



# DIG'N IN TO THE ENVIRONMENTAL REVIEW PROCESS

CHRISTINA GILLEY  
COMMUNITY DEVELOPMENT SPECIALIST  
AUGUST 20, 2014

# OVERVIEW

- ✓ What an Environmental Review is and why we do it
- ✓ Basic Terms & Definitions
- ✓ Changes
- ✓ The Process
  - Statutory Checklist/Thresholds for Compliance
  - Revised Forms and Publications
  - Timing



# WHAT IS AN ENVIRONMENTAL REVIEW?

## An Environmental Review is...

- *The process used to determine if an action created from the expenditure of federal funds will adversely affect the environment.*



## Purpose

- Ensure environmental information is made available to public officials and citizens **before** decisions are made and **before** actions are taken.



# ENVIRONMENTAL REVIEW

## Intent

- Protection of both the *Environment* and the *Project*

## Why

- Requirement of the National Environmental Protection Act of 1969 [and Related Acts](#)

# RELATED ACTS

- **National Historic Preservation Act of 1966**
- Floodplain & Wetland Management
  - Floodplain Management—E.O. 11988
  - Wetlands Protection—E.O. 11990
- Coastal Zone Management Act of 1972
- Safe Drinking Water Act of 1974 (Sole Source Aquifers)
- Endangered Species Act of 1973
- Wild and Scenic Rivers Act of 1968
- Clean Air Act
- Farmland Protection Policy Act of 1981
- Environmental Justice—E.O. 12898
- HUD Environmental Standards (Noise, Hazardous Operations, Airport Clear Zones and Hazardous Materials)

# OTHER REQUIREMENTS

- Airport Hazards
- Flood Disaster Protection Act of 1973
- Coastal Barrier Resource Act of 1982



# TERMS & DEFINITIONS



# Project

- An “activity or group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective”

[§58.2(a)(4)]



- “Aggregate”

Project = Acquisition + Demolition + Construction

# Responsible Entity (RE)

- Assumes **responsibility for compliance** with environmental requirements
- Normally the Federal Funding Agency
- One exception - HUD CDBG program
  - **Grantee – Unit of Local Government**
  - Includes DHCD administered CDBG and ARC funded construction projects



# Certifying Officer

- Person formally delegated the responsibility to act on behalf of the Responsible Entity in the environmental review process
- Usually the Chief Executive Officer of the RE
- CO executes the Request for Release of Funds and Certification Form (HUD specific requirement)
- Legal capacity to carry out ER responsibilities
- Accepts jurisdiction in federal courts for RE

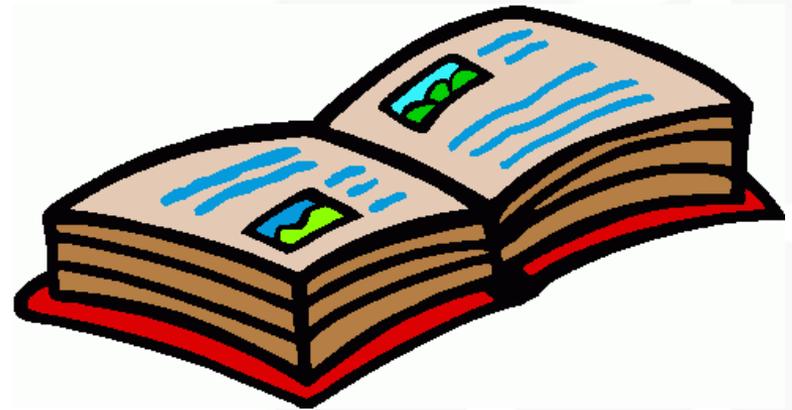


# Certifying Officer

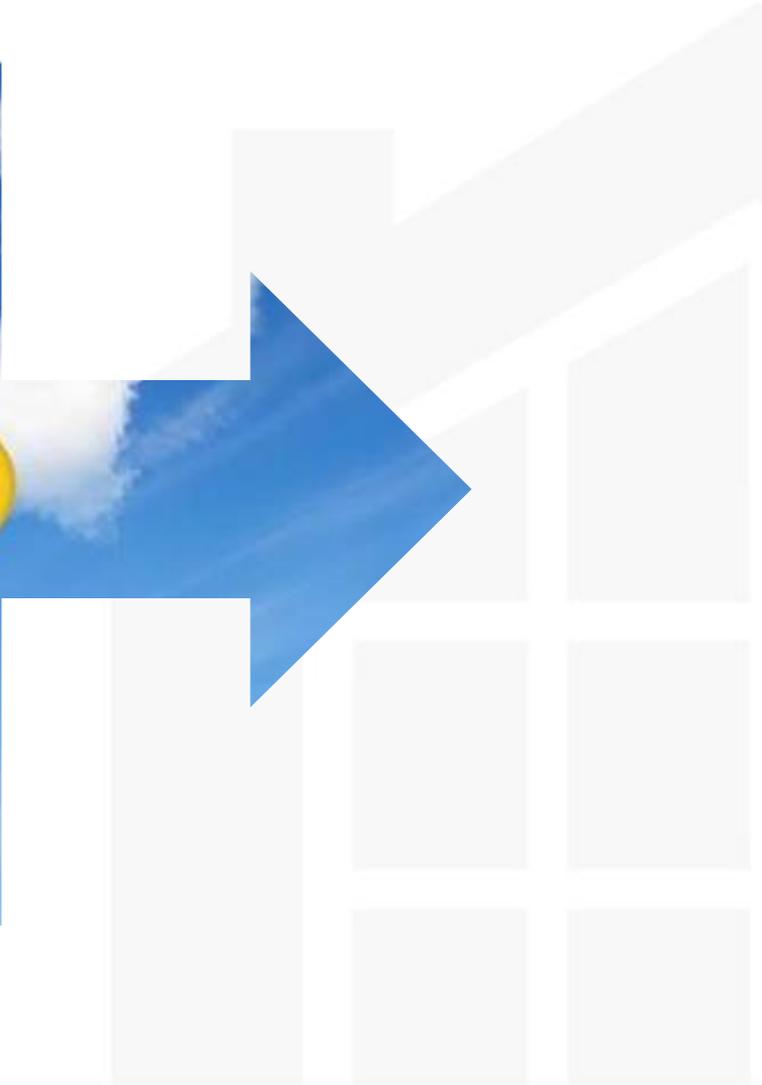
- Must have the technical capacity and administrative capability to carry out the ER duties or
- CO must develop it or delegate it
- Tools
  - DHCD manual
  - DHCD training – workshops, webinar
  - DHCD staff technical assistance
  - Professional support (PDCs, consultants)
- **Grantees can delegate authority – but not responsibility**

# Environmental Review Record (ERR)

- Written record of the environmental review undertaken for each project
- Must be available for public review
- Must Contain the Following:
  - ERR Checklist
  - Statutory Checklist
  - Environmental Checklist
  - Maps
  - Public Notices
  - Documentation of determinations or findings as evidence of review, decision making and action







# CHANGES

- RE conducts research—**not the resource agencies.**
- ERR has a standardized Format for each level of review
- Updated Compliance Thresholds
- Expanded Threshold Guidance

# CHANGES

- Revised/Updated Floodplain Management & Wetland Protection Regulations
  - Early Public Notice is now the **Early Notice and Public Review**—Revised Title , **NO** Public Hearing required and additional language has been added to the publication
  - Notice of Explanation is now the **Final Notice and Public Explanation**—Revised Title and additional language has been added to the publication
- Revised version of the following:
  - NOI-RROF
  - RROF & Certification
  - Combined Notice-- FONSI/NOI-RROF

# ENVIRONMENTAL REVIEW PROCESS

Define Project & Scope

Determine “Level of Review”

Conduct Review

Publish Notices and Submit RROF, if required

# DEFINE PROJECT & SCOPE

- **Project Description**

- Project Name*

- Specific Location*

- Type of Construction*

- Types of Activities*

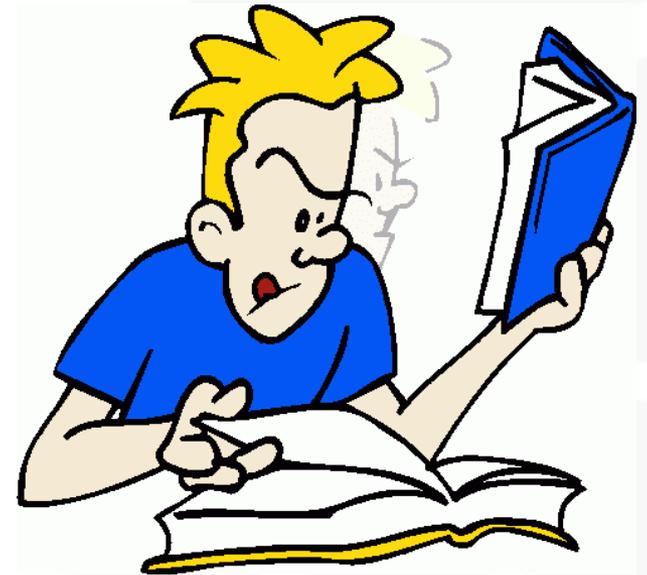
- Time frame*



Be **THOROUGH** but be **CONCISE**

# DETERMINE “LEVEL OF REVIEW”

- Exempt
- Categorically Excluded
- Environmental Assessment—*EA*
- Broad Level Tiered Review
- Environmental Impact Statement—*EIS*



# DETERMINE THE “LEVEL OF REVIEW”

## Exempt

- Activities which are deemed not to affect the human and/or physical environment.



# DETERMINE THE “LEVEL OF REVIEW”

## Categorically Excluded

- Categorically Excluded projects are those where construction involves only replacement or renovation of existing facilities or structures and no disturbance to the previously undisturbed natural or built environment



# DETERMINE THE “LEVEL OF REVIEW”

## Environmental Assessment (EA)

- A project that will involve new construction or significant expansion of existing facilities in which existing facilities or structures will be altered or the cultural environment will be disturbed.



# DETERMINE THE “LEVEL OF REVIEW”

## BROAD-LEVEL TIERED

- Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date.

# DETERMINE THE “LEVEL OF REVIEW”

## Environmental Impact Statement (EIS)

- New construction or disturbance of the natural or built environment that will have a significant impact on the environment
- DHCD must be notified **immediately**

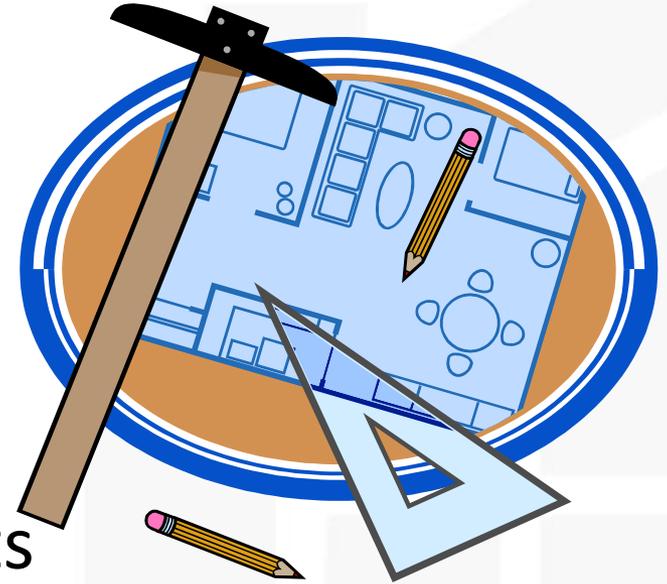
# CONDUCT REVIEW

## ➤ Exempt

✓ **NO** Review Required

✓ **NO** Publication Requirements

✓ Document finding in the ERR, Complete and Submit a “Certification of Exemption”, then proceed with project



# CONDUCT REVIEW

## ➤ For all other “Levels of Review”

- ✓ Categorical Exclusion
- ✓ Environmental Assessment
- ✓ Broad Level Tiered

## ➤ Step 1—Conduct Review

- ✓ **Complete Statutory Checklist & Other Requirements**



# CONDUCT REVIEW

- Consult with the SHPO/THPO to complete the Section 106 process
- For projects in floodplains or wetlands, conduct 8-step process
- Comply with all other regulatory agencies



# CONDUCT REVIEW

## ➤ Step 2—Consultation

- ✓ Write letters and/or emails to regulatory agencies  
—as necessary
- ✓ Follow up--Document
- ✓ Wait a minimum of 30 days



# CONDUCT REVIEW

## ➤ Categorically Excluded

### ✓ Statutory Checklist and Other Requirements

--If your project is in compliance with each statute **and** if the State Historic Preservation Officer (SHPO) concurs with the “No historic properties affected” your project will convert to **Exempt**, document your file, complete a Certification of Exemption and proceed with project

--If compliance is required for even one 58.5 Statute, proceed with **Public Notice (NOI) and RROF process**

Statute, Authority, Executive Order Cited at 24 CFR §58.5	A	B	COMPLIANCE FINDING	SOURCE DOCUMENTATION
1. 58.5(a) Historic Properties [36 CFR 800]				
2. 58.5(b)(1) Floodplain Management [24 CFR 55, Executive Order 11988]				
3. 58.5(b)(2) Wetland Protection [24 CFR 55, Executive Order 11990]				

# DETERMINE THE LEVEL OF IMPACT

## For Environmental Assessment and First Tier--Tiered Review

### GENERAL LEVEL OF DETERMINATION

1. Not A Major Federal Action
  - Finding of No Significant Impact (FONSI)
2. **Major Federal Action** may significantly affect the quality of the human environment
  - **EIS required**

# PUBLISH NOTIFICATIONS/TIMING

## For Environmental Assessment and First Tier--Tiered Review

- **Publish** and/or **Post** FONSI/NOI-RROF (combined notice)
- Allow **15/18 days** for comment period
- Address/resolve any comments received
- Sign RROF/C and submit to DHCD and other required agencies
- Allow 15 days for the State objection period

# AFTER PUBLICATIONS

## Tiered Review—2<sup>nd</sup> Tier and Each Additional Tier

- ✓ Conduct Site Specific Review as identified in your written strategy
- ✓ File Site-Specific Review Checklist and any supporting documentation in the ERR

# CALENDAR

## Calculation of Time Periods for Public Comment: Combined Notice for projects NOT in Floodplain/Wetlands

Table applies when submitting RROF & C via email

○ Please insert your actual dates in the calendar below

<ul style="list-style-type: none"> <li>Contact resource agencies via email (Allow at least 30 days for comments from resource agencies before completing the EIR)</li> </ul>						
<ul style="list-style-type: none"> <li>Complete EIR after receiving all resource agency comments. DHR approval must be documented through one of the following: letter of clearance; executed programmatic agreement, or; executed Memorandum of Agreement</li> </ul>						
	Publish or post Combined Notice of FONSI & FON-SEOF (Appendix 2-F)	Start Comment Period				
		End Comment Period*	Prepare RROF & Certification & email a PDF to DHCD (Appendix 2-G)	Begin State Objection Period		
				End State Objection Period*		

\*If comment period ends on a Saturday or Sunday, the Grantee must use the following Monday as the last

# STATUTORY CHECKLIST\*

Project Number:				
Definitions: A: The project is in compliance.				
B: The project requires an additional compliance step or action.				
Statute, Authority, Executive Order Cited at 24 CFR §58.5	A	B	COMPLIANCE FINDING	SOURCE DOCUMENTATION
1. 58.5(a) Historic Properties [36 CFR 800]				
2. 58.5(b)(1) Floodplain Management [24 CFR 55, Executive Order 11988]				
3. 58.5(b)(2) Wetland Protection [24 CFR 55, Executive Order 11990]				
4. 58.5(c) Coastal Zone Management (Coastal Zone Management Act sections 307(c) & (d))				
5. 58.5(d) Sole Source Aquifers [40 CFR 140]				
6. 58.5(e) Endangered Species [50 CFR 402]				
7. 58.5(f) Wild and Scenic Rivers [36 CFR 297]				
8. 58.5(g) Air Quality [40 CFR parts 6, 51, 61, 99]				
9. 58.5(h) Farmland Protection [7 CFR 658]				
10. 58.5(i)(1) Noise Control and Abatement [24 CFR 51B]				
11. 58.5 (j)(1) Explosive and Flammable Operations [24 CFR 51C]				
12. 58.5(j)(1) Airport Hazards (Runway Clear Zones and Clear Zones/Accident Potential Zones) [24 CFR 51D]				
13. 58.5(j)(2)(i-iv) Contamination and Toxic Substances [24 CFR 58.5(j)(2)]				
14. 58.5(j) Environmental Justice [Executive Order 12898]				

# STATUTORY CHECKLIST



## Protection of Historic Properties

36 CFR Part 800

- Section 106 of the National Historic Preservation Act requires federal agencies (**Responsible Entity**) to take into account the effects of their **undertakings on historic properties** and afford the **Council** a reasonable opportunity to comment on such undertakings.

# STATUTORY CHECKLIST

## Section 106 process

### 1. INITIATE the Process

- ✓ Determine undertaking
- ✓ Coordinate with other reviews –NEPA
- ✓ Notify Consulting Parties
  1. Agency Official (Certifying Officer)
  2. Council (ACHP)
  3. State Historic Preservation Officer (SHPO)
  4. Indian Tribes and Native Hawaiian Organizations
  5. Representatives of Local Government
  6. Project Grantees
  7. Public

# STATUTORY CHECKLIST

## 2. IDENTIFY and Evaluate Historic Properties

- ✓ Determine Area of Potential Effect (APE)
- ✓ Identify Historic Properties—DHR ePIX
- ✓ Consult with SHPO/THPO, Tribes, and other Consulting Parties
- ✓ Involve the Public

## 3. ASSESS Effects on Historic Properties

- ✓ Apply criteria of adverse effect
- ✓ Consult with SHPO/THPO, Tribes, and other Consulting Parties
- ✓ Involve the Public

# STATUTORY CHECKLIST

## 4. RESOLVE Adverse Effects

- ✓ Avoid, minimize, or mitigate adverse effects
- ✓ Notify ACHP
- ✓ Consult with SHPO/THPO, Tribes, and other Consulting Parties
- ✓ Involve the Public

Agreement—MOA/PA

# STATUTORY CHECKLIST

## Floodplains & Wetlands

- Determine if project is in a floodplain or wetland
  - ✓ No—Compliance
  - ✓ Yes—Determine if incidental (§55.12)
    - ✓ Yes—Compliance
    - ✓ NO--conduct 8-Step process

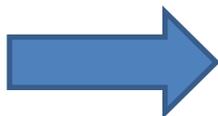
# STATUTORY CHECKLIST

## 8-Step Process For Floodplains

1. Determine whether the action is located in a 100-year floodplain
2. Notify the public for early review of the proposal and involve the affected and interested public in the decision making process
3. Identify and evaluate practicable alternatives
4. Identify potential **Direct** or **Indirect Impacts** as associated with floodplain development
5. Where practicable, design or modify the proposed action to minimize potential adverse impacts
6. Re-evaluate the alternatives
7. Determination of No Practicable Alternative
8. Implement the proposed action



# STATUTORY CHECKLIST



## Wild and Scenic Rivers

### Introduction

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 a state agency and, in some cases, a tribe or in coordination with local government. Boundaries for protected rivers generally extend one-quarter mile from either bank in the lower 48 states and one-half mile on rivers outside national parks in Alaska 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)).

### HUD Guidance

Is your project within proximity of a NWSRS river as defined below?

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.

If so, is your project a water resources project? A water resources project is a federally assisted project that could affect the free-flowing condition of a wild and scenic river. Examples include dams, water diversion projects, bridges, roadway construction or reconstruction, boat ramps, and activities that require a Section 404 permit from the Army Corps of Engineers.

If so, could the project do any of the following?

- Have a direct and adverse effect within wild and scenic river boundaries
- Invade the area or unreasonably diminish the river outside wild and scenic river boundaries
- Have an adverse effect on the natural, cultural, and/or recreational values of an NRI segment

Consultation with the appropriate federal, state, local, and/or tribal Managing Agency is required, pursuant to Section 7 of the Act, to determine if the proposed project may have an adverse effect on a wild and scenic river or a study river and, if so, to determine the appropriate avoidance or mitigation measures. The Managing Agency for a particular river segment generally is the National Park Service, the Bureau of Land Management, U.S. Forest Service, or U.S. Fish and Wildlife Service; for some river segments, a state agency, tribe, or a local government may also be a Managing Agency. For rivers listed in the NRI, the National Park Service (NPS) is the point of contact. Under Section 5 of the Act, the NPS can provide recommendations that the Responsible Entity must take into account in protecting the listed river segment.

### Documentation and Compliance

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

# STATUTORY CHECKLIST\*



- **Wild and Scenic Rivers**

- None = VA

*No Wild or Scenic River is located within the project area per the Virginia Scenic Rivers Database (WSR map attached)*

- **Study Rivers**

None = VA

- **Recreational River**

- 92 Segments = VA

*The project is not located within one mile of a designated Wild, Scenic or Recreational River (WSR/NRI map attached)*

# STATUTORY CHECKLIST\*

Potomac River, South Fork of South Branch	Highland	1 mile south of Moorefield to Palo Alto	55	1982		R, G, O	See Potomac River, South Fork of South Branch, WV comments.	WV
Powell River	Lee	Tennessee to U.S. Rt. 58 in Dryden	52	1982				
Rapidan River	Spotsylvania, Orange, Culpeper	Rappahannock River to north of Indian Town	16	1982		R, G, H	See Rappahannock River (segment from I-95 near Fredericksburg, VA to one mile past Rt. 620) comments.	

**4. §58.5(c) Coastal Zone Management [Coastal Zone Management Act of 1972, Sections 307(c) & (d)]**

- a. Does the project involve new construction, land use conversion, or substantial improvements?  
 Yes  No

If Yes, continue.

If No, compliance with this section is complete. Mark box "A" on the Statutory Checklist for this authority.

- b. Is the project located within a Coastal Zone as defined in your state Coastal Zone Management (CZM) Plan?  
 Yes  No

If Yes, the State CZM Agency must make a finding that the project is consistent with the approved State CZM Plan. Mark box "B" on the Statutory Checklist for this authority.

If No, compliance with this section is complete. Mark box "A" on the Statutory Checklist for this authority.

Comments:

Cite and attach source documentation: (Map showing project in relation to the nearest Coastal Zone Management area. If applicable, State's findings.)

Law, Authority, or Factor	Mitigation Measure
24 CFR 55, Ex Order 11990 58.5 (b) (1) Flood plain	Demolition only, property cleared leaving open space only
24 CFR 55, Ex Order 11990 58.5 (b) (2) Wetlands	Follow DEQ measures for being within 350 feet of a river
50 CFR 402, 58.5(e) Endangered Species	

**Determination:**

**Finding of No Significant Impact** [24 CFR 58.40(g)(1); 40 CFR 1508.27]

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

**Finding of Significant Impact** [24 CFR 58.40(g)(3); 40 CFR 1508.27]

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

# REVISED FORMS & PUBLICATIONS

- NOI-RROF
- RROF & Certificate
- FONSI/NOI-RROF
  
- Note that the Certification Form ( a.k.a. HUD 7015.15) **expires** on 10-31-14

The language below is HUD's recommended wording of the combined Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds. This Notice is used for projects requiring an Environmental Assessment (24 CFR Part 58, Section 58.36). Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.



## Use of other agency ERR's

- No guarantees!
  - ✓ HUD specific Requirements
    - ✓ Airports
    - ✓ Flood Insurance
    - ✓ Coastal Barriers
  - ✓ Adopted by governing body of locality



# WHAT'S NEXT?

HEROS

HUD Environmental Review Online System

## Contact Info:

Christina Gilley, DHCD, Community Development Specialist  
276-676-5471 ext. 5

Joanne Peerman, DHCD, Program Manager  
804-371-7071

# QUESTIONS

