

XIII. Environmental Review

A. Environmental Review Requirements

An environmental review is the process of analyzing the potential impact a proposed project could have on the people and the natural environment within a designated project area and the effect the material and social environment may have on a project.

An environmental review is necessary for all HUD assisted projects, including projects funded partially or in full by CDBG NDR, and all projects implemented or funded by a California public agency, or that require discretionary approval by a public agency.

For all NDR projects, HCD, as the Responsible Entity (RE), is the entity which must complete the environmental review prior to obligating any funds to the project, regardless of the source. While the subgrantees and third-party environmental consultants will compile and produce the Environmental Review Record, HCD must certify their contents and request authority to funds from HUD. This requirement also applies to projects funded with CDBG NDR generated program income.

Regulations that govern the environmental review include:

- 24 CFR §58
- National Environmental Policy Act of 1969 (NEPA); 40 CFR §1500 – 1508
- California Environmental Quality Act (CEQA); California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 – 15387

1. NDR Activity Implementation Waiver for States

Usually, a state distributes CDBG funds to units of local government and the unit of local government takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD allows the State of California to carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR §58.4, when a state carries out activities directly, the state must submit the certification and request for release of funds to HUD for approval. Once HCD has submitted the request for release of funds to HUD and it has been approved, HCD has the authority to use grant funds.

2. Environmental Review Record

Documentation of the environmental review is maintained in the environmental review record (ERR) by HCD. This record, which is to be prepared and maintained by a third-party environmental consultant, in coordination with subgrantee staff, contains the description of all activities that are part of the project and an evaluation of the effects of the project on the human environment and vice versa. The ERR must be made available for public review. The environmental consultant should start to establish the record as soon as they have been procured.

The ERR shall contain:

- A project description that:

- Provides location specific information and geographic boundaries, as well as a delineation of all activities included in the scope of the project.
- Captures the maximum anticipated scope of the proposal, not just a single activity that the money is going toward. It should include all contemplated actions that are part of the project. Activities should be aggregated according to the regulations at 24 CFR §58.32, which says that a RE, which is HCD, must group together and evaluate as a single project all individual activities which are related either on the geographical or functional basis, or both, or are logical parts of a composite of contemplated actions.
- May not be identical to the description of the project and activities used by the funding program, as the project description in the environmental review may consider activities not financed by HUD.
- If the project or environmental review contains information that can be considered sensitive, such as the location of a domestic violence shelter, sacred site, or endangered species habitat, that information is omitted from the publicly reviewable environmental review record.
- Evaluation of the effects of the project or the activities on the human environment
- Public notices
- Documentation of compliance with applicable statutes and authorities
- Record of written determinations and other review findings required by 24 CFR §58

ERRs vary in length and content depending upon the level of review required for the categories of activities. Public comments, concerns and appropriate resolution by the recipient are extremely important and must be fully documented in the ERR.

B. Timetable for Reviews

It is recommended that the Environmental Review process begin once the activity for a project is verified to be eligible and meets a national objective, as defined by HUD.

HUD's regulations at 24 CFR part 58.22 prohibit grant recipients from committing or spending HUD or non HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has become federal. This prohibition on "choice limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review.

The restriction on undertaking or committing funds for choice limiting actions does not apply to undertakings or commitments of nonfederal funds before a project participant has applied for HUD funding. A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease

further choice limiting actions on the project until the environmental review process is complete.

1. Actions Triggering Environmental Review and Limitations Pending Clearance

According to the NEPA (40 CFR part 1500-1508) and 24 CFR part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, 24 CFR part 58 prohibits the commitment or expenditure of CDBG NDR funds until the environmental review process has been completed and the RE receives a HUD issued release of funds, as evidenced by an Authority to Release Grant Funds (ATUGF).

- HCD and its subgrantees may not spend either public or private funds, including CDBG NDR or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved.
- HCD and its subgrantees must avoid actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e. the natural, physical, social and economic environment).
- Activities that have physical impacts, or which limit the choice of alternatives, cannot be undertaken, even with HCD or other project participant's own funds, prior to obtaining environmental clearance as evidenced by the ATUGF.
- For the purposes of the environmental review process, "commitment of funds" includes:
 - Execution of a legally binding agreement (such as a property purchase or construction contract).
 - Expenditure of CDBG NDR funds.
 - Use of non CDBG NDR funds on actions that would have an adverse impact (e.g. demolition, dredging, filling, excavating).
 - Use of non CDBG NDR funds on actions that would be "choice limiting" (e.g. acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures).

With HCD approval, it is acceptable for subgrantees to execute non-legally binding agreements prior to completion of the environmental review process. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim to any amount of CDBG NDR funds to be used for the specific project or site until the environmental review process is satisfactorily completed.

C. State Requirements

The California Environmental Quality Act (CEQA) applies to activities of state and local public agencies that are defined by CEQA as projects. CEQA requires that California State and local agencies follow a protocol of analysis and public disclosure of environmental impacts of proposed projects and adopt all feasible measures to mitigate those impacts.

The procedure for CEQA compliance should be completed in tandem with NEPA and 24 CFR part 85; however, the requirements and procedures are slightly different.

D. Responsibilities – State and Subgrantees

1. The Responsible Entity, Lead Agency, and Official Designations

The RE is responsible for the completion of the Federal environmental review process for CDBG NDR funded projects. The Lead Agency (LA) is responsible for completion of the State environmental review process for California. For CDBG NDR funded projects and programs, HCD is the RE and LA. While subgrantees and their environmental consultants will compile the ERR, HCD must certify that they meet all regulatory requirements.

The RE/LA's responsibilities include:

- The designation of two responsible parties:
 - Certifying Officer – The person that has the authority to assume legal responsibility for certifying that all environmental requirements have been followed.
 - Environmental Officer – The person responsible for conducting the review and facilitating responses to comments and findings. For its NDR projects, this role will be assumed by a third-party environmental consultant.
- Ensuring compliance with 24 CFR 58, NEPA, and CEQA
- Issuing public notifications
- Ensuring the ERR is complete
- Submitting the certifications (when required)
- Submitting requests for Release of Funds to HUD

E. Procedures

1. HUD Definition of Project

The term “Project” means an activity or aggregated group of integrally related activities designed to accomplish, in whole or in part, a specific goal.

2. Activity

The term “activity” means an action that HCD or its subgrantees takes on, as a part of the HUD assisted project, regardless of whether that action is directly funded via HUD funds.

3. Aggregation

The activities should be aggregated (grouped) to consider the combined environmental effect of the project. Activities that are related either geographically, functionally, or as logical parts of a composite contemplated action can be aggregated. For example, the aggregation of several activities carried out in one distinct neighborhood, such as housing rehabilitation, demolition, street paving, and construction of a water line, would be aggregated together under one project. Aggregation will reduce the number of ERRs that the RE will have to complete.

Activities where project aggregation would occur include:

- Activities are in a concentrated area
- Activities are within unspecified sites
- Multiyear activities
- Special HUD initiatives

4. CEQA definition of Project

A project is an activity that causes a direct or indirect physical change in the environment, undertaken by (1) a public agency or (2) a private entity that must receive some discretionary approval from a government agency (the agency/agencies that have the authority to deny a requested permit or approval).

5. Determine Necessary Level of Review

a. HUD Review Categories

Project activities fall into one of the below environmental review categories:

- Exempt activities
- Nonexempt activities
 - Categorically excluded activities
 - Environmental Assessment activities

b. CEQA Review Categories

- Exempt activities
- Nonexempt activities
 - Negative declaration activities
 - Environmental Impact Report activities

6. Exempt Activities

a. HUD Exempt Activities

HUD Exempt activities are not subject to NEPA or 24 CFR part 85. These are activities that are highly unlikely to have any direct impact on the environment. A list of activities that are considered exempt can be found at 24 CFR part 58.34(a). These include, but are not limited to, the following:

- Environmental and other studies

- Information and financial services
- Administrative and management activities
- Engineering and design costs
- Interim assistance (emergency) activities, if the assisted activities do not alter environmental conditions, and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration.
- Public service activities that will not have a physical impact or result in any physical changes
- Inspections and testing of properties for hazards or defects
- Purchase of tools or insurance
- Technical assistance or training
- Payment of principal and interest on loans made or guaranteed by HUD
- Any of the categorically excluded activities subject to 24 CFR part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other Federal laws and authorities listed at 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to part 58.5.

b. CEQA Exempt Activities

CEQA exempt activities are not subject to CEQA's environmental review requirements. CEQA exemptions fall under two categories: statutory and categorical.

Statutory exemptions (CEQA Guidelines Article 18) are provided to types of projects given a blanket exemption from environmental review requirements. Types of statutory exemptions include, but are not limited to:

- Feasibility and planning studies
- Adoption of coastal plans and programs
- Ministerial projects (issuance of building permits, business licenses, approval of final subdivision maps)
- Emergency projects

Categorical exemptions (CEQA Guidelines Article 19) are provided to types of projects that have been determined not to have significant impact on the environment. Certain projects may trigger exceptions to the categorical exemption. Types of categorical exemptions include, but are

not limited to:

- Minor alterations to existing structures
- Inspections or enforcement actions
- Acquisition of land
- Loans
- Training programs
- Emergency projects

7. Nonexempt Activities

a. Categorically excluded from NEPA, and NOT subject to 24 CFR 58.5

The following activities, listed at 24 CFR part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to 58.5 compliance determinations:

- Tenant based rental assistance.
- Supportive services, including but not limited to, health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local state and federal government services and services.
- Operating costs, including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs.
- Economic development activities, including equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations.
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property.
- Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

b. Categorically excluded from NEPA, but subject to 24 CFR §58.5

The following activities are categorically excluded from NEPA regulations but subject to the regulations of 24 CFR §58.5, per the list at 4 CFR §58.35(b):

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent.
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
 - For residential properties with one to four units:
 - The density is not increased beyond four units
 - The land use is not changed
 - If the building is located in a floodplain or in a wetland, the footprint of the building is not increased.
 - For multifamily residential buildings (with more than four units):
 - Unit density is not changed more than 20 percent
 - The project does not involve changes in land use from residential to nonresidential
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.
 - For nonresidential structures including commercial, industrial and public buildings:
 - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent.
 - The activity does not involve a change in land use, e.g. from commercial to industrial, from nonresidential to residential, or from one industrial use to another.
- Individual Actions
 - An individual action on up to four family dwellings where there is a maximum of four units on any one site. "Individual action" refers to new construction, development, demolition, acquisition, disposition or refinancing (does not include rehabilitation which is covered previously). The units can be four one unit buildings or one four unit building or any combination in between.
 - An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

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

8. Environmental Assessment

An Environmental Assessment (EA) level of review, required for compliance with NEPA and 24 CFR part 58, is applicable to all projects for activities not covered under a categorical exclusion or an exemption. This also applies when extraordinary circumstances exist that elevate the level of review.

9. Environmental Impact Statement

This level of review, required for compliance with NEPA and 24 CFR part 58 is applicable in accordance with 24 CFR part 58.37, and includes the following circumstances:

- An EA concludes a Finding of Significant Impact
- The complexity of the project exceeds the scope of an EA
- Extraordinary circumstances exist and elevate the review
- Noise levels exceed into what is considered the unacceptable noise zone
- Project includes 2,500 or more housing units or beds

10. CEQA nonexempt activities

a. Initial Study

If a project is not exempt, the Lead Agency is to produce an Initial Study (IS), per CEQA Guidelines Article 5. The purpose of the IS is to provide a preliminary analysis of the proposed project to determine if it may have a significant effect on the environment; thus, whether a Negative Declaration or an Environmental Impact Report should be prepared.

An IS should include:

- Project information
- Project description (including all phases – project planning implementation, and operation)
- Environmental factors potentially affected
- Determination
- Evaluation of environmental impacts

b. Negative Declaration

A Negative Declaration (CEQA Guidelines Article 6) is a determination, based on the IS, that there is no substantial evidence that the project, or any of its aspects, could result in adverse impacts. A Mitigated Negative Declaration is also possible if revisions are made to the project, prior to public review, that would mitigate the potentially significant effects.

c. Environmental Impact Report

An Environmental Impact Report (EIR) (CEQA Guidelines Article 7) is necessary if the IS presents substantial evidence that the project may have a significant effect on the environment; and a Mitigated Negative Declaration is not possible.

11. Procedures for an Exempt Activity

a. HUD procedures for exempt activities

If a project is determined to be exempt, the RE must:

- 1) Create and record in ERR written documentation that the activity meets the conditions for exemption per 24 CFR §58.35. The certification should include:
 - A description of the activity/project
 - A citation of the applicable subsection of 24 CFR §58.35(a)
 - Documentation of total estimated activity/project cost
- 2) Determine and document in ERR whether the activity triggers any of the other requirement of 24 CFR §58.6, which are: The Flood Disaster Protection Act; the Coastal Barriers Resources Act; and the requirements for disclosure of properties located in airport runway clear zones.
- 3) No Request for Release of Funds is needed.

b. CEQA procedures for an exempt activity

If project is determined to be exempt the LA must:

- 1) Create and record in the ERR a Notice of Exemption (NOE) that includes the following requirements (per CEQA Guidelines Section 15062). Notice of Exemption form available: <http://opr.ca.gov/docs/NOE.pdf>
 - A brief description of the project that supports the specific exemption and explains that no exceptions to the exemption apply.
 - A finding that the project is exempt from CEQA, including citation to the CEQA Guideline(s) under which it is found to be exempt.
 - A brief statement of reasons to support the finding.

- 2) Send NOE to Office of Planning and Research (OPR).

12. Procedures for Nonexempt activities

a. Categorically excluded from NEPA, and NOT subject to 24 CFR 58.5

The RE:

- 1) Creates and records in ERR written documentation that the activity meets the conditions for categorically exempt from NEPA, not subject to 24 CFR part 58. The documentation should include:
 - A description of the activity/project
 - A citation of the applicable subsection of 58.35(a)
 - Documentation of total estimated activity/project cost
- 2) Determine and document in ERR whether the activity triggers any of the other requirement of 24 CFR part 58.6, which are: The Flood Disaster Protection Act; the Coastal Barriers Resources Act; and the requirements for disclosure of properties located in airport runway clear zones.
- 3) No Request for Release of Funds is needed.

b. Categorically excluded from NEPA, but subject to 24 CFR 58.5

The RE:

- 1) Creates and files in ERR written documentation of the determination. The documentation should include:
 - a) A description of the activity or project
 - b) A citation of the applicable subsection of 24 CFR §58.35(a)
 - c) Documentation of total estimated project cost
- 2) Complete NEPA Statutory Checklist
- 3) Determine and document in ERR if there are any circumstances that require compliance with any other federal laws and authorities, as cited in 24 CFR §85. These include the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and the requirements for disclosure of properties located in airport runway clear zones.
- 4) Consult with the necessary regulatory agencies.
 - a) If it is determined that compliance with other environmental laws and regulations is necessary than proceed with the following:
 - i. Create Notice of Intent to Request for Release of Funds (NOI/RROF). Notice of Intent example;

<https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds/>

- ii. Publish or Post NOI/RROF for public review
 - 1. Should be available for a minimum of seven days if published and ten days if posted/mailed.
 - 2. All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF then the activity/project must be reevaluated accordingly.
 - iii. After conclusion of public comment period, and incorporation of comments, RE sends RROF and proof of public notice to HUD.
Request for Release of Funds form is available:
<https://www.hud.gov/sites/documents/7015.15.PDF>
 - iv. A 15 day period commences for HUD to receive objections to the release of funds.
 - v. HUD issues authority to release funds and Environmental Review is complete.
 - vi. It may also be possible that significant environmental impact is identified and compliance with NEPA will be evoked.
- b) If it is determined that compliance with any other environmental laws and regulations is not necessary than proceed with the following:
- i. Convert project to exempt status per 24 CFR 58.34(a)(12).

13. Environmental Assessment and Environmental Impact Statement

The RE:

- 1) Completes NEPA statutory checklist;
 - 2) Completes NEPA Environmental Assessment Checklist form;
 - 3) Determination of Significant Impact;
- a) If a Finding of No Significant impact (FONSI) is made
- i. Publish or Post NOI/RROF and notice of FONSI for public review
 - 1. Should be available for a minimum of 15 days if published and 18 days if posted/mailed
 - 2. All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the FONSI/RROF then the activity/project must be reevaluated accordingly
 - 3. After conclusion of public comment period, and incorporation of comments, RE sends RROF and proof of public notice to HUD

4. A 15day period commences for HUD to receive objections to the release of funds
5. HUD/State issues authority to release funds and Environmental Review is complete

b) If a Finding of Significant Impact is made

- i. Publish a Notice to Prepare Environmental Impact Statement (EIS)
- ii. An Environmental Impact Statement (EIS) details the RE's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. REs must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR §58, Subpart G, and 40 CFR §1500-1508)
- iii. Prepare and Publish Draft EIS
- iv. Prepare and Publish Final EIS
- v. Publish or Post NOI/RROF
 1. Should be available for a minimum of seven days if published and ten days if posted/mailed.
 2. All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF, then the activity/project must be reevaluated accordingly.
 3. After conclusion of public comment period, and incorporation of comments, RE sends RROF and proof of public notice to HUD.
 4. A 15 day period commences for HUD to receive objections to the release of funds.
 5. HUD issues authority to release funds and Environmental Review is complete.

14. CEQA Procedures for Nonexempt Activities

a. Negative Declaration

On the basis of the IS, the Negative Declaration should be created and filed with the California State Clearinghouse (SCH). It is the responsibility of the LA to create and assemble the Negative Declaration package.

The declaration should include:

- 1) A brief description and title of the project
- 2) Location of the project
- 3) A proposed finding that the project will not have a significant impact on the environment

- 4) An attached copy of the Initial Study documenting reasons to support the finding
- 5) Mitigation measures, if any, included in the project to avoid potentially significant effects

The Negative Declaration, along with the Notice of Completion (NOC) shall be submitted to the SCH. Notice of Completion form available:

<http://opr.ca.gov/docs/NOC.pdf>

- 1) The SCH circulates the Negative Declaration package to selected state agencies for review and comment
- 2) Comments are forwarded to the LA at the end of the 30 day review period
- 3) Initiate 20 to 30 day public review period
- 4) Adopt Negative Declaration. The LA considers the comments received and makes any necessary revisions prior to adopting the Negative Declaration
- 5) File Notice of Determination (NOD) with the county/counties clerk and the SCH within 5 working days of approving the project. Notice of Determination form available: <http://opr.ca.gov/docs/NOD.pdf>

15. Environmental Impact Report

An Environmental Impact Report should be created on the basis of the IS. It is the responsibility of the LA to create the Environmental Impact Report.

- 1) Create the Notice of Preparation (NOP).
<http://opr.ca.gov/docs/NOP.pdf> The notice should include, at a minimum:
 - a) Description of the project
 - b) Location of the project
 - c) Probable environmental effects of the project
- 2) Circulate the NOP for a 30 day review period. The LA should create and circulate a NOP to the SCH and all Responsible and Trustee Agencies for review and comment.
 - a) The LA circulates the NOP to the SCH and the Responsible and Trustee Agencies.
 - b) Comments are forwarded to the LA at the end of the 30 day review period.
- 3) Prepare Draft EIR.
- 4) Initiate 45 day review period. The Draft EIR, along with the Notice of Completion form (NOC) shall be submitted to the SCH.
 - a) The SCH circulates the Draft EIR package to selected state

agencies for review and comment.

- b) Comments are forwarded to LA at the end of the 45 day review period.
- 5) Initiate 30 to 60 day public review period.
- 6) Prepare Final EIR. The LA responds to comments, prepares and finalizes EIR, and makes final decisions on the project.
- 7) File Notice of Determination (NOD) with the county/counties clerk and the SCH within five working days of approving the project.