



# CHAPTER 1: INTRODUCTION

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This chapter provides a brief overview of the HOME Program and its various requirements, including the completion of an environmental review for all HOME-funded projects and activities. The environmental review, the contents of this manual, and the objectives of this course are outlined at the end of this chapter.

## HISTORY AND GOALS OF THE HOME PROGRAM

The HOME Program was created by the National Affordable Housing Act of 1990 (NAHA), and has been amended several times by subsequent legislation.

The intent of the HOME Program is to:

- Provide decent affordable housing to lower-income households;
- Expand the capacity of nonprofit housing providers;
- Strengthen the ability of state and local governments to provide housing; and
- Leverage private sector participation.

## HOME-FUNDED ACTIVITIES

As HUD's premier block grant program for housing, HOME can be used to assist the following types of affordable housing activities:

- Homeowner rehabilitation: HOME funds may be used to assist existing owner-occupants with the repair, rehabilitation, or reconstruction of their homes.
- Homebuyer activities: PJs may finance the acquisition and/or rehabilitation or new construction of homes for homebuyers.
- Rental housing: Affordable rental housing may be acquired and/or rehabilitated, or constructed.
- Tenant-based rental assistance (TBRA): Financial assistance for rent, security deposits and, under certain conditions, utility deposits may be provided to tenants. Assistance for utility deposits may only be provided in conjunction with a TBRA security deposit or monthly rental assistance program.



## ROLES AND RELATIONSHIPS BETWEEN THE PJ AND ITS PARTNERS

The HOME Program requires PJs to maintain some existing partnerships and to forge many new ones. Partners play different roles at different times, depending upon the project or activity being undertaken. Typical partners are discussed below.

- ❑ **State governments:** States are given broad discretion in administering HOME funds. They may suballocate funds to units of local government directly, evaluate and fund projects, or combine the two approaches. States may undertake jointly-funded projects with local PJs. They may use HOME funds anywhere within the state including within the boundaries of local PJs.
- ❑ **Local governments and consortia:** Units of general local government, including cities, towns, townships, and parishes may receive PJ designation or they may be allocated funds by the state. Contiguous units of local government may form a consortium for the purpose of qualifying for a direct allocation of HOME funds. Local governments and consortia then administer the funds for eligible HOME uses.
- ❑ **CHDOs:** A CHDO is a private, nonprofit organization that meets a series of qualifications prescribed in the HOME regulations. Each PJ must use a minimum of 15 percent of its annual allocation for housing owned, developed, or sponsored by CHDOs. PJs evaluate organizations' qualifications and designate them as CHDOs. CHDOs also may be involved in the program as subrecipients, but the use of HOME funds in this capacity is not counted toward the 15 percent set-aside.
- ❑ **Subrecipients:** A subrecipient is a public agency or nonprofit organization selected by a PJ to administer all or a portion of the PJ's HOME Program. It may or may not also qualify as a CHDO. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not considered a subrecipient.
- ❑ **Developers, owners, and sponsors:** Individuals, for-profit entities, and nonprofit organizations can participate in the HOME Program as owners, developers, or sponsors of housing. When CHDOs use HOME funds as owners, developers, or sponsors, this use of HOME funds counts toward the 15 percent CHDO set-aside.
- ❑ **Private lenders:** One of the goals of the HOME Program is to establish strong public/private partnerships. PJs are required to make all reasonable efforts to maximize participation by private lenders and other members of the private sector. The Community Reinvestment Act (CRA) requirements provide an incentive to private lending institutions to become involved in HOME Program activities.
- ❑ **Third-party contractors:** A PJ may contract with a private for-profit contractor to administer all or part of its HOME Program. Unlike public agencies or nonprofits, contractors must be procured through a competitive process in accordance with applicable Office of Management and Budget (OMB) procurement requirements. These requirements are found in 24 CFR Part 85 (for PJs) and Part 84 (for nonprofits).



## **PJ OBLIGATIONS**

When a PJ accepts HOME funds, it agrees to meet certain obligations as part of its responsibility to use HUD funds in a timely and productive manner, and to reflect the intent of Congress that HOME funds be used in partnership with other forms of investment. These include:

### **Matching Requirement [24 CFR 92.218-92.222]**

Each PJ incurs a 25 percent matching obligation for HOME funds it expends. Matching contributions must be:

- A permanent contribution to affordable housing;
- From non-Federal sources; and
- Provided by any of a broad array of public and private donors, such as local government agencies, state agencies, charitable organizations/foundations, and private sector organizations such as lending institutions and corporate donors.

### **Monitoring, Record-keeping and Reporting [24 CFR 92.508 and 92.509]**

In addition to using HOME funds in a productive manner, PJs must also ensure that these dollars are used in accordance with the requirements of the HOME Final Rule at 24 CFR Part 92. In order to meet these program obligations to HUD, PJs must:

- Keep records that enable HUD to determine whether they have met program and project requirements (Chapter 10 discusses this responsibility as it relates to environmental compliance); and
- Submit an annual performance report to HUD.

If HUD determines that certain program requirements have not been met, the PJ will be given an opportunity to prove that it has actually done so. If the PJ is unable to demonstrate compliance, HUD may take corrective or remedial actions. If program requirements remain unmet, HUD may take a series of steps, ranging from holding a hearing after which an administrative law judge makes the final decision, to barring the PJ from participating in further allocations of funds.



## OTHER FEDERAL REQUIREMENTS AND THE ENVIRONMENTAL REVIEW<sup>1</sup>

In addition to the HOME Statute and the HOME regulations, there are a number of other Federal laws and regulations that apply to the use of HOME and other Community Planning and Development (CPD) program funds (e.g., Fair Housing, Davis-Bacon, Uniform Relocation Act, and Lead Safe Housing Rule). Under 24 CFR Part 58 (also known as “Part 58”), PJs are required to conduct an environmental review. Part 58 implements the policies of the National Environmental Policy Act (NEPA) of 1969, as well as other Federal laws and authorities, and departmental environmental requirements.

While the HOME Program encourages PJs to develop relationships with a number of different project partners, the responsibility for complying with environmental review requirements rests solely with the PJ each time an application for HOME assistance is received or HOME funds are designated for an activity. The objective of this manual is to provide HOME PJs with a comprehensive guide to all of the applicable requirements, steps, and necessary components establishing environmental compliance for HOME activities.

## COURSE OBJECTIVES AND ORGANIZATION

The purpose of this course is to help PJs become familiar with the various levels of environmental review that apply to certain activities, and to devise standard procedures for carrying out and documenting an environmental review. The course is designed primarily for PJ and state recipient staff members who are responsible for conducting environmental reviews. It might also be useful for other PJ staff that require information about the environmental review process in general, or who are responsible for supervising compliance activities or procuring environmental services. 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 HOME-funded activities. The manual offers a step-by-step guide through the terminology, requirements, and procedures of the environmental review process.

### Participant Manual

The participant 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 Responsibilities***: provides an overview of the environmental review and its role in the process of project development. This chapter also describes the roles and responsibilities of participating jurisdictions, consortia, and state recipients in the environmental review process.

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<sup>1</sup> More information about the cross-cutting Federal requirements that pertain to the use of HOME funds is available online at: <http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/fedreq/index.cfm>.



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- ❑ **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 HOME activities that are exempt from environmental regulations and requirements, as well as the steps a PJ must take to document in an environmental review record (ERR) that a HOME-funded activity is exempt. The 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 those 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 PJ 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) of other Federal 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 those activities that, while excluded from preparing a NEPA-level environmental review, are still subject to the Federal environmental statutes and authorities listed at 24 CFR 58.5. These are described in detail, and references are provided to sources of additional information. Sample worksheets and checklists are also provided to help organize the task of documenting compliance and final determination.
- ❑ **Chapter 7: *Environmental Assessment***: describes those 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 PJ's 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: *Environmental Impact Statement***: describes activities whereby a PJ 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.



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- **Chapter 9: *Additional 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;
  - Lead/cooperating agency partnerships; and
  - Public notification and release of funds.

**Chapter 10: *Program Administration and Monitoring*:** describes the requirements for basic administration of the environmental review process. These requirements ensure that the Responsible Entity (RE, including the PJ and state recipient), as well as CHDO’s, developers, owners, or sponsors of housing, and third party contractors, comply with NEPA and Part 58.

## Appendices

In addition to the content found in each chapter, this HOME Environmental Review training manual also provides a number of appendices. These contain additional information, sample forms, and other materials and resources that will enhance the instruction these chapters provide and assist you in organizing the environmental review process in your PJ. A description of each appendix and its respective contents is provided below:

- **Appendix A - 24 CFR Part 58 & Related Policies** (A current copy of the HUD environmental regulations)
- **Appendix B – 24 CFR 51** (Environmental Criteria and Standards)
- **Appendix C – 24 CFR 55 & Related Policies** (Floodplain Management)
- **Appendix D – 40 CFR 1500-1508:** Council on Environmental Quality- Regulations for Implementing NEPA
- **Appendix E - 36 CFR 800** (Protection of Historic Properties)
- **Appendix F - HUD Form 7015.15:** Request for Release of Funds and Certification (RROF/C) and **Instructions for Completing the 7015.15 Form**
- **Appendix G - HUD Form 7015.16:** Authority to Use HUD Funds
- **Appendix H - Notice to Prospective Buyers** of Properties Located in Runway Clear Zones and Clear Zones



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- **Appendix I - Farmland Conversion Impact Rating** (Form AD-1006)
- **Appendix J - HUD Notice CPD 01-11:** Environmental Review and the HOME Investments Partnership Program
- **Appendix K - HUD Memo, Options & Conditional Contracts**
- **Appendix L - HUD Notice CPD 03-01:** Implementing Risk Analysis for Monitoring Responsible Entities for Compliance with 24 CFR Part 58 for FY 2003.
- **Appendix M - HUD Notice CPD 06-01:** Administrative Costs, Project-related Soft Costs, and Community Development Housing Organization (CHDO) Operating Expenses Under the HOME Program and American Dream Downpayment Initiative
- **Appendix N - HOMEfires Vol. 4, No. 2:** Completion of the environmental review before committing HOME funds
- **Appendix O - HOMEfires Vol. 3, No. 5:** HOME definition of commitment
- **Appendix P - Sample Environmental Review Brochure** (City of Greensboro, NC, Dept. of Housing and Community Development)
- **Appendix Q - Assessment Techniques (Environmental Review Guide for Community Development Block Grant Programs, HUD-CPD-782(2), September 1991).** **NOTE:** While this guidance was originally written specifically with the CDBG Program in mind, it is still applicable to the work of HOME PJ staff with environmental review responsibilities. Appendix P provides important context and poses a series of assessment questions that pertain to HOME project proposals that trigger the requirements of an environmental assessment under 24 C

## ENVIRONMENTAL REVIEW TERMS

The following acronyms and terms are commonly used in reference to various processes, requirements, laws, regulations, and entities involved in the environmental review.

<u>Acronym</u>	<u>Definition/Term</u>
<b>AC</b>	Advisory Council on Historic Preservation (36 CFR 800)
<b>APZ</b>	Accident Potential Zone (military airfield) (also known as <i>Accident Protection Zone</i> , 24 CFR 51, Subpart D)
<b>APE</b>	Area of Potential Effect (36 CFR 800)
<b>ASD</b>	Acceptable Separation Distance (24 CFR 51, Subpart C)



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<b>CAA</b>	Clean Air Act
<u>Acronym</u>	<u>Definition/Term</u>
<b>CBRA</b>	Coastal Barrier Resources Act (as amended by the Coastal Barriers Improvement Act of 1990)
<b>CE</b>	Categorical Exclusion (24 CFR 58.35)
<b>CEQ</b>	Council on Environmental Quality (24 CFR Part 58 and 40 CFR Parts 1500-1508)
<b>CERCLA</b>	Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund")
<b>CFR</b>	Code of Federal Regulations
<b>CZ</b>	Clear Zone (military airfield, 24 CFR Part 51, Subpart D)
<b>CZMA</b>	Coastal Zone Management Act
<b>DNL</b>	Day-Night Average Sound Level System (24 CFR Part 51, Subpart B)
<b>EA</b>	Environmental Assessment (24 CFR 58.36)
<b>EHS</b>	Extremely Hazardous Substances
<b>EIS</b>	Environmental Impact Statement (24 CFR 58.37)
<b>EPA</b>	U.S. Environmental Protection Agency
<b>ERR</b>	Environmental Review Record (24 CFR 58.38)
<b>ESA</b>	Endangered Species Act
<b>EJ</b>	Environmental Justice (Executive Order 12898)
<b>FAA</b>	Federal Aviation Administration, U.S. Department of Transportation
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHBM</b>	Flood Hazard Boundary Map (no flood elevations shown)
<b>FIRM</b>	Flood Insurance Rate Map (flood elevations shown)
<b>FOSI</b>	Finding of Significant Impact [24 CFR 58.40(g)(2)]
<b>FONSI</b>	Finding of No Significant Impact (24 CFR Part 58, Subpart E)



<u>Acronym</u>	<u>Definition/Term</u>
<b>FONSI/NOI</b>	Finding of No Significant Impact & Notice of Intent to Request Release of Funds [24 CFR 58.45(c)]
<b>FPPA</b>	Farmland Protection Policy Act
<b>FWS</b>	Fish and Wildlife Service (U.S. Department of the Interior)
<b>HOME</b>	HOME Investment Partnerships Program (24 CFR Part 92)
<b>HUD</b>	U.S. Department of Housing and Urban Development
<b>LOMA</b>	Letter of Map Amendment (24 CFR Part 55)
<b>LOMR</b>	Letter of Map Revision (24 CFR Part 55)
<b>MOA</b>	Memorandum of Agreement
<b>NAAQS</b>	National Ambient Air Quality Standards
<b>NAHA</b>	Cranston-Gonzalez National Affordable Housing Act of 1990
<b>NAL</b>	Noise Assessment Location ( <i>The Noise Guidebook</i> issued by HUD)
<b>NEPA</b>	National Environmental Policy Act of 1969
<b>NFIP</b>	National Flood Insurance Program
<b>NHPA</b>	National Historic Preservation Act
<b>NMFS</b>	U.S.D.C., National Marine Fisheries Service
<b>NOI/EIS</b>	Notice of Intent to Prepare an Environmental Impact Statement (24 CFR 58.55)
<b>NOI/RROF</b>	Notice of Intent to Request Release of Funds (24 CFR 58.70)
<b>NPL</b>	National Priority List
<b>NR</b>	National Register of Historic Places
<b>NRCS</b>	Natural Resource Conservation Service (formerly the Soil Conservation Service, U.S. Department of the Interior)



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<b>PJ</b>	Participating Jurisdiction (state, unit of local government, or consortium participating in the HOME Program)
<u>Acronym</u>	<u>Definition/Term</u>
<b>RACM</b>	Regulated Asbestos Containing Material
<b>RCRA</b>	Resources Conservation Recovery Act
<b>RCZ</b>	Runway Clear Zone (civil airport)
<b>RE</b>	Responsible Entity (includes the participating jurisdiction for the state, unit of local government or consortium) [24 CFR 58.2(a)(7)]
<b>ROF</b>	Release of Funds (i.e., <i>Authority to Use Grant Funds</i> , HUD form 7015.16)
<b>RROF</b>	Request for Release of Funds [i.e., <i>Request for Release of Funds and Certification</i> (HUD form 7015.15)]
<b>SARA</b>	Superfund Amendments and Reauthorization Act
<b>SHPO</b>	State Historic Preservation Officer (36 CFR Part 800)
<b>SFHA</b>	Special Flood Hazard Area (designated by FEMA)
<b>SSA</b>	Sole Source Aquifer (Safe Drinking Water Act of 1974; 40 CFR Part 149)
<b>UST</b>	Underground Storage Tank
<b>W&amp;SR</b>	National Wild and Scenic Rivers System (established by the Wild and Scenic Rivers Act)

## ENVIRONMENTAL INTERNET AND GOVERNMENT AGENCY REFERENCE GUIDE

Additional information on specific environmental review areas of interest is available at the following Web URLs and through the following Federal contacts:

### ***U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)***

- **HUD Environment/Energy Web page**  
<http://www.hud.gov/offices/cpd/environment/index.cfm/>
- **HUD and Federal Environmental Statutes**  
<http://www.hud.gov/offices/cpd/environment/lawsandregs/laws/>



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- **HUD Environmental Resources Library**  
<http://www.hud.gov/offices/cpd/environment/library/>
- **HUD Environmental Review Requirements**  
<http://www.hud.gov/offices/cpd/environment/review/>
- **HUD Environmental Justice**  
<http://www.hud.gov/offices/cpd/environment/review/justice.cfm>
- **HUD Noise Abatement and Control**  
<http://www.hud.gov/offices/cpd/environment/review/noise.cfm>
- **HUD Explosive and Flammable Facilities**  
<http://www.hud.gov/offices/cpd/environment/review/explosive.cfm>
- **Acceptable Separation Distance (ASD) Electronic Assessment Tool**  
<http://www.hud.gov/offices/cpd/environment/asdcalculator.cfm>
- **HUD Office of Native American Programs (ONAP)**  
<http://www.hud.gov/offices/pih/ih/>

### **HISTORIC PRESERVATION**

- **Advisory Council On Historic Preservation**  
[www.achp.gov](http://www.achp.gov)  
  
Old Post Office Building  
1100 Pennsylvania Avenue NW, Suite 803  
Washington, DC 20004  
  
**Office of Federal Agency Programs - Reid Nelson, Director**  
  
**Federal Permitting, Licensing, and Assistance Section -**  
Charlene Dwin Vaughn, Assistant Director [cvaughn@achp.gov](mailto:cvaughn@achp.gov) 202-606-8533
- **Certified Local Governments (by state)**  
<http://www.nps.gov/history/hps/clg/>
- **Native American Consultation Database, U.S.D.I., National Park Service**  
<http://portal.hud.gov/huddoc/contactslist-2012.pdf>
- **National Register of Historic Places**  
<http://www.nps.gov/history/nr/>  
  
National Park Service  
1201 Eye St., NW, 8th Floor (MS 2280)



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Washington, DC 20005  
(202) 354-2213

- **Historic American Building Survey/Historic American Engineering Record (HABS/HAER)**  
<http://www.nps.gov/history/hdp/>
- **Preserve America**  
<http://www.preserveamerica.gov/index.html>
- **National Conference of State Historic Preservation Officers**  
<http://www.ncshpo.org/>
- **National Trust for Historic Preservation**  
<http://www.preservationnation.org/>
- **U.S. Secretary of Interior's Standards for Treatment of Historic Properties**  
<http://www.nps.gov/history/hps/tps/standguide/>

## ENVIRONMENTAL QUALITY

- **U.S. Environmental Protection Agency (EPA)**  
[www.epa.gov](http://www.epa.gov)
- **EPA Regional Offices**  
<http://www.epa.gov/aboutepa/index.html#regional>
- **EPA Toxic Release Inventory, Community Right-to-Know**  
[www.epa.gov/tri](http://www.epa.gov/tri) and [www.epa.gov/enviro/html/toxic\\_releases.html](http://www.epa.gov/enviro/html/toxic_releases.html)
- **EPA Underground Storage Tanks**  
<http://www.epa.gov/oust/>
- **EPA Envirofacts Data Warehouse – Queries, Maps & Reports**  
<http://www.epa.gov/enviro/html/qmr.html>
- **HUD Environmental Maps**  
<http://www.hud.gov/offices/cio/emaps/>
- **American Society of Testing and Materials (ASTM)**  
[www.astm.org](http://www.astm.org) (Standard Practices for Phase I Environmental Site Assessments)

100 Barr Harbor Drive  
West Conshohocken, PA 19428-2959  
ASTM Customer Service: (610) 832-9585



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- **U.S. EPA Map of Radon Zones (by state)**  
[www.epa.gov/radon/zonemap.html](http://www.epa.gov/radon/zonemap.html)
  
- **U.S. Department of HUD, Office of Healthy Homes and Lead Hazard Control**  
[www.hud.gov/offices/lead/](http://www.hud.gov/offices/lead/)  
  
U. S. Department of HUD  
Office of Healthy Homes and Lead Hazard Control  
Washington, D.C. 20410  
Office: (202) 755-1785
  
- **U. S. Environmental Protection Agency, National Lead Information Center (NLIC)**  
<http://www.epa.gov/lead/pubs/nlic.htm>  
  
U.S. EPA  
Office of Pollution, Prevention and Toxics (Federal publications and information)  
422 South Clinton Avenue  
Rochester, NY 14620  
Office: (800) 424-LEAD (5323),

### **NATURAL RESOURCES**

- **National Wild & Scenic Rivers System**  
<http://www.rivers.gov/rivers/>
  
- **Coastal Zone Management Act- Federal Consistency**  
<http://coastalmanagement.noaa.gov/consistency/welcome.html>
  
- **USGS Earthquake Hazards Program**  
<http://earthquake.usgs.gov/>
  
- **USDA NRCS Websoil Survey**  
<http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>

### **COASTAL BARRIER RESOURCES SYSTEM**

- **Federal Emergency Management Agency (FEMA)**  
[www.fema.gov/](http://www.fema.gov/)
  
- **U.S. Fish and Wildlife Service**  
<http://www.fws.gov/CBRA/>
  
- **National Wetland Inventory (NWI)**  
<http://www.fws.gov/wetlands/index.html>



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- **NWI Regional Wetlands Coordinators, U.S. Fish and Wildlife Service (FWS)**  
<http://www.fws.gov/wetlands/NWI/RWC.html>
- **Wetlands Interactive Mapper Tool**  
<http://www.fws.gov/wetlands/Data/Mapper.html>
- **U.S. Environmental Protection Agency, “The Wetlands Program Across the Country”**  
[www.epa.gov/owow/wetlands/regions.html](http://www.epa.gov/owow/wetlands/regions.html)
- **National Flood Insurance Program, Federal Emergency Management Agency (FEMA)**  
<http://www.fema.gov/business/nfip/>
- **FEMA & NFIP Bureau & Statistical Agent Regional Offices**  
[http://www.fema.gov/business/nfip/nfip\\_regions.shtm](http://www.fema.gov/business/nfip/nfip_regions.shtm)
- **The FEMA Map Service Center**  
[www.msc.fema.gov/](http://www.msc.fema.gov/)  
  
FEMA Map Service Center (MSC)  
MSC Customer Service  
P. O. Box 1038  
Jessup, MD 20794-1038  
Office: (800) 358-9616
- **EPA Sole Source Aquifer Protection Program (EPA Sole Source Aquifer Maps)**  
<http://cfpub.epa.gov/safewater/sourcewater/sourcewater.cfm?action=SSA>
- **USGS Groundwater data for the Nation**  
<http://waterdata.usgs.gov/nwis/gw>

## ENDANGERED SPECIES

- **U.S.D.I. Fish & Wildlife Service:**  
[www.fws.gov/](http://www.fws.gov/)
- **U.S. FWS, Endangered Species Program**  
<http://www.fws.gov/endangered/>
- **U.S. FWS, Endangered Species Contacts (by Region)**  
<http://www.fws.gov/endangered/regions/index.html>
- **U.S.D.C. National Marine Fisheries Service, Office of Protected Resources**  
<http://www.nmfs.noaa.gov/pr/species/esa/>  
(Marine and Anadromous species protected by the Endangered Species Act)



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### **CLEAN AIR ACT**

- **U.S. EPA, Office of Air & Radiation**  
<http://www.epa.gov/oar/>
- **Air Data & Maps**  
[www.epa.gov/air/emissions/index.html](http://www.epa.gov/air/emissions/index.html)

### **FARMLAND PROTECTION POLICY ACT**

- **U.S.D.A. Natural Resource Conservation Service**  
[www.nrcs.usda.gov/](http://www.nrcs.usda.gov/)
- **Farmland Protection Policy Act (Legislation, Rules, Form AD-1006)**  
<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/alphabetical/fppa>

### **OTHER RESOURCES**

- **U.S. Governmental Printing Office (GPO)**  
[www.gpoaccess.gov](http://www.gpoaccess.gov)

The GPO is the Federal Government's primary outlet for Federal Register and Code of Federal Regulations documents.

- **HUDUSER (HUD Office of Policy Development and Research Information)**  
<http://www.huduser.org> Office: (800) 245-2691
- **HUDCLIPS (HUD Client Information and Policy System)**  
[www.hudclips.org/](http://www.hudclips.org/)

## CHAPTER 2: ENVIRONMENTAL RESPONSIBILITIES



This chapter describes the roles that HOME PJs and their program partners play in the environmental review process. After completing this chapter you will:

- Know who is responsible for conducting and documenting the environmental review for HOME activities;
- Understand the environmental considerations that are taken into account when deciding whether to fund a project; and
- Understand the role of project partners in the environmental review process.

### ROLES AND RESPONSIBILITIES OF PARTICIPATING JURISDICTIONS, CONSORTIUMS, AND STATE RECIPIENTS

As outlined in 24 CFR Part 58, states and units of local government are required to assume Federal environmental review responsibilities for compliance with the National Environmental Policy Act (NEPA), and related Federal laws and authorities. HUD's environmental review regulations identify states and units of general local government as the "responsible entity" (RE) -- those 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. For the HOME Program, the RE is the *participating jurisdiction* (PJ)—that is, the state, unit of local government, or consortium that receives a formula allocation of HOME funds directly from HUD. In addition, through written agreement with the state PJ, a state recipient that is a unit of local government assumes responsibility for compliance with NEPA and Part 58 instead of the state [24 CFR 92.504(c)(1)].

In the role of *responsible entity*, the PJ or state recipient 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 authorizations.

#### Environmental Review Record and Documentation

The RE must ensure that activities or projects that are funded by HOME 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 regardless of the level of review (§ 58.38). Chapter 3 provides details as to the appropriate levels of environmental review for every type of HOME assisted activity or project.



## **Chapter 2: Environmental Responsibilities**

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The ERR is a type of “environmental diary” that the RE uses to substantiate 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 corrective actions or sanctions may be 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
- When HUD approval is necessary.

This is true whether environmental reviews are completed by PJ staff, prepared by program partners, or a consultant is hired to perform the review. 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.

### **Environmental Decision-Making**

For purposes of compliance with NEPA and Part 58, the chief executive officer of the RE, or its formal designee, is the *certifying officer (CO)* (§ 288 of the Act). The certifying officer 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 someone 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 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 since personnel will generally change.)



## **Chapter 2: Environmental Responsibilities**

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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 Federal projects that may have an impact on the HOME PJ's program [§ 58.13(b)];
- Making health and safety decisions related to whether or not to approve residential construction projects that are exposed to high levels or 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 the placement of HUD-assisted projects in the vicinity of explosive 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. If necessary, the RE should develop an implementation/monitoring plan to ensure 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 re-evaluate 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);
- 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 re-evaluating its original findings and conclusions, the RE must decide whether or not its original determination is still valid, or that a new environmental review document must be prepared instead. If the original findings are still valid, document this in the ERR in writing.



## **REQUEST FOR PROPOSALS/ APPLICATIONS**

The application process is an opportunity for identifying environmental conditions and issues up-front that will need to be addressed in the environmental review process. In project applications, PJs should solicit information that will help it assess potential environmental concerns. For example, this information can be solicited as part of a Request for Proposals (RFP) that a PJ might issue. PJs should seek information such as whether or not the property will affect floodplains, wetlands or historic properties; or is affected by noise generators (i.e., major roads, railroads or airports), and nearby aboveground storage tanks containing explosive, flammable, or hazardous substances. A PJ should also request photographs of the project site and immediately adjacent properties, as well as ask whether other sources of Federal funds will also be used. This information is very helpful to the PJ in planning the time required for completing the review process and anticipating what Federal oversight agencies will likely be involved in consultation. RFPs/Applications also present PJs with an opportunity to make the project participant a formal part of data gathering as a means to expediting the environmental review process.

## CHAPTER 3: ENVIRONMENTAL REVIEW PROCEDURES



This chapter describes some of the primary operating principles that guide the environmental review process for the PJ, its program partners and HOME applicants. 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 (i.e., subrecipients, CHDO's, developers, owners, sponsors of housing, and third party contractors) has submitted an application for HOME funds to the PJ, or a PJ has designated funds for a specific project in its Consolidated Plan or annual action plan, Part 58 requirements are applicable to the project. At this point the PJ must advise the participant to cease all project activity until the environmental review (ER) has been completed. Part 58 prohibits further project activities and actions from being undertaken prior to completion of the ER and the determination of environmental clearance. Projects in violation of this prohibition risk the denial of HOME funds.

Where a project participant has begun a project in good faith as a private project, the PJ is not precluded from considering a later application for Federal assistance for the project, but must advise the third party applicant to cease further actions on the project until the environmental review process is completed. Project participants may proceed with the project upon receiving approval from the PJ, after the environmental review process has been completed for the project.

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58. For example, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions.

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 PJ, the applicant is at risk for the denial of HOME assistance. Such actions include:



## **Chapter 3: Environmental Review Procedures**

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

The reason is these actions interfere with the PJ'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. There is additional discussion on this issue in Chapter 3 under the heading, "Limitations Pending Environmental Clearance."

### **LIMITATIONS PENDING ENVIRONMENTAL CLEARANCE**

According to the NEPA (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 being 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).

In order to achieve this objective, Part 58 prohibits the commitment of HOME funds by the PJ or project participant until the environmental review process has been completed and HUD release of funds approval, when required, has been received.<sup>1</sup>

Moreover, until the PJ has completed the environmental review process (and until receipt of HUD approval, when necessary), neither the PJ 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.

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<sup>1</sup> See Chapters 6 – 8 of this manual (Categorical Exclusions Subject to § 58.5, Environmental Assessments, and Environmental Impact Statements).



### **Chapter 3: Environmental Review Procedures**

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For the purposes of the environmental review process, “**commitment of funds**” includes:

- Execution of a *legally binding agreement*;
- Expenditure of HOME funds;
- Use of non-HUD funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating, including soliciting bids for these activities; and
- Use of non-HUD funds on actions that would be “choice limiting”---e.g., acquisition of real property (including making bids on auctioned properties); leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures, including soliciting bids to undertake these activities.<sup>2</sup>

It should be noted that the standard for what constitutes a commitment of HOME funds for compliance with Part 58 is different from the HOME funds commitment and the CHDO reservation deadlines applicable under the HOME Program regulations in 24 CFR Part 92.

Prior to completion of the environmental review process and receiving HUD approval, the PJ may enter into a **non-binding agreement** to *conditionally commit HOME funds*---i.e., a contractual agreement between the PJ and project participant to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance, or an executed written agreement reserving a specific amount of funds to a CHDO or nonprofit entity. The *conditional commitment* must incorporate language that will ensure the project participant does not have a legal claim to any amount of HOME funds to be used for the specific project or site until the environmental review process is satisfactorily completed. In addition, the agreement must explicitly state that the agreement to provide funds to the project is conditioned on the RE’s determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review. (See CPD Notice 01-11, page 10 for suggested agreement language.)

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 Consolidated Plan or annual action plan or planning for and reserving non-HUD funds, including tax credits for the project for HUD funding.

Two means for obtaining site control while allowing time to complete the environmental review are available to PJs. These include option contracts and conditional contracts. An option contract or agreement gives the potential buyer exclusive right to buy the property at a specific price within a specific time, but it does not impose any obligation upon the potential buyer to

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<sup>2</sup> It is HUD’s policy to not allow bids for choice-limiting actions or actions that could have an adverse impact until the environmental review process is completed in order to allow for an unprejudiced decision about the action and allow for any modifications or project cancellation based upon the environmental review. This policy is consistent with CEQ NEPA regulations at 40 CFR 1501.2.



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purchase the property. A conditional contract binds the buyer to purchase the property if and when the condition(s) in the sales contract are met. HUD has restricted the use of conditional contracts to acquiring existing single family and multifamily properties. The specific circumstances under which conditional contracts may be used are described in guidance issued by HUD (See memorandum on “Guidelines on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58”, August 26, 2011, Appendix K).

If the PJ 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 PJ that is prohibited by Part 58, then the PJ must take appropriate action to ensure that the objectives and procedures of NEPA and Part 58 are achieved [§ 58.22(c)]. The PJ 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:

### **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 Consolidated 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 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, excavation, including soliciting bids for these activities.
  - b. Actions limiting the choice of reasonable alternatives---e.g., real property acquisition (including making bids on auctioned properties), leasing, rehabilitation, demolition, related site improvements, relocating buildings or structures, conversion of land or buildings/structures (including soliciting



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bids to undertake these activities).

What **is not** a commitment of funds?

1. Statements of funding reservation---e.g., approval of Consolidated Plan or annual action plan, CHDO reservations, planning for and reservation of non-HUD funds (including tax credits for the project for HUD funding).
2. Options and Conditional Contracts, as specified by HUD (See Appendix K)
3. Non-legally binding agreements---e.g. An agreement with language such as, “Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by [participating jurisdiction, insular area or state recipient’s] determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.”<sup>3</sup>

## 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 or not the project is funded entirely by HOME funds, or only certain portions of the project will be funded by HOME funds. 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 not matter where the project is located. For example, rehabilitation of single family units, or tenant-based rental assistance.

Geographically related project activities, for example, might include a proposal to acquire four units for rehabilitation and resale to first time homebuyers. All the related activities are occurring on a single site. In aggregation, all these activities must be evaluated in a single review, regardless of the fact that HOME funds may only be used for rehabilitation. One activity cannot occur without the others, and therefore all the associated environmental impacts must be

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<sup>3</sup> See p. 10 of HUD Notice CPD 01-11, Environmental Review and the HOME Investment Partnerships Program. This Notice is available in Appendix J, and online at <http://www.hud.gov/offices/cpd/lawsregs/notices/2001/01-11.pdf>.



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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, 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 phases of the project before any of the activities may be undertaken. Only one 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, unless circumstances arise that require the PJ to re-evaluate its original environmental findings (refer to the discussion in Chapter 2 on Environmental Action).

### Overview of the Categories of Environmental Review

One of the primary purposes that the environmental review process serves is to require states and units of local government 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 bases for these review levels, and categorizing various HOME-funded 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 neither have a physical impact, nor potential for altering any environmental conditions. Therefore, these actions are exempt from compliance with NEPA and the Federal laws and authorities.



## **Chapter 3: Environmental Review Procedures**

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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 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. And so, § 58.35 identifies two types of categorical exclusions: categorical exclusions not subject to § 58.5, and categorical exclusions subject to § 58.5. These categories are described in detail in Chapters 5 and 6 of this manual.

Activities not listed as either exempt or categorically excluded must be presumed by the PJ to have potential for significant impact, and therefore will require the preparation of either an EA or EIS.

**Environmental Assessment and Environmental Impact Statement:** Only those 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. Part 58 identifies those projects requiring completion of an EA or EIS under §§ 58.36 and 58.37, respectively.

## **Categorizing HOME Projects and Activities**

An environmental review must be conducted for each project and activity funded with HOME. However, the level of review that is required, along with the corresponding amount of documentation, will vary depending upon what the PJ is using the HOME funds for. Exhibit 3.2 below will help the PJ determine what level of review is required for the projects and activities it is 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 HOME funds are used to assist more than one component of a project or activity, the PJ must apply the highest level of review to cover all funds 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 PJ uses HOME funds to both acquire a unit of housing and provide a low-income homebuyer with HOME downpayment and closing cost assistance to purchase that unit, the use of all HOME funds pertaining to this unit is



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categorically excluded, *subject to § 58.5*. These same principles for categorizing projects apply when HOME assistance is combined with non-HOME funds. (See *Aggregation of Project Activities*, page 3-5)

A pair of more detailed flow charts outlining the various levels of environmental review is available at the end of this chapter.

**Exhibit 3.2: HOME Activities and Level of Environmental Review**

HOME 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>▪ Activities to assist homeownership of existing or new dwelling units under construction, including closing costs and downpayment assistance to homebuyers, interest rate buy downs, or other actions resulting in transfer of title.</li> </ul>

**Exhibit 3.2: ER Requirements for HOME Projects and Activities (continued)**

HOME Activity	Level of Environmental Review
Rehabilitation of Multifamily Housing	§ 58.35(a)(3)- Categorically Excluded, subject to § 58.5 IF: <ul style="list-style-type: none"> <li>▪ Unit density is not changed more than 20 percent;</li> <li>▪ Project does not involve changes in land use from residential to non-residential; and</li> <li>▪ Estimated cost of rehabilitation is less than 75 % of the total estimated cost of replacement after rehabilitation.</li> </ul>



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<p>Rehabilitation of Single Family Homeownership Housing (one-to-four unit structures)</p>	<p>§ 58.35(a)(3)(i)- Categorically Excluded, subject to § 58.5 IF:</p> <ul style="list-style-type: none"> <li>▪ The density is not increased above four (4) units;</li> <li>▪ The land use is not changed; and</li> <li>▪ The footprint of the building is not increased in a floodplain or a wetland.</li> </ul>
<p>“Individual Action”</p>	<p>§ 58.35(a)(4)- Categorically Excluded, subject to § 58.5.</p> <ul style="list-style-type: none"> <li>▪ 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.</li> </ul>
<p>Acquisition (single family homeownership and multifamily rental housing)</p>	<p>§ 58.35(a)(5)- Categorically Excluded, subject to § 58.5.</p> <ul style="list-style-type: none"> <li>▪ Acquisition (including leasing) or disposition of, or equity loans on an existing structure, provided that the structure acquired, financed or disposed of will be retained for the same use.</li> </ul>

**Exhibit 3.2: ER Requirements for HOME Projects and Activities (continued)**

<p><b>HOME Activity</b></p>	<p><b>Level of Environmental Review</b></p>
<p>New Construction, Multifamily Housing (5 or more units)</p>	<p>§ 58.36- Environmental Assessments.</p> <ul style="list-style-type: none"> <li>▪ If a project is not exempt of categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part (Part 58). If it is evident without preparing an EA that an EIS (Environmental Impact Statement) is required under § 58.37, the responsible entity should proceed directly to an EIS.</li> </ul>



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### Timeframes for Performing Environmental Reviews

To ensure compliance is achieved, the environmental review should begin as early as possible. The PJ 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.
- Categorical exclusions subject to § 58.5 – Takes 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 or the state (in the case of state recipients).
- Environmental Assessment – Takes 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.
- Environmental Impact Statement – Takes 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*).

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

### Using HOME to Pay for Environmental Review Costs

If necessary, HOME 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. When using HOME funds to cover environmental review-related expenses, the PJ needs to decide beforehand whether these will be entered into HUD's Integrated Disbursement Information System (IDIS) as administrative costs or as project-related costs. If the PJ chooses to categorize these costs as administrative, the funds will count against the PJ's annual 10 percent cap on the use of HOME for administrative costs. If the PJ chooses to enter the costs associated with the environmental review as a project-related expense, these must be directly related to a project that has been established by the PJ [§ 92.206(d)(8)]. Categorizing



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environmental review expenses as project costs will count against the per-unit subsidy cap at § 92.250 of the HOME Final Rule.

### **Credible 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.<sup>4</sup> These are outlined in Exhibit 3.3 below.

#### **Exhibit 3.3: Source Documentation for Environmental Reviews**

**FIELD OBSERVATION** – A 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 document, 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.

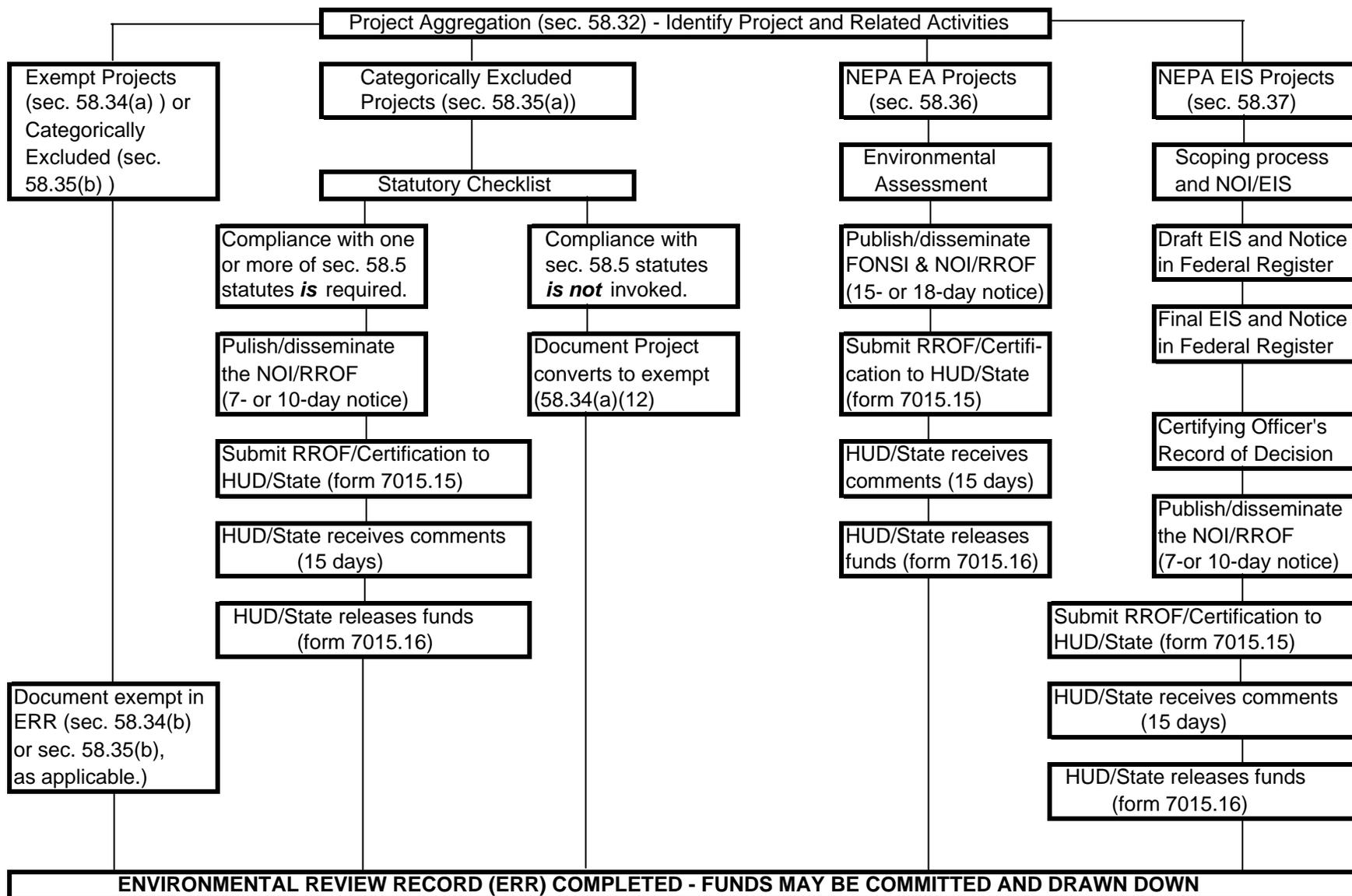
**REVIEWER'S EXPERIENCE** – Professional judgment by staff is acceptable if their expertise is relevant to the compliance issue. For example, the reviewer may have knowledge from reviewing previous projects in the same area. Another type of relevant experience is the professional finding of the reviewer 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.

<sup>4</sup> See HUD Handbook 1390.2, [http://www.hudclips.org/sub\\_nonhud/cgi/hudclips.cgi](http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi)

**ENVIRONMENTAL REVIEW REQUIREMENTS FLOWCHART**

(rev 1/00)





## CHAPTER 4: EXEMPT ACTIVITIES

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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 (§ 58.34)

According to 24 CFR 58.34, the following types of activities have been categorized as exempt from NEPA and other environmental laws and authorities: (NOTE: Under HOME program rules, in order to qualify as project costs, these activities must be associated with a specific project. Otherwise, they are considered administrative costs.)

- 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;
- Inspections and testing of properties for hazards or defects;
- Purchase of insurance;
- Engineering or design costs;
- 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



## **Chapter 4: Exempt Activities**

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those resulting from physical deterioration (NOTE: See Chapter 9, *Emergency Actions*, for further discussion); and

- Any of the categorical exclusions listed in § 58.35(a) provided there are no circumstances that require compliance with any other Federal laws and authorities cited in § 58.5. (See Chapter 6, *Projects that Convert to Exempt*, for further discussion.)

## **Compliance Documentation**

### ***Content of the Environmental Review Record (ERR)***

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

Although it is not a strict requirement that RE's provide documentation beyond what is identified in Exhibit 4.1, it is a generally accepted policy by HUD Field Offices that RE's, in fact, provide more information, i.e., citation of the applicable subsection of § 58.34, identification of the specific activity or activities, and information about the estimated amount of HOME and/or other Federal funds to be used.

## **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 Barrier 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.



## ***Chapter 4: Exempt Activities***

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- **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 or clear zone. 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 H.]

## Exhibit 4.1: Environmental Review Record for Exemptions (§ 58.34)

**LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:** (2004)

**Project Name / Description:**

### **Level of Environmental Review:**

---

Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per § 58.35(b), Categorically excluded subject to statutes per § 58.35(a), Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

### **STATUTES AND REGULATIONS LISTED AT 24 CFR 58.6**

#### ***FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT***

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?

( ) No; flood insurance is not required. The review of this factor is completed.

( ) Yes; continue.

2. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?

( ) No. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):

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(Factor review completed).

( ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):

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(Continue review).

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

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( ) Yes - Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.

( ) No (**Federal assistance may not be used in the Special Flood Hazards Area**).

## Exhibit 4.1: Environmental Review Record for Exemptions (§ 58.34)

### **COASTAL BARRIERS RESOURCES ACT**

1. Is the project located in a coastal barrier resource area?  
(See [www.fema.gov/nfip/cobra.shtm](http://www.fema.gov/nfip/cobra.shtm)).

( ) No; Cite Source Documentation:

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(Factor review completed).

( ) Yes - **Federal assistance may not be used in such an area.**

### **AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES**

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?

( ) No; cite SD, page:

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Project complies with 24 CFR 51.303(a)(3).

( ) Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record.

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Preparer Signature / Name /Date

---

Responsible Entity Official Signature / Title/ Date

## Exhibit 4.2: Sample ERR for an Exemption

**LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:** (2004)

**PROJECT NAME / DESCRIPTION:** HOME Program Administration for YR 2006 to YR 2010

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., Consolidated Plans, relocation and American Disabilities Act), the development of health and safety codes, and other similar actions.

**Level of Environmental Review Determination:** Exempt, sec. 58.34(a)(3)

(Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per § 58.35(b), Categorically excluded subject to statutes per § 58.35(a), Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

### **STATUTES and REGULATIONS Listed at 24 CFR 58.6**

#### ***FLOOD DISASTER PROTECTION ACT***

1. Does the project involve acquisition, construction or rehabilitation of structures located in a FEMA-identified Special Flood Hazard?

(  ) No; Cite Source Document:

HOME funds will be used for administration of the City of Kingsburg's affordable housing program.

(This factor is completed).

(  ) Yes; Source Document:

---

(Proceed).

2. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

(  ) Yes (Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept on file).

(  ) No (**Federal assistance may not be used in the Special Flood Hazards Area**).

#### ***COASTAL BARRIERS RESOURCES ACT***

## Exhibit 4.2: Sample ERR for an Exemption

1. Is the project located in a coastal barrier resource area?

No; Cite Source Documentation:

The City of Kingsburg does not have any coastal barrier resource areas within the City limits. The coast is more than 50 miles from City boundaries.

(This element is completed).

Yes - **Federal assistance may not be used in such an area.**

### **AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES**

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone or a Military Installation's Clear Zone?

No; SD

HOME program funds will be used for administration of the City of Kingsburg's affordable housing program.

Project complies with 24 CFR 51.303(a)(3).

Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure must be maintained in this Environmental Review Record.

Annabelle Lee Jones, Housing Specialist, Housing Div., CEDD, February 3, 2005

**Preparer Signature / Name /Date**

Charles Burrows, Director, Housing Division, Community and Economic Development  
Dept., February 3, 2005

**Responsible Entity Official Signature / Name / Date**

## 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 environmental authorities listed at § 58.5. 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 activities that are categorically excluded not subject to § 58.5 have been determined by HUD not to have potential for altering any environmental conditions where a review or determination of compliance with the Federal laws and authorities would be required. Actions in this category include:

- Tenant-based rental assistance;
- 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 re-evaluation of the environmental findings is not required under § 58.47.



## **Compliance Documentation**

### **Content of the Environmental Review Record (ERR)**

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 (or to the state in the case of state recipients) [§ 58.35(b)].

Exhibit 5.1 below 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. Although it is not a strict requirement that RE's provide documentation beyond what is identified in Exhibit 5.1, it is a generally accepted policy by HUD Field Offices that RE's, in fact, provide more information, i.e., citation of the applicable subsection of § 58.35(b), identification of the specific activity or activities, and information about the estimated amount of HOME and/or other Federal funds to be used.

### **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 Barrier 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 or clear zone. 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



## **Chapter 5: Categorical Exclusions Not Subject to § 58.5**

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Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones” located in Appendix H]

## **Exhibit 5.1: Environmental Review Record for Categorical Exclusions not Subject to § 58.5 [§ 58.35(b)]**

**LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:** (2004)

**Project Name / Description:**

### **Level of Environmental Review:**

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Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per § 58.35(b), Categorically excluded subject to statutes per § 58.35(a), Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

### **STATUTES AND REGULATIONS LISTED AT 24 CFR 58.6**

#### ***FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT***

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?

( ) No; flood insurance is not required. The review of this factor is completed.

( ) Yes; continue.

2. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?

( ) No. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):

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(Factor review completed).

( ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):

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(Continue review).

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

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( ) Yes - Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.

( ) No (**Federal assistance may not be used in the Special Flood Hazards Area**).

## Exhibit 5.1: Environmental Review Record for Categorical Exclusions not Subject to § 58.5 [§ 58.35(b)]

### **COASTAL BARRIERS RESOURCES ACT**

1. Is the project located in a coastal barrier resource area? (See [www.fema.gov/nfip/cobra.shtm](http://www.fema.gov/nfip/cobra.shtm)).

( ) No; Cite Source Documentation:

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(Factor review completed).

( ) Yes - **Federal assistance may not be used in such an area.**

### **AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES**

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?

( ) No; cite SD, page:

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Project complies with 24 CFR 51.303(a)(3).

( ) Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record.

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Preparer Signature / Name /Date

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Responsible Entity Official Signature / Title/ Date

**Exhibit 5.2: Sample ERR, Categorically Excluded, not Subject to § 58.5 [§ 58.35(b)(5)]**

**LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:** (2004)

**PROJECT NAME / DESCRIPTION:** HOME Downpayment Assistance

HOME funds will be used within Tularosa County to provide downpayment assistance and closing costs to first-time homebuyers wanting to purchase existing single family homes. Applications will be accepted for properties that are not located within floodplains (designated as Zone A on FEMA Flood Insurance Rate Maps)

**Level of Environmental Review Determination:** Categorically Excluded, § 58.35(b)(5).

(Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per § 58.35(b), Categorically excluded subject to statutes per § 58.35(a), Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

**STATUTES and REGULATIONS Listed at 24 CFR 58.6**

***FLOOD DISASTER PROTECTION ACT***

1. Does the project involve acquisition, construction or rehabilitation of structures located in a FEMA-identified Special Flood Hazard?

(  ) No; Cite Source Document:

HOME funds will be used to provide downpayment assistance and closing costs to first-time homebuyers to purchase existing single family homes within the County of Tularosa. 500 acres of the County are within a FEMA-designated special flood hazard area (i.e., 100-year floodplain). The County will not approve applications for HOME assistance within the special flood hazard area. (See attached County map).

(This factor is completed).

(  ) Yes; Source Document:

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(Proceed).

2. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

(  ) Yes (Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept on file).

(  ) No (**Federal assistance may not be used in the Special Flood Hazards Area**).

**Exhibit 5.2: Sample ERR, Categorically Excluded, not Subject to § 58.5  
[§ 58.35(b)(5)]**

**COASTAL BARRIERS RESOURCES ACT**

1. Is the project located in a coastal barrier resource area?

No; Cite Source Documentation:

The Tularosa County is not adjacent to the Gulf of Mexico, Great Lakes or Atlantic Ocean.

(This element is completed).

Yes - **Federal assistance may not be used in such an area.**

**AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES**

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone or a Military Installation's Clear Zone?

No; SD

There are no FAA-designated or DOD airfields within Tularosa County. The nearest airport is 20 miles from the County line.

Project complies with 24 CFR 51.303(a)(3).

Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure must be maintained in this Environmental Review Record.

Michael Garcia, Environmental Planner, Tularosa Planning Dept, April 19, 2005

**Preparer Signature / Name /Date**

Suzanne Smith, Director, Tularosa Planning Dept., April 22, 2005

**Responsible Entity Official Signature / Name / Date**

## CHAPTER 6: CATEGORICAL EXCLUSIONS SUBJECT TO § 58.5



This chapter covers activities that, while categorically excluded from NEPA requirements, are subject to 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); and
- Understand the steps and requirements involved in the public notification and release of funds process.

### TYPES OF ACTIVITIES [§ 58.35(a)]

Categorical exclusions *subject to* § 58.5 are excluded from compliance with NEPA, but must comply with the other related Federal laws and authorities cited in § 58.5. It is generally evident from the nature and magnitude of such activities they do not have 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;
- Removal of material and architectural barriers* restricting the mobility of and accessibility to elderly and disabled persons;



## **Chapter 6: Categorical Exclusions Subject to § 58.5**

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- Rehabilitation and improvement of single family (one-to-four unit) dwellings* provided the unit density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or wetland;
- 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;
- 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 provided the structure acquired, financed, or disposed of will be retained for the same use; and
- Any combinations of the above activities.

## **Compliance Documentation**

### **Content of the Environmental Review Record (ERR)**

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:

- Include a description of the project (including all the related activities, even though HOME 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.



## ***Chapter 6: Categorical Exclusions Subject to § 58.5***

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The RE may utilize the HUD recommended (Exhibit 6.1, *Statutory Checklist*), 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 State (for state recipients), or
- the unusual circumstances of the project may result in a significant environmental impact and, therefore, compliance with NEPA is required

Following Exhibit 6.1 is detailed guidance for completing the checklist and documenting compliance determinations. Exhibit 6.2 is a sample of a completed checklist.

## EXHIBIT 6.1 – STATUTORY CHECKLIST

Use this worksheet only for projects which are Categorically Excluded per 24 CFR § 58.35(a).

### **24 CFR §58.5 STATUTES, EXECUTIVE ORDERS & REGULATION**

PROJECT NAME and DESCRIPTION - Include all contemplated actions which logically are either geographically or functionally part of the project:

This project is determined to be Categorically Excluded according to: [Cite section(s)] \_\_\_\_\_

DIRECTIONS - Once the review process for each compliance factor has been completed, the Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

#### **Compliance Factors:**

<b>Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5</b>	<b>Status A/B</b>	<b>Compliance Documentation</b>
<b>Historic Preservation</b> [36 CFR Part 800]		
<b>Floodplain Management</b> [Executive Order 11988; 24 CFR Part 55]		
<b>Wetland Protection</b> [ Executive Order 11990; 3 CFR, §§ 2, 5]		
<b>Coastal Zone Management Act</b> [16 U.S.C. 1451, §§ 307(c), (d)]		
<b>Sole Source Aquifers</b> [40 CFR Part 149]		

## **Exhibit 6.1- Statutory Checklist**

<b>Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5</b>		
<b>Endangered Species Act</b> [50 CFR Part 402]		
<b>Wild and Scenic Rivers Act</b> [16 U.S.C. 1271, §§ 7(b), (c)]		
<b>Clean Air Act</b> [Sections 176 (c) and (d), and 40 CFR Parts 6, 51, 93]		
<b>Farmland Protection Policy Act</b> [7 CFR Part 658]		
<b>Environmental Justice</b> [Executive Order 12898]		
<b>HUD ENVIRONMENTAL STANDARDS</b>  <b>Noise Abatement and Control</b> [24 CFR Part 51, Subpart B]		
<b>Explosive and Flammable Operations</b> [24 CFR Part 51, Subpart C]		
<b>Toxic Chemicals and Radioactive Materials</b> [24CFR Part 58, § 5(i)(2)]		
<b>Airport Clear Zones and Accident Potential Zones</b> [24 CFR Part 51, Subpart D]		

## **Exhibit 6.1- Statutory Checklist**

### **DETERMINATION:**

( ) This project converts to Exempt, per § 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license (Status "A" has been determined in the status column for all authorities). Funds may be drawn down for this (now) EXEMPT project; OR

( ) This project cannot convert to Exempt because one or more statutes/authorities require consultation or mitigation. Complete consultation/mitigation requirements, publish NOI/RROF and obtain Authority to Use Grant Funds (HUD 7015.16) per §§ 58.70 and 58.71 before drawing down funds; OR

( ) The unusual circumstances of this project may result in a significant environmental impact. This project requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

### **PREPARER SIGNATURE:**

---

**DATE:**

---

**PREPARER NAME & TITLE (please print):**

---

**DATE:**

---

**RESPONSIBLE ENTITY CERTIFYING OFFICIAL SIGNATURE:**

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**NAME & TITLE (please print):**

---

**DATE:**

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## EXHIBIT 6.1 – STATUTORY CHECKLIST

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# COMPLIANCE WITH THE FEDERAL LAWS AND AUTHORITIES

**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 Federal Laws and Authorities. The following guidance is provided to assist in completing the Statutory Checklist for each environmental statute and authority listed at § 58.5.

### Historic Preservation (36 CFR Part 800)<sup>1</sup>

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.

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). 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 may be found in at the Advisory Council's Website ([www.achp.gov](http://www.achp.gov)).

It is important to remember that before approval is given to proceed with HOME 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.)

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<sup>1</sup> Standards and Legal Requirements: Section 106 of the National Historic Preservation Act of 1966, as amended; Executive Order 11593, Protection and Enhancement of the Cultural Environment, 1971 as amended; Advisory Council on Historic Preservation, Protection of Historic Properties; Recommended Approach for Consultation on Recovery of Significant Information From Archeological Sites, 36 CFR Part 800. Guidance on the historic preservation regulations is available on the Advisory Council's web site, as well as guidance on the development of affordable housing ( <http://www.achp.gov/afford.html>).



## ***Chapter 6: Categorical Exclusions Subject to § 58.5***

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### ***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.).
- 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.).

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 possibility is disposing of a property once purchased. 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, the RE must continue the consultation process or refer to a Programmatic Agreement if one has been executed with the SHPO. Consultation with the SHPO must be documented in writing. The SHPO 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 to expedite consultation if the SHPO agrees. However, the public must have an adequate opportunity to express their views on the effects to historic properties.



## ***Chapter 6: Categorical Exclusions Subject to § 58.5***

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### ***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. 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 - 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.***

Here are some 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, 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.



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- ❑ 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:
    - Determine the date of construction. If 50 years of age or older, determine:
      - The time of its architectural design.
      - Whether it's associated with a person or event significant to our 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 State Historic Preservation Officers (SHPO). If the site is known to contain archeological artifacts, consult with the SHPO 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 concerning performing an intensive survey to classify the number, type, location, and distribution of historic resources, and record the artifacts found. [NOTE: RE's are required to make a "reasonable and good faith effort" to identify REs 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):



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- A building, structure, or place is determined eligible for NR listing when the RE, in consultation with the SHPO, 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; and
  - Yielding information important to history or prehistory.

36 CFR Part 60, provides a fuller discussion of criteria for finding properties eligible for listing on the *National Register of Historic Places (NR)*, and sets forth the procedural requirements for listing properties.

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 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're 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 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, 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, 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.



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### ***Making a Finding on Historic Preservation***

DIRECTIONS - Once the review process for Historic Preservation has been completed, the Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** The RE and SHPO agree that there are No Historic Properties Affected (36 CFR 800.4), or SHPO 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 Environmental web page.]
  
- Status B:** The proposal has an effect on historic properties (i.e., no adverse effect or adverse effect). Consultation with SHPO is required to resolve or mitigate adverse effects (§ 800.5).



### **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) 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 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?

Has the RE received written confirmation from the SHPO that consultation is completed? If a Memorandum of Agreement (MOA) or Programmatic Agreement (PA) is required, have the SHPO and Advisory Council signed the agreement? Has the project participant signed the MOA?



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### ***Sources and References***

- 36 CFR Part 800, Protection of Historic Properties, Advisory Council on Historic Preservation.
- 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, Advisory Council on Historic Preservation, Federal Register, February 15, 2007, pp. 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 consider alternatives to developing projects in floodplains when other alternatives are available when other alternatives are available that achieve the same objective.

This 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). If the project is a “critical action,” the regulation also applies to areas in the 500-year floodplain (Zone B). 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.

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.
- 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.)



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- 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]. In addition, Part 55 is not applicable if FEMA has issued a Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) for any 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 HOME funds may only be used for projects in 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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** 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), or § 55.12 indicates the 8-step decision process is not applicable. 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 local Flood Control Agency.
- Status B:** 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.



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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) 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?

### **Sources and References**

- 24 CFR Part 55, Floodplain Management, U.S. Department of Housing and Urban Development.
- 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).

### **Wetlands Protection**

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.



## ***Chapter 6: Categorical Exclusions Subject to § 58.5***

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### ***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, 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 Chapter 1). 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;



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- 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.

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 C)

**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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** : The project does not involve new construction 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



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the 8-step decision making process is not applicable, according to 24 CFR 55.12, or as specified in HUD written policy.

- Status B:** The 8-step decision making process is 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 its jurisdiction.

### **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, 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;



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- ❑ 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 HOME 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 finds the project is consistent with the purposes of the Act.

### ***Making a Finding on Coastal Zone Management***

DIRECTIONS - Once the review process for Coastal Zone Management has been completed, the Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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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- Status A:** 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.
- Status B:** 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.

### **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..
- State and Territory Coastal Management Program offices.

### **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.



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### **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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** 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.
- Status B:** Consult with the Water Management Division of EPA to design mitigation measures to avoid contaminating the aquifer and implement appropriate mitigation measures.

### **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**

- National Summary of 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. (Available on the Internet.)



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### **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:

- 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 that appears 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). The RE then follows a formal consultation process in such cases. When the RE determines the project may affect listed species 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:

- 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.



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- 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, 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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** 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 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.
- Status B:** 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.



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### **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 402, 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), <http://www.fws.gov/endangered/>.

### **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.



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### **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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** 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.
- Status B:** 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.

### **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?



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### ***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, <http://www.nps.gov/rivers/wildriverslist.html>.

### **Air Quality (40 CFR Parts 6, 51, and 93)**

The Clean Air Act is a Federal law; however, 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 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.

### ***Making a Clean Air Act Finding***

DIRECTIONS - Once the review process for the Clean Air Act has been completed, the Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- ❑ **Status A:** 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;
- ❑ **Status B:** 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



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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).

### **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](http://www.epa.gov/oar). (Use this Website for a listing of State air quality boards and commissions.)

### **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.

- 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.



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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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** 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;
- Status B:** 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).



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### **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?

### ***Sources and References***

- 7 CFR 658, Farmland Protection Policy Act
- 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.
- Form AD-1006, "Farmland Conversion Impact Rating".

### **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.

### ***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.



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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.

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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory Checklist should also be filled out with the appropriate language based on the



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Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.

- Status A:** The project does not involve 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 LDN (CNEL) or less, based upon the HUD Noise Assessment Guidelines (NAG) for calculating noise levels and Airport Noise Contour map;
- Status B:** 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.

### **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 the roadway and/or 3,000 feet of the railroad? If so, is the development within line-of-sight of the major roadway and/or, railroad? Is noise attenuation required?
- Is the development within 15 miles of a military airfield or civilian airport? 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. (Available at HUD's Office of Environment and 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:



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- 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 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:

- 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 family housing units (Memorandum from Office of Environment and Energy, HUD, August 3, 1992; see Attachment 6E).

### ***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



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storage tanks, and necessary mitigation measures. This guidebook is available online at HUD's Office of Environmental and 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 Explosive or Flammable Operations***

DIRECTIONS - Once the review process for Explosive or Flammable Operations has been completed, the Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** 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 will expose neither people nor buildings to such hazards;
- Status B:** 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?
- 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**

- 24 CFR 51, Subpart C, Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature.
- Siting of 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..
- Local fire department or public safety officer.

### **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 (5 or more dwelling units) and non-residential properties, compliance with this policy requires efforts to



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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 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 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:

- 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").



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- 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 is 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.

### ***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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** 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;



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- Status B:** 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.

### **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. (Available on EPA’s web site.)
- 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).
- State offices of environmental protection or quality.
- Choosing An Environmentally “Safe” Site, Office of Community Viability, Community Planning and Development, U.S. Department of Housing and Urban Development. (Available at HUD’s Office of Environment and 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%). HUD regulation 24 CFR 51, Subpart D prohibits using HUD assistance for:



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- New construction; and
- Major or substantial rehabilitation and modernization activities if projects are located within a Clear Zone or Runway Clear Zone.

It also discourages 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, 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 H.]

### ***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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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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- Status A:** The project is not within an FAA-designated civilian airport Runway Clear Zone (RCZ) -or Runway Protection Zone, or within a military airfield Clear Zone (CZ) or Accident Potential Zone (APZ) -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;
- Status B:** 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 (0.47 miles) of a civilian airport that is regulated by the Federal Aviation Administration (FAA), or 15,000 feet (2.8 miles) of a military airfield?
- Is the project located within a designated Airport Clear Zone or Runway Clear Zone?
- Is a disclosure notice required?

### **Sources and References**

- 24 CFR 51, Subpart C, Siting of HUD Assisted Projects in Runway Clear Zones of Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields.
- 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.



## **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 Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). The Compliance Documentation column of the Statutory 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.

- Status A:** The proposed site is suitable for its proposed use and will NOT be adversely impacted by adverse environmental conditions;
- Status B:** 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.



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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. (Available at HUD’s Office of Environment and Energy website.)

## **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 compliance review for the Federal laws and authorities cited in § 58.5 for the proposed project (Statutory Checklist format).
- 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 on the compliance review form and places it in the ERR. No public notice needs to be issued nor a “Request for Release of Funds and Certification”(HUD form 7015.15) submitted to HUD or the state (in the case of state recipients).



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The RE does not need to issue a public notice or request release of funds from HUD or state (in the case of state recipients).

**EXHIBIT 6.2 – SAMPLE STATUTORY CHECKLIST (CONVERTS)**

**STATUTORY WORKSHEET**

Use this worksheet only for projects which are Categorically Excluded per 24 CFR Section 58.35(a)

**24 CFR §58.5 STATUTES, EXECUTIVE ORDERS & REGULATIONS**

**PROJECT NAME and DESCRIPTION** - Include all contemplated actions which logically are either geographically or functionally part of the project: **Cedar Ridge Single Family Units**

HOME 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. CDBG 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 \$350,000.

This project is determined to be **Categorically Excluded** according to: [Cite section(s)] Sec. 58.35(a)(4)(i)

**DIRECTIONS** - Write “A” in the Status Column when the project, by its nature, does not affect the resources under consideration; OR write “B” if the project triggers formal compliance consultation procedures with the oversight agency, or requires mitigation (see Statutory Worksheet Instructions). Compliance documentation must contain verifiable source documents and relevant base data.

**Compliance Factors:**

<b>Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5</b>	<b>Status A/B</b>	<b>COMPLIANCE DOCUMENTATION</b>
<b>Historic Preservation</b> [36 CFR Part 800]	<b>A</b>	“No historic properties affected”, according to 36 CFR 800.4(d)(1). (See attached SHPO letter dated, 6/3/05)
<b>Floodplain Management</b> [24 CFR 55, Executive Order 11988]	<b>A</b>	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.)

**EXHIBIT 6.2 – SAMPLE STATUTORY CHECKLIST (CONVERTS)**

<p><b>Wetland Protection</b> [Executive Order 11990]</p>	<p><b>A</b></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, May 22, 2005, See attached telephone record.)</p>
<p><b>Coastal Zone Management Act</b> [Sections 307(c), (d)]</p>	<p><b>A</b></p>	<p>The City of Cordova is hundreds of miles from the Atlantic Ocean. (See attached general location map.)</p>
<p><b>Sole Source Aquifers</b> [40 CFR 149]</p>	<p><b>A</b></p>	<p>There are 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, May 5, 2005.)</p>
<p><b>Endangered Species Act</b> [50 CFR 402]</p>	<p><b>A</b></p>	<p>The project sites are located within a fully developed urban area, with common ornamental landscaping. (See attached Field Notes: Mary Chin, Housing Specialist, Housing Dept., City of Cordova, April 30, 2005)</p>
<p><b>Wild and Scenic Rivers Act</b> [Sections 7(b), and (c)]</p>	<p><b>A</b></p>	<p>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, May 5, 2005)</p>
<p><b>Clean Air Act</b> [Sections 176(c), (d), and 40 CFR 6, 51, 93]</p>	<p><b>A</b></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, April 10, 2005)</p>
<p><b>Farmland Protection Policy Act</b> [7 CFR 658]</p>	<p><b>A</b></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, May 1, 2005)</p>
<p><b>Environmental Justice</b> [Executive Order 12898]</p>	<p><b>A</b></p>	<p>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</p>

## EXHIBIT 6.2 – SAMPLE STATUTORY CHECKLIST (CONVERTS)

		the Cedar Ridge subdivision, November 18, 1999.)
<b>HUD ENVIRONMENTAL STANDARDS Noise Abatement and Control</b> [24 CFR 51B]	<b>A</b>	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.)
<b>Explosive and Flammable Operations</b> [24 CFR 51C]	<b>A</b>	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, Housing Dept., City of Cordova, April 30, 2005)
<b>Toxic Chemicals and Radioactive Materials</b> [24CFR Part 58.5(i)(2)]	<b>A</b>	The project sites are not affected by hazardous facilities or substances. (See the attached Environmental Assessment for the Cedar Ridge subdivision, November 18, 1999.). 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, April 10, 2005)
<b>Airport Clear Zones and Accident Potential Zones</b> [24 CFR 51D]	<b>A</b>	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)

### DETERMINATION:

- ( X ) This project converts to Exempt, per Section 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license (Status "A" has been determined in the status column for all authorities); **Funds may be drawn down** for this (now) EXEMPT project; OR
- ( ) This project cannot convert to Exempt because one or more statutes/authorities require consultation or mitigation. Complete consultation/mitigation requirements, publish NOI/RROF and obtain Authority to Use Grant Funds (HUD 7015.16) per Section 58.70 and 58.71 before drawing down funds; OR
- ( ) The unusual circumstances of this project may result in a significant environmental impact. This project requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

**EXHIBIT 6.2 – SAMPLE STATUTORY CHECKLIST (CONVERTS)**

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PREPARER SIGNATURE:

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DATE: June 5, 2005

PREPARER NAME & TITLE (please print):

Mary Chin, Housing Specialist, Housing Dept.

RESPONSIBLE ENTITY CERTIFYING OFFICIAL SIGNATURE:

---

DATE: June 7, 2005

NAME & TITLE (please print): Robert Holmes, Director, Housing Dept.

**EXHIBIT 6.3 – SAMPLE STATUTORY CHECKLIST (DOES NOT CONVERT)**

**STATUTORY WORKSHEET**

Use this worksheet only for projects which are Categorically Excluded per 24 CFR Section 58.35(a)

**24 CFR §58.5 STATUTES, EXECUTIVE ORDERS & REGULATIONS**

**PROJECT NAME and DESCRIPTION** - Include all contemplated actions which logically are either geographically or functionally part of the project: **Ironwood Townhomes**

HOME funds will be used to acquire and rehabilitate 14 townhomes for resale to first time homebuyers. Rehabilitation work would include replacement of roofs, bring electrical, plumbing, and heating systems up to code specifications, bring units into compliance with energy conservation codes, and painting the interior and exterior surfaces. 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 \$900,000.

This project is determined to be **Categorically Excluded** according to: [Cite section(s)]

Sec. 58.35(a)(4)(i)

**DIRECTIONS** - Write “**A**” in the Status Column when the project, by its nature, does not affect the resources under consideration; OR write “**B**” if the project triggers formal compliance consultation procedures with the oversight agency, or requires mitigation (see Statutory Worksheet Instructions). Compliance documentation must contain verifiable source documents and relevant base data.

**Compliance Factors:**

<b>Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5</b>	<b>Status A/B</b>	<b>COMPLIANCE DOCUMENTATION</b>
<b>Historic Preservation</b> [36 CFR Part 800]	<b>A</b>	“No historic properties affected”, according to 36 CFR 800.4(d)(1). (See attached SHPO letter dated, August 14, 2005)
<b>Floodplain Management</b> [24 CFR 55, Executive Order 11988]	<b>A</b>	The properties are not within a special flood hazard area. According to the Flood Insurance Rate Map, they are located within Zone D (see attached photocopy of Community Panel 155166-0880 C, April 1, 1995.)

**EXHIBIT 6.3 – SAMPLE STATUTORY CHECKLIST (DOES NOT CONVERT)**

<p><b>Wetland Protection</b> [Executive Order 11990]</p>	<p><b>A</b></p>	<p>The project is to rehabilitate existing structures and does not propose any new construction. [Sections 1(a) and 2(a) of the Order].</p>
<p><b>Coastal Zone Management Act</b> [Sections 307(c), (d)]</p>	<p><b>A</b></p>	<p>The City of Apton is within the Great Basin, a thousand miles from the Pacific Ocean. (See attached general location map.)</p>
<p><b>Sole Source Aquifers</b> [40 CFR 149]</p>	<p><b>A</b></p>	<p>There is no sole source aquifers designated by U.S. Environmental Protection Agency within the City of Apton. (See attached photocopy of U.S. EPA, Region V aquifers, August 1, 2005.</p>
<p><b>Endangered Species Act</b> [50 CFR 402]</p>	<p><b>A</b></p>	<p>The project site is located within a fully developed urban area, and does not propose any new construction. (See attached Field Notes: Allan Shepherd, Planner, Planning Dept., City of Apton, July 9, 2005)</p>
<p><b>Wild and Scenic Rivers Act</b> [Sections 7(b), and (c)]</p>	<p><b>A</b></p>	<p>There are no designated wild, scenic, or recreation rivers within the City of Apton. (See attached copy of the U.S. National Park Service, state-by-state list of designated rivers, August 1, 2005)</p>
<p><b>Clean Air Act</b> [Sections 176(c) and (d), 40 CFR 6, 51, 93]</p>	<p><b>B</b></p>	<p>The City of Apton is in attainment with the National Ambient Air Quality Standards. (See attached Air Quality Element, General Plan for the City of Apton, AZ, 2001). However, regulated asbestos containing materials (RACM) will be removed from the units during rehabilitation---floor and ceiling tiles, roofing materials, siding, insulation around heating pipes and furnaces, and weather stripping. Notification, removal, disposal and cleanup will be according the City's work plan approved by the Tularosa Basin Air Quality Management District. (See attached plan, dated July 12, 2005, and letter from Michael Espinosa, Enforcement Division, Tularosa Basin AQMD, dated July 20, 2005)</p>
<p><b>Farmland Protection Policy Act</b> [7 CFR 658]</p>	<p><b>A</b></p>	<p>The project sites are zoned SF-MF (single family/multifamily residential).</p>

**EXHIBIT 6.3 – SAMPLE STATUTORY CHECKLIST (DOES NOT CONVERT)**

		(See attached Land Use Element and zoning maps, General Plan for the City of Apton, AZ, dated March 17, 2000, pp. 95-105)
<b>Environmental Justice</b> [Executive Order 12898]	<b>A</b>	The project site is compatible with the surrounding residential use. Neither the project site nor surrounding area is adversely affected by environmental hazards. (See attached Phase I Environmental Site Assessment, BioChem Engineering, Atwater, AZ, (607) 533-6700, June 30, 2005)
<b>HUD ENVIRONMENTAL STANDARDS Noise Abatement and Control</b> [24 CFR 51B]	<b>A</b>	The project does not propose noise sensitive land development [24 CFR 51.101(a)(2)]. These are existing residential structures.
<b>Explosive and Flammable Operations</b> [24 CFR 51C]	<b>A</b>	Rehabilitation of these residential buildings will not increase the unit density, make a vacant buildings become habitable, or convert buildings to habitation (24 CFR 51.201, “HUD-Assisted Project”).
<b>Toxic Chemicals and Radioactive Materials</b> [24CFR Part 58.5(i)(2)]	<b>A</b>	The project site is not affected by hazardous facilities. Asbestos will be removed and disposed of according to the City’s work plan approved by the Tularosa Basin Air Quality Management District. (See attached Phase I Environmental Site Assessment, BioChem Engineering, Atwater, AZ, (607) 533-6700, June 30, 2005; and approved asbestos removal plan, dated July 12, 2005, with letter from Michael Espinosa, Enforcement Division, Tularosa Basin AQMD, dated July 20, 2005)
<b>Airport Clear Zones and Accident Potential Zones</b> [24 CFR 51D]	<b>A</b>	The residential buildings are 2 miles from the Rickover Naval Air Station, but not within the Clear Zone or Accident Potential Zone. (See attached Air Installation Compatibility Use Zone (AICUZ) map for Rickover NAS, January 1995.)

**DETERMINATION:**

**EXHIBIT 6.3 – SAMPLE STATUTORY CHECKLIST (DOES NOT CONVERT)**

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- ( ) This project converts to Exempt, per Section 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license (Status "A" has been determined in the status column for all authorities); **Funds may be drawn down** for this (now) EXEMPT project; OR
- ( X ) This project cannot convert to Exempt because one or more statutes/authorities require consultation or mitigation. Complete consultation/mitigation requirements, publish NOI/RROF and obtain Authority to Use Grant Funds (HUD 7015.16) per Section 58.70 and 58.71 before drawing down funds; OR
- ( ) The unusual circumstances of this project may result in a significant environmental impact. This project requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

PREPARER SIGNATURE:

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DATE: August 16, 2005

PREPARER NAME & TITLE (please print): Allan Shepherd, Planner, Planning Dept.

RESPONSIBLE ENTITY CERTIFYING OFFICIAL SIGNATURE:

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DATE: August 20, 2005

NAME & TITLE (please print): Andrew R. Phillips, Director, Planning Dept.



## **PUBLIC NOTIFICATION PROCESS**

If upon completing the environmental review document (Statutory Checklist), 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 notification (Notice of Intent to Request Release of Funds) and request release for funds from HUD or from the state (in the case of state recipients). Before committing or expending project funds, the RE must receive approval from HUD or the state.

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.) 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). Exhibit 6.4 below provides a sample NOI/RROF with the minimum content required for this legal notice.
3. Consider and respond to comments received, 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 HUD Field Office or state (in the case of state recipients). (NOTE: If the notice is posted/mailed, the RE should indicate in its submission letter to HUD/State as to how the notice was dispersed.)



## ***Chapter 6: Categorical Exclusions Subject to § 58.5***

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4. 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 F for form)
5. Submit the RROF with a copy of the public notice to HUD or the state (in the case of state recipients).
6. Wait to receive a HUD form 7015.16, Authority to Use Grant Funds or equivalent letter from HUD or the state (in the case of state recipients) before initiating work or committing funds.

## **EXHIBIT 6.4 – SAMPLE NOTICE OF INTENT TO REQUEST FUNDS**

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(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).

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.

## **EXHIBIT 6.4 – SAMPLE NOTICE OF INTENT TO REQUEST FUNDS**

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### **OBJECTIONS TO RELEASE OF FUNDS**

(HUD/State) will accept objections to its release of funds and the RE's certification for a period of fifteen days following the anticipated submission date or 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.

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**(NAME AND TITLE OF RE CERTIFYING OFFICER/DATE)**

## **EXHIBIT 6.5 – SAMPLE NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS**

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### **NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS**

August 25, 2005

City of Apton  
29533 Woodland Drive  
Apton, AZ 85443  
(612) 455-1900

On or about September 2, 2005 the City of Apton will submit a request to the U. S. Department of Housing and Urban Development for the release of HOME Investment Partnerships Program funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, 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 \$900,000.

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 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 Planning Department. All comments received by September 1, 2005 will be considered by the City prior to authorizing submission of a request for release of funds.

#### **RELEASE OF FUNDS**

The City of Apton certifies to HUD that Elaine Barker in her capacity as City Manager 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 City to use Program funds.

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

#### **OBJECTIONS TO RELEASE OF FUNDS**

HUD will accept objections to its release of funds and the City's certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not

## **EXHIBIT 6.5 – SAMPLE NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS**

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executed by the Certifying Officer of the City; (b) the City 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 HUD, Community Planning and Development at One North Central Ave., Suite 600, Phoenix, AZ, 85004. Potential objectors should contact HUD to verify the actual last day of the objection period.

Elaine Barker, City Manager  
City of Apton, AZ



## **HUD OR STATE APPROVAL**

HUD or state 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 HUD or state in writing.

HUD or the state (in the case of state recipients) 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 HUD or the state. Once approval is received from HUD or the state, work may be initiated and project funds committed.

## **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 Barrier 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 or clear zone. 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 H.]



## **RE-EVALUATION OF ENVIRONMENTAL FINDINGS (§ 58.47)**

The RE will need to re-evaluate 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 HOME-funded project may receive additional Federal funds after the RE has received approval from HUD/State, 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 (§ 58.35(b)(7)].

**EXHIBIT 6.6 – DOCUMENTING COMPLIANCE WITH “OTHER REQUIREMENTS” AT 24 CFR § 58.6**

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**LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:**

**Project Name / Description:**

**Level of Environmental Review:**

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(Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per § 58.35(b), Categorically excluded subject to statutes per § 58.35(a), Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

**STATUTES AND REGULATIONS LISTED AT 24 CFR 58.6**

**FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT**

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?

( ) No; flood insurance is not required. The review of this factor is completed.

( ) Yes; continue.

2. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?

( ) No. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):  
\_\_\_\_\_ (Factor review completed).

( ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):  
\_\_\_\_\_ (Continue review).

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

( ) Yes - Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.

( ) No (**Federal assistance may not be used in the Special Flood Hazards Area**).

**EXHIBIT 6.6 – DOCUMENTING COMPLIANCE WITH “OTHER REQUIREMENTS” AT  
24 CFR § 58.6**

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**COASTAL BARRIERS RESOURCES ACT**

1. Is the project located in a coastal barrier resource area? (See <http://www.fema.gov/business/nfip/cbrs/cbrs>).

( ) No; Cite Source Documentation:

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(This element is completed).

( ) Yes - **Federal assistance may not be used in such an area.**

**AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES**

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?

( ) No; cite SD, page:

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\_\_\_\_\_ Project complies with 24 CFR 51.303(a)(3).

( ) Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record.

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Preparer Signature / Name /Date

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Responsible Entity Official Signature / Title/ Date

## **EXHIBIT 6.7 – SAMPLE DOCUMENTING COMPLIANCE WITH “OTHER REQUIREMENTS” 24 CFR § 58.6**

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### **LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:**

**Project Name / Description:** Ironwood Townhomes

HOME funds will be used to acquire and rehabilitate 14 townhomes for resale to first time homebuyers. Rehabilitation work would include replacement of roofs, bring electrical, plumbing, and heating systems up to code specifications, bring units into compliance with energy conservation codes, and painting the interior and exterior surfaces. The units are located at 9450 through 9455 W. Sherman Ave., 3122 through 3125 Cedar Way, and 1416 through 1419 Trapp Ave., Apton, AZ.

**Level of Environmental Review:** Categorically Excluded sec. 58.35(a)(4)(i)

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(Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per § 58.35(b), Categorically excluded subject to statutes per § 58.35(a), Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

### **STATUTES AND REGULATIONS LISTED AT 24 CFR 58.6**

#### **FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT**

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?

( ) No; flood insurance is not required. The review of this factor is completed.

( **X** ) Yes; continue.

3. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?

( **X** ) No. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):  
FEMA Map Panel no. 155166-0880 C, April 1, 1995, Zone D.

(Factor review completed).

( ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):

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(Continue review).

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

( ) Yes - Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.

( ) No (**Federal assistance may not be used in the Special Flood Hazards Area**).

## EXHIBIT 6.7 – SAMPLE DOCUMENTING COMPLIANCE WITH “OTHER REQUIREMENTS” 24 CFR § 58.6

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### COASTAL BARRIERS RESOURCES ACT

1. Is the project located in a coastal barrier resource area? (See <http://www.fema.gov/business/nfip/cbrs/cbrs>).

(  ) No; Cite Source Documentation: The project site is located within the City of Apton, which is 1,000 miles from the Pacific Ocean. (See attached general location map).  
(This element is completed).

(  ) Yes - **Federal assistance may not be used in such an area.**

### AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?

(  ) No; cite SD, page: The project site is 2 miles from the Rickover Naval Air Station, but is not within the Clear Zone or Accident Potential Zone. (See attached Air Installation Compatibility Use Zone (AICUZ) map for Rickover NAS, January 1995). Project complies with 24 CFR 51.303(a)(3).

(  ) Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record.

Allan Shepherd, Planner, Planning Dept., August 16, 2005  
Preparer Signature / Name /Date

Andrew R. Phillips, Director, Planning Dept., August 20, 2005  
Responsible Entity Official Signature / Title/ Date

# CHAPTER 7: 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). This document not only identifies and evaluates project effects on environmental concerns of national importance (i.e., the Federal laws and authorities at § 58.5), but also the effects on environmental issues and concerns of local and regional importance. Therefore, the potential environmental impacts (both beneficial and adverse) on the human environment (i.e., social, economic, and natural resources) 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)

Actions that may be funded by HOME and that fall into the category requiring an Environmental Assessment would include, but are not limited to:

- 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 increases or decreases the unit density more than 20 percent;



## **Chapter 7: Environmental Assessment**

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- 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**

#### **Content of the ERR**

There must be a written determination of the RE’s finding that the activity or program falls within this category. While the EA addresses the same Federal laws and authorities as activities that are subject to § 58.5 (see section on “Completing the Statutory Checklist- Federal Laws and Authorities”), it also includes the following analysis:

- Determination of existing conditions;
- Identification, analysis, and evaluation of all potential environmental impacts;
- Examination and recommendation of feasible ways to eliminate or minimize adverse environmental impacts;
- Examination of alternatives to the proposed action;
- Compliance determination for all other Federal laws and authorities cited in §§ 58.5 and 58.6; 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. Exhibit 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 Exhibit 7.2, which is a sample, completed EA Format.

## **Exhibit 7.1- Environmental Assessment Format**

# **Environmental Assessment**

## **for HUD-funded Proposals**

Recommended format per 24 CFR 58.36, revised February 2004

[Previously recommended EA formats are obsolete.]

Project Identification:

Preparer:

Responsible Entity:

Month/Year:

## Exhibit 7.1- Environmental Assessment Format (cont.)

### ENVIRONMENTAL ASSESSMENT

**Responsible Entity:**

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[24 CFR 58.2(a)(7)]

**Certifying Officer:**

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[24 CFR 58.2(a)(2)]

**Project Name:**

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**Project Location:**

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**Estimated total project cost:**

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**Grant Recipient:**

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[24 CFR 58.2(a)(5)]

**Recipient Address:**

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**Project Representative:**

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**Telephone Number:**

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# Exhibit 7.1- Environmental Assessment Format (cont.)

## ENVIRONMENTAL ASSESSMENT – RECORD OF DECISION

**Conditions for Approval:** (List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts and other relevant documents as requirements). [24 CFR 58.40(d), 40 CFR 1505.2(c)]

**FINDING:** [58.40(g)]

\_\_\_\_\_ **Finding of No Significant Impact**

(The project will not result in a significant impact on the quality of the human environment)

\_\_\_\_\_ **Finding of Significant Impact**

(The project may significantly affect the quality of the human environment)

**Preparer Signature:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Name/Title/Agency:**

\_\_\_\_\_

**RE Approving Official Signature:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Name/Title/ Agency:**

\_\_\_\_\_

## **Exhibit 7.1- Environmental Assessment Format (cont.)**

**Statement of Purpose and Need for the Proposal:** [40 CFR 1508.9(b)]

**Description of the Proposal:** Include all contemplated actions which logically are either geographically or functionally a composite part of the project, regardless of the source of funding. [24 CFR 58.32, 40 CFR 1508.25]

**Existing Conditions and Trends:** Describe the existing conditions of the project area and its surroundings, and trends likely to continue in the absence of the project. [24 CFR 58.40(a)]

## Exhibit 7.1- Environmental Assessment Format (cont.)

### Statutory Checklist

[24CFR §58.5]

Record the determinations made regarding each listed statute, executive order or regulation. Provide appropriate source documentation. [Note reviews or consultations completed as well as any applicable permits or approvals obtained or required. Note dates of contact or page references]. Provide compliance or consistency documentation. Attach additional material as appropriate. Note conditions, attenuation or mitigation measures required.

#### **Compliance Factors:**

<b>Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5</b>	<b>Status A/B</b>	<b>Compliance Documentation</b>
<b>Historic Preservation</b> [36 CFR Part 800]		
<b>Floodplain Management</b> [Executive Order 11988; 24 CFR Part 55]		
<b>Wetland Protection</b> [ Executive Order 11990; 3 CFR, §§ 2, 5]		
<b>Coastal Zone Management Act</b> [16 U.S.C. 1451, §§ 307(c), (d)]		
<b>Sole Source Aquifers</b> [40 CFR Part 149]		
<b>Endangered Species Act</b> [50 CFR Part 402]		
<b>Wild and Scenic Rivers Act</b> [16 U.S.C. 1271, §§ 7(b), (c)]		
<b>Clean Air Act</b> [Sections 176 (c) and (d), and 40 CFR Parts 6, 51, 93]		

## Exhibit 7.1- Environmental Assessment Format (cont.)

Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5	Status A/B	Compliance Documentation
<b>Farmland Protection Policy Act</b> [7 CFR Part 658]		
<b>Environmental Justice</b> [Executive Order 12898]		
<b>HUD ENVIRONMENTAL STANDARDS</b>  <b>Noise Abatement and Control</b> [24 CFR Part 51, Subpart B]		
<b>Explosive and Flammable Operations</b> [24 CFR Part 51, Subpart C]		
<b>Toxic Chemicals and Radioactive Materials</b> [24CFR Part 58, § 5(i)(2)]		
<b>Airport Clear Zones and Accident Potential Zones</b> [24 CFR Part 51, Subpart D]		

## Exhibit 7.1- Environmental Assessment Format (cont.)

### Environmental Assessment Checklist

[Environmental Review Guide HUD CPD 782, 24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27]

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a determination of impact. **Impact Codes:** (1) - No impact anticipated; (2) - Potentially beneficial; (3) - Potentially adverse; (4) - Requires mitigation; (5) - Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional material as appropriate. Note conditions or mitigation measures required.

**Land Development                      Code                      Source or Documentation**

<b>Conformance with Comprehensive Plans and Zoning</b>		
<b>Compatibility and Urban Impact</b>		
<b>Slope</b>		
<b>Erosion</b>		
<b>Soil Suitability</b>		

## Exhibit 7.1- Environmental Assessment Format (cont.)

Land Development	Code	Source or Documentation
<b>Hazards and Nuisances including Site Safety</b>		
<b>Energy Consumption</b>		
<b>Noise</b> - Contribution to Community Noise Levels		
<b>Air Quality</b> Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels		
<b>Environmental Design</b> Visual Quality - Coherence, Diversity, Compatible Use and Scale		

Socioeconomic	Code	Source or Documentation
<b>Demographic Character Changes</b>		
<b>Displacement</b>		
<b>Employment and Income Patterns</b>		

## Exhibit 7.1- Environmental Assessment Format (cont.)

**Community Facilities  
and Services**

**Code**

**Source or Documentation**

<b>Educational Facilities</b>		
<b>Commercial Facilities</b>		
<b>Health Care</b>		
<b>Social Services</b>		
<b>Solid Waste</b>		
<b>Waste Water</b>		
<b>Storm Water</b>		
<b>Water Supply</b>		

## Exhibit 7.1- Environmental Assessment Format (cont.)

### Community Facilities and Services

### Code

### Source or Documentation

<b>Public Safety</b>  - Police		
- Fire		
<b>Emergency Medical</b>		
<b>Open Space and Recreation</b>  - Open Space		
- Recreation		
- Cultural Facilities		
<b>Transportation</b>		

## Exhibit 7.1- Environmental Assessment Format (cont.)

### Natural Features

### Source or Documentation

<b>Water Resources</b>		
<b>Surface Water</b>		
<b>Unique Natural Features and Agricultural Lands</b>		
<b>Vegetation and Wildlife</b>		

### Other Factors

### Source or Documentation

<b>Flood Disaster Protection Act</b> [Flood Insurance] [§58.6(a)]		
<b>Coastal Barrier Resources Act/ Coastal Barrier Improvement Act</b> [§58.6(c)]		
<b>Airport Runway Clear Zone or Clear Zone Disclosure</b> [§58.6(d)]		
<b>Other Factors</b>		

## **Exhibit 7.1- Environmental Assessment Format (cont.)**

### **SUMMARY OF FINDINGS AND CONCLUSIONS**

#### **ALTERNATIVES TO THE PROPOSED ACTION**

**Alternatives and Project Modifications Considered** [24 CFR 58.40(e), Ref. 40 CFR 1508.9]  
(Identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.)

#### **No Action Alternative** [24 CFR 58.40(e)]

(Discuss the benefits and adverse impacts to the human environment of not implementing the preferred alternative).

#### **MITIGATION MEASURES RECOMMENDED** [24 CFR 58.40(d), 40 CFR 1508.20]

(Recommend feasible ways in which the proposal or its external factors should be modified in order to minimize adverse environmental impacts and restore or enhance environmental quality.)

#### **ADDITIONAL STUDIES PERFORMED**

(Attach studies or summaries)

#### **LIST OF SOURCES, AGENCIES AND PERSONS CONSULTED [40 CFR 1508.9(B)]**



## **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 such basic information as:

- Contact information for the RE;
- 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 or not 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 PJ 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 it’s 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.



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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.

### **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 HOME activities, this information is more than likely contained in the PJ's Consolidated 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 doesn't 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 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 STATUTORY CHECKLIST – COMPLIANCE WITH FEDERAL LAWS AND AUTHORITIES**

The Statutory Checklist, which is the first part of the 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 in completing the Statutory Checklist for each environmental statute and authority listed in § 58.5. REs must record their determination, provide appropriate source documentation (refer to Exhibit 3.3) and note conditions, attenuation or mitigation measures required in the Statutory Checklist portion of the EA, which will be part of the ERR.



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### **Historic Preservation (36 CFR Part 800)**

Section 106 of the National Historic Preservation Act<sup>1</sup> 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.

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). 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 may be found in at the Advisory Council's Website ([www.achp.gov](http://www.achp.gov)).

It is important to remember that before approval is given to proceed with HOME 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)]."

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<sup>1</sup> Standards and Legal Requirements: Section 106 of the National Historic Preservation Act of 1966, as amended; Executive Order 11593, Protection and Enhancement of the Cultural Environment, 1971 as amended; Advisory Council on Historic Preservation, Protection of Historic Properties; Recommended Approach for Consultation on Recovery of Significant Information From Archeological Sites, 36 CFR Part 800. Guidance on the historic preservation regulations is available on the Advisory Council's web site, as well as guidance on the development of affordable housing (<http://www.achp.gov/afford.html>).



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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.).
- 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.).

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 is sensitive, non-abrasive operation and maintenance of a 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. Consultation with the SHPO must be documented in writing. The SHPO 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 to expedite consultation if the SHPO 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. 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 - 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.



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- 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.***

Here are some 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, 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.
- 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:
    - Determine the date of construction. If 50 years of age or older, determine:
      - The time of its architectural design.
      - Whether it's associated with a person or event significant to our 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).



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- Request a search of existing databases maintained by State Historic Preservation Officers (SHPO). 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 concerning performing an intensive survey to classify the number, type, location, and distribution of historic resources, and record the artifacts found. [NOTE: RE's are required to make a "reasonable and good faith effort" to identify REs 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 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; and
    - Yielding information important to history or prehistory.

36 CFR Part 60, provides a fuller discussion of criteria for finding properties eligible for listing on the *National Register of Historic Places (NR)*, and sets forth the procedural requirements for listing properties.

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 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're 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 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, that:



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- 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, 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 Statutory Checklist must then cite one of the following sources as evidence of compliance:

- Letter from the State Historic Preservation Officer (SHPO) that *no historic properties* will be affected or no adverse effect.
- An executed *Programmatic Agreement* between the RE and the SHPO that verifies one or more of the non-consultation stipulations in that agreement have been met.
- For adverse effect, an executed *Memorandum of Agreement* between the RE and the SHPO regarding mitigation measures that will be implemented to protect historic properties.

ALL DOCUMENTS RELATED TO THIS COMPLIANCE DERTMINATION 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) 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 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 consultation completed? If a Memorandum of Agreement (MOA) or Programmatic Agreement (PA) is required, has the SHPO signed the agreement? Has the project participant signed the MOA? Has the agreement been filed with the ACHP?

### **Sources and References**

- 36 CFR Part 800, Protection of Historic Properties, Advisory Council on Historic Preservation
- 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.



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- ❑ 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, Advisory Council on Historic Preservation, Federal Register, February 15, 2007, pp. 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 consider alternatives to developing projects in floodplains when other alternatives are available when other alternatives are available that achieve the same objective.

This 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.

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). If the project is a “critical action,” the regulation also applies to areas in the 500-year floodplain (Zone B). 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.

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:



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- 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]. 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 HOME funds may only be used for projects in 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 Statutory 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



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- There is *no practicable alternative*, according to the completed 8-step decision making process.

ALL DOCUMENTS RELATED TO THIS COMPLIANCE DERTMINATION 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?

### **Sources and References**

- 24 CFR Part 55, Floodplain Management, U.S. Department of Housing and Urban Development.
- 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).

### **Wetlands Protection**

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



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- 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, 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 Chapter 1). 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



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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.

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 C)

**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 Statutory 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
- 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.)

ALL DOCUMENTS RELATED TO THIS COMPLIANCE DERTMINATION 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, 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:
  - 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.



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### **Basic Steps for Compliance with Coastal Zone Management Requirements**

When HOME 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 finds the project is consistent with the purposes of the Act.

### **Making a Finding on Coastal Zone Management**

DIRECTIONS - Once the review process for Coastal Zone Management has been completed, the Statutory 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
- The State Coastal Commission verifies the proposed action is *consistent* with the Coastal Zone Management Plan.

ALL DOCUMENTS RELATED TO THIS COMPLIANCE DERTMINATION 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.
- State and Territory Coastal Management Program offices.

### **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**



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DIRECTIONS - Once the review process for Sole Source Aquifers has been completed, the Statutory 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
- The proposed action is within the boundaries of a designated sole source aquifer, but it is not an activity that is regulated.
- 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 DERTMINATION 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**

- National Summary of 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. (Available on the Internet.)

### **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:

- 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.



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Another classification, according to U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) 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 that appears 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 (or U.S. National Marine Fisheries Service, if within their jurisdiction) is required (pursuant to 50 CFR 402) when the RE proposes a major construction action (requires preparation of an EIS). The RE then follows a formal consultation process in such cases. When the RE determines the project may affect listed species 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:

- 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, 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 Statutory 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 & 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.



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- USFWS issues a biological opinion 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 DERTMINATION 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 402, Interagency Cooperation Endangered Species Act of 1973, As Amended.
- Endangered Species Program, Division of Endangered Species, U.S.D.I. Fish and Wildlife Service, <http://www.fws.gov/endangered/>.
- Threatened and Endangered Wildlife and Plants (Listed species and Critical Habitat), <http://www.fws.gov/endangered/>.

### **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.



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### **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 Statutory Checklist must then cite one of the following sources as evidence of compliance:

- 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, <http://www.nps.gov/rivers/index.html>.
- Wild & Scenic Rivers- State-By-State Lists, Rivers, Trails and Conservation Assistance Program, U.S.D.I. National Park Service, <http://www.nps.gov/rivers/wildriverslist.html>.



## **Air Quality (40 CFR Parts 6, 51, and 93)**

The Clean Air Act is a Federal law; however, 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 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.

### ***Making a Clean Air Act Finding***

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

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

ALL DOCUMENTS RELATED TO THIS COMPLIANCE DERTMINATION 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](http://www.epa.gov/oar). (Use this Website for a listing of State air quality boards and commissions.)

## **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



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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.

- ❑ *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 Statutory Checklist must then cite one of the following sources as evidence of compliance:

- Current zoning classification is for non-farmland uses
- Information from the NRCS indicates the site is not classified as prime or unique agricultural land.



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- 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 DERTMINATION 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?

### **Sources and References**

- 7 CFR 658, Farmland Protection Policy Act
- 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.
- 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



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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 Statutory 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
- The proposed action would not create a negative environmental impact or aggravate and existing impact.

ALL DOCUMENTS RELATED TO THIS COMPLIANCE DERTMINATION MUST BE INCLUDED IN THE ERR FOR THE PROJECT.

### **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. (Available at HUD's Office of Environment and Energy website.)

## **Noise Abatement and Control (24 CFR Part 51, Subpart B)**



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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.

### **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 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.

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



## Chapter 7: Environmental Assessment

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 Statutory Checklist must then cite one of the 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*.
- 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.
- 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 the roadway and/or 3,000 feet of the railroad? If so, is the development within line-of-sight of the major roadway and/or, railroad? Is noise attenuation required?
- Is the development within 15 miles of a military airfield or civilian airport? 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)?



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### ***Sources and References***

- 24 CFR 51, Subpart B, Noise Abatement and Control
- The Noise Guidebook (HUD-953-CPD(1)), Office of Community Planning and Development, U.S. Department of Housing and Urban Development, September 1991. (Available at HUD's Office of Environment and Energy website.)
- Contact the local airport or military airfield for information and maps.

### **Toxic/Hazardous/Radioactive Materials, Contamination, Chemicals or Gases (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 (5 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 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 five pathways for human exposure to hazardous substances and radioactive materials:

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

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



## **Chapter 7: Environmental Assessment**

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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 is recognized in court cases concerning landowner liability (i.e., “all appropriate inquiry” into know 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 inquires [§ 312.20(b)]. Copies of the Phase I Environmental Site Assessment standards may be ordered for a minimal fee by contacting the ASTM

### ***Making a Finding on Toxic/Hazardous/Radioactive Materials, Contamination, Chemicals or Gases***

DIRECTIONS - Once the review process for Hazardous Materials, Chemicals and Radioactive Substances has been completed, the Statutory 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.



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- 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.

### **Toxic/Hazardous/Radioactive Materials, Contamination, Chemicals or Gases 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. (Available on EPA's web site.)
- 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).
- State offices of environmental protection or quality
- Choosing An Environmentally "Safe" Site, Office of Community Viability, Community Planning and Development, U.S. Department of Housing and Urban Development. (Available at HUD's Office of Environment and Energy website)

### **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 is to prevent injury to people and damage to property from industrial



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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:

- 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 family housing units (Memorandum from Office of Environment and Energy, HUD, August 3, 1992; see Attachment 6E).

### ***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 HUD's Office of Environmental and 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***



## **Chapter 7: Environmental Assessment**

DIRECTIONS - Once the review process for Explosive or Flammable Operations has been completed, the Statutory 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).
  - There is an *acceptable separation distance* for people and buildings
  - People and buildings can be protected with mitigation measures. Mitigation measures should become conditions for approval and implemented.

ALL DOCUMENTS RELATED TO THIS COMPLIANCE DERTMINATION 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**



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- 24 CFR 51, Subpart C, Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature.
- Siting of 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.
- Local fire department or public safety officer.

### **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%). HUD regulation 24 CFR 51, Subpart D prohibits using HUD assistance for:

- 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, 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 H.]



## **Chapter 7: Environmental Assessment**

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### **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 Statutory Checklist must then cite one of the following sources as evidence of compliance:

- The project is more than 2,500 feet (0.47 miles) from any FAA-designated airport. Contact your HUD Field Office for the most recent list of FAA-regulated airfields in your area, 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.

### **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.

PJs 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;



## ***Chapter 7: Environmental Assessment***

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- Nuisances and hazards (manmade or built); and
- Commercial/retail and transportation.

In addition, PJs 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 D: 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.
- 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.



## **Chapter 7: Environmental Assessment**

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Once determinations have been made, the appropriate impact code must be entered from the list provided on the EA Checklist:<sup>2</sup>

- 1) No impact anticipated (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 so small as to require no 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” 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

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<sup>2</sup> 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.



## **Chapter 7: Environmental Assessment**

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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 Statutory Checklist and the 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 HOME funds, then the property might be used for retail development (with non-HOME funds).

With regard to other reasonable courses of action the PJ considered, perhaps the PJ 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).



## **Chapter 7: Environmental Assessment**

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### **Mitigation Measures**

Whenever adverse environmental impacts are identified during preparation of the Statutory 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;
- 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 environments---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 even 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.

## Exhibit 7.2 - SAMPLE Environmental Assessment

# Environmental Assessment

### for HUD-funded Proposals

Recommended format per 24 CFR 58.36, revised February 2004

[Previously recommended EA formats are obsolete.]

Project Identification: Sunnyland Affordable Housing Subdivision, Blaine, Florida

Preparer: Sandra Atwood, Senior Planner, Blaine Planning Dept.

Responsible Entity: City of Blaine, Florida

Month/Year: September 20, 2005

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### ENVIRONMENTAL ASSESSMENT

**Responsible Entity:** City of Blaine, 7575 S. Ravenwood Dr., Blaine, FL, 19222

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[24 CFR 58.2(a)(7)]

**Certifying Officer:** Warren Coates, Mayor

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[24 CFR 58.2(a)(2)]

**Project Name:** Sunnyland Affordable Housing Subdivision

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**Project Location:** Northwestern side of the junction of Grove Dr. and Kendall Road, Blaine, FL

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**Estimated total project cost:** \$2,800,000.00

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**Grant Recipient:** City of Blaine, FL

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[24 CFR 58.2(a)(5)]

**Recipient Address:** Same above.

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**Project Representative:** Eric Washburn, Program Manager, Housing & Community Development Division, City of Blaine, FL Eric Washburn, Program Manager, Housing & Community Development Division

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**Telephone Number:** (808) 979-1402

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## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### ENVIRONMENTAL ASSESSMENT – RECORD OF DECISION

**Conditions for Approval:** (List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts and other relevant documents as requirements). [24 CFR 58.40(d), 40 CFR 1505.2(c)]

1. 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 developer will submit a request for a *Letter of Map Revision* (LOMR) to FEMA for approval. Prior to the developer's submission of the request to FEMA, City Engineers will review and approve the design plans submitted by the developer.
2. 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 *Acceptable* (65DNL) exterior noise level on the first floor. In addition, the developer must advise the City, 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.
3. Soil Suitability - Specifications and recommendations for fill dirt and foundation construction that are contained in the *Soil and Geological Report* will be followed. Fill dirt imported to the project site will be certified as "clean".
4. Homeowners who purchase units that are within the Zone AE special flood hazard area will be required to purchase and maintain flood insurance as a condition of sale until FEMA has approved the LOMR. Proof of purchase will be established by the homeowners' submission of a copy of their Policy Declaration.

**FINDING:** [58.40(g)]

**Finding of No Significant Impact**

(The project will not result in a significant impact on the quality of the human environment.)

**Finding of Significant Impact**

(The project may significantly affect the quality of the human environment.)

**Preparer Signature:**

\_\_\_\_\_ **Date:** September 15, 2005

**Name/Title/Agency:** Sandra Atwood, Senior Planner, Planning Dept

**RE Approving Official Signature:** \_\_\_\_\_ **Date:** Sept. 20, 2005

**Name/Title/Agency:** Ironda Hernandez, Director, Planning Dept.

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### **Statement of Purpose and Need for the Proposal:** [40 CFR 1508.9(b)]

A housing survey was completed by the City in August 2002. One of the objectives of the survey was to determine the demand for affordable housing. Results were that demand for affordable single family housing had increased by 20 percent since the last survey completed in 1990. Over the next 15 years, the City intends to develop partnerships with developers and non-profit housing organizations to construct 1500 single family units.

**Description of the Proposal:** Include all contemplated actions which logically are either geographically or functionally a composite part of the project, regardless of the source of funding. [24 CFR 58.32, 40 CFR 1508.25]

The City will use local funds to purchase 7 acres of vacant land in the Kendall neighborhood. The land was purchased previously by a subdivision developer, who eventually defaulted on its acquisition. HOME funds will be used by Home Providers, Inc., a community development housing organization (CHDO), to construct 20 units of single family housing for resale to first time homebuyers, and to connect the units to City service systems. The development will be composed of 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.

**Existing Conditions and Trends:** Describe the existing conditions of the project area and its surroundings, and trends likely to continue in the absence of the project. [24 CFR 58.40(a)]

The Kendall neighborhood is zoned 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 1995 when the City extended sewer, water, and storm services to this area in order to connect existing development to its infrastructure systems, and to 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 neighborhood.

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### Statutory Checklist

[24CFR §58.5]

Record the determinations made regarding each listed statute, executive order or regulation. Provide appropriate source documentation. [Note reviews or consultations completed as well as any applicable permits or approvals obtained or required. Note dates of contact or page references]. Provide compliance or consistency documentation. Attach additional material as appropriate. Note conditions, attenuation or mitigation measures required.

#### Factors

#### Determination and Compliance Documentation

<p><b>Historic Preservation</b> [36 CFR 800]</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 August 30, 2005.)</p>
<p><b>Floodplain Management</b> [24 CFR 55, Executive Order 11988]</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 City has determined there is no practicable alternative to locating the project in the floodplain. The portion of the project site in the special flood hazard area will be elevated above the floodplain. The developer will submit a request for a <i>Letter of Map Revision</i> (LOMR) to FEMA for approval. (See attached <i>Soils and Geological Report</i>, Geo-Design Corp., June 16, 2005, and also the decision document containing mitigation requirements.)</p>
<p><b>Wetlands Protection</b> [Executive Order 11990]</p>	<p>The City 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 August 15, 2005)</p>
<p><b>Coastal Zone Management Act</b> [Sections 307(c),(d)]</p>	<p>The project is within the Florida coastal zone management area. The City submitted its request for a consistency determination to the Florida State Clearinghouse (See attached request dated June 1, 2005). The Florida Department of Environmental Protection has issued a "determination of consistency" with the Florida Coastal Management Program (See attached determination, dated August 4, 2005)</p>
<p><b>Sole Source Aquifers</b> [40 CFR 149]</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, August 10, 2005)</p>

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### Factors

### Determination and Compliance Documentation

<p><b>Endangered Species Act</b> [50 CFR 402]</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 July 8, 2005, and letter from the U.S. Fish and Wildlife Service, dated August 17, 2005)</p>
<p><b>Wild and Scenic Rivers Act</b> [Sections 7 (b), (c)]</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, March 28, 2005)</p>
<p><b>Clear Air Act</b> [ Sections 176 (c) and (d), and 40 CFR 6, 51, 93]</p>	<p>The project is in conformance with the State Implementation Plan. (See letter from South District Air Resources, dated June 30,2005)</p>
<p><b>Farmland Protection Policy Act</b> [7 CFR 658]</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 telephone record- Sherry Black, Planner, Building and Zoning Department, City of Blaine, (808) 979-1125, June 4, 2005)</p>
<p><b>Environmental Justice</b> [Executive Order 12898]</p>	<p>The environmental concerns at this particular site are the same throughout the City of Blaine. 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 any dangers to life and property from flooding. [See attached Phase I Environmental Site Assessment (ESA), dated June 1, 2005, and documentation on noise abatement and floodplain management.]</p>

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### HUD Environmental Standards

### Determination and Compliance Documentation

<p><b>Noise Abatement and Control</b> [24 CFR 51 B]</p>	<p>There are no railroad lines within 3,000 feet, nor military or civil airfields within 15 miles of the project site. Flamingo Blvd. is one-third mile away and is not within line-of-sight of project site. However, Kendall Road is a major roadway that borders the south side of the project site. It has been determined 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, Public Works Dept., (808) 979-7075, June 1, 2005.</p>
<p><b>Toxic Chemicals and Radioactive Materials</b> [24 CFR 58.5(i)(2)]</p>	<p>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 occupants. (See attached Phase I ESA, dated June 1, 2005)</p>
<p><b>Explosive and Flammable Operations</b> [24 CFR 51 C]</p>	<p>As a result of a field inspection of the project site and general vicinity, it was determined there are no stationary aboveground storage tanks more than 100 gallons in size within line-of-sight of the project. (See attached Field Observation notes, Sandra Atwood, May 15, 2005)</p>
<p><b>Airport Clear Zones and Accident Potential Zones</b> [24 CFR 51 D]</p>	<p>There are no civil airports within 3000 feet, nor military airfields within 2-1/2 miles of the project site. Connor Regional Airport is 10 miles from the project. (See attached general location map of the City of Blaine, FL, dated October 12, 2004)</p>

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### Environmental Assessment Checklist

[Environmental Review Guide HUD CPD 782, 24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27]

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a determination of impact. Impact Codes: (1) - No impact anticipated; (2) - Potentially beneficial; (3) - Potentially adverse; (4) - Requires mitigation; (5) - Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional material as appropriate. Note conditions or mitigation measures required.

Land Development	Code	Source or Documentation
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Conformance with Comprehensive Plans and Zoning	1	The proposed development is in conformance with the City of Blaine 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>City of Blaine 2015: A Comprehensive Land Management Plan</i> , July 2000)
Compatibility and Urban Impact	1	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 affecting the project area. (Sandra Atwood, Senior Planner, Blaine Planning Dept. Also, see attached map M-14, from the <i>City of Blaine 2015: A Comprehensive Land Management Plan</i> , July 2000) and Phase I ESA, dated June 1, 2005)
Slope	1	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., June 16, 2005)
Erosion	1	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., June 16, 2005)

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

Land Development	Code	Source or Documentation
Soil Suitability	3 & 4	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., June 16, 2005)
Hazards and Nuisances including Site Safety	1	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, 2004)
Energy Consumption	1	<p>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 City's Energy Conservation Code (Code 15542). In addition, the CHDO has agreed to procure construction materials that are Energy Star approved. (See letter from Burke Brown, Senior Manager, Residential Services, AVISTA Utilities, dated July 12, 2005)</p> <p>The project site is within a 1 miles of shopping, services and schools. Bus transit service is available throughout the City. (See attached Field Observation notes, Sandra Atwood, May 15, 2005)</p>

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

Land Development	Code	Source or Documentation
<b>Noise</b> - Contribution to Community Noise Levels	1	The proposed housing construction in this established residential area will not generate substantial noise. Construction activities are restricted by City Code (Code 13111) to the hours of 7 AM and 6PM. Increased noise from construction activities will be temporary. [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822]
<b>Air Quality</b> Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels	1	There will be minimal dust from the housing construction. City Code (Code 13115) requires contractors to implement dust abatement at work sites. [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822]
<b>Environmental Design</b> Visual Quality - Coherence, Diversity, Compatible Use and Scale	1	The mass and scale of the proposed residential units will be in keeping with those in the neighborhood. Three distinct floor plans will be used to give the new units an appearance of individual architectural design. Construction materials and colors will be compatible with units in the surrounding neighborhood. Front yards will be landscaped as part of the project. [Eric Washburn, Program Manager, Housing & Community Development Division, City of Blaine, FL, (808) 979-1402, May 16, 2005]

Socioeconomic	Code	Source or Documentation
Demographic Character Changes	1	The project will not change the demographics of the general area. More affordable housing will be created to serve City residents. [Eric Washburn, Program Manager, Housing & Community Development Division, City of Blaine, FL, (808) 979-1402, May 16, 2005]
Displacement	1	No one will be displaced as a result of constructing the new units on the vacant site. [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822]
Employment and Income Patterns	2	There will be a temporary increase in jobs for construction workers as 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 Kendall neighborhood because there will be additional households requiring their services. [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822]

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### Community Facilities and Services

#### Code

#### Source or Documentation

Educational Facilities	1	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] [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822]
Commercial Facilities	1	The project area is served by a large variety of commercial and retails services within 1/2 to 5 miles. (See attached Field Observation notes, Sandra Atwood, May 15, 2005)
Health Care	1	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, May 15, 2005)
Social Services	1	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, May 15, 2005)
Solid Waste	1	The project area is served by the Municipal Disposal Company that provides curbside service. The additional housing units being constructed in the Kendall neighborhood will have no impact on the service provider or the capacity of the existing City landfill. [Don Rogers, Sanitary Engineer, City Public Works Dept., (808) 979-7070, June 5, 2005. See attached telephone record.]

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### Community Facilities and Services

#### Code

#### Source or Documentation

Waste Water	1	The project area is served by City sewer systems and will not impact the existing sewer capacity. In 1995, 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, Public Works Dept., (808) 979-7071, June 5, 2005. See attached telephone record.]
Storm Water	1	The project area is protected by a storm water system that is managed and maintained by the City. In 1995, the City extended its storm water control system to the project area in order to control storm water runoff and remedy local flooding problems. There is sufficient capacity for the housing construction project, as well as additional development in the area. [Sam Davenport, Engineer, Public Works Dept., (808) 979-7071, June 5, 2005. See attached telephone record.]
Water Supply	1	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 1995, 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 5, 2005. See attached telephone record.]
Public Safety - Police	1	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 City Police Dept. to respond, nor cause additional burden on existing staff. [Samuel Gonzales, Chief, Blaine Police Dept., (808) 979-9922, June 21, 2005. See attached telephone record.]

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### Community Facilities and Services

### Code

### Source or Documentation

- Fire	1	There are two fire stations serving the project area---Harbor Street and Kendall Road. Another station will be completed in 2006. 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, Blaine Fire Department, June 30, 2005.)
- Emergency Medical	1	Sacred Heart Hospital and Mercy Regional Hospital provide emergency services to the project area. Sacred Heart Hospital is within 7 miles of the project and Mercy Regional Hospital is within 15 miles. The additional housing units will not impact hospital services. It is expected that these units will be purchased by current City residents, therefore the number of people served will not be increased. [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822]
Open Space and Recreation - Open Space	1	There are two community parks in the project area---Tamini Park is 3 acres and Barton Regional Park is 60 acres. [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822]
- Recreation	1	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, Senior Planner, Blaine Planning Dept., (808) 979-1822. Also, see attached location map of City recreational facilities, map M-20, <i>City of Blaine 2015: A Comprehensive Land Management Plan</i> , July 2000

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### Community Facilities and Services

#### Code

#### Source or Documentation

- Cultural Facilities	1	There is a public library that serves the Kendall neighborhood, which occasionally hosts art and history exhibits. The City has several community theatres for symphonies and plays. The City fairground holds numerous special events throughout the year. All these facilities are accessible by public transportation. [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822.]
Transportation	1	The project site is accessible from several access roads. Public transportation (City Rapid Transit) is also available in the project area, as well as throughout the City. [Sandra Atwood, Senior Planner, Blaine Planning Dept., (808) 979-1822.]

### Natural Features

#### Source or Documentation

Water Resources	1	Groundwater will not be affected by the housing project. In 1995, 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 5, 2005. See attached telephone record.]
Surface Water	1	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, May 15, 2005)

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

Natural Features		Source or Documentation
Unique Natural Features and Agricultural Lands	1	<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.</p> <p>(See the chapter on <i>Natural Resources, City of Blaine 2015: A Comprehensive Land Management Plan</i>, July 2000, page 6-15)</p>
Vegetation and Wildlife	1	<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 July 8, 2005, and letter from the U.S. Fish and Wildlife Service, dated August 17, 2005)</p>

Other Factors		Source or Documentation
Flood Disaster Protection Act [Flood Insurance] [§58.6(a)]	4	<p>Homeowners purchasing units that are within Zone AE special flood hazard area will be required to purchase flood insurance and maintain flood insurance as a condition of sale until FEMA has approved the LOMR. Proof of purchase will be established by the homeowners' submission of a copy of their "Policy Declaration.</p>
Coastal Barrier Resources Act/ Coastal Barrier Improvement Act [§58.6(c)]	1	<p>The project is not located in a designated Coastal Barrier Resources Area. (See attached map for Connor County, Flood Insurance Rate Map no. 120067058E, 8/3/92, page 16.)</p>
Airport Runway Clear Zone or Clear Zone Disclosure [§58.6(d)]	1	<p>There are no FAA-designated airports within 3,000 feet or DOD military airfields within 2-1/2 miles of the project site. (See attached general location map of the City).</p>
Other Factors		N/A

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

### SUMMARY OF FINDINGS AND CONCLUSIONS

The proposed housing construction project will not adversely impact the Kendall 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.

### ALTERNATIVES TO THE PROPOSED ACTION

**Alternatives and Project Modifications Considered** [24 CFR 58.40(e), Ref. 40 CFR 1508.9] (Identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.)

Consideration had been given to developing the housing units on scattered sites throughout the City. However, the higher cost of individual parcels outside the Kendall neighborhood 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.

#### **No Action Alternative** [24 CFR 58.40(e)]

(Discuss the benefits and adverse impacts to the human environment of not implementing the preferred alternative).

The no action alternative was considered, however, it would not meet the demand by low income persons for affordable housing in the City. The demand for affordable housing has increased 20 percent since 1990. The concern is that low income households would then be required to rely more and more upon the City'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.

#### **MITIGATION MEASURES RECOMMENDED** [24 CFR 58.40(d), 40 CFR 1508.20]

(Recommend feasible ways in which the proposal or its external factors should be modified in order to minimize adverse environmental impacts and restore or enhance environmental quality.)

5. 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 developer will submit a request for a *Letter of Map Revision* (LOMR) to FEMA for approval. Prior to the developer's submission of the request to FEMA, City Engineers will review and approve the design plans submitted by the developer.
6. 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 *Acceptable* (65DNL) exterior noise level on the first floor. In addition, the developer must advise the City, 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.
7. Soil Suitability- Specifications and recommendations for fill dirt and foundation construction that are contained in the *Soil and Geological Report* will be followed. Fill dirt imported to the project site will be certified as "clean".

## Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)

8. Homeowners who purchase units that are within the Zone AE special flood hazard area will be required to purchase and maintain flood insurance as a condition of sale until FEMA has approved the LOMR. Proof of purchase will be established by the homeowners' submission of a copy of their "Policy Declaration.

### ADDITIONAL STUDIES PERFORMED

(Attach studies or summaries)

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, 2005.
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, 2005,
4. *Soils and Geological Report for the Sunnyland Subdivision*, Geo-Design Corp., 14142 Westland St., Cocoa Beach, FL, 32494, (808) 979-0022.

### 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
7. Sherry Black, Planner, Building and Zoning Division, Planning Dept., City Hall, 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 979-1125
8. *City of Blaine 2015: A Comprehensive Land Management Plan*, adopted July 2000
9. U.S. EPA Map of Radon Zones, Canton County, FL, [www.epa.gov/iaq/radon/zonemap/florida](http://www.epa.gov/iaq/radon/zonemap/florida)
10. Burke Brown, Senior Manager, Southern Region, AVISTA Utilities, 2800 S. Horseshoe Dr., Cocoa Beach, FL, 32388, (808) 979-5738
11. Eric Washburn, Program Manager, Housing and Community Development Dept., City Hall, 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 1402
12. Christine Chow, District Administrator, Mayfly School District, 25055 Channel St., Blaine, FL, 19222, (808) 979-4444

## **Exhibit 7.2 - SAMPLE Environmental Assessment (cont.)**

13. Don Rogers, Sanitary Engineer, Waste Management Division, Public Works Dept., 295 Riverside Circle, Blaine, FL, 19222, (808) 979-7070.
14. Sam Davenport, Engineer, Water and Sewer Division, Public Works Dept., 295 Riverside Cr., Blaine, FL, 19222, (808) 979-7071
15. George Colson, Engineer, Traffic Engineering Division, Public Works Dept., 295 Riverside Cr., Blaine, FL, 19222, (808) 979-7075
16. Samuel Gonzales, Chief, Blaine Police Dept., City Hall, 7575 S. Ravenwood Dr., Blaine, FL, 19222, (808) 979-9922
17. Alan Williams, Chief, Blaine Fire Dept., 5544 Cypress Ave., Blaine, FL, 19222, (808) 979-1515
18. Connor County, Flood Insurance Rate Map (F.I.R.M.), Coastal Barrier Resources Act Zones, Map Panel no. 120067058E, 8/3/92
19. City of Blaine, Flood Insurance Rate Map (F.I.R.M.), Map Panel no. 1200670383, 11/16/89  
Florida Coastal Management Program, Dept. of Environmental Protection, 3900 Commonwealth Blvd., Mail Station #47, Tallahassee, FL, 32399, (850) 245-2163



## Chapter 7: Environmental Assessment

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### 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.

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, and resolve outstanding issues.
- 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 HUD or the state (in the case of state recipients).
- Wait to receive a HUD form 7015.16, Authority to Use Grant Funds or equivalent letter from HUD or the state (in the case of state recipients) before initiating work or committing funds.

Exhibit 7.3 is the combined FONSI and NOI/RROF with the minimum content required for this legal notice. Exhibit 7.4 is a sample, completed FONSI and NOI/RROF for the project that was described in the Sample EA Format in Exhibit 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 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.

# **Exhibit 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).

## **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.

## **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

## **Exhibit 7.3 - Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds (cont.)**

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 accept objections to its release of funds and the RE's certification for a period of fifteen days following the anticipated submission date or 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 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)**

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## **Exhibit 7.4 - SAMPLE Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds (Published)**

September 25, 2005

City of Blaine  
7575 S. Ravenwood Drive  
Blaine, Florida 19222  
(808) 979-1402

This Notice shall satisfy the above-cited two separate but related procedural notification requirements.

### **REQUEST FOR RELEASE OF FUNDS**

On or about October 11, 2005 the City of Blaine will submit a request to the HUD for the release of HOME Investment Partnerships Program funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, 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 first time homebuyers. The project is located at the northwestern corner of the junction of Grove Drive and Kendall Road in City of Blaine.

### **FINDING OF NO SIGNIFICANT IMPACT**

The City 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 Housing and Community Development Department, City Hall, 7575 S. Ravenwood Drive, Room 205, 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, Housing and Community Development Department. All comments received by October 10, 2005 will be considered by the City prior to authorizing submission of a request for release of funds. Commentators should specify which part of this Notice they are addressing.

## **Exhibit 7.4 - SAMPLE Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds (cont.)**

### **RELEASE OF FUNDS**

The City certifies to HUD that Warren Coates in his capacity as Mayor 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 City to use Program funds.

### **OBJECTIONS TO RELEASE OF FUNDS**

HUD will accept objections to its release of funds and the City's certification for a period of fifteen days following the anticipated submission date or 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 or other officer of the City approved by HUD; (b) the City 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 the HUD Miami Field Office at Brickell Plaza Federal Building, 909 SE First Avenue, Room 500, Miami, FL 33131-3028. Potential objectors should contact HUD to verify the actual last day of the objection period.

Warren Coates, Mayor

City of Blaine, FL



### 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 HUD Field Office or state (in the case of state recipients). (NOTE: If the notice was posted or mailed, the RE should indicate in its submission letter to HUD as to how the notice was dispersed.) Form 7015.5 is provided in the Appendix to this manual. Instructions for completing HUD form 7015.15 are provided in Appendix F.

### HUD OR STATE APPROVAL

HUD or the state 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 HUD or the state in writing.

HUD or the state (in the case of state recipients) 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 HUD or the state. Once approval is received from HUD or the state, project funds committed and work may be initiated. A copy of the HUD Form 7015.16 is provided in Appendix G.

### 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 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.



## Chapter 7: Environmental Assessment

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- ❑ **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 or clear zone. 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 H.]

### **RE-EVALUATION OF ENVIRONMENTAL FINDINGS (§ 58.47)**

The RE will need to re-evaluate 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 HOME-funded project may receive additional Federal funds after the RE has received approval from HUD/State, 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 [§ 58.35(b)(7)].

## Exhibit 7.5 - Documenting Compliance with “Other Requirements” at 24 CFR § 58.6

### LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:

#### Project Name / Description:

#### Level of Environmental Review:

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(Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per § 58.35(b), Categorically excluded subject to statutes per § 58.35(a), Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

### STATUTES AND REGULATIONS LISTED AT 24 CFR 58.6

#### **FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT**

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?

( ) No; flood insurance is not required. The review of this factor is completed.

( ) Yes; continue.

1. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?

( ) No. Source Document (FEMA/FIRM floodplain zone designation, panel number, date): \_\_\_\_\_ (Factor review completed).

( ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date): \_\_\_\_\_

\_\_\_\_\_(Continue review).

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

( ) Yes - Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.

( ) No (**Federal assistance may not be used in the Special Flood Hazards Area**).

## Exhibit 7.5 - Documenting Compliance with “Other Requirements” at 24 CFR § 58.6

### COASTAL BARRIERS RESOURCES ACT

1. Is the project located in a coastal barrier resource area? (See <http://www.fws.gov/CBRA/>).

No; Cite Source Documentation:

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(This element is completed).

Yes - **Federal assistance may not be used in such an area.**

### AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?

No; cite SD, page:

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\_\_\_\_\_ Project complies with 24 CFR 51.303(a)(3).

Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record.

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Preparer Signature / Name /Date

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Responsible Entity Official Signature / Title/ Date

## Exhibit 7.6 - SAMPLE Documentation of Compliance with “Other Requirements” at 24 CFR § 58.6

### LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:

**Project Name / Description:** Sunnyland Affordable Housing Subdivision, Blaine, Florida

The City will use local funds to purchase 7 acres of vacant land in the Kendall neighborhood. The land was purchased previously by a subdivision developer, who eventually defaulted on its acquisition. HOME funds will be used by Home Providers, Inc., a community development housing organization (CHDO), to construct 20 units of single family housing for resale to first time homebuyers, and to connect the units to City service systems.

**Level of Environmental Review:** Environmental Assessment, sec. 58.36

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(Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per § 58.35(b), Categorically excluded subject to statutes per § 58.35(a), Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

### STATUTES AND REGULATIONS LISTED AT 24 CFR 58.6

#### **FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT**

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?

( ) No; flood insurance is not required. The review of this factor is completed.

( **X** ) Yes; continue.

2. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?

( ) No. Source Document (FEMA/FIRM floodplain zone designation, panel number, date): \_\_\_\_\_ (Factor review completed).

( **X** ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date): \_\_\_\_\_

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. The portion of the project site in the special flood hazard area will be elevated above the floodplain. The developer will submit a request for a *Letter of Map Revision* (LOMR) to FEMA for approval. Homeowners purchasing units that are within Zone AE special flood hazard area will be required to purchase flood insurance and maintain flood insurance as a condition of sale until FEMA has approved the LOMR. Proof of purchase will be established by the homeowners' submission of a copy of their "Policy Declaration".

(Continue review.)

## Exhibit 7.6 - SAMPLE Documentation of Compliance with “Other Requirements” at 24 CFR § 58.6

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

(  ) Yes - Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.

(  ) No (**Federal assistance may not be used in the Special Flood Hazards Area**).

### COASTAL BARRIERS RESOURCES ACT

1. Is the project located in a coastal barrier resource area? (See <http://www.fws.gov/CBRA/>).

(  ) No; Cite Source Documentation: The project is not located in a designated Coastal Barrier Resources Area. (See attached map for Connor County, Flood Insurance Rate Map no. 120067058E, 8/3/92, page 16.)

(This element is completed.)

(  ) Yes - **Federal assistance may not be used in such an area.**

### AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?

(  ) No; cite SD, page: There are no FAA-designated airports within 3,000 feet or DOD military airfields within 2-1/2 miles of the project site. (See attached general location map of the City).

Project complies with 24 CFR 51.303(a)(3).

(  ) Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record.

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Preparer Signature / Name /Date: Sandra Atwood, Senior Planner, Planning Dept, September 15, 2005

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Responsible Entity Official Signature / Title/ Date: Ironda Hernandez, Director, Planning Dept., September 20, 2005

# CHAPTER 8: 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.

EIS thresholds stated at §§ 58.37(a) and (b)(2) include:

- Projects determined, by a previously written environmental assessment, to have a potentially significant impact on the human environment; and
- Projects involving 2,500 or more units being removed, demolished, converted, rehabilitated, or constructed.

**NOTE:** It is not typical for a HOME project to trigger the Environmental Impact Statement requirements. If an RE believes that a project it is contemplating as a possible HOME project may in fact trigger these requirements, it should consult with a HUD representative immediately before taking any further action.

## COMPLIANCE DOCUMENTATION

### Content of the Environmental Review Record (ERR)

The RE must use the EIS format recommended by the Council on Environmental Quality (CEQ)



## **Chapter 8: Environmental Impact Statements**

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regulations (40 CFR 1502.101) 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. Following is the standard format for an environment impact statement (EIS):

- 1) Cover sheet.
- 2) Summary.
- 3) Table of contents.
- 4) Purpose of and need for action.
- 5) Alternatives including the proposed action.
- 6) Affected environment.
- 7) Environmental consequences.
- 8) List of preparers.
- 9) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
- 10) Index.
- 11) Appendices (if any).

## **PUBLIC NOTIFICATION PROCESS**

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 HUD 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
- 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 HUD or the state (in the case of subrecipients). The RE will do all of the following:

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## **Chapter 8: Environmental Impact Statements**

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- 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 HUD or the state (in the case of state recipients).
- Wait to receive a HUD form 7015.16, Authority to Use Grant Funds or equivalent letter from HUD or the state (in the case of state recipients) before initiating work or committing funds.

A sample copy of the NOI/RROF form is provided as Exhibit 6.4 in Chapter 6, Categorical Exclusions Subject to § 58.5.

### **HUD OR STATE APPROVAL**

HUD or state 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 HUD or state in writing.

HUD or the state (in the case of state recipients) 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 or equivalent letter from HUD or the state. Once approval is received from HUD or the state, work may be initiated and project funds committed.

### **COMPLIANCE WITH OTHER REQUIREMENTS AT § 58.6**

After completing the environmental impact statement, the RE must also provide written documentation as to whether or not the activity meets the requirements of the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and/or HUD's requirement for disclosure of properties located in runway clear zones or clear zones.

- 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.
- 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



## ***Chapter 8: Environmental Impact Statements***

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prohibited for activities or projects within a coastal barrier area designated by the U.S. Congress.

**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 or clear zone. The buyer must be advised of the location of that property and of the possibility it may be acquired by the airport operator at a later date.

The RE must document in the ERR whether or not any of these laws are applicable to the HOME project.

## CHAPTER 9: ADDITIONAL 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

There are two circumstances in which it is permissible for projects to receive HOME funding after construction has started without violating environmental requirements. These circumstances are as follows:<sup>1</sup>

- Projects started with Federal funds.** An approved HOME-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 or the state (in the case of state recipients). Approval of supplemental assistance to cover minor 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)].
- Projects started with non-Federal funds.** PJs, state recipients, subrecipients, contractors, owners, developers (including CHDOs) who had committed or expended non-Federal funding including permanent financing, to begin the development of an affordable

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<sup>1</sup> See HUD Notice CPD 01-11, Environmental Review and the HOME Investment Partnership Program. This Notice is available online at: <http://www.hud.gov/offices/cpd/environment/library/notices.cfm>. A copy of this Notice is also available in Appendix J.



## **Chapter 9: Additional Environmental Guidance**

housing project before the RE obtains approval from HUD or the state (i.e., Authority to Use Grant Funds (HUD form 7015.16), or equivalent letter) may be reimbursed with HOME funds for such expenditures only when the following conditions are met:

- The contractors, owners and developers started the project without the intention of using Federal assistance (e.g., as evidenced by other anticipated funding, the original project budget, etc.); and
- The PJ informs the state recipient, subrecipient, contractor, owner or developer that all work on the project must cease and/or the PJ itself ceases all work on the project once an application for HOME funds is made. No work or other choice limiting actions may occur after that date. Work may recommence upon receipt of approval from HUD or the state, where required (i.e., HUD form 7015.16 or equivalent letter). The PJ may not obligate funds to projects unless the RE first determines that the result of the environmental review is satisfactory and HUD or the state (in the case of state recipients) has issued a HUD form 7015.15 or equivalent letter.

**Example:** A nonprofit housing developer uses its own funds to acquire land to construct four single family affordable housing units. Under normal circumstances this project could be sustained by using local funds, and the nonprofit had no intention of using HOME funds to assist any part of it. However, unanticipated cost overruns occur related to site preparation work causing the project to go over budget. The developer decides to seek HOME funds from a PJ. To do so, the developer must stop work on the project, and provide information requested by the RE regarding the project site to aid in the production of the environmental review. Work on the project may recommence only after completion of the environmental review process.

### **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. However, the public notification process may be expedited. Specifically, for the combined Notice of FONSI and NOI/RROF, the public comment period and HUD's (or the state'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 (or the state) 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 (or the state's) time period for receiving objections may run simultaneously. Again, 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), but HUD will not release funds until comments the RE may receive are considered and resolved.



## **Chapter 9: Additional Environmental Guidance**

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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 (or the state) to ensure these comments receive full consideration.

For actions that are determined to be exempt ---i.e., imminent threats to public safety, per § 58.34(a)(10)---the RE should consult with their CPD Field Representative to ensure the proposed action is eligible under HOME program regulations and to determine if the situation at hand qualifies as an “imminent threat to public safety”. Exempt actions only require a written record of determination that they meet the conditions for exemption. Neither public notification, nor approval from HUD or state is required.

### **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 Consolidated Plans. Tiered reviews are typically used for activities that are categorically excluded “subject to sec. 58”, or require preparation of an environmental assessment or environmental impact statement.

Consideration of the tiered approach is appropriate when the PJ 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, HOME funds will be used county-wide to purchase substandard housing for rehabilitation and resale to first time homebuyers (see Exhibit 9.1 and 9.2 for sample documentation 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, 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 (Tier 1), and the unspecified site review (the exact physical location of the project is not presently known) (Tier 2). 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



## **Chapter 9: Additional Environmental Guidance**

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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:

### **Tier 1**

- A clear statement of all the related activities (i.e., aggregation) and funding sources (if several sources of HUD assistance will be used);
- Identification of the targeted geographic area;
- Identification and evaluation of the environmental factors and effects that can be decided upon immediately;
- Publishing and disseminating notice for the entire action;
- Submit a Request for Release of Funds and Certification (7015.15 form) for the entire action;
- HUD/State approves the RE's request; and
- Document compliance with "Other Requirements" at § 58.6. (NOTE: If these requirements cannot be concluded at Tier 1, then they must become part of the Tier 2 review once individual properties are identified.)

### **Tier 2**

- 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);

(NOTE: Compliance with the "Other Requirements at § 58.6 must also be addressed if these requirements cannot be resolved at Tier 1.)

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. Be certain to follow the environmental review requirements that are described in Chapter 6 (Categorical Exclusions Subject to § 58.5) and Chapter 7 (Environmental Assessment) as applicable.



## ***Chapter 9: Additional Environmental Guidance***

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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 HUD or the state.

Subsequent site-specific reviews will not require notices or approval from HUD or the state (in the case of state recipients), 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 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 (5) years, unless conditions or circumstances change. To be certain that conditions or circumstances have not changed, it becomes necessary to, at least once annually, assess the tiered ERR to ensure the scope of the target area has not changed, the list of activities evaluated for their environmental impacts has not changed, and the information contained in the tiered ERR is still current and relevant to the environmental findings that were made.

The following exhibits provide examples of tiered reviews and their component parts. Exhibit 9.1 is a HUD-recommended format for rehabilitation of existing residential structures in a targeted geographic area (Tier 1). This exhibit identifies those environmental factors that will be addressed and resolved for the target area. It also references the need to resolve other environmental compliance factors (i.e., Appendix A- Tier 2) once project sites are identified within the target area and before HUD funds are committed or spent. Exhibit 9.2 (Appendix A- Tier 2) must be completed for each project site. It identifies the environmental compliance factors that must be addressed once specific residential units have been identified for rehabilitation work (i.e., historic preservation, airport clear zones, explosive and flammable operations, and toxic/hazardous/radioactive materials, contamination, chemicals or gases).

Exhibit 9.3 is an example of a tiered Environmental Assessment, focusing on a program of work that will be undertaken by the RE in a targeted geographic area (Tier 1). Exhibit 9.4 is the form that must be completed by the RE for each project site within the target area as their locations become known (Tier 2).

## Exhibit 9.1- Tiered Rehabilitation Environmental Review Format (Tier 1)

# Rehabilitation Environmental Review (2004)

This RER tiered review format [per 24CFR §58.15] may only be used for the environmental review of the rehabilitation of existing residential structures [according to §58.35(a)(3)] with or without the acquisition of the existing structure [according to §58.35(a)(5)]. It may not be used for projects involving changes of use or new construction activities. It may be used for the rehabilitation of individual units in a multi-family structure, but not for the rehabilitation/acquisition of an entire multi-family building, where using a Statutory Worksheet is recommended.

**Program/project name and description: Carlos Rios Single Family Acquisition and Rehabilitation Program**

**The City of Carlos Rios intends to use HOME and/or CDBG funds for rehabilitation of single family owner occupied units and single family rental units, as well as for acquisition and/or rehabilitation of single family units for resale to first time homebuyers.**

**Project applications will be accepted from the individual the property owners. On occasion, severe wind storms in the area cause damage to single family residential properties. This review also covers those situations in which property owners apply for HOME and/or CDBG funds to make the necessary repairs and the work being planned is within the thresholds established by §58.35(a)(3)(i).**

**From (month/year): July 1, 2010**

**To (month/year): June 30, 2014**

**Definition of Area of Consideration: The City of Carlos Rios is 13.9 sq. mi. in size within Sandusky County, Arizona (See attached location map with the City boundaries identified).**

(Attach a composite map showing area of consideration and floodplains)

### **Instructions:**

The Factors addressed in this RER form apply to the entire **area of consideration** (see NOTES below). Prepare an RER form **once for each program** that meets the criteria of minor rehabilitation/acquisition at §58.35, and retain it in the Environmental Review Record (**ERR**). A new RER must be completed whenever there are changes in the area of consideration or changes in the environmental conditions which could affect the program or which may bear on the program's impact on the environment. Publish or disseminate a Notice of Intent to Request Release of Funds (NOI/RROF) per §58.70, after completion of this RER. The **NOI/RROF** shall identify the issues to be addressed in the **site-specific reviews (Appendix A)** per §58.15. **Do not commit HUD funds to specific projects before obtaining the Authority to Use Grant Funds** (HUD form 7015.16) for the program or before completing the site-specific **Appendix A**.

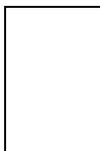
**Site specific issues** (historic preservation, air quality, explosive/flammable operations, toxic substances, and airport clear zones) which apply to individual rehabilitation/acquisition proposals, shall be addressed by completing **Appendix A** when an individual loan or grant application is received. Before **approving any site-specific loan or grant, complete the Appendix A for each structure, document and implement the mitigation of impacts as necessary, and keep all supporting documents in the ERR as evidence of compliance.**

### **Area-wide Factors**

#### **Floodplain Management**

Check box only if no part of the area of consideration (see Notes below) is located in a Special Flood Hazard Area (**SFHA**, i.e. area designated "A" or "V" Zone FEMA) , OR, if not mapped by FEMA, the area of consideration is not subject to a 100-year flood event, OR if the activities include acquisition, minor rehabilitation and/or disposition of 1 to 4 units of residential housing [see 24 CFR § 55.12(b) for definition of "minor"].

## Exhibit 9.1 – Tiered Rehabilitation Environmental Review Format (Tier 1)



There are 640 acres of the City that are located within a FEMA mapped special flood hazard area (Zone A). See attached FIRM Panel nos. 004586-005 and 004586-010, August 17, 1989. The 8-step decision process was completed for the target area (i.e., City of Carlos Rios) and it was determined that there is “no practicable alternative” to funding rehabilitation projects within the special flood hazard area. For any projects involving acquisition and resale, the City will not purchase those properties that are within the special flood hazard area. See the attached 8-step decision process, which discusses this decision in full.

(Source documentation, e.g. FIRM panel number[s] and date, special study, or other relevant source)

If any part of the area of consideration is in a SFHA, complete Part I on page 2.

### Coastal Zone Management

Check box if no part of the area of consideration (see “Notes” below) is within the Coastal Zone according to the state coastal commission or coastal management district, local planning department or other relevant source.



The City of Carlos Rios is 1000 miles inland from the Pacific Ocean, which is the closest coastal area to the City. See attached regional map.

(Source documentation)

If any part of the area of consideration is within the Coastal Zone, complete Part II on Page 2.

#### NOTES:

1. **Area of consideration** is the geographic portion of a City or County from which applications for rehabilitation/acquisition loans or grants are to be accepted under this HUD-funded program.
2. Ordinarily, the following **laws/authorities listed at 24 CFR 58.5** are not invoked by housing rehabilitation projects under the identified citations or references: Wetland Protection, Executive Order 11990, Sections 1(a) and 2(a); Endangered Species Act, 16 USC 1531 et seq. as amended, particularly 16 USC 1536, 50 CFR 402; Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271 et. seq., as amended [particularly Sections 7(b) and (c)]; Farmland Protection Act, 7 CFR 658.3(c); Noise Abatement, 24 CFR 51.101(a)(2); Sole Source Aquifers, Memorandum of Agreement between HUD Region IX and U.S. Environmental Protection Agency Region IX, dated 4/30/90, and Executive Order 12898 Environmental Justice. **Should exceptional circumstances require compliance steps with any of these authorities, such compliance must be documented prior to approving the site-specific loan or grant.**

**Part I FLOODPLAIN MANAGEMENT**

Complete this part if this program will ever involve any of the following activities within Special Flood Hazard Areas: (1) acquisition of multifamily residential structures, (2) rehabilitation of single family units exceeding 50% of the market value of the structure before rehabilitation [“substantial rehabilitation, per 24 CFR § 55.2(8)], or (3) rehabilitation of multifamily residential structures.

1. Before approving any loans or grants for rehabilitation activities described above and/or acquisition of multifamily buildings occurring within a SFHA, comply with Executive Order 11988 by completing the 8-step-decision-making process for the entire area of consideration, according to 24 CFR §55.20. **ATTACH A COPY OF THIS 8-STEP PROCESS (including copies of all published notices).**

2. Did completion of the 8-step process result in a determination that there is no practicable alternative to carrying out rehabilitation and/or acquisition of residential units within the Special Flood Hazard Area?

( **X** ) Yes ( ) No

3. Is the community participating in the National Flood Insurance Program?

( **X** ) Yes ( ) No

4. If either answer to questions #2 and #3 (or to both) is no, loans and grants may not be approved within the Special Flood Hazard Area.

5. If both answers to questions #2 and #3 are yes, compliance review of this factor is complete.

NOTE: As an alternative to doing the 8-step process, the responsible entity may choose to revise the boundaries of the area of consideration to exclude the Special Flood Hazard Areas (**SFHA**'s). However, properties within the excluded portions would then be ineligible for HUD-assisted acquisition/rehabilitation loans or grants under this program.

WARNING: The Flood Disaster Protection Act (listed at §58.6) additionally mandates the purchase of **flood insurance** for buildings located in SFHA's as a condition of approval for federal financial assistance. Flood insurance protection is mandatory for acquisition, construction, reconstruction, repair and improvement activities, but **not for routine maintenance** activities. Recipients with projects located in SFHA's are responsible for ensuring that flood insurance is maintained for the statutorily-prescribed period and dollar amount. In the case of grants, flood insurance must be maintained for the life of the building. In the case of loans, flood insurance must be maintained for the term of the loan. The necessary documentation for compliance is the Policy Declaration form. The amount of flood insurance coverage must be at least equal to the total project cost (less the estimated land cost) or to the maximum limit of coverage made available by the Act.

# Exhibit 9.1 – Tiered Rehabilitation Environmental Review Format (Tier 1)

## Part II COASTAL ZONE MANAGEMENT

Complete this part only if you have determined that the area of consideration (or portions of it) is within the Coastal Zone.

1. Have all acquisition/rehabilitation activities under this program been found to be consistent with the applicable Coastal Zone Management Plan?

( ) Yes ( ) No

Source of this finding is:

- ( ) local Planning Department
- ( ) State Coastal Commission
- ( ) Coastal Management District or Board

a. If question #1 was answered "Yes", STOP HERE. Compliance with the Coastal Zone Management Act is documented.

b. If question #1 was answered "No", the applicant will be required to get a coastal zone permit or determination of consistency from the state commissions or coastal management district with jurisdiction.

**DO NOT APPROVE ANY HUD-FUNDED LOAN OR GRANT WITHIN THE COASTAL ZONE BEFORE A PERMIT OR DETERMINATION OF CONSISTENCY IS ISSUED.**

Sophia La Crosse, Environmental Planner *Sophia LaCrosse* February 15, 2010

Preparer Name and Title

Signature

Date

Raymond Chavez, City Administrator, **Raymond Chavez**, February 18, 2010

Responsible Entity Official-Name

Signature

Date

## APPENDIX A (2004) (All previous versions are obsolete)

This Appendix A must be completed for each residential structure proposed for minor rehabilitation [according to 24 CFR § 58.35(a)(3)(i) and (ii)] and/or acquisition before HUD funds are committed to specific projects. It may be used only in conjunction with a currently valid **RER** (Rehabilitation Environmental Review) form. Completion of the Appendix A will not require the submission of an additional RROF/EC (Request for Release of Funds/ Environmental Certification) if it was submitted at the conclusion of the RER, unless there are unanticipated impacts/circumstances which have previously not been adequately addressed.

**Building Address: 49887 Maine Street, Carlos Rios, AZ 99001**

### **Part III HISTORIC PRESERVATION**

1. Does the project involve only those activities permitted without further consultation under a currently valid **programmatic agreement** among the responsible entity, the State Historic Preservation Officer (**SHPO**) or Tribal Historic Preservation Officer (**THPO**) and/or the Advisory Council on Historic Preservation?

( ) Yes ( **X** ) No

If yes, note date of programmatic agreement \_\_\_\_\_ and STOP here; the Section 106 Historic Preservation review is complete. If no, PROCEED.

2. Does the project involve only acquisition and/or minor, interior rehabilitation of a 1-4 unit residential structure that is **less than 50 years old**, with **no visible changes to the exterior** and **no potential to cause effects** on historic properties per §800.3(a)(1)? ( ) Yes ( **X** ) No

If Yes, record date of building construction \_\_\_\_\_, age: \_\_\_\_\_ years, and STOP here. The Section 106 Historic Preservation review part is complete. If No, PROCEED.

3. If the proposed rehabilitation involves exterior physical work on any structure, **determine** -in consultation with the appropriate **SHPO/THPO**- whether the building is **listed or eligible** for inclusion in the National Register of Historic Places (NR).

Is the building listed in or eligible for listing in the NR? ( ) Yes ( **X** ) No

If No, attach SHPO/THPO concurrence or other evidence of conclusion and STOP here. This part is complete pursuant to 36 CFR §800.4(d). If Yes, Proceed.

4. Determine whether **historic properties are affected** per §800.4(d). Has SHPO/THPO concurred with your fully documented determination of "no historic properties affected", or failed to object within 30 days of receipt of such determination?

( ) Yes. Enclose documentation and stop here. Section 106 review is complete.

( ) No. Proceed.

5. **Determine whether the project will have adverse effect** on historic properties according to § 800.5, in consultation with the SHPO/THPO and consulting parties [see §800.2( c)].

Will this project have an adverse effect on historic properties? ( ) Yes ( ) No

If "no", attach SHPO/THPO concurrence and STOP here. This part is complete per 36 CFR §800.5(d)(1).

If "yes", PROCEED.

6. Resolve Adverse Effects per §800.6 -in consultation with the SHPO/THPO, the Advisory Council on Historic Preservation (ACHP) if participating, and any consulting parties. The loan or grant may not be approved until adverse effects are resolved according to §800.6 or ACHP comment is considered by the Responsible Entity.

**NOTES:** 1. The determination/consultation of eligibility for the NR, may be sent to SHPO/THPO concurrently with the determination/consultation of effect or no effect and with the determination/consultation of adverse/no adverse effects. 2. The jurisdiction's Chief Executive Officer cannot delegate the decision to approve a project in opposition to Advisory Council comment. 3. Keep copies of this form, all SHPO/THPO and ACHP correspondence in the ERR as evidence of compliance with Section 106 of the National Historic Preservation Act.

## **Part IV Airport Clear Zones**

1. Does this project involve the purchase or sale of existing property? (  )Yes (  )No

If no, STOP here. This part is complete, pursuant to 24 CFR Subpart D §51.302. If yes, PROCEED.

2. Is the subject property located in the Clear Zone (CZ), Approach Protection Zone, or in the Runway Clear Zone (RCZ) of a commercial civil airport or military airfield? (  )Yes (  )No

Source Documentation: The project is not located within 2500 feet of the San Carlos Regional Airport. See the attached map of the City of Carlos Rios and the location of the project in relationship to the subject property.

If no, STOP here; this part is complete. If yes, PROCEED.

Provide a **disclosure statement** advising the buyer that the property is in a RCZ or CZ, what the implications of such a location are and that there is a possibility that the property may, at a later date, be acquired by the airport operator. Obtain the buyer's signature acknowledging receipt of this information and attach it to this Appendix. (This disclosure requirement does not apply to Accident Potential Zones).

## **Part V Explosive & Flammable Operations**

1. Will this proposed acquisition/rehabilitation project result in increased residential density or cause a vacant building to become physically or legally habitable?

(  ) Yes (  ) No

If the answer to both parts of the question is No, STOP HERE. This part is complete per 24 CFR §51.201.

If the answer is Yes, PROCEED.

2. Is this proposed project within 1 mile of any visible, explosive-or-flammable-substance container (a stationary, above-ground tank with a capacity of more than 100 gallons)?

( ) Yes ( ) No (See 24 CFR 51C, Appendices I and II).

Field inspection by: \_\_\_\_\_ Date: \_\_\_\_\_

If No, STOP here. This part is complete. If yes, PROCEED.

3. Note Tank volume: \_\_\_\_\_ gallons, or diked area around tank: \_\_\_\_\_ square feet.

Record distance from the project to the flammable/explosives container: \_\_\_\_\_ feet.

4. According to HUD Guidebook "Siting of HUD-Assisted Projects Near Hazardous Facilities"

(HUD-1060-CPD), the **Acceptable Separation Distance (ASD)** for both, blast overpressure **and** thermal radiation is: \_\_\_\_\_ feet. (The applicable ASD [see Appendix F for Thermal Radiation or Appendix G for Blast Overpressure] is the greater of the two distances).

The project is located at an Acceptable Separation Distance according to Appendices F and G.

( ) Yes ( ) No If yes, STOP here; this part is complete.

If no, ( ) DENY PROJECT APPROVAL, or

( ) APPROVE only with the following mitigation measures designed in compliance with 24 CFR §51.205:

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## **Part VI Toxic/Hazardous/Radioactive Materials, Contamination, Chemicals or Gases (24 CFR 58.5(i)(2))**

1. Are there visible dumps, landfills, industrial sites or other locations containing or releasing toxic/hazardous/ radioactive/ materials, chemicals or hazardous wastes on or near the subject site?

( ) Yes ( **X** ) No Proceed.

2. Does this project site contain an underground storage tank (which is not a residential fuel tank)?

( ) Yes ( **X** ) No Proceed.

Field Inspection by: Reid Thayler, Planner II, City Planning Department

Date: May 18, 2010



## **Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1)**

# **Environmental Assessment**

### **for HUD-funded Proposals**

Recommended format per 24 CFR 58.36, revised February 2004

[Previously recommended EA formats are obsolete].

Project Identification: So. City Affordable Hous. Project, Arrowhead Census Tract, SouthCity, TX

Preparer: Amanda Baker, Planner, South City Planning Dept.

Responsible Entity: So. City Community Planning and Development Department, South City, TX

Month/Year: October 2010

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

### Environmental Assessment

**Responsible Entity:** Community Planning and Development Department, 1223 Main Street,  
South City, TX

\_\_\_\_\_ [24 CFR 58.2(a)(7)]

**Certifying Officer:** Elizabeth M. Rickert, City Administrator

\_\_\_\_\_ [24 CFR 58.2(a)(2)]

**Project Name:** South City Affordable Housing Project

**Project Location:** Arrowhead Census Tract

**Estimated total project cost:** \$2,200,000

**Grant Recipient:** South City Community Planning and Development Department

\_\_\_\_\_ [24 CFR 58.2(a)(5)]

**Recipient Address:** 1223 Main Street, South City, TX

**Project Representative:** Aaron McCall, Housing Specialist, Community Planning & Devel.  
Dept. \_\_\_\_\_

**Telephone Number:** (301) 556-1432

**Conditions for Approval:** (List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts and other relevant documents as requirements). [24 CFR 58.40(d), 40 CFR 1505.2(c)]

1. Document compliance with the historic preservation MOA for each project site.
2. Rehabilitation of buildings with 5 or more units requires inspection for asbestos. Document the results and whether the Air Quality Management District had to be notified.
3. For construction of new units or replacement of units, document whether or not noise attenuation is required to mitigate high noise levels. If noise attenuation is required, document that attenuation has been incorporated into the construction work.
4. Document whether new housing units or demolition/replacement units are an acceptable separation distance from the Petrochemical Corp. tank. Otherwise, the City certifying officer must accept proposed mitigation measures prior to approving the project.

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

5. For new units and demolition/replacement units, document that engineering specification for fill dirt and foundations are incorporated into the construction work.

**FINDING:** [58.40(g)]

**Finding of No Significant Impact**

(The project will not result in a significant impact on the quality of the human environment.)

**Finding of Significant Impact**

(The project may significantly affect the quality of the human environment.)

**Preparer Signature:**

*Amanda C. Baker*

Date: October 25, 2010

**Name/Title/Agency:** Amanda Baker, Planner, City Planning Dept.

**RE Approving Official Signature:**

**Elizabeth M. Rickert**

Date: October 27, 2010

**Name/Title/Agency:** Elizabeth Rickert, City Administrator

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

### **Statement of Purpose and Need for the Proposal:** [40 CFR 1508.9(b)]

Affordable housing in South City is only available in three Census Tracts within the city limits--- Arrowhead, Rio Dell and Franklin. In the 2009 housing survey completed by the City, the demand for affordable housing has increased 15 percent, whereas availability has dropped 5% (See attached report summary.) South City is a growing community for all levels of income, but housing opportunities are least for low income persons. One of the objectives identified in its Comprehensive Housing Plan is to increase affordable housing opportunities for low income persons by 25 percent over the next 5 years.

**Description of the Proposal:** Include all contemplated actions which logically are either geographically or functionally a composite part of the project, regardless of the source of funding. [24 CFR 58.32, 40 CFR 1508.25]

The Arrowhead Census Tract is a low income residential area composed of single family owner-occupied housing, single family rental units, and multifamily rental housing (See attached location map). The City of South City intends to use CDBG and HOME funds in this Census Tract for rehabilitation of existing housing stock (owner-occupied and rental units), and acquisition of vacant land to construct single family housing, and acquisition/demolition of dilapidated or partial burned units for replacement with new single family units. Housing construction will be for first time homebuyers in the City's affordable housing program.

In addition to housing, several streets serving this area (Main Street, 1st Street, 2nd Street, Cottonwood Avenue, and Barton St) will be repaved, and new street lighting, curbs and sidewalks will be installed. Also, new sewer and water lines will be installed over the next 10 years in the area bounded by Brown Street, Main Street, Cottonwood Avenue, and Elm Street to bring these systems up to current City codes. (See attached street map).

The two community parks serve this area (Tami Park is 3 acres, and Barton Park is 5 acres) will be landscaped and automatic sprinkler systems will be installed. (See attached map)

**Existing Conditions and Trends:** Describe the existing conditions of the project area and its surroundings, and trends likely to continue in the absence of the project. [24 CFR 58.40(a)]

This is the largest of the three Census Tracts---640 acres---and offers the greatest potential for improvement. Fifty years ago, this was a thriving neighborhood because of its close proximity to Downtown City services, parks and cultural events. However, the trend changed from urban homeownership to the outlying suburban areas because larger homes became affordable to moderate income persons with fewer undesirable environmental issues (e.g., traffic noise, increasing crime, an increasing number of homes with visible signs of postponed maintenance).

The size of single family homes in the Arrowhead Census Tract range from 950 to 1300 square feet. About 50% of the single family units are owner-occupied. The remainder of single family units is rental units. Two hundred (200) of these rental units are dilapidated, or partially burned. The absentee landowners are resisting making the necessary repairs to bring their units up to current City building codes. There are also vacant parcels (about 100) that can be utilized for single family housing construction.

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

The multifamily rental units are also provide affordable housing. During the past 15 years, the City has been working with the owners to bring their buildings up to code. The City's Multifamily Housing Rehabilitation Program has used HOME funds to achieve these changes. The City's desire is to incorporate this program into the South City Affordable Housing Program in order to consolidate all affordable housing efforts into one plan for the Arrowhead Census Tract.

### Statutory Checklist

[24CFR §58.5]

Record the determinations made regarding each listed statute, executive order or regulation. Provide appropriate source documentation. [Note reviews or consultations completed as well as any applicable permits or approvals obtained or required. Note dates of contact or page references]. Provide compliance or consistency documentation. Attach additional material as appropriate. Note conditions, attenuation or mitigation measures required.

#### Factors

#### Determination and Compliance Documentation

<p><b>Historic Preservation</b> [36 CFR 800]</p>	<p>A Historic Properties Inventory was completed in 2006 by the City Historic Resources Commission (attached). Twelve houses within the Arrowhead Census Tract were built between 1886 and 1902 and determined eligible for listing on the National Register of Historic Places. A Memorandum of Agreement was executed by the City and the Texas State Historic Preservation Officer, dated June 18, 2010 (attached) concerning rehabilitation of these buildings and construction of housing units adjacent to these same buildings. As the individual project sites are selected, the City will review the MOA and document its determination of whether or not the stipulations of the agreement are invoked and require implementation. This determination will be incorporated into this environmental assessment record.</p>
<p><b>Floodplain Management</b> [24 CFR 55, Executive Order 11988]</p>	<p>The are no floodplains within the Arrowhead Census Tract. FIRM panel no. 004586-005 and 004586-010, 8/17/86, Zone X.</p>
<p><b>Wetlands Protection</b> [Executive Order 11990]</p>	<p>The project area within a fully developed urban area. (See attached street map).</p>
<p><b>Coastal Zone Management Act</b> [Sections 307(c),(d)]</p>	<p>The City of South City is 200 miles inland from the Gulf of Mexico. (See attached location map).</p>
<p><b>Sole Source Aquifers</b> [40 CFR 149]</p>	<p>The City of South City does not have a sole source aquifer designated by the U.S. EPA. Emmet Blackbird, Engineer, Public Works Dept., (301) 556-1820, 6/17/10.</p>

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

<p><b>Endangered Species Act</b> [50 CFR 402]</p>	<p>The project area is within a fully developed urban area. There is no native vegetation. (Field Observation, Amanda Baker, Planner, City Planning Dept., 6/17/10 (Field notes attached).</p>
<p><b>Wild and Scenic Rivers Act</b> [Sections 7 (b), (c)]</p>	<p>There are no designated Wild and Scenic Rivers within the City of South City, according to the USDI National Park Service list (See attached list, updated 8/23/04)</p>
<p><b>Air Quality</b> [Clean Air Act, Sections 176 (c) and (d), and 40 CFR 6, 51, 93]</p>	<p>The project area is in nonattainment of the National Ambient Air Quality Standards for carbon monoxide and sulfur dioxide. However, the proposed project activities have been determined to be in conformance with the State Implementation Plan. (Letter from the Basin Air Quality Management District, 5/18/10, attached). Seventy-five percent (75%) of the housing stock was constructed prior to 1980. Therefore, in accordance with U.S. EPA regulation 40 CFR 61, Subpart M, each building with 5 or more units will be inspected for asbestos containing material (ACM). Inspection results will be incorporated into this environmental assessment (EA) record. The Air Quality Management District will be advised in writing whether friable ACM's will be removed as a result of rehabilitation, or whether ACM's will become friable as a result of rehabilitation or demolitions. This will also be incorporated into this EA record.</p>
<p><b>Farmland Protection Policy Act</b> [7 CFR 658]</p>	<p>The area is zoned R-1 and R-2 (mixed residential). Land Use Management Plan, City of South City, TX, approved September 5, 2008, Page 29 and Figure 20 (Attached).</p>
<p><b>Environmental Justice</b> [Executive Order 12898]</p>	<p>Arrowhead Census Tract is a mixed residential area. Therefore, the proposed activities are compatible with the existing land use. Land use adjacent to the Arrowhead Census Tract includes offices and commercial/retail uses. The findings of the Phase I Environmental Site Assessment were that there are no environmental hazards affecting the project area. (See attached Phase I, dated 7/28/10). The area is not exposed to <i>Unacceptable</i> noise levels (&gt;75 DNL) from roadways, railroads or airfields. Nor, is the area within a special flood hazard area. There is one stationary aboveground storage tank affecting approximately 10 parcels in the census tract. However, this is an established neighborhood with mixed moderate income households, as well as low income households. Should any of the affected parcels be selected for housing construction, a determination will be made as to whether</p>

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

	mitigation is possible and use of the site appropriate.
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### HUD Environmental Standards Determination and Compliance Documentation

<p><b>Noise Abatement and Control</b> [24 CFR 51 B]</p>	<p>There are no railroads within 3,000 feet, nor civilian or military airfields within 15 miles of the project area. Two of the roads serving the project area are arterial roadways---Main Street and Barton Street. A noise study was prepared by Acoustics Engineers, Inc., to determine which parcels within the project area are affected by roadway noise that exceeds 65 DNL. It was determined that 30 parcels within the tract are exposed to <i>Normally Unacceptable</i> levels of noise (68-71 DNL). Construction of new units or replacement of units will require a determination by the City as to whether or not noise attenuation is required to mitigate high noise levels. This determination will be incorporated into this EA record. (<i>Noise Assessment for the South City Affordable Housing Program: Arrowhead Census Tract, 3/14/10, copy is attached</i>).</p>
<p><b>Toxic/Hazardous/Radio-active Materials, Contamination, Chemicals or Gases</b> [24 CFR 58.5(i)(2)]</p>	<p>The are no environmental hazards affecting the project area. (See attached Phase I, dated 7/28/10)</p>
<p><b>Siting of HUD-Assisted Projects near Hazardous Operations</b> [24 CFR 51 C]</p>	<p>There is one aboveground, petroleum storage tank within one mile of the project area. It is owned by Petrochemicals Corp. The tank is undiked and has a storage capacity of 50,000 gallons of petroleum. (Letter from Alan Williams, Chief, South City Fire Department, 6/1/10) For rehabilitation projects, Part 51C applies only if, as a result of rehabilitation, a vacant building becomes habitable, there is an increase in unit density, and the use of the building changes to habitation. None of these criteria apply to the proposed rehabilitation activities related to this project . However, for new construction and demolition/reconstruction of housing units in the project area, a determination will be made by the City as to whether or not the units are an acceptable separation distance (ASD) from this tank. For people the ASD is 1,430 feet or greater, and for buildings the ASD is 310 feet or greater. This is according to HUD's guidebook on "Siting of HUD-Assisted Projects Near Hazardous Facilities" (HUD-1060-CPD). If the units are closer to the tank than these established distances, the certifying officer for South City will make a determination as to whether there is appropriate mitigation in place before approving the project (per 24 CFR 51.206). These determination will be made part of this EA record.</p>

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

<b>Airport Clear Zones and Accident Potential Zones</b> [24 CFR 51 D]	There are no FAA-designated civil airports within 2,500 feet of the project, nor military airfields within 2.8 miles (15,000 feet) of the project area. (See attached City map which delineates the boundaries of the subject census tract).
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### Environmental Assessment Checklist

[Environmental Review Guide HUD CPD 782, 24 CFR 58.40; Ref. 40 CFR 1508.8 & 1508.27]

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a determination of impact. **Impact Codes:** (1) - No impact anticipated; (2) - Potentially beneficial; (3) - Potentially adverse; (4) - Requires mitigation;

(5) - Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional material as appropriate. Note conditions or mitigation measures required.

Land Development	Code	Source or Documentation
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Conformance with Comprehensive Plans and Zoning	1	The housing rehabilitation and construction projects in the Arrowhead Census Tract will take place within areas zoned R-1 and R-2. Amanda Baker, Planner, City Planning Dept.
Compatibility and Urban Impact	1	The housing projects are compatible the surrounding land uses. The project area is composed of mixed residential uses (R-1 and R-2---single family (1-4 units) and multifamily units. Residential buildings in the area are one-, two-, and three-stories in height. New housing construction will be one- and two-stories in height. Land use adjacent to the Arrowhead Census Tract includes offices and commercial/retail uses. The findings of the Phase I Environmental Site Assessment were that there are no environmental hazards affecting the project area. (See attached Phase I, dated 7/28/04) Field Observation- Amanda Baker, Planner, City Planning Dept., 5/17/10. (See attached field notes.)
Slope	1	The project area is level, and so slopes will not be created by cut and fill. Soils and Geological Report, Geo-Design Corp., 6/1/10 (See attached report.)
Erosion	1	The project area does not have any indications of erosion problems. Off-site drainage will be directed to existing storm water systems. Soils and Geological Report, Geo-Design Corp., 6/1/10 (See attached report.)
Soil Suitability	3 & 4	The project area has expansive clay soils, therefore the specifications recommended by the engineering report for fill dirt and foundation construction will be followed. Soils and Geological Report, Geo-Design Corp., 6/1/10 (See attached report.)

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

Land Development	Code	Source or Documentation
Hazards and Nuisances including Site Safety	1	The project area is not adversely affected by on-site or off-site hazards or nuisances. There is evidence of dumping of construction materials on vacant lots, but this is minimal. There is adequate off-street parking, as well as street lighting at major intersections and along most of the City streets. Field Observation- Aaron McCall, Housing Specialist, Community Planning and Development Dept., , 5/17/10 (See attached field notes.)
Energy Consumption	1	The units that will be rehabilitated will be brought up to City Energy Conservation Code (Code 15542). This will enhance energy conservation in the project area. The new units will be constructed according to the City Energy Code requirements.  The area is already served by electrical and gas utilities operated by the City. Public Transportation is also available in the project area, as well as throughout the City. Field Observation- Aaron McCall, Housing Specialist, Community Planning and Development Dept. , 5/17/10 (See attached field notes.).
<b>Noise</b> - Contribution to Community Noise Levels	1	The project activities (i.e., housing rehabilitation and housing construction) in an established residential area will not generate substantial noise. Construction activities are restricted by City code to the hours of 7AM to 6PM. Increased noise from construction activities will be temporary and will only occur as specific sites are identified for work. Eric Skwersky , Planner, City Planning Dept (301) 556-1495, 6/15/10.
<b>Air Quality</b> Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels	1	There should be minimal dust from project activities. The adjacent properties will be affected temporarily until work is completed. City code requires contractors to implement dust abatement at work sites (City Code 18333). Amanda Baker, Planner, City Planning Dept.
<b>Environmental Design</b> Visual Quality - Coherence, Diversity, Compatible Use and Scale	1	The mass and scale of the proposed housing construction will be in keeping with the units in the Arrowhead Census Tract. Construction materials and colors will be similar to those found throughout the project area. Aaron McCall, Housing Specialist, Community Planning and Development, Dept., (301) 556-1432, 5/13/10

Socioeconomic	Code	Source or Documentation
Demographic Character Changes	1	The project would not change the demographics of the general area. More affordable housing would be created to serve City residents. City General Plan, Arrowhead Census Tract, City of South City, TX, approved September 25, 2008, pages 40-45..
Displacement	1	No one will be displaced as a result of building new units on vacant parcels or demolishing burned units. However, a relocation plan has been developed in the event that some residents may be required to temporarily relocate to alternative housing units while their home is being rehabilitated. (See attached Relocation Plan for the South City Affordable Housing Program, 2/13/10).

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

Employment and Income Patterns	1	Employment and income patterns will not expected to change as a result of this project. The project could be beneficial to businesses in the vicinity of the Arrowhead Census Tract because there will be additional households requiring their services. Amanda Baker, Planner, City Planning Dept.
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### Community Facilities and Services

#### Code

#### Source or Documentation

Community Facilities and Services	Code	Source or Documentation
Educational Facilities	1	There are several schools that serve the project area---Fruitvale Elementary School, Summit and Plains Middle Schools, and Taft and Richart High Schools. All the schools are part of the Arrowhead School District. The additional housing units will not impact the capacity of any of these schools. Christine Chow, District Administrator, (301) 556-4444 (See attached letter dated July 15, 2010).
Commercial Facilities	1	The project area is served by a large variety of commercial and retail services within one mile. Field Observation- Aaron McCall, Housing Specialist, Community Planning and Development Dept. , 5/17/10 (See attached field notes.).
Health Care	1	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. Letter from Inga Schmidt, Health Care Specialis, City Social Services Dept., August 12, 2010 (Attached).
Social Services	1	The project area is served by many social service providers---as job placement, public welfare, family counseling---within a 3 mile radius. Public transportation is available throughout the project area and the City. The middle schools and high schools all have after school youth activities. Letter from Inga Schmidt, Health Care Specialis, City Social Services Dept., August 12, 2010 (Attached)..
Solid Waste	1	The project area is served by the Municipal Disposal Company that provides curbside service. The additional housing units that will be constructed in Arrowhead Census Tract will not have minimal impact on the capacity of the existing landfill. Don Rogers, Sanitary Engineer, Publi Works Dept., (301) 556-7070, 6/5/10 (See attached telephone record).
Waste Water	1	The project area is served by City sewer systems. The capacity of the system will not be impacted by construction of additional units in the area. Sam Davenport, Engineer, Public Works Dept., (301) 556-7071, 6/5/10 (See attached telephone record.)
Storm Water	1	The project area is served by a storm water system that is managed and maintained by the City. Sam Davenport, Engineer, Public Works Dept., (301) 556-7071, 6/5/10 (See attached telephone record.)

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

Water Supply	1	The drinking water for the project area is managed and maintained by the City. The additional housing units in this area will not impact the current water supply. Sam Davenport, Engineer, Public Works Dept., (301) 556-7071, 6/5/10 (See attached telephone record.)
Public Safety - Police	1	There are three substations serving this area---Barton Street, Main Street, and Elm Street. The response time is 10 minutes. The additional housing units will not impact the ability of the City Police Department to respond, or cause additional burden on existing staff. Remy Gonzales, Chief, South City Police Department, (301) 556-9922, 4/15/10. (See attached telephone record.)
- Fire	1	There are four fire stations serving the project area---Main St., Cottonwood, 2nd St., Brown St. The response time is 10 minutes. The additional housing units will not impact the ability of the City Fire Department to respond, or cause additional burden on existing staff. Alan Williams, Chief, South City Fire Department, (301) 556-4422, 4/15/10. (See attached telephone record)
- Emergency Medical	1	The South City Regional Hospital is within 4 miles of the project area. The additional housing units will not impact the hospital services. It is expected that these units will be purchased by current residents. Letter from Ken Attwood, Administrator, South City Regional Hospital, 8/20/10 (Attached).
Open Space and Recreation - Open Space	1	There are 2 community parks in the project area (Tami Park is 3 acres, and Barton Park is 5 acres) . These will be landscaped to improve their aesthetics and encourage more use by residents. Amada Baker, Planner, City Planning Dept.
- Recreation	1	Schools in the project area provide after school events and sports programs. The schools also have baseball and outdoor basketball courts that are available for community use. Amanda Baker, Planner, City Planning Dept.
- Cultural Facilities	1	There is a public library in the project area that occasionally hosts art exhibits. The City has several community theatre for symphonies and plays. The City fairgrounds holds numerous special events throughout the year. All these facilities are accessible by public transportation. Amada Baker, Planner, City Planning Dept.
Transportation	1	All areas of Arrowhead Census Tract have access roads. Public Transportation is also available in the project area, as well as throughout the City. Anthony Reynolds, Transportation Planner, City Planning Dept., (301) 556-1919, 4/22/10 (Telephone record is attached)

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

### Natural Features

### Source or Documentation

Water Resources	1	There are no rivers, creeks, or open bodies of water in the project area. Field Observation- Amanda Baker, Planner, City Planning Dept., 5/17/10 (See attached field notes.)
Surface Water	1	There is no surface water present in the project area. Emmet Blackbird, Engineer, Public Works Dept., (301) 556-1820, 1/17/10.
Unique Natural Features and Agricultural Lands	1	There is no unique or natural features present in the project area. There area has been developed for more than 50 years. Letter from Louise Brannon, Director, City Parks and Recreation Dept, 2/5/10 (Attached)
Vegetation and Wildlife	1	The project area is a fully developed urban area. There isn't any native vegetation or wildlife that inhabits this area. Letter from Louise Brannon, Director, City Parks and Recreation Dept, 2/5/10 (Attached)

### Other Factors

### Source or Documentation

Flood Disaster Protection Act [Flood Insurance] [§58.6(a)]	1	The are no floodplains within the Arrowhead Census Tract. FIRM panel no. 004586-005 and 004586-010, 8/17/86, Zone X.
Coastal Barrier Resources Act/ Coastal Barrier Improvement Act [§58.6(c)]	1	The City of South City is 200 miles inland from the Gulf of Mexico. (See attached location map).
Airport Runway Clear Zone or Clear Zone Disclosure [§58.6(d)]	1	There are no FAA-designated civil airports within 3,000 feet of the project, nor military airfields within 2-1/2 miles of the project area. (See attached City map).
Other Factors		

## SUMMARY OF FINDINGS AND CONCLUSIONS

The proposed housing rehabilitation and housing construction activities will not adversely impact the Arrowhead Census Tract. The proposed activities are compatible with the existing use of the area, and constructing units on vacant parcels will have minimal affect on the housing density in the area. Neither will there be any impact on existing resources, or services to the area.

## ALTERNATIVES TO THE PROPOSED ACTION

**Alternatives and Project Modifications Considered** [24 CFR 58.40(e), Ref. 40 CFR 1508.9] (Identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.)

## Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)

Consideration had been given to acquiring land to develop affordable housing units. However, the cost of land in areas outside Arrowhead Census Tract limited the number of units that could be built for low income persons. This included the Bernice Census Tract and Overland Census Tract. Other factors of consideration were the fact that the Bernice Census Tract is located within a floodplain, which requires homebuyers have flood insurance coverage, and the distance of these tow areas from support services the low income households were expected to need.

### **No Action Alternative** [24 CFR 58.40(e)]

(Discuss the benefits and adverse impacts to the human environment of not implementing the preferred alternative).

The no action alternative was considered, however, it would not meet the demand by low income persons for affordable housing in the City. The demand for affordable housing has increased 15 percent, whereas availability has dropped 5%, according to the City's recent housing survey. The concern is that low income households would then be required to rely more and more upon the City's social service programs, and would not be able to meet their household needs on their own. In addition, their only choices may be substandard housing.

### **MITIGATION MEASURES RECOMMENDED** [24 CFR 58.40(d), 40 CFR 1508.20]

(Recommend feasible ways in which the proposal or its external factors should be modified in order to minimize adverse environmental impacts and restore or enhance environmental quality.)

1. For each project site, the City will review the historic preservation MOA and document its determination of whether or not the stipulations of the agreement are invoked and require implementation. This determination will be incorporated into this environmental assessment record.
2. Buildings with 5 or more units that will be rehabilitated must be inspected for asbestos containing material (ACM). Inspection results will be incorporated into this environmental assessment (EA) record. The Air Quality Management District will be advised in writing whether friable ACM's will be removed as a result of rehabilitation, or whether ACM's will become friable as a result of rehabilitation or demolitions. This will also be incorporated into this EA record.
3. Construction of new units or replacement of units will require a determination by the City as to whether or not noise attenuation is required to mitigate high noise levels. Review the noise study for the affected locations. This determination will be incorporated into this EA record.
4. For new construction and demolition/reconstruction of housing units in the project area, document whether or not the units are an acceptable separation distance (ASD) from the Petrochemicals Corp. tank. If the units are closer to the tank than the established distances, the certifying officer for South City must determine whether there is appropriate mitigation in place before approving the project (per 24 CFR 51.206). These determination will be made part of this EA record.
5. For new units and demolition/replacement units, document that engineering specification for fill dirt and foundations are incorporated into the construction work.

## **Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)**

### **ADDITIONAL STUDIES PERFORMED**

(Attach studies or summaries)

*Arrowhead Census Tract, Phase I Environmental Site Assessment*, Techtronics, Inc., Houston, TX, (540) 455-0040, 7/28/10

*Noise Assessment for the South City Affordable Housing Program: Arrowhead Census Tract*, Acoustics Engineers, Inc., Ft. Worth, TX, (555) 998-1212, 3/14/10.

*Relocation Plan for the South City Affordable Housing Program*, Community Planning and Development Department, 2/13/10.

Soils and Geological Report, Geo-Design Corp., Ft. Worth, TX, (505) 777-0202, 4/1/10

### **LIST OF SOURCES, AGENCIES AND PERSONS CONSULTED** [40 CFR 1508.9(b)]

"Summary Report for the South City Affordable Housing Survey", Community Planning and Development Department, South City, Texas, August 2009

City General Plan, Arrowhead Census Tract, City of South City, TX, approved September 25, 2008

Historic Properties Inventory of the Arrowhead Census Tract, South City Historic Resources Commission, South City, TX, April 12, 2006.

Land Use Management Plan, City of South City, TX, approved September 5, 2008.

Ken Attwood, Administrator, South City Regional Hospital, 8/20/10

Myron Lee, State Historic Preservation Officer, Houston, TX, (909) 345-1234, Memorandum of Agreement executed June 18, 2004.

Emmet Blackbird, Engineer, Public Works Dept., (301) 556-1820, January 17, 2010.

Louise Brannon, Director, City Parks and Recreation Dept, 2/5/10

Christine Chow, District Administrator, Arrowhead School District, South City, TX (301) 556-4444, July 15, 2010

Sam Davenport, Engineer, Public Works Dept., (301) 556-7071, 6/5/10

Micheal Fortuna, Planner, Basin Air Quality Management District, Dallas, TX, (505) 777-0000, 5/18/10

Remy Gonzales, Chief, South City Police Department, (301) 556-9922, 4/15/10.

Aaron McCall, Housing Specialist, Community Planning and Development, Dept., (301) 556-1432, 5/13/10

Anthony Reynolds, Transportation Planner, City Planning Dept., (301) 556-1919, 4/22/10

## **Exhibit 9.3 – SAMPLE Environmental Assessment (Tier 1) (cont.)**

Don Rogers, Sanitary Engineer, Public Works Dept., (301) 556-7070, 6/5/10

Inga Schmidt, Health Care Specialist, City Social Services Dept., August 12, 2010

Eric Skwersky, Planner, City Planning Dep (301) 556-1495, 6/15/10

Alan Williams, Chief, South City Fire Department, (301) 556-4422, 4/15/10

## Exhibit 9.4 - SAMPLE Site Specific Review for Tiered Environmental Assessment (Tier 2)

### Site Specific Review: SOUTH CITY AFFORDABLE HOUSING PROJECT

#### *Arrowhead Census Tract, South City, TX*

**Building Address:** 14566 Merriweather Drive, South City, TX

**Description of Activities:** The project building is a two-story single family home. Activities include roof replacement, painting interior and exterior surfaces, replacement of windows and doors.

#### COMPLIANCE DOCUMENTATION

**1. Compliance with the Historic Preservation MOA.**

The house was built in 1979. Stipulation II of the MOA specifies that review by the State Historic Preservation Officer (SHPO) or Advisory Council on Historic Preservation (Council) is not required for building that are less than fifty (50) years old.

**2. Asbestos Inspection for residential building built before the mid-1980's with 5 or more units (40 CFR 61, Subpart M, Section 61.145).**

According to Section 61.145, residential buildings having four or fewer dwelling units are excluded from the requirements of this regulation. The project building is a single residential unit and, therefore meets this stipulation for exclusion.

**3. Compliance with HUD's Noise Abatement and Control regulations (24 CFR 51, Subpart B, Section 51.101(a)(2)).**

According to Section 51.101(a)(2), this regulation applies to "noise sensitive land development." The proposed activity will rehabilitate an existing residential building and, therefore is excluded from compliance with this regulation.

**4. Compliance with HUD's regulations on acceptable separation distance of HUD-assisted projects from aboveground storage tanks (24 CFR 51, Subpart C)**

The project will not result in an increased number of people begin exposed to hazardous operations by increasing residential densities, converting e type of use of a building to habitation, or making a vacant building habitable (Section 51.201). Therefore, compliance with this regulation is not required.

**5. Compliance with engineering specifications in the Soils and Geological Report (dated 4/1/02) concerning fill dirt and foundation construction.**

The project does not involve new construction, therefore, the conditions specified in the Soils and Geological Report are not applicable (Refer to Conditions and Recommendations, page 25).

*Amanda C. Baker*, Planner, City Planning Dept.

Nov. 20, 2010

Reviewer's Name/Title

Date



## **USING OTHER ENTITIES ENVIRONMENTAL REVIEW DOCUMENTS**

Sometimes the RE may find that, in addition to HOME funds being used for a project, other Federal or state funds are also covering portions of the project costs. In these circumstances the RE may either want to use another entity's environmental review document, or establish a cooperative agreement with them to combine efforts to complete the environmental review.

### **Using Another 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 or state environmental law. It's 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 between Federal and state environmental law (i.e., definitions of exempt, categorically excluded, environmental assessment). In addition, the context for compliance with Federal law, as well as regulatory and policy guidance, generally varies with that of state environmental law. 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, is not sufficient for compliance with NEPA and HUD environmental regulations and other Federal laws and authorities. The two documents have different compliance purposes though the Phase I could be used to provide some information needed for the Environmental Review.)

### **“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. (NOTE: The requirements of Part 58 vary slightly from those of Part 50.)

### **Establishing a Lead/Cooperating Agency Partnership**

If the RE is made aware that another entity (Federal or state) is preparing 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, state recipients, or other RE's working on behalf of the PJ. This allows for the environmental review document to be prepared in sync with the



other entity, and will cover all the environmental requirements (both Federal and state) in one document. This kind of cooperative partnership is encouraged by NEPA (40 CFR §1506.2) 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 state law may classify the project as “categorically excluded.” One environmental review document may still be prepared by the two.

### **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 getting approval from HUD or the state (in the case of state recipients) according to Part 58. Once approval is received, funds may be committed to the project.

When the RE enters into a partnership with another entity, the public comment period related to HOME 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). The notice required for the purposes of HOME 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 HOME environmental review notice should be nothing less than what is provided in the sample HUD notices. See the chapters on Categorical Exclusions Subject to § 58.5 (Chapter 6) and Environmental Assessment (Chapter 7).

# CHAPTER 10: 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 CHDO's and other subrecipients of HUD assistance. After completing this chapter, you will:

- Understand the division of ER responsibilities among State and local PJs and project partners; and
- Know the key concepts behind developing a successful strategy to monitor for environmental compliance.

## HUD/STATE OVERSIGHT RESPONSIBILITIES

### PJs that are Responsible Entities

The Office of Community Planning and Development Director has the authority to approve the PJ's Request for Release of Funds (RROF) and Certification, Form HUD-7015.15 that certifies compliance with Federal environmental laws and authorities. (**NOTE:** States please refer to State PJs as REs, below). HUD will assume the validity of the RROF and Certification after expiration of the 15-day period to receive objections for approving such a request. The form used by HUD to convey its approval is the Authority to Use Grant Funds, Form HUD-7015.16, or equivalent letter. The CPD Director may disapprove the RROF and Certification if one or more of the permissible bases for objection apply in accordance with § 58.75, or if HUD has knowledge that the RE has not complied with the items in § 58.75 or that the RROF and certification are inaccurate, in accordance with § 58.72.

Permissible bases for objecting to HUD's release of funds includes such things as:

- Certification of compliance with NEPA and Part 58 was not executed by the Certifying Officer for the RE;
- The RE omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58---e.g., did not consult with the State Historic Preservation Officer when required, did not consider project impacts on a floodplain, did not make a finding of no significant impact or finding of significant impact upon completing the environmental assessment, etc.



## ***Chapter 10: Program Administration and Monitoring***

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- The PJ or other participants in the project committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by HUD or the state; or
- Another Federal agency has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Periodically, HUD will monitor the RE's project Environment Review Records (ERRs), and even inspect project sites. Typically, this review by HUD occurs after the RE has received HUD approval to use HOME funds, and oftentimes when projects are already underway or have been completed. Any compliance deficiencies discovered during a monitoring visit by HUD requires HUD to initiate sanctions, corrective actions or other remedies. The action HUD chooses to take will depend upon the severity of the violation. (See § 58.77(d) for a list of possible actions.)

Similarly, if HUD approves a RROF and Certification but then learns the PJ or the project participants committed or expended project funds prior to receiving HUD approval, HUD will take whatever action it determines appropriate to this violation of Part 58. (NOTE: Commitment of funds prior to receiving HUD approval is also a statutory violation, according to § 288 of the HOME statute (Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990, as amended).

Section 58.1(d) allows the Assistant Secretary for CPD to waive or make exceptions to the requirements of Part 58 for good cause and with appropriate conditions. This does not mean that HUD is authorized to waive compliance with any Federal laws and authorities. However, HUD may determine, on the basis of its investigation, that it is able to make a waiver or exception on the bases that, for example:

- The RE's noncompliance did not result in a substantive violation or frustrate the goals of NEPA or any other provision of law that furthers the goals of NEPA;
- The RE's noncompliance does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;
- The RE's noncompliance is not the result of an inadvertent error, including an incorrect or incomplete certification provided under § 288 of the Act; or
- The RE's noncompliance can be corrected through the sole action of the recipient.

If HUD determines that a waiver is not possible or warranted, then sanctions will be implemented by HUD, and corrective actions will be required of the RE. The spectrum of sanctions taken by HUD ranges from the issuance of a reprimand to the request of reimbursement of HUD funds.



## ***Chapter 10: Program Administration and Monitoring***

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### **State PJs Assuming HUD Administrative Responsibilities**

The state PJ assumes a similar role to that of HUD, described above, concerning state recipients' projects. The state PJ may use the Authority to Use Grant Funds, Form HUD-7015.16, or equivalent letter to convey its approval of the RROF and Certification.

The state PJ is required to develop a program for monitoring compliance with environmental conditions, as well as for enforcing sanctions and corrective actions.

### **RESPONSIBLE ENTITY/RECIPIENT OVERSIGHT**

PJ's and state recipients have two roles in Part 58 compliance---the role of RE and recipient. This means they are responsible for ensuring that any special conditions, procedures and requirements of the environmental review are implemented as part of the project.

In addition, PJs and state recipients need to keep in contact with their clients and project partners to ensure that they are notified if the scope of the project changes and/or any environmental conditions have changed that would necessitate re-evaluation of the original environmental findings. They must also ensure that project funds are not committed and that project costs are not incurred before approval of the RROF by HUD or the state (in the case of state recipients). This means, prior to receiving HUD/state approval, the RE may not allow the use or commitment of HUD or non-HUD funds to undertake acquisition, rehabilitation, conversion, leasing, repair, demolition, or construction activities (including excavation, filling or dredging).

### **PJ PROGRAM ADMINISTRATION**

To facilitate the environmental review process and ensure that compliance with Part 58 and NEPA is achieved, the PJ should consider the following actions for administrating its HOME program:

- 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 HOME-funded 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



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activities (including excavation, filling or dredging---prior to receiving authorization from the PJ.

- ❑ 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; and
    - An RFP process that informs applicants of the environmental requirements.

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.

## **HOME MONITORING PLAN AND PROCEDURES**

Effective program administration includes not only monitoring the organizations and projects the PJ's have entrusted with HOME funds, but should also include conducting internal monitoring as well. The HUD training module, "Monitoring HOME Program Performance" (HUD-2030-CPD, October 2000) advises PJs on how to assess their HOME Program performance and ensure that all HOME funds are spent in accordance with the laws and regulations governing the HOME Program, including the environmental requirements of 24 CFR Part 58.

State PJs should incorporate environmental compliance into its overall monitoring plan as well. In accordance with Part 58 (§ 58.18), the state PJ has similar oversight responsibilities as HUD for ensuring the procedures of Part 58 are followed by the state recipients.



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For all other PJs, that are assuming the responsibilities of an RE, the HOME Program Final Rule requires PJs to assume monitoring responsibilities for their program partners, including environmental compliance.---i.e., ensuring that funds are not committed or spent prematurely and that conditions are implemented on the ground.

The planning elements identified by HUD include: monitoring objectives and strategy, ongoing monitoring, and monitoring staff.

### **Monitoring Objectives and Strategy**

The plan should identify the PJ's monitoring goals and strategies, highlighting areas to which staff should pay special attention during the monitoring year. For the purposes of environmental compliance, this means the PJ should be guided by its responsibilities under Part 58:

- In the case of a state PJ, it should identify any technical assistance needs of the state recipients for effectively undertaking the responsibility for environmental review. For all other PJ's, that are assuming the responsibilities RE, attend environmental compliance training provided by HUD and by Federal agencies that have oversight responsibilities for specific laws and authorities (e.g., Advisory Council, Federal Emergency Management Agency, U.S. Environmental Protection Agency, etc.), to maintain technical capacity as required by Part 58.
- For all PJ's, ensure project funds are not committed or spent prior to completion of the environmental review process and receiving HUD or state approval (in the case of state recipients), 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 PJ staff assignments for responsibilities related to the environmental compliance process to ensure technical capacity and administrative capability is maintained.

### **Ongoing Monitoring**

The plan should clearly identify the check-points that ensure a minimum level of review for all activities during the year and the scope and frequency of those reviews to be conducted, as well as establishing the frequency and timing of such reviews.

The scope of these reviews should include evaluation of the Environmental Review Record (ERR) content for:



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- 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., 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 or not 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.);
- 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 PJ should also determine whether funds were committed or spent prior to the receipt of HUD (or state) approval of any project.

HUD requires that PJ's program performance plans provide for ongoing monitoring of all HOME-assisted activities each program year. This means that environmental



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compliance monitoring must be included, but does not mean the PJ must monitor the ERR for all the activities undertaken in that year. The PJ may determine, through risk assessments, that only certain activities should be reviewed.

### **Risk Assessments**

The risk assessment process provides a consistent and logical approach that the PJ can use to determine which applicants and projects should be selected for monitoring. The purpose is to allocate staff in the most efficient and effective manner in order to minimize and, perhaps, eliminate the likelihood of non-compliance with Part 58. The applicants and projects selected for monitoring will be those at the greatest risk of non-compliance. For example, risk factors used to rate applicants and their need to be monitored could include such things as:

- Recent recipient of HOME funds;
- Recent desk reviews or monitoring that have resulted in compliance findings such as ineligible use of HOME funds, lack of written rehabilitation standards for housing rehabilitation activities, or the incorrect calculation of HOME rents for HOME rental housing;
- Input from PJ staff;
- Project complexity;
- Lack of staff capacity; and
- Previous monitoring findings.

Monitoring subrecipients and CHDO staff for environmental compliance ensures that all controls in place to prevent the commitment or expenditure of project funds before approval is received from the PJ. Monitoring would focus on the completeness of the content of the ERR, whether environmental reviews were completed prior to commitments being made and funds expended (including written determinations of exemption), the content of public notices met Part 58 requirements for publication and dissemination, the record contains evidence that the conditions for project approval were implemented.

## Exhibit 10.1: Sample Environmental Review Record Project Checklist

Project/Program Name:

Project/Program ID Number.:

Project Location (if applicable):

### Section 1- Level of Environmental Review Completed

Date Completed: \_\_\_\_\_

Exempt.....

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.....

FONSI/NOI published Date: \_\_\_\_\_

RROF submitted to HUD (form 7015.15) Date: \_\_\_\_\_.

HUD approval received (form 7015.16) Date signed by HUD: \_\_\_\_\_