

ASNH DIVISION ENVIRONMENTAL REVIEW POLICIES AND PROCEDURES

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OVERVIEW

MEMORANDUM

This document has been established for use by the Affordable and Special Needs Housing (ASNH) Division as a reference guide for Environmental Review Record (ERR) policies and procedures. It is not an agency-wide Virginia Department of Housing and Community Development (DHCD) policy document and is not intended to supersede or replace any officially adopted DHCD agency policies.

The procedures and requirements contained herein are drawn primarily from HUD guidance and applicable federal regulations, including:

- The National Environmental Policy Act (NEPA);
- 24 CFR Part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities); and
- Relevant HUD program guidance and regulations governing U.S. Department of Housing and Urban Development (HUD) assisted activities administered by DHCD.

ASNH Division staff should use this document as a working reference when conducting, reviewing, or overseeing environmental reviews for rental housing projects. Questions regarding applicability or program-specific requirements should be directed to ASNH Division leadership.

This document will be updated as HUD guidance or federal regulations are revised. Staff are encouraged to verify that they are referring to the most current version.

PURPOSE

NEPA requires Federal agencies to evaluate the environmental impacts of proposed actions and consider alternatives prior to making decisions. HUD has established regulations at 24 CFR Part 58 to implement NEPA and related Federal environmental requirements for HUD-assisted projects.

This manual provides guidance on environmental review requirements for projects receiving HUD assistance from programs subject to Part 58 and administered by DHCD. Projects funded solely with National Housing Trust Fund (NHTF) funds are subject to Environmental Provisions under 24 CFR § 93.301, which differ from Part 58 requirements and are outcome-based rather than process-based. Where these requirements apply, DHCD will provide project-specific guidance.

This guidance outlines:

- Roles and responsibilities of DHCD, local governments, and project partners;
- Key requirements and limitations of the environmental review process;
- Environmental review categories and applicable procedures; and
- Documentation and approval requirements necessary to achieve compliance.

USING THE MANUAL

This manual is organized to guide users through the environmental review process under 24 CFR Part 58.

Users should:

- Review **Section 1** to identify the Responsible Entity (RE) and understand roles and responsibilities;
- Review **Section 2** to determine when environmental review requirements apply and key limitations; and
- Review **Section 3** to identify the appropriate level of environmental review.

Additional sections provide guidance on documentation requirements, approval processes, and special circumstances.

Appendix A includes information for evaluating environmental impact factors.

Appendix B includes guidance for meeting the environmental review application requirements of the ASNH funding program.

APPLICABILITY NOTE

This manual reflects the environmental review requirements of 24 CFR Part 58 and applies to projects receiving HUD assistance for which DHCD or a unit of general local government serves as the RE, unless otherwise governed by program-specific requirements.

While originally developed for HOME-funded projects, the procedures described in this manual are intended to apply broadly to HUD-assisted activities administered by DHCD and subject to NEPA evaluation, including situations where environmental review responsibilities are assumed by localities or retained by DHCD.

The RE is responsible for conducting the environmental review and maintaining the Environmental Review Record (ERR). The Request for Release of Funds (RROF) is submitted by the RE and approved by the appropriate approving authority (HUD or DHCD, as applicable), depending on the program structure.

Certain HUD programs administered by DHCD, including the NHTF, may have additional or program-specific environmental review requirements. This manual provides general guidance applicable to 24 CFR Part 58; however, where program-specific requirements apply, those requirements will govern. DHCD program staff will provide project-specific guidance where additional or program-specific requirements apply.

SECTION 1: ROLES AND RESPONSIBILITIES

ROLE AND RESPONSIBILITIES OF UNITS OF LOCAL GOVERNMENT, CONSORTIA, AND DHCD

As outlined in 24 CFR Part 58, states and units of general local government are authorized to assume Federal environmental review responsibilities for compliance with NEPA, and related Federal laws and authorities. These regulations identify the RE as the entity that assumes legal responsibility for environmental review, decision-making, and compliance.

The entity serving as the RE varies depending on the funding source and program structure. The RE is typically a unit of general local government, the state, or a consortium lead entity, provided it has the legal authority to assume environmental responsibilities under 24 CFR Part 58.

For certain programs administered by DHCD, units of general local government may be designated as “state recipients” and may assume the role of RE for projects within their jurisdiction. In other cases, DHCD serves as the RE, including where no unit of local government assumes that role or where DHCD determines a locality does not have the administrative capacity to carry out environmental review responsibilities (§ 58.12).

Whenever a state recipient or local government assumes the role of RE, DHCD is responsible for oversight of compliance with HUD environmental review requirements. This includes monitoring ERRs, providing technical assistance, receiving certifications, addressing objections, and carrying out responsibilities related to the release of funds process in accordance with § 58.18 and Subpart H.

When DHCD serves as the RE, it assumes full legal responsibility for environmental compliance under NEPA and related authorities. In these cases, oversight responsibility is retained by HUD.

In all cases, a single entity serves as the RE for a given project. While multiple entities may coordinate or contribute to the environmental review process, legal responsibility for compliance rests with the designated RE.

RESPONSIBLE ENTITY AND RELEASE OF FUNDS

The RE is responsible for conducting the environmental review, making environmental determinations, maintaining the ERR, and ensuring that all applicable requirements are met prior to project approval.

Following completion of the environmental review, the RE is responsible for submitting the Request for Release of Funds and Certification (HUD Form 7015.15), when required.

The approval of the RROF is performed by the appropriate approving authority, which will be either HUD or DHCD, depending on the applicable program structure. The RE may not commit or expend funds on choice-limiting activities until approval has been received.

DHCD's responsibilities related to the Release of Funds process are described in Section 4: Release of Funds and Public Notice Process.

ROLE AND RESPONSIBILITIES OF PROJECT PARTNERS

Any individuals or entities receiving or utilizing HUD assistance are considered project partners or project participants for purposes of compliance with Part 58 (§ 58.22). This includes unincorporated communities, community housing development organizations (CHDOs), public housing authorities, private nonprofit and for-profit entities, contractors, and individual borrowers.

These partners must:

- Not acquire, repair, rehabilitate, convert, demolish, or lease properties or undertake construction prior to receiving approval from the RE;
- Not commit non-HUD funds (local public funds or private funds) to project activities that would have an adverse environmental impact or limit the choice of project alternatives (These prohibited actions are discussed in the section on "Actions Prohibited Prior to Completion of the Environmental Review Process in Section 2");
- Carry out any mitigation and/or conditions associated with approval of the project; and
- Either prepare environmental review documentation or provide information necessary for the RE to complete the environmental review.

Project partners may prepare environmental review documentation or retain consultants; however, the RE remains responsible for independently evaluating the information and making final environmental determinations.

ENVIRONMENTAL DECISION MAKING

For purposes of compliance with NEPA and Part 58, the chief executive officer of the RE, or its formal designee, is the certifying officer (CO) (§ 288 of Title II of the Cranston-Gonzalez National Affordable Housing Act). The CO is recognized as the "responsible Federal official under NEPA" (§ 58.13, 40 CFR 1508.12) and, therefore, the decision-maker as to whether a project is approved or rejected on the basis of the environmental review findings. This is a Federal legal responsibility. As such, if someone other than the chief executive officer for the RE is designated to fulfill this role, HUD requires there be a formal designation by the governing body that identifies this officer. (In making such designations, the RE may want to consider assigning the CO authority to the office being held rather than to a particular person since personnel will generally change. For example, the Director of DHCD, Deputy Director of Housing, or Deputy Director of Community Development.)

The CO represents the RE in Federal court if there is legal challenge to the content of the ERR and the RE's decision based upon that record [§ 58.13(a)]. The CO is also the only person with the legal authority to sign the RROF and Certification (HUD form 7015.15).

Other responsibilities required of the CO are:

- To ensure that the RE reviews and comments on all environmental review documents prepared for major Federal projects proposed by other Federal entities that may have an impact on DHCD's HOME program (§ 58.13(b));
- Making health and safety decisions related to whether or not to approve residential construction projects that are exposed to high levels of noise from major roadways, railroads, and/or military or civilian airports (HUD regulation on Noise Abatement and Control, 24 CFR 51.104(a)(2) and (b)(2)); and
- Making health and safety decisions related to the construction, rehabilitation, or conversion of buildings exposed to blast overpressure or thermal radiation from above-ground storage tanks in proximity to the project (HUD regulation on placement of HUD- assisted projects in the vicinity of explosive or flammable operations, 24 CFR 51.206).

ENVIRONMENTAL ACTION

The RE is also responsible for ensuring that any environmental conditions or safeguards resulting from completion and approval of the environmental review document are implemented. If necessary, the RE should develop an implementation/monitoring plan to ensure conditions that were identified as necessary for protecting and enhancing environmental quality or minimizing adverse environmental impacts are included in agreements or other relevant documents and implemented during completion of the project.

In addition, the RE must re-evaluate its environmental findings and decision if:

- Substantial changes in the nature, magnitude, or extent of the project are proposed by the project proponent (e.g., new activities not anticipated in the original project scope);
- New circumstances and environmental conditions arise that were not previously considered or evaluated for effect (e.g., conditions discovered during implementation of the project, such as archeological resources, asbestos containing materials, endangered species, underground storage tanks, dry wells); or
- The project proponent proposes selection of an alternative not previously considered.

DHCD OVERSIGHT AND ADMINISTRATIVE RESPONSIBILITIES (§ 58.18)

When DHCD assumes HUD environmental responsibilities, DHCD is responsible for ensuring compliance with Part 58 requirements for programs it administers. This includes oversight of entities serving as the RE, as well as carrying out administrative responsibilities outlined in Subpart H (§§ 58.70–58.77).

These responsibilities include:

- Reviewing and approving RROFs, where applicable;
- Monitoring ERRs;
- Providing technical assistance and training;
- Addressing objections and compliance issues; and
- Taking corrective actions when necessary.

MONITORING OF STATE RECIPIENTS [§ 58.77(D)]

When DHCD assumes HUD environmental responsibilities, DHCD intends to conduct in-depth monitoring of state recipients' ERRs at least every three years. Limited monitoring will be conducted during each program monitoring site visit. If through limited or in-depth monitoring or by other means, DHCD becomes aware of any environmental deficiencies, DHCD may take one or more of the following actions:

- In the case of problems found during limited monitoring, DHCD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;
- DHCD may require attendance by staff of the RE at DHCD or HUD-sponsored, or other approved training;
- DHCD may refuse to accept the certifications of environmental compliance on subsequent grants;
- DHCD may suspend or terminate the RE's assumption of the environmental review responsibility;
- DHCD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the state recipient.

Whether or not DHCD takes any of these actions, the state recipient's CO remains the responsible Federal official under § 58.13 with respect to projects and activities for which the CO has submitted a certification.

COORDINATION IN MULTI-FUNDING PROJECTS

In projects where multiple funding sources subject to 24 CFR Part 58 are involved, including situations where both DHCD and a unit of general local government are providing funds, DHCD will coordinate with the locality to determine the appropriate RE structure for the project.

DHCD will serve as the RE for all projects involving DHCD-administered funds. In certain circumstances, and in coordination with the locality, DHCD may also assume the role of RE for the entire project, including activities funded by the locality, in order to streamline the environmental review process.

Where the locality retains the role of RE for its funding, DHCD and the locality will coordinate environmental review activities to ensure compliance with Part 58 requirements. This may include the use of combined or concurrent public notices and aligned review processes, where appropriate.

In all cases, a single entity will be designated as the RE for the environmental review associated with each source of funding, and that entity retains legal responsibility for compliance.

SECTION 2: APPLICABILITY AND KEY REQUIREMENTS

ENVIRONMENTAL REVIEW PROCESS

The RE must ensure that projects or activities funded in whole or in part with HUD assistance comply with NEPA and 24 CFR Part 58 unless program-specific requirements apply. This includes preparing and maintaining a written ERR for every project, regardless of the level of review (§ 58.38).

The ERR documents the RE's environmental determinations and demonstrates compliance with applicable requirements. The ERR is a public record and must be complete and sufficient to support the RE's conclusions.

The RE is responsible for the content and accuracy of the ERR, regardless of whether it is prepared by staff, project partners, or consultants. The RE must independently evaluate all information and make final environmental determinations.

The RE must also maintain sufficient technical and administrative capacity to:

- Determine the appropriate level of environmental review;
- Evaluate compliance with applicable laws and authorities;
- Meet public notice and release of funds requirements, where applicable; and
- Ensure that funds are not committed prior to completion of the environmental review process.

Refer to **Section 3: Environmental Review Categories and Requirements** for guidance on determining the appropriate level of review.

TRIGGERS AND LIMITATIONS

ACTIONS TRIGGERING COMPLIANCE WITH PART 58

Part 58 requirements apply once a project is proposed to receive HUD assistance, including when an application is submitted or funds are designated for a specific project.

At that point, the RE must ensure that no choice-limiting actions occur until the environmental review process is completed and, where required, approval of the RROF has been received.

Projects that proceed in violation of these requirements risk denial of HUD assistance.

Certain activities may occur prior to environmental clearance, provided they do not have a physical impact or limit the choice of reasonable alternatives. Examples include:

- Hiring consultants for environmental or engineering studies;
- Planning, design, or feasibility studies; and
- Other administrative or preparatory activities.

ACTIONS PROHIBITED PRIOR TO COMPLETION OF THE ENVIRONMENTAL REVIEW PROCESS

The RE must ensure that no funds (HUD or non-HUD) are committed to choice-limiting actions prior to completion of the environmental review and receipt of required approvals.

Choice-limiting actions include activities that:

- Have a physical impact on the site; or
- Limit the ability to consider reasonable alternatives.

Examples include:

- Acquisition of real property;
- Demolition or site clearing;
- Excavation, grading, or filling;
- Rehabilitation or new construction; and
- Conversion of land or structures to a different use.

An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review and the cost of the option is a nominal portion or the purchase price.

If prohibited actions occur prior to environmental clearance, the project may be ineligible for HUD assistance.

Funds may not be committed until the RE completes the environmental review and receives approval from the appropriate approving authority (HUD or DHCD, as applicable), where required.

DEFINING “CONTEMPLATE” AND “COMMITMENT” FOR THE ENVIRONMENTAL REVIEW

A project is considered “contemplated” when the RE is actively considering providing HUD assistance for a specific project or activity.

A “commitment of funds” occurs when resources are obligated to a project through legally binding or choice-limiting actions.

Examples of commitment include:

- Execution of a legally binding agreement;
- Expenditure of HUD funds; or
- Use of non-HUD funds for choice-limiting actions (e.g., acquisition, construction, or demolition).

The standard for commitment under Part 58 differs from commitment requirements under program regulations.

The following are not considered commitments of funds:

- Statements of funding reservation (e.g., inclusion in a Consolidated Plan or Action Plan);
- Non-binding agreements that explicitly condition funding on completion of the environmental review; and
- Planning or administrative activities that do not affect the physical environment.

PROJECT SCOPING

AGGREGATING PROJECT ACTIVITIES

The RE must aggregate all related activities when determining the appropriate level of environmental review. This includes activities that are:

- Functionally related;
- Geographically related; or
- Part of a multi-phase or multi-year project.

All aggregated activities must be evaluated in a single environmental review, regardless of the funding source.

The level of review is determined by the activity with the greatest potential environmental impact.

For multi-phase projects, a single environmental review may cover all phases. In such cases, one RROF may be submitted for the entire project, subject to re-evaluation if project conditions change.

Refer to **Section 5: Post-Determination and Special Circumstances** for additional requirements.

ENVIRONMENTAL REVIEW RECORD (ERR) REQUIREMENTS

The RE must maintain a written ERR for every project or activity subject to 24 CFR Part 58, regardless of the level of environmental review (§ 58.38).

The ERR serves as the official record supporting the RE's environmental determinations and compliance with applicable Federal laws and authorities. The ERR must be complete, accurate, and available for public review.

CORE ERR COMPONENTS

At a minimum, the ERR must include:

- A clear description of the project and all related activities (including aggregated activities, where applicable);
- Identification of the level of environmental review completed (e.g., Exempt, Categorically Excluded, Environmental Assessment, or Environmental Impact Statement);
- Documentation supporting the RE's determinations and findings;
- Evidence of compliance with applicable Federal laws and authorities under § 58.5;
- Documentation of compliance with Other Requirements (§ 58.6); and
- The RE's written environmental determination.

DOCUMENTATION STANDARDS

The RE must use reliable and appropriate sources to support environmental determinations. Documentation included in the ERR must be credible, traceable, and relevant to the project.

Acceptable sources include:

- Site observations;
- Agency correspondence;
- Published data, maps, and reports;
- Professional studies; and
- Professional judgment, where appropriate.

Detailed guidance on evaluating environmental impact factors and completing environmental reviews is provided in a separate resource.

Refer to Exhibit 1: Source Documentation Guidance for additional examples.

PUBLIC NOTICES AND RELEASE OF FUNDS DOCUMENTATION

For projects requiring public notice and approval, the ERR must include:

- Copies of all public notices issued;
- Documentation of publication, posting, or distribution;
- Any comments received and responses to those comments;
- The Request for Release of Funds and Certification (HUD Form 7015.15); and
- The Authority to Use Grant Funds (HUD Form 7015.16), or equivalent approval documentation.

Refer to **Section 4: Release of Funds and Public Notice Process** for detailed requirements.

LEVEL-SPECIFIC REQUIREMENTS

The specific contents of the ERR will vary depending on the level of environmental review performed. The RE must ensure that the ERR includes all documentation necessary to support the requirements of the applicable review category.

Refer to **Section 3: Environmental Review Categories and Requirements** for category-specific expectations.

RESPONSIBILITY FOR ERR CONTENT

The RE is responsible for the accuracy, completeness, and adequacy of the ERR, regardless of whether the environmental review is prepared by staff, project partners, or third-party consultants.

The RE must independently evaluate all information included in the ERR and make its own environmental determinations.

AVAILABILITY AND RETENTION

The ERR must be made available to the public upon request and must be accessible during required public comment periods.

The RE must retain ERR documentation in accordance with applicable record retention requirements. Environmental records should be maintained for a period sufficient to address long-term environmental liability and compliance monitoring.

SOURCES FOR COMPLIANCE DOCUMENTATION

There are several types of resources necessary to demonstrate compliance with NEPA and the Federal laws and authorities.

All sources of information used in preparation of the NEPA document should be identified. Copies of written information should be included in the ERR (e.g., databases, plans, reports, correspondence, telephone records). This includes listing any special studies completed for the project. If information from other environmental review documents is used for compliance documentation, such information must pertain to the project site and must also be current and relevant to the environmental issues being addressed. In addition, copies of the entire content of such environmental review documents must be obtained and included in the project ERR. It is not sufficient to only reference these documents in the ERR.

The RE must include in the ERR all correspondence, reports, surveys, studies, photos, maps, as well as names of persons contacted, dates of contact, telephone numbers, and page references that were used to make compliance determinations.

Exhibit 1

FIELD OBSERVATION – A visit to the project site to make observations of the general site conditions. There should be written documentation of the conditions observed. Also include the name and title of the observer and the date of the site visit.

PERSONAL CONTACT – Personal contacts are useful only when the individual contacted is an accepted authority on the subject or subjects. Documentation should include the name and title of the person contacted, the date of the conversation, and brief notes of the key points. Whenever the person that was contacted cites reports, records, or other documents, the title, date and source of the report should be noted. Contacts can include staff experienced in a particular area (e.g., engineer, planner, historian).

PRINTED MATERIALS – Printed materials such as comprehensive land use plans, maps, statistical surveys, and studies are useful sources of detailed information. The material must be current and reflect accepted methodologies. Environmental reviews that were completed by another governmental entity may also be used if the information is relevant. Complete citations for all material must be included.

REVIEWER'S EXPERIENCE – Professional judgment by staff is acceptable if their expertise is relevant to the compliance issue. For example, the reviewer may have knowledge from reviewing previous projects in the same area. Another type of relevant experience is the professional finding of the reviewer in subjects where he or she has the background to make judgments about a specific factor. Some reviewers have the expertise to evaluate soil conditions, while others will need to consult an engineer or other specialist.

SPECIAL STUDY – This is a study conducted for a particular project performed by qualified personnel using accepted methodologies. Some tests are relatively simple to perform but others may require elaborate equipment or personnel with additional expertise. The reviewer is responsible for obtaining assistance from others in order to have the appropriate tests or studies conducted. Examples include archeological or architectural reconnaissance surveys, biological assessment (habitat or species surveys) concerning threatened and endangered species, or Phase I Environmental Site Assessments or other hazardous materials studies to evaluate site contamination.

SECTION 3: ENVIRONMENTAL REVIEW CATEGORIES AND REQUIREMENTS

Environmental review requirements under 24 CFR Part 58 are based on the scope of a proposed project. The RE must classify each project into the appropriate level of review and complete the corresponding environmental analysis and documentation.

The four levels of environmental review are:

- Exempt (§ 58.34)
- Categorical Exclusion (CE) (§ 58.35)
- Environmental Assessment (EA) (§ 58.36)
- Environmental Impact Statement (EIS) (§ 58.37)

The level of review is determined by the activity with the greatest potential environmental impact.

1. EXEMPT

Exempt activities do not have the potential to result in a physical impact or alter environmental conditions. These activities are exempt from NEPA and the related Federal laws and authorities at § 58.5. Documentation of compliance with requirements at § 58.6 is required.

Examples of exempt activities include:

- Environmental and planning studies;
- Information and financial services;
- Administrative and management activities;
- Public services that do not involve physical changes;
- Inspections and testing of properties;
- Purchase of insurance or tools;
- Engineering and design costs; and
- Disaster recovery activities limited to repair or restoration.

A written record of the determination must be maintained in the ERR. No public notice or approval from the appropriate approving authority (HUD or DHCD, as applicable) is required.

2. CATEGORICAL EXCLUSIONS

CE's require compliance with NEPA and § 58.6 and may require compliance with requirements at § 58.5.

Two types of CEs are defined under § 58.35:

- Categorical Exclusions Subject to § 58.5 (CEST), and

- Categorical Exclusions Not Subject to § 58.5 (CENST).

2A. CATEGORICAL EXCLUSIONS SUBJECT TO § 58.5 [REFER TO § 58.35(A)].

These activities must comply with the Federal laws and authorities listed at § 58.5.

Examples include:

- Rehabilitation or improvement of residential properties within defined thresholds;
- Acquisition or disposition of property for the same use;
- Infrastructure improvements and non-residential rehabilitation that do not substantially change capacity; and
- One-to-four-unit housing or scattered-site development meeting regulatory criteria.

The RE must document compliance with all applicable laws and authorities.

If no laws or authorities are triggered, the project may convert to Exempt. In such cases, no public notice or approval is required.

If compliance is required under any law or authority, the project cannot convert to Exempt and must complete the public notice and release of funds process. Refer to **Section 4: Release of Funds and Public Notice Process**.

2B. CATEGORICAL EXCLUSION NOT SUBJECT TO § 58.5 [REFER TO § 58.35(B)].

These activities do not have the potential to affect environmental conditions and are not subject to § 58.5 review.

Examples include:

- Tenant-based rental assistance;
- Homebuyer assistance for existing or under-construction units;
- Pre-development activities with no physical impact; and
- Supplemental assistance to previously approved projects where re-evaluation is not required.

A written determination must be maintained in the ERR. No public notice or approval is required.

If these activities are combined with actions that involve physical impact or change in use, the appropriate level of review must be reassessed.

3. ENVIRONMENTAL ASSESSMENT (REFER TO § 58.36).

An EA is required for projects that have the potential for significant environmental impact but do not clearly require an EIS.

Examples include:

- New construction of five or more residential units;
- Scattered-site development where sites are in close proximity;
- Rehabilitation that significantly changes density or footprint;
- Conversion of non-residential to residential use; and
- Acquisition of land for development (change in land use).

The EA must evaluate potential environmental impacts, consider reasonable alternatives (including the no-action alternative), and identify any required mitigation measures. =

Detailed guidance on evaluating environmental impact factors is provided in a separate resource. Refer to **Appendix A: Part 58 Environmental Assessment Guidance** document for factor-specific analysis requirements and documentation standards.

Although the suggested EA format is a detailed analysis of the preferred alternative, NEPA also requires consideration of alternative courses of action and a brief discussion of environmental impacts of those alternatives [40 CFR §1508.9(b)]. At minimum, this includes the consideration of taking “no action,” as well as identifying other reasonable courses of action that were considered but not selected. Other courses of action might include other sites, modifications of the preferred alternative, and other uses of the subject site.

Projects requiring an EA must complete the public notice and release of funds process. Refer to **Section 4: Release of Funds and Public Notice Process**.

Funds may not be committed until approval from the appropriate approving authority (HUD or DHCD, as applicable) is received.

Whenever adverse environmental impacts are identified during preparation of the EA, it is necessary to arrive at feasible solutions for eliminating or minimizing the impacts.

This could mean:

- Avoiding the impact altogether by not taking a certain action or parts of an action – e.g., preserving a wetland area;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation—e.g., raising the first floor of a building above the special flood hazard area;
- Rectifying the impact by repairing, rehabilitating or restoring the affected environment—e.g., “clean-up” of site contamination;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action—e.g., using a deed restriction to protect a historic building; or

- Compensating for the impact by replacing or providing substitute resources or environment—e.g., relocating endangered plant species, providing funds to an approved land bank for purchase of replacement habitat for endangered species.

4. ENVIRONMENTAL IMPACT STATEMENT (REFER TO § 58.37).

An EIS is required for projects expected to have a significant impact on the human environment.

Examples may include:

- Projects determined through an EA to have significant impacts; or
- Large-scale developments exceeding regulatory thresholds.

Because EIS-level reviews are uncommon, the RE should consult with DHCD prior to proceeding with an EIS.

EIS projects require completion of all applicable public notice and release of funds procedures. Refer to **Section 4: Release of Funds and Public Notice Process**.

SECTION 4: RELEASE OF FUNDS AND PUBLIC NOTICE PROCESS

RELEASE OF FUNDS AND APPROVAL PROCESS

There are several steps related to the release of funds and approval process. Projects that must undergo the public notification and release of funds process include projects that are CEST-level that cannot convert to exempt, and projects requiring an EA or EIS. In these situations, the process first begins with issuing a public notice and ends with the RE receiving release of funds from the appropriate approving authority (HUD or DHCD, as applicable).

PUBLIC NOTIFICATION

The public notification process is an integral part of the environmental review process that allows the public, interested persons, and agencies to voice their opinions about the project's potential environmental impact and the RE's environmental findings. Public notices are required when the RE determines that a project which is CEST-level cannot convert to exempt, or when the RE prepares an EA or EIS.

CATEGORICAL EXCLUSIONS THAT CANNOT CONVERT TO EXEMPT

If the proposed activity triggers compliance with any of the Federal laws and authorities, and there is documentation supporting this finding, the RE must then issue a Notice of Intent to Request Release of Funds (NOI/RROF) using the current HUD-recommended format.

Publish or post/mail a NOI/RROF, according to §§ 58.45 and 58.70. A minimum of 7 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community or on a Government website that is accessible to individuals with disabilities or Limited English Proficiency, or a minimum of 10 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures.

NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 7 days of the comment period. If posted, the notice must be maintained in place until after the public comment period has expired. The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/ mailing date of the notice (§ 58.21).

The RE must consider and respond to any comments received and resolve any outstanding issues before signing and submitting a RROF and Certification to the appropriate approving authority (HUD or DHCD, as applicable). A copy of the public notice must accompany this request. DHCD (or HUD) has 15 calendar days from the date it receives the RE's request (or 15 days from the date that appears in the notice, whichever is later) before it may approve release of funds (Authority to Use Grant Funds [AUGF] is issued).

ENVIRONMENTAL ASSESSMENT

If the RE makes a finding of no significant impact (FONSI), it must prepare a FONSI notice, using the current HUD-recommended format. The RE should send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate Tribal, Federal, State, and local agencies to the Regional Offices of the Environmental Protection Agency (EPA) having jurisdiction and to the HUD Field Office (or DHCD when DHCD is assuming HUD responsibilities). The RE should publish the FONSI notice in a newspaper of general circulation in the affected community or on an appropriate Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency. If the notice is not published it must be posted/mailed in accordance with procedures established as part of the citizen participation process. The RE may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF.

Publish or post/mail a NOI/RROF and combined FONSI, according to §§ 58.45 and 58.70. A minimum of 15 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community or on a Government website that is accessible to individuals with disabilities or Limited English Proficiency, or a minimum of 18 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures. The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/mailing date of the notice (§ 58.21).

The RE must consider and respond to any comments received and resolve any outstanding issues before signing and submitting a RROF and Certification to the appropriate approving authority (HUD or DHCD, as applicable). A copy of the public notice must accompany this request. DHCD (or HUD) has 15 calendar days from the date it receives the RE's request (or 15 days from the date that appears in the notice, whichever is later) before it may approve release of funds (AUGF is issued).

SECTION 5: POST-DETERMINATION AND SPECIAL CIRCUMSTANCES

RE-EVALUATION OF ENVIRONMENTAL FINDINGS (§ 58.47)

The RE will need to re-evaluate its original environmental findings if it finds that, while undertaking the project, changes or new circumstances arose that were not previously considered during the environmental review process or in the RE's decision---e.g., new activities are added to the scope and magnitude of the project, or concealed or unexpected conditions are discovered, such as archeological sites, underground storage tanks, and similar environmental conditions.

If, before project work is initiated, the project developer proposes a different course of action that was not previously considered in the RE's environmental review, this also triggers the requirement for re-evaluation of the RE's original environmental findings.

An approved HOME-funded project may receive additional Federal funds after the RE has received approval from the appropriate approving authority (HUD or DHCD, as applicable), but before the project itself is completed. In such cases, the RE may be required to initiate a re-evaluation of the original environmental determination in accordance with § 58.47.

If the project is requesting HOME funds to cover shortfalls in funding in order to complete a project for which the environmental review process was already completed, the RE only needs to document this in the project ERR. [Refer to 24 CFR 58.35(a)(7)].

TIERED ENVIRONMENTAL REVIEWS

A tiered review provides a method for grouping similar projects within a program before specific sites are known (e.g., lead-based paint abatement projects, rehabilitation projects, demolition of blighted homes). Tiered reviews consist of two stages: a broad-level review and subsequent site-specific reviews. The broad-level review should identify and evaluate the issues that can be fully addressed and resolved as well as establish the standards, constraints, and processes to be followed in the site-specific reviews. As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete environmental review addressing all required elements. Funds cannot be spent or committed on a specific site or activity until both the broad-level review and the site-specific review have been completed for the site.

The RE should consider a tiered environmental review for their single-family housing projects as a possible option to achieve both compliance and speed because it does not require upfront identification of assisted properties. In short, a tiered review focuses on a targeted geographic area (i.e., maximum size is a single census tract) to address and analyze environmental impacts related to the proposed activities that might occur on a typical project site within that area. The specific addresses/locations of the individual properties are not known at this time. However, once individual project sites are located

any remaining environmental compliance issues that could not be resolved until project locations became known are now completed, according to standards for approval previously established for the target area

Tiered reviews can be used for either projects that require CEST or EA-level review.

- For CEST-level activities, the tiered review must address compliance with the Federal laws and authorities listed at 24 CFR 58.5 and 58.6, such as historic preservation, floodplains, endangered species, hazardous substances, etc.
- For activities requiring preparation of an EA, the tiered review must address compliance with the Federal laws and authorities listed at 24 CFR 58.5 and 58.6 and Environmental Factors in accordance with HUD guidance.

There are many situations in which environmental reviews should not be tiered. Tiering should not be used to review an entire funding source or HUD program unless all tiered activities are sufficiently alike to make a tiered review meaningful and effective. Tiering is also not appropriate for projects where specific locations have been identified, and for which the development of site-specific reviews is feasible. Finally, the RE must have the capacity to perform and maintain a complete ERR over a prolonged period before attempting to perform a tiered review.

A tiered environmental review is a two-step process:

- Tier 1: Target Area Assessment
- Tier 2: Site Specific Project Review

TIER 1: TARGET AREA ASSESSMENT

The focus of a Tier 1 review is on a targeted geographic area. It is important that the boundaries of the target area are clearly defined so the scope of the environmental conditions under consideration is evident.

The Tier 1 review addresses and analyzes those environmental impacts related to the proposed activities that might occur on a typical site within the geographic area. This includes examining the applicable laws and authorities (e.g., floodplains, coastal zones, wetlands, aboveground storage tanks). For example, if the target area is not within a 100-year floodplain or a coastal zone management area, none of the project sites will be affected no matter where they are located in the target area. On the other hand, if a portion of the target area is within a 100-year floodplain, then the review must complete the required compliance process to decide whether to fund any future projects within the floodplain, including whether mitigation measures are feasible. (See the discussion in the section entitled Compliance with the Related Federal Laws and Authorities.)

For activities requiring an EA, the Tier 1 review must also assess project effects related to a longer list of EA Factors (e.g., compatibility with surrounding land uses, conformance with zoning plans, nuisances that affect site safety, displacement of people or businesses, solid waste management.).

All environmental compliance requirements satisfactorily resolved in this first level of review—meaning there are findings of no impact and/or impacts requiring mitigation—are excluded from any additional examination or consideration once the Tier 1 review is completed.

However, the Tier 1 review also identifies those compliance requirements that cannot be resolved until specific project locations become known. Site specific issues that cannot be resolved in a Tier 1 review may include the following: above ground storage tanks that present a safety hazard to building and occupants of buildings; new residential units located in close proximity to a freeway that generates high levels of noise; soils that are not suitable for multifamily structures; or asbestos removal that may be necessary. The Tier 2 Site Specific Project Review will address such issues.

During the Tier 1 review process the preparer develops and describes written standards (usually a checklist and accompanying narrative) that will be used during the Tier 2 Site Specific Project Review. These written standards are used to identify potential environmental impacts, as well as help the preparer choose appropriate sites. In developing the standards, the preparer must anticipate any special conditions, such as mitigation measures that must be met and carried out as part of an approved project by HUD if a potential environmental impact is associated with the site.

Upon completion of the Tier 1 review, including the written standards to be used during the Tier 2 process, the RE must issue a public notice and request release of funds from the appropriate approving authority (HUD or DHCD, as applicable). However, HOME funds may not be committed or spent prior to completion of the Tier 2 Site Specific Project Review.

Because the Tier 1 ERR is viable for up to five (5) years, it is critical for this record to be maintained for currency, meaning the content should be reviewed at least annually by the RE to be certain environmental conditions in the target area have not changed and that the Tier 1 findings are still valid. In addition, the Tier 1 ERR must also be accessible because each site-specific review (Tier 2) becomes a part of the Tier 1 ERR.

TIER 2: SITE SPECIFIC PROJECT REVIEW

The Tier 2 review focuses only on the environmental compliance requirements that could not be resolved in the Tier 1 Target Area Assessment until specific project locations become known.

When the preparer identifies a specific property or site within the target area for obligating HOME funds (e.g., property acquisition, financing repairs, demolishing a structure) the RE uses the written standards (checklist and narrative) set forth in the Tier 1 review process to determine if there are any environmental issues associated with the property/site that must be resolved before committing and spending HOME funds.

At minimum, the Site Specific Project Review (Tier 2) must identify the location of the project within the target area, describe all the related project activities that are proposed, and document in writing that compliance and/or site acceptability standards previously identified in the Tier 1 review were met, and what required mitigation measures, if any, will be incorporated into project implementation.

As mentioned before, once the Tier 2 review is completed it is filed with the Tier 1 ERR.

PROVIDING ASSISTANCE TO PROJECTS IN PROGRESS

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

- *Projects started with Federal funds.* An approved HOME-funded project may receive supplemental assistance after the original RROF and Certification (HUD form 7015.15) [where required] had been approved by HUD or the DHCD, as applicable. Approval of supplemental assistance to cover minor shortfalls in funding and to help complete a project previously approved under Part 58 is excluded from the environmental review requirements of NEPA and also not subject to compliance with the Federal laws and authorities, if approval is made by the same RE and re-evaluation of the environmental findings is not required under § 58.47 [§ 58.35(b)(7)].
- *Projects started with non-Federal funds.* Participating Jurisdictions (PJs), state recipients, subrecipients, contractors, owners, developers (including CHDOs) who had committed or expended non-Federal funding including permanent financing, to begin the development of an affordable housing project before the RE obtains approval from DHCD (in the case of state recipients) or HUD (i.e., AUGF [HUD form 7015.16]), or equivalent letter) may be reimbursed with HOME funds for such expenditures only when the following conditions are met:
 - The contractors, owners and developers started the project without the intention of using Federal assistance (e.g., as evidenced by other anticipated funding, or the original project budget); and
 - The PJ informs the state recipient, subrecipient, contractor, owner or developer that all work on the project must cease and/or the PJ itself ceases all work on the project once an application for HOME funds is made. No work or other choice limiting actions may occur after that date.

Work may recommence upon receipt of approval from the appropriate approving authority (HUD or DHCD, as applicable), where required (i.e., HUD form 7015.16 or equivalent letter). The PJ may not obligate funds to projects unless the RE first determines that the result of the environmental review is

satisfactory and DHCD (in the case of state recipients) or HUD has issued a HUD form 7015.15 or equivalent letter.

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

EMERGENCY ACTIONS [§§ 58.33 AND 58.34(A)(10)]

When there is a Presidentially declared disaster, a local emergency declared by the chief elected official of the jurisdiction who has proclaimed there is an immediate need for public action to protect public safety, or an imminent threat to health and safety is declared, the RE must still complete an environmental review regardless of NEPA level of review. However, the public notification process may be expedited. Specifically, for the combined Notice of FONSI and NOI/RROF, the public comment period and HUD's (or the state's) time period for receiving objections may run simultaneously. Once the notice is published, the RE may submit the RROF and Certification (along with a copy of the notice that was published or posted/mailed) before the public comment period has expired. However, if the RE receives comments, the appropriate approving authority (HUD or DHCD, as applicable), will withhold approval of the request until the RE considers and resolves those comments.

In similar fashion, if a NOI/RROF is published for a CE (which cannot convert to exempt), the public comment period and DHCD's (or HUD's) time period for receiving objections may run simultaneously. Again, the RE may submit the RROF and Certification (along with a copy of the notice that was published or posted/mailed) before the public comment period has expired, but DHCD (or HUD)) will not release funds until comments the RE may receive are considered and resolved.

The notice shall state the nature of the emergency or disaster, advise those submitting comments that the comment periods have been combined, and invite them to submit their written comments to both the RE and the appropriate approving authority (HUD or DHCD, as applicable), to ensure these comments receive full consideration.

For actions that are determined to be exempt ---i.e., imminent threats to public safety, per § 58.34(a)(10)---the RE should consult with their DHCD HOME representative to ensure the proposed action is eligible under HOME program regulations and to determine if the situation at hand qualifies as an "imminent threat to public safety". Exempt actions only require a written record of determination

that they meet the conditions for exemption. Neither public notification, nor approval from HUD or state is required.

SECTION 6: ADMINISTRATIVE REQUIREMENTS

RECORDKEEPING

The RE must be responsive to project partners and the public, and DHCD where units of local government are the RE. The RE must have the resources necessary to comply with all document management and correspondence requirements associated with performing the environmental review and the assumption of environmental responsibility. At a minimum record maintenance should provide for:

Accessibility - Environmental reviews under NEPA and Part 58 are a public process. Therefore, documents produced in support of the environmental review should be available to the public upon request. During the public comment period, the ERR should be immediately available to the public. After the project is approved and funds released, the ERR should be accessible within a reasonable period of time.

Retention - Environmental issues have a long liability timeline. The RE's record retention policy should at least comply with HUD's internal record retention policy of five years for environmental documentation.

WAIVERS AND EXCEPTIONS [§ 58.1(D)]

Section 58.1(d) describes the limited circumstances in which requests for a waiver or exception to compliance with the provisions of 24 CFR Part 58 may be granted. It should be noted that approval of such requests will be weighed against the criteria and conditions that HUD has established for determining whether there is good cause within the constraints of compliance with NEPA and the Federal laws and authorities cited at § 58.5 for granting such waivers and exceptions.

Only HUD may grant waivers or exceptions. And so, such requests may only be made to HUD by DHCD. Therefore, requests by state recipients for a waiver or exception may only go through DHCD.

Please contact DHCD immediately if a waiver from HUD may be necessary.

APPENDIX A: PART 58 ENVIRONMENTAL REVIEW GUIDANCE

COMPLIANCE WITH NEPA AND THE RELATED FEDERAL LAWS AND AUTHORITIES

The following sections provide guidance to assist applicants completing an environmental review in compliance with NEPA, and the related Federal laws and authorities cited at 24 CFR 50.4, 58.5, and 58.6. For more detailed instructions please see [HUD guidance¹](https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/)

STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 AND 58.6

AIRPORT HAZARDS (24 CFR 51, SUBPART D)

Applicability

Applies to projects located near civil or military airports.

Key Consideration

The RE must determine whether the project is located within a Runway Protection Zone, Clear Zone, or Accident Potential Zone and whether the project is permitted.

Documentation (ERR)

- Airport proximity determination;
- Map or documentation of zone location;
- Required notifications, if applicable.

COASTAL BARRIER RESOURCES (COASTAL BARRIER RESOURCES ACT 16 USC 3501)

Applicability

Applies to projects located within units of the Coastal Barrier Resources System (CBRS) or Otherwise Protected Areas (OPAs).

Key Consideration

The RE must determine whether the project is located within a designated CBRS unit or OPA, where federal financial assistance is generally prohibited.

Documentation (ERR)

- CBRS determination (e.g., map or official source showing project location);
- Documentation supporting whether the project is inside or outside a CBRS unit or OPA;
- If applicable, documentation supporting an allowable exception.

¹ <https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>

FLOOD INSURANCE (FLOOD DISASTER PROTECTION ACT 42 USC 4012A)

Applicability

Applies to projects involving buildings or improvements located in a Special Flood Hazard Area (SFHA) where federal financial assistance is used for acquisition, construction, or rehabilitation.

Key Consideration

The RE must determine whether the project is located within a FEMA-designated Special Flood Hazard Area and whether flood insurance is required as a condition of assistance.

Documentation (ERR)

- Floodplain determination (e.g., FEMA map or equivalent);
- Identification of whether the project involves insurable structures in an SFHA;
- Documentation that flood insurance, if required.

STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.5

CLEAN AIR ACT (40 CFR PARTS, 6, 51, 93)

Applicability

Applies to projects located in areas designated as nonattainment or maintenance for National Ambient Air Quality Standards.

Key Consideration

The RE must determine whether the project conforms to the applicable State Implementation Plan (SIP), if required.

Documentation (ERR)

- Air quality status (attainment/nonattainment/maintenance);
- Conformity determination, if applicable;
- Mitigation measures, if required.

COASTAL ZONE MANAGEMENT ACT (16 USC 1451 ET SEQ.)

Applicability

Applies to projects located within or affecting a designated coastal zone.

Key Consideration

The RE must determine whether the project is consistent with the state's approved coastal zone management program.

Documentation (ERR)

- Coastal zone determination;
- Consistency determination or documentation of non-applicability.

SITE CONTAMINATION (24 CFR PART 58.5(I)(2))

Applicability

Applies to all properties receiving HUD assistance.

Key Consideration

The RE must determine whether the site is free of hazardous materials, contamination, or conditions that could affect health and safety.

Documentation (ERR)

- Phase I Environmental Site Assessment (ESA) is required for all applicants;
- Supporting documentation of findings;
- Mitigation or remediation measures and documentation that the site has been cleaned up according to EPA or state standards, if required.

ENDANGERED SPECIES (ENDANGERED SPECIES ACT SECTION 7)

Applicability

Applies to projects that may affect federally listed threatened or endangered species or designated critical habitat.

Key Consideration

The RE must determine whether the project will affect listed species or critical habitat.

Documentation (ERR)

- Species list or database results
- Effect determination (e.g., no effect, likely to adversely affect, not likely to adversely affect) - Note the RE is responsible for final Section 7 consultation
- Consultation documentation
- Supporting analysis or studies, if applicable

EXPLOSIVE & FLAMMABLE HAZARDS (24 CFR 51, SUBPART C)

Applicability

Applies to projects located near above-ground storage tanks containing explosive or flammable materials.

Key Consideration

The RE must determine whether the project meets acceptable separation distance (ASD) requirements.

Documentation (ERR)

- Identification of nearby hazards
- HUD ASD tool results
- Mitigation measures, if required

FARMLAND PROTECTION POLICY ACT (7 CFR PART 658)

Applicability

Applies to projects that convert prime, unique, or locally important farmland to non-agricultural use.

Key Consideration

The RE must determine whether the project results in conversion of protected farmland.

Documentation (ERR)

- Farmland classification determination
- Completed NRSC Form AD-1006, if required
- Supporting documentation of findings

FLOODPLAIN MANAGEMENT (EXECUTIVE ORDER 11988)

Applicability

Applies to projects located in or affecting the Federal Flood Risk Management Standard (FFRMS) floodplain.

Key Consideration

The RE must determine whether the project is located in a FFRMS floodplain and whether there are practicable alternatives to avoid floodplain impacts.

Documentation (ERR)

- Floodplain map (e.g., FEMA) showing project location;
- Floodplain determination;
- 8-step decision-making documentation, if required;
- Mitigation measures, if applicable.

HISTORIC PRESERVATION (NATIONAL HISTORIC PRESERVATION ACT SECTION 106)

Applicability

Applies to projects involving physical impacts or changes in use that may affect historic properties.

Key Consideration

The RE must determine whether the project affects properties listed on or eligible for listing on the National Register of Historic Places or historic properties of religious and cultural significance to federally recognized Indian tribes.

Documentation (ERR)

- State Historic Preservation Officer (SHPO) concurrence (no historic properties affected, no adverse effect, or adverse effect) - Note the RE is responsible for SHPO and Tribal consultation.
- Documentation of consultation and findings
- Resolution of adverse effects, if applicable

NOISE ABATEMENT AND CONTROL (24 CFR 51 SUBPART B)

Applicability

Applies to projects located near major noise sources (roadways, railroads, airports)

Key Consideration

The RE must determine whether noise levels meet HUD standards and whether mitigation is required.

Documentation (ERR)

- Identification of noise sources
- Noise calculations or HUD tool results
- Noise level determination
- Mitigation measures, if required

SOLE SOURCE AQUIFERS (SAFE DRINKING WATER ACT)

Applicability

Applies to projects located within designated sole source aquifer areas.

Key Consideration

The RE must determine whether the project may impact the aquifer or drinking water quality.

Documentation (ERR)

- Sole source aquifer location determination
- Documentation of potential impacts
- Coordination or findings, if applicable

WETLANDS PROTECTION (EXECUTIVE ORDER 11990)

Applicability

Applies to projects located in or affecting wetlands.

Key Consideration

The RE must determine whether the project impacts wetlands and whether there are practicable alternatives to avoid or minimize impacts.

Documentation (ERR)

- Wetlands determination (map or other supporting documentation)
- 8-step decision-making documentation, if required
- Mitigation measures, if applicable

WILD AND SCENIC RIVERS ACT

Applicability

Applies to projects that may affect designated or eligible wild and scenic rivers.

Key Consideration

The RE must determine whether the project will directly or indirectly affect protected river segments or their values.

Documentation (ERR)

- Determination of proximity to designated rivers, study rivers or Nationwide Rivers Inventory rivers that potentially qualify as a national wild, scenic or recreational river area;
- Impact analysis, if required;
- Supporting documentation of findings.

ENVIRONMENTAL ASSESSMENT FACTORS - 24 CFR 58.40

For EA level reviews, Environmental Assessment Factors must be evaluated to determine the potential impacts of the proposed project on the surrounding environment and ensure that existing infrastructure can support the project. Evaluations should be proportionate to the scope and relevance of the project and supported by appropriate documentation in the Environmental Review Record (ERR).

Supporting documentation must be credible, traceable, and sufficient to support each determination. Where applicable, required reviews, consultations, permits, and mitigation measures must be completed and documented.

Responsible Entities should use HUD-provided EA formats and tools to complete detailed analysis, including assigning **Impact Codes** and documenting **Impact Evaluations**.

IMPACT CODES

The RE will assign an impact code for each factor:

- (1) Beneficial impact
- (2) No impact anticipated

- (3) Adverse impact (may require mitigation)
- (4) Significant impact (may require project modification or further review)

IMPACT EVALUATION

Environmental Assessment Factor	Impact Evaluation (Summary of Findings)
LAND DEVELOPMENT	
Conformance with Plans / Compatible Land Use and Zoning / Scale and Urban Design	Consistency with local land use plans, zoning, and surrounding development patterns
Soil Suitability / Slope / Erosion / Drainage / Storm Water Runoff	Site conditions and suitability for development, including drainage and erosion considerations
Hazards and Nuisances (including Site Safety and Noise)	Potential exposure to hazards or nuisances affecting site safety or livability
SOCIOECONOMIC	
Employment and Income Patterns	Effects on employment opportunities and local economic conditions
Demographic Character Changes, Displacement	Potential for displacement or changes to population characteristics
COMMUNITY FACILITIES AND SERVICES	
Educational and Cultural Facilities	Availability and capacity of schools and cultural resources
Commercial Facilities	Access to goods, services, and commercial activity
Health Care and Social Services	Availability of health and social services
Solid Waste Disposal / Recycling	Capacity of waste management systems
Waste Water / Sanitary Sewers	Availability and capacity of wastewater infrastructure
Water Supply	Availability and adequacy of water supply
Public Safety – Police, Fire, and Emergency Medical	Availability of emergency and public safety services
Parks, Open Space, and Recreation	Access to recreational resources and open space
Transportation and Accessibility	Access to transportation networks and mobility
NATURAL FEATURES	
Unique Natural Features, Water Resources	Presence of natural features or water resources that may be affected
Vegetation, Wildlife	Potential impacts to vegetation and wildlife
Other Factors	Any additional local or site-specific environmental considerations
ENERGY	
Energy Efficiency	Energy use, efficiency, and location-related impacts

APPENDIX B: ASNH DIVISION ENVIRONMENTAL REVIEW GUIDE FOR APPLICANTS

OVERVIEW

This guidance was developed for applicants of the Virginia Department of Housing and Community Development (DHCD) Affordable and Special Needs Housing (ASNH) program, which provides U.S. Department of Housing and Urban Development (HUD) funding through the HOME Investment Partnership Program (HOME) and the National Housing Trust Fund (NHTF; rental only).

The environmental review process should be incorporated into project feasibility and due diligence to:

- Identify potential environmental impacts;
- Evaluate mitigation measures; and
- Inform project planning and decision-making.

The **DHCD Environmental Pre-Planning Worksheet** can also be used to help identify potential environmental issues early in the planning process.

DETERMINING YOUR REVIEW PATH

The applicable environmental review framework depends on your project's funding source:

HOME/Part 58: Projects receiving HOME funds are subject to environmental review under 24 CFR Part 58. Reviews typically require an Environmental Assessment (EA), a Finding of No Significant Impact (FONSI), public notice, and HUD approval of a Request for Release of Funds (RROF) before an Authority to Use Grant Funds (AUGF) is issued.

NHTF/§93.301 (Rental Projects only): Projects funded solely with National Housing Trust Fund (NHTF) dollars are subject to Environmental Provisions under 24 CFR §93.301, which are outcome-based rather than process-based. The environmental review requires the completion of an NHTF Environmental Review Checklist.

All applicants must submit the applicable **Project Information Form** at application regardless of option selected.

ENVIRONMENTAL REVIEW SUBMISSION OPTIONS

Applicants may choose one of the following approaches when applying for ASNH funding:

- **Option 1: Applicant-Prepared Review**
The applicant submits a complete, review-ready environmental review document at application, along with all supporting documentation including a Phase I Environmental Site Assessment (ESA) and the applicable Project Information Form.
- **Option 2: DHCD-Prepared Review**
The applicant submits baseline environmental information at the time of application, including a Phase I ESA and the applicable Project Information Form. DHCD completes the review after award.

PHASE I ESA REQUIREMENT

A Phase I ESA prepared in accordance with ASTM Standard E1527-21 (or most current standard) is required for all ASNH rental applicants regardless of funding source. However, applicants applying for federal funds must incorporate HUD guidance **“Using a Phase I Environmental Site Assessment to Document Compliance with HUD Environmental Standards at 24 CFR 58.5(i)(2) or 50.3(i)”** for Business Environmental Risks into their ESA.

See the **ASNH Hazardous Materials Documentation Requirements** for full Phase I ESA and supplemental study requirements.

ROLES AND RESPONSIBILITIES

Applicant/Developer

- Provides required documentation at application
- Funds and completes required studies as directed by DHCD (e.g., Phase I ESA, Phase II ESA)
- Responds to documentation deficiencies
- Coordinates with any applicable locality or funding partners regarding environmental review status, as applicable
- Complies with all mitigation commitments identified in the environmental review process

DHCD

- Serves as the RE under Part 58
- Reviews all environmental documentation and identifies documentation deficiencies
- Makes environmental determinations
- Initiates required environmental consultations (e.g., Section 106 National Historic Preservation Act, Section 7 Endangered Species Act)
- Completes and approves the EA and issues Finding of No Significant Impact (FONSI), if applicable
- Publishes required public notices
- Submits Request for Release of Funds (RROF) to HUD and obtains Authority to Use Grant Funds (AUGF) from HUD, if applicable
- Executes funding agreement

TIMING REMINDER:

- The applicant should always view the environmental review process as a feasibility tool during a project’s planning and due diligence phase.
- The environmental review process must be completed prior to any choice-limiting actions. Choice-limiting actions may include but are not limited to real property acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation or clearance, ground disturbance, and leasing, including a binding legal contract to commit these activities that is not conditioned on successful completion of the environmental review process.

- Failure to comply with 24 CFR Part 58 requirements or Environmental Provisions under 24 CFR §93.301 may result in denial of Federal funding.
- Project timelines should account for environmental review, consultation requirements, public notice periods, and HUD approval timelines.

ASNH ENVIRONMENTAL REVIEW FORMS + GUIDANCE

ASNH has compiled resources to assist with the environmental review process.

[Click here](#) to download a zip file including the following subfolders and documents:

For Applications:

- HOME Project Information Form – Homeownership
- HOME Project Information Form – Rental
- NHTF Project Information Form

HUD Templates:

- NHTF Checklist – New Construction
- NHTF Checklist – Rehabilitation
- Part 58 Environmental Assessment

HUD Guidance:

- CPD NHTF Environmental Provisions
- CPD Notice for Addressing Radon
- Choice Limiting Action Fact Sheet
- Using a Phase I Environmental Site Assessment to Document Compliance with HUD Environmental Standards at 24 CFR 58.5(i)(2) or 50.3(i)

ASNH Guidance:

- Environmental Assessment Planning Worksheet
- Environmental Review Resources
- Hazardous Materials Document Requirements