

Chapter 3 - Environmental Review

Basic Federal Requirement

The policies of the National Environmental Policy Act of 1969 (NEPA) and other provisions of law, which further the purposes of such Act, shall be effectively implemented in connection with the expenditure of funds under the Housing and Community Development Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(g) of the Housing and Community Development Act and are contained in 24 CFR part 58. The state shall assume responsibility for environmental review, decision making, and action (and shall require the assumption of these requirements by units of general local government receiving Community Development Block Grant funds from the state) as shall be specified and required in regulations at 24 CFR part 58. Source for these requirements come from the Federal statute at Section 104(g) of the Housing and Community Development Act.

Rules

The rules for environmental review to be performed by CDBG recipients are in 24 CFR Part 58, **Exhibit 3A**. As the source of environmental review rules, different sections of §58 will be referred to throughout this chapter. The index and links to all sections is found online at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr58_main_02.tpl)

[idx?tpl=/ecfrbrowse/Title24/24cfr58_main_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr58_main_02.tpl)

Resources

A list of resources, both online and hard copy, is found at the end of this chapter. The regional coordinator is also available to help answer questions and assist you with the environmental review process. A complete summary of environmental regulations and requirements can be found on the HUD website at:

<http://www.hud.gov/local/shared/working/rl0/environment/oregon.cfm?state=or>.

IMPORTANT - When working through the Endangered Species Act, please refer to guidance provided as Exhibit 3S within this Chapter as the guidance has recently changed.

Reasons for Environmental Review

There are several reasons that HUD requires Recipients to conduct environmental reviews of federally assisted projects. These include:

- To avoid or mitigate environmental effects that may cause harm to humans;
- To avoid or mitigate any harm to the surrounding environment;
- To avert successful legal action to stop projects on environmental grounds; and
- To secure the value of public investment.

VERY IMPORTANT NOTICE!

No project funds, either federal or local, may be committed until the environmental review is complete.

Failure to properly complete the required environmental review prior to commitment of project funds will result in severe consequences, i.e. the State being federally prohibited from providing grant funds for part of or the entire project.

According to the NEPA (40 CFR 1500-1508) and Part 58, the responsible entity (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, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process have been completed and if required, receives a Release of Funds from OBDD-IFA.

- RE's may not spend either public or private (non-Federal or other Federal funds) or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until the environmental clearance has been achieved.
- The RE must avoid any and all 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 the RE's or other project participant's own funds, prior to obtaining environmental clearance

For purposes of the environmental review process, "commitment of funds" includes:

- Commit funds through a public meeting process, or other authorization to expend funds;
- Execution of legally binding agreement;
- Expenditure of CDBG funds;
- Use of non-CDBG funds on actions that would have an adverse impact, e.g., demolition, dredging, filling, excavating, ground disturbing activities; and,
- Use of non-CDBG 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.

The RE is advised to begin the environmental review process as soon as possible.

Recipient Responsibilities and definition of Responsible Entity (RE)

Each grant recipient (RE) is responsible for carrying out its Community Development Block Grant project in accordance with 24 CFR Part 58. Due to the complexities of environmental review processes, it is not possible to include information applicable to all projects and situations in this Grant Management Handbook.

The grant recipient is, by federal statute, the Responsible Entity (RE) which must ensure that the environmental review process is completed properly. The environmental review record is a legally binding document and if legal action is taken against the conclusions of the environmental review record, the RE will have to testify to the validity of the record in a Federal Court of Law.

For situations that are not sufficiently explained in this chapter, the RE is encouraged to use the many sources of information available. They are shown throughout this chapter, as well as listed at the end.

RE must not commit or expend funds on any activity in an Oregon Community Development Block Grant project before environmental review is complete and, when applicable, a Request for Release of Funds (RROF) is submitted and Release of Funds (ROF) has been issued by the state.

The type of environmental clearance is determined by the nature of the activities in the project and their potential impact on the environment. It is the RE's responsibility to conduct the environmental review and to determine the type of environmental clearance needed.

State Responsibilities

The state will provide general information and materials in this Grant Management Handbook, but cannot address all possible situations that may be encountered by grant recipients. The department's regional coordinators are available to answer questions and provide more detailed assistance for meeting specific requirements. The state will monitor local records to assure that the environmental review requirements have been met.

To assist the RE in assuring that all required steps are successfully completed, an *Environmental Review Flow Chart* is attached as **Exhibit 3B**.

A comprehensive summary of HUD requirements for completing environmental

review in Oregon may be found at:
<http://www.hud.gov/local/shared/working/10/environment/oregon.cfm?state=or>.

Applicability of Environmental Review Procedures

All activities related to a project funded with a Community Development Block Grant, including those activities that are paid for entirely with local or other funds, fall under the HUD environmental review procedures. With the use of even one federal CDBG dollar in a project, the RE (grant recipient) assumes responsibility for all the environmental regulations—even for activities beyond the control of the RE.

NOTE: If a county intends to apply for CDBG funds on behalf of a water or wastewater district, or a city/county is intending to apply for CDBG funds on behalf of a non-profit entity, and the potential city/county recipient considering application from a prospective district, non-profit etc., is aware that the prospective district, non-profit etc. is about to take an action within the jurisdiction of the potential recipient that is prohibited, the potential recipient must take appropriate action to ensure the objectives and procedures of NEPA are achieved, in accordance with 58.22(a).

The "Potential Impact of a Project on the Environment" includes the cumulative effects on the environment, which could result from the proposed project activities when added to other past, present and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative

impacts can result from individually minor, but collectively significant, actions taking place over a period of time. Project means an activity or a group of integrally related activities designed by the recipient to accomplish, in whole or in part, a specific objective.

When does the Environmental Review Process Begin?

The environmental review process should begin as soon as the potential recipient determines the projected use of HUD assistance (58.30(b)). Therefore, the date on which a project becomes subject to the environmental review requirements is the date the potential applicant commences with the required application process identified within the current Method of Distribution. This is generally defined as:

- The date the department receives a Project Notification and Intake Form (PNIF). The PNIF does not need to be processed or approved by OBDD, only received. The PNIF does not need to identify the project proponents desire to use CDBG funds for the project, it need only describe the project itself, in accordance with 24 CFR Part 58.32; or,
- In the absence of a PNIF it is the initial indication of the Recipients approval of a specific site for assistance under the program; or,

From this point forward all the federal and state CDBG program requirements apply to the project.

What if a project proponent already started a project?

If a project proponent (non-profit, district etc.) has started a project prior to compliance with HUD environmental procedures the potential city/county CDBG grant recipient is to halt non-compliance activities and seek advice from OBDD-IFA. Non-compliance with HUD environmental procedures puts at risk proceeding with the project with Federal financial assistance. The non-HUD funded portion of the project is subject to the same environmental procedures as the HUD funded portion. The applicable statutes are 24 CFR Parts: 58.2(a)(4), 58.32, 58.22, 50.2, 50.21, and 50.17

The limitation on activities pending environmental clearance applies not only to the CDBG grant recipient, but also to the other project participants, such as public or private non-profit or for-profit entities and their contractors. The applicable statutes are 24 CFR Parts: 58.22 and 50.17.

Determining Scope of Project

To determine the scope of the “project”, the Recipient must group together and evaluate all individual activities which are related either on a geographical or functional basis, or are logical parts of the planned project. In other words, the “project” means an activity or group of integrally related activities, designed by the Recipient to accomplish, in whole or in part, a specific objective. The “environmental review project” may be different than the “CDBG project”. For example, if the project were construction of sewer and water lines to provide capacity for a new manufacturing plant, all three components would be included in the environmental review. For

purposes of environmental review, the project includes both CDBG and non-CDBG funds. The project might span several funding years. If any portion of the project is dependent upon another portion, not funded with CDBG funds, for successful completion, it must be included in the environmental review.

Federal rules related to this “project aggregation” are found in §58.32. Access to the index to all sections of 24 CFR Part 58 is at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr58_main_02.tpl

NO Commitment of Funds Prior to Environmental Review

No project funds, including local match or other sources, may be committed or expended until the applicable environmental review process has been completed and, if required, clearance is received from OBDD.

This includes activities that may be “Exempt” or “Categorically Excluded” (see elsewhere in this chapter for details). It is critical that a Recipient complete all environmental review procedures and, for most project activities, receive a formal Release of Funds from the state, before signing any contracts or spending money from any source on the project. The Rules for this are found in §58.22. Failure to complete the environmental review process according to HUD’s CDBG requirements will result in the department being federally prohibited from funding the project.

Property Acquisition/Option Agreement

The RE and any of the project proponents may not enter into a legally binding commitment on a particular site before the environmental review is complete. However, 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 RE 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 of the purchase price.

The option agreement must meet the requirements of 58.22(d) and with the option, the buyer has the option to purchase but not the obligation-- even if certain conditions are met -- to purchase. Regulations at 24 CFR Part 58.22 make it clear that a recipient, any participant in the development process (including public or private nonprofit or for profit entities), or any of their contractors may not commit HUD or non-HUD funds on a project until the environmental review process has been completed and the Request for a Release of Funds (RROF) and related certification have been approved, by means of the issuance of a Release of Funds (ROF) by the state, if needed.

The RE must complete the environmental review of the property pursuant to HUD regulations at 24 CFR Part 58 and receive approval of a RROF, through the issuance of a ROF by the state, before the RE provides its written determination to exercise its right to purchase the property, under the option agreement.

If the environmental review requires conditions to mitigate any environmental impacts, then the RE (if it is not the Purchaser) should enter into a separate written agreement with the Purchaser to ensure that the conditions will be undertaken.

This limitation does not apply if title to the project site is already held by the RE or a participant in the project prior to the grant recipient's decision to pursue CDBG funding. The date on which a project becomes subject to the environmental review requirements is generally defined as the date the department receives a Project Notification and Intake Form (PNIF). The PNIF does not need to be processed or approved by OBDD, only received. The PNIF does not need to identify the project proponents desire to use CDBG funds for the project, it need only describe the project itself, in accordance with 24 CFR Part 58.32. In the absence of a PNIF it is the initial indication of the recipient's approval of a specific site for assistance under the program. From this point forward all the federal and state CDBG program requirements apply to the project.

Community Facility grant recipients, exercising a trust deed to ensure the facility will meet the five year continued use period, are advised to not enter into the trust deed prior to the Release of Funds (ROF) being issued by the State or to ensure that the trust deed is contingent upon successful completion of the environmental review process.

Certifying Officer

An entity receiving CDBG funding (Responsible Entity – (RE)) must designate a

“Certifying Officer.” The Certifying Officer is attesting to the RE's compliance with HUD's environmental review procedures and will be held legally responsible for defending the environmental clearance if it is challenged. The responsibilities of the certifying officer are described in §58.13.

The Certifying Officer is the RE's chief elected official. If any person other than the chief elected official is the Certifying Officer, the city council or county board must officially designate a person, such as the city manager, city administrator, city recorder or county administrator. A copy of the resolution designating someone other than the chief elected official and or the minutes from the meeting that describe the designation must be submitted to the department. A copy of this documentation must also be kept in the RE's environmental review record. Failure to document the authority of the certifying officer can be the basis for a legal objection to the Recipient's Request for Release of Funds. Consulting engineers, architects, and staff of another unit of government or persons employed by agencies providing grant administration services cannot be certifying officers.

Environmental data gathering and analysis may be done by consultants, with the exception of the historic (State and Tribal) preservation requirements which must be completed by the RE, but the RE's federal certifying officer is responsible for the accuracy and validity of the data and the conclusions drawn.

Environmental Review Record (ERR)

The RE is required to establish and maintain an *Environmental Review Record (ERR)* for each project, according to §58.38. The purpose of this record is to document the environmental review decision-making process and all actions taken during the course of the environmental review, regardless of the funding source of the activity. At a minimum, the ERR must include the following:

- Description of the project and all related activities
- All environmental review documents
- Documentation of Public Involvement/Public Notices
- Public comments and responses to them
- Written determinations and findings
- Verifiable source documentation and relevant data
- Request for Release of Funds and Certification
- Release of Funds issued by the state

The ERR must contain copies of all paperwork associated with the environmental review including a well-organized written record of the process and determinations.

ERR is a Legal Document

The Environmental Review Record is a legal document that may be subpoenaed. It serves as the RE's proof of compliance with the procedural provisions of federal environmental law and as defense against such challenges to the project based on environmental grounds.

Public Access to ERR

The Environmental Review Record must be available for public review. In addition to the copy in the RE's office, other good places to keep copies are the public or high school library or a community center. The department encourages grant recipients to post the ERR record on their web site. Posting on the web site would be in addition to the required public participation requirements.

Levels of Environmental Review

The different levels of Environmental Review that must be completed depend on the overall nature of the project. A first step in the Environment Review process will be the RE's determination of the level of review needed. Each of the levels will be discussed in this grant management handbook. The five (5) levels of review and their applicable rules are:

1. Exempt—24 CFR 58.34(a)
2. Categorical exclusions not subject to 24 CFR 58.5—24 CFR 58.35(b)
3. Categorical exclusions subject to 24 CFR 58.5—24 CFR 58.35(a)
4. Environmental Assessment (*Finding of No Significant Impact*)—24 CFR 58.36
5. Environmental Impact Statement (*Finding of Significant Impact*)—24 CFR 58.37

Time and Cost of Environmental Reviews

The time needed to complete the Environmental Review process varies greatly and increases with the level of review. As a general guideline, the RE may use the following:

1. Exemptions: one hour or less
2. Categorical exclusions not subject to §58.5: one hour or less
3. Categorical exclusions subject to §58.5: 75-90 days or less
4. Environmental Assessments: 180-270 days or less
5. Environmental Impact Statements: 1½ to 2 years, sometimes more.

After completion and submittal of a Finding of Exemption form, the RE may use grant funds for environmental review tasks as defined in the Method of Distribution and the grant recipient's contract.

Effect of Changes to Projects – ERR Amendments

Any changes in a project after the initial environmental review process is completed must also be assessed for their impact on the environment. Some changes, such as a new location of a project activity or an increase in the size of a facility, may trigger a different level of review, or an amendment to the current ERR.

Requirements of 24 CFR 58.6

Regardless of the level of environmental review required, §58.6 will apply to all CDBG-funded projects. This rule addresses compliance with the *Flood Disaster Protection Act of 1973*, *Runway Clear Zones*, and the *Coastal Barrier Improvement Act of 1990*. (Note: there are no Coastal Barrier Resources in Oregon; this should not be confused with Oregon's Coastal Zone Management Program).

To view a Part 58 Flowchart of the Environmental Review process, please see Exhibit 3R

1st - Level of Review: Exempt Activities

Certain activities are, by their nature, highly unlikely to have any direct impact on the environment. Accordingly, these activities are exempt from 24 CFR Part 58.22. Exempt activities as listed in §58.34(a) include:

- Environmental studies, plans and strategies
- Information and financial services
- Administrative and management expenses, including sub-granting funds
- Public services without any physical changes
- Inspections and testing of properties for hazards or defects
- Purchase of insurance
- Purchase of tools
- Engineering or design costs
- Technical assistance and training
- Payment of principal and interest on HUD loans
- Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair or arrest the effects of disasters or imminent threats to public safety, including those resulting from physical deterioration.

Common Exempt Activities

CDBG projects typically include one or more of the following exempt activities:

- Grant administration
- Engineering and architectural services
- Housing Rehabilitation Program Management
- Sub-grants to non-profits

- Preparation of the environmental review record
- Legal/Audit services
- Planning activities in Technical Assistance and Preliminary Engineering Public Works projects

Remember that in addition to federal monies, the use of local and other funds in the project must also be covered in the review.

Finding of Exemption

An RE must document in writing its determination that an activity or project is exempt. This is done by completing a *Determination of Exemption (Exhibit 3C)*. The finding identifies each exempt activity. After completion, this document must be signed by the RE's certifying officer, filed in the Environmental Review Record, and submitted to OBDD

The finding must be dated prior to the RE (recipient) committing any funds to these project costs whether paid for with CDBG or other funds. This would include contracting with another agency to complete the environmental review or any other work.

Activities that are determined to be exempt are not required to undergo an environmental assessment, public notice or comment period.

Projects that are Entirely Exempt

If the project consists solely of Exempt activities, no other actions described in this chapter, including the Request for Release of Funds, need be taken.

Most Recipients, however, have projects that include both exempt and nonexempt activities. These Recipients must complete

other environmental clearance actions in addition to the Determination of Exemption.

Summary of Actions for Exempt Activities

The following is a summary of the steps necessary for projects with Environmentally Exempt activities:

1. Prepare a Finding of Exemption (**Exhibit 3C**)
2. Have it signed and dated by the RE's Certifying Officer
3. Place the Finding of Exemption in the ERR
4. Send a copy of the Finding of Exemption to OBDD
5. Proceed with contracting for non-construction-type activities; expenses can now also be incurred for exempt activities.

2nd Level of Review: Categorically Excluded Activities Not Subject to §58.5

Categorical Exclusion refers to activities that normally would not alter any conditions that would require an Environmental Assessment or Environmental Impact Statement except in extraordinary circumstances. This is described in §58.35. While these activities may not be subject to all NEPA procedural requirements, the RE must present evidence that the project activities meet the environmental requirements contained in other related laws, regulations or Executive Orders. Evidence is documented through the completion of the appropriate Statutory Checklist discussed within this handbook.

Activities determined to be Categorically Excluded under §58.35(b) require compliance with regulations at §58.6 only and are considered Exempt from the National

Environmental Policy Act of 1969 (NEPA) and other related laws. Refer to **Exhibit 3E** for a copy of the Determination of Categorical Exclusion (not subject to 58.5) checklist. Such activities include:

- Tenant-based rental assistance
- Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs
- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations. (For Economic Development Revolving Loan Fund projects, please see Chapter 9 for more guidance.)
- Activities that assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy-downs, and similar activities that result in the transfer of title
- Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact
- Approval of supplemental assistance (including insurance or guarantee) to a

project previously approved under §58.5(b) of this part, if the approval is made by the same Recipient that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47

Summary of Actions for Categorical Exclusions Not Subject to §58.5 Activities

The following is a summary of the steps necessary for projects with activities that meet the requirements for Categorical Exclusions not subject to 58.5:

1. Prepare a Determination of Categorical Exclusion (Not subject to 58.5) (**Exhibit 3E**)
2. Have it signed and dated by the RE's Certifying Officer
3. Place the Determination of Categorical Exclusion in the ERR
4. Send a copy of the Determination of Categorical Exclusion to OBDD.
5. Proceed with contracting; expenses can now be incurred for categorically excluded activities not subject to 58.5

Guide to Completing Statutory Checklists

As an aide to completing the Statutory Checklist, a *Statutory Review Worksheet* is included as **Exhibit 3D**. This lists each of the factors that must be evaluated, the applicable statute, regulation or Executive Order, and websites containing additional information and/or the legal reference. This is for informational purposes only and is not meant to replace the mandatory Statutory Checklist.

There is space provided on each Statutory Checklist to document compliance with the

applicable law, regulation or Executive Order and to indicate the source of information and references that support each finding. The RE must take the necessary action to obtain clearance for each of the regulatory areas listed. A condition or source must be cited and a copy attached to the checklist for each item. Sources may be a report, phone contact, previous environmental review, field observation, or general knowledge of the area. Notes, correspondence and all source documents (e.g., approval letters, permits) must be attached to the Checklist.

When the Statutory Checklist has been accurately completed, it must be signed by the RE's Certifying Officer. This must be done prior to the public review period.

3rd Level of Review: Categorical Exclusions Subject to §58.5

Activities and projects that consist solely of the kinds of activities listed in 24 CFR 58.35(a) are categorically excluded from NEPA review because they do not individually or collectively have a significant impact on the environment. However, compliance with other applicable federal environmental laws listed in §58.5 is required for activities designated under this part. Such activities include:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when they are in place and will be retained for the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets)
- Special projects directed to the removal of material and architectural barriers that

restrict the mobility of and accessibility to elderly and handicapped persons

- Rehabilitation of buildings and improvements when the following conditions are met: in the case of multifamily residential buildings, (a) unit density is not changed more than 20 percent, (b) the project does not involve changes in land use from residential to non-residential, and (c) the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; in the case of non-residential structures, including commercial, industrial, and public buildings, (a) the facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent, and (b) the activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another
- An individual action on one- to four-family dwelling units or an individual action on a project of five or more units 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
- Combinations of the above activities

If Not Every Activity is Exempt or Excluded

An entire project may be Categorically Excluded if it consists solely of one or more of the activities listed in §58.35. However, if the project has even one activity that is neither Exempt nor Categorically Excluded, the project cannot be classified as Categorically Excluded.

Summary of Actions for Categorically Excluded Activities subject to 58.5

Step 1 – Endangered Species Act – Follow the Endangered Species Act (ESA) Guidance for Oregon (Exhibit 3S), provided by HUD, to determine if consultation with National Oceanic and Atmospheric Administration (NOAA) and/or U.S. Fish and Wildlife Services (USFWS) is needed and the level of consultation. The consultation process with NOAA can take from 30 to 130 days or more, depending on the level of consultation and the type of project. To minimize the potential impact in delays to the project the consultation process may have, the RE should begin the ESA process as soon as is reasonably feasible following the completion of the Determination of Exemption (DOE). It is also strongly recommended for the recipient to work with local personnel from NOAA and USFWS during project development.

Step 2 – Complete 8-step Process - Complete the 8-step environmental review process for project area that includes a floodplain or wetland, while completing the statutory checklist, if required.

Step 3 – SHPO/THPO Consultation - The RE must complete the SHPO/THPO letters and allow them 30 days, to respond. Refer to **Exhibit 3P** for additional information.

Prepare the THPO letters in accordance with the HUD template included as **Exhibit 3Q**. All correspondence with SHPO/THPO must be included in the ERR. Only the RE's certifying officer can initiate communications and negotiate with THPO. The THPO letters must be on the RE's letterhead and be signed by the RE's certifying officer. Here are a few items which require particular attention:

- If there will be an adverse effect the RE must notify the Advisory Council on Historic Preservation and give them an opportunity to enter into consultation.
- The RE is responsible for ensuring that the mitigation measures required by the Memorandum of Agreement (MOA) are satisfactorily carried out.
- The MOA, if required, must be executed PRIOR to the decision point for the project and prior to the dissemination of the NOI-RROF.

A representative of the grant recipient (retained consultant) can initiate communications and negotiate with SHPO if the consultant clearly states in writing that they are initiating consultation on behalf of the responsible entity (RE) (the grant recipient).

The THPO/SHPO negotiations must be completed before the statutory checklist can be considered complete, signed by the RE's certifying officer and made available for public comment.

Step 4 – Statutory Checklist - Complete the statutory checklist **Exhibit 3F**, referring to the "specialized environmental review topic area information" of this GMH for assistance. The responses received from the above 3 steps

must be incorporated into the ER and any necessary mitigation actions must also be included in the ER.

- **Provide the project name, description and location** from the application and a map showing the location of the project that are detailed enough to enable readers to easily locate the project
- **The complete checklist** will include a project description, map showing the location, statement of who has been involved in the ER process (recipient staff, consultants, other agencies etc.), a summary of the existing environmental conditions and any mitigation actions that must be undertaken, the environmental statutory checklist, documentation supporting each conclusion on the statutory checklist, a brief analysis of alternatives that were considered (no action versus the selected alternative), any research documents supporting the conclusions on the statutory checklist, copies of all communication's e-mails, phone logs/notes, letters, etc. pertaining to the ER, any official letters, community requests for information, environmental objections/comments, record of site visits and meetings including a list of attendees, a complete list of the participants in the ER, the completed NOI-RROF, evidence of publishing/posting.

Step 5 – Converting to an Exemption - If the completed checklist shows that the answer to each question is "A" the entire project is categorically excluded and can be converted to exempt. In this rare event, OBDD-IFA must issue written confirmation that the project can be converted to exempt. In order to

obtain OBDD-IFA review, everything must be provided to OBDD-IFA for review.

If the Statutory Checklist shows that compliance with each area is achieved without adverse effects on the protected resource, the project converts to Exempt under §58.34 (a)(12). This usually means that you answered "A" in all areas showing the project is "In Compliance" with all regulations or that "B" was required. In such cases, the project may still be converted to an Exemption if the consultation does not result in required actions. For example, consultation with the State Historic Preservation Office (SHPO) is required if houses more than 50 years old will be rehabilitated. When the result of the consultation is a SHPO statement that no historically significant structures will be affected, the project (overall rehabilitation program) is Categorically Excluded from further review.

If the project may be converted to Exempt, the only necessary action is to complete the Determination of Categorical Exclusion (subject to 58.5) Checklist and mark the appropriate box indicating that the activity/project can convert to exempt, have the RE's certifying officer sign and date the form and send a copy to OBDD, and place it in the Environmental Review Record along with the Statutory Checklist and any other relevant documentation. When this has been done, OBDD will notify the Recipient that they may begin the contracting process and that they are eligible to incur project costs.

Step 6 - Project that cannot convert to exempt - If the project cannot be converted to exempt, there is at least one item on the statutory checklist is a "B", and is still

categorically excluded. The RE's certifying officer needs to review the ERR and sign the document.

Step 7 – ERR Public Dissemination - The ERR can now be made public. The NOI-RROF can be prepared and published (**Exhibit 3G**). The NOI-RROF cannot be published until the ERR has been signed by the RE's certifying officer. In accordance with **Exhibit 3I**, if the NOI-RROF is published the public has 7 days (not including the date of publication) to provide comment back to the RE regarding the technical integrity of the ER record. Any comments received must be incorporated into the ER document along with any responses by the RE and any mitigating actions. If the notice is posted the first public comment period is 10 days.

Step 8 – Incorporate Public Comment into ERR and prepare RROF - The RE must address and resolve any comments received before preparing a Request for Release of Funds (**Exhibit 3H**). Once the public comments are properly incorporated into the ERR, the RE can prepare the RROF and mail the RROF and the completed ERR to OBDD-IFA. The submission must include either the affidavit of publication and copy of what was published or a certification of posting which includes: identification of the locations the notice was posted, the dates it was posted, who posted it, and a copy of what was posted, which must be signed and dated by an official of the grant recipient.

Step 9 – OBDD receipt of “complete” ERR and RROF - Once OBDD-IFA receives the complete ERR and the completed RROF the public has 15 days (not including the date it was

received by OBDD-IFA) to submit comments to the state about the procedures used by the RE in completing the ER record. A complete ERR contains all documents referenced in Step 4 above.

Step 10 – ROF Issuance - If OBDD-IFA receives public comment, it must be addressed. Based upon the public comment received, OBDD-IFA will issue a ROF, if applicable.

Extraordinary Circumstances

If the Recipient determines that a Categorically Excluded activity or project has the potential for an environmentally significant impact because of extraordinary circumstances or conditions at, or affecting, the location of the activity or project, an Environmental Assessment or an Environmental Impact Statement must be prepared. The regional coordinator should be consulted in such situations.

NOI-RROF Public Notice

For a Categorically Excluded project that cannot convert to Exempt, the RE must disseminate a *Notice of Intent to Request the Release of Funds (NOI-RROF)*. A sample is attached as **Exhibit 3G**. The RE may add language to the Notice but must not delete any of the boilerplate language.

The NOI-RROF informs the public that the RE intends to draw down funds for their CDBG project. It invites interested parties to comment on the content of the Environmental Review Record. The RE must provide a copy of the NOI-RROF to interested parties. This is not meant as an opportunity to comment on the validity of the project.

Public Notice Timing

There are very strict timelines for publication of environmental notices and it is vital that they are followed precisely. **Exhibit 3I** contains a table of the required posting and publishing requirements, as well as a chart for the RE to do their own calculations. The length of the public comment period must be calculated from 12:01 AM on the first day after publication or posting through 11:59 PM on the last day. If the last day of the comment period falls on a Saturday, Sunday or holiday, comments should be accepted through the following business day. If desired, the Recipient may extend the comment period for any reason. Any written public comments received as result of these notices must be included in the Environmental Review Record.

NOI-RROF Public Dissemination Methods

The comment period for a NOI-RROF is seven (7) days if published and ten (10) days if posted. Assure that the dates shown on the NOI-RROF are accurate. There are three ways the NOI-RROF can be disseminated: publishing, posting and mailing. At a minimum the RE must publish or post the NOI-RROF and mail copies to interested persons. In addition to the minimum requirements it is also recommended that the RE made the ERR available in other formats such as posting on the RE's website etc.

Publishing – All newspaper notices must be published in a newspaper of general circulation in the affected community. This is usually the Recipient's "Newspaper of Record." Documentation of publication is to be included in the ERR and must consist of an affidavit of publication and a copy of the

notice. The required public review period for a published notice is seven (7) calendar days.

Posting – If the required notices are not published, they must be prominently displayed in public buildings (such as the local Post Office) and within the project area or in accordance with procedures established as part of the local citizen participation process. The required time for posted notices is ten (10) days. Copies of the notice, as well as the time, date and location of posting must be included in the ERR.

Mailing – Notices must be mailed to interested parties, but this does not substitute for publishing or posting. At a minimum, notices must be sent to:

- Individuals and groups known to be interested in the activities, (ODFW, US Fish and Wildlife Service, SHPO, etc.;
- To the local news media;
- To the appropriate tribal, local, State and Federal agencies; and
- To the Regional Office of the Environmental Protection Agency and to the HUD Oregon Field Office:

U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

US Dept. of Housing and Urban Development
400 SW Sixth Avenue
Portland, OR 97204

Public Comment Received by RE

If any legitimate issues about the project are raised during this review period, the RE must respond to them and document this in the ERR. Comments may make it necessary to

make modifications, if appropriate, in response to the objections. This must be done before the RE completes and submits the RROF to OBDD.

Request for Release of Funds (RROF)

A Request for Release of Funds and Certification (RROF) (Exhibit 3H) along with the complete ERR must be submitted to OBDD to certify completion of the NEPA environmental review. **It must be approved through the issuance of a Release of Funds by the state before any funds, whether federal or local, are committed to the project.** If comments were received during the local public comment period, the issues must be addressed and resolved prior to submitting the RROF to the state.

In addition to the RROF, there are other documents that must be submitted to OBDD prior to a Release of Funds notice being issued. These include:

1. Determination of Categorical Exclusion (subject to 58.5) checklist signed by the RE's Certifying Officer
2. ALL source documents supporting the finding of Categorical Exclusion,
3. Documentation of publishing or posting and mailing
4. Evidence that any comments received were addressed and resolved

Public Comment Received by OBDD

OBDD will accept objections to its Release of Funds only if they are based on one of the following:

- A. The certification was not executed by the Certifying Officer

- B. The Recipient omitted a necessary procedural step or failed to make a required decision or finding
- C. The Recipient committed funds or incurred costs before approval of a ROF
- D. Another Federal or State agency submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Release of Funds (ROF)

When OBDD receives the RROF (accompanied by other required documentation listed above), they will review the submissions. If complete and accurate, a 15 day public review period begins the day after receipt of the RROF by the department. The same timing guidelines described in this chapter. Please also refer to **Exhibit 3I**. This review period is intended to permit public comment on the Recipient's certification, particularly in the areas of the review process and/or findings. When the comment period is complete, and if no issues were raised, and the environmental record is complete, OBDD will issue a Release of Funds notice. If there are any objections that are found to be legitimate, funds will not be released until the objection(s) are resolved. Once the RE has received the Release of Funds notice, they may begin implementation of the project and may incur expenses.

In cases in which the State has issued a Release of Funds but subsequently learns that the RE violated 58.22 or otherwise failed to comply with the applicable environmental authority, the state is required to impose appropriate remedies and sanctions in accord with the law and regulations for the CDBG program, under which the violation was found, in accordance with 58.72(c).

4th Level of Review: Environmental Assessment (EA)

An Environmental Assessment (EA) must be prepared for projects with activities that are neither Exempt nor Categorically Excluded. The EA is the basis for a determination by the RE that the proposed project is or is not a “major federal action which will significantly affect the quality of the human environment.” This is called your “level of clearance” finding. If it is evident without preparing an EA that an Environmental Impact Statement (EIS) is required under §58.37, the Recipient should contact your Regional Coordinator at OBDD as soon as it is evident that an EIS is required for guidance. An EIS is the 5th (fifth) level of environmental review.

The EA includes both the Statutory Checklist and the Environmental Assessment Checklist attached at **Exhibit 3J**. The assessment also includes examining and recommending feasible ways to eliminate or minimize adverse environmental impacts and examining alternatives to the project itself, if appropriate. The EA will result in either a Finding of No Significant Impact (FONSI) or a Finding of Significant Impact. If the EA results in a Finding of Significant Impact, the RE must proceed with an EIS.

Preparing the Environmental Assessment

Guidelines for preparing the EA are found at §58.40. According to these rules, in preparing an EA for a particular project, the RE must:

1. Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

2. Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
3. Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in §58.5 and §58.6.
4. Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.
5. Examine alternatives to the project itself, if appropriate, including the alternative of no action.
6. Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §58.5 and §58.6.
7. Based on these steps, make one of the following findings:
 - (a) A Finding of No Significant Impact (FONSI), in which the Recipient determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed with publication of the FONSI.
 - (b) A Finding of Significant Impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The Recipient must then proceed with an Environment Impact Statement.

Using Environmental Assessments Prepared by Other Agencies

An Environmental Assessment prepared for your project by another agency (e.g., USDA Rural Development, Department of

Environmental Quality, Oregon Health Division or the Environmental Protection Agency) may be adopted provided that:

- The RE documents that the other agency's review adequately addresses all areas of compliance;
- For compliance areas not covered by the other agency (e.g., noise and blast hazards), the RE modifies the review accordingly;
- The RE formally adopts the EA as meeting the CDBG requirements;
- The RE follows all public notice procedures as though no other agency is involved; and
- The RE remains responsible for the environmental determinations, follow up and representation in court.

A project may also include other HUD funds administered by another agency (e.g., the HOME program operated by the Oregon Housing and Community Services Department). In these cases, contact the regional coordinator prior to conducting the environmental review to avoid duplication of effort.

Summary of Actions for Environmental Assessments (EA)

Step 1 – Endangered Species Act – Follow the Endangered Species Act (ESA) Guidance for Oregon (Exhibit 3S), provided by HUD, to determine if consultation with National Oceanic and Atmospheric Administration (NOAA) and/or U.S. Fish and Wildlife Services (USFWS) is needed and the level of consultation. The consultation process with NOAA can take from 30 to 130 days or more, depending on the level of consultation and the type of project. To minimize the potential impact in delays to the project the consultation process may have, the RE should begin the ESA process as soon as is

reasonably feasible following the completion of the Determination of Exemption (DOE). It is also strongly recommended for the recipient to work with local personnel from NOAA and USFWS during project development.

Step 2 – Complete 8-step Process - Complete the 8-step environmental review process for project area that includes a floodplain or wetland, while completing the statutory checklist, if required. Refer to **Exhibit 3L** for additional information.

Step 3 – SHPO/THPO Consultation - The RE must complete the SHPO/THPO letters and allow them 30 days, to respond.

Prepare the THPO letters in accordance with the HUD template included as **Exhibit 3Q**. All correspondence with SHPO/THPO must be included in the ERR and only the RE's certifying officer can initiate communications and negotiate with THPO. The THPO letters must be on the RE's letterhead and be signed by the RE's certifying officer. Here are a few items which require particular attention:

- If there will be an adverse effect the RE must notify the Advisory Council on Historic Preservation and give them an opportunity to enter into consultation.
- The RE is responsible for ensuring that the mitigation measures required by the Memorandum of Agreement (MOA) are satisfactorily carried out.
- The MOA, if required, must be executed PRIOR to the decision point for the project and prior to the dissemination of the NOI-RROF.

A representative of the grant recipient (retained consultant) can initiate communications and negotiate with SHPO if the consultant clearly states in writing that they are initiating consultation on behalf of the responsible entity (RE) (the grant recipient).

The THPO/SHPO negotiations must be complete before the statutory checklist can be considered complete, signed by the RE's certifying officer and made available for public comment.

Step 4 – Statutory Checklist - Complete the statutory checklist **Exhibit 3J**, referring to the “specialized environmental review topic area information” of this GMH for assistance. The responses received from the above 3 steps must be incorporated into the ER and any necessary mitigation actions must also be included in the ER.

- **Provide the project name, description and location** from the application and a map showing the location of the project that are detailed enough to enable readers to easily locate the project
- **Provide a statement of process and status of environmental analysis.** This is a brief description of who has been involved in the preparation of the EA including RE staff, consultants, other agencies and the public. Where applicable, this section would also include a written decision on the use of prior environmental reviews.
- **List of participants in the assessment** - List of major participants, their titles and roles.
- **Provide a description of the site and environmental context**, by providing a summary of existing environmental conditions according to seven primary impact areas: land development; noise; air

quality; environmental design and historic values; socioeconomic characteristics; community facilities and services; and natural features. Local comprehensive land use plans are often the source for most of this information.

- **The complete checklist** will include a project description, map showing the location, statement of who has been involved in the ER process (recipient staff, consultants, other agencies etc.), a summary of the existing environmental conditions and any mitigation actions that must be undertaken, the environmental statutory checklist, documentation supporting each conclusion on the statutory checklist, a brief analysis of alternatives that were considered (no action versus the selected alternative), any research documents supporting the conclusions on the statutory checklist, copies of all communication's e-mails, phone logs/notes, letters, etc. pertaining to the ER, any official letters, community requests for information, environmental objections/comments, record of site visits and meetings including a list of attendees, a complete list of the participants in the ER, the completed Combined Notice, evidence of publishing/posting. **For every item listed on the checklist, note the source documentation that supports the finding for that item and attach any reference material to the environmental review checklist.**
- **Provide a brief discussion and comparison of alternatives** considered in addition to the proposed project activities.
- **List the analysis of impacts and mitigation actions** - If the Environmental Assessment Checklist identifies areas of impact needing further study, the results of that additional

work/study are summarized here. An overall review of effects should accompany the discussion by specific impact categories. Attach any supporting documentation to the checklist.

- **Describe monitoring and enforcement procedures** - Description or documentation of monitoring and enforcement procedures and related post environmental review actions.
- **Provide Copies of Other Analyses, Data and Relevant Information** - Relevant information and data from other environmental analyses and/or reports used in the environmental review.
- **Provide Other Relevant Correspondence and Notification** - Official notification letters providing environmental data, community requests for information and copies of environmental objection/comments that are received.
- **Record of Site Visits and Important Meetings** - Including list of attendees and meeting minutes.

Note: If after careful consideration of the responses on the Environmental Assessment Statutory Checklist and other components of the EA, the RE finds that the project will have a potentially significant impact on the human environment that cannot be avoided or mitigated, the RE must make a formal *Finding of Significant Impact*. It will then be necessary to proceed with the Environmental Impact Study (EIS) 5th level of review or the project must be rejected.

Step 5 – Findings/Signature of RE’s Certifying Officer - The RE’s certifying officer needs to review the ERR and sign the

document and make a Finding of No Significant Impact (FONSI).

Step 6 – ERR Public Dissemination – Combined Notice - The ERR can now be made public by means of a published or posted “Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request for Release of Funds (NOI-RROF)”. A copy of the combined notice is included as **Exhibit 3K**.

The “combined notice” cannot be published until the ERR has been signed by the RE’s certifying officer. In accordance with **Exhibit 3I**, if the combined notice is published the public has fifteen (15) days (not counting the date of publication) or if the notice is posted the public has eighteen (18) days (not counting the date of posting) to provide comment back to the RE regarding the technical integrity of the ER record. Any comments received must be incorporated into the ER document along with any responses by the RE and any mitigating actions.

Step 7 – Incorporate Public Comment into ERR and prepare RROF - The RE must address and resolve any comments received before preparing a Request for Release of Funds (**Exhibit 3H**). Once the public comments are properly incorporated into the ERR, the RE can prepare the RROF and mail the RROF and the completed ERR to OBDD-IFA. The submission must include either the affidavit of publication and copy of what was published or a certification of posting which includes: identification of the locations the notice was posted, the dates it was posted, who posted it, and a copy of what was posted, which must be signed and dated by an official of the grant recipient. A complete ERR

contains all documents referenced in Step 4 above.

Step 8 – OBDD receipt of “complete” ERR and RROF - Once OBDD-IFA receives the complete ERR and the completed RROF the public has 15 days (not including the date it was received by OBDD-IFA) to submit comments to the state about the procedures used by the RE in completing the ER record. A complete ERR contains all documents referenced in Step 4 above.

Step 9 – ROF Issuance - If OBDD-IFA receives public comment, it must be addressed. Based upon the public comment received, OBDD-IFA will issue a ROF, if applicable.

“Combined Notice” –FONSI and NOI-RROF

When the EA is complete and results in a FONSI, the RE is required to disseminate the FONSI for a public comment period. This is commonly done using the *Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds* (generally called the Combined Notice) and is attached as **Exhibit 3K**. This Combined Notice must clearly indicate that it is intended to meet two separate procedural requirements and must advise the public to specify in their comments, which “notice” their comments address.

Overall, the public must have at least 30 calendar days to comment on these finding consisting of fifteen (15) days if published to eighteen (18) days if posted for local review and fifteen (15) days for state review. After the first 15 to 18 day comment period, if no issues are raised, the RE may submit the Request for Release of Funds (RROF) to OBDD.

The length of the public comment period must be calculated from 12:01 a.m. on the first day through 11:59 p.m. on the last day. **Exhibit 3I** contains a table of the required posting and publishing requirements. Any written public comments received as result of these notices, along with evidence that the comments were reviewed and addressed, must be included in the Environmental Review Record.

Public Notice Timing

There are very strict timelines for publication of environmental notices and it is vital that they are followed precisely. **Exhibit 3I** contains a table of the required posting and publishing requirements, as well as a chart for the RE to do their own calculations. The length of the public comment period must be calculated from 12:01 AM on the first day after publication or posting through 11:59 PM on the last day. If the last day of the comment period falls on a Saturday, Sunday or holiday, comments should be accepted through the following business day. If desired, the RE may extend the comment period for any reason. Any written public comments received as result of these notices must be included in the Environmental Review Record.

Combined Notice Public Dissemination Methods

The first local comment period for a Combined Notice is fifteen (15) days if published and eighteen (18) days if posted. Assure that the dates shown on the Combined Notice are accurate. There are three ways the Combined Notice can be disseminated: publishing, posting and mailing. At a minimum the RE must publish or post the Combined Notice and mail copies

to interested persons. In addition to the minimum requirements it is also recommended that the RE make the ERR available in other formats such as posting on the RE's website etc.

Publishing – All newspaper notices must be published in a newspaper of general circulation in the affected community. This is usually the Recipient's "Newspaper of Record." Documentation of publication is to be included in the ERR and must consist of an affidavit of publication and a copy of the notice. The required public review period for a published notice is fifteen (15) calendar days, not counting the original date of publication.

Posting – If the required notices are not published, they must be prominently displayed in public buildings (such as the local Post Office) and within the project area or in accordance with procedures established as part of the local citizen participation process. The required time for posted notices is eighteen (18) days, not counting the original date of posting. Copies of the notice, as well as the time, date and location of posting must be included in the ERR.

Mailing – Notices must be mailed to interested parties, but this does not substitute for publishing or posting. At a minimum, notices must be sent to:

- Individuals and groups known to be interested in the activities, (ODFW, US Fish and Wildlife Service, SHPO, etc.;
- To the local news media;
- To the appropriate tribal, local, State and Federal agencies; and
- To the Regional Office of the Environmental Protection Agency and to the HUD Oregon Field Office:

U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

US Dept. of Housing and Urban Development
400 SW Sixth Avenue
Portland, OR 97204

Public Comment Received by RE

If any legitimate issues about the project are raised during this review period, the RE must respond to them and document this in the ERR. Comments may make it necessary to make modifications, if appropriate, in response to the objections. This must be done before the RE completes and submits the RROF to OBDD.

Request for Release of Funds (RROF)

A Request for Release of Funds and Certification (RROF) (**Exhibit 3H**) is submitted to OBDD to certify completion of the environmental review. **It must be approved by the state through issuance of a Release of Funds before any funds, whether federal or local, are committed to the project.** If comments were received during the local public comment period, the issues must be addressed and resolved prior to submitting the RROF to the state.

Once the RROF and a "complete" ERR and any other required information is received by OBDD, the state has a 15-day public comment period at the completion of which, if no public comments are received, the state can issue a Release of Funds Notice to the Recipient.

In addition to the RROF, there are other documents that must be submitted to OBDD

prior to a Release of Funds notice being issued. These include:

1. Statutory Checklist signed by the RE's Certifying Officer
2. Environmental Assessment Checklist signed by the RE's Certifying Officer
3. Environmental Assessment with all supporting documentation
4. Documentation of publishing, posting and/or mailing
5. Evidence that any comments received were addressed and resolved. If no comments were received, include a statement to that effect
6. If the Certifying Officer is other than the chief elected official, documentation designating someone other than the chief elected official to sign the documents

Public Comment Received by OBDD

OBDD will accept objections to its Release of Funds only if they are based on one of the following:

- A. The certification was not executed by the Certifying Officer
- B. The Recipient omitted a necessary procedural step or failed to make a required decision or finding
- C. The Recipient committed funds or incurred costs before approval of a ROF
- D. Another Federal or State agency submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality

Release of Funds (ROF)

When OBDD receives the RROF (accompanied by other required documentation listed above), they will review the submissions. If complete and accurate, a 15 day public review period begins the day after receipt of the RROF by the department. The same timing guidelines described in this chapter. Please also refer to **Exhibit 3I**. This review period is intended to permit public comment on the Recipient's certification, particularly in the areas of the review process and/or findings. When the comment period is complete, and if no issues were raised, and the environmental record is complete, OBDD will issue a Release of Funds notice. If there are any objections that are found to be legitimate, funds will not be released until the objection(s) are resolved. Once the RE has received the Release of Funds notice, they may begin implementation of the project and may incur expenses.

In cases in which the State has issued a Release of Funds but subsequently learns that the RE violated 58.22 or otherwise failed to comply with the applicable environmental authority, the state is required to impose appropriate remedies and sanctions in accord with the law and regulations for the CDBG program, under which the violation was found, in accordance with 58.72(c).

5th Level of Review: Environmental Impact Statement (EIS)

If your project requires an Environmental Impact Statement, contact the Department's Regional Coordinator for assistance, due to the complexities associated with an environmental impact statement.

SINGLE-FAMILY OWNER OCCUPIED HOUSING REHABILITATION TIERED REVIEW PROCESS DESCRIPTION

The housing rehabilitation category is a Tiered Environmental Review process, which is described below:

Step 1 - Finding of Exemption; (Exhibit 3C)

Step 2 – Categorical Exclusion (Tier 1 Review); and,

Step 3 – Site Specific Review (Tier 2 Review).

Step 1 – Finding of Exemption Process

Refer to the section entitled “1st Level of Review – Exempt Activities” presented earlier within this chapter for a description of the process to clear exempt activities associated with HR grants such as: grant administration, program management, sub-granting funds, environmental review preparation, legal services, etc.

Step 2 HR Categorically Excluded Subject to 58.5 Process

The Housing Rehabilitation projects funded by the program result in improvements to owner occupied single-family homes that are not “substantial” (Substantial - Rehabilitation of single family units exceeds 50% of the market value of the structure before rehabilitation). The activities in these projects are almost always Exempt or Categorical Excluded, subject to Section 58.5. Generally, the environmental review for a Housing Rehabilitation project will include these steps:

Step 2-1 – Statutory Checklist - Complete the statutory checklist **Exhibit 3M**, referring to the “specialized environmental review topic area information” of this GMH for assistance. The responses received from the above 3 steps must be incorporated into the ER and any necessary mitigation actions must also be included in the ER.

- **Provide the project name, description and location** from the application and a map showing the location of the project that are detailed enough to enable readers to easily locate the project
- **The complete checklist** will include a project description, map showing the location, statement of who has been involved in the ER process (recipient staff, consultants, other agencies etc.), a summary of the existing environmental conditions and any mitigation actions that must be undertaken, the environmental statutory checklist, documentation supporting each conclusion on the statutory checklist, a brief analysis of alternatives that were considered (no action versus the selected alternative), any research documents supporting the conclusions on the statutory checklist, copies of all communication’s e-mails, phone logs/notes, letters, etc. pertaining to the ER, any official letters, community requests for information, environmental objections/comments, record of site visits and meetings including a list of attendees, a complete list of the participants in the ER, the completed NOI-RROF, evidence of publishing/posting.

Step 2-2 – Complete 8-step Process – Based on the outcome of the Statutory Checklist, all

or a portion of the 8-step environmental review process, for a project area that includes a floodplain or wetland, will be required. Refer to **Exhibit's 3L and 3O** for additional information.

Step 2-3 – SHPO/THPO Consultation - The RE must complete the SHPO/THPO letters and allow them 30 days, to respond.

Prepare the THPO letters in accordance with the HUD template included as **Exhibit 3Q**. All correspondence with SHPO/THPO must be included in the ERR. Only the RE's certifying officer can initiate communications and negotiate with THPO. The THPO letters must be on the RE's letterhead and signed by the RE's certifying officer. Here are a few items which require particular attention:

- If there will be an adverse effect the RE must notify the Advisory Council on Historic Preservation and give them an opportunity to enter into consultation.
- The RE is responsible for ensuring that the mitigation measures required by the Memorandum of Agreement (MOA) are satisfactorily carried out.
- The MOA, if required, must be executed PRIOR to the decision point for the project and prior to the dissemination of the NOI-RROF.

A representative of the grant recipient (retained consultant) can initiate communications and negotiate with SHPO if the consultant clearly states in writing that they are initiating consultation on behalf of the responsible entity (RE) (the grant recipient).

The THPO/SHPO negotiations must be complete before the statutory checklist can be considered complete, signed by the RE's certifying officer and made available for public comment.

Step 2-4 – Converting to an Exemption - If the completed checklist shows that the answer to each question is "A" the entire HR project is categorically excluded and can be converted to exempt. In this rare event, OBDD-IFA must issue written confirmation that the project can be converted to exempt. In order to obtain OBDD-IFA review, everything must be provided to OBDD-IFA for review.

If the Statutory Checklist shows that compliance with each area is achieved without adverse effects on the protected resource, the project converts to Exempt under §58.34 (a)(12). This usually means that you answered "A" in all areas showing the project is "In Compliance" with all regulations. In such cases, the project may still be converted to an Exemption if the consultation does not result in required actions. For example, consultation with the State Historic Preservation Office (SHPO) is required if houses more than 50 years old will be rehabilitated. When the result of the consultation is a SHPO statement that no historically significant structures will be affected, the project (overall rehabilitation program) is Categorical Excluded from further review.

If the project may be converted to Exempt, the only necessary action is to complete the Determination of Categorical Exclusion (subject to 58.5) Checklist, mark the appropriate box indicating that the

activity/project can convert to exempt, have the RE's certifying officer sign and date the form and send a copy to OBDD, and place it in the Environmental Review Record along with the Statutory Checklist and any other relevant documentation. When this has been done, OBDD will notify the Recipient that they may begin the contracting process and that they are eligible to incur project costs.

If there is a HR project that is categorically excluded and converts to exempt, it is only exempt as long as none of the site specific reviews result in a Finding that an historic property or other statutory requirement will be affected. If one of the site specific reviews reveals that a property proposed to be assisted under the CDBG funded project will result in a Finding that it will affect a historic property or other statutory requirement, the ER for the HR program as a whole must be resigned by the certifying officer showing that it cannot be converted to exempt, the NOI-RROF public notification process must be completed and the RROF must be issued by the state, before the loan or grant for that housing unit can be approved, or before the loan or grant can be closed as long as the loan or grant closing is conditioned upon properly satisfying the ERR requirements.

Step 2-5 – Project that cannot convert to exempt - If the HR project cannot be converted to exempt and is still categorically excluded (at least one item on the statutory checklist is a "B"), the RE's certifying officer needs to review the ERR and sign the document.

Step 2-6 – ERR Public Dissemination - The ERR can now be made public. The NOI-RROF can be prepared and published (**Exhibit 3N**). The NOI-RROF cannot be published until the ERR has been signed by the RE's certifying officer. In accordance with **Exhibit 3I**, if the NOI-RROF is published, the public has 7 days (not including the date of publication) to provide comment back to the RE regarding the technical integrity of the ER record. Any comments received must be incorporated into the ER document along with any responses by the RE and any mitigating actions. If the notice is posted the first public comment period is 10 days (not including the date of posting).

Step 2-7 – Incorporate Public Comment into ERR and prepare RROF - The RE must address and resolve any comments received before preparing a Request for Release of Funds (RROF) (**Exhibit 3H**). Once the public comments are properly incorporated into the ERR, the RE can prepare the RROF and mail the RROF and the completed ERR to OBDD-IFA. The submission must include either the affidavit of publication and copy of what was published or a certification of posting which includes: identification of the locations the notice was posted, the dates it was posted, who posted it, and a copy of what was posted, which must be signed and dated by an official of the grant recipient. A complete ERR contains all documents referenced in Step 2-1 above.

Step 2-8 – OBDD receipt of "complete" ERR and RROF - Once OBDD-IFA receives the complete ERR and the completed RROF, the public has 15 days (not including the date it

was received by OBDD-IFA) to submit comments to the state about the procedures used by the RE in completing the ER record. A complete ERR contains all documents referenced in Step 2-1 above.

Step 2-9 – ROF Issuance - If OBDD-IFA receives public comment, it must be addressed. Based upon the public comment received, OBDD-IFA will issue a ROF, if applicable. *At this time the HR program as a whole has cleared the Tier 1 of the ER Tiered Review process.*

NOI-RROF Public Notice

For a Categorically Excluded project that cannot convert to Exempt, the RE must disseminate a *Notice of Intent to Request the Release of Funds (NOI-RROF)*. A sample is attached as **Exhibit 3N**. The RE may add language to the Notice but must not delete any of the boilerplate language. The laws and authorities referenced in paragraphs three and four of the NOI-RROF should correspond to the respective outcomes determined from the Statutory Checklist. Laws and Authorities referenced in paragraph three should be based on those Laws and Authorities that could be addressed in the Tier 1 review and exhibited by an “A” in the Statutory Checklist. Laws and Authorities referenced in paragraph four should be based on those Laws and Authorities that will need to be addressed in the Tier 2 (site specific) review and exhibited by a “B” in the Statutory Checklist.

The NOI-RROF informs the public that the RE intends to draw down funds for their CDBG project. It invites interested parties to

comment on the content of the Environmental Review Record. This is not meant as an opportunity to comment on the validity of the project.

Public Notice Timing

There are very strict timelines for publication of environmental notices and it is vital that they are followed precisely. **Exhibit 3I** contains a table of the required posting and publishing requirements, as well as a chart for the RE to do their own calculations. The length of the public comment period must be calculated from 12:01 AM on the first day after publication or posting through 11:59 PM on the last day. If the last day of the comment period falls on a Saturday, Sunday or holiday, comments should be accepted through the following business day. If desired, the Recipient may extend the comment period for any reason. Any written public comments received as result of these notices must be included in the Environmental Review Record.

The comment period for a NOI-RROF is seven (7) days if published and ten (10) days if posted. Assure that the dates shown on the NOI-RROF are accurate. There are three ways the NOI-RROF can be disseminated: publishing, posting and mailing. At a minimum the RE must publish or post the NOI-RROF and mail copies to interested persons. In addition to the minimum requirements, it is also recommended that the RE allow the ERR to be made available in other formats such as posting on the RE’s website etc.

NOI-RROF Public Dissemination Methods

Publishing – All newspaper notices must be published in a newspaper of general circulation in the affected community. This is usually the Recipient’s “Newspaper of Record.” Documentation of publication is to be included in the ERR and must consist of an affidavit of publication and a copy of the notice. The required public review period for a published notice is seven (7) calendar days.

Posting – If the required notices are not published, they must be prominently displayed in public buildings (such as the local Post Office) and within the project area or in accordance with procedures established as part of the local citizen participation process. The required time for posted notices is ten (10) days. Copies of the notice, as well as the time, date and location of posting must be included in the ERR.

Mailing – Notices must be mailed to interested parties, but this does not substitute for publishing or posting. At a minimum, notices must be sent to:

- Individuals and groups known to be interested in the activities, (ODFW, US Fish and Wildlife Service, SHPO, etc.;
- To the local news media;
- To the appropriate tribal, local, State and Federal agencies; and
- To the Regional Office of the Environmental Protection Agency and to the HUD Oregon Field Office:

U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

US Dept. of Housing and Urban Development
400 SW Sixth Avenue
Portland, OR 97204

Public Comment Received by RE

If any legitimate issues about the project are raised during this review period, the RE must respond to them and document this in the ERR. Comments may make it necessary to make modifications, if appropriate, in response to the objections. This must be done before the RE completes and submits the RROF to OBDD.

Request for Release of Funds (RROF)

A Request for Release of Funds and Certification (RROF) (Exhibit 3H) along with the complete ERR must be submitted to OBDD to certify completion of the NEPA environmental review. **It must be approved through the issuance of a Release of Funds by the state before any funds, whether federal or local, are committed to the project.** If comments were received during the local public comment period, the issues must be addressed and resolved prior to submitting the RROF to the state.

In addition to the RROF, there are other documents that must be submitted to OBDD prior to a Release of Funds notice being issued. These include:

1. Determination of Categorical Exclusion (subject to 58.5) checklist signed by the RE's Certifying Officer
2. ALL source documents supporting the finding of Categorical Exclusion,
3. Documentation of publishing or posting and mailing

4. Evidence that any comments received were addressed and resolved

Public Comment Received by OBDD

OBDD will accept objections to its Release of Funds only if they are based on one of the following:

- A. The certification was not executed by the Certifying Officer
- B. The Recipient omitted a necessary procedural step or failed to make a required decision or finding
- C. The Recipient committed funds or incurred costs before approval of a ROF
- D. Another Federal or State agency submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Release of Funds (ROF)

When OBDD receives the RROF (accompanied by other required documentation listed above), they will review the submissions. If complete and accurate, a 15 day public review period begins the day after receipt of the RROF by the department. The same timing guidelines described in this chapter. Please also refer to **Exhibit 3I**. This review period is intended to permit public comment on the Recipient's certification, particularly in the areas of the review process and/or findings. When the comment period is complete, and if no issues were raised, and the environmental record is complete, OBDD will issue a Release of Funds notice. If there are any objections that are found to be legitimate, funds will not be released until the objection(s) are resolved.

Once the RE has received the Release of Funds notice, they may begin implementation of the project and may incur expenses.

In cases in which the State has issued a Release of Funds but subsequently learns that the RE violated 58.22 or otherwise failed to comply with the applicable environmental authority, the state is required to impose appropriate remedies and sanctions in accord with the law and regulations for the CDBG program, under which the violation was found, in accordance with 58.72(c).

Step 3 – Tier 2 HR Site Specific Review Process

Site specific reviews must be completed for each housing unit to be assisted under the funded project.

The Tier 2 site specific reviews must address everything found on the site specific review form, **Exhibit 3M**. At a minimum, there must be documentation supporting the conclusion for each item on the statutory checklist. The site specific review must be signed by the RE's certifying officer before the loan is approved for that specific housing unit, or before the loan can be closed, as the loan closing is conditioned upon properly satisfying the ERR requirements.

Compliance Monitoring

Each CDBG Recipient will be monitored to determine if all environmental review requirements were followed. The monitoring will involve a review of the ERR to determine

if timing and procedural requirements were correct and if the review process was thorough and adequate. There will also be an on-site monitoring.

Potential Problems

Some of the most likely deficiencies to be found during project monitoring are:

- **Incurring costs or commencing action before a ROF is issued – when this occurs the state will generally be federally prohibited from disbursing HUD CDBG funds for this project.**
- Inadequate project description or not including project activities funded by non-CDBG sources
- Environmental Assessment activities classified as Categorically Excluded activities
- Inadequate consultation or source data to document compliance with applicable laws and authorities
- Failure to complete the 8-step Floodplain/Wetlands review process prior to Finding of No Significant Impact
- FONSI and/or NOI/RROF notices published prior to consultation with appropriate environmental authorities
- FONSI and/or NOI/RROF notices not sent to federal and state agencies and other interested parties
- Public notices did not contain all required information or the comment periods were inadequate
- Not responding to comments received from environmental authorities
- Not responding to comments received during the public notice period

SPECIALIZED ENVIRONMENTAL REVIEW TOPIC AREA INFORMATION

Specialized Topic Area Checklists

An excellent source of information specific to Oregon, including specialized checklists, by topic, can be located at:

<http://www.hud.gov/local/shared/working/r10/environment/oregon.cfm?state=or>. When working through the Endangered Species Act please refer to Endangered Species Act Guidance for Oregon provided as Exhibit 3S within this chapter as the guidance has recently changed.

Finding Information

Due to the complexities of many of these compliance areas, this Grant Management Handbook does not attempt to explain all of them in depth. If a project appears to have issues with any of these standards, the RE should take advantage of the many resources available. HUD environmental review requirements for each of these areas may be found at

<https://www.hudexchange.info/programs/environmental-review/>

Historic Properties/Cultural Resources

Sponsors of federally funded projects are required to take into account the effects of their undertakings on historic properties and must comply with the National Historic Preservation Act (NHPA), particularly Section 106. The Section 106 compliance process is found in 36 CFR Part 800: Protection of Historic Properties (<http://www.ecfr.gov/cgi->

bin/text-idx?tpl=/ecfrbrowse/Title36/36cfr800_main_02.tpl). The review must be documented in the Statutory Checklist and/or the Environmental Assessment Checklist and must be included in the ERR.

In cooperation with the federal Advisory Council on Historic Preservation (ACHP), the Oregon State Historic Preservation Office (SHPO) works with RE's to assist them in complying with NHPA Section 106.

Legislation permits the SHPO Section 106 Review and Compliance program to review federally funded projects, both archaeological and aboveground, for their impacts upon cultural resources. On SHPO's website, there are numerous links to publications, forms, contacts and other helpful information. Go to (https://www.oregon.gov/oprd/HCD/SHPO/pages/preservation_106_submittoshpo.aspx) More detailed information is available from:

Oregon Parks and Recreation Department
State Historic Preservation Office
725 Summer St, NE
Salem, OR 97301
(503) 986-0671
<http://www.oregon.gov/OPRD/HCD/SHPO>

Contacting Tribal Governments

RE's must make a reasonable, good faith effort to identify tribal governments that might attach religious and cultural significance to the project site or area of potential effect and to invite them to identify concerns about the proposed project. This requirement can be addressed by informing potentially interested tribes of the right to comment based on Section 106. A directory of cultural resource contacts for the federally-recognized tribes in Oregon can be found at <https://www.oregonlegislature.gov/cis> or

<http://egis.hud.gov/tDat/Tribal.aspx>. In addition, the following websites for Oregon tribes are also information sources:

Burns Paiute Tribe: <http://www.burnspaiute-nsn.gov/>

Confederated Tribes of Coos, Lower Umpqua & Siuslaw: <http://www.ctclusi.org>

Coquille Indian Tribe: <http://www.coquilletribe.org/>

Cow Creek Band of Umpqua Indians: <http://www.cowcreek.com/>

Confederated Tribes of Grand Ronde: <http://www.grandronde.org/>

Klamath Tribes: <http://www.klamathtribes.org/>

Confederated Tribes of Siletz: <http://www.ctsi.nsn.us/>

Confederated Tribes of Umatilla Reservation: <http://www.umatilla.nsn.us/>

Confederated Tribes of Warm Springs: <http://www.warmsprings.com/>

SHPO/THPO Consultation

Refer to **Exhibit 3P** for a copy of the recent CPD Notice 12-0006 "Process for Tribal Consultation in Projects That Are Reviewed under 24 CFR Part 58", HUD Memorandum dated May 5, 2015 providing clarification to HUD's procedure for Section 106 consultation and "HP Fact Sheet #6, When To Do Archeological Field Investigations".

An RE normally contracts with a grant administrator to assist them in the preparation of the ERR record. This

consulting grant administrator normally initiates consultation with the federal/state agencies on behalf of the (responsible entity) grant recipient. However, in order to achieve compliance with the Section 106 requirements:

The RE must prepare the THPO letters in accordance with the HUD template included as **Exhibit 3Q**. The THPO letters must be on the RE's letterhead and signed by the RE's certifying officer. The letters must allow 30-days for the Tribe to respond.

- When an RE has determined whether or not historic properties could be affected by the proposed project, the regulations at 36 CFR 800.4(d) require that SHPO and the THPO/Tribe have 30 days to concur or disagree with the finding before the Combined Notice or NOI-RROF is published in order to meet the Section 106 requirements. It is recommended that the RE ensures that the initial letters mailed by the RE or the grant administrator on behalf of the RE to SHPO or the RE to the THPO/Tribe clearly state their initial determination of: "no historic properties present", "no effect", "no adverse affect" or "adverse affect" to start this 30 day concurrence required by Section 106.
- If the SHPO/THPO/Tribe does not respond to a well documented letter the RE can proceed. If SHPO/THPO/Tribe responds and does not concur with the RE's initial determination, further consultation/negotiation/historical assessments/archeological investigations etc. may be required.

Only the RE's certifying officer can initiate communications and negotiate with THPO.

If the Tribe responds within the 30-day comment period and desires to enter into negotiations, only the RE's certifying officer can negotiate with the Tribe. Negotiations can take an undetermined amount of time to complete. Here are a few items which require particular attention:

- If there will be an adverse effect the RE must notify the Advisory Council on Historic Preservation (ACHP) and give them an opportunity to enter into consultation.
- The RE is responsible for ensuring that the mitigation measures required by the Memorandum of Agreement (MOA) are satisfactorily carried out.
- The MOA, if required, must be executed PRIOR to the decision point for the project and prior to the dissemination of the NOI-RROF or the Combined Notice.

A representative of the grant recipient (retained consultant) can initiate communications and negotiate with SHPO on behalf of the RE if the consultant clearly states in writing that they are initiating consultation on behalf of the responsible entity (RE) (the grant recipient).

The THPO/SHPO negotiations must be complete before the statutory checklist can be considered complete, signed by the RE's certifying officer and made available for public comment. All correspondence with SHPO/THPO must be included in the ERR

SHPO/THPO Consultation Results

HUD's guidance for Historic Preservation has been in effect since 2004. In general, when you consult with the SHPO/THPO there are

four possible results in accordance with 36 CFR Part 800. They are:

1. There are No Historic Properties present (Not eligible);
2. There are historic properties present but the undertaking will have No Effect upon them;
3. There are historic properties present that may be affected by the undertaking and the undertaking will have No Adverse Effect on those properties; or
4. There are historic properties present and the undertaking will have an Adverse Effect on those properties.

RE's can determine that there are "no historic properties affected" and place an "A" in your statutory worksheet when a "not eligible or no historic properties present" (#1) and/or "no effect" (#2) consensus is reached with the SHPO/THPO (and ACHP, if it chooses to participate), or when a "not eligible" ruling is made by the Keeper of the National Register.

However, if the SHPO writes that your undertaking will have "No Adverse Effect" on a historic property, you must put a "B" in your statutory worksheet and your project cannot convert to exempt. This is, of course, also true if your project will have an Adverse Effect.

For further guidance regarding SHPO/THPO consultation can be found at:
http://www.oregon.gov/OPRD/HCD/SHPO/preservation_106.shtml

Historic Preservation and Categorical Exclusions

When completing a Categorically Excluded, subject to the laws and authorities level of review (24 CFR 58.35(a)), Responsible Entities complete the Statutory Worksheet and make a determination for each law and authority, ultimately deciding whether to put an A or a B in the middle column.

Status "A" applies when compliance with the authority is achieved without adverse effects on the protected resource, without necessary mitigation or attenuation AND when no formal consultation, permit or agreement is required to establish compliance.

Status "B" applies when project compliance with the authority requires formal consultation, a permit or agreement, OR when the proposal may have an adverse effect on the protected resources.

If the statutory worksheet has only A's in the middle column, the project can convert to exempt. If there is a single B in the middle column, the project cannot convert to exempt and the Responsible Entity (RE) must proceed with the Request Release of Funds process. HUD Region X's guidance on how to make the A and B determinations for specific laws and authorities can be found at:

<http://www.hud.gov/local/shared/working/rl0/environment/585.pdf>

Projects on Tribal Lands

NOTE: State non-entitlement CDBG funds cannot be used for projects on tribal lands but the overall project could include work on non-tribal lands (CDBG funded) and tribal lands (non-CDBG funds).

In 1992, the NHPA was amended to allow federally recognized Indian tribes to take on more formal responsibility for the preservation of significant historic properties on tribal lands. In cases such as this, the Tribal Historic Preservation Officer (THPO) should be consulted. There are currently two designated THPOs in Oregon: Confederated Tribes of the Umatilla Indian Reservation (<http://www.umatilla.nsn.us/>) and Confederated Tribes of Warm Springs (www.warmsprings.com). For other information about projects on tribal land, please consult <http://www.achp.gov/thpo.html> or call SHPO.

Floodplain Management

All non-exempt project activities must be reviewed for compliance with Executive Order (EO) 11988 (Floodplain Management) found at <http://www.epa.gov/owow/wetlands/regs/eo11988.html>. EO 13690, effective January 30, 2015 further identifies the basis for establishing the floodplain. Public Works and Community Facility projects should follow the steps outlined in the Environmental Assessment Guide found in Exhibit 3J. Further guidance for compliance is contained in 24 CFR Part 55 (http://www.access.gpo.gov/nara/cfr/waisidx_01/24cfr55_01.html).

The purpose is to avoid the adverse impacts associated with the occupancy and modification of floodplains and to avoid floodplain development wherever there is a practicable alternative. Refer to Exhibit 3J for additional guidance.

No CDBG projects may be constructed within a floodway. This is the area of a floodplain

where flood hazard is greatest (i.e., highest water depth and velocity).

Including bored pipelines under a waterway, (rivers, creeks, streams, etc.), is not recommended, will require review and approval from the Washington DC office of HUD and may delay the project for 6 months to a year. When considering whether to include this work, the RE must work closely with OBDD-IFA and should consider the guidance provided in Exhibit 3T.

To find out if the project site is located within a 100- or 500-year floodplain, access Federal Emergency Management Agency (FEMA) maps at: <https://www.fema.gov/>. In addition the local city or county should have FEMA maps available.

Options in a Floodplain

If a project is located in a floodplain, there are three options:

- Reject the project site
- Apply to FEMA for a Letter of Map Amendment (LOMA) or a Letter of Map Revision - based on Fill (LOMR F), if appropriate

(Information on this process is found at <https://www.fema.gov/floodplain-management>)

- ***Begin the 8-Step Decision Making Process – This must be part of the completed environmental review record.***

Recipients with projects located in floodplain should contact their regional coordinator before proceeding with the review.

500-Year Floodplain

FEMA designates both 100-year and 500-year floodplains. Generally, projects will be allowed in a 500-year floodplain unless the activity is a “critical action” as described in §55.2. Critical Action means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property. This includes facilities that will (a) produce or store highly volatile, explosive, or toxic materials, (b) contain essential or irreplaceable records or emergency services, or (c) house immobile occupants such as a hospital or nursing home.

Eight Step Process

The procedures for making determinations on floodplain management may be found in §55.20 and is included as **Exhibit 3L**. The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. For any project located in a floodplain, the regional coordinator should be consulted. Briefly, the steps to be followed in the decision making process are:

Step 1—Determine whether the proposed action is located in a 100-year floodplain or a 500-year flood plain if the activity is a critical action.

Step 2—Publish notice of a proposal to consider an action in a floodplain. A minimum of 15 calendar days must be allowed for comment on the public notice.

Step 3—Identify and evaluate practicable alternatives

Step 4—Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain

Step 5—Design or modify the action to minimize adverse impacts and preserve the beneficial values of the floodplain

Step 6—Reevaluate the proposed action to determine whether it is still practicable

Step 7—Publish notice of decision to identify the reasons there is “no practicable alternative,” and the mitigation measures to be taken. This has a minimum 7 day public comment period

Step 8—Implement the proposed action with mitigating measures

Flood Insurance

Flood insurance is *recommended* for property in the floodplain. The insurance should be maintained for the life of a loan made from Oregon Community Development Block Grant funds or for the useful life of the project if a grant is made. More information on this insurance program is available at <http://www.hud.gov/offices/cpd>

Wetlands Protection

All non-exempt project activities must be reviewed for compliance with Executive Order 11990 (Wetland Protection) and Section 404 of the Clean Water Act (CWA). Section 404 of the CWA is implemented through the U.S. Army Corps of Engineers permits. EO 11990 (<http://www.epa.gov/owow/wetlands/regis/eo11990.html>) discourages federally assisted construction in wetlands whenever there is a

practicable alternative. Section 404 addresses the permitting for filling wetlands. In Oregon, the state also regulates wetlands and waterways through the Removal-Fill Law, as administered by the Department of State Lands (DSL). Information on DSL Removal Fill permits is found at https://www.oregon.gov/dsl/PERMITS/Pages/404_assumption.aspx. All other project inquiries should be directed to the Corps. If the project is located in a federally designated wetland, the above 8-Step process must be used. Contact your regional coordinator if there are wetlands issues with a project. Refer to Exhibit 3J for additional guidance.

Wetlands 8-Step Process and Section 404 Permits

Executive Order 11990, Protection of Wetlands and Section 404 Permits:

Compliance with Section 404 of the Clean Water Act does **NOT** constitute compliance with the policy and procedures of Executive Order 11990, Protection of Wetlands, under HUD environmental regulations.

HUD environmental regulations at 24 CFR 58.5(b) (3) require compliance with the Executive Order because it imposes a legal obligation when “providing federally undertaken, financed, or assisted construction and improvements” within or affecting wetlands. Section 10 of the Executive Order extends these legal obligations to agencies assuming HUD environmental responsibilities in accordance with 24 CFR Part 58.

Executive Order 11990:

- Prescribes the national policy and procedures to be followed (Section 2);

- Requires that factors relevant to a proposal's effect on the survival and quality of the wetlands be considered (Section 5); and
- Defines the terms “new construction” and “wetlands” (Section 7).

The Executive Order does not prohibit construction in wetlands, but does restrict the approval of federally undertaken, financed, or assisted construction and improvements, subject to compliance with the prescribed policy and procedures.

Executive Order 11990 has its own distinctive procedure for compliance that the RE, under Part 58, must perform for the protection of wetlands. Specifically, Section 2(a) of the Executive Order requires that:

- Each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetland which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.
- The first requirement, the Section 2(a) (1) finding that there is no practicable alternative, would not be addressed by Section 404 compliance, which has no such requirement. A Responsible Entity would therefore have to make such a finding even if the project has a Section 404 permit.
- The second requirement, the Section 2(a) (2) finding that harm has been minimized, must be carried out with reference to the

more detailed description of factors given in Section 4 of the Executive Order.

- A Responsible Entity may consider how much of this mandate is fulfilled by compliance with Section 404 requirements, and will possibly be able to use the conditions placed on the 404 permit as the Executive Order's required minimization of harm. However, the likelihood that the 404 conditions will satisfy the minimization requirements of the Executive Order will be much greater in the case of an individual permit than a general one.
- In addition, the RE must provide for "early" public review under Section 2(b) of the Executive Order, and that procedure would also be more likely satisfied by the notice period under an individual permit than the short or nonexistent notice under a general permit.

Reminder:

Please keep in mind that some wetlands will not require a Section 404 permit because they are not within the jurisdictional nexus required by the Clean Water Act. However, compliance with the Executive Order will still be required for federal activities.

To summarize, in performing wetland compliance for HUD programs, the RE reviewer may use any wetlands information or procedures, including individual and general 404 permit information and procedures, provided that the reviewer independently evaluates them and supplements the information and procedures to conform to the requirements of Executive Order 11990.

Coastal Zone Management

The Coastal Zone Management (CZM) authority applies only to new construction, conversion, major rehabilitation, and substantial improvement activities that are located within a Coastal Zone. For a map of the areas, consult the Coastal Zone Atlas at <http://www.coastalatlantlas.net/maps/index.php>. Guidance on how to meet the coastal zone management requirements can be found at http://www.oregon.gov/LCD/OCMP/FedCon_Intro.shtml

Sole Source Aquifers

Sole Source Aquifer designations protect drinking water with few or no alternative sources to the ground water. The only designated Sole Source Aquifer in Oregon is the North Florence-Dunal Aquifer. More information can be found at http://www.access.gpo.gov/nara/cfr/waisidx_99/40cfr149_99.html

Endangered Species

Section 7 of the Endangered Species Act (ESA) of 1973 requires protection of plants and animals that are listed, or proposed for listing, on the endangered species list. The Recipient must insure that activities proposed for areas harboring such species will avoid adversely modifying or destroying their habitat. The ESA authority generally applies only to new construction, conversion of land use, major rehabilitation of existing buildings, and the acquisition of undeveloped land. Most housing rehabilitation projects should not have the potential to impact sensitive species, unless landscaping in a riparian zone is proposed.

The United States Fish and Wildlife Service (FWS) has jurisdiction over terrestrial species (including birds, plants and insects) and some fish. NOAA’s National Marine Fisheries Service (NMFS) has jurisdiction over marine species and anadromous fish. Contact information for both of these agencies is shown below.

Listings of the endangered and threatened species and habitats in Oregon can be found on the FWS website at http://ecos.fws.gov/tess_public/StateListingAndOccurrence.do?state=OR.

By regulation, the consultation process determines an action’s effects. In practice, for actions with well understood effects, the action determines the level of consultation required. The types of effects determinations under the ESA are

- No Effect
- May Affect, but not likely to adversely affect (NLAA)
- May affect, but likely to adversely affect (LAA)

Previously NOAA accepted a NLAA finding for stormwater impacts, but recent science indicates that “any stormwater reaching a receiving water with ESA-listed species or designated critical habitat may have an adverse impact on such species and habitats.” The same holds true for projects reaching LAA. If a project reaches an LAA determination, formal consultation with NOAA is required. The *Programmatic Biological Opinion for HUD Programs in Oregon* is a mechanism for completing formal consultation with NOAA.

For projects that reach an LAA determination and formal consultation with NOAA is required, the recipient must submit an

initiation package to NOAA/USFWS providing information that is:

- A description of the proposed action
- A description of the area that may be affected
- A description of listed species and critical habitat that may be affected
- A description of how listed species and critical habitat may be affected, including cumulative effects
- Relevant reports and assessments prepared
- Any other relevant information re: listed species, critical habitat, or the effects of the proposed action

For Individual and Programmatic Consultation, the consultation does not start until the initiation package is complete. Further NOAA will determine when the initiation package is complete. For Individual Consultation, NOAA issues a Biological Opinion specific to the action. The RE should allow 120+ day review period. For Programmatic Consultation, NOAA issues a Biological Opinion for the specific range of actions with appropriate terms and conditions. The RE should allow ~30 day review period if action meets terms and conditions.

Note: For public works project, please contact NOAA regional offices (http://www.westcoast.fisheries.noaa.gov/about_us/washington_oregon_coastal_area_office.html) to initiate the consultation process early on in the project (20% design or sooner)

Endangered Species Resources

Any project that might jeopardize the existence of plants or animals listed or proposed for listing on the endangered species list, or adversely modify or destroy

their habitat must consult with the following agencies:

NOAA's National Marine Fisheries Service
Northwest Regional Office
525 NE Oregon Street
Portland, Oregon 97232
(503) 231-2224
<http://www.nwr.noaa.gov/>

United States Fish and Wildlife Service
Attn: Endangered Species Division
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
(503) 231-6179
<http://www.fws.gov/pacific/#>

Oregon Department of Fish and Wildlife
3406 Cherry Avenue NE
Salem, OR 97303
(503) 947-6000 or Toll Free: (800) 720-ODFW
<http://www.dfw.state.or.us>

Wild and Scenic Rivers

All HUD-funded activities are subject to the requirements of the Wild and Scenic Rivers Act. The environmental review must evaluate the potential for impact to any listed Wild and Scenic River when the project is within one mile of a river. This applies to new construction, conversion of land use, major rehabilitation of existing structures, and the acquisition of undeveloped land. If your project may fall under the Wild and Scenic Rivers Act contact the National Park Service for a list of all designated rivers in Oregon.

Air Quality

The Clean Air Act is the nation's premier law for protecting public health and the

environment from dangerous air pollution. The law and its amendments are at <http://www.hud.gov/offices/cpd/>

The environmental review should determine whether the project location would lead to an increase in air pollution or that would expose humans to increased air pollution.

The Clean Air Act is applicable in "non-attainment" areas. To determine if the project is in such an area, check the list of current Oregon non-attainment areas at <http://www.deq.state.or.us/aq/planning/nonattainment.htm>.

In Oregon, the Oregon Department of Environmental Quality (DEQ) Air Quality Division (<http://www.deq.state.or.us/aq/>) is responsible for compliance. The exceptions are Eugene, Springfield, Cottage Grove and Oakridge, which are under the authority of the Lane Regional Air Pollution Authority (<http://www.lrapa.org/>).

Farmland Protection

The Farmland Protection Policy Act discourages federally funded projects that would convert farmland to non-agricultural purposes. If the proposed activity will occur in any type of agricultural area, consult with the local USDA Natural Resources Conservation Service (NRCS) to determine if the site is classified as prime, unique, statewide, or locally important farmland.

Environmental Justice

Environmental Justice (EJ) means ensuring that the environment and human health are fairly protected for all people regardless of

race, color, national origin, or income. The Environmental Justice Executive Order 12898 (<http://www.hud.gov/offices/fheo/FHLaws/EX012898.cfm>) describes federal actions necessary to address environmental justice in minority populations and low-income populations.

Generally, this Order applies to low-income or minority neighborhoods where the HUD assisted project proposes the acquisition of existing housing, the acquisition of land for development, and new construction. EJ issues may include, but are not limited to new, continued or historically disproportionate potential for high and adverse human health and environmental effects on minority or low-income populations.

In practice, this order means that Recipients must identify in their environmental review whether or not the project will have an adverse effect on minority or low-income persons. If a possible adverse impact is identified, the Recipient must consider mitigation or avoidance of adverse impacts from the project to the extent practicable. If so, call the OBDD regional coordinator for further guidance.

Runway Clear Zones

Potential aircraft accident problems make some types of development incompatible for locations in the immediate vicinity of airports and airfields. If the proposed project is located near an airport or in the immediate area of the landing and approach zones, the Recipient will need to obtain additional information to determine whether this issue is a concern and, if so, how to mitigate it. For additional guidance contact your regional

coordinator. More information can be found at

<http://www.hud.gov/offices/cpd/environment/review/qa/airport.cfm>

Noise Abatement

The environmental review must consider noise hazards that may impact a HUD-assisted project. The purpose is to encourage land use patterns for housing and other noise sensitive needs that will provide a suitable separation between them and major noise sources. Noise abatement and control regulations are found in §51.100-106 at http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr51_04.html.

Noise sensitive uses that can be easily disturbed by high noise levels include housing, nursing homes, hospitals, and other non-housing uses where quiet is integral to the project's function (e.g., libraries) or ancillary to the principal use (e.g., quiet outdoor seating area). HUD's noise calculator can be found at:

<http://www.hud.gov/offices/cpd/environment/atec.cfm>

If the project is determined to be a noise sensitive use and is near a potential noise source, further action must be taken. It is recommended that any Recipient having questions about Noise Abatement and Control use the *Noise Guidebook* as a source of information. It is online at:

<http://www.hud.gov/offices/cpd/energyenvir/on/environment/resources/guidebooks/noise/>

/. It will be helpful if the Recipient orders a hardcopy of the book from HUD's Direct Distribution Center at

<http://www.hud.gov/offices/adm/dds/index.cfm>. Orders may also be placed by calling 1-

800-767-7468 Monday through Friday between the hours of 5:00 AM and 2:15 PM or e-mailing on_demand_mail@hud.gov.

Noise Guidance for Rehabilitation Projects

(Includes rehabilitation of any facility and is not specific to housing rehabilitation projects.)

The noise regulations state at Part 51.101(a) that for modernization projects located in all noise exposed areas, HUD shall encourage noise attenuation features in alterations:

- For major or substantial rehabilitation projects* in the Normally Unacceptable and Unacceptable noise zones, HUD actively shall seek to have project sponsors incorporate noise attenuation features given the extent and nature of the rehabilitation being undertaken and the level or exterior noise exposure.
- In Unacceptable noise zones, HUD shall strongly encourage conversion of noise-exposed sites to land uses compatible with the high noise levels.

**Major rehabilitation is generally considered to be rehabilitation that requires an environmental assessment level of review.*

For minor rehabilitation or modernization, noise attenuation must be encouraged.

- RE's are not required to calculate the noise level, however. RE's can use a map that identifies the busy roads and include a statement showing that a portion of the project may be noise impacted. RE's should identify how they are encouraging noise attenuation (i.e. inform the recipient and suggest that they consider noise

attenuation as appropriate in future rehabilitation. For example, if windows are required in the building, suggest that they be double insulated).

Siting Near Hazardous Operations

Properties that are located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature are subject to HUD safety standards in §51, Subpart C (Sections 200-208). In the case of tanks containing common liquid fuels, the requirement for an acceptable separation distance (ASD) calculation only applies to storage tanks that have a capacity of more than 100 gallons.

To assist in evaluating the applicability of the standards to their project the recipient should consult the HUD guidebook, *Siting of HUD-assisted Projects near Hazardous Facilities (HUD-1060-CPD, Sept. 1996)* that is found online at:

<http://www.hud.gov/offices/cpd/energyenvironment/environment/resources/guidebooks/hazfacilitie/> This book describes the procedures for collecting data about a proposed project site and a potential hazard and details the steps for calculating the acceptable separation distance between the hazard and the project site.

Toxics, Radioactive Substances, & Site Contamination

According to §50.3(i), all property proposed for use in HUD programs must be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the

health and safety of occupants or conflict with the intended utilization of the property.

Multifamily and non-residential properties must include evaluation of previous uses of the site and other evidence of contamination on or near the site. Particular attention should be paid to dumps, landfills, industrial sites, and hazardous waste in the vicinity of the project.

If it is determined that investigations are necessary (see list below), the use of current techniques by qualified professionals is required. An excellent source of information is HUD's *Choosing an Environmentally Safe Site* found at <http://www.hud.gov/offices/cpd/energyenvironment/environment/subjects/toxins/safesitepub.pdf>.

Following are some questions that will help the Recipient evaluate project sites known or suspected to be contaminated:

- Is the property or surrounding area on the EPA Superfund National Priorities List (http://www.epa.gov/enviro/html/cerclis/cerclis_query.html) or the equivalent state list maintained by DEQ (<http://www.deq.state.or.us/lq/cu/response/superfund.htm>)?
- Is the property located within 3000 feet of a toxic or solid wasteland fill, etc.?
- Are there any underground storage tanks (other than residential fuel tanks)?
- Is the property known to be, or suspected to be contaminated?

If the project site may be contaminated, contact the regional coordinator and the appropriate DEQ representative. A list of the

regional DEQ offices is found at <http://www.deq.state.or.us/about/locations.htm>.

General Resources

Below are some resources that will assist the Recipient to successfully meet the environmental review requirements. Additional ones are listed in the body of this chapter.

Index to of 24 CFR Part 58, rules for environmental review:

http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html.

Completing Environmental Review in Oregon: <http://www.hud.gov/local/shared/working/rl0/environment/oregon.cfm?state=or>

Environmental Resources that are useful in preparing assessments of potential environmental impact:

<http://www.hud.gov/offices/cpd/energyenvironment/environment/resources/index.cfm>

HUD Office of Environment and Energy Homepage:

<http://www.hud.gov/offices/cpd/environment/index.cfm>

HUD Environmental Questions and Answers: <http://www.hud.gov/offices/cpd/energyenvironment/environment/compliance/qa/index.cfm>

HUD Environmental Review Requirements: <http://www.hud.gov/offices/cpd/environment/review/>

HUD Environmental Resource Library: <http://www.hud.gov/offices/cpd/environment/library/>

HUD Online Library (a wide range of topics):

<http://www.hud.gov/library/index.cfm>

HUD's Direct Distribution Center. Items not available on-line must be mailed and will arrive in 7 to 10 business days. Orders may be placed online at:

<http://www.hud.gov/offices/adm/dds/index.cfm>, by phone at (800) 767-7468 (Monday-Friday, 5:00 AM and 2:15 PM) or by e-mailing on_demand_mail@hud.gov

Hard copy only: *Environmental Review Guide for Community Development Block Grant Programs* (Item Number 2377) is available from the Direct Distribution Center

Quick Checklist for Environmental Review

This checklist is designed to aid the recipient in assuring that the ERR is complete. In addition to the components listed, copies of ALL information related to the Environmental Review should be maintained. The ERR is a legal document that must be available to the public. It must document the recipient’s compliance with federal and state environmental laws, and may be subpoenaed.

No project funds, CDBG or non-CDBG, can be obligated or expended without the proper environmental clearance completed.

	1. Project identification number, name, recipient etc.
	2. Project description with map.
	3. Finding of exemption for non-construction related activities.
	Copy of finding of exemption, signed by the certifying officer, sent to the State (Exhibit 3C)
4. Construction Related Activities (depending of the project complete option A, B, C or D)	
	A. Completion of Categorical Exclusion checklist <u>not subject to 58.5</u> (if applicable to project)
	----- Copy of Determination of Categorical Exclusion not subject to 58.5, signed by the certifying officer, sent to the State. (Exhibit 3E)
	B. Completion of Categorical Exclusion checklist subject to 58.5
	----- Categorical exclusion converted to exemption ----- Determination of categorical exclusion subject to 58.5, signed by the certifying officer, sent to the State. (Exhibit 3F)
	----- Categorical exclusion not converted to exemption ----- Determination of categorical exclusion subject to 58.5, signed by the certifying officer. (Exhibit 3F) ----- Mail notices to interested parties ----- Publish or post the NOI-ROF (Exhibit G) and allow 7 or 10 days for comment ----- Send RROF (Exhibit 3H), the complete, signed checklist with attachments and documentation of publication/posting/ mailing to the State ----- ROF issued by the State

	C. Completion of Environmental Assessment Checklist
	<ul style="list-style-type: none"> ----- Checklist completed and signed by certifying officer, with determination of a FONSI (Exhibit 3J) ----- Mail notices to interested parties. ----- Publish or post Combined Notice (Exhibit 3K) and allow 15 or 18 days for comment ----- Send RROF (Exhibit 3H), the complete, signed checklist with attachments and documentation of publication/posting/mailing to the State ----- ROF issued by the State
	D. Housing Rehabilitation Tiered Environmental Review
	<ul style="list-style-type: none"> ----- Finding of exemption for non-construction related activities (Exhibit 3C) ----- Categorically excluded that cannot convert to an exemption – Checklist completed and signed by the certifying officer for the rehabilitation program, as a whole, with a determination of categorically excluded that cannot convert to an exemption. (Exhibit 3M) ----- Mail notices to interested parties ----- Publish or post the NOI-ROF and allow 7 or 10 days for comment (Exhibit 3N) ----- Send RROF (Exhibit 3H), the complete, signed checklist with attachments and documentation of publication/posting/mailing to the State ----- ROF issued by the State ----- Site specific reviews completed for each property, signed by the certifying officer (Exhibit 3M)