VIRGINIA
DHCD

Back to Basics: Building a New Foundation

Grant Management Workshop   January 26-28, 2021

To **ERR** is Human:

The "Whats," "Whys," "Whos," and "Hows" of the **E**nvironmental **R**eview and **R**ecord Process

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First and Foremost...

WHAT is an Environmental Review (ER)?

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

- *Environmental reviews* are **legally required for any project receiving federal funds** by the **National Environmental Act (NEPA) of 1969 and Related Acts**

  - Federally funded grants include *all* CDBG and ARC projects

WHAT is the Environmental Review Record (ERR)?

- The *environmental review record* **(ERR)** is the documentation created by completing the *environmental review process*.

- The **ERR**:
  - Provides a way for public citizens and officials to review environmental impacts **BEFORE** any action is undertake
  - Helps tell the story of the project
  - Leaves a "paper trail" showing due diligence for any potential future problems
  - A well-documented and maintained ERR is of upmost important because *IF IT'S NOT IN WRITING IT DIDN'T HAPPEN*

WHAT is the Environmental Review Record (ERR)? - continued

- The **ERR** must contain:

- Project Description
- Statutory Checklist
- Environmental Checklist
- Maps
- Public Notices
- Documentation of determinations or findings as evidence of review, decision making, and action
  - All correspondence between regulatory agencies and localities/grantees

- The **ERR** must :
  - Be available for public review – Town Hall, Municipal Building, County Administration Building
  - Be accessible for public review

Why do we do Environmental Reviews?

- Protect both the environment and the project

- To comply with federal laws – National Environmental Protection Act (NEPA) of 1969, Part 58, and Related Acts

The National Environmental Protection Act (NEPA) of 1969

- The umbrella that encompasses all environmental factors are considered

- All federally funded grants fall under **NEPA**

- **All** Federal agencies must implement **agency-specific** systems to ensure all environmental aspects are considered during project development
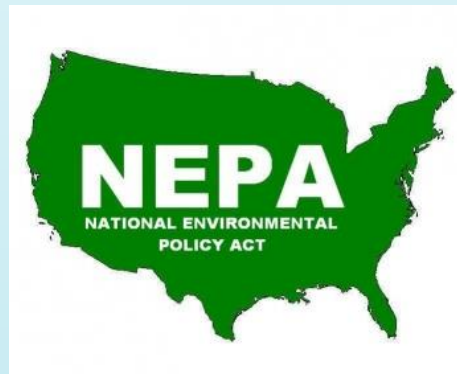
Related Acts

- National Historic Preservation Act of 1966
- Floodplain & Wetland Management
  - Floodplain Management
  - Executive Order 11988
- Wetlands Protection
  - Executive Order 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 of 1970
- Farmland Protection Policy Act of 1981
- Environmental Justice—E.O. 12898
- **HUD specific Requirements**
  - Runway Clear Zones and Clear Zones
  - Flood Insurance
  - Coastal Barriers

WHO is responsible for information in ER?

- **RESPONSIBLE ENTITY (RE)** – the unit of local government (Town or County)
  - CDBG projects have to have the unit of local government as the grantee
  - For grantees that are non-profits (ARC grants), DHCD assumes the role of **RE**

WHO is the Certifying Officer?

- Is the highest-ranking ELECTED official (Mayor, Chair of the Board of Supervisors)
  - Can be delegated to other government officials (such as a town manager or county administrator) but MUST be in writing

- Must have the technical capacity and administrative capability to carry out the ER duties

- Has the legal capacity to carry out ER responsibilities

- Holds the responsibility to act on behalf of the Responsible Entity in the environmental review process

- Executes the Request for Release of Funds and Certification Form (HUD specific requirement)

- Accepts jurisdiction in federal courts for RE

HOW do we do environmental reviews?

Define Project & Scope

Determine "Level of Review"

Conduct Review

Publish Notices and Submit RROF & Certification (if required)

Step 1 – Define Project and Scope

The Project Description **must include**:

- Project Name

- Type of Construction

- Specific Location

- Types of Activities

- Time frame

Step 2 – Determine Level of Review
(From least level of review to most level of review)

- Exempt

- Categorically Excluded Not Subject to §58.5—CENST

- Categorically Excluded Subject to §58.5—CEST

- Environmental Assessment—EA

- Broad-Level Tiered Review

- Environmental Impact Statement—EIS
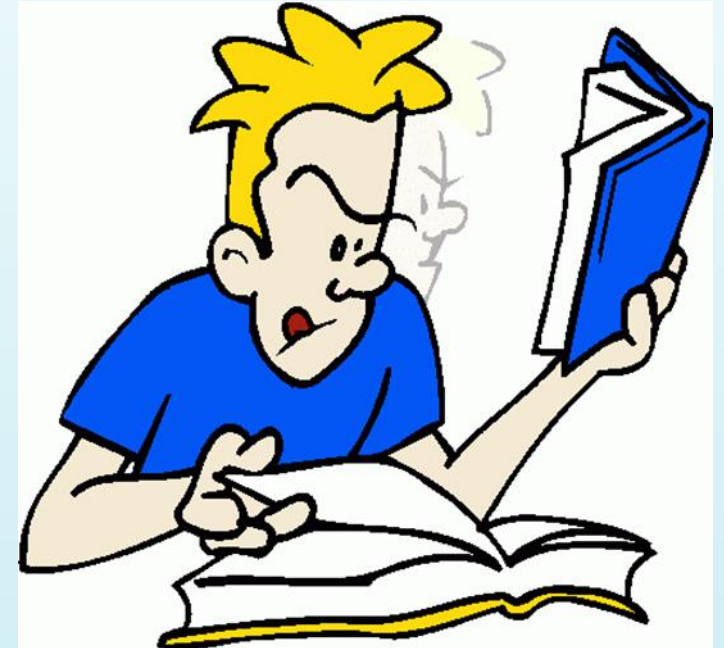
Exempt and

Categorically Excluded NOT Subject to §58 (CENST)

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

Exempt Activities Examples:
- Administrative Costs
- Purchase of tools or equipment

- CENST Activities Examples:
- Operating Costs
- Economic Development Activities
- Homebuyers Assistance

Step 2 – Determine Level Of Review : CEST

Categorically Excluded Subject to §58 (CEST)

CEST 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

Examples:
Replacement of water/sewer lines
Renovation of a building

Step 2 – Determine Level Of Review : EA

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.

Good Rule of Thumb
If you turn dirt—an EA is needed!

Step 2 – Determine 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.
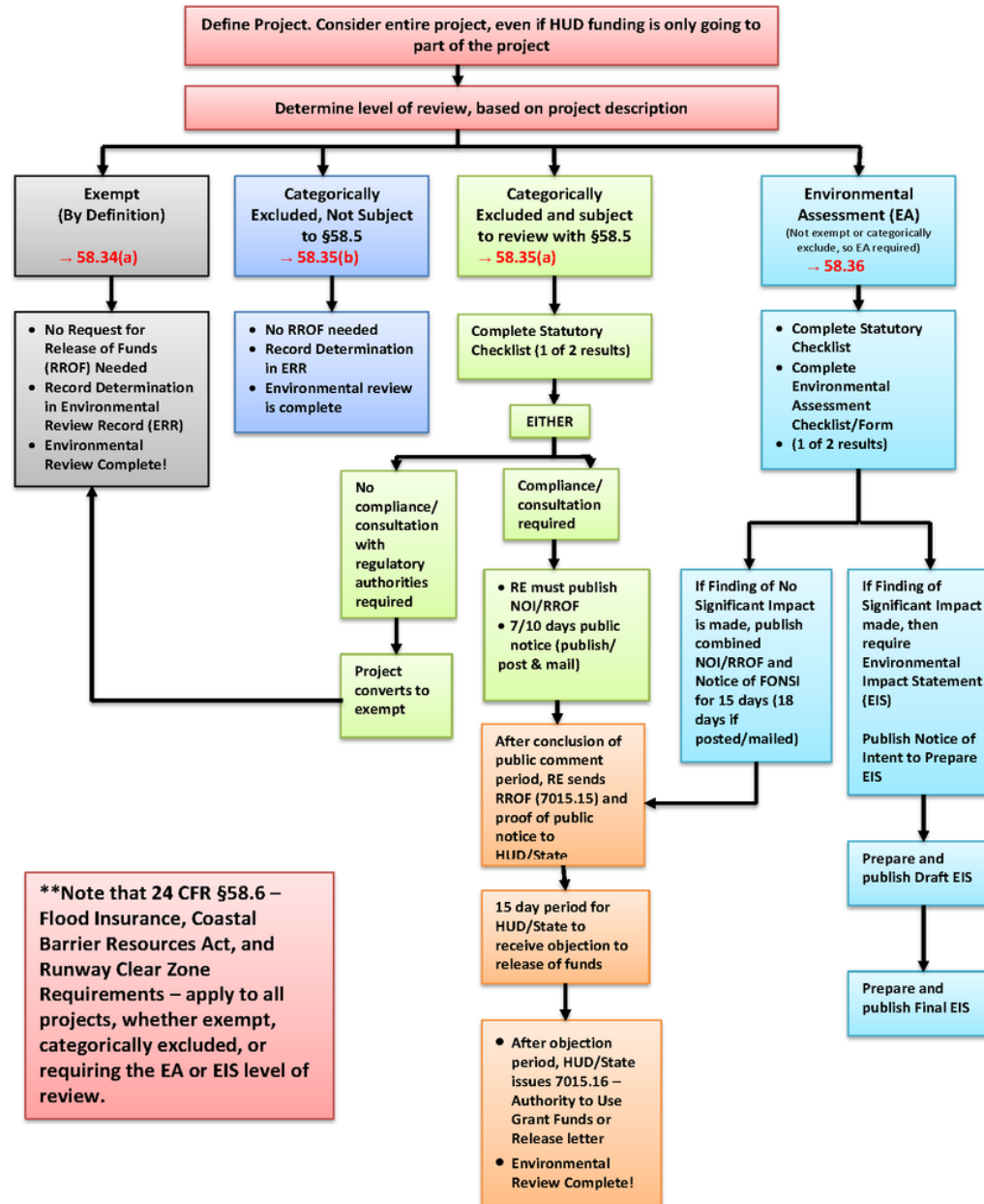
Step 2 – Determine Level Of Review : EIS

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

Environmental Review Process
(To Be Conducted by Responsible Entity)

Define Project. Consider entire project, even if HUD funding is only going to part of the project

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Determine level of review, based on project description

Exempt (By Definition)
→ 58.34(a)

- No Request for Release of Funds (RROF) Needed
- Record Determination in Environmental Review Record (ERR)
- Environmental Review Complete!

Categorically Excluded, Not Subject to §58.5
→ 58.35(b)

- No RROF needed
- Record Determination in ERR
- Environmental review is complete

Categorically Excluded and subject to review with §58.5
→ 58.35(a)

Complete Statutory Checklist (1 of 2 results)

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EITHER

No compliance/ consultation with regulatory authorities required

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Project converts to exempt

Compliance/ consultation required

- RE must publish NOI/RROF
- 7/10 days public notice (publish/ post & mail)

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After conclusion of public comment period, RE sends RROF (7015.15) and proof of public notice to HUD/State

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15 day period for HUD/State to receive objection to release of funds

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- After objection period, HUD/State issues 7015.16 – Authority to Use Grant Funds or Release letter
- Environmental Review Complete!

Environmental Assessment (EA)
(Not exempt or categorically exclude, so EA required)
→ 58.36

- Complete Statutory Checklist
- Complete Environmental Assessment Checklist/Form
- (1 of 2 results)

If Finding of No Significant Impact is made, publish combined NOI/RROF and Notice of FONSI for 15 days (18 days if posted/mailed)

If Finding of Significant Impact made, then require Environmental Impact Statement (EIS)

Publish Notice of Intent to Prepare EIS

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Prepare and publish Draft EIS

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Prepare and publish Final EIS

**Note that 24 CFR §58.6 – Flood Insurance, Coastal Barrier Resources Act, and Runway Clear Zone Requirements – apply to all projects, whether exempt, categorically excluded, or requiring the EA or EIS level of review.
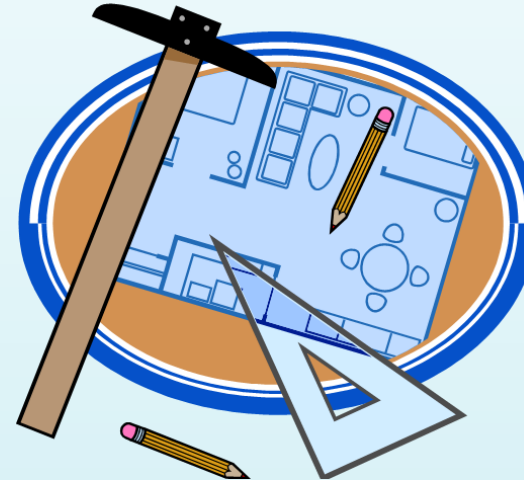
Step 3 – Conduct Review
For Exempt and CENST Projects

NOT Subject to §58.5

Compliance with §58.6 is
   REQUIRED

NO Publication Requirements

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

Step 3 – Conduct Review
For All Other Review Levels

- Review Levels:
  - Categorically Excluded Subject to §58
  - Environmental Assessment
  - Broad Level Tiered

- Begin this process by completing the Statutory Checklist

The Statutory Checklist – Bad Example

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	Yes ☐ No ☑	
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes ☐ No ☐	

The Statutory Checklist – Good Example

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	Yes ☐ No ☑	This project is not in near an airport. See Appendix 5 for map determination showing this.
Coastal Barrier Resources	Yes No	

Step 3 – Conduct Review

Research and Consultation:

Virginia Department of Historic Resources (DHR)

Floodplains and/or wetlands

Step 3- Conduct Review

Research and Consultation

- Write letters and/or emails to regulatory agencies—as necessary

- Question: How long do we have to wait for a response?

Step 3 – Conduct Review

Categorically Excluded Subject to §58

Statutory Checklist

--If your project is in compliance with each statue and if the State Historic Preservation Officer (SHPO) concurs with the "No historic properties affected" your project will convert to Exempt, document file and proceed
    with project

--If compliance is required for even one 58.5 Statue, proceed with Public Notice and RROF process

Determination:

☐ This categorically excluded activity/project converts to Exempt, per 58.34(a)(12) because there are no circumstances which require compliance with any of the federal laws and authorities cited at §58.5. **Funds may be committed and drawn down after certification of this part** for this (now) EXEMPT project; OR

☐ This categorically excluded activity/project cannot convert to Exempt because there are circumstances which require compliance with one or more federal laws and authorities cited at §58.5. Complete consultation/mitigation protocol requirements, **publish NOI/RROF and obtain "Authority to Use Grant Funds"** (HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds; OR

☐ This project is not categorically excluded OR, if originally categorically excluded, is now subject to a full Environmental Assessment according to Part 58 Subpart E due to extraordinary circumstances (Section 58.35(c)).

For Environmental Assessment

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 (FOSI)

   - EIS required

Step 4 – Publish/Post Public Notices and Request RROF-C

- **Publish** and/or **Post** FONSI/NOI-RROF (combined notice)

- Allow **15 or 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

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

• Contact resource agencies via email (*Allow at least 30 days for comments from resource agencies before completing the ERR.*)						
• Complete ERR 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						
	Publish or post Combined Notice of FONSI & NOI-RROF (Appendix 2.H)	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

Reminders

- Your ERR is current for 5 years
- Make sure to accurately complete your project description
- Completely fill out your statutory checklist (no blank boxes or N/A)
- The RE is the culpable party should information be inaccurate
- Use current and correct forms (HUD Exhange)

Resources:

- The Grant Management Manual – Appendix 2 (ERR)
- The HUD Exchange Website www.hudexhange.info
- Tribal Directory Assessment Tool (TDAT)—egis.hud.gov/tdat
- An EPA tool used to facilitate the environmental review process--nepassisttool.epa.gov
- VCRIS (Virginia Cultural Resource Information System) provides interactive views of information in the DHR's Archives--dhr.virginia.gov
- IPaC is a project planning tool which streamlines the USFWS environmental review process--ecos.fws.gov/
- Your CDS
- Me!

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Questions?