

CHAPTER 2: ENVIRONMENTAL REVIEWS

OVERVIEW

The purpose of the Environmental Review (ER) is to analyze the effect the proposed project will have on the people and the natural environment within the project area. This process examines a project relative to the National Environmental Policy Act of 1969 (NEPA). NEPA was established to ensure environmental protection for federally funded projects. All Community Development Block Grant (CDBG) funds also are subject to the provisions of the Housing and Urban Development (HUD) regulations implementing NEPA.

In summary, Environmental Reviews are necessary because they:

- ensure the project site is suitable for the activity being proposed;
- avoid or mitigate any harm to the surrounding environment and project site;
- protect health and safety, avoid or mitigate impacts that may harm residents;
- prevent time delays and cost overruns that might otherwise occur because of unknown environmental conditions;
- avoid litigation that could stop the project on environmental grounds;
- avoid monitoring findings and/or loss of HUD financial assistance to the project;
- are required by Federal Law & Regulations under the National Environmental Policy Act of 1969 (NEPA) and NEPA related laws.

If any CDBG funding is utilized for any part of the proposed project, the entire project must be held to the Environmental Review regulations listed in the Federal laws and Regulations section.

The type of project a Grantee is managing will determine the level of Environmental Review and the necessary documentation that will be required. All Environmental Review procedures must be completed and approved prior to the issuance of a Notice to Proceed. Any costs incurred before the Notice to Proceed has been issued by the Nevada Governor's Office of Economic Development (GOED) will not be reimbursed.

This chapter covers environmental regulations that must be followed on all CDBG funded projects. A chart, Environmental Review Process, provides an overview of the processes for each level of environmental review. For every project and Environmental Review, there are basic steps that are necessary to correctly complete the review. The steps are:

- 1) **Designate the Environmental Review Officer and Certifying Officer** – Each Grantee, assuming the position of Responsible Entity (RE) [City or County], must designate an Environmental Review Officer (ERO) [Grantee or Consultant] who is responsible for completing the Environmental Review process.

The Certifying Officer (CO) is the Chief Elected Official [Mayor or Chair] of the unit of general local government.

- 2) **Develop Project Description and Apply the Concept of Aggregation** – The Grantee must evaluate the entire scope of the project and include all funding sources that may be used in association with the project. The project scope must include any related activities necessary to accomplish the project. The project description must include the project site and its boundaries.

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- 3) **Determine the Level of Review** – The Grantee must determine which level of Environmental Review is appropriate for the overall project.
- 4) **Documentation** – The Grantee must complete all documents necessary for the appropriate level of Environmental Review. These documents ultimately become the Environmental Review Record (ERR).

FEDERAL LAWS AND REGULATIONS

National Environmental Policy Act (NEPA) and implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500 – 1508).

NEPA ensures that environmental information is available to the public before decisions are taken and before actions are taken. It requires a systematic, interdisciplinary approach to Environmental Reviews, and helps officials make decisions with an understanding of environmental consequences.

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

- 24 CFR 58.34 - Regulations governing Exempt activities.
- 24 CFR 58.35(a) - Defines Categorically Excluded Subject To 24 CFR Part 58.5 (CEST)
- 24 CFR 58.35(b) - Defines Categorically Excluded Not Subject To 24 CFR Part 58.5 (CENST)
- 24 CFR 58.36 & 58.40 – Refers to Environmental Assessments
- 24 CFR 58.37 – Refers to Environmental Impact Statements
- 24 CFR 58.38 - Defines requirements for the Environmental Review Record (ERR)

These regulations allow units of general local government (Responsible Entity) to perform NEPA responsibilities that would otherwise apply to HUD.

NEPA Related Laws and Authorities (Ref. 24 CFR Part 58.5 and 24 CFR Part 51).

- National Historic Preservation Act (1966)
- Floodplain Management & Wetlands Protection: Executive Orders (1977)
- Coastal Zone Management Act of 1972
- Safe Drinking Water Act (1974)
- Endangered Species Act (1973)
- Wild & Scenic Rivers Act (1968)
- Clean Air Act (1970)
- Farmland Protection Policy Act (1981)
- HUD Environmental Criteria & Standards
 - Noise Abatement and Control
 - Near Explosives or Flammable Sites
 - Near Airport Runway Protection Zones
 - Near Toxic Hazards
- Environmental Justice E.O. (1994)
- Noise Control Act (1972)

Further information on applicable regulations is provided in the Chapter 2: Exhibits.

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ROLES AND RESPONSIBILITIES

The CDBG Eligible Entity [City or County] is the **Responsible Entity (RE)**. This is the entity at the local level that assumes responsibility for the ER, decision making, and action according to NEPA and Part 58.

The **Environmental Review Officer (ERO)** [Grantee or Consultant] manages the entire Environmental Review process and serves as point of contact for public inquiries. Typically, the CDBG Grant Administrator is designated as the Environmental Officer.

The **Certifying Officer (CO)** is the Chief Elected Official [Mayor or Chair] of the Responsible Entity, or other official who has the authority to consent on behalf of the Chief Elected Official to federal court jurisdiction, and bind the RE to satisfy any judgment about the environmental record. The CO assumes responsibility by signing off on the Environmental Review.

It is recommended to start the Environmental Review process as early as possible. Depending on the complexity of the project, environmental reviews can take from one day or less (Exempt or Cat Ex, Not Subject to) to 120 days or more to complete. It must be stressed that no action, in terms of project implementation, can be taken until the Environmental Review process is complete and the Notice to Proceed is issued. Allowable reimbursements are made on costs incurred from the date of the Notice to Proceed letter.

The State, acting for HUD, approves or denies an Environmental Review and ensures compliance with the Environmental Review throughout the life of the project and close out of the grant.

PROJECT DESCRIPTION AND THE CONCEPT OF AGGREGATION

The Environmental Officer must evaluate the entire scope of the project and include all funding sources that may be used in association with the project. Defining the project needs to include determining all integrally related activities designed to accomplish the project objectives. All activities that are related either geographically or functionally or are logical parts of a composite of contemplated actions, should be aggregated in the project definition and evaluated as a single project. The project site and its boundaries must be included.

It is necessary for the Grantee to describe the project fully and include all details, including, but not limited to, any infrastructure being developed in conjunction with the project, regardless of whether or not that additional portion of the project is being funded with CDBG funds. The following questions might be asked:

- What is the scope of the project?
- What activities will be included?
- What is the location/site?
- What are the project boundaries?
- What are the characteristics of the location of the project?

The use of maps and photographs are required in defining the project.

Most projects funded under the CDBG program entail more than one activity. For example, a new wastewater treatment plant would have both administrative and construction related activities. The

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Environmental Review must be completed utilizing the highest level of review relative to the activities in the project, if there are multiple activities.

DETERMINING THE LEVEL OF REVIEW

The Grantee must determine which level of Environmental Review is appropriate for the project to correctly complete the necessary documentation. Determining the activity classification is the responsibility of the Grantee's Environmental Review Officer. To do this, the Environmental Review Officer must list all the activities associated with the project and determine the highest level of review.

Each level of Environmental Review is defined by HUD. The three main environmental classifications are:

- 1) **Exempt Activities** – 24 CFR 58.34 (a);
- 2) **Categorically Excluded Activities**
 - Not Subject To 24 CFR Part 58.5 (CENST) – 24 CFR Part 35 (b)
 - Subject To 24 CFR Part 58.5 (CEST) – 24 CFR Part 35 (a)
- 3) **Environmental Assessment Activities** – 24 CFR Part 58.36 and 58.40

In addition to the three main classifications, another environmental classification is the **Environmental Impact Statement (EIS)** – 24 CFR Part 58.37. The EIS comprehensive review is for those projects that are large in scope and will have a significant environmental impact. Environmental Impact Statements are seldom used in the Nevada CDBG program.

Regardless of the number of activities associated with the project, it is only necessary to complete one Environmental Review. The different *Levels of Environmental Review* are summarized in the Chapter 2: Exhibits.

EXEMPT ACTIVITIES

These are activities that are exempt from the requirements of NEPA and the federal laws listed at 24 CFR 58.5. An activity has an Exempt classification when there is no effect whatsoever on the physical environment. Project activities that fall under this classification include the following:

- 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 recreational needs;
- Inspections and testing of properties for hazards or defects;
- Engineering or design costs;
- Technical assistance and training;
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration; and

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- Payment of principal and interest on loans made or obligations guaranteed by HUD.

If the proposed project entails exempt only activities, the Environmental Review process is simple. The Grantee does not have to publish a Finding of No Significant Impact (FONSI), or a Notice of Intent/Request for Release of Funds (NOI/RROF) or submit a Request for Release of Funds and Certification (RROF/Certification) Form. The Grantee is required to take the following steps:

- 1) **Exempt Activity Notification:** Submit the form titled *Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 [pursuant to 24 CFR Part 58.34 (a) and 58.35 (b)]* Chapter 2: Exhibits.
 - a. Ensure that narrative is provided for all sections, even if “No” is checked. The purpose of this form is to provide essential information regarding the project.
 - b. Narrative and maps should exhibit a clear picture of the project.
 - c. This form is signed by both the Preparer (RE) and the Certifying Officer (CO).

Assuming everything is in order, a Notice to Proceed will be sent to the Grantee.

CATEGORICALLY EXCLUDED ‘NOT SUBJECT TO’ (CENST) ACTIVITIES

A project that has been classified as CENST requires a limited Environmental Review. Activities that qualify under this classification include the following:

- 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;
- 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 homebuyers with the purchase of existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title;
- Affordable housing pre-development costs including 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 this part. If the approval is made by the same responsible entity that conducted the Environmental Review on the original project, re-evaluation of the environmental findings is not required.

If the proposed project is determined to be CENST, the Environmental Review process is simple. The Grantee does not have to publish a Finding of No Significant Impact (FONSI), or a NOI/RROF, or submit a Request for Release of Funds and Certification (RROF/Certification) Form. The Grantee is required to take the following steps:

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- 1) **CENST Activity Notification:** Submit the form titled *Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 [pursuant to 24 CFR Part 58.34 (a) and 58.35 (b)]*.
 - a. Ensure that narrative is provided for all sections, even if “No” is checked. The purpose of this form is to provide essential information regarding the project.
 - b. Narrative and maps should exhibit a clear picture of the project.
 - c. This form is signed by both the Preparer (RE) and the Certifying Officer (CO).

Assuming everything is in order, a Notice to Proceed will be sent to the Grantee.

CATEGORICALLY EXCLUDED ‘SUBJECT TO’ (CEST) ACTIVITIES

A project that is considered CEST requires a more detailed environmental review. Activities that qualify under this classification include the following:

1. 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);
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of, and accessibility to elderly and handicapped persons;
3. Rehabilitation of buildings and improvements when the following conditions are met:
 - i) In the case of a building for residential use (with one to four units), the 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 in a wetland,
 - ii) In the case of multifamily residential buildings when:
 - (a) Unit density is not changed more than 20 percent,
 - (b) The project does not involve changes in land use from residential to non-residential, and
 - (c) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation,
 - iii) In the case of non-residential structures, including commercial, industrial, and public buildings when:
 - (a) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent, and
 - (b) 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;
4. Rehabilitation of buildings and improvements does not apply when the following conditions are met:
 - i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between, or
 - ii) An individual action on a project of 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 housing units on any one site;

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5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use; and
6. Combinations of the above activities.

If the proposed project entails any Categorically Excluded activities, the Grantee is required to complete the following steps:

- 1) **Review by External Agencies:** The Grantee sends the detailed project description (referred to earlier) to the prescribed list of external reviewers (per §58.5) for comment. A list of the external reviewers, and templates for the cover letter and response format, are provided in the Chapter 2: Exhibits. The State Historic Preservation Office (SHPO) does not use a template. Follow the instructions for the Section 106 review process found on the Nevada SHPO web site regarding their process.

<http://shpo.nv.gov/welcome-to-review-and-compliance/preparing-a-submission-for-section-106-or-section-110-review>

Reviewers are expected to respond within 30 days: some reviewers respond in a timelier manner than others. It is the Grantee's responsibility to ensure all reviewers respond with comments; it is a best practice is to track responses for the 30-day period. When all the responses have been received, or the 30-day period has passed, the Grantee must read and review the responses carefully, and determine what mitigation measures, if any, are recommended.

- 2) **Complete Statutory Worksheet:** If there are no mitigation measures recommended by the external reviewers, the project essentially converts to Exempt and the Grantee completes the prescribed form titled *Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Pursuant to 24 CRF 58.35 (a)]*. When completed, and signed by the appropriate parties, the Grantee submits the Statutory Worksheet to CDBG complete with:
 - the project description as sent to the reviewers (complete with maps, diagrams, photographs, etc.),
 - copies of letters sent to reviewers, and
 - copies of the response letters from the reviewers.

There are no publication requirements when a CEST project converts to Exempt. CDBG staff will review the *Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 [Pursuant to 24 CRF 58.35 (a)]* and attachments. Assuming everything is in order, a Notice to Proceed will be sent to the Grantee.

- 3) **Responding to Mitigation Recommendations:** If any of the reviewers conclude that mitigation measures are required, the project does not convert to Exempt. The Grantee must prepare a mitigation plan, follow the publication steps described in **Publication of Notice of Intent**, and submit the Statutory Worksheet and attachments, the mitigation plan, and publication details to CDBG for final approval. Successful project completion depends on compliance with any mitigation requirements.

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Floodplain Notification: If any part of the project is within a floodplain, the Grantee must conduct the HUD 8 Step Decision Making Process. See **PROCEDURES FOR MAKING DETERMINATIONS ON FLOODPLAIN AND WETLAND MANAGEMENT: THE 8 STEP DECISION MAKING PROCESS** in the Chapter 2: Exhibits.

- 4) **Publication of Notice of Intent:** The Grantee prepares a 'Notice of Intent to Request Release of Funds' (NOI-RROF) that details the activities associated with the project and publishes this notice in a newspaper of general circulation form in Chapter 2: Exhibits.

For the Categorically Excluded, Subject to: if the Notice of Intent to Request Release of Funds (NOI-RROF) is published in a newspaper of general circulation, the public comment period is a minimum of 7 calendar days from the day after publication and a minimum of 10 calendar days if it is posted on a public notice board or near to the project site mailed.

For Environmental Assessments, the NOI-RROF may be combined with the FONSI notice. If combined, the public comment period is a minimum of 15 calendar days when published or a minimum of 18 calendar days when posted/mailed. A 30-day comment period may be required for exceptional circumstances. The combined notice must clearly indicate that it is intended to meet two separate notification requirements and that comments need to state whether they apply to the NOI-RROF or the FONSI.

- 5) **Request Release of Funds:** During the required public comment period, the Grantee must acquire the affidavit for the NOI-RROF from the newspaper publisher and collect and respond to any local comments on the proposed project. After completion of the public comment period, the Grantee must forward a copy of the newspaper notice, the publisher's affidavit, any local comments on the project, and the RROF/Certification Form (Chapter 2: Exhibits) to CDBG. The RROF/Certification must be signed by the Certifying Officer. CDBG staff will have an additional fifteen-day public comment period at the state level. After the fifteen days have elapsed, assuming no negative comments are received, CDBG staff will issue the Notice to Proceed and the Authority to Use Grant Funds Chapter 2: Exhibits).

It is important to remember that the mitigation plan must be implemented by the project manager and monitored by the Grantee when the project begins. Monitoring for compliance must continue throughout the duration of the project. If any change in the Scope of Work/Change Order impacts the Environmental Review, additional actions may be necessary and documentation and/or mitigation may be required. No grant project can be closed if mitigation issues are not resolved.

ENVIRONMENTAL ASSESSMENT ACTIVITIES

A project that cannot be classified as Exempt, CENST, or CEST, but is classified under 24 CFR 58.36 requires the completion of an Environmental Assessment (EA). These activities are usually those that have a direct impact on the physical environment. **Any new construction and improvements of more than 20% in size or capacity would fall under this classification.**

As with the CEST Environmental Review, if the proposed project entails any EA activities, the Grantee must prepare and maintain a written record of the Environmental Review undertaken for the project. This is like the CEST review, but more detailed.

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To complete the EA, the Grantee must undertake the following steps.

1. Environmental Packet Preparation: The Grantee's Environmental Review Officer must first put together a packet of information that fully explains the activities associated with the proposed project. This packet must include a project narrative with maps and photographs depicting the project site. The following maps could be used:

- a United States Geological Survey (USGS) topographical map,
- a floodplain map,
- a wetland map (if applicable),
- a soils map (if applicable).

The project description from the original grant application could be used in developing an expanded narrative that fully describes the proposed project. It is essential to include all project activities in the Environmental Assessment, regardless of who is funding the activities (58.32). The project description must be comprehensive, accurate and finite, and, at a minimum, describe the maximum scope, scale and magnitude of the project.

2. Review by External Agencies: The Grantee must be familiar with the Environmental Assessment Form that needs to be completed at the end of the EA process. To satisfy the requirements of this form, the Grantee must start by sending the described environmental packet to the appropriate local, state, and federal agencies requesting an environmental response. The applicable agencies are listed in Chapter 2: Exhibit Environmental Review List-ERR contact list. In addition to this list of reviewers, the Grantee should seek comments from other local experts, engineers and etcetera: those familiar with the project and project site.

Additionally, the Grantee must engage in a process for Tribal Consultation for projects to determine whether a proposed project may adversely affect historic properties of religious and cultural significance, and if so, how the adverse effect could be avoided, minimized or mitigated. This applies to projects on and off tribal Lands (Section 106 of the National Historic Preservation Act (*U.S.C. 470f*)). Refer to HUD's Tribal Directory Assessment Tool (TDAT) for tribal contacts for the project area. All tribes within the area must be consulted.

<https://egis.hud.gov/TDAT/>

3. Floodplain Notification: if any part of the project is within the floodplain, the Grantee must conduct the HUD 8 Step Decision Making Process. See **PROCEDURES FOR MAKING DETERMINATIONS ON FLOODPLAIN AND WETLAND MANAGEMENT: THE 8 STEP DECISION MAKING PROCESS** in the Chapter 2: Exhibit.

4. Environmental Response Collection: If any environmental response raises project concerns or requires further documentation or study, it is the Grantee's responsibility to clarify the concerns and/or obtain further documentation. For example, if SHPO requires an archeological survey to be performed where construction is proposed in an 'undisturbed' area, the Grantee must complete the study and obtain the final SHPO letter prior to completing the Environmental Assessment submission to CDBG.

5. Complete the Environmental Assessment (EA) Form and Environmental Review Record (ERR): Once all the environmental responses have been received and all concerns addressed and/or studies completed, the Grantee uses the information contained in the responses to complete the form titled

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Environmental Assessment Determinations and Compliance Findings for HUD-assisted Projects 24 CFR Part 58. The completed EA form is submitted to CDBG staff for review and approval.

6. FONSI/FSI Determination: Once the Environmental Assessment Form and the Environmental Review Record have been completed and approved, and assuming the project activities have been found to have no negative impact on the environment, the Grantee declares a Finding of No Significant Impact (FONSI). If the project is found to have a negative impact on the environment, the Grantee must contact the CDBG staff for further direction.

7. Publication of Finding of No Significant Impact (FONSI) and Combined Notice: If the project activities are determined to have no significant impact on the environment, the Grantee can prepare and publish a FONSI public notice **OR** publish a FONSI/NOI-RROF notice, called the Combined Notice. The Combined Notice is recommended, and the public comment period is 15 days, counting from the day after publication in the local newspaper. The chosen notice should be published in a newspaper of general circulation examples of the notice are in the Chapter 2: Exhibits.

8. Request for Release of Funds: During the 15-day notice period, the Grantee must acquire the affidavit for the FONSI/NOI-RROF from the newspaper publisher and collect and respond to any local comments on the proposed project. After completion of the 15-day period, the Grantee must forward a copy of the newspaper notice, the publisher's affidavit, any local comments on the project, and the RROF/Certification Form to CDBG. The RROF/Certification must be signed by the Certifying Officer. CDBG staff will have an additional fifteen-day public comment period at the state level. After fifteen days have elapsed, assuming no negative comments are received, GOED CDBG staff issues the Notice to Proceed and the Authority to Use Grant Funds.

ENVIRONMENTAL IMPACT STATEMENT

If the proposed project is determined to have a potentially significant impact on the physical and/or human environment, an Environmental Impact Statement (EIS) is required. This determination is based upon the environmental responses collected from the applicable agencies.

In the event this situation occurs, the Grantee must contact GOED CDBG staff and discuss possible means of mitigation and/or project modifications.

PROCEDURES FOR MAKING DETERMINATIONS ON FLOODPLAIN AND WETLAND MANAGEMENT: THE 8 STEP DECISION MAKING PROCESS

Projects located within a floodplain or within a designated wetland are subject to Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) respectively. HUD regulations describe measures for protecting floodplains and wetlands. The required 8-Step Process is explained as follows:

Step 1: Determine whether the proposed action is in a 100-year floodplain and/or wetland. The Nevada Division of Environmental Protection can advise on this, or Grantees can check at <https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper> and on Federal Emergency Management Agency (FEMA) Floodplain Maps. If the proposed action is not in one of those

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locations, no further compliance with this part is required. Please note, Categorically Excluded projects are NOT excluded from this process.

Step 2: Notify the public at the earliest possible time of a proposal to consider an action in a floodplain and/or wetland and involve the affected and interested public in the decision-making process. This is accomplished by publishing the Early Public Review Notice.

a. The public notices required in this section may be combined with other project notices wherever appropriate. All notices must be published in an appropriate local printed news medium. A sample notice is in Chapter 2: Exhibits.

b. A minimum of 15 calendar days shall be allowed for comment on the public notice.

c. A notice under this paragraph shall state: the name, proposed location and description of the activity, the total number of acres of floodplain and/or wetlands involved, and the name of the Chief Elected Official (CEO), and phone number to contact for information. The notice shall indicate the hours and the Grantee's main office at which a full description of the proposed action may be reviewed.

Step 3: Identify and evaluate practical alternatives to locating the proposed action within the floodplain and/or wetland.

a. The consideration of practical alternatives to the proposed site or method may include:

- i. Locations outside the floodplain and/or wetlands;
- ii. Alternative methods to serve the identical project objective; and
- iii. A determination not to approve any action.

b. In reviewing practical alternatives, CDBG or the Grantee shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

Step 4: Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain and/or wetland.

Step 5: Where practical, design or modify the proposed action to minimize the potential adverse impacts within the floodplain and/or wetland and to restore and preserve its natural and beneficial values.

Step 6: Re-evaluate the proposed action to determine:

a. Whether it is still practical considering its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains and/or wetlands, and its potential to disrupt floodplain and/or wetland values; and

b. Whether alternatives preliminarily rejected at Step 3 of this section are practical considering the information gathered in Steps 4 and 5 of this section.

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Step 7: Publish the final Notice of Explanation.

a. If the reevaluation results in a determination that there is no practical alternative to locating the proposed project in the floodplain and/or wetland, the Grantee shall publish the Final Notice of Explanation that includes:

- i. The reasons why the project must be in the floodplain and/or wetland;
- ii. A list of the alternatives considered; and
- iii. All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

b. In addition, depending on the level of ER, a minimum of 7 or 10 calendar days must be provided for public comment before the approval of the proposed action. This notice may be run concurrent with either the (FONSI/RROF) or the NOI/RROF.

Step 8: Upon completion of the decision-making process in Steps 1 through 7, implementation of the proposed action to proceed. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

RE-EVALUATION OF PREVIOUSLY CLEARED PROECTS

Sometimes projects are revised, delayed or otherwise changed so an evaluation is required to determine if the original findings are still valid. If the original findings are still valid, but the data and conditions upon which they were based have changed, the Grantee must update their ERR by including this re-evaluation and its determination based on the changed circumstances.

If it is determined that the original findings are no longer valid, and a reevaluation indicates potentially significant impacts, the Grantee must prepare an EA or EIS that:

- Includes a written statement that explains how this re-evaluation was conducted and includes documentation of the results.
- References the previous Environmental Review record.
- Describes both the old and new project activities, and provides maps delineating both old and new project areas.
- Determines if the FONSI is still valid.
- Is signed and dated by the Chief Elected Official (CO).

The written statement is placed in the ERR and a copy sent to CDBG for clearance.

ENVIRONMENTAL REVIEWS PREPARED BY OR FOR OTHER AGENCIES

CDBG will accept Environmental Reviews prepared by or for other state and federal funding agencies provided that the ERR and associated public notifications meet or exceed the requirements for CDBG's Environmental Reviews. Sometimes Environmental Reviews prepared by or for other agencies do not contact all the agencies required in CDBG's Environmental Review process. It is the responsibility of the Grantee to ensure that all appropriate agencies have been contacted, and that the Environmental Review is complete. Re-publication of the Combined Notice, FONSI and/or the NOI/RROF is necessary. Submission of the RROF/Certification also is necessary before the Notice to Proceed can be issued.

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MONITORING: PROJECT AND POST-REVIEW

The Environmental Review is a dynamic document. Once the initial ER is approved by the CDBG staff, there is continual monitoring throughout the project for compliance with the Environmental Review requirements. Should the Scope of Work change or Change Orders occur, it is necessary to ensure the initial Environmental Review is not impacted. If it is, additional requirements would be necessary.

Grantees must be cognizant of the fact that Environmental Review requirements are included as part of the grant agreement and need to be included in any permits or other approvals that might be needed. At project closing, the project is monitored to ensure compliance occurred throughout the project. A grant project will not be closed if there are any mitigation requirements that have not been completed. If there is non-compliance, repayment of funds may be required.

SUMMARY OF APPLICABLE REGULATIONS

- 24 CFR 58.34 - Regulations governing Exempt activities.
- 24 CFR 58.35(a) - Defines Categorically Excluded Subject To 24 CFR Part 58.5 (CEST)
- 24 CFR 58.35(b) - Defines Categorically Excluded Not Subject To 24 CFR Part 58.5 (CENST)
- 24 CFR 58.36 & 58.40 – Refers to Environmental Assessments
- 24 CFR 58.37 – Refers to Environmental Impact Statements
- 24 CFR 58.38 - Defines requirements for the Environmental Review Record (ERR)
- 36 CFR 800, 801- Regulations governing Historic Properties
- 44 CFR 59-79 – Regulations governing Floodplains
- 42 USC 6901-6987 – Regulations governing Water Supply and Solid Waste Disposal
- 16 USC 1531-1543 – Regulations governing Endangered Species
- 7 CFR 658, 7 USC 4201c2 – Regulations governing Agricultural Lands
- 42 USC 7401-7642 – Regulations governing Air Quality
- 33 USC 1251-1376, 42 USC 300f-300j-10 – Regulations governing Water Quality
- 24 CFR 51 – Regulations governing Noise
- 24 CFR 5 c, d – Regulations governing Hazard
- National Historic Preservation Act, Section 106 (16 U.S.C.470f)
- National Historic Preservation Act (36 CFR Part 800)