



Environmental Review and Disaster Recovery



Welcome and Speakers

- Welcome to HUD's webinar series on CDBG-DR basics
 - Webinars will focus on key rules and requirements for managing DR grants
 - Webinars will also share tips & lessons learned
- Speakers:
 - Ashley Bechtold, Danielle Schopp, Lauren McNamara, U.S. Department of Housing and Urban Development (HUD)
 - Cathy Dymkoski, ICF International



CDBG-DR Webinar Series

- This is the last in a series of seven webinars about CDBG-DR for CDBG-DR and NDR grantees
 - Specific guidance on unique requirements of NDR will not be covered in these webinars



Polling and Asking Questions

- Webinar will include some polls
 - If you are attending as a group, feel free to briefly discuss before answering
- How to ask questions
 - Questions will be taken throughout webinar
 - Written questions: Type questions into the “Questions” box located on your GoToWebinar panel



Poll #1

- Years of experience with HUD Environmental Review (ER) requirements:
 - Less than one year
 - 1-4 years
 - 5-10 years
 - 10 years +



Agenda

- Environmental Review and DR
- Unified Federal Review (UFR)
- Tips for Environmental Laws Post Disaster
- Setting up a Single Family Rehab Tiered Review
- Questions and Resources



Environmental Reviews and DR



HUD's Environmental Regulations

- 24 CFR 50 – HUD Review
 - Environmental review requirements for HUD staff
- 24 CFR 51 – HUD Standards
 - Noise, Explosive or Flammable Hazards, Runway Clear Zones
- 24 CFR 55 – Floodplains & Wetlands
- 24 CFR 58 – State or Local Government Review
 - Environmental review requirements for states or units of general local government (“Responsible Entity”/”RE”)



What is an Environmental Review?

- Analysis of the impacts of a project on the surrounding environment and vice versa
- Ensures that HUD-funded projects provide decent, safe, and sanitary housing
- Demonstrates compliance with up to 17 federal environmental laws and authorities
- A public document that encourages public participation



Opportunity to Improve the Project

- Use the Environmental Review as part of the planning process to make projects more resilient:
 - Build it back better
 - Ensure the useful life of projects under changing conditions, including future risk
 - Reduce current and future risk is essential to the long-term economic well-being of communities and businesses
 - Minimize future impacts (expected threats and hazards)



Best Practices

- Use State or local Environmental Departments
 - In NJ the Department of Environmental Protection did all the ER work
- Use State or local GIS Data
 - Allows for quick, cost-effective and up-to-date reviews
- Secretary of the Interior Qualified (SOI) person on staff to complete Section 106 reviews
- Consultants can be brought in to help prepare the Environmental Review Record (ERR)
- Bring program and environmental staff and subject matter experts together early and often!
- Coordination with other agencies critical



Environmental Review Basics

- Resources on the Environmental Review Page on the HUD Exchange -
 - Orientation to Environmental Reviews
 - Webinar - Basics of a Part 58 Environmental Review for HUD-Assisted Projects
 - Related Federal Environmental Laws and Authorities
 - Suggested Formats
 - Environmental Staff Contacts



Important Tips



- DON'T SPEND A DIME – until the environmental review is complete and you have received an approved Request for Release of Funds (7015.16) when it's required
- **Neither applicant nor partners in the process, are allowed to commit or spend HUD or non-HUD funds on physical activities, including acquisition until the ER process is completed**



Examples of Commitment and Expenditure of Funds

Execution of Legally-binding Agreements	Expenditure of CDBG funds	“Choice Limiting Actions” (using both HUD and non-HUD funds)
Awarding construction contracts	Purchase of materials by force account crews	Demolition, dredging, filling, and excavation
Entering into project agreements	Hiring a consultant to prepare a special study	Real property acquisition, leasing, rehabilitation, site improvements, relocation of buildings, and solicitation of bids



Environmental Review Record (ERR)

- Written record of the review
- Must be available to the public
- Let the ERR tell the story – project description, maps, photographs, studies, consultation and other correspondence, public notices, programmatic agreements, etc.
- ERR must demonstrate compliance through the use of above referenced supporting documentation

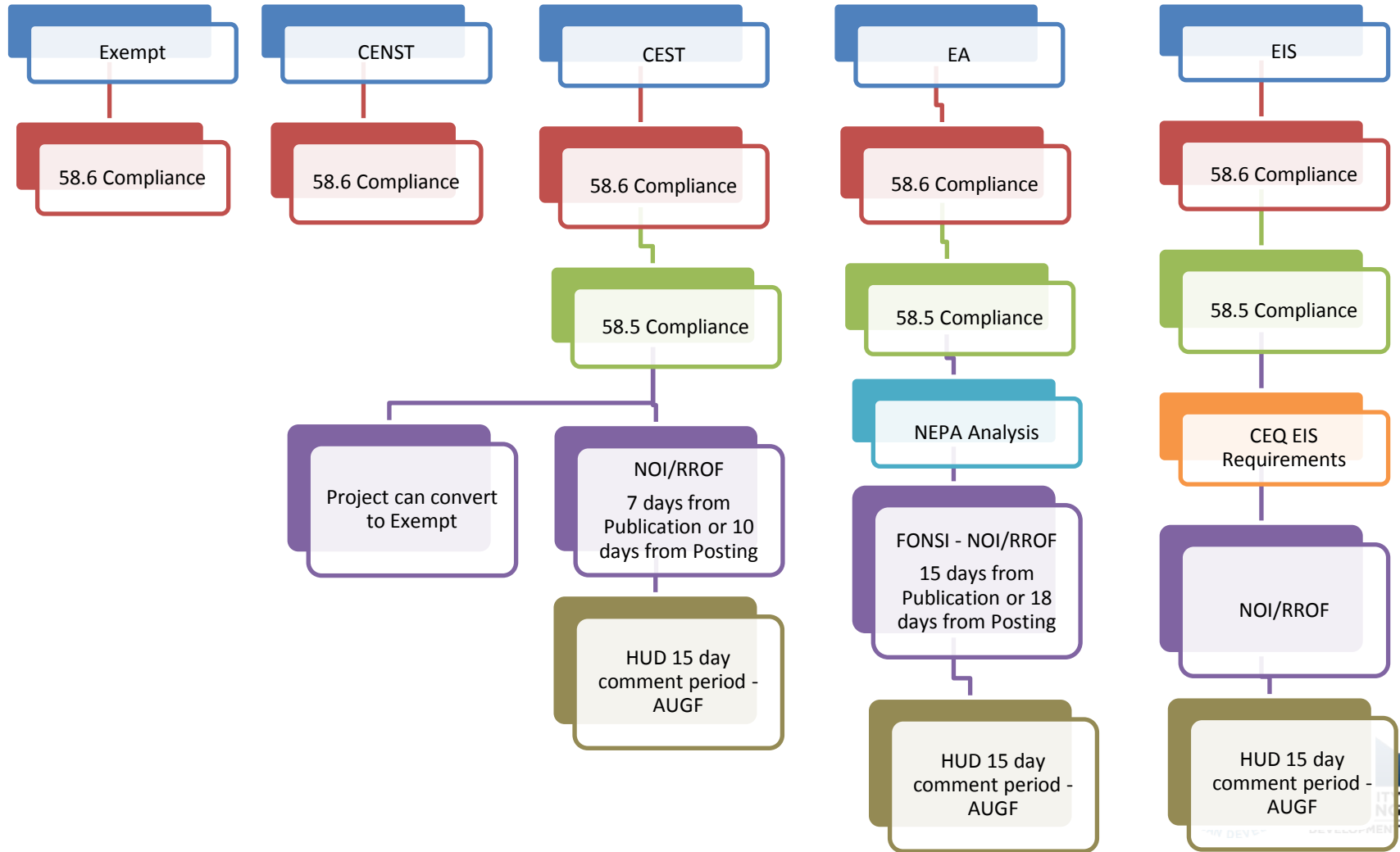


Define the Project: Aggregation

- 24 CFR 58.32 – The RE must group together and evaluate, as a single project, all individual activities that are related geographically, functionally or are logical parts of a composite of contemplated actions (including HUD and non-HUD funding sources)
- Use “but for” analysis...(avoids segmentation)
- Project: An activity, or a group of integrally related activities, designed to accomplish a specific objective



Levels of Review



Emergency Exemptions

- Available, but very narrow
- Does this need to be done within thirty days after the event?
- Example: tree removal to allow emergency vehicle access



Request for Release of Funds and (RROF) Certification

- When States are the RE then form 7015.15 (RROF) must be submitted to HUD
- When Units of General Local Government are the RE (i.e., receive grant funds directly from States) then State-approved release of funds and certification forms must be used and submitted to States



Authority to Use Grant Funds

- HUD and States use form 7015.16
- The RROF may be disapproved (58.75) if any of the following conditions apply:
 - Knowledge that the RE did not properly conduct the environmental review.
 - Inaccuracies in the Certification or RROF.
 - Valid public objections attesting to the inaccuracy or non-compliance of the environmental review.
- If there are no reasons to object the RROF, the Authority to Use Grant Funds (AUGF) will be issued by HUD or the State



Unified Federal Review (UFR)



Unified Federal Review (UFR Process)

- Collective agency approach for disaster recovery projects, authorized by the Sandy Recovery Improvement Act of 2013, that encourages enhanced coordination for ERs after a disaster
- Leveraging existing resources and creating process efficiencies to improve the ER process of disaster recovery projects

*The UFR Process
does not change the environmental
requirements under existing federal law.*



Coordination with FEMA for CDBG-DR projects

- HUD/FEMA joint funding
- HUD memo on adopting FEMA reviews
- HUD REs can adopt a FEMA review if
 - The scope of work has not changed
 - HUD funds are covering the cost share
 - Grantee must notify HUD in Request for Release of Funds
- Talk to your HUD & FEMA Environmental Representatives





TIPS FOR ENVIRONMENTAL LAWS AND AUTHORITIES POST DISASTER

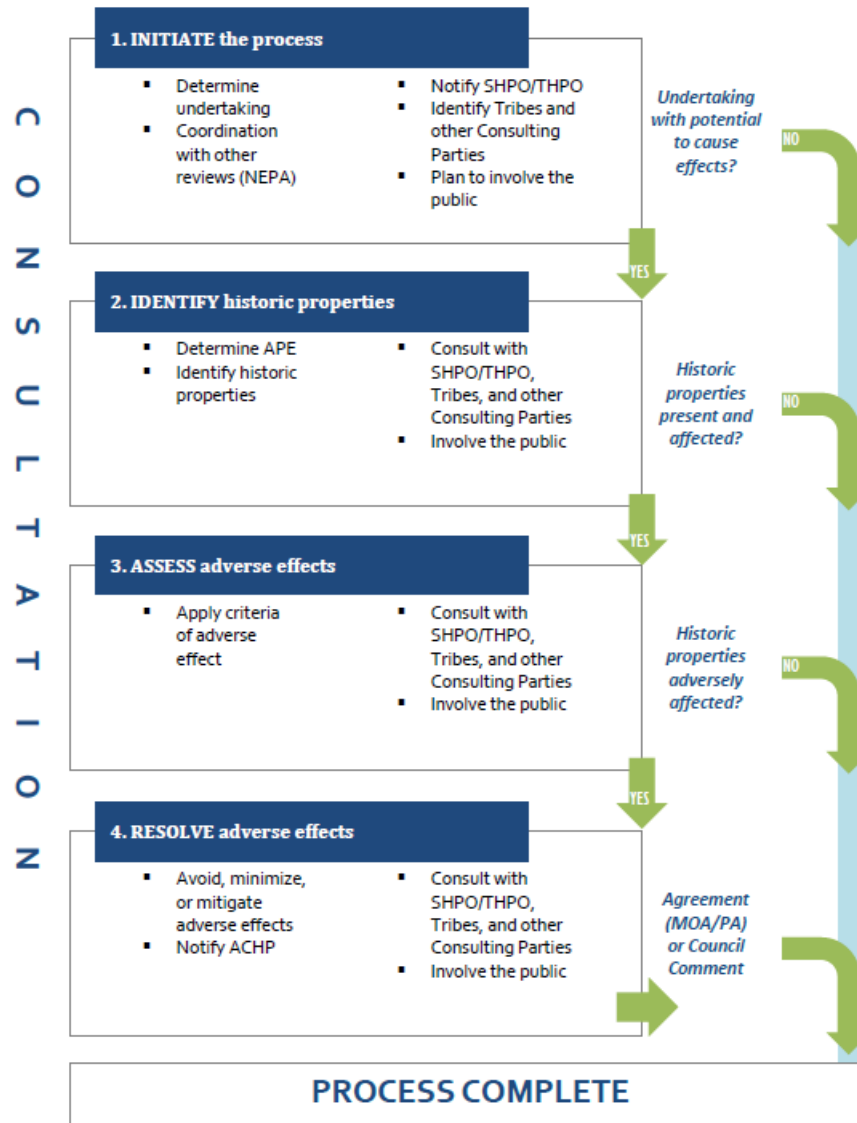




HISTORIC PRESERVATION/ SECTION 106

Historic Preservation Process

Section 106 Process



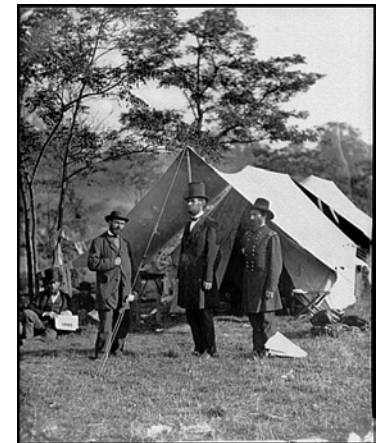
National Register of Historic Places

Criteria

- A. Historic Significance
- B. Important Person
- C. Architectural Significance
- D. Archeological Significance



- Level of Significance: local, state or national
- Generally 50 years old or older
- Eligible individually or as part of an historic district



Section 106 Programmatic Agreements (PAs)

- Legally binding agreement between state and federal agencies (including federally recognized tribes as appropriate), and REs on review protocols or mitigation protocols
- Streamlining capabilities and time savings for project reviews
- Promote trust
- Focus on preserving historic resources



FEMA Prototype Programmatic Agreement

- Endorsed by the Advisory Council on Historic Preservation December 2013
- Input from Tribes, SHPOs & State Agencies
- Provides a template for statewide FEMA PAs
- Significant time savings for negotiation
- Provision that allows for other agencies to sign on the PA



HUD Addendum to the FEMA PA

- HUD REs (States and Units of General Local Government) may sign on to the HUD Addendum
- States that have currently signed on:
New York, New Jersey, Colorado, Oklahoma
– Currently focusing on South Carolina
- No additional responsibility on FEMA's part
- Future of HUD disaster PAs



How to sign on to the HUD addendum

- Disaster Programmatic Agreement Database
- Process is outlined in the Protocols
- Secretary of the Interior (SOI) Qualified staff
- Provide resumes of SOI Qualified staff
- Annual Reporting Requirement
- Contact Ashley Bechtold- 202-402-6298,
Ashley.R.Bechtold@hud.gov



Tribal Consultation

- Notice on Tribal Consultation
- TDAT: Tribal Directory Assessment Tool Database that uses project address to identify federally recognized tribes with possible interest in a project
- Updated Information on counties of interest and contacts in Spring 2016





FLOOD INSURANCE

Flood Insurance

- FEMA National Flood Insurance Program flood insurance is required if project is located within a Special Flood Hazard Area – 100 year floodplain.
- The Flood Disaster Protection Act of 1973, as amended, requires that property owners purchase flood insurance for buildings located within Special Flood Hazard Areas (SFHA), when Federal financial assistance is used to acquire, repair, improve, or construct a building. Also required for insurable contents.
- Note that this is required by a statute and not the E.O. 11988. This requirement will apply in many cases where the 8 Step process may not be applicable.



Flood Insurance

- Duration of Flood Insurance Coverage: Statutory period for flood insurance coverage may extend beyond project completion
- For loans, loan insurance or loan guarantees, flood insurance coverage must be continued for the term of the loan
- For grants and other non-loan forms of financial assistance, flood insurance coverage must be continued for the life of the building irrespective of the transfer of ownership
- Limits of NFIP coverage: \$250,000 for 1-4 family residential and \$500,000 for multi-family nonresidential structures
- HUD recommends purchase for all insurable structures, but it is only required for those in the SFHA
- Equipment purchase \$5,000 or more, must also be insured



One Bite Rule

- HUD/State cannot offer Federal disaster assistance for a person's property for construction activities, where the person previously received Federal disaster assistance and failed to maintain the flood insurance (24 CFR 58.6(b))

Translation = Failure to maintain flood insurance after using Federal disaster assistance jeopardizes Federal assistance following subsequent disasters

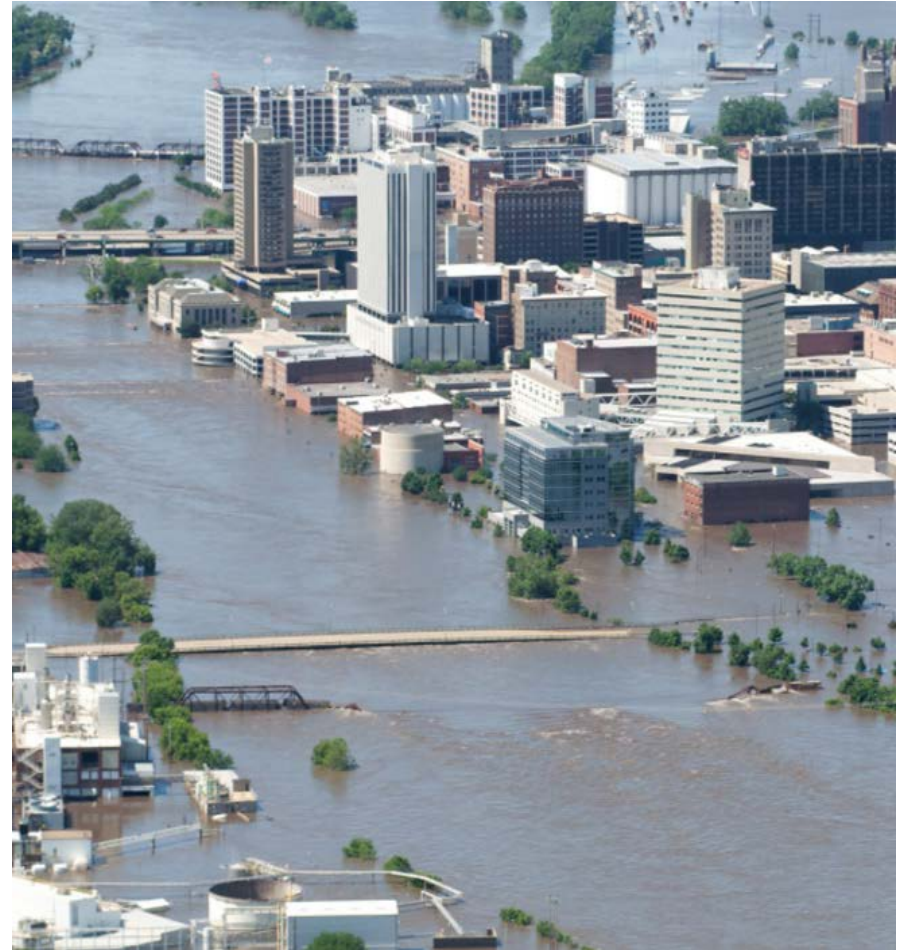




FLOODPLAIN MANAGEMENT AND WETLANDS

EO 11988 - Floodplain Management

- Purpose “to **avoid** to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to **avoid** direct and indirect support of floodplain development wherever there is a practicable alternative.”



EO 11988 - Floodplain Management

- Flooding is the most common disaster
- FEMA Flood Insurance Rate Maps only look at historical and data available at the time of mapping, and do not take into consideration climate change, sea-level rise, growth in impervious surface, or any other trends!
- HUD's Floodplain Regulation at 24 CFR Part 55 looks at avoidance, minimizing impacts and providing public notice



Floodplain Management

24 CFR Part 55

- Applies to physical actions in 100 year or critical actions* in 500 year floodplains:
 - 1-4 family rehab if $\geq 50\%$ value before rehab
 - Buildings
 - Roads
 - Pipelines
 - Anything except minor clearing and grubbing

* See 55.2(b)(2) for definition



Prohibited Actions under 55.1(c)

- Any non-functionally dependent use in a Floodway
- Any Critical Action or new construction of non-critical actions in a Coastal High Hazard Area (V Zone)
- Any repair or reconstruction of non-Critical Actions that were not designed consistent with 55.1(c)(3)



Preliminary Data for Disaster Assistance

- EO 11988 and 24 CFR Part 55 requires “best available information” which includes preliminary Flood Insurance Rate Maps (FIRMs) and Advisory Base Flood Elevations (ABFEs)
 - Flood Insurance is only required for 100-year floodplain on locally adopted FIRMs

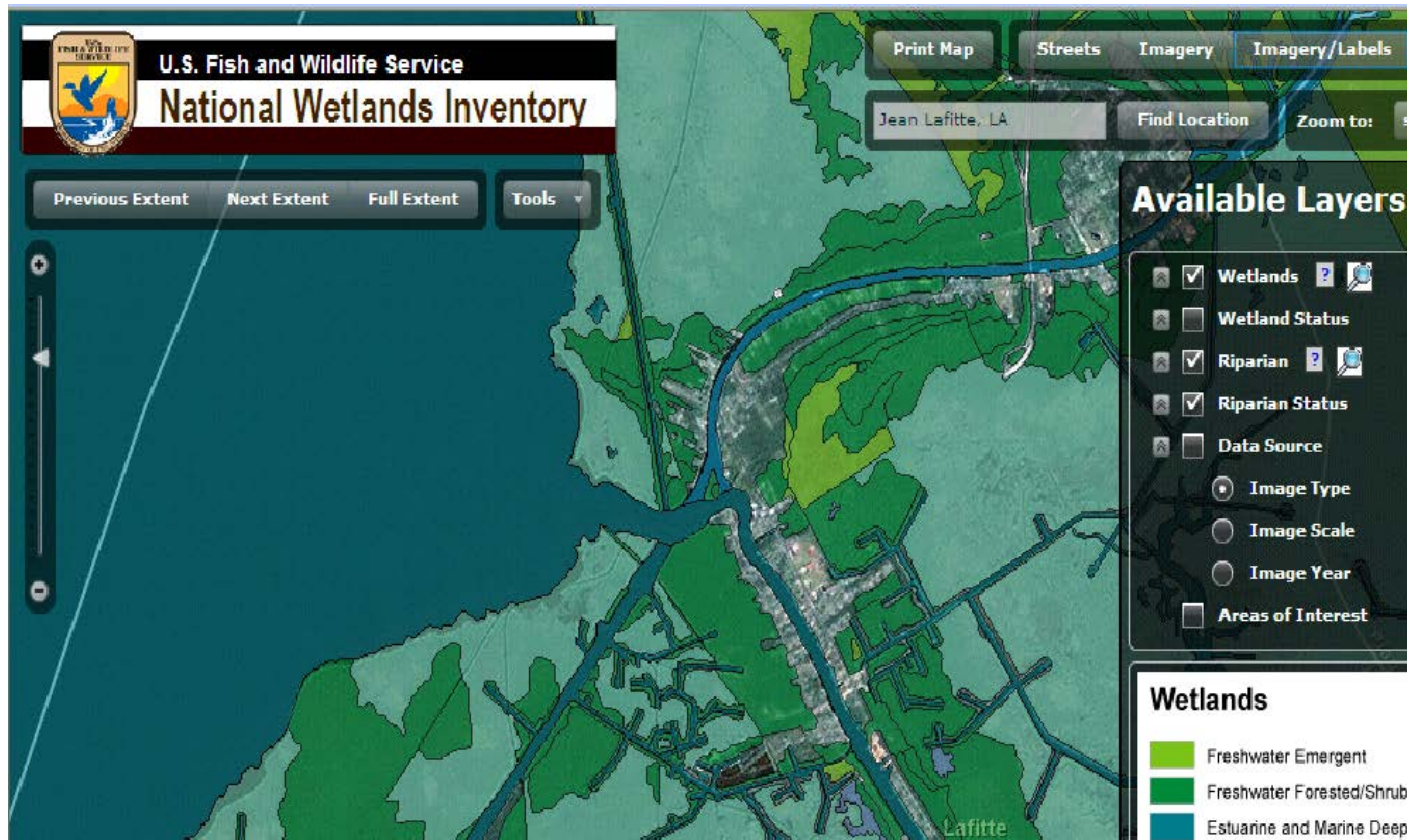


EO 11990 – Protection of Wetlands

- Purpose is “to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative[.]”



National Wetlands Inventory Map



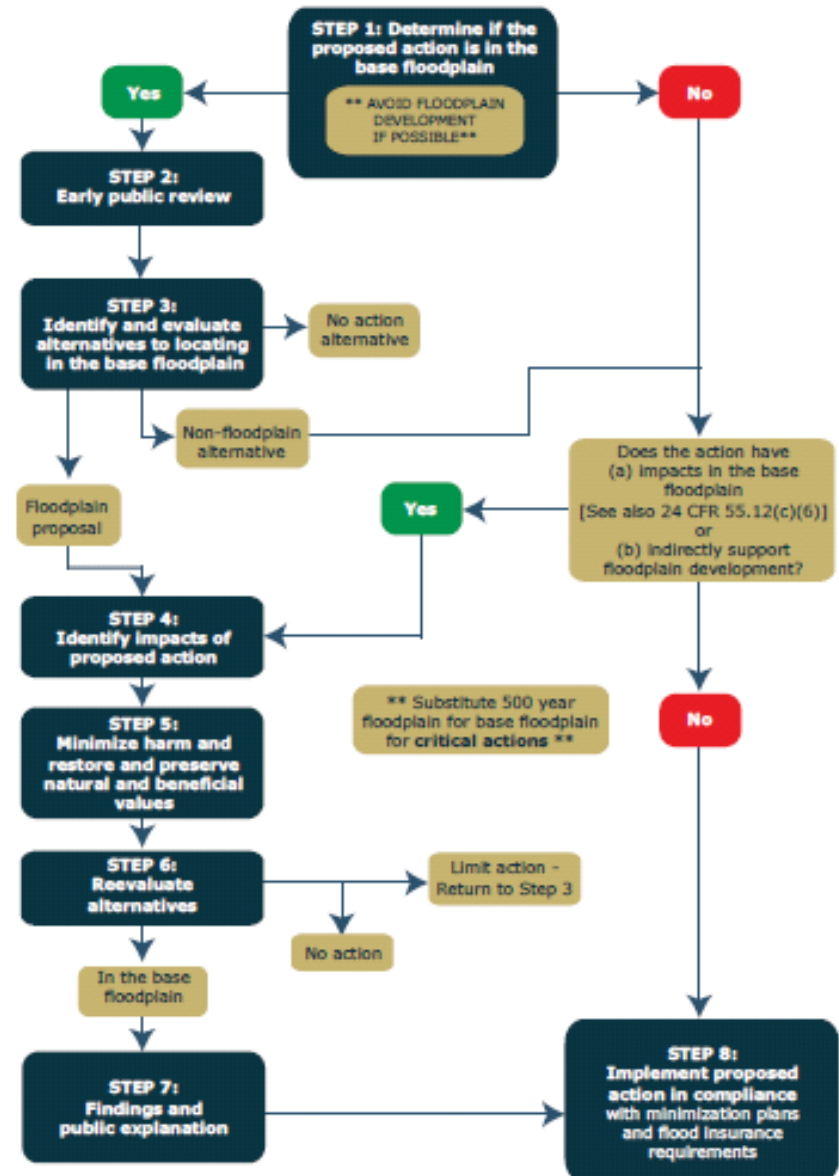
*NWI maps are to be used from primary screening. Sites should be checked any time substantial filling, drainage, impounding, or other “new construction” activities occur.



8-Step Process

- Does allow for aggregated review of single family rehab on county basis – talk to your local FEO – tricky!
- Does NOT allow for countywide analysis for multifamily or non-residential – these require individual 8-step process
- Floodplain notices can be combined with wetlands
- Multiple locations can share notices for 8-steps

8- Step Decision-Making Process for Executive Order 11988





ENDANGERED SPECIES

Endangered Species Act (ESA)

- The ESA is jointly administered by the US Fish and Wildlife Service and the National Marine Fisheries Service (“the Services”)
- Work with the Services as soon as possible to:
 - Identify any endangered and threatened species and critical habitats in the area
 - Develop a plan to avoid potential impacts to protected species and habitats
- Consider any activities that can impact an endangered species for example, beach renourishment projects, debris removal activities, tree removal, boardwalk and pier replacements, bank stabilization, bridge and culvert replacements





SETTING UP SINGLE FAMILY REHAB TIERED REVIEW

Poll #2

- Do you currently use Tiering?
 - Yes
 - No



What are your activities?

- What type of work will be done to the houses?
- How is the program designed?
- Will density be increased?
 - Probably not!
- Is elevation a part of the program?



Setup your Tier 1/ Broad level Review

- Which Laws and Authorities can be analyzed at the Tier 1 level?
 - Document!
- Which Laws and Authorities need to be analyzed at the Tier 2/Site Specific level?
 - How will they be analyzed at this level?
- Public Comment Period and RROF Approval



Tier 2/ Site-specific

- Tier 2/Site Specific reviews, analyze the Laws and Authorities that were not addressed at the Tier 1/Broad level review
 - Document!
- Tier 2/Site Specific reviews need to be completed prior to starting work
- Maintain a record of the Tier 2/ Site-specific review with the Tier 1/Broad level review



Questions & Resources



Resources

- Webinars in this series: <https://www.hudexchange.info/news/2016-cdbg-dr-webinar-series/>
- CDBG-DR Website at HUD Exchange: <https://www.hudexchange.info/programs/cdbg-dr/>
- HUD Environmental Website at HUD Exchange: <https://www.hudexchange.info/programs/environmental-review/>
 - Tribal Directory Assessment Tool, Section 106 Programmatic Agreement Database, Noise Calculator, Separation Distance Calculator
- DR and Environment (check here for updates): <https://www.hudexchange.info/programs/environmental-review/disaster-recovery-and-environment/>
- HUD Environmental Contacts: <https://www.hudexchange.info/environmental-review/hud-environmental-staff-contacts/>
- Part 58 Basics Webinar: <https://youtu.be/ytkzT4HvXQY> and Slides: https://www.hudexchange.info/onecpd/assets/File/Part58ReviewWebinar_Slides.pdf



Resources

- Sample Notices: <https://www.hudexchange.info/resource/2755/sample-fonsi-and-rrof/>
- Imminent Threats Memo: <https://www.hudexchange.info/resources/documents/Environmental-Review-Exemptions-Disasters-Imminent-Threats.pdf>
- UFR: <https://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters>
- HUD memo on adopting FEMA reviews <https://www.hudexchange.info/resources/documents/AdoptionFEMAOtherFederalEnvironmentalReviewProcessingSandy.pdf>
- 7015.15: <https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/>
- 7015.16: <https://www.hudexchange.info/resource/2602/hud-form-701516-authority-use-grant-funds/>



Resources

- Section 106 Flowchart:
<https://www.hudexchange.info/resource/760/section-106-flowchart>
- Disaster Programmatic Agreement Database:
<https://www.hudexchange.info/programs/environmental-review/disaster-recovery-and-environment/>
- Notice on Tribal Consultation:
http://portal.hud.gov/hudportal/documents/huddoc?id=env_notice_tribe_con.pdf
- TDAT: Tribal Directory Assessment Tool:
<http://egis.hud.gov/tdat/Tribal.aspx>



Thank you!

