

Chapter 2

Environmental Review





Chapter Two: Environmental Review

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Introduction

Chapter 2: Environmental Review is designed to aid Community Development Block Grant (CDBG) recipients in developing an environmental review record in compliance with the federal regulations. However, this chapter must not be considered a substitute for those regulations. **In all cases, federal regulations will apply.** It is the policy of the U.S. Department of Housing and Urban Development (HUD) to reject proposals that have significant adverse environmental impacts and to encourage the modification of projects in order to enhance environmental quality and minimize environmental harm.

Completion of the environmental review process is **mandatory** before taking physical action on a site, or making a commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair, or construction activities. Each project activity will be assessed to determine the applicable procedure that must be followed in order to obtain environmental clearance and/or a Release of Funds (ROF) from the West Virginia Development Office (WVDO).

The National Environmental Policy Act (NEPA) and “other federal laws and authorities” require that an environmental review be conducted for all federally-assisted actions, except those exempted from 24 CFR Part 58. The Grantee’s determination of exemption must be accepted by the WVDO before CDBG funds are expended. Current regulations may be found online at <http://tinyurl.com/HUD-Environmental-Regs>¹ Citations used in this chapter may be reviewed in HUD’s “[Environmental Review Guide for Community Development Block Grant Programs.](#)”

Abbreviations

CDBG	= Community Development Block Grant, including Small Cities Grants
CENST	= Categorically Excluded Not Subject To Section 58.5
CEST	= Categorically Excluded Subject To Section 58.5
CEQ	= Council on Environmental Quality
CFR	= Code of Federal Regulations
CO	= Certifying Officer
EA	= Environmental Assessment
EO	= Environmental Officer
EIS	= Environmental Impact Statement
ERR	= Environmental Review Record
FONSI	= Finding of No Significant Impact
HEROS	= HUD Environmental Review Online System
HUD	= Department of Housing and Urban Development
NEPA	= National Environmental Policy Act
NHPA	= National Historic Preservation Act
NOI/RROF	= Notice of Intent to Request Release of Funds
RE	= Responsible Entity
ROF	= Release of Funds
RROF	= Request for Release of Funds and Certification
SHPO	= WV State Historic Preservation Office
WVDO	= West Virginia Development Office

¹ The specific regulations can be found under Title 24, Subtitle A, Part 58

Key Terms

Note: Many of the definitions are not direct quotes from CEQ or HUD regulations and have been slightly modified. For more precise definitions, users of this section are encouraged to consult the relevant source.

- **Activity** – An action that a responsible entity puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.
- **Aggregation** – The grouping together and evaluating as a single project of all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.
- **Categorical Exclusion** – Activities which do not have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency (40 CFR 1508.4). In such cases, neither an EA nor an EIS is required, however these activities must comply with non-NEPA statutes and regulations as specified in §58.35.
- **Certifying Officer** – The official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13
- **Commitment** – For purposes of the environmental review process, commitment means the expenditure of private or public funds, or a legally binding agreement by any of the following parties: participating jurisdictions; insular areas; state recipients; subrecipients; Grantees; contractors; or owners/developers. To expend funds for a specific project for activities such as property acquisition, construction, conversion, demolition, movement, rehabilitation, or repair or the provision of an environmental review for complying with the applicable requirements of “other federal laws and authorities” listed in §58.5 and §58.6. Activities that require compliance with any of the federal laws and authorities also require the publishing of a Notice of Intent to Request Release of Funds and submittal of a Request for Release of Funds and Certification form (HUD-7015.15) to the WVDO.
- **Contractor** – An entity contracted by the participating jurisdiction to provide goods and services in accordance with a written agreement (the contract). The contractor cannot assume the RE’s responsibilities for environmental review, decision making, and action under §58.30.
- **Cumulative Impacts** – Impacts on the environment resulting from the incremental impact of the action which added to the past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.
- **Environmental Assessment (EA)** – A concise public document that serves to: 1) provide sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement or a finding of no significant impact; 2) aid an agency’s compliance with NEPA when an Environmental Impact Statement is not necessary; and 3) facilitate the preparation of a statement when one is necessary.
- **Environmental Clearance** – The completion of the environmental review process and documentation of compliance with §58.
- **Environmental Review** – The appropriate level of environmental analysis for a project or activity. This may include a Compliance Determination, Environmental Assessment, or Environmental Impact Statement.
- **Environmental Review Process** – The completion of all procedural steps necessary for compliance with NEPA and all related laws and authorities cited in §58. This includes conducting and documenting all environmental requirements, making an environmental determination, publishing required public notices, submission of a Request for Release of

Funds and Certification form, and receipt of an Authority to Use Grant Funds form from the WVDO.

- **Environmental Review Record (ERR)** – The Responsible Entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated as the “Environmental Review Record” (ERR), and shall be available for public review. The Responsible Entity must use the current HUD-recommended formats or develop approved equivalent formats. The ERR shall contain all environmental review documents, public notices and written determinations or environmental findings required by §58 as evidence of review, decision making and actions pertaining to a particular project as specified in §58.38.
- **Exempt Activities** – Activities for which there is no environmental requirement are “exempt” from both NEPA and other related statutory requirements as defined in §58.34
- **Finding of No Significant Impact (FONSI)** – A document by the Responsible Entity briefly presenting the reasons why an action, not otherwise excluded or exempt will not have a significant effect on the human environment and for which an EIS will not be prepared.
- **Grantee** – A unit of local government that is an eligible recipient under a program listed in §58.1(b). Also referred to as “Responsible Entity.”
- **Mitigation** – Measures taken to reduce potential environmental impacts.
- **Project** – An activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.
- **Recipient** – A unit of local government when they are eligible recipients or Grantees under a program listed in §58.1(b).
- **Release of Funds (ROF)** – The issuance of the “Authority to Use Funds” form or equivalent letter by the WVDO for activities which require the Responsible Entity to submit a Request for Release of Funds and Certification form to the WVDO.
- **Responsible Entity (RE)** – The participating jurisdiction responsible for conducting environmental reviews. Also referred to as “Grantee.”
- **Source Documents** – Verifiable information and data, such as studies, correspondence, maps, interviews, places, and observations, used or cited as a basis to make an environmental determination. The type of source documentation shall be included in the Environmental Review Record and made available for inspection by interested parties.
- **Tiering** – The evaluation of an action or an activity at various points in the development process as a proposal or event becomes subject for an Environmental Assessment or Review.

Supporting Materials

Attachment 2-1	24 CFR Part 58
Attachment 2-2	Summary of Levels of Environmental Review & Documentation Required in the ERR
Attachment 2-3	Environmental Review Flowchart
Attachment 2-4	ERR Checklist
Attachment 2-5	Other Requirements Checklist [Omitted]
Attachment 2-6	Flood Insurance Protection [Omitted]
Attachment 2-7	Flood Insurance Policy Declaration – SAMPLE [Omitted]
Attachment 2-8	Civil Primary and Commercial Service Airports
Attachment 2-9	Environmental Review for Exempt Activity or CENST Activity
Attachment 2-10	Environmental Review for CEST Activity
Attachment 2-11	Environmental Review for Environmental Assessment
Attachment 2-12	SAMPLE – Request for Review of Historic Preservation Letter
Attachment 2-13	Section 106 Review Information
Attachment 2-14	Floodplain 8-Step Decision Making Process Flow Chart
Attachment 2-15	Floodplain and Wetland – Early Notice and Public Review
Attachment 2-16	Floodplain and Wetland – Final Notice and Public Explanation
Attachment 2-17	Distribution List
Attachment 2-18/ 19/20	Calculation of Time Periods – Concurrent Combined Noticed with Floodplain Notice; Concurrent Combined Notice FONSI-NOI-RROF; and NOI-RROF
Attachment 2-21	Public Notice – FONSI-NOI-RROF
Attachment 2-22	Public Notice – NOI-RROF
Attachment 2-23	Request for Release of Funds and Certification (HUD-7015.15)

Note: Strikethroughs are Attachments from previous manuals which are no longer used.

Responsibilities

In order to complete its environmental review responsibilities, the Grantee should designate two responsible parties:

Certifying Officer

The Grantee must designate a Certifying Officer who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of Section 58.13.

This individual is usually the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The Certifying Officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.

Environmental Officer

The Grantee should designate an Environmental Officer. This individual is usually the grant administrator or the consulting engineer. The Environmental Officer will be responsible for writing the project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received

on the environmental findings. However, the Certifying Officer is responsible for ensuring compliance with NEPA and the federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds, when required, and for ensuring the ERR is complete.

Environmental Review Record

Each CDBG recipient must prepare and maintain a well-organized, written record of the environmental review for each project, including exempt activities such as administrative costs, design costs, and tenant-based rental assistance. This file is called the ERR and must be available for public review.

Be sure that any ERR that is maintained electronically meets the requirements of 24 CFR 58.38. Electronically maintained ERRs must remain available for public review and monitoring in accordance with 24 CFR 58.45 (i.e., an individual, organization, or HUD monitor wishing to review an ERR cannot be denied access to an ERR because it is stored on an employee's computer or a private network). Therefore, it is recommended by HUD that the RE keep both an electronic copy and paper copy of the ERR.

Note: The WVDO still requires a hard copy to be submitted for review.

A preliminary environmental review, including source documentation, must be conducted prior to contacting applicable agencies for comment. Agencies must be provided ample project information, maps, and source documentation to make a determination of compliance with applicable laws.

Procedures

Pursuant to 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," the Grantee, also known as the Responsible Entity, must conduct the appropriate environmental review prior to the expenditure or obligation of funds.

If the review process was not completed prior to submission of an application to the West Virginia Development Office (WVDO), the project will be conditionally approved. The environmental review procedure and, if applicable, a formal Release of Funds, must be executed and approved by the WVDO prior to the obligation or expenditure of project funds (§58.22[a]). If funds are obligated or expended for activities that have not completed the environmental review process, these will be considered ineligible and a reimbursement will be required. Therefore, compliance with Part 58, Environmental Review Procedures, is imperative.

Each CDBG-funded activity is subject to one of five levels of environmental review:

1. 24 CFR 58.34 Exempt
2. 24 CFR 58.35(a) Categorically Excluded Subject to 24 CFR 58.5
3. 24 CFR 58.35(b) Categorically Excluded Not Subject to 24 CFR 58.5 (rarely seen in West Virginia's program.)
4. 24 CFR 58.36 Environmental Assessment
5. 24 CFR 58.37 Environmental Impact Statement (rarely seen in our state's program.)

WVDO Approval of Evidentiary Materials and Notice to Proceed

In all cases regarding the levels of Environmental Reviews listed above, the Grantee must obtain environmental clearance from the WVDO. Project funds may NOT be obligated or

expended prior to environmental clearance from the WVDO, including the Exempt Activities.

WVDO Prior Review of Public Notices

The Grantee shall submit all components of the ERR to the WVDO for prior review before publication of public notices. This will accomplish two goals: First, all requirements concerning standard language will be included in the public notice; and second, the public notice will not be issued prematurely.

Project Aggregation

The Grantee must group together and evaluate, **as a single project, all the individual activities that will take place in order to complete the project.** This includes activities that are not assisted by HUD but are aggregated by the Grantee in accordance with §58.32. This includes activities which: are related on a geographic basis (site specific) or a functional basis (activity specific), are logical parts of a larger project, are funded by several federal programs, or are partially funded with non-federal sources. The purpose of aggregation is to reduce the number of individual reviews by analyzing the impacts of the entire proposed activity.

The environmental review must state whether or not the proposed activity will receive multiple year funding, identify all sources of funds, and address all aspects of the project. Additionally, the public notice(s) shall identify the sources of all other funds.

Limitations on Activities Pending Clearance (24 CFR 58.22)

- Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in §58.1(b) on an activity or project until the WVDO has issued a Notice to Proceed letter and approved the recipient's RROF and the related certification from the responsible entity. **In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in §58.1(b).**
- The Grantee must ensure that non-governmental entities refrain from undertaking any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives until the WVDO has approved the RROF (HUD 7015.15.) and the Authority to Use Grant Funds (HUD 7015.16) and the Notice to Proceed letter is issued by the WVDO.
- If a project or activity is exempt under §58.34, or is Categorically Excluded (except in extraordinary circumstances) under §58.35(b), no RROF is required and the recipient may undertake the activity when the **Notice to Proceed letter is issued by WVDO,** however the recipient must comply with applicable requirements under §58.6.

Re-evaluations (24 CFR 58.47)

After completing the original environmental review process, circumstances may require that the original review be re-evaluated. This will occur when:

- Substantial changes to the nature, magnitude, or extent of the project are proposed,
- New activities not anticipated in the original review are proposed,
- New circumstances and environmental conditions that may affect the project or have a bearing on its impacts are discovered during the implementation of the project, or
- The selection of an alternative not in the original finding is proposed.

If the original findings are still valid but the data or conditions upon which those findings were based have changed, the Grantee must affirm the original findings and update the ERR by including this re-evaluation and its determination based on these new findings. A statement addressing the above four points will suffice as documentation of the re-evaluation. In this case, a new FONSI is not required however the re-evaluation statement shall be included as part of the original ERR.

If the Grantee determines that the original findings are no longer valid, it must prepare a new Environmental Assessment. A new FONSI must be published and distributed, and submitted to the WVDO.

Emergencies (24 CFR 58.33)

When an emergency, disaster or imminent threat to health and safety is declared, the combined Notice of FONSI and Notice of Intent to Request Release of Funds may be disseminated and/or published simultaneously with the submission of the Request for Release of Funds and Certification form to the WVDO. The combined FONSI Notice and Notice of Intent to Request Release of Funds shall state that the funds are needed immediately due to a Presidential Declared Disaster and the comment periods have been combined. Any comments made by the public, other organizations or agencies are to be sent to both the WVDO and the Grantee.

Project Description

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

The project description for the environmental review may not be identical to the description of the project and activities used by the funding program, as the project description in the environmental review may consider activities not financed by HUD. This project description must be **clear and consistent** throughout all components of the review.

Developing the Environmental Review Record
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The Grantee should initiate the environmental review process as soon as possible to avoid delay of project implementation. Contact the WVDO if there are questions on the environmental review process and responsibilities.

Create Environmental Review Record file

Establish a file known as the Environmental Review Record (ERR). The Environmental Review is a means of providing decision makers with sufficient information on which to base informed choices. Further, the review should clearly outline the proposed action so that the public may sufficiently understand the action and all associated environmental concerns.

The ERR must contain all of the documentation of the review process: an environmental determination for each activity and its level of clearance finding, copies of the various public notices, evidence of compliance with related provisions for historic preservation, floodplains/wetlands, and all other federal laws and authorities as outlined in this chapter.

The ERR must be available for public review. One copy must be in the Grantee's office; others should be in public places such as the public or high school libraries or a community center. An ERR checklist is provided in this chapter to guide the completion of the environmental review record.

Establish a Timeline

The Grantee should allow at least 60 days to complete the environmental review process and receive environmental clearance from WVDO. When another federal agency has funds in the project, it frequently conducts its own environmental review process. The Grantee is permitted to use that agency's review to compile its own record. (§58.52 and 58.53) The Grantee is reminded that utilization of another agency's documentation does not eliminate or minimize its own responsibilities for either the contents of the review or conducting the public comment requirements. Before making a finding based on another agency's review, the Grantee should carefully check the review against the requirements referenced in this chapter to ensure the contents are sufficiently inclusive to allow the Grantee to meet its responsibilities.

If the adopted review does not meet all of the requirements of 24 CFR 58, it must be supplemented by the Grantee to meet all HUD CDBG-Small Cities requirements.

Designate an Environmental Certifying Officer

The Grantee's Chief Executive Officer, generally the mayor or county commission president, must agree to assume the role of "Responsible Federal Official" under the provisions of the National Environmental Policy Act (NEPA). In the event of action against the Grantee in federal court on environmental grounds, the Chief Executive Officer will be named as the defendant. The Chief Executive Officer may designate a staff person to serve as the "Environmental Certifying Officer" to assume overall responsibility for the environmental review process. This person does not need to be a technical expert, but should be credible if it becomes necessary to defend the finding.

If the Chief Executive Officer designates a staff person as the Environmental Certifying Officer, the ultimate environmental responsibility remains with the Chief Executive Officer. To ensure the Chief Executive Officer has properly reviewed the environmental packet prepared by the Environmental Certifying Officer, the WVDO requires that the Chief Executive Officer sign the

Finding of No Significant Impact and Request for Release of Funds Certification, where applicable.

Submit Public Notices to the WVDO for Prior Review

All public notices must be submitted to the WVDO prior to publication. This will ensure that appropriate clearances are issued, and that proper language is used in the public notice.

HUD Environmental Review Online System (HEROS)

HEROS is an online system for documenting and managing environmental reviews. The system includes all levels of HUD environmental reviews and includes on-screen guidance for completing the reviews.

HEROS is expected to increase transparency in the environmental reviews process, as reviews will be posted to the OneCPD website for public review. The system improves consistency, as many functions of the environmental review process will be automated to guide Grantees through the appropriate functions and forms associated with each level of review. WVDO will provide additional details on HEROS as they become available.

Levels of Environmental Review

The Grantee should consult §58.34, §58.35, §58.36, and §58.37 to determine the level of review applicable to each proposed activity. Examples of each level of review are provided on the following pages, and the Summary of Levels of Environmental Review & Documentation Required in ERR (**Attachment 2-2**).

The following steps are required:

1. Determine the level of review required:
 - A. Exempt (24 CFR 58.34)
 - B. Categorically excluded NOT subject to 24 CFR 58.5 (24 CFR 58.35 (a))
 - This category includes tenant based rental assistance and redevelopment housing costs, and is rarely seen in our state's program.
 - C. Categorically Excluded Subject to 24 CFR 58.5 (24 CFR 58.35 (a))
 - D. Environmental Assessment (24 CFR 58.36)
 - E. Environmental Impact Statement (24 CFR 58.37)
2. Initiate contacts with other sources and agencies, such as the WV State Historic Preservation Office, WV Department of Environmental Protection, and the USDA Natural Resources Conservation Service to name a few.
3. Collect Data.
4. Complete applicable review format for the determined level of review.
5. Make environmental determination; Compliance with federal laws and authorities, or finding of no significant impact, or finding of significant impact.
6. Submit public notices to WVDO for approval; publish and disseminate public notices when applicable.
7. Submit Request for Release of Funds and Certification form to the WVDO.
8. Wait for receipt of Authority to Use Grant Funds, Notice to Proceed or equivalent letter from the WVDO.

Obtain any other necessary clearances from WVDO, such as Authorization to Bid.

A. Exempt (24 CFR 58.34)

This category includes, but is not limited to, environmental and other studies, administrative and management activities, engineering and design, and inspections. The complete list of exempt activities from the CFR is listed below. If the Grantee wishes to begin work on activities that are exempt from NEPA procedures prior to the approval of the completed ERR and Release of Funds (ROF), the Grantee shall complete the appropriate form stating which activities are determined to be part of this level of environmental review. The form must be signed by the Certifying Officer.

Types of Projects

List of exempt activities is provided below. For complete details outlining exempt activities, refer to 24 CFR 58.34.

- Environmental and other studies
- Information and financial services
- Administrative and management activities
- Engineering and design costs for an eligible project activity
- Assistance for improvements that do not alter environmental conditions and are limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration
- Public services that will not have a physical impact, including but not limited to employment, crime prevention, child care, drug abuse
- Inspections and testing of properties for hazards or defects
- Purchase of tools and insurance
- Technical assistance or training
- Payment of principal and interest on loans made or guaranteed by HUD

Required Documentation

To proceed with exempt activities, the following items must be submitted to the WVDO, as indicated on the “Summary of Levels of Environmental Review & Documentation Required in ERR” spreadsheet (**Attachment 2-2**):

- Environmental Review for CE or CENST form (**Attachment 2-9**)
- Other required supportive documentation

When the above activities are undertaken, the RE does not have to publish a Notice of Intent/Request for Release of Funds (NOI/RROF). The WVDO will assume the validity of the exempt determination and will verify the other evidentiary materials before issuing the “Notice of Approval of Evidentiary Materials” or equivalent letter to the Grantee. This finding will apply to the activities specifically excluded from NEPA and do not, under any circumstances, apply to any construction activity or activity not listed in the exempt determination. A separate environmental determination will be required for construction activity.

B. Categorical Exclusions Not Subject to §58.5 (24 CFR 58.35.(b))

This category of projects, Categorically Excluded Not Subject to §58.5 (CENST), would not alter any conditions that would require an environmental review or compliance determination under federal laws and authorities cited in §58.5. Examples of activities that are categorical exclusions not subject to §58.5 include the following:

Types of Projects:

- Tenant-based rental assistance.
- Supportive services including but not limited to health care; housing services; permanent housing placement; day care; nutritional services; short-term payments for rent/mortgage/utility costs; and assistance in gaining access to local, state, and federal government benefits and services.
- Operating costs including maintenance, security, operation, utility, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs.
- Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations.
- Activities to assist home ownership of existing “or new dwelling units not assisted with federal funds” including closing costs and down payment assistance to home buyers, interest buy downs, and similar activities that result in the transfer of title to a property.
- Affordable housing predevelopment costs including legal, consulting 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.

Required Documentation:

To proceed with CENST activities, the following items must be submitted to the WVDO, as indicated on the “Summary of Levels of Environmental Review & Documentation Required in ERR” spreadsheet (**Attachment 2-2**):

- Environmental Review for CE or CENST form (**Attachment 2-9**)
- Other required supportive documentation

When the above activities are undertaken, the RE does not have to publish a Notice of Intent/Request for Release of Funds (NOI/RROF). The WVDO will assume the validity of the CENST determination and will verify the other evidentiary materials before issuing the “Notice of Approval of Evidentiary Materials” or equivalent letter to the Grantee. This finding will apply to the activities specifically excluded from NEPA and do not, under any circumstances, apply to any construction activity or activity not listed in the CENST determination. A separate environmental determination will be required for construction activity.

The Grantee is responsible for determining that a given activity qualifies under the definitions for

exclusion and/or expedited procedures. Even when federal regulations presume that an activity probably will not impact the environment or require compliance with other environmental laws does not necessarily make it true. The clearance level of an activity may be elevated if it exhibits extraordinary circumstances that affect its impact on the environment. Such circumstances are defined as:

- Actions that are unique and without precedent;
- Are substantially similar to those which would require an Environmental Assessment (EA) or EIS;
- Are unlikely to alter HUD policy or HUD mandates; or
- Due to unusual physical conditions on the site or in the vicinity, have a potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

C. Categorical Exclusions Subject to §58.5 (24 CFR 58.35(a))

This category of projects, Categorically Excluded Subject to §58.5 (CEST), does not individually or cumulatively have a significant effect on the human environment. Categorically excluded projects typically replace or improve existing facilities or structures, and retain the original use of a structure or facility. Projects will be considered CEST provided that they:

- Do not increase the size or unit density of the structure or facility being improved by more than 20 percent,
- Do not change land uses (commercial to residential), and
- Do not exceed 75 percent of the total estimated cost of replacement after rehabilitation, in the case of rehabilitation.

These projects require the completion of a compliance determination review using the Statutory Worksheet found in the CEST form. This format lists the federal laws and authorities found in §58.5. The proposed project is reviewed to determine whether it complies with the requirements of the federal laws and authorities.

If the proposed project triggers any of the federal laws and authorities, such as Executive Order 11988, Floodplain Management, the specific review must be completed before the compliance determination can be considered complete. If none of the compliance factors require mitigation, it is likely that the project will qualify for a CEST determination.

Types of Projects

The following activities are Categorically Excluded under NEPA, but are subject to review under CDBG regulations:

- Acquisition, repair, improvement, reconstruction or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets, etc.).
- Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
 - For single-family residential buildings:**
 - Unit density is not increased beyond four units.
 - Project doesn't involve change in land use from residential to non-residential.
 - The footprint of the building is not increased in a floodplain or a wetland.
 - For multifamily residential buildings:**
 - Unit density is not changed more than 20 percent.
 - The project does not involve changes in land use from residential to nonresidential.
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

For nonresidential structures, including commercial, industrial, and public buildings:

- The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent.
- The activity does not involve a change in land use such as from nonresidential to residential, commercial to industrial, or from one industrial use to another.
- An individual action on a one-to-four family dwelling or an individual action on a project of five 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 one site.
- Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.
- Combination of the above activities.

Required Documentation

To proceed with CEST activities, the following items must be submitted to the WVDO, as indicated on the “Summary of Levels of Environmental Review & Documentation Required in ERR” spreadsheet (**Attachment 2-2**):

- Environmental Review for CEST form (**Attachment 2-10**)
- Statutory Worksheet (included in **Attachment 2-10**)
- All supportive documentation
- NOI/RROF Notice (**Attachment 2-22**)
- RROF- HUD Form 7015.15 (**Attachment 2-23**)

The WVDO will assume the validity of the RROF and will approve the CEST determination in the absence of any receipt of objection, except as provided in §58.72(b), after the appropriate public comment periods have elapsed and will then issue the Authority to Use Grant Funds (HUD Form 7015.16) or equivalent letter to the Grantee.

This finding will apply to the activities specifically stated in the CEST determination and do not, under any circumstances, apply to any other activities. A separate determination will be required for any additional activities.

Categorically Excluded Activities Converted to Exempt Activities (24 CFR 58.34(a)(12))

Activities that are listed in §58.35(a)(1)-(6) as Categorical Exclusions may be converted to Exempt activities under the following conditions:

- The Grantee completes the compliance determinations under the federal laws and authorities cited in §58.5 for the proposed activity.
- The Grantee concludes that no circumstances exist where any of the federal laws and authorities require compliance with its own review procedures.
- The Grantee documents its determinations on the Environmental Review for CEST form (**Attachment 2-10**) and places it in the ERR. No public notices are published and no Request for Release of Funds and Certification is submitted to WVDO.

When these conditions are shown to apply, the WVDO will assume the validity of the “CEST converts to Exempt” determination and will verify the other evidentiary materials before issuing the “Notice of Approval of Evidentiary Materials” or equivalent letter to the Grantee. This finding will apply to the activities specifically excluded from NEPA and do not, under any

circumstances, apply to any other construction activity or activity not listed in the “CEST converts to Exempt” determination. A separate environmental determination will be required for all additional activities.

D. Environmental Assessment (24 CFR 58.40)

Activities which cannot be determined to be Exempt (§58.34) or Categorically Excluded (§58.36), require that an Environmental Assessment (EA) be completed. While the EA addresses the same issues as those found in other compliance determination reviews, it also includes the following analysis:

- Determines existing conditions
- Identifies, analyzes and evaluates all potential environmental impacts
- Examines and recommends feasible ways to eliminate or minimize adverse impacts
- Examines alternatives to the project
- Includes a compliance determination for all other federal laws and authorities cited in §58.5 and §58.6
- Leads to an RE's Finding of No Significant Impact (FONSI), or a Finding of Significant Impact and thereby requiring the execution of an Environmental Impact Statement (EIS)

Types of Projects

An EA generally includes the following types of projects:

- New construction of any kind
- Major rehabilitation of water and sewer systems
- Major rehabilitation and reconstruction of five or more residential units
- Conversion of non-residential land use to residential land use
- New construction of five or more residential units
- Acquisition of vacant land for development when five or more units are involved

For EA activities, the Environmental Assessment – Determinations and Compliance Findings (**Attachment 2-11**) must be used to document compliance with NEPA, the environmental requirements of other federal laws (§58.5 and §58.6), and determine whether or not the proposed project will result in a significant impact on the quality of the human environment. This determination cannot be made until all compliance criteria with the applicable regulatory agencies outlined on the statutory worksheet have been met.

Required Documentation

To proceed with EA activities, the following items must be submitted to the WVDO, as indicated on the “Summary of Levels of Environmental Review & Documentation Required in ERR” spreadsheet (**Attachment 2-2**):

- Environmental Assessment Determinations and Compliance Findings (**Attachment 2-11**)
- Significant Impact Determination (included in **Attachment 2-11**)
- Statutory Worksheet (included in **Attachment 2-11**)
- All supportive documentation
- NOI/RROF Notice (**Attachment 2-22**)
- RROF- HUD Form 7015.15 (**Attachment 2-23**)

The WVDO will assume the validity of the RROF and will approve the EA documents in the absence of any receipt of objection, except as provided in §58.72(b), after the appropriate public comment periods have elapsed and will then issue the Authority to Use Grant Funds (HUD

Form 7015.16) or equivalent letter to the Grantee.

This finding will apply to the activities specifically stated in the EA and do not, under any circumstances, apply to activity not included. A separate determination will be required for any additional activity.

E. Environmental Impact Statement (24 CFR 58.37)

An Environmental Impact Statement (EIS) details the recipient's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. Recipients must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR 58, Subpart G).

If the project requires an EIS, consult early in that process with a Project Manager Specialist at the WVDO.

An EIS may be required when:

- The project is so large that it triggers density thresholds, and it is apparent that it may have a substantial environmental impact
- A Finding of Significant Impact is found as a result of completing an environmental assessment for the project

Preparation of an EIS is mandatory if the project meets any of these requirements below:

- Any project to provide a site or sites for hospitals and nursing homes with a total of at least 2,500 beds
- Any project to remove, destroy, convert, or substantially rehabilitate at least 2,500 existing housing units
- Any project to construct, install or provide sites for at least 2,500 housing units
- Any project to provide water and sewer capacity for at least 2,500 housing units
- Any project that exceeds the 2,500-unit threshold for nonresidential housing construction

If the sole reason for preparing an EIS is that a project will exceed one or more of the thresholds listed above, the recipient may prepare an EA. In such cases, if the recipient makes a Finding of No Significant Impact (FONSI), the FONSI must be made available for public review for at least 30 days before the recipient makes a final determination about whether to prepare an EIS.

Public Notices

Publication and/or Posting

Grantees have the option of either publishing the FONSI and NOI/RROF in a newspaper of general circulation serving the affected geographical area or posting the notices in prominent public places within the recipient's geographical boundaries. Suitable locations for posting may include but are not limited to:

- Municipal and county buildings accessible to the general public
- Post offices
- Libraries
- Health departments
- Other local establishments frequented by project area residence

In addition to publishing or posting public notices, copies must be disseminated to the following entities:

- The local news media
- Individuals and groups known to be interested in the activities
- The Regional Office of the Environmental Protection Agency
- Appropriate local, state, and federal agencies including all of those contacted as part of the environmental review process.

Floodplain and Wetland Notices

Most projects require the submission of a legible Flood Insurance Rate Map (FIRM) from FEMA which must show the elements of the project located on the map along with the flood data it provides. If activities are located in floodplain or wetland areas, the Eight-Step Process is required by Executive Order 11988 and 11990. The ERR must contain evidence that the Eight-Step Process was used in the decision to locate CDBG-Small Cities activities in floodplain or wetland areas. Steps 2 and 7 require that notices be published; an Early Notice of Floodplain Activity (Attachment 2-15) identifying the project and soliciting comments and a Notice of Explanation for Floodplain Activity (Attachment 2-16), including your judgment that the benefits of the project outweigh the environmental considerations.

Submit Public Notices to WVDO for Prior Review

All public notices must be submitted to WVDO prior to publication. This will ensure that appropriate clearances are issued, and that proper language is used in the public notice.

Calculating Time Periods for Public Notices

The Calculation of Time Periods form (**Attachments 2-18, 2-19, and 2-20**) may be used to accurately calculate required notification time periods. All time periods shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication date of the notice which initiates the time period. If a time period ends on a holiday or weekend, extend the time period to the next business day.

Document	Published Time Period	Posted/Mailed Time Period	Comments
NOI/RROF	7 days for comments 15 days for the WVDO to receive objections	10 days for comments 15 days for the WVDO to receive objections	Published for a project that is CEST and does not convert to Exempt; or after a FONSI comment period ends for an EA
FONSI	15 days	18 days	Published for all EA-type projects
FONSI and NOI/RROF	15 days for comments 15 days for the WVDO to receive objections	18 days for comments 15 days for the WVDO to receive objections	Published as a Combined Notice
Early Notice and Public Review	15 days		Floodplains EO 11988 and Wetlands EO 11990
Final Notice and Public Explanation	7 days		Floodplains and Wetlands May be run at the same time as the Combined Notice

Other Statutory Requirements §58.6

The RE must certify that it has complied with the requirements that would apply to HUD under these “Other Statutory Requirements” and must consider the criteria, standards, policies, and regulations of the requirements. Record in the appropriate form (**Attachments 2-9, 2-10, or 2-11**) the compliance determination below. Provide credible, transparent, and supportive source documentation for each item.

Airport Hazards

Some types of development are incompatible for locations in the immediate vicinity of airports and airfields. Potential aircraft accident problems pose a hazard to end users of these development projects. If the proposed project is located near an airport or in the immediate area of the landing and approach zones, additional information is necessary to determine whether this issue is a concern and if so, how to mitigate it.

It is HUD’s policy to apply standards to prevent incompatible development around civil airports and military airfields. See 24 CFR 51, Subpart D. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales registration, or any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.

The Environmental Review Record should contain one of the following:

- Documentation that the rule is not applicable to the proposed project (i.e., acquisition of an existing building, “minor” rehabilitation, or emergency action)
- A map showing the site is not within 15,000 feet of a military airport or within 2,500 feet of a civilian airport
- If within 15,000 feet of a military airport, a map showing the site is not within a designated APZ or a letter from the airport operator stating so
- If within 2,500 feet of a civilian airport, a map showing the site is not within a designated RPZ/CZ or a letter from the airport operator stating so
- If the site is in a designated APZ, documentation of consistency with DOD Land Use Compatibility Guidelines
- If the site is in a designated RPZ/CZ and the project does not involve any facilities that will be frequently used or occupied by people, and a determination of such and a written assurance from the airport operator that there are no plans to purchase the land as part of a RPZ/CZ program
- If the site is in a designated RPZ/CZ and the project involves the acquisition or sale of an existing property that will be frequently used or occupied by people, a copy of the notice to prospective buyers signed by the prospective buyer

Coastal Barrier Resources

The Coastal Barrier Resources Act (CBRA) of 1982 designated relatively undeveloped coastal barriers along the Atlantic and Gulf coasts as part of the John H. Chafee Coastal Barrier Resources System (CBRS) and made these areas ineligible for most new federal expenditures and financial assistance. The Coastal Barrier Improvement Act (CBIA) of 1990 reauthorized the CBRA and expanded the CBRS to include undeveloped coastal barriers along the Florida Keys, Great Lakes, Puerto Rico, and U.S. Virgin Islands.

The environmental review record should contain the following:

A general location map establishing there are no Coastal Barrier Resource System units in the city or county

Flood Insurance

HUD State-administered assistance such as Community Development Block Grants (CDBG) is considered "formula grant made to states." By law, "formula grants made to states" are exempt from the flood insurance purchase requirements by Section 3(a)(3) of the Act. 24 CFR 58.6(a)(3).

Related Federal Laws and Authorities §58.5
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The RE must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies, and regulations of these laws and authorities. Record in the appropriate form (**Attachments 2-10 or 2-11**) the compliance determination below. Provide credible, transparent, and supportive source documentation for each item.

Clean Air

The Clean Air Act was implemented to remedy the damaging effects that bad air quality can have on human health and the environment. Although it is a federal act applied nationally, much of the work and planning is done at the state and local level to tailor air quality requirements to local needs. The Act was most recently revised in 1990, when major changes were enacted.

The Clean Air Act is administered by the U.S. Environmental Protection Agency (EPA), which sets National Ambient Air Quality Standards (NAAQS). These are limits on certain “criteria” air pollutants, including limits on how much of these pollutants can be in the air anywhere in the United States. Geographic areas that are in compliance with standards are called “attainment areas,” while areas that do not meet standards are called “nonattainment” areas. The location of areas designated by U.S. EPA as polluted under the Clean Air Act is documented in the U.S. EPA’s Green Book on Nonattainment Areas for Criteria Pollutants.

In addition to the EPA, the Clean Air Act is administered by state, tribal, and local agencies, which are responsible for developing local solutions to air quality problems. states must develop State Implementation Plans (SIPs) to regulate their state air quality.

In order to show compliance with the NAAQS, projects funded by HUD must demonstrate that they conform to the appropriate SIP.

The environmental review record should contain one of the following:

- A determination that the project does not include new construction or conversion of land use facilitating the development of public, commercial, or industrial facilities OR five or more dwelling units
- Documentation that the project’s county or air quality management district is not in nonattainment or maintenance status for any criteria pollutants
- Evidence that estimated emissions levels for the project do not exceed the minimum emissions levels for the nonattainment or maintenance level pollutants
- A determination that the project can be brought into compliance with the State Implementation Plan (SIP) through modification or mitigation, including documentation on how the project can be brought into compliance

Coastal Zone Management

A general location map establishing the project is located in a state where there are no coastal zones or documentation showing the state is not participating in the CZM program.

Contamination and Toxic Substances

It is HUD policy, as described in 24 CFR Part 50.3(i) and 24 CFR 58.5(i)(2), that:

1. All property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard

- could affect the health and safety of occupants or conflict with the intended utilization of the property.
2. Environmental review of multifamily and non-residential properties shall include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards.
 3. Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.
 4. The RE shall use current techniques by qualified professionals to undertake investigations determined necessary.

It is therefore essential that REs, potential grant applicants, and other HUD program participants become familiar with the potential environmental issues involving property before leasing, optioning, and/or acquiring the property. Unknowing individuals or parties that acquire contaminated property with good intentions could face liability for clean-up costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), third party lawsuits, and cause costly delays in implementing the project.

For non-FHA-insured programs, the Environmental Review Record should contain one of the following:

- Evidence the site is not contaminated (for multifamily housing projects this includes on site and off site contamination and previous uses of the site); a Phase I Environmental Site Assessment is strongly encouraged for multifamily and non-residential projects
- Evidence supporting a determination the hazard will not affect health and safety of the occupants or conflict with the intended use of the site, including any mitigation measures used
- Documentation the site has been cleaned up according to EPA or state standards for residential properties, which requires a letter of “No Further Action” (NFA) required from the appropriate state department/agency, or a RAO letter from the LSRP

Endangered Species

The Endangered Species Act (ESA) of 1973, as amended, and its implementing regulations were designed to protect and recover species in danger of extinction and the ecosystems that they depend upon. When passed, the ESA spoke specifically to the value - tangible and intangible - of conserving species for future generations. In passing the Act, Congress recognized another key fact that subsequent scientific understanding has only confirmed: the best way to protect species is to conserve their habitat.

Under Section 7 of the ESA, the federal government and each of its agencies have a statutory mandate to use their powers for the conservation of species. Each agency must ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species in the wild or destroy or adversely modify its critical habitat.

The U.S. Fish and Wildlife Service (USFWS) part of the US Department of Interior is responsible for terrestrial and freshwater species. This office is responsible for listing species under their authority as threatened or endangered as appropriate. If an agency determines that a proposed action may affect one or more listed species, it must formally consult with the USFWS office or offices responsible for the affected species.

The environmental review must consider potential impacts of the HUD-assisted project to endangered and threatened species and critical habitats. The review must evaluate potential impacts not only to any listed but also to any proposed endangered or threatened species and critical habitats. This responsibility is cited in environmental procedures at 24 CFR 58.5(e) and 24 CFR 50.4 (e).

The environmental review record should contain one of the following determinations and supporting documentation:

- No Effect, including a determination that the project does not involve any activities that have a potential to affect species or habitats, evidence that there are no federally listed species in the area, or other analysis supporting a No Effect finding
- May Affect, Unlikely to Adversely Affect, including all correspondence with the USFWS
- Likely to Adversely Affect, including all correspondence with the USFWS

Explosive and Flammable Hazards

There are inherent potential dangers associated with locating HUD-assisted projects near hazardous facilities which store, handle, or process hazardous substances of a flammable or explosive nature. Project sites located too close to facilities handling, storing or processing conventional fuels, hazardous gases or chemicals of an explosive or flammable nature may expose occupants or end-users of a project to the risk of injury in the event of an explosion.

Blast overpressure and thermal radiation standards are used as a basis for calculating acceptable separation distances (ASDs) for HUD-assisted projects from specific, stationary hazardous operations which store, handle, or process substances of fire or explosive prone nature. HUD-assisted projects must meet ASDs or else mitigation measures must be undertaken.

The environmental review record should include:

- **One of the following on aboveground storage tanks:**
 - A determination that the project does not include development, construction, rehabilitation that will increase residential densities, or conversion
 - Evidence that within one mile of the project site there are no current or planned stationary aboveground storage containers of more than 100-gallon capacity containing common liquid industrial fuels or of any capacity containing hazardous liquids or gases that are not common liquid industrial fuels
 - A determination along with all supporting documentation that the separation distance of such containers from the project is acceptable
 - Documentation of the existing or planned barrier that would serve as sufficient mitigation, including correspondence with a licensed engineer
- **AND one of the following on hazardous facilities:**
 - A determination that the project does not include a hazardous facility
 - A determination along with all supporting documentation that the hazardous facility is located at an acceptable separation distance from residences and any other facility or area where people may congregate or be present
 - Documentation of the existing or planned barrier that would serve as sufficient mitigation, including correspondence with a licensed engineer

Farmlands Protection

The importance of farmlands to the national and local economy requires the consideration of the impact of activities on land adjacent to prime or unique farmlands. The purpose of the Farmland Protection Policy Act (7 U.S.C. 4201 et seq., implementing regulations 7 CFR Part 658, of the Agriculture and Food Act of 1981, as amended) is to minimize the effect of federal programs on the irreversible conversion of farmland to nonagricultural uses.

The Act does not apply to projects already in or committed to urban development or those that could otherwise not convert farmland to non-agricultural uses. 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. In some states agricultural lands are protected from development by agricultural districting, zoning provisions, or special tax districts.

The environmental review record should contain one of the following:

- A determination that the project does not include any activities, including new construction, acquisition of undeveloped land, or conversion, that could potentially convert one land use to another
- Evidence that the exemption applies, including all applicable maps
- Evidence supporting the determination that "Important Farmland," including prime farmland, unique farmland, or farmland of statewide or local importance regulated under the FPPA does not occur on the project site
- Documentation of all correspondence with NRCS, including the completed AD-1006 and a description of the consideration of alternatives and means to avoid impacts to Important Farmland

Floodplain Management

Executive Order 11988 - Floodplain Management requires federal activities to avoid impacts to floodplains and to avoid direct and indirect support of floodplain development to the extent practicable. The Federal Emergency Management Agency (FEMA) designates floodplains. The FEMA Map Service Center provides this information in the form of FEMA Flood Insurance Rate Maps (FIRMs).

The environmental review record should contain one of the following:

- Documentation supporting the determination that an exception at 55.12(c) applies.
- A FEMA map showing the project is not located in a Special Flood Hazard Area.
- A FEMA map showing the project is located in a Special Flood Hazard Area along with documentation of the 8-Step Process and required notices. If the 5-Step Process is applicable, provide documentation of the 5-Step Process and indicate the applicable citation. If the 8-Step Process is inapplicable, indicate the applicable citation and document the determination.

Historic Preservation

HUD programs support and facilitate the use of historic properties for affordable housing, economic development, and community revitalization. HUD encourages the rehabilitation of historic buildings and the preservation of irreplaceable resources like archeological sites that convey centuries of human cultural activity. The National Historic Preservation Act (NHPA), 16 U.S.C. 470 et seq., directs each federal agency, and those tribal, state, and local governments that assume federal agency responsibilities, to protect historic properties and to avoid, minimize,

or mitigate possible harm that may result from agency actions. The review process, known as Section 106 review, is detailed in 36 CFR Part 800. Early consideration of historic places in project planning and full consultation with interested parties are key to effective compliance with Section 106. The WV State Historic Preservation Officer is the primary consulting party in the process. A qualified historic preservation consultant may assist with the technical components of the Section 106 review process. The RE must prepare the Section 106 Review documents for the WV State Historic Preservation Office (SHPO). Details on this process can be found at the following website: www.wvculture.org/shpo/review.html. The initial assessment may take up to 30 days.

It is important to remember that the environmental review record (ERR) must show that Section 106 review was completed before approval is given to proceed with HUD assisted projects.

The environmental review record should contain documentation on one of these types of findings:

- **No Historic Properties Affected**
 - Letter from SHPO that concurs with HUD's or the Responsible Entity's determination of "no historic properties affected"
 - With documentation on 1) the undertaking and the Area of Potential Effect (APE) (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, 3) the basis for determining that no historic properties are present or affected, and 4) copies or summaries of any views provided by consulting parties and the public
 - If the SHPO has not responded to a properly documented request for concurrence within 30 days of receipt of the request, document the request and lack of response as part of the record
- **No Adverse Effect**
 - Letter from SHPO that concurs with HUD'S or the Responsible Entity's finding of "no adverse effect"
 - With documentation on 1) the undertaking and the APE (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, 3) affected historic properties (including characteristics qualifying them for the NR), 4) the undertaking's effects on historic properties, 5) why the criteria of adverse effect were not applicable (§800.5), and 6) copies or summaries of any views provided by consulting parties and the public
 - If the SHPO has not responded to a properly documented request for concurrence within 30 days of receipt of the request, document the request and lack of response as part of the record
- **Adverse Effect**
 - Notification of adverse effect sent to Advisory Council on Historic Preservation
 - Letter from SHPO that concurs with a finding of "adverse effect"
 - With documentation on 1) the undertaking and the APE (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, 3) affected historic properties (including characteristics qualifying them for the NR), 4) the undertaking's effects on historic properties, 5) why the criteria of adverse effect are applicable (§ 800.5), and 6) copies or summaries of any views provided by consulting parties and the public
 - A Memorandum of Agreement (MOA) or a Programmatic Agreement (PA) signed by the HUD official or Responsible Entity, SHPO, the Advisory Council on Historic Preservation if participating, and other signatory and concurring parties

- If resolution is not reached in an MOA or PA, provide correspondence and comments between the Advisory Council on Historic Preservation and HUD Secretary (for Part 50 projects) or Responsible Entity's chief elected local official (for Part 58 projects)

Noise Abatement and Control

HUD's noise standards may be found in 24 CFR Part 51, Subpart B. For proposed new construction in high noise areas, the project must incorporate noise attenuation features. Consideration of noise applies to the acquisition of undeveloped land and existing development as well.

All sites whose environmental or community noise exposure exceeds the day night average sound level (DNL) of 65 decibels (dB) are considered noise-impacted areas. For new construction that is proposed in high noise areas, grantees shall incorporate noise attenuation features to the extent required by HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR Part 51. The interior standard is 45dB.

The "Normally Unacceptable" noise zone includes community noise levels from above 65 decibels to 75 decibels. Approvals in this noise zone require a minimum of 5 dB additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 dB but does not exceed 70 dB, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 dB but does not exceed 75 dB.

Locations with day-night average noise levels above 75 dB have "Unacceptable" noise exposure. For new construction, noise attenuation measures in these locations require the approval of the Assistant Secretary for Community Planning and Development (for projects reviewed under Part 50) or the Responsible Entity's Certifying Officer (for projects reviewed under Part 58). The acceptance of such locations normally requires an environmental impact statement.

In "Unacceptable" noise zones, HUD strongly encourages conversion of noise-exposed sites to land uses compatible with the high noise levels.

The environmental review record should contain one of the following:

- Documentation the proposed action is not within 1000 feet of a major roadway, 3,000 feet of a railroad, or 15 miles of a military or FAA-regulated civil airfield
- If within those distances, documentation showing the noise level is *Acceptable* (at or below 65 DNL)
- If within those distances, documentation showing that there's an effective noise barrier (i.e., that provides sufficient protection)
- Documentation showing the noise generated by the noise source(s) is *Normally Unacceptable* (66 – 75 DNL) and identifying noise attenuation requirements that will bring the interior noise level to 45 DNL and/or exterior noise level to 65 DNL

Sole Source Aquifers

Aquifers and surface water are drinking water systems that may be impacted by development. The Safe Drinking Water Act of 1974 requires protection of drinking water systems that are the sole or principal drinking water source for an area and, if contaminated, would create a significant hazard to public health.

Sole Source Aquifer designations are one tool to protect the drinking water supplies in areas where alternatives to the groundwater resource are few, cost-prohibitive, or nonexistent. The designation protects an area's ground water resource by requiring U.S. Environmental Protection Agency (EPA) review of any proposed projects within the designated area that are receiving federal financial assistance. All proposed projects receiving federal funds are subject to review to ensure they do not endanger the water source.

Resources to contact for further information include the local water department or authority, WV Department of Environmental Protection Offices, and the WV Department of Natural Resources.

The environmental review record should contain one of the following:

- Documentation, including a map, showing that the project site is not on a sole source aquifer
- A determination that the project consists solely of acquisition, leasing, or rehabilitation of existing buildings
- Documentation showing that a memorandum of understanding (MOU) or agreement with the EPA excludes your project from further review
- Documentation that EPA has reviewed and commented on the proposed action within an SSA and a description of any mitigation measures, if necessary

Wetlands Protection

Executive Order 11990: Protection of Wetlands requires federal activities to avoid adverse impacts to wetlands where practicable. As primary screening, HUD or grantees must verify whether the project is located within wetlands identified on the National Wetlands Inventory (NWI) or else consult directly with the USFWS staff. If USFWS staff is unavailable, HUD or grantees are to consult with the USDA/NRCS National Soils Survey or the U.S. Army Corp of Engineers (ACE).

The environmental review record should contain one of the following:

- Documentation supporting the determination that an exception at 55.12(a)(3), 55.12(a)(4), 55.12(c)(3), 55.12(c)(7), or 55.12(c)(10) applies.
- Documentation supporting the determination that the project does not involve new construction (as defined in Executive Order 11990), expansion of a building's footprint, or ground disturbance.
- A map or other relevant documentation supporting the determination that the project does not impact an on- or off-site wetland.
- A completed 8-Step Process, including a map and the early and final public notices.

Wild and Scenic Rivers

The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) provides federal protection for certain free-flowing, wild, scenic, and recreational rivers designated as components or potential components of the National Wild and Scenic Rivers System (NWSRS). The National Wild and Scenic Rivers System (NWSRS) was created by Congress in 1968 (Public Law 90-542; 16 U.S.C. 1271 et seq., as amended) to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations. The Act is notable for safeguarding the special character of these rivers, while also recognizing the potential for their appropriate use and development. It encourages river management that crosses political boundaries and promotes public participation in developing goals for river protection.

Each river or river segment in the National Wild and Scenic Rivers System is administered with the goal of protecting and enhancing the values that caused it to be eligible for inclusion in the system. Designated rivers need not include the entire river and may include tributaries.

Four primary federal agencies are charged with protection and managing our wild and scenic rivers: the National Park Service, Bureau of Land Management, U.S. Forest Service and U.S. Fish and Wildlife Service. Each river segment is administered by generally one of these federal agencies and/or state boundaries for protected rivers generally extend one-quarter mile from either bank in order to protect river-related values.

HUD-assisted activities are subject to the requirements of the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). The environmental review must evaluate the potential to impact any listed Wild and Scenic River when the assisted project is within proximity to a listed natural resource (24 CFR 58.5(f) or 24 CFR 50.4(f)).

Wild and Scenic Rivers These rivers or river segments have been designated by Congress or by states (with the concurrence of the Secretary of the Interior) as wild, scenic or recreational.

Study Rivers These rivers or river segments are being studied as a potential component of the Wild & Scenic River system.

Nationwide Rivers Inventory (NRI) The National Park Service has compiled and maintains the NRI, a register of river segments that potentially qualify as national wild, scenic or recreational river areas.

The environmental review record should contain one of the following:

- Evidence the proposed action is not within proximity to a designated Wild, Scenic, or Recreational River
- Documentation that contact was made with the federal (or state) agency that has administrative responsibility for management of the river and that the proposed action will not affect river designation or is not inconsistent with the management and land use plan for the designated river area

Environmental Justice

Environmental justice means ensuring that the environment and human health are protected fairly for all people regardless of race, color, national origin, or income. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations" (2/94) requires certain federal agencies, including HUD, to consider how federally assisted projects may have disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Environmental justice is an integral part of HUD's mission. The Department works with multiple stakeholders and other federal agencies in its efforts to assure environmental justice concerns are addressed.

Review land use plans, census information and the U.S. EPA Environmental Justice webpage (EJ View). Consider local government sources such as the health department or school district that may be more current or focused on the neighborhood as their unit of analysis.

The environmental review record should contain one of the following:

- Evidence that the site or surrounding neighborhood does not suffer from adverse environmental conditions and evidence that the proposed action will not create an adverse and disproportionate environmental impact or aggravate an existing impact. (Describe how the proposed action will not have a disproportionate adverse impact on minority or low-income populations.)
- Evidence that the project is not in an environmental justice community of concern (demographics, income, etc.) or evidence that the project does not disproportionately affect a low-income or minority population
- If there are adverse effects on low-income or minority populations, documentation that the affected community residents have been meaningfully informed and involved in a participatory planning process to address (remove, minimize, or mitigate) the adverse effect from the project and the resulting changes