



Environmental Review and Disaster Recovery

2018 CDBG-DR Problem Solving Clinic

Atlanta, GA | December 12-14, 2018



Welcome & Speakers

- Session Objectives
 - The importance of Environmental Reviews
 - Tips for understanding post disaster Environmental Laws
 - How to set up a Single Family Rehab Tiered Review
- Speakers
 - Donna Mahon, HUD



Agenda

- Environmental Review and DR
- Tips for Environmental Laws Post Disaster
- Setting up a Single Family Rehab Tiered Review
- Questions and Resources



Environmental Review and Disaster Recovery (DR) Overview



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 impacts of a project on the surrounding environment and vice versa
- Ensures 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



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 early and ongoing critical

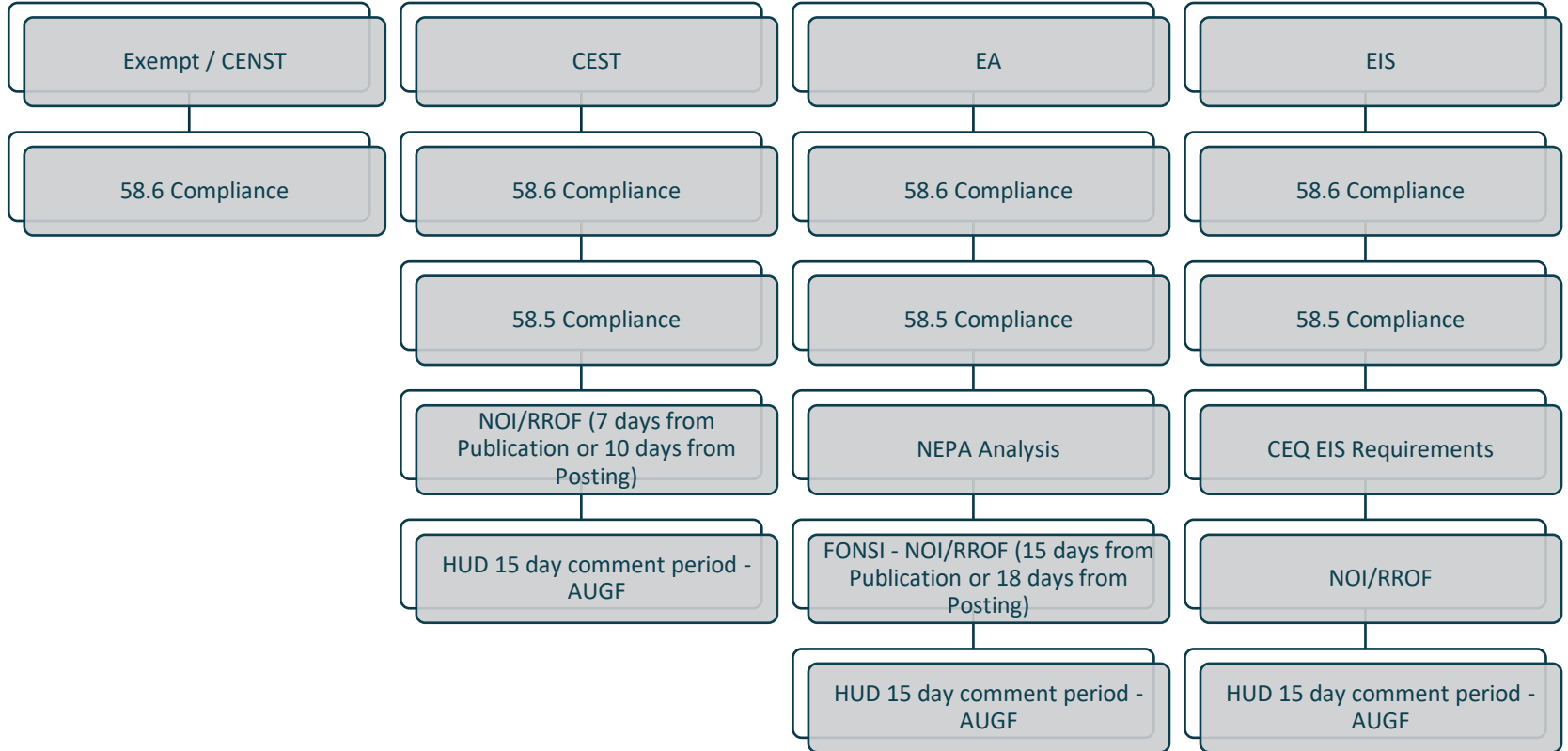


Environmental Review Record (ERR)

- 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



Levels of Review



Emergency and Disaster Action Exemptions

- 24 CFR 58.34(a)(10) & 58.33(b)
- Actions necessary to control the immediate impacts of emergency
- HUD Guidance: Exemptions for Disasters & Imminent Threats
- Expedited Comment period for non-exempt activities



Important Tips

- Neither applicant nor partners in the process, are allowed to commit or spend HUD or non-HUD funds on physical or choice-limiting actions, including acquiring property or entering into a contract, until the ER process is completed 58.22(a)
- **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



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



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
- 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
- Some states that have currently signed on: New York, New Jersey, Colorado, Oklahoma, South Carolina, West Virginia, and Louisiana
- 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 Nancy Boone – 202-402-6298, Nancy.E.Boone@hud.gov
- <https://www.hudexchange.info/environmental-review/historic-preservation/section-106-agreements/>



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 100 year 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



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
 - <https://msc.fema.gov/portal/home>



Elevation Requirements

- CDBG-DR funds require the best available data +2 feet for new construction and substantial improvement of structures
- Substantial improvement is any repair, reconstruction, modernization, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started or if the structure has been damaged, and is being restored, before the damage occurred
- Substantial improvement also includes improvements to a structure that increase the average peak number of employees or customers likely to be onsite at any one time or the number of residential units in the project more than twenty percent
- The substantial improvement elevation requirements do not apply to structures listed on the National Register of Historical Places or on a State Inventory of Historic Places
- “Critical facilities,” such as hospitals, nursing homes, and police and fire stations, require buildings to be elevated at least three feet

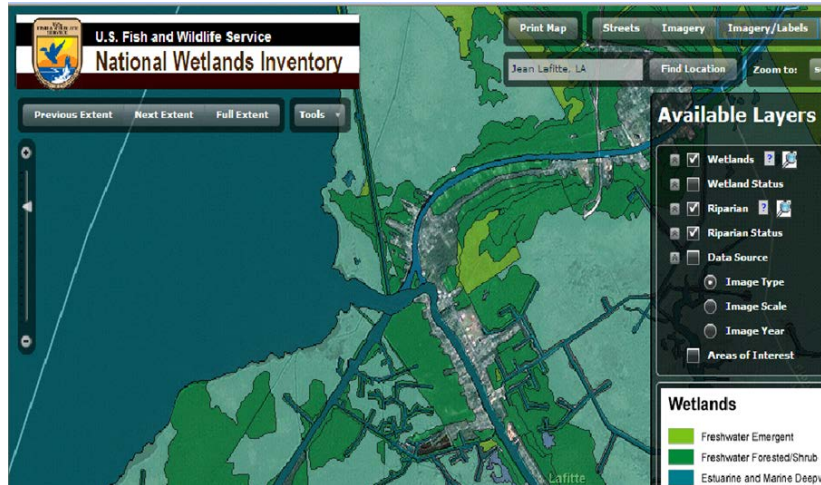


EO 11990 – Protection of Wetlands

- 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

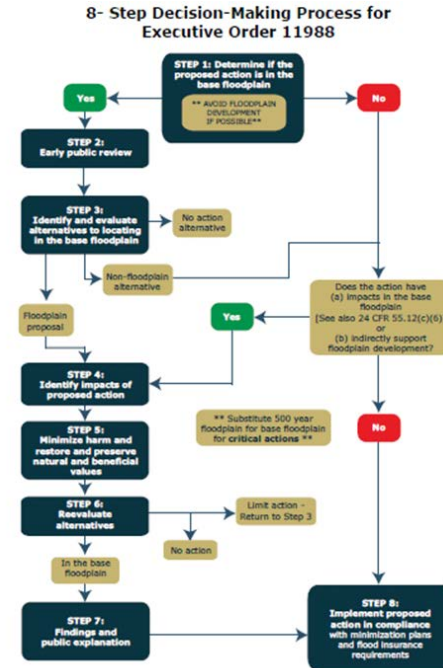


*NWI maps are to be used from primary screening. Sites should be checked any time substantial filling, drainage, impounding, or other “new construction” activities occur.



8-Step Process

- Does allow for aggregated review of single family rehab on county basis for floodplains – 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 but not for aggregated reviews
- Multiple locations can share notices for 8-steps



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 and 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

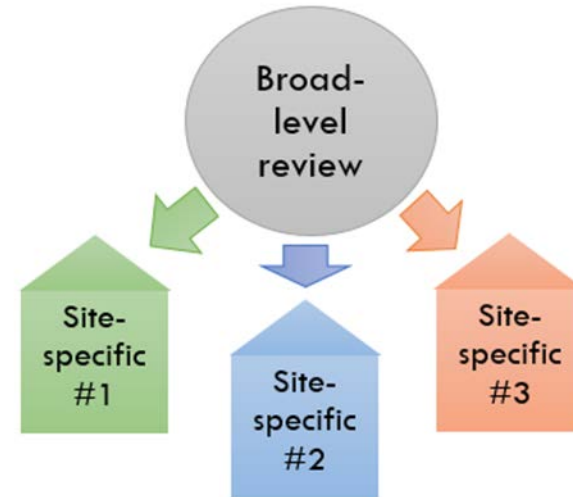


Tiering



What is Tiering?

- **Goal of tiering** = eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review
- A tiered review consists of two stages:
 - A broad-level review
 - Subsequent site-specific reviews



Two Stages of Review

- Stage 1 - Broad-level review:
 - Identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project
 - ALSO establish the standards, constraints, and processes to be followed in the site-specific reviews
- Stage 2 - Site-specific reviews:
 - Evaluate the remaining issues based on the policies established in the broad-level review as individual sites are selected for review
- Together, the broad-level review and all site-specific reviews comprise a complete environmental review record



Broad Level Review



Project Description

- Project description must define...
 1. All contemplated activities
 2. All proposed funding sources
 3. Maximum number of units/properties
 4. Average cost per unit
 5. Geographic range (county or parish)
 6. “Expiration date”



Related Laws and Authorities

- Consider each of required environmental laws and authorities and either...
 - Resolve at the broad level
OR
 - Define a protocol to achieve compliance at site-specific level



Compliance at Broad-Level

- Possible if full scope of project can be determined to comply with an environmental law, authority, or factor
 - May comply due to geography or activities involved (or a combination!)
- Example: Compliance based on location – non-coastal county
 - No Coastal Zones or Coastal Barriers in a county → compliance with CZMA & CBRA at broad level
- Example: Compliance based on activities – single family rehab
 - No new construction/ground disturbance → compliance with EO 11990, Wetlands Protection



Tiering Environmental Assessments (EAs)

- In addition to the related laws and authorities in 58.5 and 58.6, EAs must complete a more thorough NEPA review and consider all EA factors and analysis
- Like all EAs, tiered EAs must include a finding of no significant impact (FONSI) prior to Request for Release of Funds
 - Protocols must be specific and detailed to ensure that there will not be a significant impact on the human environment



Completing Broad Level Reviews

- Public Notice must be clear about the nature and scope of the proposal
 - Plain language project description must communicate scale of the review to the public
 - A sample notice is available [on the HUD Exchange](#)
- Complete Request for Release of Funds process at broad level
 - But do not commit funds to individual sites until site-specific review has been completed



Site Specific Reviews



Site-Specific Reviews

- Complete site-specific reviews as sites are identified
- Determine and document compliance with all required laws and authorities that were not already resolved
 - Follow protocols defined at broad level to concentrate on the pertinent issues
- If site-specific activity does not conform to limits established at broad level, separate review is required
- Site-specific reviews need to be completed prior to starting work or signing contracts with homeowners



Environmental Impact Statements



Environmental Impact Statements



Public Participation



Reimbursement Exceptions

- HUD guidance on allowance for reimbursement actions under disaster allocations for 2017 events
- Privately conducted rehab, demolition and reconstruction of single family, multi-family, and non residential buildings – no public facilities or direct government actions.
- Flood insurance is still required
- ERR will be conducted post commitment



Recordkeeping

- Environmental review record is not complete without both broad-level and site-specific reviews
 - Site-specifics must identify corresponding broad-level review
 - Both parts should be filed together
 - Compliance must be documented – including maps, consultation letters, checklists
- Avoid monitoring findings – make sure records are complete!



Resources



Resources

- 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:
 - <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
- WISER (on-demand training modules):
 - <https://www.hudexchange.info/trainings/wiser/>
- FEMA Flood Maps
 - <https://msc.fema.gov/portal/home>



Resources

- Imminent Threats Memo:
 - <https://www.hudexchange.info/resources/documents/Environmental-Review-Exemptions-Disasters-Imminent-Threats.pdf>
- CPD 15-07 - Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants:
 - <https://www.hudexchange.info/resources/documents/Notice-CPD-15-07-Guidance-for-Charging-Pre-Application-Costs.pdf>
- HUD memo on adopting FEMA reviews:
 - <https://www.hudexchange.info/resources/documents/AdoptionFEMAOtherFederalEnvironmentalReviewProcessingSandy.pdf>
- FEMA/HUD – Environmental Checklist:
 - https://www.fema.gov/media-library-data/1411485492585-6338cb32b06a7074edfef418429de5c9/Template_Env_Checklist.pdf
- Tiering Guidance:
 - <https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/>
- Pre-award Guidance
 - <https://www.hudexchange.info/resources/documents/Notice-CPD-15-07-Guidance-for-Charging-Pre-Application-Costs.pdf>



Questions

