actions with HUD or non-HUD funds---i.e., acquisition, rehabilitation, conversion, leasing, repair, demolition, or construction activities (including excavation, filling or dredging---prior to receiving authorization from the RE;

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Chapter 11 – Program Administration and Monitoring

- ❑ Stay in contact with clients and project partners to remain aware of whether the scope of the projects change and/or any environmental conditions have changed that would necessitate re-evaluation of the original environmental findings;
- ❑ Establish a standardized record keeping system that is used by all staff;
- ❑ Develop a compliance checklist to insure all requirements have been achieved before funds are committed (See examples in chapters 6 and 7) as well as throughout the duration of the project; and
- ❑ Develop a chart on how the staff will be used throughout the planning, compliance and implementation process that is based upon:
 - Availability and technical capacity of the responsible staff; and
 - The requirements for implementing Part 58.

In order to meet these requirements, it is best for the RE to concentrate on maintaining the following:

- ⇒ A well-trained staff;
- ⇒ A record-keeping system that is well-organized and easy to follow;
- ⇒ A copy of the environmental review record for each HUD-assisted action;
- ⇒ An RFP process that informs applicants of the environmental requirements; and
- ⇒ As is determined necessary, identify staff who will be responsible for the post-approval inspection of projects to ensure that specific standards, and if applicable, mitigation actions, were completed during implementation of the projects.

Considerations When Hiring an Environmental Specialist

The RE may decide to hire an environmental specialist to manage, monitor, and/or prepare environmental review documents. The RE needs to identify key qualifications it desires of an environmental specialist to help prepare the job description, such as:

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Chapter 11 – Program Administration and Monitoring

Educational background. A variety of educational backgrounds may provide a solid foundation for working on NEPA issues, such as engineers, scientists, or land use planners. The type of degree may be:

- Masters degree;
- Bachelor of Science in either natural or physical environment;
- Bachelor of Arts in planning or environmental studies;
- Associate of Arts in environmental studies; or
- Related experience.

An RE may need to look at the available job pool in their area to determine how much education versus experience is needed. If the RE simply wants someone who can manage the environmental review process---i.e., pull together the right information and put it in the right format--- then someone with a High School degree may be as acceptable as someone with a college degree.

Years of experience. Types of experience that a strong candidate will possess include:

- At least three years of experience in preparing environmental reviews;
- Ability to manage the environmental review process, including working with local, state, and federal agencies;
- Experience in development of a NEPA Environmental Assessment;
- Experience with related HUD requirements and other federal laws and authorities; and
- Ability to read maps and legal descriptions.

Other skills that may be useful include:

- Specific types of experience depending on the nature of the project, such as land development or construction experience;

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- Strong writing and communication skills; and
- Sensitivity to Native American issues.

Considerations When Hiring an Outside Consultant

Determine whether to hire a consulting firm or outside professional to prepare NEPA documentation. Hiring a consultant may be appropriate when an RE does not have the sufficient staff capacity to conduct an environmental review or have the necessary training to complete the review.

The RE should prepare a thorough “Request for Proposal” (RFP). Key elements are:

- Scope of Work. The scope of work should clearly define the tasks to be performed by the consultant, for example:
 - Prepares environmental review documents---e.g., all levels of environmental review documents (including exempt activities), OR only environmental assessments (EA) and, on occasion, reviews for categorical exclusions *subject to §58.5*;
 - Consults with regulatory agencies for permits or compliance resolution;
 - Obtains documents necessary for establishing compliance with Part 58 requirements;
 - Evaluates and fills-in gaps in information and data needed for environmental compliance;
 - Assists with responding to public comments that are received, and requests by HUD for more information.
 - Coordinates with all required reviewers and agencies;
 - Reports regularly on the progress of the review process.

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- Costs for Work and Services.** Consider asking for cost estimates in the RFP, not to exceed (NTE) a specific amount. Estimates allow for flexibility, whereas fixed costs may cause consultants to cut corners in order to stay within the bid amount.

When looking to hire a consultant, key qualifications to consider include:

- Corporate Experience and Qualifications.** The consultant should be asked to provide information on their experience with NEPA issues, as well as their technical understanding of environmental issues and regulations, and staff expertise that is available. Such information may include:
 - A list of environmental reviews they've prepared in the past and a description of those projects;
 - The number of reviews they've completed for HUD-assisted projects, and copies of some of them;
 - A written description of how they've dealt with particular environmental issues in the past---e.g., archeological resources, endangered species, site contamination, wetlands, etc.;
 - Specific local or regional experience they have;
 - Qualified Personnel---i.e., number of persons on staff, full resumes of relevant staff (i.e., engineers; biologists; archeologists; land development, realty and construction specialists, etc.), number of staff having NEPA-related experience. (If the consultant does not have all the necessary expertise needed, they should be able to put the expertise together, such as subcontracting with experts.)

The RE should also establish criteria for selecting a consultant. The selection criteria might include:

- Qualifications under HUD's Indian preference requirements (24 CFR 1000.52)

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- Availability and timeliness for completing the environmental review process (Can the consultant complete the work within the timelines needed by the RE.)
- Professional references. It is always a good idea to check references to learn about previous work experiences.
- Previous work completed by the consultant for the RE (or another tribe) was found satisfactory.
 - Ability to manage the environmental review process, including working with local, state, and federal agencies;
 - Experience in development of a NEPA Environmental Assessment;
 - Experience with related HUD requirements and other federal laws and authorities.

Use of Databases to Facilitate Environmental Reviews

When a tribe has a significant number of environmental reviews to complete, and there are many similar conditions or circumstances among these reviews, the development of a database can facilitate the completion of the environmental reviews. When there is new or updated information for any particular item, the database will need to be updated. Databases can assist with organizing the following types of information that is needed for environmental reviews:

- Social and land use data:
 - Local and areawide comprehensive plans;
 - Maps of major public facilities;
 - Labor force and income data; and
 - Maps of military and civil airfields.
- Resource data:

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- Historic and cultural maps, records, and photographs;
 - Soil survey maps;
 - Floodplain/wetland maps;
 - Maps of critical habitat for endangered species; and
 - Maps of sole source aquifer boundaries.
- Other data:
- Letters from or agreements with federal and state oversight agencies that address:
 - ⇒ Activities that will not have an impact; and
 - ⇒ Circumstances in which they want to be consulted.
 - Guidebooks and technical reports; and
 - Previous environmental review documents.

MONITORING OBJECTIVES AND STRATEGY

Monitoring is the primary tool that recipients use to ensure that ONAP projects are being carried out in accordance with program requirements. Monitoring is a review of program or project performance and compliance. Effective program administration includes not only monitoring the organizations and projects the tribe's have entrusted with NAHASDA, ICDBG and Section 184 funds, but should also include conducting internal monitoring as well. Recipients of IHBG are responsible for monitoring their grant agreements to ensure compliance with federal requirements and to measure performance goals under their IHP.

- As stated in 24 CFR 1000.502(a), the recipient is required to:
- Conduct a self assessment at least annually to determine if all the applicable federal requirements are being followed.

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- Have an audit conducted by an Independent Public Accountant.
 - Prepare and submit an Annual Performance Report (APR). Recipients are to report on their self monitoring activities in their APR under Part II of Section A.
- For the purposes of environmental compliance, the RE should be guided by its responsibilities under Part 58:
- For all REs, ensure project funds are not committed or spent prior to completion of the environmental review process and receiving HUD approval, when required.
 - The record keeping system is organized and easy to follow.
 - Applicants are well informed about the environmental requirements, timeframes for compliance, and the point at which a decision is made to approve the project and release program funds.
 - Identify RE staff assignments for responsibilities related to the environmental compliance process to ensure technical capacity and administrative capability is maintained.
- For more information on monitoring responsibilities, refer to:
- NAHASDA Indian Housing Block Grant Recipient Self-Monitoring Guidebook, October 2013, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_8747.pdf
 - ONAP Indian Housing Grant Oversight and Monitoring web page, ., http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/grants/oversight

ONGOING MONITORING

The RE should clearly identify the check-points that ensure a minimum level of monitoring for all activities during the year and the scope and frequency of those monitoring reviews to be conducted, as well as establishing the frequency and timing of such reviews.

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The scope of these reviews should include evaluation of the Environmental Review Record (ERR) content for:

- A written determination (signed by the certifying officer or other designated official of the responsible entity) specifying whether the project is:
 - Exempt;
 - Categorically excluded not subject to § 58.5;
 - Categorically excluded subject to § 58.5, but converted to exempt;
 - Categorically excluded subject to § 58.5;
 - Environmental assessment; or
 - Environmental impact statement.
- Whether or not all the related activities were grouped together and reviewed in a single environmental document;
- All relevant documents pertaining to the environmental review and determination:
 - Correspondence with required oversight agencies (e.g., THPO/SHPO, coastal commissions, U.S. Fish and Wildlife Service, air quality districts, etc.) and
 - Determinations and other information from qualified professionals (e.g., biologists, archeologists, soils engineers, etc.), or printed materials (maps, plans, studies, etc.).
- Public notices (e.g., wetlands, floodplains, request for release of funds), and the process used to disseminate those notices;
- Whether the record substantiates that all required mitigation measures were implemented (e.g., noise attenuation, written notification that a property is in an airport clear zone, runway clear zone, or accident potential zone, permit from the Corps of Engineer to fill or dredge a wetland, etc.);

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- A copy of the Request for Release of Funds and Certification (HUD Form 7015.15);
- Copies of any comments received during the public comment period, and the response to those comments; and
- Copies of the Authority to Use Grant Funds (HUD Form 7015.16).

The RE should also determine whether funds were committed or spent prior to the receipt of HUD approval of any project.

HUD requires that RE's program performance plans provide for ongoing monitoring of all NAHASDA-assisted activities each program year. This means that environmental compliance monitoring must be included, but does not mean the RE must monitor the ERR for all the activities undertaken in that year. The RE may determine, through risk assessments, that only certain activities should be reviewed.

RECORDKEEPING

The RE must be responsive to ONAP, project partners and the public. The RE must have the resources necessary to comply with all document management and correspondence requirements associated with performing the environmental review and the assumption of environmental responsibility. The RE's record maintenance system may be as simple as maintaining organized paper files, or could include off-site archival, microfiche, and disposal of paper files. At a minimum it should provide for:

- Accessibility** - Environmental reviews under NEPA and Part 58 are a public process. Therefore, documents produced in support of the environmental review should be available to the public upon request. During the public comment period, the ERR should be immediately available to the public. After the project is approved and funds released, the ERR should be accessible within a reasonable period of time. Most off-site archival document management programs allow for materials to be retrieved within two to five days.
- Retention** - Environmental issues have a long liability timeline. The RE's record retention policy should at least comply with HUD's internal record retention policy required by the applicable program regulations:
For IHBG, 3 years from the date the environmental review document is created. (NOTE:

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Some tribes have opted to create their own record retention policy of 3 years from the date the project closes, which addresses records retention for multi-year projects that take longer than 3 years to complete.)

For ICDBG, 3 years from the date of grant closeout, which is according to the U.S. Department of Treasury regulations (2 CFR Part 200) that applies to all federal grants.

The RE may also consider the American Society of Testing and Materials (ASTM) guidelines for retention of environmental records which prescribes a 35-year retention.

Exhibit 11.1 is a suggested list of items to keep in the files. Please note that tribes may have other items that they may want to include in their files.

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Exhibit 11.1: Contract Administration Filing System

One of the keys to effective contract administration is the ability to maintain records of your activities in a concise and consistent format. An IHA/TDHE's ability to maintain an accurate and effective filing system can ease the burden of record keeping requirements and ONAP reviews.

The following is a filing system is recommended for Procurement and Contract Administration files:

GENERAL

1. A complete copy of the Indian Housing Plan
2. HUD notices and circulars
3. HUD approval of the Indian Housing Plan
4. Copies of the Annual Statement and Five Year Action Plans
5. Procurement policy / procurement procedures
6. Environmental review manual
7. Relocation requirements and policy
8. Code requirements
9. IHA/TDHE rehabilitation/modernization standards
10. ONAP review findings
11. Correspondence-ONAP
- 12 Correspondence - residents
- 13 Correspondence - other
14. Notes

FOR EACH NAHASDA PROGRAM YEAR

1. Copy of HUD approved Annual Performance Report
2. HUD approval letter
3. Insurance requirements compliance
4. Implementation schedules
5. Indian owned business contract participation plan
6. A/E selection files
 - RFP
 - Responses
 - Selection process minutes
 - Negotiation
 - Copy of contract
7. Management improvement work plan
8. Management improvement procurement/consultant selection
 - RFP
 - Responses
 - Selection records
 - Negotiation records
9. File for each management improvement item
10. Relocation plan
11. Relocation case files
12. Lead-based paint notices
13. Fair housing and 504 notices
14. Environmental file for each activity

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CONTRACT FILES

1. Bid package
2. Calculations of rate of liquidated damages
3. Wage rates
4. Advertisement for bids
5. Bid deposit log
6. Addenda log
7. Bid opening documents
8. Bid review documentation/cost analysis
9. Contract award notification
10. Board approval resolution
11. Pre-construction meeting minutes
12. Construction progress schedule
13. Schedule amount of contract payments
14. Notice to proceed
15. Resident council notification
16. Contractor's insurance
17. Contractor's performance bond
18. Correspondence
19. Construction inspection reports

PAYROLLS

1. WH 3475 -General Contractor
2. WH 3475 - Sub Contractors
3. Correspondence
4. Copy of wage interviews
5. Copy of wage determination

CONTRACT PAYMENTS

1. Schedule amount of contract payments- HUD 51000; Forms HUD 51001,51002,51003,51004
2. Change orders by number and date
3. Construction progress meeting minutes
4. Construction inspection reports, pictures, etc.
5. Record of disputes, claims, damages

CONTRACT CLOSE-OUT

1. Final inspection notifications
2. Final inspection notes
3. Punch list
4. Certificate of occupancy
5. Contractor's certificate and release
6. Certificate of completion
7. Open items
8. Schedule of change orders
9. Final pay request
10. Warranties and guaranties
11. Liquidated damages
12. Correspondence

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FORCE ACCOUNT

1. Force Account cost estimates
2. Force Account work plan
3. Force Account implementation schedule
4. Wage determinations
5. Force Account work items
6. Force Account payroll -WH 347
7. Correspondence

SMALL PURCHASES

1. Record of solicitation
2. Purchase order
3. Approval for payment

ENVIRONMENTAL FILES (For each activity)

1. Activity name – include description of proposal (24 CFR 58.32), grant number, estimated cost, site plan and funding sources
2. ERR Guides –appropriate to the level of review; completed and signed
3. Correspondence
4. Published notices
5. Requests for release of funds

ANNUAL PERFORMANCE REPORTS

1. HUD Annual Statement/Performance Reports of each annual statement
2. Board approval resolution of annual report
3. Public hearing and resident comments

Attachment 11.1 – Sample Environmental Review Record Project Checklist

Project/Program Name: _____

Project/Program ID Number: _____

Project Location (if applicable): _____

Level of Environmental Review Completed:

Date Completed: _____

Exempt [§58.34(a)]

Categorically excluded *not subject to* §58.5 [§58.35(b)]

Categorically excluded *subject to* §58.5 [§58.35(a)]:

Converted to exempt (§ 58.35(a)(12)) Date converted: _____

OR

NOI/RROF published Date: _____

RROF submitted to HUD (form 7015.15) Date: _____

HUD approval received (form 7015.16) Date: signed by HUD: _____

Environmental Assessment (§58.36)

FONSI/NOI published Date: _____

RROF submitted to HUD (form 7015.15) Date: _____

HUD approval received (form 7015.16) Date signed by HUD: _____