Environmental Review of Projects Assisted with HOME Program Funds

Virginia Department of Housing and Community Development

Procedures and Compliance Requirements According to 24 CFR Part 58

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OVERVIEW

PURPOSE

The National Environmental Policy Act (NEPA) of 1969 was enacted by Congress to ensure that Federal agencies consider and address environmental impacts resulting from the activities and projects they sponsor. Congress subsequently enacted a series of statutes dealing with specific environmental issues. The US Department of Housing and Urban Development (HUD) developed its own set of regulations that implement NEPA and the other environmental statutes. All Federally-assisted projects are subject to the requirement for environmental review and documentation.

This manual details the HUD environmental review rules and related Federal laws and authorities that are applicable to all projects and activities receiving HOME assistance. It describes:

- The role and responsibilities of the Virginia Department of Housing and Community Development (DHCD) and local government entities that are recipients of HOME funds, who have the primary responsibility for conducting environmental reviews;
- The role of CHDO's and nonprofit organizations as project partners in the environmental review process;
- The primary procedures and operating principles that guide the environmental review process; and
- The levels of environmental review required for various HOME funded activities and projects.

USING THE MANUAL

The rule 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (Appendix S), implements the policies of the National Environmental Policy Act (NEPA), as well as other applicable Federal laws and authorities, and departmental environmental requirements. Further discussion of these is contained in the section on "Compliance with NEPA and Related Federal Laws and Authorities."

The way in which the regulations affect any given project depends on several factors:

- Whether it is a city, county, lead entity of a consortium, or DHCD that is authorized to be the "responsible entity" (RE), according to 24 CFR Part 58 (See the description of the roles and responsibilities below);
- The type of project being proposed by a city, county, consortium, public housing authority, nonprofit or for profit will affect how reviews, public notices, approvals, and documentation are processed.
- Depending on the description, size, and nature of the project, it may be subject to compliance with specific statutes or all statutes, and subject to differing levels of review.
- Depending on the initial results of the environmental review, the project may or may not be subject to further requirements for review, notices, approvals, and mitigation of environmental impact.

This manual is designed to help Virginia DHCD staff understand their oversight responsibilities for ensuring environmental compliance has been achieved for projects receiving HOME funds; and also how to conduct environmental reviews themselves, when required, by classifying projects into the appropriate level of review, and addressing and documenting full compliance with HUD's environmental regulations.

Similarly, the manual provides guidance to state recipients on their responsibilities in performing environmental reviews and the content of the environmental review record (ERR). “State recipients” are units of local government that receive HOME funds from the Virginia DHCD, which is the HOME participating jurisdiction (state PJ).

Following this introduction, the manual is divided into four major parts:

- Guidance for cities, counties, and DHCD in their role as “Responsible Entity”
- Guidance for nonprofits, for profits, and public housing authorities
- Environmental Review Process
- DCHD Oversight and Administrative Responsibilities (§ 58.18)

Attachments and general information useful to all “Responsible Entities” are also included in this manual.

Within the manual are sections describing types of eligible HOME projects and activities, with step-by-step instructions of the environmental review procedures, documentation requirements, notices, and approval process. As you use the manual, the first step is to locate the section that is applicable to the project or activity being undertaken. As you read the relevant section, the instructions will direct you to the necessary forms and other attachments. In some cases, you will be directed to another section with additional steps that are necessary.

Be aware that the process of environmental review may involve numerous layers. Any particular step in the process may require undertaking additional steps to achieve compliance. For example: the rules require that the Responsible Entity (RE) determine whether a project is located in a 100-year floodplain. If it is not, then only documentation of that fact is needed. If a project is located in the 100-year floodplain, then another set of steps is required, based on the type of project.

RE’s are required to retain written documentation of the environmental review process. This documentation comprises the Environmental Review Record (ERR) and must be available to the public at all times. DHCD requires RE’s to use HUD recommended forms when completing an environmental clearance review. These are provided in Appendices C, D, E, and F.

The environmental rules require the designation of a Responsible Entity (RE). City and county (i.e., state recipients) are the designated RE for their programs, and DHCD is the designated RE for nonprofits, for profits, and public housing authorities. The designation of RE affects the method for processing of notices and approvals, explained in each of the relevant sections of this manual.

To help you navigate to the appropriate level of environmental review for your projects and activities, please refer to Categories of Environmental Review (pages 12 – 21), as well as Appendix A (Summary of Environmental Review Action by Activity).

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

As outlined in 24 CFR Part 58, states and units of local government are authorized to assume Federal environmental review responsibilities for compliance with the National Environmental Policy Act (NEPA), and related Federal laws and authorities. HUD’s environmental review regulations identify states and units of general local government as the “responsible entity” (RE) ---those entities having legal authority to assume this role because they exercise control over planning, permitting, and supplying infrastructure

to support HUD-assisted projects for their jurisdictions. For the HOME Program, the RE is the participating jurisdiction (PJ)—that is, the state, unit of local government, or consortium that receives a formula allocation of HOME funds directly from HUD.

As mentioned previously, Virginia DHCD is the HOME PJ and, therefore, is the RE. However, the Virginia DHCD may enter into a written agreement with units of general local government, designating them as "state recipients" ([24 CFR 92.504(c)(1)]. As such, the units of general local government are authorized to assume responsibility for compliance with NEPA and Part 58 for HOME-funded projects and activities within their jurisdiction instead of DHCD.

Whenever state recipients have assumed the role of RE, then DHCD is responsible for overseeing compliance with HUD's environmental review procedures, as well as providing assistance to state recipients in meeting their compliance responsibilities under Part 58. DHCD's role in this capacity is to conduct post-review monitoring of state recipient's Environmental Review Records (ERR); enforcing violations of Part 58; receiving certifications of compliance from state recipients; accepting objections from the public or other agencies; and other responsibilities related to the release of funds process (§ 58.18 and Subpart H).

If DHCD determines a state recipient does not have the technical capacity or administrative capability (§ 58.12) to assume the role of RE, then DHCD will take on the role of RE.

DHCD is also the RE wherever a Community Housing Development Organization (CHDO), or a nonprofit or for profit organization has applied directly to DHCD for HOME grant assistance. DHCD assumes the RE role in many instances.

In the role of responsible entity (RE), DHCD not only assumes the responsibility for environmental review, decision-making, documentation, and mitigation (if necessary), but also the legal responsibility for compliance with NEPA and all other applicable laws, regulations, and authorizations.

On those occasions DHCD assumes the role of RE, then HUD performs the oversight responsibilities described in the paragraph above (24 CFR 58, Subpart H).

With consortia, it is the lead government entity of the consortia that assumes the role of RE. In situations where consortia projects will also receive HOME funds for which DHCD is the RE, both the consortium and DHCD may participate or act in a joint lead or cooperating agency capacity to undertake and complete the environmental review process. Such relationships are encouraged by both the NEPA regulations [40 CFR 1501.5(b) and 1501.6], as well as 24 CFR 58.14

Responsible Entity:	**Approves Releases Funds (as required by Part 58:**
Incorporated County or City (i.e., "State recipient")	Virginia DHCD
Virginia DHCD	HUD

ROLE AND RESPONSIBILITIES OF PROJECT PARTNERS

Any other individuals and entities that utilize HOME program assistance fall into the category of project partners, and are specifically referred to as project participants with regard to compliance with Part 58 (§ 58.22). This includes unincorporated communities within the county, CHDOs, public housing authorities, private nonprofit or for profit entities, contractors and individual borrowers receiving HOME grants loans.

These partners must:

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

CHDOs or developers may also be requested by the RE (or required by executed agreement) to supply additional information necessary for the RE to perform the environmental compliance review. This could mean the CHDO or developer submits certain types of information to the RE. Or, it could mean the CHDO or developer prepares the environmental compliance review for submission to the RE for its review and adoption. Or, the CHDO or developer may decide to hire a consultant to prepare the environmental review for the RE’s review and adoption.

Project Partners:	**Responsible Entity:**
Unincorporated communities	Incorporated county (i.e., “State recipient”)
CHDO	City, County, or DHCD
Public housing authorities	City or County
Private nonprofit or for profit entities	City, county or DHCD
Contractors and individual borrowers	City, County, or DHCD

ENVIRONMENTAL REVIEW PROCESS

The RE must ensure that activities or projects that are funded by HOME assistance, in total or in part, are in compliance with NEPA and Part 58 requirements. This means creating a written environmental review record (ERR) for every activity and project regardless of the level of review (§ 58.38). Later on in this guide the section on Categories of Environmental Review (pages 12 – 21) provides more detail as to the appropriate levels of environmental review for every type of HOME assisted activity or project.

The ERR is a type of "environmental diary" that the RE uses to substantiate its decisions and conclusions concerning protection and enhancement of the environment as a result of approving the project. Keeping good records and having complete documentation is necessary to fulfill the RE's environmental review obligations. This is a public record. Legal challenges to a project's environmental compliance may be won or lost over how complete or incomplete the RE's ERR documentation is; therefore, this administrative record is important.

DHCD will periodically monitor the content of the RE's environmental records to determine whether corrective actions or sanctions are necessary. See the section of this guide on "DHCD Oversight and Administrative Responsibilities". (On those occasions when DHCD is the RE, the HUD Richmond Field Office will conduct a monitoring review of DCHD's project ERRs.)

The RE is required to maintain technical capacity and administrative capability to ensure compliance with NEPA and Part 58 is achieved (§ 58.12). With regard to technical capacity, the RE's staff needs to have sufficient knowledge of the Federal laws and authorities, as well as an understanding of Part 58 requirements in order to make informed decisions about whether:

- The appropriate level of review has been completed;
- Compliance with NEPA and Federal laws and authorities has been achieved;
- The public notification requirements have been met (if required);
- When DHCD (or HUD) approval is necessary; and
- Mechanisms are in place to ensure project funds are not committed or spent prior to the environmental review process having been completed.

This is true whether environmental reviews are completed by RE staff, prepared by project participants, or a consultant is hired to perform the review. The RE is still responsible for the content of the ERR and must make an independent evaluation of the environmental issues, take responsibility for the scope and content of the compliance findings, and make the final environmental decision concerning project approval.

With regard to administrative capability, the RE's staff should have sufficient knowledge about the Part 58 procedures to understand when funds may be committed and spent, the time periods for the public notification and release of funds process, and the minimum content of the ERR.

ENVIRONMENTAL DECISION MAKING

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

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

Other responsibilities required of the CO are:

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

ENVIRONMENTAL ACTION

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

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

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

See Appendix H for examples of re-evaluation.

ENVIRONMENTAL REVIEW PROCEDURES

ACTIONS TRIGGERING COMPLIANCE WITH PART 58

Once a project participant (i.e., CHDO's, developers, owners, sponsors of housing, and third party contractors) has submitted an application for HOME funds to DCHD or a state recipient, or DHCD has designated funds for a specific project in its Consolidated Plan or annual action plan, Part 58 requirements are applicable to the project. At this point the RE (i.e., state recipient or DHCD) must request the participant to cease all project activity until the environmental review (ER) has been completed. Part 58 prohibits further project activities and actions from being undertaken prior to completion of the ER and the determination of environmental clearance. Projects in violation of this prohibition risk the denial of HOME funds.

Where a project participant has begun a project in good faith as a private project, the state recipient (or DHCD) is not precluded from considering a later application for Federal assistance for the project, but must request the third party applicant to cease further actions on the project until the environmental review process is completed. The project participant may proceed with the project upon receiving approval from the state recipient (or DHCD), after the environmental review process has been completed for the project.

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58. For example, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the project participant's own funds, prior to obtaining environmental clearance to use HUD funds. This process may include public notification and approval from HUD. If prohibited activities are undertaken prior to receiving approval from state recipient (or DHCD), the applicant is at risk for the denial of HOME assistance. Such actions include:

- Purchasing real estate;
- Demolishing structures or buildings;
- Excavating or dredging soils;
- Placing fill dirt on the site;
- Rehabilitation or converting a new building; and
- New construction.

Undertaking any of these actions interferes with the RE's ability to comply with NEPA and Part 58. If prohibited actions are taken prior to environmental clearance, then environmental impacts may have occurred in violation of the Federal laws and authorities and the standard review procedures that ensure compliance. Below is further discussion of issue under the heading, "Actions Prohibited Prior to Completing the Environmental Review Process".

ACTIONS PROHIBITIED PRIOR TO COMPLETION OF THE ENVIRONMENTAL REVIEW PROCESS

According to the NEPA (40 CFR 1500-1508) and Part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. The RE may not commit or expend resources, either public or private funds (HUD, other Federal, or non-Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. In other words, 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.)

In order to achieve this objective, Part 58 prohibits the commitment of HOME funds by the Recipient or project participant (or DCHD if it is the RE) until the environmental review process has been completed and DHCD (or HUD when DCHD is RE) release of funds approval has been received, when required. (Not all projects require release of funds approval. See section on "Categories of Environmental Review" below.)

Neither the Recipient nor project participant may commit non-HUD funds or undertake an activity if that action would have an adverse environmental impact or limit the choice of reasonable alternatives until the environmental review process has been completed.

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

- Execution of a legally binding agreement;
- Expenditure of HOME funds;
- Use of non-HUD funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating;
- Use of non-HUD 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 to an alternative use.

It should be noted that the standard for what constitutes a commitment of HOME funds for compliance with Part 58 is different from the HOME funds commitment and the CHDO reservation deadlines applicable under the HOME Program regulations in 24 CFR Part 92.

There are some actions that are not considered to be a commitment of funds when they are undertaken before the environmental review process is completed. For example, the RE enters into a non-binding agreement with a project partner to conditionally commit a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance, or through an executed written agreement with a CHDO a specific amount of HOME funds is reserved.

In the situation where a non-legally binding agreement is executed with a project partner, the conditions of the agreement must incorporate language that will ensure the project participant does not have a legal claim to any amount of HOME funds to be used for a specific project or site until the environmental review process is satisfactorily completed. In addition, the agreement must explicitly state that the agreement to provide funds to the project is conditioned on the RE’s determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review. (See Exhibit 1, “Defining ‘Contemplate’ and ‘Commitment’ for the Environmental Review”, for suggested agreement language).

Other types of actions that are not considered a commitment of funds for purposes of Part 58 compliance are statements of funding reservation, e.g., approval of Consolidated Plan or annual action plan or planning for and reserving non-HUD funds, including tax credits for the project for HUD funding.

If a state recipient (or DHCD if it is the RE) is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within its jurisdiction that is prohibited by Part 58, then the state recipient (or DHCD) must take appropriate action to ensure that the objectives and procedures of NEPA and Part 58 are achieved [§ 58.22(c)]. The state recipient (or DHCD) is ultimately responsible for establishing internal controls to enforce compliance with NEPA and Part 58.

EXHIBIT 1

DEFINING "CONTEMPLATE" AND "COMMITMENT" FOR THE ENVIRONMENTAL REVIEW

Once the RE *contemplates* assisting a project or activity with HUD funds, (§ 58.32), neither HUD funds nor non-HUD funds may be *committed* (§ 58.22) until compliance with Part 58 has been achieved and documented. The following guidance is provided to clarify the meaning of the terms *contemplate* and *commitment* as these apply to the environmental review process.

What is a contemplated HUD assisted action?

1. A state recipient is considering an application from a prospective owner or beneficiary.
2. A state recipient has identified a specific activity or project in its application.

What is a commitment of funds?

1. Execution of a legally binding agreement—e.g., awarding construction contracts, entering into project agreements with developer or state recipient, etc.
2. Expenditure of HUD funds—e.g., purchase of materials by a force account crew, hiring a consultant to prepare a Phase I Environmental Site Assessment, etc.
3. Use of HUD funds or non-HUD funds on "choice limiting actions":
   a) Actions having an adverse impact---e.g., demolition, dredging, filling, excavation.
   b) Actions limiting the choice of reasonable alternatives---e.g., real property acquisition, leasing, rehabilitation, demolition, related site improvements, relocating buildings or structures, conversion of land or buildings/structures.

What is not a commitment of funds?

1. Statements of funding reservation---e.g., approval of an application, CHDO reservations, planning for and reservation of non-HUD funds (including tax credits for the project for HUD funding.)
2. Non-legally binding agreements---e.g. An agreement with language such as, "Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by Recipient's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review."[1]

1 See HUD memorandum, "Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity Under Part 58" August 28, 2011, and p. 10 of HUD Notice CPD 01-11, Environmental Review and the HOME Investment Partnerships Program, Both are available on HUD's Environment webpage.

AGGREGATING PROJECT ACTIVITIES

To determine the appropriate level of environmental review for a project, the RE must group together (aggregate) all related project activities, whether or not the project is funded entirely by HOME funds, or only certain portions of the project will be funded by HOME funds. An environmental review must evaluate all activities that are geographically or functionally related, or part of a multi-year project. The appropriate level of environmental review for an aggregated project will be determined by whichever activity or activities being undertaken by the RE or its partners will have the greatest environmental impact. For instance, real property acquisition will have less of a physical impact on the human environment than constructing 30 units of affordable housing.

"Functionally related" describes a specific type of activity that will be undertaken in several locales or jurisdictions. The environmental impacts will be the same or similar no matter where the project is located. For example, rehabilitation of single family units, or tenant-based rental assistance within a city or county.

Geographically related project activities, for example, might include a proposal to acquire four units for rehabilitation and resale to first time homebuyers. All the related activities are occurring on a single site. In aggregation, all these activities must be evaluated in a single review, regardless of the fact that HOME funds may only be used for rehabilitation. One activity cannot occur without the others, and therefore all the associated environmental impacts must be evaluated together. The environmental review for the acquisition of the properties cannot be separated from the environmental review for the rehabilitation of the properties.

Multi-year aggregation is a process that addresses phased project activities. For instance, consider a three-year project, during which, real property will be acquired in the first year, infrastructure improvements will be installed in years two and three, along with several phases of affordable housing construction. Again, a single environmental review must be completed for all phases of the project before any of the activities may be undertaken. Only one request for release of funds (covering all project phases) needs to be submitted to DHCD for approval (or to HUD if DHCD is the RE). (Refer to pages 40 – 41, Release of Funds and Approval Process.) After DHCD approval is received, no other approval or environmental action is required; unless circumstances arise that require the RE to re-evaluate its original environmental findings. (See section on "Re-Evaluation of Environmental Findings" and Appendix H, "Examples of When Re-Evaluation is Necessary and When Not".)

SOURCES FOR COMPLIANCE DOCUMENTATION

There are several types of resources necessary to demonstrate compliance with NEPA and the Federal laws and authorities. These resources provide written documentation in the environmental review record that is credible, traceable, and supportive of the conclusions reached by the RE.

EXHIBIT 2

SOURCE DOCUMENTATION FOR ENVIRONMENTAL REVIEWS

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

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

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

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

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

See HUD Handbook 1390.2, http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi

CATEGORIES OF ENVIRONMENTAL REVIEW

One of the primary purposes that the environmental review process serves is to require the RE to include environmental impacts as part of the overall deliberation process surrounding proposed projects. The HUD environmental review requirements at Part 58 were written so as to best strike a balance between the imposition of reasonable requirements upon the RE (i.e., expediting the decision process for activities that clearly have no physical impact and requiring sufficient analysis for those that will alter environmental conditions), while ensuring that project decisions are well-documented. Therefore, the environmental review requirements are divided on the basis of the level of impact that a proposed project might be anticipated to have were the RE to go through with funding approval.

There are four (4) levels of environmental review identified in Part 58 (Appendix B). The criteria for these levels span the range of possible impacts, from none whatsoever to significant physical impact. The levels under Part 58 include:

- Exempt (§ 58.34);
- Categorically Excluded (§ 58.35);
- Environmental Assessment (§ 58.36 and Subpart E); and
- Environmental Impact Statement (§ 58.37 and Subparts F and G).

NEPA and the implementing regulations at 40 CFR 1500-1508 establish direction for these review levels. The basis for these review levels, and categorizing various HOME-funded activities into the review levels is to determine if there is potential to cause significant impact on the human environment (i.e., natural resources, ecosystems, aesthetic, historic, cultural, social, economic, health, etc.). (Refer to Appendix A, "Summary of Environmental Review Action by Activity.)

A. EXEMPT

HUD has determined that exempt activities will neither have a physical impact, nor potential for altering any environmental conditions. Therefore, these actions are exempt from compliance with NEPA and the Federal laws and authorities cited at § 58.5.

According to 24 CFR 58.34, the following types of activities have been categorized as exempt from NEPA and other environmental laws and authorities: (NOTE: Under HOME program rules, 24 CFR 92, in order to qualify as project costs, these activities must be associated with a specific project. Otherwise, they are considered administrative costs.)

- Environmental and other studies, resource identification, and the development of plans and strategies;
- Information and financial services;
- Administrative and management activities;
- Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, and welfare or recreation needs;
- Inspections and testing of properties for hazards or defects;
- Purchase of insurance;
- Engineering or design costs;
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threat to public safety including those resulting from physical deterioration; and
- Any of the categorical exclusions listed in § 58.35(a) provided there are no circumstances that require compliance with any other Federal laws and authorities cited in § 58.5. (See section B.1., page 15, for further discussion about this.)

Public notification and approval from DHCD (or HUD if DHCD is the RE) is not required for these types of activities. Once a written record has been completed for these activities, no further action is required.

What Should the Environmental Review Record Look Like for Exempt Activities?

- The RE must document in writing its determination that an activity meets the conditions for exemption. Use the *Determination of Exemption form* (Appendix C) to document the designation of a HOME project or activity as exempt. The RE does not have to issue a public notice or request release of funds (RROF) from DHCD [§ 58.34(b)].
- The RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones.(Also see Determination of Exemption form , Appendix C)

B. CATEGORICAL EXCLUSIONS

This term refers to a category of actions that do not individually or cumulatively have potential for significant effect on the human environment (40 CFR 1508.4). Therefore, neither an environmental assessment (EA) nor environmental impact statement (EIS) is required to comply with NEPA.

Although these actions are categorically excluded under NEPA, a determination must still be made as to whether they would alter any environmental conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. The laws and authorities cited in § 58.5 are freestanding from NEPA, such as the National Historic Preservation Act of 1966, the Executive Orders on Floodplain Management and Wetlands Protection, and several regulations specific to HUD concerning the health and safety of project occupants, to name a few. The RE must certify that it has complied with the requirements under these laws and consider the criteria, standards, policies and regulations of these laws and authorities. The section on "Compliance with NEPA and the Related Federal Laws and Authorities" provides guidance on this.

However, HUD has determined that certain kinds of categorical exclusions, because of the nature of the actions, would never alter any environmental conditions to create circumstances requiring compliance with these laws and authorities. And so, § 58.35 identifies two types of categorical exclusions: categorical exclusions not subject to § 58.5, and categorical exclusions subject to § 58.5.

1. CATEGORICAL EXCLUSIONS SUBJECT TO § 58.5 [Refer to § 58.35(a)].
Categorical exclusions *subject to* § 58.5 are excluded from compliance with NEPA, but must comply with the other related Federal laws and authorities cited in § 58.5 (See section on "Compliance with NEPA and the Related Federal Laws and Authorities").

It is generally evident from the nature and magnitude of such activities they do not have potential to have a significant impact on the human environment; however, these types of activities are physical in nature and will alter environmental conditions that could, for example, affect historic properties, floodplains, wetland areas, and endangered species. Actions in this category include:

- *Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities (other than buildings*)---e.g., replacement of water or sewer lines where the capacity is not changed more than 20 percent, reconstruction of curbs and sidewalks, and repaving of streets;
- *Removal of material and architectural barriers* restricting the mobility of and accessibility to elderly and disabled persons;

- *Rehabilitation and improvement of single family (one-to-four unit) dwellings* provided the unit density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or wetland;
- *Rehabilitation and improvement of multifamily(5 or more unit) dwellings* provided the unit density is not changed more than 20 percent (either increased or decreased), it does not change residential use to non-residential use, and the estimated cost of rehabilitation is less than 75 percent of the replacement cost;
- *An individual action on one to four dwelling units* where there is a maximum of four units on any one site. The term "individual action" refers to new construction, development, demolition, acquisition, disposition, or refinancing;
- *An individual action on five or more housing units developed on scattered sites* when the sites are more than 2,000 feet apart and there are not more than four units on any one site;
- Acquisition (including leasing) or disposition of, or equity loans on, an existing structure provided the structure acquired, financed, or disposed of will be retained for the same use; and
- Any combinations of the above activities.

A project may be converted to Exempt, according to § 58.34(a)(12) if none of the Federal laws and authorities are triggered. What this means is that public notification and approval from DHCD (or HUD if DHCD is the RE) is not required. No further action by the RE is necessary. Funds may now be drawn down.

A project may only be converted to Exempt under the following conditions and documentation procedures:

- The RE completes the Statutory Worksheet addressing compliance with Federal laws and authorities cited in § 58.5. (Refer to Appendix E, Statutory Worksheet form.)
- The RE concludes that no circumstances exist where any of the Federal laws and authorities requires compliance (according to the established review procedures for each law and authority), and documents this finding. (Refer to Appendix E, "Instructions for Completing the Statutory Worksheet".)
- The RE documents its determination that the project converts to exempt on the Statutory Worksheet (See "DETERMINATION"), and places the form in the ERR. No public notice needs to be issued nor a "Request for Release of Funds and Certification" (HUD form 7015.15) submitted to DHCD (or HUD if DHCD is the RE).

NOTE: It will not be evident that a project converts to Exempt until the Statutory Worksheet has been completed (Appendix E), with the findings supported by written documentation (See Exhibit 2, "Source Documentation for Environmental Reviews" and "Compliance with NEPA and the Related Federal Laws and Authorities, pages 21 – 42).

For projects that *do not* convert to Exempt, public notification and approval from DHCD (or HUD if DHCD is the RE) is required before project funds may be committed or spend. Refer to the section on "Release of Funds and Approval Process".

What should the Environmental Review Record (ERR) Look Like for Categorical exclusions subject to § 58.5?
The RE should complete the *Statutory Worksheet* form (Appendix E) to document its environmental findings. Such documentation must support the RE's determinations related to compliance with the Federal laws and authorities cited in § 58.5. [Guidance on compliance is provided below in "Compliance with NEPA and Related Federal Laws and Authorities", and "Instructions for Completing the Statutory Worksheet

(Appendix E).]

Upon completion of the checklist, the RE will make one of three environmental findings in writing (refer to "DETERMINATION" in the Statutory Worksheet):

- The project converts to Exempt and does not require public notification or approval from DHCD [§ 58.34(a)(12)];
- The project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from DHCD before funds are committed or spent; or
- The unusual circumstances of the project may result in a significant environmental impact and, therefore, compliance with NEPA is required. Therefore, an environmental assessment (EA) must be completed instead.

The ERR must also contain:

- Supporting documentation used to prepare the review (See Exhibit 2, Source Documentation for Environmental Reviews);

If the project did not convert to Exempt:

- A copy of public Notice of Intent to Request Release of Funds that was issued (Appendix I);
- Copy of the Request for Release of Funds and Certification (HUD form 7015.15) (Appendix K); and
- Copy of Authority to Use Grant Funds (HUD form 7015.16), issued by DHCD (or HUD) (Appendix L).

The RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones. [See *Other Requirements, § 58.6* form (Appendix G) and discussion in this guide on "Other Requirements (§ 58.6)"]

2. CATEGORICAL EXCLUSION NOT SUBJECT TO § 58.5 [Refer to § 58.35(b)].
The activities that are categorically excluded *not subject to* § 58.5 have been determined by HUD not to have potential for altering any environmental conditions where a review or determination of compliance with the Federal laws and authorities would be required. Actions in this category include:

- Tenant-based rental assistance;
- Activities to assist homebuyers to purchase *existing dwelling units or dwelling units under construction*---e.g., closing costs, down payment assistance, interest buydowns, and similar activities that result in the transfer of title;
- Affordable housing pre-development costs with no physical impact---e.g., 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; and
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under Part 58, if the approval is made by the same RE that conducted the environmental

review on the original project and re-evaluation of the environmental findings is not required under § 58.47. Refer to "Re-Evaluation of Environmental Findings", and Appendix H)

Public notification and approval from DHCD (or HUD if DHCD is the RE) is not required for these types of projects and activities. Once the written record has been completed, no further action is required.

However, if these activities are combined with ones that will change the character or use of a property (e.g., conversion building to another type of use, disposition of real property), make a long term commitment to a site (e.g., acquisition of real property, leasing), or have a physical impact (e.g., demolition, construction, rehabilitation), then public notification and approval from DHCD may be required. Refer to Appendix A, Summary of Environmental Review Action by Activity, to determine the appropriate level of review for these situations.

What should the Environmental Review Record (ERR) Look Like for Categorical exclusion not subject to § 58.5?
The RE must document in writing its determination that an activity meets the conditions for categorical exclusion not subject to § 58.5. Complete the *Determination of Categorical Exclusion Not Subject to 58.5* form (Appendix D) to document designation of a HOME project or activity in this category. The RE does not have to issue a public notice or request release of funds (RROF) from DHCD [§ 58.34(b)].

The RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones. [Also see the form *Determination of Categorically Excluded Not Subject to §, Sec. 58.5* (Appendix D) and the discussion in this guide on "Other Requirements (§ 58.6)]

C. ENVIRONMENTAL ASSESSMENT (Refer to § 58.36).
Environmental Assessment (EA) refers to a category of actions which, either individually or cumulatively, have potential for significant effect on the human environment (40 CFR 1508.4, Appendix W). Therefore, the potential environmental impacts on the human environment resulting from the proposed activity must be analyzed and evaluated according to NEPA procedures, as well as the other Federal laws and authorities cited at § 58.5. (Refer to the section in this guide on "Compliance with NEPA and the Related Federal Laws and Authorities".)

The EA is a public record that, upon completion, documents the RE's findings and conclusions about environmental effects and the reasons for its decision concerning those effects, as well as compliance with Federal laws and authorities. This document not only identifies and evaluates project effects on environmental concerns of national importance (i.e., the Federal laws and authorities), but also the effects on environmental issues and concerns of local and regional importance.

Actions that may be funded by HOME and that fall into the category requiring an Environmental Assessment would include, but are not limited to:

- New construction of five or more residential units on a single site;
- New construction of five or more single family units on scattered sites that are less than 2,000 feet apart;

- Rehabilitation or reconstruction of multifamily residential units that increases or decreases the unit density more than 20 percent;
- Rehabilitation of a single family unit that proposes expanding the building footprint into a floodplain or wetland area [NOTE: The building footprint is generally defined as including the first floor built area(i.e., living area, decks, garages, porches, etc.). It may also include decks, balconies and structural supports for roof overhangs.]
- Conversion of a non-residential structure to create a residential use;
- Acquisition of land for development of a housing subdivision; and
- Categorical exclusions with "extraordinary circumstances"---i.e., actions that are unique or without precedent, actions that are substantially similar to those that normally require an Environmental Impact Statement (EIS), actions that are likely to alter existing HUD policy or HUD mandates, or action that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

Two public notices and approval from DHCD (or HUD if DHCD is the RE) are required for these types of projects. Refer to the section on "Release of Funds and Approval Process" in this guide, as well as the "Sample Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds" (Appendix J).

Approval from DHCD (or HUD if DHCD is the RE) must be received before project funds may be committed or spent (including non-HUD funds).

What Should the Environmental Review Record (ERR) Look Like for an Environmental Assessment (EA)?

There must be a written determination by the RE that the project falls within this category. The EA includes the following information and analysis, according to NEPA regulations (40 CFR 1500-1508):

- Determination of existing conditions;
- Identification, analysis, and evaluation of all potential impacts on the human environment (i.e., social, economic and natural resources);
- Examination and recommendation of feasible ways to eliminate or minimize adverse environmental impacts;
- Examination of alternatives to the proposed action;
- Compliance determination for all other Federal laws and authorities cited in § 58.5; and
- Determination as to a finding of no significant impact (FONSI) or a finding of significant impact (FOSI), which requires the execution of an Environmental Impact Statement (EIS).

The RE should use the *Environmental Assessment* form (Appendix F) in evidence of compliance with NEPA and the Federal laws and authorities cited in § 58.5.

Upon completion of the environmental assessment, the RE will make either a finding of no significant impact (FONSI), or a finding of significant impact (FOSI) determination. In the event that a FONSI is made, the RE must issue two public notices, submit a release of funds request and certification to DHCD, and receive a release of funds from DHCD before funds are committed or spent.

The ERR must also contain:

- Supporting documentation used to prepare this review (See Exhibit 2 *Source Documentation for Environmental Reviews.*);
- Copy of the two public notices, "Finding of No Significant Impact and Notice of Intent to Request Release of Funds" (Appendix J).
- Copy of the *Request for Release of Funds and Certification* (HUD form 7015.15) (Appendix K); and
- Copy of the *Authority to Use Grant Funds* (HUD form 7015.16) issued by DHCD (or HUD.) (Appendix L)

The RE must also determine whether the project triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones. [See the *Environmental Assessment* form, as well as Appendix G, and the discussion in this guide on "Other Requirements (§ 58.6)].

D. ENVIRONMENTAL IMPACT STATEMENT (Refer to § 58.37).

An environmental impact statement (EIS) is a complex analysis required for proposed activities that would have significant impact on the human environment in accordance with § 102(2)(C) of the National Environmental Policy Act. Significance is determined as a result of the project having regional versus local impacts (e.g., power plant or water treatment facility), long-term versus short term impacts (e.g., construction of a landfill), impacts on unique resources (e.g., may jeopardize endangered species or historic battlefields), and/or is highly controversial (e.g., disagreement among scientists and engineers).

EIS thresholds stated at §§ 58.37(a) and (b)(2) include:

- Projects determined, by a previously written environmental assessment, to have a potentially significant impact on the human environment; and
- Projects involving 2,500 or more units being removed, demolished, converted, rehabilitated, or constructed.

It is not typical for a HOME project to trigger the Environmental Impact Statement requirements. If an RE believes that a project it is contemplating as a possible HOME project may, in fact, trigger these requirements it should consult with DHCD immediately before taking any further action.

If the RE determines the project must go forward, then the RE is to follow the EIS format recommended by the Council on Environmental Quality (CEQ) regulations (40 CFR 1502.10, Appendix W), unless a determination is made that there is a compelling reason to do otherwise. Following is the standard format for an EIS:

Cover sheet.
Summary.
Table of contents.
Purpose of and need for action.
Alternatives including the proposed action.
Affected environment.
Environmental consequences.
List of preparers.
List of agencies, organizations, and persons to whom copies of the statement are sent.
Index.

Appendices (if any).

There are several notices related to preparation and completion of an EIS that are required to appear in the Federal Register. They are the Notice of Intent to Prepare an EIS (NOI), Notice of Availability of a Draft EIS, and Notice of Availability of a Final EIS. Because only Federal agencies may submit notices to the U.S. Environmental Protection Agency (EPA) for publication in the Federal Register, the RE will need to coordinate this effort through their HUD Field Office. The comment periods required for each of these notices are as follows:

- Notice of Intent to Prepare an EIS: A simple announcement in the Federal Register
- Notice of Availability of a Draft EIS: 45-90 days
- Notice of Availability of a Final EIS: 30 days

In addition, there are public hearings and scoping meetings also associated with the EIS review process. Upon completion of the EIS, and once the 30 day comment period has expired for the Final EIS notice, the RE must issue a Notice of Intent to Request Release of Funds (NOI/RROF) prior to submitting its request for release of funds to HUD or the state (in the case of subrecipients). The RE will do all of the following:

- Publish or post/mail the Notice of Intent to Request Release of Funds (NOI/RROF), in accordance with §§ 58.45 and 58.70.
- Have the Certifying officer (CO) sign the Request for Release of Funds and Certification (RROF) (HUD form 7015.15).
- Submit the RROF with a copy of the public notice to DHCD (or HUD if DHCD is the RE).
- Wait to receive a HUD form 7015.16, Authority to Use Grant Funds or equivalent letter from DHCD (or HUD if DHCD is the RE) before initiating work or committing funds.

Refer to the section in this guide on “Release of Funds and Approval Process”, as well as the “Sample Notice of Intent to Request Release of Funds” (Appendix I).

What Does the Environmental Review Record (ERR) Look Like for an Environmental Impact Statement (EIS)?

There must be a written determination by the RE that the project falls within this category. Content of the EIS must follow the format recommended by the Council on Environmental Quality (CEQ) regulations (40 CFR 1502.10) (Refer to NEPA regulations, 40 CFR 1500-1508).

The ERR must also contain:

- Supporting documentation used to prepare this review (See Exhibit 2 *Source Documentation for Environmental Reviews.*);
- Copy of the following public notices:
  - Notice of Intent to Prepare an EIS
  - Notice of Availability of the Draft EIS
  - Notice of Availability of the Final EIS
  - Notice of Intent to Request Release of Funds.
- Copy of public input received during any public hearings or scoping meetings.
- Copy of the *Request for Release of Funds and Certification* (HUD form 7015.15) (Appendix K); and

- Copy of the *Authority to Use Grant Funds* (HUD form 7015.16) issued by DHCD (or HUD.) (Appendix L)

The RE must also determine whether the project triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones. [See Appendix G, and the discussion in this guide on "Other Requirements (§ 58.6)"].

COMPLIANCE WITH NEPA AND THE RELATED FEDERAL LAWS AND AUTHORITIES

The following section provides guidance to assist REs in compliance with NEPA and the related Federal laws and authorities cited at § 58.5.

HISTORIC PRESERVATION ACT (36 CFR PART 800)

Section 106 of the National Historic Preservation Act requires RE's to:

- Consider the effects of their undertakings on historic properties; and
- Provide the Advisory Council on Historic Preservation (Advisory Council) with a reasonable opportunity to comment with regard to such undertakings.

"Undertakings" are defined in the National Historic Preservation Act, as well as the Advisory Council's regulations, 36 CFR Part 800.16(y) (Appendix V). For HOME projects and activities, this term would cover any projects or activities that would have a physical impact (e.g., new construction, demolition, reconstruction, rehabilitation of buildings and structure, improvements to sewer and water systems), and/or would change the character of use of a property or site (e.g., converting a building or structure to an alternative use, relocation of a building or structure).

Compliance with Section 106 is achieved by initiating procedures the Advisory Council on Historic Preservation has outlined at 36 CFR Part 800. Section 800.2(a) recognizes the RE's certifying officer as having authority to carry out these procedural responsibilities.

The focus of Part 800 is on the RE making a determination whether a proposed project will affect buildings, structures, or places that are listed on or are eligible for listing on the National Register of Historic Places (NR). In making this determination, the RE must follow a detailed review process in consultation with the State Historic Preservation Officer (SHPO). For the State of Virginia, the office of the SHPO is in the Virginia Department of Historic Resources. (Refer to Appendix N.)

The consultation process also provides an opportunity for interested persons, agencies, and Indian tribes to be part of the RE's decision concerning historic properties that may be affected.

It is important to remember that before approval is given to proceed with HOME-funded projects, the environmental review record must show the Part 800 consultation process was completed.

Basic steps for compliance with the Section 106 Review Process (36 CFR Part 800) include:

- Determine whether the project is an undertaking, or has no potential to cause effects on historic properties;
- If the project is an “undertaking”, then:
  - Define the area of potential effects (APE) for the undertaking;
  - Identify and evaluate historic properties in the APE;
  - Determine the effect of the undertaking;
  - Assess the effects on listed and/or eligible properties; and
  - Resolve any adverse effects.

In identifying historic properties, this includes consulting the National Register of Historic Places (NR) maintained by the U.S.D.I National Park Service, and also inventories maintained by the State, as well as local and county historic boards and commissions. It also includes seeking information from individuals and organizations in the community that are known to have an interest in historic resources, as well as Indian tribes whose aboriginal lands were historically located in the vicinity of the project. Contact with tribes is for the purpose of determining whether the project could affect religious or ceremonial sites of significance to the tribe.

NOTE: The RE may enter into a Programmatic Agreement (PA) with the SHPO and Advisory Council. A PA is a negotiated agreement used to govern implementation of compliance with Section 106. It is most often used by REs for a particular program, such as a housing rehabilitation program, and can streamline the consultation process. There are several standard stipulations in a PA describing “no effect on historic properties”---e.g., a property is less than 50 years of age, interior work on a single family home will not be visible from the exterior of the building, and if replacement in-kind of building components is being proposed. Therefore, no further consultation with SHPO is required. Any projects that are subject to review under an existing historic preservation Programmatic Agreement (PA) executed between the RE and SHPO shall abide by the stipulations of the PA. [Refer to 36 CFR 800.14(b).] Also, if there is an existing Memorandum of Agreement (according to 36 CFR 800) concerning adverse effects on a historic property, the Recipient should consult with the SHPO to determine whether they may become a signatory to the MOA in order to use the HOME funds.

Any projects that are categorically excluded subject to § 58.5, or that require an EA are “undertakings” for the purposes of Section 106 of the Act.

The RE will initiate the consultation process with the SHPO and secure a letter or other written confirmation from the SHPO that states, upon reviewing the information provided by the RE, that the Section 106 review process has been concluded.

Addressing Compliance with Historic Preservation
If the project is an "undertaking", then:

- Define the area of potential effects (APE);
- Identify and evaluate historic properties in the APE (properties listed on the National Register, and eligible for listing);
- Determine the effect of the "undertaking";
- Assess the effects, if any, on listed or eligible properties;
- Submit the findings to SHPO for comment; and
- Resolve any adverse effects in consultation with SHPO

The ERR should contain <u>one</u> of these types of documentation:

- Letter from SHPO that concurs with the RE's determination of "no historic properties affected".
- "No historic properties affected"-
  - Based upon the RE's description of: 1) the undertaking and the APE (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, and 3) the basis for determining that no historic properties are present or affected.
- The record contains documentation (as described above in numbers 1 - 3) "No historic properties affected" and the SHPO has not objected within 30 days of having received such documentation from the RE. (NOTE: The RE must verify the date on which the SHPO received the grantee's request.)
- Letter from SHPO that concurs with a finding of "no adverse effect".
  - "No adverse effect" –Based upon the RE's description of: 1) the undertaking and the APE (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, 3) affected historic properties (including characteristics qualifying them for the NR), 4) the undertaking's effects of historic properties, 5) why the criteria of adverse effect were not applicable (§ 800.5), and 6) copies or summaries of any views provided by consulting parties and the public.
- Letter from SHPO that concurs with a finding of "adverse effect".
  - "Adverse effect" – Based upon the RE's description of: 1) the undertaking and the APE (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, 3) affected historic properties (including characteristics qualifying them for the NR), 4) the undertaking's effects of historic properties, 5) why the criteria of adverse effect are applicable (§ 800.5), and 6) copies or summaries of any views provided by consulting parties and the public. The RE and SHPO execute a Memorandum of to resolve adverse effects.

FLOODPLAIN MANAGEMENT (EXECUTIVE ORDER 11988)

The purpose of Executive Order 11988 is to require REs to consider alternatives to developing projects in floodplains when other alternatives are available that achieve the same objective. This is to avoid risking lives and loss of property that results from occupying a floodplain, and to avoid losing the beneficial values of floodplains. Naturally vegetated floodplains can provide a broad area to spread and slow floodwaters, thereby reducing velocities and flood peaks. Slower floodwaters help maintain water

quality because the slowed runoff allows sediments to be deposited. Floodplains are also important for recharging groundwater. Rainwater and surface water infiltrate through the generally porous soil of the floodplain into the groundwater.

RE's are required to avoid floodplain development whenever there are *practicable alternatives* to development in the floodplain. According to HUD regulation 24 CFR Part 55 (Appendix U), floodplains are those land areas identified on maps published by FEMA as 100-year floodplain (Zones A or V). If the project is a "critical action," the regulation also applies to areas in the 500-year floodplain (Zone B). Coastal high hazard areas are subject to high velocity waters, such as hurricane wave wash. FEMA maps designate these as Zones V1-30, VE, or V.

Most, if not all, communities in the U.S. have been mapped by FEMA. However, if a community has not been mapped by FEMA, the RE must establish whether or not the area is subject to one percent or greater chance of flooding in any given year [Section 6(c) of the Executive Order]. The RE must research the best available information to determine whether buildings or structures could be damaged by floodwaters because of their location. Sources of information may include: U.S. Corps of Engineers, Community Flood Administrators; U.S. Geological Survey Maps; U.S.D.A. Natural Resources Conservation Service (formerly Soil Conservation Service); state departments of water resources; county public works; or local flood control or levee districts. The RE may also contract to have a special study completed.

Basic steps for compliance with floodplain management requirements are at § 55.20, which identifies the "eight-step" decision making process REs must follow to comply with Executive Order 11988:

- Step 1- Determine whether the proposed action is located in a 100-year floodplain;
- Step 2- If the project is in a floodplain, publish notice of the proposal to consider an action in the floodplain (15 calendar day comment period);
- Step 3- Evaluate practicable alternatives to locating the proposed action in a floodplain ("Practicable" means capable of being done within existing constraints);
- Step 4- Identify the potential impacts associated with occupancy and 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 whether the proposed action is practicable;
- Step 7- If the RE decides to proceed with the project, it must publish a notice of the decision, addressing why there is "no practicable alternative", the alternatives that were considered, and the mitigation measures being adopted. (Seven calendar day comment period.); and
- Step 8- Implement the proposed action with mitigation measures.

HUD has determined that certain activities are excluded from the 8-step decision-making process even if they are located within a floodplain. These include, for example, HUD assistance for purchasing, mortgaging or refinancing one-to four-family properties, and minor repairs or improvements on one-to four-family properties [§ 55.12]. In addition, Part 55 is not applicable if FEMA has issued a Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) for the subject site in a floodplain.

Projects that are not within a special flood hazard area (100-year floodplain) are not subject to completion of the 8-step decision process. One of the ways to document this is to generate a FIRMette from floodplain maps on FEMA's Map Service Center web page (Refer to Appendix N, Environmental Internet and Government Agency Reference Guide). Other sources maintaining these maps are the local or regional planning department or public works department. Request a copy of the map where the project is located that shows the flood zone designation (e.g., A, B, C, X, V, etc.), and also the date the map was issued and the community panel number displayed on the map.

The 8-step decision making process is described in further detail in the *U.S. Water Resource Council Floodplain Management Guidelines,* available at HUD's Office of Environmental and Energy web site (Refer to Appendix N).

See a completed example of the 8-step process, including sample notices (Steps 2 and 7), on HUD's Floodplain Management webpage (Appendix N).

If the outcome of the 8-step decision making process is that there is a "practicable alternative" to modifying or destroying the floodplain--- i.e., the RE should not undertake the project, alternative sites are available instead, alternative ways of doing the same thing are available--- the grantee must choose the alternative course of action.

Addressing Compliance with Floodplain Management
RE reviews FEMA maps or, if the area is not mapped by FEMA, use the best available information to demonstrate the project site is or is not within the 100-year floodplain (Zones A or V). It may require contracting a special study to find this out.

The ERR contain <u>one</u> of these types of documentation:

- Evidence the proposed action is not within a special flood hazard area mapped by FEMA (i.e., 100-year floodplain or 500-year floodplain for critical actions).
  - The project location and/or boundary must be indicated on a map---i.e., an official FEMA map (a FIRM or FIRMette), or the best available documentation (e.g., U.S. Geological Survey map, etc.).
- Documentation the decision making process is not applicable (§ 55.12).
- Documentation supporting steps 1 through 8:
  - Step 1 and 2 showing the projects location in the floodplain and an Early Public notice.
  - RE then completes and documents in writing steps 3 through 7 and issues a Final Notice if the RE decides there is "no practicable alternative" to locating the project in the floodplain.
  - Step 8 - RE identifies mitigation measures, and documents implementation of the proposed action with required mitigation measures has been achieved.

WETLANDS PROTECTION (EXECUTIVE ORDER 11990)

The purpose of the Executive Order 11990 (Wetlands Protection, May 24, 1977) is to:

- Avoid, if possible, any long and short-term adverse impacts associated with destruction or modification of wetlands; and
- To avoid direct or indirect support of new construction in wetlands whenever there is a *practicable alternative.*

Seventy-two percent (72%) of Virginia's wetlands are in the Coastal Plain region (including estuary wetlands), and 22% are in the Piedmont region. The remaining wetlands in Virginia are located in the Appalachian Plateaus, Blue Ridge and Valley regions.[2]

Contact the Virginia Department of Environmental Quality (DEQ) or local planning or building departments to determine whether the proposed project will affect wetlands. (Refer to Appendix N). The following activities may require a permit from DEQ:

- New activities to cause draining that significantly alters or degrades existing wetland acreage or functions.
- Filling or dumping.
- Permanent flooding or impounding.
- New activities that cause significant alteration or degradation of existing wetland acreage or functions.

The RE should only complete the 8-step decision making process in § 55.20 (24 CFR Part 55, Appendix U) if new construction or conversion of vacant land, or any of the activities above are being proposed in a designated wetland. At the conclusion of that 8-step process the RE must decide whether there is a practicable alternative that would prevent destroying or modifying wetland---i.e., the RE should not undertake the project, alternative sites are available instead, alternative ways of doing the same thing are available.

Executive Order 11990 describes wetlands as those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. Further information on wetland identification can be found in the Fish and Wildlife Service's (FWS) Classification of Wetlands and Deep Water Habitats of the United States (Cowardin, et al., 1977) available at U.S. Fish and Wildlife Service web site (Appendix N).

NOTE: A Clean Water Act Section 404 permit from the Virginia Department of Environmental Quality is required if the wetland is within or adjacent to navigable waters of the U.S. or within the jurisdiction of the Commonwealth. This requirement is separate from the Executive Order 11990 requirements. All wetlands, including those requiring 404 permits, must undergo Executive Order 11990 processing. Withdrawal of surface water may also require a permit or water use reporting.

Addressing Compliance with Wetlands Protection
If the proposed action includes new construction or expansion of a building footprint, the RE must determine whether the project will affect a designated wetland.

The ERR should contain <u>one</u> of these types of documentation:

- The RE has determined the proposed action does not include new construction or expanding the footprint of a building;
- The RE provides evidence the new construction will not occur in a designated wetland or expand the footprint of a building into a wetland; or

2 "What's Going on with Virginia's Wetlands?", Virginia Department of Environmental Quality, http://www.acb-online.org/pubs/projects/deliverables-239-5-2006.pdf

- The RE has determined there is *no practicable alternative*, according to the completed 8-step decision making process.
  - Step 1 and 2 showing the projects location in the floodplain and an Early Public notice.
  - RE then completes and documents in writing steps 3 through 7 and issues a Final Notice because the RE decides there is "no practicable alternative" to locating the project in the floodplain.
  - Step 8 - RE identifies mitigation measures, and documents implementation of the proposed action with required mitigation measures has been achieved.
- Virginia Department of Environmental Quality has issued the RE a permit where they have wetland jurisdiction.

ENDANGERED SPECIES (ENDANGERED SPECIES ACT AND 50 CFR 402)

Section 7 of the Endangered Species Act requires that, when Federal assistance is used for a project, a determination must be made whether continued existence of *Federally-listed* endangered or threatened species is likely to be affected, and whether it will result in their Critical Habitats being destroyed or adversely modified. The regulation implementing compliance with the Act is 50 CFR 402, issued by the Departments of Interior (U.S. Fish and Wildlife Service) and Commerce (U.S. National Marine Fisheries). The regulation also covers species or critical habitat that is *proposed for Federal-listing* and is likely to be jeopardized by the project.

The U.S. Fish and Wildlife Service (FWS) exercises jurisdiction over management of Federally-listed species and their habitat, or species proposed for listing and proposed critical habitat. The National Marine Fisheries Service (NMFS) is responsible for the management, conservation, and protection of living marine resources. State fish and wildlife agencies or divisions may work in cooperation with FWS and NMFS to implement measures to protect these species. Grant recipients must avoid all actions which could jeopardize the continued existence of any endangered or threatened species as designated by U.S. Fish and Wildlife Service or National Marine Fisheries Service or would result in the destruction or have an adverse modification of the designated critical habitat of such species

For NMFS, use their website to determine the location of listed/proposed species and, for FWS, use their website to obtain a species list. (Appendix N).

In addition, within the Commonwealth of Virginia, there are two state agencies that have legal authority for endangered and threatened species and are responsible for their conservation in Virginia. They are the Department of Game and Inland Fisheries and the Department of Agriculture and Consumer Services. These are the primary sources within the state for securing information about Federally-listed species or species being proposed for listing and inclusion in the Federal endangered species program.. However, the Virginia Department of Game and Inland Fisheries is the principal contact for REs concerning their projects and whether Federally-listed and/or proposed species are in the vicinity of the project and could be affected. You may want to consult their web page first, http://www.dgif.virginia.gov/wildlife/virginiatescspecies.pdf

Consideration of project impacts on species and/or their habitat should be given if, for example, development of vacant land or construction of infrastructure is planned (i.e., roads, sewer and water systems, and/or utilities), then federally listed species and their habitat may be affected. The grantee must, then, establish whether species and/or habitat are present. This means gathering information from

current studies or surveys already completed that include the project site, consulting with FWS, NMFS, and state fish and wildlife agencies, or hiring a consulting to prepare a biological assessment.

However, a project is not likely to "effect" an endangered species or critical habitat if it consists solely of the following activities: purchasing existing buildings; completing interior renovations to existing structures; reconstruction or repair to existing curbs, sidewalks or other concrete structures; repairs to existing parking lots; replacement or repairs to existing roofs; replacing exterior paint or siding on existing buildings; repairing landscaping; or purchasing or installing appliances. Consultation with the Services is not required, but documentation must be provided to that effect.

Similarly, if the project involves rehabilitation or new construction on a previously developed parcel (i.e. urban infill), a "no effect" determination is likely. Again, documentation must be provided to that effect. The grantee must establish the project site has already undergone change or disturbance. For example, it could be shown that the project site is in the middle of a residential neighborhood or is a parcel within an existing subdivision, or that the proposal is to replace a residential unit. Alternatively, the grantee may secure a letter from the FWS stating which types of activities funded by HOME funds are not actions that will affect listed/proposed species or their habitat. This could include the acquisition of residential units, housing rehabilitation, and replacement of dilapidated housing.

Addressing Compliance with Endangered Species
The RE consulted the lists of Federally listed and proposed species maintained by the Virginia Department of Wildlife and Fish, and/or USFW and NMFS, or

The RE has contacted these agencies directly as to whether the project will may affect listed species or likely jeopardize proposed species.

The ERR should contain one of these types of documentation:

- Evidence the habitat will not be altered or species be affected (e.g. Field observation the site is currently developed; letter from the Virginia Department of Wildlife and Fish or USFWS (and/or NMF for species within their jurisdiction, local planning department, contracted study, etc.)
- If the proposed action *may affect* species or their habitat, the RE provides evidence the USFWS (and/or NMF for species within their jurisdiction) has reviewed the biological assessment and agrees with the findings of no effect.
- Where the USFWS (and/or NMF for species within their jurisdiction) has issued a biological opinion to the RE concerning adverse impacts; and the RE has incorporated the appropriate mitigation measures into project plans.

COASTAL ZONE MANAGEMENT

When HOME funds will be used for physical changes to properties or land within or adjacent to the coastal zone, the RE must make a determination whether the project is *consistent* with the state's approved coastal management program.

Even though a community may not have a coastal zone the RE must still provide documentation as to why this law is "not applicable".

The RE should contact the local planning department or Virginia Department of Environmental Quality, or DEQ Coastal Regional Office to determine if the project is located within the Coastal Zone Management Area (CZMA).

If the project is within the CZMA, the RE must obtain a "Federal consistency determination" from the coastal zone commission or board.

If it is not, the RE needs a letter from that agency as verification. Alternatively, the RE may request a map from the Virginia Department of Environmental Quality, or DEQ Coastal Regional Office. showing the boundary of the CZMA to indicate the project is outside of it.

Addressing Compliance with Coastal Zone Management
The RE has a map indicating the project is not within the State Coastal Zone Management Area, or;

The RE has contacted the local planning department, or Virginia Department of Environmental Quality, or DEQ Coastal Regional Office to determine whether the project is within the boundaries of a State Coastal Zone Management Area

The ERR should contain <u>one</u> of these types of documentation:

- A general location map or statement establishing there are no coastal zone management areas in the city or county, or use other documentation that may be available.
- A map or a statement from the local planning department or state coastal commission, or district as evidence the project is not in the CZMA.
- A "Federal consistency determination" from the Virginia Department of Environmental Quality, or DEQ Coastal Regional Office.

SOLE SOURCE AQUIFERS

Aquifers are underground geological formations that yield a significant amount of water to a well or spring used for drinking water. The regulations at 40 CFR Part 149 requires the RE to determine whether:

- A project is within a Critical Aquifer Protection Area designated by U.S. Environmental Protection Agency (EPA) in Region 3; and
- Project activities have the potential to contaminate the aquifer.

For example, drilling water wells, housing developments, construction of water treatment facilities, and construction projects that involve disposal of storm water have the potential for contaminating aquifers.

Currently, there are two designated Sole Source Aquifers (SSA) within the State of Virginia. These include Prospect Hill in Clarke County, and Columbia and Yorktown-Eastover in Accomack and Northampton Counties. The RE should first refer to the Sole Source Aquifer Designation Map for Region 3 that is posted on EPA's web site for its Sole Source Aquifer Program (Appendix N). A copy of this map should be included in the project ERR. If any projects are located within the boundaries of these aquifers, the RE should contact EPA to determine whether the proposed project could affect the water quality of the aquifer.

Project activities should avoid sites and activities that have potential to contaminate sole source aquifer areas (SSAs). The U.S. Environmental Protection Agency (USEPA) defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. Project activities that may potentially contaminate sole source aquifer areas are subject to review by the USEPA. The reviews are designed to reduce the risk of ground water contamination which could pose a health hazard to those who use it.

If the project is within the aquifer boundary, contact the EPA Regional Coordinator to determine what affects need to be taken into consideration, and the mitigation measures that may be necessary to protect the aquifer. Contact information for the EPA Region 3 Coordinator may be found on EPA's webpage (refer to Appendix N).

Addressing Compliance with Sole Source Aquifers
The RE reviews the U.S. EPA Region 3 Sole Source Aquifer (SSA) map to determine whether the project is within the boundaries of a designated SSA

The ERR should contain one of these types of documentation:

- Documentation the proposed action is not within the boundaries of a U.S. EPA Region 3 designated SSA;
- Documentation the action is not a regulated activity within the boundaries of a SSA; or
- Documentation the U.S. EPA has reviewed and commented on the proposed action within a SSA.

WILD AND SCENIC RIVERS ACT

The National Wild and Scenic Rivers (WSR) System was created to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition. The purpose is to safeguard the special character of these rivers, recognize the potential for their appropriate use and development, and promotes public participation in developing goals for river protection. Rivers classified in the system are subject to various protections and are likely to have land-use requirements and development limitations. Maps for the National Wild and Scenic Rivers System are available at on the U.S.D.I. National Park Service web page (refer to Appendix N).

Entire river systems or portions of rivers may be designated wild, scenic, or recreational and included in the National Wild and Scenic Rivers System (NWSRS) either by Act of Congress, or may be designated by a state or states if the U.S. Secretary of Interior finds they meet the criteria established by the Act.

In order to be in compliance with this Act a determination must be made regarding the following:

- Whether any river listed in the NWSRS, or that is designated for inclusion in the NWSRS, would be directly and adversely affected by development activities associated with the project; and
- If the project is located above or below a listed river, whether the project will impact the river management area or could unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

The U.S. National Park Service maintains a list of all rivers and segments of rivers on the Nationwide Rivers Inventory. Currently, there are no rivers or river segments within the State of Virginia that appear on the Nationwide Rivers Inventory. However, the RE should incorporate a copy of the posted list in the project ERR, showing there are none (Appendix N). Other acceptable sources for documenting this fact may include local government experts, land use plans, etc.

In the future, should rivers within the State become listed within the community where the project is located, the RE must make copy of the information about that river, including the Federal or state agency responsible for managing it, as well as the "Designated Reach" and "Classification/Mileage". If the project is *within one mile* of the designated river or river segment, contact the agency responsible for managing it to determine if the proposed project will impact the river management area or could unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

The RE should avoid activities that are inconsistent with conservation easements, land-use protections and restrictions adjacent to designated/listed wild and scenic rivers.

Addressing Compliance with Wild and Scenic Rivers
The RE has reviewed the National Wild and Scenic Rivers list maintained by the U.S. National Park Service.

The ERR should contain with one of these types of documentation:

- Evidence the proposed action is not within one mile of a designated Wild, Scenic, or Recreational River (Appendix N).
- Documentation that contact was made with the Federal (or state) agency that has administrative responsibility for management of the river and that the proposed action will not affect river designation or is not inconsistent with the management and land use plan for the designated river area.

CLEAN AIR ACT

The Clean Air Act is a Federal law; however, the states do much of the work to carry out most of the Act. Each state develops a state implementation plan (SIP) that contain its objectives and regulations for carrying out the Clean Air Act.

The purpose of an implementation plan is to ensure that ambient concentrations of any of six air pollutants are within the established levels of the National Ambient Air Quality Standards (NAAQS). The six pollutants are ozone, carbon monoxide, particulate matter, sulfur dioxide, lead, and nitrogen dioxide. Sources for pollutants include transportation vehicles, industrial facilities, and farming operations.
The RE should contact the local planning department or air quality board to determine if the project is within an area in "attainment" with NAAQS, or whether the area is in "nonattainment" with one or more of the air quality standards.

If the area is in "nonattainment," the RE must find out whether the proposed project is in conformance with the SIP. If not, mitigation measures must be identified that will bring the project into conformance with the plan.

Currently, the following communities are in “nonattainment” with one of more of the regulated air pollutants:

Alexandria
Arlington County
Fairfax
Fairfax County
Falls Church
Loudoun County
Manassas
Manassas Park
Prince William County

Asbestos is also covered under the Clean Air Act. Section 112 of the Clean Air Act (CAA) requires EPA to develop emission standards for hazardous air pollutants. Asbestos presents a significant risk to human health from air emissions from one or more source categories, and is therefore considered a hazardous air pollutant [as promulgated in the "National Emission Standards for Hazardous Air Pollutants" (NESHAP) regulations]. The Asbestos NESHAP (40 CFR 61, Subpart M) addresses milling, manufacturing and fabricating operations, demolition and renovation activities, waste disposal issues, active and inactive waste disposal sites and asbestos conversion processes.

U.S. EPA’s regulations for asbestos apply if ALL the following conditions are met:

- The project includes rehabilitation of multifamily residential buildings, or demolition of multifamily and single family residential units;
- Buildings were constructed before 1979; and
- The project is located in an area in “nonattainment” with the NAAQS for total suspended particulates (i.e., PM2.5 and PM10 particulates).

Contact the state or local air quality management district or commission having jurisdiction where the project is located. Consult with them regarding conformance with the SIP and notification requirements associated with disturbance of the asbestos containing materials or their total removal.

Addressing Compliance with the Clean Air Act
The RE has reviewed the Virginia Department of Environmental Quality, or U.S. EPA web page concerning areas in “nonattainment”, or

The RE has consulted with local oversight agencies regarding whether the project is within a “nonattainment” area.

The ERR should contain one of these types of documentation:

- Determination from a resource expert that the proposed action is not of a type that would contribute air pollution.
- Evidence that the proposed action is within an area in *attainment* with the NAAQS for all six pollutants.
- Evidence that the proposed action is within a *non-attainment* area for one or more of the pollutants but is in conformance with the State Implementation Plan (SIP).
- Evidence that the proposed action is within a *non-attainment* area for one or more of the pollutants and mitigation measures have been identified to bring it into conformance with the State Implementation Plan (SIP).

Addressing Compliance with the Clean Air Act for Asbestos
The RE provides evidence the project does not contain regulated asbestos containing materials (RACM); or

The RE provides evidence the proposed action will not cause the RACMs to become friable-; or.

The RE determines the project contains RACMs that are friable, and:
- The RE consults with the Virginia Department of Environmental Quality or local air quality management district or commission having jurisdiction where the project is located regarding conformance with the SIP and air quality regulations, and
- The RE documents that construction contractors have disposed of the asbestos containing materials, in accordance with the U.S. EPA or state regulatory requirements.

FARMLAND PROTECTION POLICY ACT (7 CFR PART 658)

Farmlands are limited. Their importance to the national and local economy requires considering the impact of activities on land adjacent to prime or unique farmlands, and to their potential conversion. The purpose of the Farmland Protection Policy Act (USC 4201 et seq, implementing regulations 7 CFR part 658, of the Agriculture and Food Act of 1981, as amended) is to minimize the effect of Federal programs on the unnecessary and irreversible conversion of farmland to nonagricultural uses. The Act does not apply to lands already in, or committed to, urban development (i.e., 30 structures per 40 acres or water impoundment, or already designated for an alternative use through zoning classification). However, land that meets the definition of prime or unique farmlands or is determined to be of statewide or local significance (with concurrence by the U.S. Secretary of Agriculture) is subject to the Act. In some states agricultural lands are protected from development by agricultural districting, zoning provisions, or special tax districts.

If the RE cannot determine whether or not the land is classified as prime or unique, it should request the USDA Natural Resources Conservation Service (NRCS) to make the determination by submitting Form AD-1006, the Farmland Conversion Impact Rating form. These forms are available at NRCS offices or the Internet.

Addressing Compliance with Farmland Protection
The RE contacts the local zoning department, or reviews land use plans, appraisal reports or U.S. Natural Resource Conservation Service maps to determine whether the project is classified a prime or unique farmland.

The ERR should contain one of these types of documentation:

- Evidence from the current local zoning classification or community development, master, or general land-use plan that the site is not farmland, or that the proposed project is consistent with current uses (i.e., residential use, commercial use, etc.).
- Evidence that the activity is occurring in an existing urbanized, built up area, or involves urban infill, or is consistent with current land uses or scheduled zoning.
- Information from NRCS that shows the site is not prime or unique farmland.
- Evidence from NRCS that shows the site is classified prime or unique agricultural land and that the grantee completed and submitted form AD-1006 to NRCS and received its comments.

ENVIRONMENTAL JUSTICE (EXECUTIVE ORDER 12898)

The Executive Order on Environmental Justice directs each Federal agency to make achieving environmental justice part of its mission by "identifying and addressing as appropriate disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Presently, there are not any regulations for implementing the Executive Order. However, HUD has issued a “Strategy Plan for Implementing Environmental Justice”, which it uses as guiding principles in deciding whether the project could result in disproportionate high and adverse effects on these populations.

During the environmental review process, health and environmental issues may arise concerning the suitability of the project site for its intended use, particularly its suitability for human habitation. The grantee should document how the Executive Order was given consideration. In addition, if the RE suspects there are high and adverse effects on low income and minority persons (i.e., racial or ethnic minorities), the grantee may use the EPA Environmental Justice Strategic Enforcement Assessment Tool (http://www.epa.gov/compliance/resources/policies/ej/ej-seat.html), to document its resultant findings. To respond to the “social demographic indicators”, the RE may find that local census tract information or poverty indices are useful. If there is a high and adverse effect, the grantee needs to document they’ve informed the local residents being assisted with HOME funds.

Addressing Compliance with Environmental Justice
The RE reviews land use plans, census information and the U.S. EPA Environmental Justice webpage (EJ View) (Appendix N)

The ERR should contain ALL these types of documentation:

- Evidence that the project is in an Environmental Justice community of concern (demographics, income, etc.).
- Evidence that the proposed action is compatible with surrounding land uses.
- Evidence that the site or surrounding neighborhood does not suffer from adverse environmental conditions.
- Evidence that the proposed action will not create an adverse and disproportionate environmental impact or aggravate an existing impact (Describe how the proposed action will not have a disproportionate adverse impact on minority populations and low income populations.
- If there are high and adverse effects on low income and minority residents, the RE shall document that the affected community residents have been meaningfully informed and involved in a participatory planning process to address (remove, mitigate, or minimize)the adverse effect from the project and the resulting changes.

SITE CONTAMINATION [SECTION 58.5(I)(2)]

Section 58.5(i)(2) states that all properties receiving HUD assistance must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances that *"could affect the health and safety of the occupants of conflict with the intended utilization of the property."* Compliance with this policy requires efforts to identify any hazardous substances and radioactive materials that may be on-site and/or off-site that could harm inhabitants. For multifamily housing (5 or more units in a building) an evaluation of previous uses of the property/properties must also be made. Properties having clear health risks for the occupants or inhabitants should be rejected.

It should be noted that § 58.5(i)(2) does not require preparation of a Phase I Environmental Site Assessment (according to the American Society for Testing and Materials protocol). However, while no Phase I ESA is required, the RE must be able to establish, through written records, databases, or other documentation, whether the project site is near an industry disposing of chemicals or hazardous wastes; listed on an EPA Superfund National Priorities or CERCLA; an equivalent State list; and/or located within 3,000 feet of a toxic or solid waste landfill site. If so, the RE must justify that the project site is not exposed to any deleterious effects associated with hazardous substances or petroleum products.

Some databases are available on the Internet, such as the U.S. EPA Environfacts Data Warehouse website (see the website's *Queries, Maps, and Reports*, Appendix N). The Virginia Department of Environmental Quality also has some databases available online. These databases will have information about National Priority List and Superfund sites, state regulated contaminated sites, solid waste landfills, underground storage tanks (UST), and any facilities that are regulated because they store, use, transport, and dispose of substances that are classified as hazardous. In addition, REs may also use any existing studies or reports related to the project site. However, these studies and reports must have current information and be relevant to the proposed project. The RE's documentation should reflect this fact.

NOTE: If a Phase I ESA is already available or circumstances have indicated a Phase I ESA needed to be prepared, the report must reflect current information. If a Phase I ESA was previously completed but is over one year old, the RE should decide whether it should be redone. At minimum, if the Phase I ESA is over 180 days old, the information should be updated to ensure currency.

Further guidance is available at HUD's Assessment Tools for Environmental Compliance: Hazardous, Toxic, or Radioactive web page, http://www.hud.gov/offices/cpd/environment/review/hazardous.cfm.

NOTE: Lead-based paint is addressed by the HOME program rules (24 CFR 92) and is not a part of the environmental review process.

Addressing Compliance with Site Contamination
The RE reviews databases maintained by U.S. EPA and the Virginia Department of Environmental Quality to screen for potential *on-site* and *off-site* facilities that could pose health and safety problems, or

The RE possesses a current Phase I Environmental Site Assessment, or other existing studies and reports; or

The RE contracts a Phase I Environmental Site Assessment to be completed.

The ERR should contain one of these types of documentation:

- Evidence the site is not contaminated (For multifamily housing projects this includes on site and off site contamination and previous uses of the site);
- Evidence supporting a determination the hazard will not affect health and safety of the occupants or conflict with the intended use of the site;
- Documentation the site has been cleaned up according to EPA or state standards for residential properties, which requires a letter of 'no further action required' from the appropriate State agency

EXPLOSIVE/FLAMMABLE OPERATIONS (24 CFR 51, SUBPART C)

The purpose of this HUD regulation is to ensure there is an acceptable separation distance (ASD) between people and buildings and *stationary aboveground storage tanks that are more than 100 gallons in size and that contain materials that are explosive or flammable in nature* (e.g., gasoline, fuel oil, kerosene, crude oil, propane). This is to prevent injury to people and damage to property from industrial accidents. The grantee must determine if there are hazardous liquids and gases being stored in stationary containers within one mile of the project and within line-of-sight of the project.

The regulation applies to the new construction, and rehabilitation or modernization of a building or buildings only when such work will increase residential densities (i.e., number of dwelling units or rooming units), or by converting the use of a building to habitation, or makes a vacant building habitable (§ 51.201, "HUD-Assisted Project", Appendix T). The regulation also applies to Self-Contained above ground storage containers (SCACs), which are treated as containers without a diked area.

The regulation does not apply to following:

- Underground Storage containers;
- Stationary containers of 100 gallons or less containing common liquid industrial fuels;
- Natural gas holders with floating tops;
- Mobile conveyances (tank trucks, barges, railroad tank cars when off-loading fuels);
- Pipelines (high pressure natural gas transmission pipelines or liquid petroleum pipelines).

The RE may determine whether tanks are present by contacting the local fire department or public safety officer about aboveground tanks in the community and their location to the project. Aerial photos may also be useful to show distances from tanks to the project site. If there are tanks within one mile, the grantee must find out the capacity of the tank, whether the materials are of an explosive or flammable nature (or both), the distance from the tank to the project, and whether the tanks are pressurized. If the tank is not pressurized, the grantee must also find out if there is an earthen or concrete cistern (i.e., diked area) surrounding the tank that would contain any spilled materials. In this case, the RE would need to find out the capacity of the cistern (i.e., diked area). REs may need to contact the operator of the tank for some of the information.

When determining the separation distance, it is the distance from the property boundary to the tank that should be used, instead of from the building or building set back to the tank. This is because outdoor spaces associated with the project, such as driveways, walkways, recreational areas, and parking lots, also leave people exposed to this danger. So, they need to be factored into the separation distance.

Refer to the HUD guidebook, “Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature”, that is posted on HUD’s Environment webpage for guidance on information necessary for calculating acceptable separation distances, as well as appropriate mitigation measures if people and/or buildings are determined to be too close to the hazard (Appendix N).

The RE may use HUD’s Acceptable Separation Distance Electronic Assessment Tool to calculate an acceptable separation distance (ASD) for people and buildings. This tool is also available online at HUD’s Environment website (Appendix N).

Field observation by the RE may note whether the line-of-sight from the project is broken by a barrier of sufficient height and length so as to shield the project from any accidental explosion or thermal radiation from fire. Examples of effective barriers include such things as concrete walls, a hill or mountain, and a solid row of buildings.

NOTE: If a project proposes construction, rehabilitation, or conversion of buildings which are exposed to blast overpressure or thermal radiation from above-ground storage tanks, the RE’s certifying officer must decide whether or not to approve the project and, if approved, that mitigation measures will ensure that people and buildings are protected. (HUD regulation on placement of HUD- assisted projects in the vicinity of explosive or flammable operations, 24 CFR 51.206).

Addressing Compliance with Explosive/Flammable Operations (24 CFR 51, Subpart C)
The RE completes a field review or uses aerial photos to screen for aboveground storage tanks in the vicinity or the project.

The ERR should contain one of these types of documentation:

- Documentation that the proposed action does not meet the definition of a "HUD assisted project" (§ 51.201).
- Documentation from local authorities and/or aerial photos that show no aboveground tanks are within one mile.
- Documentation of field observations there are no aboveground tanks within *one mile* and line-of-sight of the project;
- If tanks are within one mile, documentation should include as appropriate, the calculation distance results and fuel types, and one of the following:
  - That there is an effective barrier (include a description of the barrier), or
  - The RE's calculations support an acceptable separation distance, using HUD calculation methodology, for people and buildings, or
  - The RE provides a detailed description of the mitigation design to protect people and buildings.

NOISE ABATEMENT AND CONTROL (24 CFR 51, SUBPART B)

The purpose of this HUD regulation (Appendix T) is to encourage suitable separation between noise sensitive land uses (particularly housing) and major noise sources (i.e., roadways, railroads, and military and civilian airports). The RE must determine whether there are any major roadways with 1,000 feet, railroads within 3,000 feet, and military or civilian airports (regulated by the Federal Aviation Administration because of commercial and passenger operations) that are within 15 miles of the project.

HUD's noise standards are based on the Day-Night Average (DNL) Sound Level System---a system of calculating noise exposure instead of measuring it with instruments. This system is a 24 hour average sound level (expressed in decibels), with an additional 10 decibels added for nighttime noise. The calculation is based upon projected conditions that are expected at least 10 years beyond the project approval date.

Noise is considered *Acceptable* when the exterior noise level is *65 DNL or less*. Otherwise, attenuation measures must be incorporated into construction plans (*66-75 DNL, Normally Unacceptable*). If the exterior noise level is *above 75 DNL* (Unacceptable), the project requires special approval from the certifying officer, or it should be disapproved [24 CFR 51.104(a)(2)].

The RE must determine whether the exterior noise level at the project site is within HUD's standard for acceptability, or whether noise attenuation is required or another site should be selected for the project. Making this determination may require completing a noise calculation for roadways, railroads, and/or airports according to guidelines provided in The Noise Guidebook [HUD-953-CPD(1)]. This guidebook is issued by and available from HUD online (refer to Appendix N).

NOTE: If the project is exposed to Unacceptable noise, the REs certifying officer must decide whether to approve residential construction projects that are exposed to high levels or noise from major roadways, railroads, and/or military or civilian airports, and if mitigation measures can achieve 65 DNL on the

building exterior, and/or 45 DNL on the interior [HUD regulation on Noise Abatement and Control, 24 CFR 51.104(a)(2) and (b)(2)].

Addressing Compliance with Noise Abatement and Control
The RE reviews general location maps and/or conducts a field review to screen for major roadways (within 1,000 feet), railroads (within 3,000 feet), and military or FAA-regulated airfields (with 15 miles) in the vicinity of the project.

The ERR should contain <u>one</u> of these types of documentation:

- Documentation the proposed action is not:
  - A *noise sensitive land use*, according to [§ 51. 101(a)(2)] (i.e., housing); or
  - Within 1000 feet of a major roadway, 3,000 feet of a railroad, or 15 miles of a military or FAA-regulated civil airfield.
- If within those distances, documentation shows there's an effective noise barrier (i.e., sufficient height and length to shield the project from noise);
- If within those distances, documentation shows the noise level is *Acceptable* (at or below 65 DNL);
- Documentation shows the noise generated by the noise source(s) is *Normally Unacceptable (66 – 75 DNL)*, and noise attenuation requirements are identified and will bring the interior noise level to 45 DNL and/or exterior noise level to 65 DNL.

AIRPORT CLEAR ZONES (24 CFR 51, SUBPART D)

Clear Zones, Runway Clear Zones, and Accident Potential Zones are designated areas at the end of airport runways where the greatest number of airplane accidents occur (about 75%). This HUD regulation *prohibits* using HUD assistance for:

- New construction; and
- Major or substantial rehabilitation and modernization activities if projects are located within a Clear Zone or Runway Clear Zone.

It also *prohibits* using HUD assistance for these activities in an Accident Potential Zone, if such activities would:

- Change the current use of the facility;
- Significantly increase the density or number of people at the site; or
- Introduce explosive, flammable, or toxic materials to the area.

However, this prohibition does not apply to the purchase, sale or rental of existing buildings, nor to minor rehabilitation/modernization or emergency assistance activities.

NOTE: Minor rehabilitation/modernization would mean, for Clear Zones and Runway Clear Zones, it does not significantly prolong the physical or economic life of a building. For Accident Potential Zones, it does not change its use, increase density, or introduce explosive, flammable, or toxic materials. (See § 51.302, Appendix T.)

Any HUD assistance in a Runway Protection Zone or Accident Potential Zone must include notification of the buyer of the safety implications of the location and the potential for the airport to acquire the property in the future [See a discussion of the notification in the section entitled *Other Requirements (§ 58.6)*]

The RE must determine whether the project is within 2,500 feet of an FAA-regulated civil airport or 15,000 (about 2.8 miles) of a military airfield. This can be established with a community map and using the map scale to verify distances.

If the project is within these distances, the RE must secure either a letter from the airport operator or manager, or get a copy of the airport map that shows the project location is outside the Runway Protection Zone, Clear Zone, and Accident Potential (or Protection) Zone. The RE may also contact the local planning department for this information.

Addressing Compliance with Airport Clear Zones
The RE reviews general local maps or conducts a field review to screen for military airfields (within 2.8 miles) and FAA-regulated civil airfields (within 2,500 feet).

The ERR should contain <u>one</u> of these types of documentation:

- Documentation that the rule is not applicable to the proposed project (i.e., acquisition of an existing building, “minor” rehabilitation, or emergency action).
- Documentation that there are no FAA-regulated airports within 2,500 feet and/or Dept. of Defense airfields within 15,000 feet (about 2.8 miles) of the proposed project.
- Documentation that the project is within the specified distances, but that the map of the airport/airfield or a letter from the airport/airfield operators shows the proposed action is not located within a Runway Protection Zone, Clear Zone, or Accident Potential Zone.

COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

In the previous section, environmental compliance concerned issues of national import. These issues are beyond only regional or local concerns. However, in this section, locally important issues are also incorporated into the environmental review by identifying, analyzing and evaluating the effects a proposed project may have, either positively or negatively, on such things as the character of the area (e.g., land use patterns and compatibility, employment, demographics, etc.), features (e.g., availability and capacity of services, transportation, etc.) and resources (e.g., wildlife, vegetation, parks, water, etc.). All these considerations and the related environmental findings are contained in either an environmental assessment (EA) or an environmental impact statement (EIS). It is highly unlikely that a HOME project will require preparation of an EIS. Please consult with the DHCD staff if you believe a project may have or will have significant impact on the human environment. EIS reviews will not be discussed further in this guide.

The National Environmental Policy Act (NEPA) addresses potential impacts related to the human environment (i.e., social, economic and natural resources). EAs are concise public documents that include discussion of need for a proposed action and analysis of existing conditions and trends; alternatives to the project; and indirect and direct effects and cumulative impacts of the proposed action. So, not only must the environmental assessment (EA) address compliance with the Federal laws and

authorities (§ 58.5) that were discussed in the previous section, but the RE must also address additional environmental factors. These additional factors are briefly described in this section. A complete list of the environmental factors that must be addressed is contained in the recommended EA format in Appendix F of this guide. Determinations of impact should be based on site observations, information from relevant documents and reports, special studies, or correspondence with the appropriate government agencies (See Exhibit 2, "Source Documentation for Environmental Reviews")

DESCRIPTION OF THE PROPOSAL [40 CFR 1508.25]

The project description should include all contemplated actions which logically are either geographically or functionally related or a composite part of the project, regardless of whether HOME funds are used in whole or in part to finance the project. For example, demolition, construction and disposition (resale) of 20 single family units to first time homebuyers.

STATEMENT OF PURPOSE AND NEED

This should be a brief description of the necessity for the project and the purpose it will fulfill.

EXISTING CONDITIONS AND TRENDS

Provide a description of the existing conditions of the project area and its surroundings. Include in this description any trends likely to continue in the absence of the project.

ENVIRONMENTAL ASSESSMENT CHECKLIST

The Environmental Assessment Checklist (EA Checklist) is where anticipated impacts on the human environment are addressed. The EA Checklist contains, at minimum, those environmental factors that must be taken into account. Refer to Appendix M, "Environmental Assessment Techniques", for a detailed discussion of the applicable environmental factors. Any additional local compliance issues may be added to the EA Checklist as required (under the category of "Other Factors"). Following are a few of the environmental factors that appear on the EA Checklist.

- **Conformance with local comprehensive plans and zoning.** To supplement the conformance determination, contact the local planning and/or zoning department to verify in writing the project **is in conformance with the local jurisdiction requirem**ents.

- **Unique and natural features.** Contact the local planning department or state agency that deals with natural resources to determine whether unique geological features or mineral resources are near the project and whether they will affect the project or be affected by the project and to determine if any designated Natural Areas or Rare Species Habitats will be affected by the project or, if applicable, mineral extraction operations will be affected or pose a safety hazard to occupants of the proposed project.

- **Site suitability, access and compatibility with the surrounding environment.** To supplement the determination about physical suitability of the site for the proposed use, available site access, and compatibility of the proposed project with the surrounding environment, contact the local planning agency or board.

- **Soil stability, erosion and drainage.** To supplement the determination of soil stability, erosion and drainage, refer to the Natural Resource Conservation Service (NRCS) County Soil Survey to determine if engineering restraints are indicated. The Soil Survey may be obtained by contacting the local NRCS office. Provide comments from the site engineer or local development department if engineering restraints are indicated based on the Soil Survey. Where applicable, a review of a geologic map produced by the state geological surveys may be required. The grantee should also note when the project is located in an earthquake seismic zone that requires compliance with local seismic building codes, and document that the proposed construction meets those standards.

- **Water supply/sanitary sewers.** To assess water supply/sanitary sewers, contact the local public works department.

- **Solid waste disposal.** To assess solid waste disposal, contact the local public works department.

- **School services.** To assess school services, contact the local school board.

- **Parks, recreation, and social services.** To assess parks, recreation, and social services contact the local planning department, parks and recreation department, and social services department.

- **Emergency health care, fire and police services.** To assess emergency health care, fire, and police services contact the local fire department, police department, and emergency management organization.

- **Transportation.** To assess transportation contact the state or city transportation department.

- **Energy consumption.** Energy consumption should be viewed in a two-fold manner; energy consumed directly by the project for heating, cooling, and for hot water systems, and indirectly by the transportation of people and goods to and from the project. Energy efficiency can be incorporated in nearly all phases of project planning: site selection, site planning building design and density. The location of new facilities in central areas with close proximity to mass transportation, shops, schools, and services can reduce energy consumed for transportation. Energy saving measures can be incorporated in building design.

The RE may use the appropriate local or regional agencies to assess the impacts a project may have related to the above issues. For example, availability and capacity of local services are an important part in determining project impacts and site suitability, including sewer and water services, schools, emergency services, public safety (e.g., fire and police protection), and solid waste services, to name a few. Appendix M, Environmental Assessment Techniques, contains a detailed discussion of these issues to be addressed in the Environmental Checklist and sources of information available.

Once determinations have been made for each environmental factor, the appropriate **impact code (Code)** must be entered from the list provided at the top of the first page of the EA Checklist. These codes fulfill the requirement of the CEQ regulations to address the "effects" (both direct and indirect) of the proposed action (40 CFR 1508.8):[3]

3 Descriptions of the impact codes are adapted from "Environmental Review Guide for Community Development Block Grant Programs, U.S. Department of Housing and Urban Development, HUD-CPD-782, January 1985, page 25.

No impact anticipated (Code "1") - Entering this impact code indicates no more analysis or mitigation effort is needed. Clear and specific documentation is essential, referencing the factual conditions or specific circumstances that support the finding. Mere conclusions are not sufficient.

Potentially beneficial (Code "2") - Beneficial impacts should be indicated with code "2". Notations supporting that finding can be attached. A more detailed analysis is not necessary.

Potentially adverse (Code "3") - In some cases, potentially adverse impacts may only require documentation because that is all that is needed to evaluate such impacts. They may be so small as to require no more study; they may be construction effects only for which standard mitigation procedures have been established; or they may have been analyzed for previous environmental reviews in a fully comparable situation. Documentation here is particularly important and will require attached notes outlining sources explaining factual basis of the impact finding and describing any mitigation efforts.

In other situations, potentially adverse impacts will be subject to further review (site visits, detailed review data, consultations with experts, etc.). The points to remember are that: a) only those environmental categories on the EA Checklist with impact code "3" are subject to a detailed review, and b) this is not a decision about preparing an environmental impact statement (EIS) but only a decision to investigate further.

Requires mitigation (Code "4") - This code should be used in combination with impact code "3" indicating some type of potential adverse impact. In some cases, specific measures to reduce adverse effects on a community cannot be discussed in full detail right away. Instead, such measures are subject to review and development, along with identification as to who will be responsible for implementing such measures. All are a part of a more detailed analysis that follows identification of there being an adverse impact. In other cases, appropriate mitigation measures to alleviate the adverse impact may already be known, and recorded. Mitigation measures or safeguards should be listed within the relevant impact categories, and repeated again on the Environmental Assessment form under both "Mitigation Measures Recommended" (last page) and "Conditions for Approval" (second page); and

Requires project modification (Code "5") - Completing the Environmental Assessment early in the project planning and development process affords a special opportunity to identify needed changes in the project itself before either project plans or site selection are finalized. Often such changes can eliminate the need for further analysis by eliminating the source of the problem. It is also possible that changes (such as moving a project to a different site outside a high noise zone, or combining it with a new project to provide needed sewer or water lines) could be identified at this time.

The RE must note names, dates of contact, telephone numbers and page references as well as any mitigation measures required. Attach additional source documentation to the EA as appropriate.

SUMMARY OF FINDINGS AND CONCLUSIONS

The CEQ regulations state that there shall be a brief discussion of the environmental impacts of the proposed action [40 CFR §1508.9(b)]. The RE should base its findings and conclusions about such impacts on the results of having completed both the Statutory Checklist and the Environmental Assessment Checklist. These Checklists analyze both beneficial and adverse impacts of the project. The RE provides a synopsis of the findings of these Checklists with regard to major conclusions, areas of controversy (including issues raised by agencies and the public). Not every item in the Checklists will be included in this summary.

ALTERNATIVES CONSIDERED

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

The "no action" alternative means the proposed activity would not take place. Briefly describe the benefits and adverse impacts to the human environment of not implementing the preferred alternative. This alternative serves as a baseline for comparing the environmental effects of "no action" with the environmental effects that would occur from permitting the preferred alternative or another alternative to go forward. For instance, if residential units were not built with HOME funds, then the property might be used for retail development (with non-HUD funds), or deterioration of units and urban blight would increase.

The RE must also briefly describe the benefits and adverse impacts to the human environment of other alternatives considered and the reasons for rejecting them. Other reasonable courses of action would include other sites considered by the grantee but they were not affordable, or there were environmental problems with those sites that were unacceptable. Another example would be a project that was first planned to include more units on the project site, but not all of the property was found suitable for housing (e.g., steep slope, erosion problems or problems with a high water table).

MITIGATION MEASURES

Whenever adverse environmental impacts are identified during preparation of the Environmental Assessment, it is necessary to arrive at feasible solutions for eliminating or minimizing the impacts. This could mean:

- Avoiding the impact altogether by not taking a certain action or parts of an action—e.g., preserving a wetland area;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation—e.g., raising the first floor of a building above the special flood hazard area;
- Rectifying the impact by repairing, rehabilitating or restoring the affected environment—e.g., "clean-up" of site contamination;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action—e.g., using a deed restriction to protect a historic building; and
- Compensating for the impact by replacing or providing substitute resources or environment—e.g., relocating endangered plant species, providing funds to an approved land bank for purchase of replacement habitat for endangered species.

STUDIES AND CONTACTS

All sources of information used in preparation of the EA should be identified. Copies of written information should be included in the ERR (e.g., databases, plans, reports, correspondence, telephone records, etc.). This includes listing any special studies completed for the project. If information from other environmental review documents is used for compliance documentation, such information must pertain to the project site and must also be current and relevant to the environmental issues being

addressed. In addition, copies of the entire content of such environmental review documents must be obtained and included in the project ERR. It is not sufficient to only reference these documents in the ERR.

CEQ regulations also require agencies or persons consulted in preparation of the EA be listed in the record [40 CFR §1508.9(b)]. This requirement includes any persons or agencies that were contacted but may not have turned out to be a key contact for compliance documentation. Include their name, title, agency, contact information and date contacted.

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

Addressing Compliance with NEPA
The EA includes the following information and analysis, according to NEPA regulations (40 CFR 1500-1508):

- Determination of existing conditions;
- Identification, analysis, and evaluation of all potential impacts on the human environment (i.e., social, economic and natural resources);
- Examination and recommendation of feasible ways to eliminate or minimize adverse environmental impacts;
- Examination of alternatives to the proposed action;
- Compliance determination for all other Federal laws and authorities cited in § 58.5; and
- Determination as to a finding of no significant impact (FONSI) or a finding of significant impact (FSI), which requires the execution of an Environmental Impact Statement (EIS).

OTHER REQUIREMENTS (§ 58.6)

Compliance with the following requirements must be documented in the project ERR for all levels of environmental review (exempt, categorical exclusions, and environmental assessments).

Documentation of compliance with these "Other Requirements" is a component of the "Determination of Exemption" form (Appendix C) and "Determination of Categorically Excluded Not Subject to § 58.5" form (Appendix D). However, the "Other Requirements, § 58.6" form (Appendix G) is to be used for projects that require preparation of a Statutory Worksheet (projects that are categorical excluded subject to § 58.5), as well as projects requiring preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

FLOOD INSURANCE

Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) requires that projects receiving Federal assistance and located in an area identified by the Federal Emergency Management Agency (FEMA) as being within a special flood hazard area must be covered by flood insurance under the National Flood Insurance Program (NFIP). In order to be able to purchase flood insurance, the

community must be participating in the NFIP. If the community is not participating in the NFIP, Federal assistance cannot be used in those areas.

Flood insurance must be taken for the life of a loan or the useful life of an improvement funded by a grant, regardless of transfer of ownership. For loans, loan insurance, or guarantees, the amount of flood insurance coverage need not exceed the outstanding principal balance of the loan. For grants and other non-loan forms of financial assistance, the amount of flood insurance coverage must be at least equal to the maximum limit of coverage made available by the Act with respect to the particular type of building involved (i.e., single family, other residential, non-residential, or small business), or the development or project cost, whichever is less. The development or project cost is the total cost for acquiring, constructing, repairing or improving the building. This cost covers both the Federally-assisted and the non-Federally assisted portion of the cost, including any machinery, equipment, fixtures, and furnishings. If the Federal assistance includes any portion of the cost of any machinery, equipment, fixtures, or furnishings, the total cost of that item must also be covered by flood insurance.

The RE is responsible for ensuring that property owners receiving HOME assistance purchase flood insurance. A "proof of purchase" (i.e., a copy of the Policy Declaration) must be included in the project file.

COASTAL BARRIER RESOURCES ACT

HOME may not be used for activities proposed in the Coastal Barrier Resource System. The Act prohibits Federal assistance for development or improvement of barrier islands that are subject to frequent damage by hurricanes and high storm surges. Islands, sand bars, sand spits that are part of the system are along the Atlantic Ocean, Gulf of Mexico and the Great Lakes.

The RE must verify their projects are not located in an area that is part of the Coastal Barrier Resources System. REs may refer to U.S. Fish and Wildlife Service's web site for a list of counties and states, as well as the FEMA map panel number (Appendix N). Other sources maintaining these maps are the local planning department or public works department, and the Federal Emergency Management Agency.

DISCLOSURE OF PROPERTIES IN RUNWAY CLEAR ZONES AND CLEAR ZONES

Issuance of this disclosure applies to projects proposing the purchase or sale of properties in a runway clear zone or clear zone. Whenever HUD assistance is used for sale or purchase of an existing property located in a Runway Clear Zone or Clear Zone, the buyer must be notified of this in writing and that the property may be acquired by the airport at a later date. The buyer must acknowledge receipt of this information [§51.303(a)(3)]. (See the sample "Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones" located in Appendix O.

RELEASE OF FUNDS AND APPROVAL PROCESS

There are several steps related to the release of funds and approval process. Projects that must undergo the public notification and release of funds process include project that are categorically excluded and subject to §58.5 that cannot convert to exempt, and projects requiring an environmental assessment or environmental impact statement. In these situations, the process first begins with issuing a public notice and ends with the RE receiving release of funds from DHCD (or HUD if DHCD is the RE).

PUBLIC NOTIFICATION

The public notification process is an integral part of the environmental review process that allows the public, interested persons, and agencies to voice their opinions about the project's potential environmental impact and the RE's environmental findings. Public notices are required when the RE determines that a project which is categorically excluded subject to § 58.5 cannot convert to exempt, or when the RE prepares an environmental assessment (EA) or environmental impact statement (EIS).

CATEGORICAL EXCLUSIONS THAT CANNOT CONVERT TO EXEMPT

If the proposed activity triggers compliance with any of the Federal laws and authorities, and there is documentation supporting this finding, the RE must then issue a *Notice of Intent to Request Release of Funds.* (Refer to Appendix I)

Publish or post/mail a *Notice of Intent to Request Release of Funds* (NOI/RROF), according to §§ 58.45 and 58.70. A minimum of 7 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community, or a minimum of 10 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures.

NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 7 days of the comment period. If posted, the notice must be maintained in place until after the public comment period has expired.

The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/mailing date of the notice (§ 58.21).

The RE must consider and respond to any comments received, and resolve any outstanding issues before signing and submitting a *Request for Release of Funds and Certification* to DHCD (or HUD if DHCD is RE). A copy of the public notice must accompany this request. DHCD (or HUD) has 15 calendar days from the date it receives the RE's request (or 15 days from the date that appears in the notice, whichever is later) before it may approve release of funds (*Authority to Use Grant Funds* is issued. [NOTE: HUD/DHCD will accept fax copies of the public notice(s) issued by the RE, as well as the Request for Release of Funds and Certification signed by the certifying officer. However, HUD/DHCD will not release funds until they receive the original copies.]

In addition to publishing or posting/mailing the notice, the RE must also disseminate a copy of the notice, at minimum, to individuals and groups known to be interested in the project/activities, to the local news media, to the appropriate tribal, local, state and Federal agencies, to Regional Office of the U.S. Environmental Protection Agency having jurisdiction, and to DCHD (or HUD) (§ 58.45).

ENVIRONMENTAL ASSESSMENT

Upon completion of the EA, the RE will make either a finding of no significant impact (FONSI), or a finding of significant impact (FOSI) determination. In the event that a FONSI is made, the RE must issue two public notices: *Finding of No Significant Impact* (FONSI) and *Notice of Intent to Request Release of Funds* (NOI/RROF). These notices may be published concurrently (refer to Appendix J).

When there is a combined FONSI/NOI-RROF notice, a minimum of 15 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community, or a minimum of 18 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures.

NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 15 days of the comment period. If the notice is posted, it must be maintained in place until after the public comment period has expired.

The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/mailing date of the notice (§ 58.21).

The RE must consider and respond to any comments received, and resolve any outstanding issues before signing and submitting a *Request for Release of Funds and Certification* to DHCD (or HUD if DHCD is RE). A copy of the public notice must accompany this request. DHCD (or HUD) has 15 calendar days from the date it receives the RE's request (or 15 days from the date that appears in the notice, whichever is later) before it may approve release of funds (*Authority to Use Grant Funds* is issued.) (NOTE: DHCD will accept fax copies of the public notices the state recipient issued, as well as the Request for Release of Funds and Certification signed by the certifying officer. However, DHCD will not release funds until they receive the original copies.)

In the event that a FOSI is made, the RE must initiate an Environmental Impact Statement (EIS) in accordance with Subparts F and G of Part 58. An EIS has additional public involvement and notification requirements. Consult with DHCD if there is a FOSI determination.

In addition to publishing or posting/mailing the notice, the RE must also disseminate a copy of the notice, at minimum, to individuals and groups known to be interested in the project/activities, to the local news media, to the appropriate tribal, local, state and Federal agencies, to Regional Office of the U.S. Environmental Protection Agency having jurisdiction, and to DHCD (or HUD) (§ 58.45).

RE-EVALUATION OF ENVIRONMENTAL FINDINGS (§ 58.47)

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

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

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

If Recipients or subrecipients are only providing additional HOME funds to cover shortfalls in funding in order to complete a project for which the environmental review process was already completed, the RE only needs to document this in the project ERR. [Refer to 24 CFR 58.35(a)(7), as well as the section in

this guide on "Categorical exclusions not subject to § 58.5", and Appendix A, "Summary of Environmental Review Action by Activity"].

TIERED ENVIRONMENTAL REVIEWS

Tiered environmental reviews are a subject discussed in NEPA regulations (*§* 502.20) that may also be applied to HOME projects covered under Part 58.

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

Tiered reviews can be used for either categorically excluded activities or those that require an environmental assessment.

- For categorically excluded activities, the tiered review must address compliance with the Federal laws and authorities listed at 24 CFR 58.5, such as historic preservation, floodplains, endangered species, hazardous substances, etc.
- For activities requiring preparation of an environmental assessment, the tiered review must address compliance with the Federal laws and authorities listed at 24 CFR 58.5, as well as compliance with the NEPA.

A tiered environmental review allows for a general assessment of the impacts of any activity (e.g., acquisition of foreclosed homes, demolition of blighted properties, or land banking) on the environment prior to identification of a specific site.

A tiered environmental review is a two-step process:

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

TIER 1: TARGET AREA ASSESSMENT

The focus of a Tier 1 review is on a targeted geographic area. It is important that the boundaries of the target area are clearly defined so the scope of the environmental conditions under consideration is evident. Since grantees are already required to target geographic areas for HOME-funded activities, it should be simple to define and describe these areas.

The Tier 1 review addresses and analyzes those environmental impacts related to the proposed activities that might occur on a typical site within the geographic area. This includes examining the applicable laws and authorities (e.g., floodplains, coastal zones, wetlands, aboveground storage tanks, etc.). For example, if the target area is not within a 100-year floodplain or a coastal zone management area, none of the project sites will be affected no matter where they are located in the target area. On the other hand, if a portion of the target area is within a 100-year floodplain, then the grantee must complete the

required compliance process to decide whether to fund any future projects within the floodplain, including whether mitigation measures are feasible. (See the discussion in the section entitled *Compliance with the Related Federal Laws and Authorities.*)

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

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

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

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

Upon completion of the Tier 1 review, including the written standards to be used during the Tier 2 process, the RE , must issue a public notice and request release of funds from DHCD (or HUD if DHCD is the RE). However, HOME funds may not be committed or spent prior to completion of the Tier 2 (site specific) review.

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

TIER 2: SITED SPECIFIC PROJECT REVIEW

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

When the grantee identifies a specific property or site within the target area for obligating HOME funds (e.g., property acquisition, financing repairs, demolishing a structure, etc.) the RE uses the written standards (checklist and narrative) set forth in the Tier 1 review process to determine if there are any environmental issues associated with the property/site that must be resolved before committing and spending HOME funds. This, then, is the Tier 2 review.

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

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

What Should the Environmental Review Record Look Like for the Tier 1: Target Area Review?

The information and documentation of a Tier 1: Target Area Review must include at least the following:

- A clear statement of project activities and the source(s) of project funds.
- Identification of the target area (including a map).
- Identification and evaluation of the environmental factors and effects that can be decided immediately (including mitigation).
- Specific written strategies for addressing the environmental effects that can only be determined when specific sites become known (i.e., Tier 2 - site acceptability criteria and standards, including any required mitigation measures).
- Source documents and other relevant information that support compliance decisions.
- Issue a public notice, and following expiration of the comment period, submit the Request for Release of Funds and Certification (HUD form 7015.15) to DHCD.
- Secure a release of funds ("Authority to Use Grant Funds", HUD form 7015.16), from DHCD.

What Should the Environmental Review Record Look Like for the Tier 2: Site Specific Project Review?

The information and documentation of a Tier 2: Site Specific Project Review must include at least the following:

- Copies of the individual site reviews completed, including a description of the activities related to the project, location of the project, map of where the project is located, and legal description if a street address is not available.
- Source documents and other relevant information that supports compliance with the written strategies.
- Document whether purchase of flood insurance is required, provide evidence funds will not be used in a Coastal Barrier Resources Area and, when applicable, the buyer/seller of the property were advised and signed a disclosure statement concerning the location of the property in a runway clear zone/clear zone. (See the discussion about these issues in the section entitled *Other Requirements (§ 58.6).*)

Include Tier 2 in the ERR file. No further action is required.

PROVIDING ASSISTANCE TO PROJECTS IN PROGRESS

There are two circumstances in which it is permissible for projects to receive HOME funding after construction has started without violating environmental requirements. These circumstances are as follows:[4]

- *Projects started with Federal funds.* An approved HOME-funded project may receive supplemental assistance after the original Request for Release of Funds and Certification (HUD form 7015.15) [where required] had been approved by HUD or the state (in the case of state recipients). Approval of supplemental assistance to cover minor shortfalls in funding and to help complete a project previously approved under Part 58 is excluded from the environmental review requirements of NEPA and also not subject to compliance with the Federal laws and authorities, if approval is made by the same RE and re-evaluation of the environmental findings is not required under § 58.47 [§ 58.35(b)(7)].

- *Projects started with non-Federal funds.* PJs, state recipients, subrecipients, contractors, owners, developers (including CHDOs) who had committed or expended non-Federal funding including permanent financing, to begin the development of an affordable housing project before the RE obtains approval from DHCD (in the case of state recipients) or HUD (i.e., Authority to Use Grant Funds (HUD form 7015.16), or equivalent letter) may be reimbursed with HOME funds for such expenditures only when the following conditions are met:

    - The contractors, owners and developers started the project without the intention of using Federal assistance (e.g., as evidenced by other anticipated funding, the original project budget, etc.); and

    - The PJ informs the state recipient, subrecipient, contractor, owner or developer that all work on the project must cease and/or the PJ itself ceases all work on the project once an application for HOME funds is made. No work or other choice limiting actions may occur after that date.

  Work may recommence upon receipt of approval from DHCD (or HUD if DHCD is the RE), where required (i.e., HUD form 7015.16 or equivalent letter). The PJ may not obligate funds to projects unless the RE first determines that the result of the environmental review is satisfactory and DHCD (in the case of state recipients) or HUD has issued a HUD form 7015.15 or equivalent letter.

4 See HUD Notice CPD 01-11, Environmental Review and the HOME Investment Partnership Program. This Notice is available online at: http://www.hud.gov/offices/cpd/environment/library/notices.cfm. A copy of this Notice is available on HUD's web site.

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

EMERGENCY ACTIONS [§§ 58.33 and 58.34(a)(10)]

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

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

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

For actions that are determined to be exempt ---i.e., imminent threats to public safety, per § 58.34(a)(10)---the RE should consult with their DHCD HOME representative to ensure the proposed action is eligible under HOME program regulations and to determine if the situation at hand qualifies as an "imminent threat to public safety". Exempt actions only require a written record of determination that they meet the conditions for exemption. Neither public notification, nor approval from HUD or state is required.

RECORDKEEPING

The RE must be responsive to DHCD, project partners and the public. The RE must have the resources necessary to comply with all document management and correspondence requirements associated with performing the environmental review and the assumption of environmental responsibility. The RE's

record maintenance system may be as simple as maintaining organized paper files, or could include off-site archival, microfiching, and disposal of paper files. At a minimum it should provide for:

- *Accessibility* - Environmental reviews under NEPA and Part 58 are a public process. Therefore, documents produced in support of the environmental review should be available to the public upon request. During the public comment period, the ERR should be immediately available to the public. After the project is approved and funds released, the ERR should be accessible within a reasonable period of time. Most off-site archival document management programs allow for materials to be retrieved within two to five days.
- *Retention* - Environmental issues have a long liability timeline. The RE's record retention policy should at least comply with HUD's internal record retention policy of five years (after issuance of the project's actual development cost certificate) for environmental documentation. The RE may also consider the American Society of Testing and Materials (ASTM) guidelines for retention of environmental records which prescribes a 35 year retention.

WAIVERS AND EXCEPTIONS [§ 58.1(D)]

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

Only HUD may grant waivers or exceptions. And so, such requests may only be made to HUD by DHCD, as the PJ. Therefore, requests by state recipients for a waiver or exception may only go through DHCD. For guidance on the process for obtaining a waiver, refer to the HUD memorandum issued by the Office of Environment and Energy that is contained in Appendix Q of this guide.

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

DHCD OVERSIGHT AND ADMINISTRATIVE RESPONSIBILITIES (§ 58.18)

DHCD is responsible for ensuring that HOME state recipients comply with the provisions of Part 58 and NEPA. Therefore, DCHD will carry out and the requirements and administrative responsibilities laid out in Subpart H (§§ 58.70 – 58.77)

RELEASE OF FUNDS PROCESS

As noted in the previous section on the *Release of Funds and Approval Process*, DHCD is responsible for receiving public notices and the *Request for Release of Funds and Certification* (HUD form 7015.15) from state recipients.

In addition, DHCD will address objections it receives from any person or agency concerning procedural requirements of 24 CFR Part 58 and NEPA that were not met. Sections 58.73 through 58.76 describe the bases and timing for receiving objections.

DHCD will approve certifications submitted by state recipients that are determined to satisfy the responsibilities under NEPA and the related provisions of the law cited at § 58.5, as authorized by the § 288(c) of Title II of the Cranston-Gonzalez National Affordable Housing Act [Also see 24 CFR 92.352(b)(2) of the HOME Investment Partnerships Program regulations.]

DHCD will not approve state recipients' requests if they have knowledge that either the state recipients or their project partners have not complied with NEPA or Part 58, including deficient public notifications and inaccurate certifications. DHCD will communicate to state recipients what mitigation or remedies must occur before release of funds is approved.

MONITORING OF STATE RECIPIENTS [§ 58.77(D)]

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

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

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

Appendix P contains an example of the elements of DCHD's in-depth monitoring.

List of Appendices
For
VA DHCD Environmental Guide

Appendix S – 24 CFR Part 58, Environmental Review Procedures

Appendix T – 24 CFR Part 51, Noise Abatement, Aboveground Tanks, Airport Clear Zones

Appendix U – 24 CFR Part 55, Floodplain Management

Appendix V – 36 CFR Part 800, Historic Preservation

Appendix W – 40 CFR 1500 – 1508, NEPA Regulations

APPENDIX A

Summary of Environmental Review Action by Activity

Activity	Action	Documentation/Form	Notes
Administration	Exempt § 58.34 (a)	Complete *Determination of Exemption*	Under HOME rules, funds must be associated with a specific project to be considered a project cost rather than admin. cost.
TBRA	Cat. Ex. *not subject to* § 58.5 § 58.35 (b)(1)	Complete *Determination of Categorical Exclusion not subject to* § 58.5	Public notification and DHCD (or HUD if DHCD is RE) approval is not required.
Homeowner-Rehabilitation	Cat. Ex. *subject to* § 58.5 § 58.35 (a)(3)(i)	Complete *Statutory Worksheet, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds.
Homeowner-Reconstruction	Cat. Ex. *subject to* § 58.5 § 58.35 (a)(4)(ii)	Complete *Statutory Worksheet, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds.
Homebuyer Acquisition existing unit	Cat. Ex. *subject to* § 58.5 § 58.35 (a)(5)	Complete *Statutory Worksheet, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds.

Activity	Action	Documentation/Form	Notes
Homeowner-New Construction development (single family 1-4 units)	Cat. Ex. *subject to* § 58.5	Complete *Statutory Worksheet, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds.
New Construction development (5 or more single family units on scattered sites: • The scattered sites are *more than* 2,000 feet apart, and • No more than 4 units per site	Cat. Ex. *subject to* § 58.5 § 58.35 (a)(4)(ii)	Complete *Statutory Worksheet, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds.
Acquisition, Rehabilitation and Resale (single family 1-4 units)	Cat. Ex. *subject to* § 58.5	Complete *Statutory Worksheet, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds.
Rental Acquisition existing building (single family 1-4 units or multifamily)	Cat. Ex. *subject to* § 58.5	Complete *Statutory Worksheet, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds.
Rental Rehabilitation (multi-family 5 or more units): • Unit density will not change more than 20% as a result of rehab; • Current use will not changed from residential to non-residential; and/or	Cat. Ex. *subject to* § 58.5	Complete *Statutory Worksheet, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds.

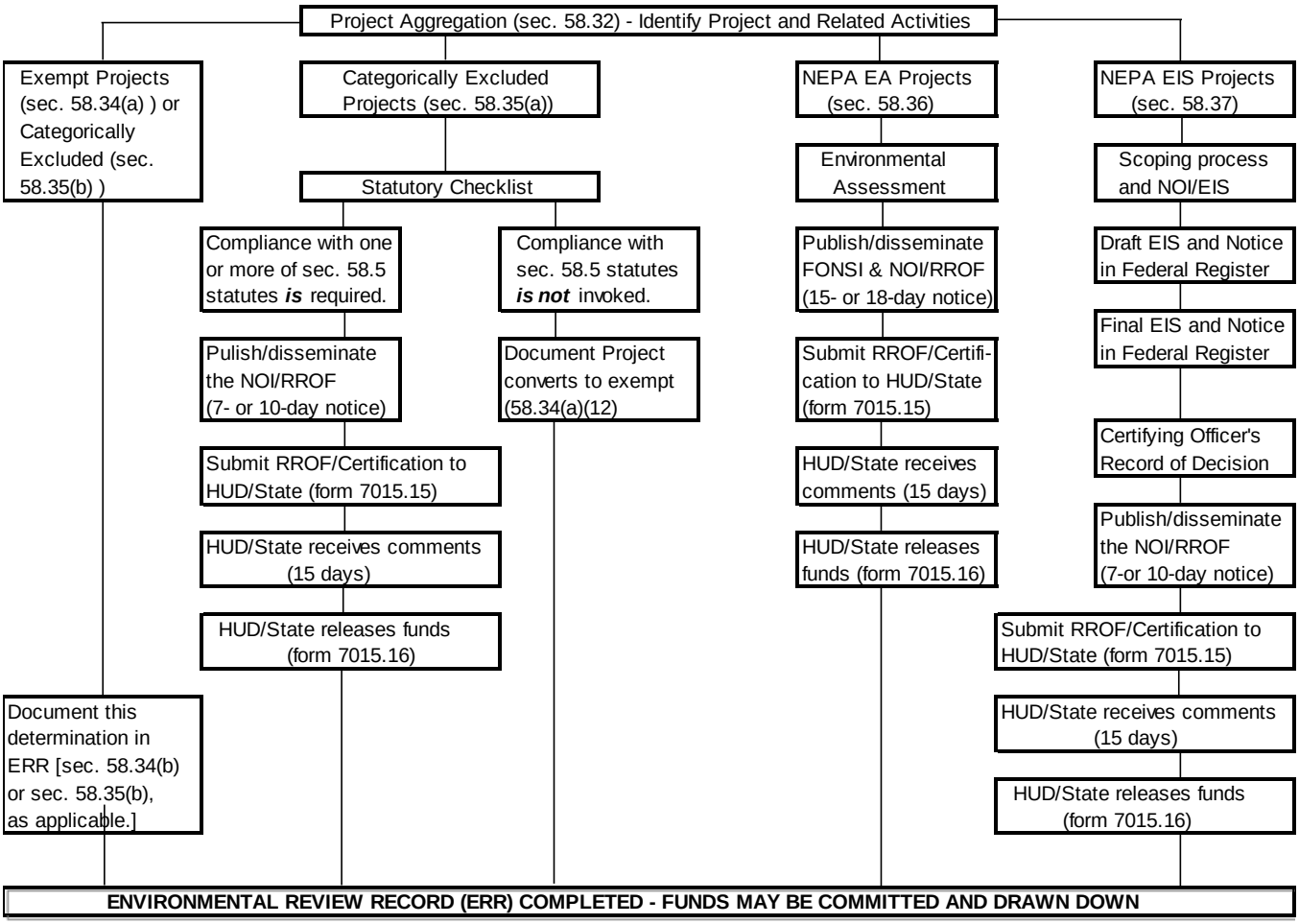
Activity	Action	Documentation/Form	Notes
• Estimated cost of rehab is less than 75% of replacement cost after rehab			
Vacant Land Acquisition for New Construction (Rental or Single Family, 5 or more units on a site)	Environmental Assessment	Complete *Environmental Assessment* (which includes NEPA and related Federal laws and authorities at § 58.5, as well as § 58.6 requirements)	Public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds
New Construction development (5 or more single family units on scattered sites: • The scattered sites are *less than* 2,000 feet apart, and/or • There a more than 4 units per site	Environmental Assessment	Complete *Environmental Assessment* (which includes NEPA and related Federal laws and authorities at § 58.5, as well as § 58.6 requirements)	Public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds
Homeowner-Rehabilitation • Footprint of building is increased in a floodplain or wetland.	Environmental Assessment	Complete *Environmental Assessment* (which includes NEPA and related Federal laws and authorities at § 58.5, as well as § 58.6 requirements)	Public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds
Rental Rehabilitation (multi-family 5 or more units): • Unit density is changed more than 20% as a result of rehab; • Current use will be changed from residential to non-residential or visa versa; and/or • Estimated cost of rehab is more than 75% of replacement cost after rehab	Environmental Assessment	Complete *Environmental Assessment* (which includes NEPA and related Federal laws and authorities at § 58.5, as well as § 58.6 requirements)	Public notification and DHCD (or HUD if DHCD is RE) approval is required prior to committing and expending funds
Supplemental	Cat. Ex. *not*	Complete *Determination of*	Public notification

Activity	Action	Documentation/Form	Notes
Assistance • HOME funds are being provided by same RE; • Re-evaluation of the environmental findings are not required under § 58.47	*subject to* § 58.5	*Categorical Exclusion not subject to* § 58.5	and DHCD (or HUD if DHCD is RE) approval <u>is not</u> required.

NOTE: Except for administrative costs, combinations of activities above that make up a project must be evaluated in a single environmental review. Whichever of the project activities requires the highest level of review dictates the type of review required for the entire project (see section in this chapter on “Aggregation of Project Activities).

APPENDIX B
Environmental Review Requirements

ENVIRONMENTAL REVIEW REQUIREMENTS FLOWCHART



APPENDIX C

Determination of Exemption

Project Name / Description:

This project is determined to be Exempt according to:
[Cite applicable subsection(s) of §58.34(a)]_____

OTHER REQUIREMENTS, § 58.6 (All three requirements below must be addressed.)

FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?
( ) No; flood insurance is not required. The review of this factor is completed.
( ) Yes; continue.

2. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?
( ) No. Source Document (FEMA/FIRM floodplain zone designation, map panel number, date or other credible source):

_____
(Factor review completed. Flood insurance is not required.)

( ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):

_____
(Continue review).

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?
( ) Yes [*Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.*]

( ) No [Federal assistance may not be used in the Special Flood Hazards Area].

COASTAL BARRIERS RESOURCES ACT

1. Does the project involve any of the following uses of Federal assistance:
   - acquisition, construction, repair, improvement or rehabilitation of public facilities;
   - acquisition, construction, repair, improvement or rehabilitation of residential or non-residential structures;
   - flood insurance for new or substantially improved structures;
   - erosion control or stabilization of inlet, shoreline or inshore areas?

( ) No The review of this factor is completed.

( ) Yes; continue.

2. Is the project in an area along the Atlantic Coast, Gulf of Mexico, or Great Lakes?

( ) No; Cite Source Documentation:

_____

(Factor review completed).

( ) Yes; continue

3. Is the project located in a coastal barrier resource designated on a FEMA map? (See http://www.fema.gov/national-flood-insurance-program/coastal-barrier-resources-system).

( ) No; Cite Source Documentation:

_____

(Factor review completed).

( ) Yes - **Federal assistance may not be used in such an area.**

AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of an existing building or structure?

( ) No. The review of this factor is completed.

( ) Yes; continue.

2. Is the building/structure within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?

( ) No; Cite Source Documentation:

_____

Project complies with 24 CFR 51.303(a)(3). The review of this factor is completed.

( ) Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record [24 CFR 51.303(a)(3)].

_____

Preparer Signature / Name /Date

_____

Responsible Entity Official Signature / Title/ Dat

APPENDIX D

Determination of Categorically Excluded Not Subject to § 58.5

Project Name / Description:

This project is determined to be Exempt according to:
[Cite applicable subsection(s) of §58.34(a)]_____

OTHER REQUIREMENTS, § 58.6 (All three requirements below must be addressed.)

FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?
( ) No; flood insurance is not required. The review of this factor is completed.
( ) Yes; continue.

2. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?
( ) No. Source Document (FEMA/FIRM floodplain zone designation, map panel number, date or other credible source):

_____
(Factor review completed. Flood insurance is not required.)

( ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):

_____
(Continue review).

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?
( ) Yes [*Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.*]

( ) No [Federal assistance may not be used in the Special Flood Hazards Area].

COASTAL BARRIERS RESOURCES ACT

1. Does the project involve any of the following uses of Federal assistance:
   - acquisition, construction, repair, improvement or rehabilitation of public facilities;
   - acquisition, construction, repair, improvement or rehabilitation of residential or non-residential structures;
   - flood insurance for new or substantially improved structures;
   - erosion control or stabilization of inlet, shoreline or inshore areas?

   ( ) No The review of this factor is completed.

   ( ) Yes; continue.

2. Is the project in an area along the Atlantic Coast, Gulf of Mexico, or Great Lakes?
   ( ) No; Cite Source Documentation:

   _____

   (Factor review completed).
   ( ) Yes; continue

3. Is the project located in a coastal barrier resource designated on a FEMA map?
(See http://www.fema.gov/national-flood-insurance-program/coastal-barrier-resources-system).
( ) No; Cite Source Documentation:

_____

(Factor review completed).

( ) Yes - **Federal assistance may not be used in such an area.**

AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of an existing building or structure?
( ) No. The review of this factor is completed.
( ) Yes; continue.

2. Is the building/structure within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?
( ) No; Cite Source Documentation:

_____

Project complies with 24 CFR 51.303(a)(3). The review of this factor is completed.

( ) Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record [24 CFR 51.303(a)(3)].

_____

Preparer Signature / Name /Date

_____

Responsible Entity Official Signature / Title/ Date

APPENDIX E

Statutory Worksheet

Use this worksheet only for projects which are Categorically Excluded per 24 CFR § 58.35(a).

24 CFR §58.5 STATUTES, EXECUTIVE ORDERS & REGULATION

PROJECT NAME and DESCRIPTION - Include all contemplated actions which logically are either geographically or functionally part of the project:

This project is determined to be Categorically Excluded according to: [Cite section(s)]_____

DIRECTIONS - Once the review process for each compliance factor has been completed, the Statutory Checklist must then be filled out. Specifically, the RE must indicate whether the activity does not affect the resources under consideration (Status A) or that the activity triggers formal compliance consultation procedures with the oversight agency or requires mitigation (Status B). **The Compliance Documentation column of the Statutory Checklist should also be filled out with the appropriate language based on the Status determination made. Any compliance documentation should also be attached to the Checklist and included in the ERR.**

Compliance Factors:

Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5	**Status A/B**	**Compliance Documentation**
Historic Preservation [36 CFR Part 800]		
Floodplain Management [Executive Order 11988; 24 CFR Part 55]		

Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5	Status A/B	Compliance Documentation
Wetland Protection [Executive Order 11990; 3 CFR, §§ 2, 5]		
Coastal Zone Management Act [16 U.S.C. 1451, §§ 307(c), (d)]		
Sole Source Aquifers [40 CFR Part 149]		
Endangered Species Act [50 CFR Part 402]		
Wild and Scenic Rivers Act [16 U.S.C. 1271, §§ 7(b), (c)]		
Clean Air Act [40 CFR Parts 6, 51, 93]		

Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5	Status A/B	Compliance Documentation

Farmland Protection Policy Act [7 CFR Part 658]		
Environmental Justice [Executive Order 12898]		
HUD ENVIRONMENTAL STANDARDS Noise Abatement and Control [24 CFR Part 51, Subpart B]		
Explosive and Flammable Operations [24 CFR Part 51, Subpart C]		
Toxic Chemicals and Radioactive Materials [24CFR Part 58, § 5(i)(2)]		
Airport Clear Zones and Accident Potential Zones [24 CFR Part 51, Subpart D]		

DETERMINATION:

( ) This project converts to Exempt, per § 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license (Status "A" has been determined in the status column for all authorities). Funds may be drawn down for this (now) EXEMPT project; OR

( ) This project cannot convert to Exempt because one or more statutes/authorities require consultation or mitigation. Complete consultation/mitigation requirements, publish NOI/RROF and obtain Authority to Use Grant Funds (HUD 7015.16) per §§ 58.70 and 58.71 before drawing down funds; OR

( ) The unusual circumstances of this project may result in a significant environmental impact. This project requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

PREPARER SIGNATURE:

DATE:

PREPARER NAME & TITLE (please print):

DATE:

RESPONSIBLE ENTITY CERTIFYING OFFICIAL SIGNATURE:

NAME & TITLE (please print):

DATE:

INSTRUCTIONS FOR COMPLETING THE STATUTORY WORKSHEET

For HUD funded projects which are categorically excluded per 24 CFR §58.35(a), the Responsible Entity (**RE**) must make a determination of whether the proposal achieves compliance with each applicable statute, Executive Order or regulation with or without requiring formal consultation procedures, mitigation, permits or having adverse effects on the resources protected by the statute. (These instructions provide a brief description of essential compliance findings needed. Regulations take precedence over these brief instructions). The Preparer must DOCUMENT OR ATTACH THE SOURCES OF THE DETERMINATION.

Record the finding status on the STATUTORY WORKSHEET for each listed Federal statute, regulation, authority as follows:

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. In these situations, enter **"A"** in the STATUTORY WORKSHEET status column.

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. Part B summarizes what additional steps or formal procedures must be completed prior to submitting a Request for Release of Funds (RROF) to HUD or to the State. Evidence of completion and implementation of the required procedures or mitigation must be retained in the project Environmental Review Record (ERR).

Historic Properties (including archeology): **A)** The RE and SHPO agree that there are No Historic Properties Affected per 36 CFR 800.4 or SHPO has not objected within 30 days to such fully documented determination. **B)** The proposal has an effect on historic properties. Consult with SHPO et al., per §800.5 et seq., to resolve or mitigate adverse effects on historic properties.
Guidance: http://www.hud.gov/offices/cpd/environment/review/historic.cfm

Floodplain Management: **A)** The project does not involve property acquisition, management, construction or improvements within a 100 year floodplain (Zones A or V) identified by FEMA maps, and does not involve a "critical action" (e.g., emergency facilities, facility for mobility impaired persons, etc.) within a 500 year floodplain (Zone B). If FEMA has not published flood maps, the RE must make a finding based on best available data, e.g. from the City/County Engineer or local Flood Control Agency. **B)** Complete the 8-step decision making process according to 24 CFR Part 55.20 to document that there are no practicable alternatives to the proposal and to mitigate effects of the project in a floodplain.
Guidance: http://www.hud.gov/offices/cpd/environment/review/floodplain.cfm

Wetlands Protection: A) The project does not involve new construction within or adjacent to wetlands, marshes, wet meadows, mud flats or natural ponds per field observation and maps issued by the USDI Fish & Wildlife Service or U.S. Corps of Engineers. **B)** Complete the 8-step decision making process in 24 CFR 55.20 to document there are no practicable alternatives and to mitigate effects of the project on wetlands. Such action also requires obtaining a permit from the U.S. Corps of Engineers under Section 404 of the Clean Water Act. Guidance:
http://www.hud.gov/offices/cpd/environment/review/floodplain.cfm

Coastal Zone Management: A) The project does not involve the placement, erection or removal of materials, nor an increase in the intensity of use in the Coastal Zone (CZ) per certified local coastal plan, California Coastal Commission, SF BCDC, etc. **B)** Secure

concurrence from he CZ Commission or delegated local planning commission with your determination of consistency with the applicable CZ Plan, or obtain coastal zone permit.
Guidance: http://www.hud.gov/offices/cpd/environment/review/coastal.cfm

Sole Source Aquifers (Safe Drinking Water Act): A) The project is not located within a U.S. EPA-designated sole source aquifer watershed area per EPA Ground Water Office, **OR** the project need not be referred to EPA for evaluation according to the HUD-EPA (Region IX) Sole Source Aquifer Memorandum of Understanding of 1990.
B) Consult with the Water Management Division of EPA to design mitigation measures to avoid contaminating the aquifer and implement appropriate mitigation measures. Guidance: http://www.hud.gov/offices/cpd/environment/review/aquifers.cfm

Endangered Species: A) The RE documents that the proposal will have "no effect" **or** "is not likely to adversely affect" any federally protected (listed or proposed) Threatened or Endangered Species (i.e., plants or animals, fish, or invertebrates), nor adversely modify designated critical habitats. This finding is to be based on the review of designated critical habitats, contacts with the U.S. Fish and Wildlife Service or National Marine Fisheries Service, or by special study completed by a biologist or botanist. A determination of "no effect" based on the well-documented absence of listed species and critical habitats does not require U.S. FWS concurrence. **B)** Consult with the U.S. FWS or with the National Marine Fisheries Service, as appropriate, in accordance with procedural regulations contained in 50 CFR Part 402. Formal consultation with FWS or NMFS is always required for federally funded "major construction" activities and anytime a "likely to adversely affect" determination is made.
Guidance: http://www.hud.gov/offices/cpd/environment/review/endangeredspecies.cfm

Wild and Scenic Rivers: A) The project is not located within one mile of a listed Wild and Scenic River, **OR** the project will have no effects on the natural, free flowing or scenic qualities of a river in the National Wild and Scenic Rivers system. **B)** Consult with the U.S. Department of Interior, National Park Service for impact resolution and mitigation.
Guidance: http://www.rivers.gov/wildriverslist.html

Air Quality: A) The project is located within an "attainment" area, **OR**, if within a "non-attainment" area, conforms with the EPA-approved State Implementation Plan (SIP), per contact with the State Air Quality Management District or Board, **AND** the project requires no individual NESHAP permit or notification; **B)** Negotiate suitable mitigation measures with the Air Quality Management District or Board, obtain necessary permits, issue required notices. (For example, 40 CFR §61.145 requires 10-day prior notification to the Air Quality District Administrator whenever either 260 linear ft., 160 sq.ft., or 35 cubic ft., of asbestos containing material is to be disturbed during rehabilitation/demolition activities in multi-family properties).
Guidance: http://www.hud.gov/offices/cpd/environment/review/cleanair.cfm

Farmland Protection: A) The project site does not include prime or unique farmland, or other farmland of statewide or local importance as identified by the U.S. Department of Agriculture, Natural Resources Conservation Service NRCS (formerly the Soil Conservation Service, **OR** the project site includes prime or unique farmland, but is located in an area committed to urban uses; **B)** Request evaluation of land type from the NRCS using Form AD-1006, and consider the resulting rating in deciding whether to approve the proposal, as well as mitigation measures (including measures to prevent adverse effects on adjacent farmlands).
Guidance: http://www.hud.gov/offices/cpd/environment/review/farmlands.cfm

Noise Abatement and Control: A) The project does not involve development of noise sensitive uses, **OR** the project is not within line-of-sight of a major or arterial roadway or railroad, **OR** ambient noise level is documented to be 65 LDN (CNEL) or less, based upon the HUD Noise Assessment Guidelines (NAG) for calculating noise levels and Airport Noise Contour map; **B)** Apply the noise standard, per 24 CFR §51.101, to the decision whether to approve the proposal (see §51.104), and implement noise attenuation measures (NAG page 39-40) as applicable. Guidance: http://www.hud.gov/offices/cpd/environment/review/noise.cfm

Explosive or Flammable Operations: A) The project is located at an Acceptable Separation Distance (ASD) from any above-ground explosive or flammable fuels or chemicals containers according to "Siting of HUD-Assisted Projects Near Hazardous Facilities" (Appendices F & G, pp. 51-52), **OR** the project will expose neither people nor buildings to such hazards; **B)** mitigate the blast overpressure or thermal radiation hazard with the construction of a barrier of adequate size and strength to protect the project (per 24 CFR 51.205). Guidance: http://www.hud.gov/offices/cpd/environment/review/explosive.cfm

Toxic Chemicals and Radioactive Materials: A) The subject and adjacent properties are free of hazardous materials, contamination, toxic chemicals, gasses and radioactive substances which could affect the health or safety of occupants or conflict with the intended use of the subject property. Particular attention should be given to nearby dumps, landfills, industrial sites and other operations with hazardous wastes. **B)** Mitigate the adverse environmental condition by removing, stabilizing or encapsulating the toxic substances in accordance with the requirements of the appropriate Federal, state or local oversight agency; **OR** reject the proposal. Guidance: http://www.hud.gov/offices/cpd/environment/review/hazardous.cfm

Airport Clear Zones and Accident Potential Zones: A) The project is not within an FAA-designated civilian airport Runway Clear Zone (RCZ) -or Runway Protection Zone, or within a military airfield Clear Zone (CZ) or Accident Potential Zone (APZ) -Approach Protection Zone, based upon information from the civilian airport or military airfield administrator identifying the boundaries of such zones, **OR** the project involves only minor rehabilitation, **OR** the project involves only the sale or purchase of an existing property in the RCZ or CZ; **B)** It is **HUD** policy not to provide any development assistance, subsidy or insurance in RCZs or CZs unless the project will not be frequently used or occupied by people and the airport operator provides written assurances that there are no plans to purchase the project site. Guidance: http://www.hud.gov/offices/cpd/environment/review/airport.cfm

Environmental Justice: A) The proposed site is suitable for its proposed use and will NOT be adversely impacted by adverse environmental conditions; **B)** Site suitability is a concern; the proposal is adversely affected by environmental conditions impacting low income or minority populations. Avoid such impacts or mitigate them to the extent practicable. Address and mitigate the disproportional human health or environmental effects adversely affecting the low income or minority populations **OR** reject the proposal. Guidance: http:///www.hud.gov/offices/cpd/environment/review/justice.cfm

APPENDIX F

Environmental Assessment for HUD-Funded Proposals

Recommended format per 24 CFR 58.36

Project Identification:

Preparer:

Responsible Entity:

Month/Year:

Responsible Entity:

_____

[24 CFR 58.2(a)(7)]

Certifying Officer:

_____

[24 CFR 58.2(a)(2)]

Project Name:

_____

Project Location:

_____

_____

Estimated total project cost:

_____

Grant Recipient:

_____

[24 CFR 58.2(a)(5)]

Recipient Address:

_____

_____

Project Representative:

_____

Telephone Number:

_____

RECORD OF DECISION

Conditions for Approval: (List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts and other relevant documents as requirements). [24 CFR 58.40(d), 40 CFR 1505.2(c)]

FINDING: [58.40(g)]

___ **Finding of No Significant Impact (FONSI)**
(The project will not result in a significant impact on the quality of the human environment)

___ **Finding of Significant Impact (FOSI)**
(The project may significantly affect the quality of the human environment)

PREPARER:

_____ **Date:**_____
Signature

_____
Name/Title/Agency (Printed)

RE APPROVING OFFICIAL:

_____ **Date:**
Signature

_____
Name/Title/ Agency (Printed)

Statement of Purpose and Need for the Proposal: [40 CFR 1508.9(b)]

Description of the Proposal: Include all contemplated actions which logically are either geographically or functionally a composite part of the project, regardless of the source of funding. [24 CFR 58.32, 40 CFR 1508.25]

Existing Conditions and Trends: Describe the existing conditions of the project area and its surroundings, and trends likely to continue in the absence of the project. [24 CFR 58.40(a)]

Statutory Checklist

[24CFR §58.5]

Record the determinations made regarding each listed statute, executive order or regulation. Provide appropriate source documentation. [Note reviews or consultations completed as well as any applicable permits or approvals obtained or required. Note dates of contact or page references]. Provide compliance or consistency documentation. Attach additional material as appropriate. Note conditions, attenuation or mitigation measures required.

Factors	**Determination and Compliance Documentation**
Historic Preservation [36 CFR 800]	
Floodplain Management [24 CFR 55, Executive Order 11988]	
Wetlands Protection [Executive Order 11990]	
Coastal Zone Management Act [Sections 307(c),(d)]	
Sole Source Aquifers [40 CFR 149]	

Endangered Species Act [50 CFR 402]	

Factors	**Determination and Compliance Documentation**
Wild and Scenic Rivers Act [Sections 7 (b), (c)]	
Air Quality [Clean Air Act, Sections 176 (c) and (d), and 40 CFR 6, 51, 93]	
Farmland Protection Policy Act [7 CFR 658]	
Environmental Justice [Executive Order 12898]	

HUD Environmental Standards	**Determination and Compliance Documentation**
Noise Abatement and Control [24 CFR 51 B]	
Toxic/Hazardous/ Radioactive Materials, Contamination, Chemicals or Gases [24 CFR 58.5(i)(2)]	

HUD Environmental Standards	**Determination and Compliance Documentation**
Siting of HUD-Assisted Projects near Hazardous Operations [24 CFR 51 C]	
Airport Clear Zones and Accident Potential Zones [24 CFR 51 D]	

Environmental Assessment Checklist

[Environmental Review Guide HUD CPD 782, 24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27]

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a determination of impact. **Impact Codes**: (**1)** - No impact anticipated; (**2)** - Potentially beneficial; (**3)** - Potentially adverse; (**4)** - Requires mitigation; (**5)** - Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional material as appropriate. Note conditions or mitigation measures required.

Land Development	**Code**	**Source or Documentation**
Conformance with Comprehensive Plans and Zoning		
Compatibility and Urban Impact		
Slope		
Erosion		
Soil Suitability		

Land Development	Code	Source or Documentation
Hazards and Nuisances including Site Safety		
Energy Consumption		
Noise - Contribution to Community Noise Levels		
Air Quality Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels		
Environmental Design Visual Quality - Coherence, Diversity, Compatible Use and Scale		

Socioeconomic	Code	Source or Documentation
Demographic Character Changes		
Displacement		
Employment and Income Patterns		

Community Facilities and Services	Code	Source or Documentation
Educational Facilities		
Commercial Facilities		
Health Care		
Social Services		
Solid Waste		
Waste Water		
Storm Water		
Water Supply		

Community Facilities and Services	Code	Source or Documentation
Public Safety - Police		
- Fire		
- Emergency Medical		
Open Space and Recreation - Open Space		
- Recreation		
- Cultural Facilities		
Transportation		

Natural Features		**Source or Documentation**
Water Resources		
Surface Water		
Unique Natural Features and Agricultural Lands		
Vegetation and Wildlife		

Other Factors		**Source or Documentation**
Flood Disaster Protection Act [Flood Insurance] [§58.6(a)]		
Coastal Barrier Resources Act/ Coastal Barrier Improvement Act [§58.6(c)]		
Airport Runway Clear Zone or Clear Zone Disclosure [§58.6(d)]		
Other Factors		

SUMMARY OF FINDINGS AND CONCLUSIONS

ALTERNATIVES TO THE PROPOSED ACTION

Alternatives and Project Modifications Considered [24 CFR 58.40(e), Ref. 40 CFR 1508.9]
(Identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.)

No Action Alternative [24 CFR 58.40(e)]
(Discuss the benefits and adverse impacts to the human environment of not implementing the preferred alternative).

MITIGATION MEASURES RECOMMENDED [24 CFR 58.40(d), 40 CFR 1508.20]
(Recommend feasible ways in which the proposal or its external factors should be modified in order to minimize adverse environmental impacts and restore or enhance environmental quality.)

ADDITIONAL STUDIES PERFORMED
(Attach studies or summaries)

LIST OF SOURCES, AGENCIES AND PERSONS CONSULTED [40 CFR 1508.9(B)]

APPENDIX G

"Other Requirements", Sec. 58.6

LEVEL OF ENVIRONMENTAL REVIEW DETERMINATION:

Project Name / Description:

Level of Environmental Review:

_____

(Categorically excluded subject to statutes per § 58.35(a), or Environmental Assessment per § 58.36, or EIS per 40 CFR 1500)

"OTHER REQUIREMENTS", § 58.6 (All three requirements below must be addressed.)

FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT

1. Does the project involve the acquisition, construction or rehabilitation of structures, buildings or mobile homes?

( ) No; flood insurance is not required. The review of this factor is completed.

( ) Yes; continue.

2. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?

( ) No. Source Document (FEMA/FIRM floodplain zone designation, map panel number, date or other credible source):

_____ (Factor review completed. Flood insurance is not required.)

( ) Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):

_____

(Continue review).

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

( ) Yes [*Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record.*]

( ) NO **[FEDERAL ASSISTANCE MAY NOT BE USED IN THE SPECIAL FLOOD HAZARDS AREA]**

COASTAL BARRIERS RESOURCES ACT

1. Does the project involve any of the following uses of Federal assistance:
   - acquisition, construction, repair, improvement or rehabilitation of public facilities;
   - acquisition, construction, repair, improvement or rehabilitation of residential or non-residential structures;
   - flood insurance for new or substantially improved structures;
   - erosion control or stabilization of inlet, shoreline or inshore areas?

   ( ) No The review of this factor is completed.

   ( ) Yes; continue.

2. Is the project in an area along the Atlantic Coast, Gulf of Mexico, or Great Lakes?
   ( ) No; Cite Source Documentation:
   _____ (Factor review completed)
   ( ) Yes; continue
3. Is the project located in a coastal barrier resource designated on a FEMA map? (See www.fema.gov/nfip/cobra.shtm).

( ) No; Cite Source Documentation:
_____ (Factor review completed).

( ) Yes - **Federal assistance may not be used in such an area.**

AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of an existing building or structure?

( ) No. The review of this factor is completed.

( ) Yes; continue.

2. Is the building/structure within a Civil Airport's Runway Clear Zone, Approach Protection Zone or a Military Installation's Clear Zone?

( ) No; Cite Source Documentation:
_____ Project complies with 24 CFR 51.303(a)(3). The review of this factor is completed.

( ) Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in this Environmental Review Record [24 CFR 51.303(a)(3)].

_____
Preparer Signature / Name /Date

_____
Responsible Entity Official Signature / Title/ Date

APPENDIX H

Examples of When Re-Evaluation Is Necessary and When Not

Re-evaluation is required when:

Substantial changes in the nature, magnitude or extent of the project:

- New Activities are added to the scope and magnitude of the project:
  - Other activities are added to the project that were not considered, such as infrastructure improvements, parking lot for a multifamily (5+ buildings), laundry building for multifamily building, etc.
  - The footprint of the single family home was not supposed to be altered, but now the footprint of the building will be expanded into a floodplain because the unit is located within Zone A and it is determined an 8-step review is required.
- Changes are made in the scope of the project:
  - The project boundary is changed—e.g., adjacent parcels are now included in the project; the target area for a tiered review is altered to include, for example, additional neighborhoods or census tracts

There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact:

- New environmental conditions which may have a bearing on project impacts.
  - FEMA remaps the flood zone and the project is now within Zone A or V (regulated floodplain)
  - New species are added to the Federal endangered and threatened species list or are proposed for listing.
- Concealed or unexpected conditions are discovered during the implementation of the project or activity, and the RE intends to continue with the project after making these discoveries.
  - For example, archeological sites, underground storage tanks, asbestos containing materials, dry wells, and similar environmental conditions.

Selection of an alternative not in the original finding is proposed:

- Examples:
  - Rehabilitation was the proposed activity, but the project changes to demolition and new construction;
  - A multifamily building will be demolished and replaced with duplex units instead (i.e., single family homes).

Re-evaluation is not necessary when, for example:

- Additional HOME funds must be provided to complete the project because of cost overruns (e.g, cost of construction materials and labor goes up)
- Rehabilitation activities are added after the environmental review is completed, but all are within the scope of Part 58 definition of rehab as well as environmental impacts considered---e.g., previous determination was made that the single family home was not located within a floodplain and, therefore, expanding the footprint of the building will not impact a floodplain.

APPENDIX I

SAMPLE
NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

(DATE OF NOTICE)

(NAME OF RESPONSIBLE ENTITY [RE])

(ADDRESS)

(CITY, STATE, ZIP CODE)

(TELEPHONE NUMBER OF RE PREPARER AGENCY)

On or about (AT LEAST ONE DAY AFTER THE END OF THE COMMENT PERIOD) **the** (NAME OF RE) **will** [IF THE RE IS NOT ALSO THE GRANTEE INSERT THE FOLLOWING LANGUAGE HERE--"AUTHORIZE THE (NAME OF GRANTEE) TO"] **submit a request to the** (HUD/STATE ADMINISTERING AGENCY) **for the release of** (NAME OF GRANT PROGRAM) **funds under** [Title/Section ( )] **of the** (NAME OF THE ACT) **of** (DATE OF ACT)**, as amended, to undertake a project known as** (PROJECT TITLE), **for the purpose of** (NATURE/SCOPE OF PROJECT, AND PROJECT ADDRESS/LOCATION IF APPLICABLE).

The activities proposed [ALTERNATIVE #1: ARE CATEGORICALLY EXCLUDED UNDER HUD REGULATIONS AT 24 CFR PART 58 FROM NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS--ALTERNATIVE #2: COMPRISE A PROJECT FOR WHICH A FINDING OF NO SIGNIFICANT IMPACT ON THE ENVIRONMENT WAS (PUBLISHED/POSTED) ON (DATE OF FINDING PUBLICATION/POSTING)]. **An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at** (NAME AND ADDRESS OF RE OFFICE WHERE ERR CAN BE EXAMINED AND NAME AND ADDRESS OF OTHER LOCATIONS WHERE THE RECORD IS AVAILABLE FOR REVIEW) **and may be examined or copied weekdays**
( ) A.M. to ( ) P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the (RE DESIGNATED OFFICE RESPONSIBLE FOR RECEIVING AND RESPONDING TO COMMENTS). **All comments received by** (IF NOTICE IS PUBLISHED: NOTICE DATE PLUS SEVEN DAYS--IF NOTICE IS POSTED: POSTING DATE PLUS TEN DAYS) **will be**

considered by the (NAME OF RE) **prior to authorizing submission of a request for release of funds.**

RELEASE OF FUNDS

The (NAME OF RE) **certifies to** (HUD/STATE) **that** (NAME OF CERTIFYING OFFICER) **in** (HIS/HER) **capacity as** (OFFICIAL TITLE) **consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied.** (HUD'S/STATE'S) **approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the** (NAME OF GRANTEE) **to use Program funds.**

OBJECTIONS TO RELEASE OF FUNDS

(HUD/STATE) **will consider objections to its release of funds and the** (RE'S NAME) **certification received by** (ANTICIPATED DATE OF HUD/STATE RECEIPT OF RROF/C PLUS FIFTEEN DAYS) **or for a period of fifteen days following its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the** (NAME OF RE); **(b) the** (RE) **has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by** (HUD/STATE)**; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to** (HUD/STATE GRANT ADMINISTRATION OFFICE) **at** (ADDRESS OF THAT OFFICE). **Potential objectors should contact** (HUD/STATE) **to verify the actual last day of the objection period.**

(NAME AND TITLE OF RE CERTIFYING OFFICER)

APPENDIX J

SAMPLE

Combined Notice of Finding of No Significant Impact And Intent to Request Release of Funds

(DATE OF NOTICE)

(NAME OF RESPONSIBLE ENTITY [RE])

(ADDRESS)

(CITY, STATE, ZIP CODE)

(TELEPHONE NUMBER OF RE PREPARER AGENCY)

This Notice shall satisfy the above-cited two separate but related procedural notification requirements.

REQUEST FOR RELEASE OF FUNDS

On or about (AT LEAST ONE DAY AFTER THE END OF THE COMMENT PERIOD) the (NAME OF RE) will [IF THE RE IS NOT ALSO THE GRANTEE INSERT THE FOLLOWING LANGUAGE HERE--"AUTHORIZE THE (NAME OF GRANTEE) TO"] submit a request to the (HUD/STATE ADMINISTERING AGENCY) for the release of (NAME OF GRANT PROGRAM) funds under [Title/Section ( )] of the (NAME OF THE ACT) of (DATE OF ACT), as amended, to undertake a project known as (PROJECT TITLE), for the purpose of (NATURE/SCOPE OF PROJECT, AND PROJECT ADDRESS/LOCATION IF APPLICABLE).

FINDING OF NO SIGNIFICANT IMPACT

The (NAME OF RE) has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at (NAME AND ADDRESS OF RE OFFICE WHERE ERR CAN BE EXAMINED AND NAME AND ADDRESS OF OTHER LOCATIONS WHERE THE RECORD IS AVAILABLE FOR REVIEW) and may be examined or copied weekdays
( ) A.M. to ( ) P.M.

PUBLIC COMMENTS

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments to the (RE DESIGNATED OFFICE RESPONSIBLE FOR RECEIVING AND RESPONDING TO COMMENTS). All comments received by (IF NOTICE PUBLISHED: NOTICE DATE PLUS FIFTEEN DAYS--IF NOTICE POSTED: POSTING DATE PLUS EIGHTEEN DAYS) will be considered by the (NAME OF RE) prior to authorizing submission of a request for release of funds. Commentors should specify which part of this Notice they are addressing.

RELEASE OF FUNDS

The (NAME OF RE) certifies to (HUD/STATE) that (NAME OF CERTIFYING OFFICER) in (HIS/HER) capacity as (OFFICIAL TITLE) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. (HUD'S/STATE'S) approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the (NAME OF GRANTEE) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

(HUD/STATE) will consider objections to its release of funds and the (RE's NAME) certification received by (ANTICIPATED DATE OF HUD/STATE RECEIPT OF RROF/C PLUS FIFTEEN DAYS) or a period of fifteen days from its receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer or other officer of the (NAME OF RE) approved by (HUD/STATE); (b) the (RE) has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by (HUD/STATE); or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to (HUD/STATE GRANT ADMINISTRATION OFFICE) at (ADDRESS OF THAT OFFICE). Potential objectors should contact (HUD/STATE) to verify the actual last day of the objection period.

(NAME AND TITLE OF RE CERTIFYING OFFICER)

APPENDIX K

Instructions for Completing Request for Release of Funds and Certification

[Form HUD-7015.15)]

Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

Block 1. Program Title(s): Enter the HUD program name - e.g., Community Development Block Grant, HOME, Supportive Housing , Shelter Plus Care, Section 8 Moderate Rehabilitation Single Room Occupancy, Housing Opportunities for Persons with AIDS, etc.

Block 2. HUD/State Identification Number: Enter the HUD grant number(s) under which the proposed activity will be funded--- e.g. Community Development Block Grant, B-05-UC-42-1414; Supportive Housing Program, DE05B018888; HOME, M-05-MC-42-0100; etc.

Block 3. Recipient Identification Number: No entry is required for this box; rather, the Responsible Entity may use this space for internal filing purposes. For example, a number may be entered that corresponds to the activity's file number for the Environmental Review Record.

Block 4. OMB Catalog Number(s): Enter designated OMB numbers --- i.e.., Catalog of Federal Domestic Assistance (CFDA) number. For example:
CDFA No 14.235, Supportive Housing Program
CFDA No. 14.218, Community Development Block Grant
CDFA No. 14.239, HOME
CFDA No. 14.246, Brownfields Economic Development Initiative
CFDA No. 14.247, Self-Help Homeownership Opportunity Program (SHOP)
CFDA No. 14.866, HOPE VI Demolition/Revitalization Grants

NOTE: The OMB Catalog is available on line at HUD's web site.

Block 5. Name and Address of Responsible Entity: Enter the name and address of the unit of government or the State Agency/Department responsible for the environmental review of the activity/project. It may be the same as the grant recipient implementing the project.

Block 6. For Information about this request, Contact (name & phone number): Enter the name of person to contact concerning this form, HUD-7015.15, and the environmental review for the activity/project listed on this form.

Block 7. Name and Address of Recipient (if different than responsible entity): Enter the name of the private, public, quasi-governmental, profit or non-profit organization which received the grant directly from HUD but lacks the legal capacity to assume the environmental review responsibility for the activity/project.

Block 8. HUD or State Agency and Office Unit to Receive Request: Enter the name and address of the Virginia Department of Housing and Community Development (DHCD) (or HUD Office, if DCHD is the RE) to whom form HUD-7015.15 will be submitted.

Block 9. Program Activity/Project Name: Enter the activity/project name for which the request for release of funds is being submitted.

Block 10. Location (Street address, city, county, and State): Enter the location of the activity/project.

Block 11. Program Activity/Project Description: Enter a description of the activity/project to which this form pertains.

Part 2. Environmental Certification (to be completed by responsible entity, **Item 3:** Check either the first or second box. The second box is the one usually checked.

Signature of Certifying Officer of the Responsible Entity:
The Certifying Officer signs his/her name, title, and the date. The Certifying Officer is usually the chief elected official for the responsible entity/jurisdiction in which the project is located, or his/her designee. The Certifying Officer is attesting to the responsible entity's compliance with HUD's environmental review procedures (24 CFR Part 58) as set forth in items 1 through 8 in Part 2.

If the responsible entity is also the grant recipient, the completed form HUD-7015.15, along with a copy of the posted or published environmental Notice(s), is submitted to the appropriate DHCD Deputy Director (or HUD Office Division Director if DHCD is the RE).

If the responsible entity is not also the grant recipient, the form HUD-7015.15 must be transmitted to the grant recipient, in accordance with 24 CFR Part 58.71(b), along with a copy of the completed signed and dated environmental review record, and the posted or published environmental Notices.

Part 3. To be completed when the Recipient is not the Responsible Entity

Signature of Authorized Officer of the Recipient:
The recipient receives the completed form HUD-7015.15 from the responsible entity. It is to be signed and dated by the "Authorized Officer" of the recipient. The recipient then submits the completed form HUD-7015.15, along with a copy of the posted or published

public Notice(s), to DHCD (or the appropriate HUD Office Division Director) cited in the above referenced environmental Notice(s). The recipient maintains the copy of the environmental review record for its official project file.

NOTE: The recipient, by signing form HUD-7015.15, agrees to implement any special environmental conditions resulting from the environmental review prepared by the responsible entity. The recipient also agrees to notify the responsible entity of any proposed change in scope of the project or any change in environmental conditions. It also agrees not to implement any of those changes without a prior concurrence from the responsible entity and, if deemed necessary by the responsible entity, a supplemental formal release of funds from HUD.

Request for Release of Funds and Certification

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB No. 2506-0087
(exp. 10/31/2014)

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

1. Program Title(s)	2. HUD/State Identification Number	3. Recipient Identification Number (optional)
4. OMB Catalog Number(s)	5. Name and address of responsible entity	
6. For information about this request, contact (name & phone number)		
8. HUD or State Agency and office unit to receive request	7. Name and address of recipient (if different than responsible entity)	

The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental grant conditions governing the use of the assistance for the following

9. Program Activity(ies)/Project Name(s)	10. Location (Street address, city, county, State)

11. Program Activity/Project Description

Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.
2. The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.
3. The responsible entity has assumed responsibility for and complied with and will continue to comply with Section 106 of the National Historic Preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian tribes and Native Hawaiian organizations, and the public.
4. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal did ☐ did not ☐ require the preparation and dissemination of an environmental impact statement.
5. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.
6. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.
7. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

8. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.
9. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity	Title of Certifying Officer
	Date signed
X	

Address of Certifying Officer

Part 3. To be completed when the Recipient is not the Responsible Entity

The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).

Signature of Authorized Officer of the Recipient	Title of Authorized Officer
	Date signed
X	

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

APPENDIX L

Authority to Use Grant Funds (HUD form 7015.16)

Authority to Use Grant Funds

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

To: (name & address of Grant Recipient & name & title of Chief Executive Officer)	**Copy To:** (name & address of SubRecipient)

We received your Request for Release of Funds and Certification, form HUD-7015.15 on	
Your Request was for HUD/State Identification Number	

All objections, if received, have been considered. And the minimum waiting period has transpired.
You are hereby authorized to use funds provided to you under the above HUD/State Identification Number.
File this form for proper record keeping, audit, and inspection purposes.

Typed Name of Authorizing Officer	Signature of Authorizing Officer	Date (mm/dd/yyyy)
Title of Authorizing Officer	X	

APPENDIX M

Environmental Assessment Techniques

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APPENDIX M- ASSESSMENT TECHNIQUES

FROM APPENDIX A, ENVIRONMENTAL REVIEW GUIDE FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED (HUD-CPD-SEPTEMBER 1991).

APPENDIX M

APPENDIX D

[**NOTE:** The contents of this Appendix document first appeared as Appendix A of the September 1991 HUD publication, Environmental Review Guide for Community Development Block Grant Programs (HUD-CPD-782(2)). This publication pre-dates the NAHASDA Program, and the guidance was written for state and local CDBG managers and their staffs. However, the guidance can also be used by tribe and TDHE staffs to document compliance with environmental review requirements under NAHASDA and ICDBG Programs. It has therefore been provided as an Appendix to this manual to further assist tribes in their efforts to better understand and document compliance with the HUD environmental review requirements at 24 CFR Part 58. The A-95 review process referred to in this document has been superceded by Executive Order 12372, *Intergovernmental Review of Federal Programs* . The Order does not apply to NAHASDA programs or ICDBG. (refer to 24 CFR 52 for a list of programs subject to this Order)]

ASSESSMENT TECHNIQUES

This chapter serves to direct the environmental analyst toward relevant detailed issues and impact criteria. For each impact category, key important issues and questions which should be considered have been listed. Also, technical assistance has been provided through the identification of appropriate techniques for assessment of direct and indirect impacts in each category. The analyst may use this chapter first as a reference for filling out the checklist and second for completing a detailed environmental assessment in the selected impact categories.

Each impact category or grouping of categories within this chapter has been organized as follows:

ORGANIZATION OF IMPACT CATEGORY OR GROUPING

Overview

This section defines the impact category and other relevant terms and concepts. It describes typically critical issues for CDBG and UDAG projects, which may influence the assessment of that impact category.

Assessment Questions

This section provides a set of key assessment questions to guide the analyst in determining the likelihood of significant impacts. The assessment questions are first used by the analyst when filling out the checklist and then later when the analyst focuses on a specific impact category as part of the more detailed impact assessment process.

Analysis Techniques

In this section the specific analysis techniques are presented which can be used in determining the impacts in that category. These techniques typically include the following:

- ❑ Review of Project Plans
- ❑ Review of Secondary Documents Including Maps, Comprehensive Plans and other EIS's
- ❑ Contacts with Local Experts
- ❑ Special Studies
- ❑ Field Observation

A brief discussion is included which is intended to guide the analyst in employing correctly each of the assessment techniques.

Policy Base (Including Standards and Legal Requirements)

This section outlines both official and commonly used standards and any statutory or regulatory requirements which relate to each of the categories of impact. Since many impact categories do not have adopted standards or legal requirements, this section is not included under each impact category.

Sources and References

Both secondary source material, special studies and guidance material such as text books and handbooks are included in this section. Possible contact persons also are listed.

Experts to Contact

The titles and typical agency locations of local experts are listed in this section. The listings are intended to be suggestive of typical experts found on the local level. The actual persons and agencies will vary from place to place.

Mitigation Measures

Measures which can be used to mitigate possible adverse impacts are listed in each impact category. This Chapter will include the discussion of assessment techniques in the following categories:

Land Development

- ❑ Conformance with Comprehensive Plans and Zoning
- ❑ Compatibility and Urban Impact

- ❑ Slop
- ❑ Erosion
- ❑ Soil Suitability
- ❑ Hazards and Nuisances, Including Site Safety
- ❑ Energy Consumption

Noise

- ❑ Noise Contribution and Effects of Ambient Noise on the Project

Air Quality

- ❑ Effects of Ambient Air Quality on Project and Contribution of Community Pollution Levels

Environmental Design and Historic Values

- ❑ Visual Quality – Coherence, Diversity, Compatible Use and Scale
- ❑ Historic, Cultural and Archaeological Resources

Socioeconomic

- ❑ Demographic/Community Character Change
- ❑ Displacement
- ❑ Employment and Income Patterns

Assessment Questions

1. Is the proposal consistent with complete components of the local or regional comprehensive plan, whether adopted or in draft stage? Is there a relevant state plan and is the proposal consistent?

2. Is the proposed project consistent with other plans including those prepared by area wide planning agencies, special districts and boards and state agencies in various functional areas?

3. Is the proposed project consistent with adopted community or area wide policies and goals?

4. Does the proposed project comply with existing zoning and subdivision regulations? If not, does the proposal require a zoning variance?

Analysis Techniques

To undertake this assessment, it is first necessary to determine if the proposed project is in conformance with existing zoning, subdivision control or other land use regulations of the community with respect to factors such as allowed use, height and scale of the building, adequacy of parking, access and landscaped areas.

Following a zoning review, the project should then be evaluated for consistency with plans. Some agencies may not have planning documents and may need to be contacted directly to determine if a proposed project is consistent with proposed actions of that agency.

This analysis is similar to the A-95 Review process. However, because it is performed by the CDBG agency in-house prior to the formal A-95 review procedure, it offers the community the opportunity to modify the project, as necessary, prior to the more formal A-95 review by the appropriate reviewing agencies. The State Clearinghouse and the Metropolitan Planning Organization (MPO) should be contacted for assistance in initially compiling the inventory of relevant plans and agencies. The goal of the review should be the following:

1. Identify areas of agreement and conflict between the proposed project and existing plans.

2. Identify policies and programs which could adversely affect the project or be adversely affected by the project.

These should be fully documented with either a source or a personal citation.

Policy Base (Including Standards and Legal Requirements)

The CEQ regulations require that agencies consider “the possible conflicts with… regional, state, and local land use plans, policies, and controls for the area concerned.”

Sources and References

The Model Land Development Code, prepared by the American Law Institute, provides a basic legal reference to zoning and land use regulation generally.

Another basic source is by Robert H. Twiss, “Linking the EIS to the Planning Process,” **Environmental Impact assessment Guidelines and Commentary** (Thomas Dickert and Katherine Domeny (eds.), Berkeley: University of California, 1974).

LAND DEVELOPMENT

- ❑ Conformance with Comprehensive Plans and Zoning
- ❑ Compatibility and Urban Impact
- ❑ Slope
- ❑ Erosion
- ❑ Soil Suitability
- ❑ Hazards, Nuisances, and Site Safety
- ❑ Hazards (thermal Explosive Hazards and Airport Clear Zones)
- ❑ Energy Consumption

CONFORMANCE WITH COMPREHENSIVE PLANS AND ZONING

Overview

It is important to ensure that a proposed project is consistent with a community's long range goals and policies as articulated in its comprehensive plans. A community's zoning ordinance is the principal legal tool available for the implementation of its master plan and for the definition of the community's land use policies. While not all communities have zoning, in those communities where zoning exists it regulate development patterns including construction, alteration or use of buildings, structures, or land.

A proposed project may not be in conformance with existing zoning but may be in conformance with general development plans and policies. Such projects may require either a change in the zoning or a special permit through an appeals process. The need for a change in the zoning should not, by itself, be interpreted as an adverse environmental effect.

Comprehensive plans are intended to encompass plans and goals relating to a wide variety of areas including transportation, housing improvement, recreation, social and human service, health, economic development and utilities. These plans are prepared by a variety of agencies and boards, including municipal and county government, special districts, area-wide planning agencies, and state agencies. An assessment of the degree of conflict or consistency with local and regional plans must take into account the fact that the power to prepare and implement plans is highly decentralized, both on a geographic and an administrative or governmental basis. Some communities even require that local zoning be consistent with adopted plans. (See A. Delatons, Land use Controls in the U.S., MIT Press).

Experts to Contact

- ❑ Regional Planning Agency and A-95 Review Coordinator
- ❑ Zoning Review Officer or Administrator
- ❑ Planning Commission/Director
- ❑ State Planning Office

Mitigation Measures

If the project is inconsistent with zoning and if neither a special permit nor a change in zoning is contemplated, then the project must be modified to make it conform to zoning (e.g., reduce the density or height). Or its location could be changes to achieve zoning conformance by relocating it to a less restrictive zone. If the project is inconsistent with comprehensive plans then some modification of the project or the plans may be required. The assessment process can help identify where new or revised plans are needed.

COMPATIBILITY AND URBAN IMPACT

Overview

The man-made environment consists of differing types of land use: commercial, industrial, residential, recreation, and open space. It also takes place in areas of differing land use density. Central city areas, particularly along the East Coast, for example, contain higher densities of development than rural areas, small towns or newer western communities. In terms of residential uses, density is measured by number of dwelling units or people per unit per land area, usually the acre. In most communities density is governed by the local zoning ordinance. Some communities have no zoning; Houston, Texas is one example.

Issues to consider under this category are:

❑ **Urban Impact** – Certain types of federally assisted activities can have an adverse impact on the economic viability of a city's central business district. For example, situating a UDAG-assisted shopping center at the fringe of a city can serve to undermine the financial stability of downtown commercial establishments. Similarly, CDBG funded infrastructure improvements made at the edge of an urbanized area (e.g. sewer and water lines) may serve to induce development in underdeveloped portions of a community thus creating sprawl with resulting environmental and social costs. In some situations, the impacts of induced development may be highly desirable. CDBG funded infrastructure improvements made in the inner city may stimulate private investment and thereby help revitalize a lagging section of a community.

- **Land Use Compatibility** – Certain types of land uses may be compatible with one another. For example, it may be incompatible to locate a new housing development in a newly industrialized area.

Assessment Questions

1. What are the existing land uses adjacent to the proposed project? Do the abutters and neighbors think the proposed project will be incompatible with existing uses?

2. Will the project have an adverse effect on the economy of a core city area? Will it contribute to urban sprawl? Will it displace economic activity from a central business district?

3. Will the proposed project result in induced development which will alter existing land use or which will be incompatible with the existing scale and density of development? Are the changes which will result from any induced development regarded by the community as beneficial or negative?

4. Does the proposed project contribute to reducing the racial, ethnic, and income segregation of the area's housing?

Analysis Techniques

Analyze the existing project plans. If the proposal involves a new community facility such as a new sewer line, what is the service capacity of the new facility? How much new development will likely take place due to new facilities? Can this new growth be accommodated by the community services? Will this growth provide increased housing opportunities for low and moderate income or minority persons?

Consult secondary data sources to establish existing land uses and trends in development. These include:

- **Land Use Maps and Zoning Maps** which show general land use patterns in the community. Review how land use has changed in recent years prior to the current proposal.

- **Aerial Photos** can be useful in showing areas with large vacant land tracts and areas where new development is taking place.

- **Public Infrastructure Plans** – These are useful in identifying likely locations where new growth will take place, locations where new highways and/or sewer and water lines are planned.

- **Building Permit Records** indicate where new development or rehab activity is taking place.

- **Property Ownership and Title Transfer** data, where available, can reveal areas where real estate development interests are active.

Is this new induced growth consistent with community land use plans? Will the project serve to displace any existing uses? What are the trade-off issues to consider in this displacement?

Policy Base (Including Standards and Legal Requirements)

There is no Federal legislation specifically addressing urban impact issues. Local zoning laws, plans, and codes should be examined for their various requirements.

Sources and References

Schaeman, Philip. **Using an Impact Measurement System to Evaluate Land Development**. Washington, DC: The Urban Institute, 1976.

HUD Land Planning Bulletins.

The Costs of Sprawl, Council on Environmental Quality, HUD and EPA, Washington, DC USGPO 1974 (Stock No. 041-011-00021-1).

Experts to Contact

- Planners at local and area-wide planning agencies

- Zoning Officer

- City Planning Department

Mitigation Measures

The location of the project could be altered or protective measures could be instituted to safeguard existing land uses, for example, the possible granting of tax abatements for certain types of land uses, such as threatened agricultural use.

Community facilities and services could be expanded to service a development which is regarded as consistent with local and federal growth policies, particularly urban impact, despite its location at the fringe of a developed area.

SLOPE

Overview

Slope refers to changes in the physical features of the land: its elevation, orientation, and its topography. Such alteration is associated with construction on hillsides where changes in the visual character of the site may occur and where slop instability, erosion, and/or drainage problems may result. In some localities, hillsides are likely to house native plant communities which could be lost as a result of topographic alteration.

Excessive grading will often alter the groundwater level, which may cause the slow death of trees and ground cover, and in turn destroy wildlife habitat.

Since erosion, slope stability and drainage characteristics depend not only on the steepness of the slope but also on the materials of which it is composed, soils sustainability (discussed later in this Guide) needs to be considered in any analysis of slope conditions.

Assessment Questions

The following questions can be used to determine: (a) if the project will significantly affect or be affected by the slope conditions; and (b) if the slope is unstable, potential problems which may require remedy.

1. Does the proposal call for development on a steep slope and, if so, does its design plan include measures to overcome potential erosion, slope stability, and runoff problems?

2. Does the county, local, or site-specific soil survey mention that stables are unstable for any of the soils on the site?

3. Is there a history of slope failure in the project area environs?

4. Is there visual indication of previous slides or slumps in the project area, such as cracked walls or tilted tress or fences?

Analysis Techniques

It is recommended that communities with potential slope impacts relate their actions to a map of the area in order to establish if the project location is in an area of significant slope. An example of such a map is provided here.

Visual Indication of Unstable Slopes (Field Observation)

- ❑ Indications of previous slides or slumps in the project area.

- ❑ Cracking of top of slope shows movement.

- ❑ Movement or tilting of fence, retaining walls, utility poles, or trees.

- ❑ Slowly developing and widening cracks in the ground or paved areas.
- ❑ Hummocky undulations on mid to lower slopes.
- ❑ Breakage of underground utility lines.
- ❑ New cracks in plaster, tile, brickwork, or foundations.
- ❑ Outside walls, walks, or stairs pulling away from the building.
- ❑ Leakage from swimming pools.
- ❑ Doors or windows that stick or jam may be caused by slope movement.

Policy Base (Including Standards and Legal Requirements)

There is no Federal legislation specifically addressing slope stability issues. HUD Minimum Property Standards establish requirements for the stability of slopes and embankments. Some states and localities including Colorado, San Mateo County, California, and Cincinnati, Ohio have established slop construction regulations. These usually deal with a combination of factors: hillside management in relation to land use, lot size, drainage, foundation design, and sewage disposal.

A restrictive soil zoning district proposed by the Metropolitan Council in the Twin Cities area in Minnesota would prohibit commercial and industrial development on slopes steeper than 12% and would require that developers of residential property on such slopes prove that construction techniques employed would overcome the site's limitations. Pittsburgh has slope zoning districts. The table below presents slope suitability standards for urban areas.

Sources and References

1. US Soil Conservation Service, County Soil Surveys (to be consulted for more in-depth tests).

2. U.S. Geological Survey, topographic maps, Federal, State, and local geologic mapping programs now commonly include an assessment of landslide hazards, and the resulting maps identify known slides as well as potentially unstable slopes, especially in urban areas.

3. USGS. **Nature to be Commanded**, Geological Survey Professional Paper 950. Washington, DC, 1978.

4. USGS. **Facing Geologic and Hydrologic Hazards: Earth Science Considerations**, Geological Survey Professional Paper 1240-B. Washington, DC, 1981.

Experts to Contact

- ❑ Civil Engineer
- ❑ Geologist
- ❑ Soils Scientist

Mitigation Measures

Architectural and engineering designs which addresses site problems adequately; to be determined by appropriate local agency (building inspector, city engineer, city building department, etc.)

Development on steep slopes should be avoided if at all possible. Such land is usually more suited for park or open space use. If developed, the densities should be very low and grading should be avoided wherever possible.

EROSION

Overview

Erosion, transport, and sedimentation are the processes by which the land surface is worn away (by the action of wind and water), moved to and deposited in another location. While commonly considered an agricultural problem, erosion in the urban context, resulting from land clearance and construction can be equally serious. In urbanized areas, erosion can cause structural damage in buildings by undermining foundation support. It can pollute surface waters with sediment and increase the possibility flooding, by filling river or stream channels and urban storm drains.

Erosion results from the interaction of physical characteristics (topography, soil type, ground cover), wind and water action and human use at any one site. Some soils are less stable than others and are consequently more susceptible to erosion. Loosely consolidated soils (e.g., sands) and those of small particle size (e.g., fine silts) are more susceptible to erosion. By contrast, soils with high moisture and clay content are more resistant to erosion. Wind erosion is most likely to occur in arid or semi-arid regions where the low moisture content reduces the cohesiveness of indigenous soils.

A key factor in erosion is the land cover. Undisturbed vegetated areas are less susceptible to erosion than surfaces which have been exposed. The greater the slope the more likely the occurrence of erosion, because steep slopes (often defined as 12% +) increase the velocity of runoff.

Assessment Questions

1. Does the project involved development of an erosion sensitive area (near water, on a steep slope, on a sandy or silty soil)? If so, is erosion control included as part of the plan?

2. Does the proposed project create slopes by cut and fill?

3. Does site clearance require vegetation removal? How many acres will be cleared and for how long?

4. Is there evidence of erosion or sedimentation?

Analysis Techniques

Field Observations

A variety of secondary sources, as listed below, provide guidance as to assessment techniques. In addition, field observation can help indicate a site's erosion potential. Evidence of past erosion can be observed if active rills or gullies, stream bank erosion, sediment fans or muddy water are found near the site. Silty or sandy soils and high slopes are also indications of erosion potential.

Policy Base (Including Standards and Legal Requirements)

While no Federal legislation specifically addresses erosion concerns, they should be considered under the general provisions of NEPA. In many communities, local building codes, subdivision regulations, and hillside zoning ordinances address the issue of erosion and control techniques to be used during site preparation and actual construction.

In order to determine locations with serious erosion potential, it is useful to consult both solid classification and topographic maps. If your community has not prepared such maps, the following sources should be helpful:

Sources and References

Topographic quadrangle maps available from the U.S. Geological Survey are available for most areas and present slope gradients and hydrologic features (ponds, streams, etc.).

U.S. Soil Conservation Service **Soil Survey Maps** can be used to classify soil types on a project site. The "Unified Classifications" included on the map legend indicates soil erodibility.

To help in use of the maps listed above, the following documents provide instruction in the causes and control of erosion:

1. National Academy of Sciences, **Slope Protection for Residential Development**, Washington, DC, NAS, 1969.

2. Tourbier, J. and Westmacott, R., **Water Resources Protection Measures In Land Development – A Handbook**. Newark, Delaware, University of Delaware, Water Resource Center, 1974.

3. USEPA. **Processes, Procedures and Methods to Control Pollution Resulting from All Construction Activity**. Washington, DC, 197 (EPA 430/9-73-007).

4. Urban Land Institute, **Residential Erosion and Sediment Control**, Washington DC, 1978.

5. USGS. **Nature to be Commanded**, Geological Survey Professional Paper 950. Washington, DC, 1978.

Experts to Contact

The following specialists could be consulted:

- ❑ City or County Engineer
- ❑ Soil Conservationist – Soil Conservation Service County Office
- ❑ Landscape Architect
- ❑ Soils Engineer – State or local highway department

Mitigation Measures

If it is determined that a location has a potential erosion problem, project plans should be reviewed to determine if the need for erosion control measures has been properly addressed.

Good site design and construction practice should include (1) a plan that fits the contours of the site and keeps grading to a minimum; (2) retaining vegetative cover until construction start-up, clearing only that area needed for construction at any one time; and (3) providing temporary cover when extended exposure is unavoidable such as grass, sod, mulch, burlap, or plastic. Despite these precautions, to some extent erosion may be inevitable. Sediment control measures – such as the construction of sediment barriers, traps, and basins – can help reduce potential damage and should be considered as part of a thorough impact mitigation effort.

There are three basic approaches to reducing potential wind erosion: 1) maintain soil cohesiveness (by wetting disturbed areas and by avoiding unnecessary traffic on construction sites); 2) create or maintain vegetation or ground cover; and 3) reduce wind action (by scheduling construction to avoid high wind seasons, by planting or preserving tree lines or hedgerows perpendicular and upwind of the construction site, and by erecting artificial wind barriers, such as snow fences, if needed).

SOIL SUITABILITY

Overview

Soil suitability is the physical capacity of a soil to support a particular land use. To be suitable for a building, for example, a soil must be capable of adequately supporting its foundation without settling or cracking. The soil should be well drained so that basements remain dry, and so that septic systems can be installed in localities not served by sewers. Soil depth is an important factor and must be adequate for the excavation of basements, sewers, and underground utility trenches. Surface soils need to be capable of supporting plantings. How well a soil is able to support development is a function of several factors including: its composition, texture, density, moisture content, depth, drainage, and slope. Surface and bedrock geological conditions will also affect site suitability for development.

Development Issues. There are soils with poor drainage and poor permeability qualities. There are also soils with high shrink swell potential, high frost action potential, and with high side seepage potential. Each of these are characteristics which may cause problems for development if appropriate mitigation measures are not included in project design. It is, of course, not just the type of soil which creates problems for development but the soil combined with other features of the site including the height of the water table, the slope stability, and the potential of subsidence or settling of soils due to the extraction of mineral and geological deposits beneath the surface.

Nonetheless, it should be observed that most soils are suited for development, and many of the soil conditions which are adverse to development can be overcome by installation of drainage, replacement with structural fill or use of special foundations. While these measures add to project costs, in most urban areas the high cost of land makes these measures economically feasible. In rural localities these factors may justify the selection of an alternative development site.

Assessment Questions

1. Is there any visible evidence of soil problems- foundation cracking or settling, basement flooding, etc. – in the neighborhood of the project site?

2. Have soil borings been made for the area? Do they indicate marginal or unsatisfactory soil conditions?

3. If the answer to either of the above questions is yes and the proposed project involves either new construction or very substantial rehabilitation activities, does the project design include appropriate mitigation measures to address the problem of poor soil conditions?

Analysis Techniques

Initial Screening

An initial screening test should be performed to determine if the soils are compressible or unstable in foundation. Other sources which can be used are Soil Survey Maps prepared by the U.S. Soil Conservation Service, or soil maps prepared by the Army Corps of Engineers or state department of natural resources.

If the potential exists for any of the problems described below to be present at the project site, a site examination by a soils engineer or geologist will be needed.

Land Fill

A field observation can be useful in helping to determine if the site contains a former dump or land fill. Evidence of trash, random vegetative growth, odors, and/or rodents can be indicative. If it is determined that a building is to be constructed on filled ground, a test boring to determine soil stability and the possible presence of hazardous substances is needed. Sometimes land fills contain toxic chemicals (consult the section on "Hazards, Nuisances, and Site Safety" which follows). If buildings are to be placed on a land fill or dump, appropriate engineering principles and techniques must be followed.

Bearing Capacity

Foundation support capacity of a project site is defined by the bearing capacity of site soils and surficial geology. In general, well-drained coarse textured soils provide the best structural support. Poorly drained clay and organic soils provide the least support. Two frequently used rating scales for soil engineering performance are the American Association of State Highway Officials scale and the Unified Soil Classification system (Corps of Engineers). Both ratings are generally provided in Soil Conservation Service County Soil Surveys. Local building codes my also establish standards for soil bearing capacity.

For mid-rise or high-rise structures, or in those areas where bedrock is close to the surface, the bearing capacity of the geological substrate will be important. Geotechnical engineering standards can be used to interpret the potential structural loadings for various categories of surface/bedrock geology configurations; however, site specific analyses will still be needed for major structures.

Frost Susceptibility Liquefaction

The city or county engineer or a geologist may need to be contracted to determine if frost susceptibility is a problem, based upon consideration of the frost line, foundation depth, soil type, and water table. In general, poorly drained soils are more susceptible to frost action than

well-drained soils. The engineer or geologist may also need to be consulted to determine if liquefaction is a problem in the area. Sandy soils or filled areas in which high water table conditions exist are subject to liquefaction in the event of ground tremors or in the presence of large vibrating machinery. Under these circumstances, soil loses nearly all structural bearing capacity.

Shrink-Swell

This factor describes the volume change for a soil when the moisture content is varies. Soil with a high clay content, subject to changes in moisture due to groundwater withdrawal, drainage, increase in paved areas, etc. are the least suitable for development.

If the site has soil with a high shrink-swell potential, such as soil with high clay content, a soil engineer should be consulted to determine if settlement might occur due to changes in moisture content of the soil.

Subsidence

Ground sinking can lead to the collapse of existing structures, changes in drainage and vegetation, and safety hazards. Conditions which may indicate subsidence include: extensive underground (shaft/tunnel) mining; presence of limestone (or other soluble) bedrock in areas of moderate to high precipitation; large withdrawals of groundwater from aquifers; and excessive wetting of low density soils subject to hydro-compaction. The city or county engineer or a geologist should be contacted to determine if subsidence is a potential problem in the area.

Water Table

A high water table might produce damp or flooded basements or foundation damage. High water table conditions may also limit use of septic systems for on-site wastewater disposal. The soil survey should be checked to determine if the seasonal water table is higher than the lowest elevation of the structure. A soil boring test or soil percolation tests may be needed for more in-depth analysis.

Policy Base (Including Standards and Legal Requirements)

No Federal statute exists specifically concerned with physical site suitability, though NEPA implies that must be considered. Legal requirements are found primarily in State and local building codes, zoning requirements, and subdivision regulations.

Sources and References

1. Johnson, Sydney M. and Thomas C. Cavanagh, **The Design of Foundations for Buildings**, New York: McGraw-Hill, 1968 (a technical text).

2. Sowers, George B. and George F. Sowers, Introductory Soil Mechanics and Foundations, Third Edition, New York: MacMillian Co., 1970 (a general introductory text).

3. USGS. **Nature to Commanded**, Geological Survey Professional Paper 950. Washington, DC, 1978.

4. USGS. **Facing Geologic and Hydrologic Hazards: Earth Science Considerations**, Geological Survey Professional Paper 1240-B, Washington, DC, 1981.

Experts to Contact

- ❑ Architect/Engineer – local building department, HUD Field Office
- ❑ Soil Conservationist – Soil Conservation Service County Office
- ❑ Highway Department Soil Engineer
- ❑ Geologist-Soil Specialist

Mitigation Measures

Mitigation measures call for soil engineering and foundation engineering solutions. Solutions include the replacement of problem soil with more satisfactory, fill the treatment of problem soil to reduce or eliminate problems, as by injecting additives or improving drainage. Other solutions involve altering foundation design through measures such as embedding the foundation, using pilings or increasing the bearing areas of spread footings. Problems with subsidence or lack of suitable soil for on-site wastewater disposal may require considerations of alternative locations.

HAZARDS, NUISANCES, AND SITE SAFETY

Overview

This category is concerned with ensuring that a project is located and designed in a manner which reduces any potential risk to the public or project users from both natural and man-made risks to people or property damage. Accordingly, a number of possible hazards to health and safety have been identified below. Many of these hazards are already subject to municipal regulation. For example, standards for adequate light and air, building density, construction materials, structural integrity, maintenance and cleanliness are contained in local zoning, building and health codes. Their enforcement often independent of environmental assessment procedure. The environmental assessment should particularly include those areas, which are not covered by code requirements. Many can be corrected through proper siting, sound planning, and good project design.

Potential Sources of Public Health and Safety Problems

- ❑ Noise
- ❑ Vibration
- ❑ Odor
- ❑ Lack of Light
- ❑ Air Pollution
- ❑ Toxic Chemical Dumps
- ❑ Uranium Mill Tailings
- ❑ Reclaimed Phosphate Land (Radioactive)

Site Hazards: Shadows, inadequate street lighting, uncontrolled access to lakes and streams, improperly screened drains or cachment areas, steep stairs or walks, overgrown brush, lack of access for emergency vehicles, hazardous waste dumps, uranium mill tailings used as foundation or building material, radioactive reclaimed phosphate land, facilities handling chemicals and/or petrochemicals of an explosive or fire prone nature.

Traffic: Circulation conflicts, road safety, exposure to radiation, or toxic substances.

Natural Hazards. Climatic: wind, droughts, floods, lighting, hurricanes, tornadoes, hail, and snowstorms. Geological: erosion, landslides, volcanoes, earthquakes. Biological: infestations, allergies, bacterial, viral, and fungal diseases.

Assessment Questions

1. Does the project involve any of the potential hazards listed above? Any that are not listed including hazards created by project construction, operation and design as well as those existing on and near the site?

2. Are there project users or neighboring populations whose special health and safety needs are not anticipated in the project design? Have actions been taken to protect children from "attractive nuisances?" Have measures been taken to reduce the potential risk to the elderly from dust and temporary walkways and traffic around construction sites?

Analysis Techniques

Earthquake or Volcanic Activity

1. Using the Seismic Risk map of the United States given in HUD Minimum Property Standards, determines the risk zone of the project area.

2. If the project is in Zone 2, contact the State or Federal geological survey to determine if the site is within 0.5 miles of an active fault. If so, obtain the review and opinion of an engineer. Make sure the design requirements in HUD Minimum Property Standards are met. A seismologist can provide additional information as to the extent of risk.

Flash Floods, Tornadoes, Hurricanes

To determine if the project is in risk zones for these hazards, consult the following sources:

- ❑ Flash Flood Information from the appropriate district office of the Army Corps of Engineering or the Federal Emergency Management Agency (FEMA).

- ❑ Annual Climatological Data National Summary, which summarizes occurrences of tornadoes, hurricanes, and floods, published by the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. It is available for local areas from the National Weather Center in Asheville, North Carolina.

- ❑ Wind Speed Map – HUD Minimum Standards. If these hazards are present, consult a structural engineer to determine the type and extent of precautions or mitigative measures which are necessary.

Forest and Range Fires

Contact local fire departments to determine whether the project area is susceptible to forest and/or range fires. If so, consult with the fire department and local weather service authorities to determine which factors create a potential for fire hazards.

Mudslides, Sands, and Hazardous Terrain Features

Through field observation, area soil maps, and consultation with local flood insurance personnel, local weather bureau and the Soil Conservation Service, determine

(a) the site or adjacent area contains slopes with unconsolidated loose soils (i.e., a type of light windborne soil)

(b) the area is subject to extensive rainfall that could cause mudslides, or

(c) The site contains soil materials prone to exhibit liquefaction, such as quicksand.

Toxic and Radioactive Hazards

Using HUD Notice 79-33 and HUD guidebook, “Safety Considerations in Siting Housing Projects, “ Conduct field observations to identify potential hazards.

Contact local officials:

- ❑ State Fire Marshall
- ❑ Local Fire Department
- ❑ City or Area-wide Planning Agency
- ❑ Public Utility Commission
- ❑ Department of Public Health
- ❑ City or County Engineer
- ❑ United States Environmental Protection Agency Regional Office

Policy Base (Including Standards and Legal Requirements)

HUD Notice 79-33, subject: “Policy guidance to address the problems posed by toxic chemicals and radioactive material.”

HUD Minimum Property Standards along with local zoning, health and building codes apply to many of these categories.

Sources and References

1. **Landslide Analysis and Control**, Special Report 176. Transportation Research Board, NAS. Washington, DC, 1978.

2. **Guidelines and Criteria for Identification and Land Use Controls of Geologic Hazards and Mineral Resources Areas**, Colorado Geological Survey, Denver, Colorado, 1974 (p.3-49).

3. USGS. **Facing Geologic and Hydrologic Hazards: Earth Science Considerations**, Geological Survey Professional Paper 1240-B, Washington, DC, 1981.

4. The Environmental Protection Agency (EPA) maintains a list of EPA’s most hazardous (toxic) waste sites, the National Priorities List (NPL) (Office of the Superfund).

Mitigation Measures

There are a number of mitigation measures, which can be instituted to avoid or guard against the various problems cited above. Most involve appropriate project planning and design.

HAZARDS (THERMAL/EXPLOSIVE HAZARDS AND AIRPORT CLEAR ZONES)

Overview

This section of the hazards discussion is concerned with two specific kinds of hazards which can result in significant risk to HUD-assisted or insured projects and their occupants. The first involves sites located near operations handling conventional fuels or chemicals of an explosive or flammable nature and the other involves sites located in Runway Clear Zones at civil airports and Clear Zones and Accident Potential Zones at military airfields. For both types of hazards, HUD has established standards for reducing the risk to persons and property.

Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature

Both people and property are at significant risk to exposure from explosion and thermal radiation (fire) when projects are located too close to storage containers of hazardous gas and liquids or chemicals of a flammable or explosive nature.

Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

Potential aircraft accident problems that are inevitable side effects of aircraft operations make some types of development incompatible or unsuitable for locations in the immediate vicinity of airports and airfields.

Assessment Questions

Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature

1. Is the project site located near or in an area where conventional fuels (such as petroleum), hazardous gases (e.g., propane), or chemicals (e.g., benzene or hexane) of a flammable nature are stored?

2. Is there any evidence of industrial facility storage tanks, processing, or transport tanks in the project site vicinity?

Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

3. Is there a military airfield or commercial service airport near (in the vicinity of) the proposed project site?

If yes, is the project site located in the Runway Clear Zone (civil airports only) or in the case of military airfields, is it located in the Clear Zone or Accident Potential Zone?

Analysis Technique

Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature

If these hazards are present identify the contents of the container (or containers) and determine the distance between the container(s) and buildings and the container(s) and open space areas (play areas, parking lots, etc.) of the project site. Using the procedures contained in the regulation, calculate the acceptable separation distance (ASD) between the hazard and where the project building (and activities) should be located.

Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

The following information is necessary first to determine whether or not the project is located in an affected Runway Clear Zone or in a Clear Zone or Accident Potential Zone and second whether it is acceptable under regulation.

1. The listing of the affected civil airports

2. The dimensions of the zones

3. Land use compatibility guidelines for Accident Potential Zones from the Department of Defense.

The dimensions of the zones are available from the airport operators themselves.

Policy Base (Including Standards and Legal Requirements)

The standards for these hazards can be found in HUD regulations:

24 CFR Part 51, Subpart C, “Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature.”

24 CFR Part 51, Subpart D, “Siting of HUD-Assisted Projects In Runway Clear Zones at Civil Airports and in Clear Zones and Accident Potential Zones at Military Airfields.”

Handbook 1390.4: A Guide to HUD Environmental Criteria and Standards Contained in 24 CFR Part 51. U.S. Department of Housing and Urban Development, August 1984.

Sources and References

Urban Development Siting with Respect to Hazardous Commercial/Industrial Facilities. U.S. Department of Housing and Urban Development, HUD-777-CPD, April 1984.

Compatible Land Uses at Federal Airfields. (Federal Management Circular 75-2) General Services Administration, 1975.

Experts to Contact

- Engineers
- Airport Operators
- HUD Regional or Field Office Environmental Officers
- HUD Regional or Field Office Engineers

Mitigation Measures

For projects near hazardous operations handling chemicals, gases, or liquids of a flammable or explosive nature there are mitigation measures. The circumstances under which they can be applied are clearly stated in the regulation. Because of variables involved assistance should be obtained from an expert before proceeding with mitigation measures.

ENERGY CONSUMPTION

Overview

Energy is a scarce resource due to increasing worldwide shortages and the resulting price increases. It has therefore become increasingly important to both design and to locate new facilities in a way in which minimizes energy usage. Energy consumption should be viewed in a two-fold manner, first energy consumed directly by the facility for heating, cooling, and for hot water systems, and secondly heating consumed indirectly or induced by the facility, consumed chiefly in the transportation of people and goods to and from the facility.

Maximizing opportunities for energy efficiency can be incorporated in nearly all phases of project planning location selection, site plan, building design, and density. The location of new facilities in central areas with close proximity to mass transportation, shops, schools, and

services can reduce energy consumed for transportation, the largest non-industrial use of energy in the U.S. The reuse of existing building can often cost less and save more energy than new construction. Site planning should take into account the role which trees can play in sheltering a structure from climatic extremes (wind, heat and cold). Southward facing sites receive maximum solar input, an important consideration in northern climates during the colder months. The final consideration is the incorporation of energy saving measures in building design, such as the usage of extra insulation, use of efficient heating, cooling, and hot water systems, possibly solar, use of double-gazed windows, which open and close, use of fluorescent rather than incandescent lights. Other measures include the reduction in the number of parking spaces provided to encourage carpooling and/or transit usage.

Assessment Questions

1. Does the location of the site have any special energy related advantages or disadvantages? Can these be maximized or overcome?

2. Have the architectural plans taken full advantage of potential energy saving measures, such as insulation, window design and placement, lighting, heating, cooling and hot water systems? Are they in conformance with HUD Minimum Property Standards and other applicable energy saving codes?

3. Is the location of the project in close proximity to transit, shopping, services, and employment locations?

Analysis Techniques

Further analysis beyond the initial screening questions listed above consists of both a document review and field observation, both of which might require consultation with an expert. First, to determine if a site is adequately serviced with utilities (gas and electric), utility representatives should be consulted. Local street and transit maps can be used to determine if the site has good access to schools, shopping, transit lines, etc. Field observation can help in evaluating site design, exposure of the building to the sun, use of trees to reduce consumption, etc.

Building plans for the project also should be reviewed for compliance with energy saving standards.

Policy Base (Including Standards and Legal Requirements)

Projects which are required to conform to HUD Minimum Property Standards are now also required to include certain energy conservation measures. Recent Presidential Executive Orders have been issued which regulate thermostat settings in public buildings. The National Energy Policy and Conservation Act of 1975 (PL 94-163) outlines national policy and provides assistance to the States in developing State plans. Many States and localities have revised building codes, subdivision requirements, and zoning ordinances to require minimum energy efficiency standards.

Sources and References

Both HUD and the Department of Energy have prepared numerous manuals for including energy conservation in building design, as have many state energy offices.

National Recreation and Park Association. **Energy Conservation Program Planning Materials**. U.S. Department of Interior, Washington, DC, 1978 (Vol. IV Facilitation Manual).

U.S. Department of Energy. **Passive Solar Design Handbook** (2 Vols.) January 1980.

Landscape Planning for Energy Conservation. Environmental Design Press. 1977.

Experts to Contact

It may be necessary to consult with an engineer and/or architect to determine if the design fully exploits potential energy saving measures. Direct contact with utility companies is suggested. Local public works staff can sometimes assist in determining adequacy of utilities.

Mitigation Measures

The mitigation measures refer to all of the project design measures discussed earlier such as (a) adequate insulation; (b) proper siting (north/south); (c) double-gazed movable windows; (d) fluorescent versus incandescent lights; (e) efficient heating, cooling, and hot water systems; and (f) trees for shade and windbreak, etc.

NOISE CONTRIBUTION AND EFFECTS OF AMBIENT NOISE ON THE PROJECT

Overview

Noise is defined as any unwanted sound, which disturbs human activity. In the urban environment, noise is due primarily to vehicular traffic, air traffic, heavy machinery and heating, ventilation and air conditioning (HVAC) operations. Ambient noise levels in urban area are increasing due to the growing volume of noise-generating activities. As with other kinds of environmental impacts, the long-term effects of noise on people are difficult to determine with scientific precision. A casual relationship has been established between noise and various effects, such as heating loss and impairment, interference with speech communication, sleep disturbance, general anxiety, irritability, and annoyance. Other less well established effects include fatigue, unsociability, and inefficiency in performing complicated tasks.

Definition

Although the point at which sound becomes undesirable, and hence noise, varies with individual and sound itself, levels of noise can be defined. A noise level depends on the volume or intensity of the sound, its frequency or pitch, and the time of day and duration of its occurrence.

- **Intensity**- Noise is comprised of small, very rapid fluctuations in air pressure to which the ear is quite sensitive. These sound pressure levels are measured on a logarithmic scale in decibels (or dB), where 0 dB is approximately the threshold of hearing and 120 dB is approximately the threshold of pain. The logarithmic relationship between decibels means that it requires a tenfold increase in sound energy to produce an increase of 10 dB, and it requires a one hundredfold increase in sound energy to produce an increase of 20 dB. Such a 10 dB increase would be perceived by an average person as twice as loud as the original sound. An increase of 20 dB would be perceived as four times as loud as the original sound. A doubling of sound energy (as might occur when the number of noise sources is doubled) results in an increase of 3 dB.

- **Frequency**- Frequency, the number of sound waves per second produced by an emitting source, gives a sound its pitch. The human ear is less sensitive to some frequencies than others. Thus, not all sounds having the same decibel value are perceived to be equally loud. In general, high pitched sounds are judged to be "louder" (i.e., more annoying) than low pitched sounds even when both types of sound are being emitted at the same sound pressure level. Nonetheless, low frequencies heard continuously can cause stress and impair a person's ability to sleep.

- **Duration**- The third variable in describing noise is the time of day at which the noise occurs and its duration. For analytic purposes, night-time noise events (occurring between 10pm and 7am) are generally weighted as being ten times louder (10dB higher sound pressure) than identical daytime noises. This reflects the findings of many studies that indicate a much higher human disturbance level (e.g., sleep disruption) associated with noise at night than at any other time. Concerning noise duration, noises which are heard frequently at short intervals are perhaps the more irritating whereas continuous sounds tend to blend into the background, and hence become less irritating. Continuous noises at high decibel levels are, however, more likely to cause physical harm.

Assessment Questions

Refer to the HUD Noise Assessment Guidelines to respond to the following assessment questions.

1. Given the existing ambient noise and estimated future noise levels of the site, is the site appropriate for the proposed activities and facilities? Will the project be exposed to noise levels which exceed HUD's (or state or local) noise standards? If there is a potential noise problem, what kinds of mitigation measures are proposed for the project?

Analysis Techniques

The prime concern of a CDBG environmental impact assessment for noise should be the effect of existing and projected noise levels on the proposed activities and facilities. An assessment will be needed if housing and other noise sensitive uses are proposed and any of the following conditions are present:

- ❑ Existing or proposed commercial or military airports within 15 miles of the site
- ❑ Roadways within 1,000 feet of the site with such characteristics (e.g., high traffic levels, high speed, heavy truck/bus usage, slope gradients, etc.) that would indicate high ambient vehicular noise levels.
- ❑ At-grade or elevated transit lines or railroads within 3,000 feet of the site
- ❑ Other significant noise sources (e.g., industrial/manufacturing facilities, power generating stations, etc.) in proximity to the site.

The measure used in analyzing the overall level of noise in an area is the day-night average sound level system which is denoted as L_{dn} or DNL. The day-night average sound level is derived by taking the average noise level of a 24-hour period and weighting it by the addition of 10 dB for noises occurring between 10pm and 7am.

U.S. Department of HUD Noise Assessment Guidelines

The Noise Assessment Guidelines were designed to be used as a screening tool to indicate whether sites may be exposed to excessive noise levels. The Guidelines are written specifically so that a person without training in acoustical engineering can estimate present and future noise levels at a proposed site to determine whether the decibel levels comply with the HUD standards.

The Noise Assessment Guidelines provide a series of work sheets for the estimation of individual DNL resulting from aircraft, highway, and railroad sources as well as an overall site noise level base on these three sources. If the major noise sources includes a non-transportation activity, measurements may be necessary to determine the noise levels.

Once DNL is determined, it should be compare to the HUD Standards (see Standards and Legal Requirements below). Generally if the site exposure is 65 L_{dn} and 75 L_{dn}, alternative locations or mitigation measures should be considered. If noise mitigation is impractical or impossible, the project will generally be considered unacceptable.

Airport authorities, state transportation agencies, the Environmental Protection Agency, and other Federal, State, and local agencies conduct noise surveys or require noise data to be prepared for their operations or projects. Whenever possible, use this data. Make sure that it is up to date and calculated in DNL. This data could possibly be used to map areas of the city of high noise levels. Typical areas of high noise levels are heavily traveled streets and highways, airport approach routes and rail lines.

Policy Base (Including Standards and Legal Requirements)

Under HUD's noise policy (24 CFR Part 51D) CDBG grant recipients must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative action when noise sensitive land development is proposed in high noise exposure areas. The grantee should pay particular attention to noise levels when HUD assistance is contemplated later for housing or other noise sensitive activities related to CDBG actions (see 24 CFR 51.101(2)). The grantee risks denial of HUD assistance for noise sensitive activities if noise standards are violated.

In order to determine whether sound levels at a given project site are acceptable, HUD has adopted the use of the day-night average sound level (DNL) formula, previously described, and has adopted the following noise standards.

Sources and References

Aircraft Noise Impact: Planning Guidelines for Local Agencies. U.S. Department of Housing and Urban Development, 1972.

The Audible Landscape – A Manual for Highway Noise and Land Use. U.S. Department of Transportation, Federal Highway Administration, 1974. Provides a good overview of noise mitigation measures.

"Environmental Criteria and Standards, Noise Abatement and Control, 24 CFR Part 51, Subpart B," U.S. Department of Housing and Urban Development, July 12, 1979. This is the HUD noise regulation with quantitative noise standards and implementation procedures.

Noise Assessment Guidelines. U.S. Department of Housing and Urban Development, 1983. These are guidelines for use in implementing the HUD noise regulation. They provide a desk top tool for persons without acoustical training to calculate the noise exposure at a site in relation to the HUD standards.

Noise Assessment Guidelines Technical Background. U.S. Department of Housing and Urban Development, 1980. This report discusses the need for noise abatement, the various techniques for measuring and describing noise and human responses to it. It gives technical background information for the development of site noise assessment techniques.

Noise Barrier Design Handbook. U.S. Department of Transportation, Federal Highway Administration, 1976.

Guidelines for Considering Noise in Land Use Planning and Control. Federal Interagency Committee on Urban Noise, June 1980. Consolidates federal guidance on noise considerations in local planning.

Experts to Contact

In most areas, there are variety of experts who can provide useful data on noise sources and noise sensitive receptors. State transportation agencies, airport authorities and aviation planning departments, railroads, transit authorities, bridge and turnpike authorities, and local highway departments can provide data on traffic movements (and in some cases, noise emissions). Representatives of utilities and industries can be contacted, as appropriate, to provide any available data on facilities in close proximity to proposed CDBG project sites.

State or local health department may be able to provide available data on ambient noise conditions or records, or local noise-related complaints. Service providers- especially hospitals and nursing homes, libraries, schools-may be able to assist in noise evaluation for proposed project sites near existing service facilities. Also the Federal Aviation Administration, FAA, can be consulted concerning airport noise.

Mitigation Measures

Four types of measures can be taken to reduce noise or its effects: (listed in order of preference)

1. Reduce noise at its source

2. Locate noise-sensitive uses so that they will not be exposed to unacceptable noise levels

3. Modify the path along which noise emissions travel so as to reduce noise levels at the receptor site

4. Design or modify structures to minimize interior noise levels.

Noise source reduction is beyond the scope of what can realistically be accomplished as part of most CDBG projects. Considerable long term intergovernmental efforts are needed to modify aircraft approach patterns, reschedule freight rail movements, or implement truck tire and exhaust noise reductions. Less ambitious, but potentially useful options are available to most CDBG grant recipients. Modifying roadway movement patterns, reducing traffic levels, and limiting vehicular access (according to vehicle type or time of day) can significantly reduce noise levels on residential streets. In addition, CDBG project construction related noise should be minimized, especially in residential areas and near noise sensitive facilities such as schools, libraries, and hospitals. Construction contracts can specify use of muffled equipment, temporary noise barriers, truck access routes which avoid noise-sensitive areas, and construction scheduling to avoid early morning and late evening hours.

Noise can be lessened by taking the common sense approach of grouping noise sensitive activities close together and locating them as far as possible from the noise source. Specifically, this requires siting practices which (a) provide as much distance as possible between the noise source and the noise sensitive activity, (b) interpose noise compatible activities such as parking lots, open space, and commercial facilities between the noise source and the noise sensitive activities, (c) use buildings containing non-sensitive activities as noise

barriers, and (d) orient sensitive receptors away from the noise source. Within a particular building this means grouping the noise sensitive rooms together, away from the noise source and putting the noise compatible rooms, such as the kitchen, closer to the noise source.

Placing a barrier between the source and receptor is a technique that can be used to reduce exterior noise impacts to sensitive receptors. Noise reduction will usually be achievable at ground level and perhaps up to one or two stories in height. To be most effective, the barrier must be close to the source, The greater the height and length of the barrier, the more effective it is in reducing noise, Examples of barriers include earth berms and masonry walls. Dense vegetation plantings, while they do not attenuate noise emissions, provide perceived relief from noise impacts. Refer to the HUD Assessment Guidelines for calculation of noise barrier adjustment factors.

Sensitive receptor facilities can be designed or modified to reduce the effect of ambient noise on interior noise levels. Eliminating or reducing the size of windows is one possibility for lowering interior noise levels. Weather-stripping windows and doors, providing air conditioning and constructing ceilings and floors of dense materials will also help reduce interior noise levels. Interior noise reduction is necessary in heavily urbanized areas near transportation facilities or industrial facilities where alternative sites are not available and where, due to land constraints, barriers are feasible. This is the least desirable approach to noise mitigation because most CDBG projects have outdoor activities associated with them- such as recreation activities, which would continue to be exposed to noise emissions.

If noise impact mitigation for a proposed facility at a particular site is not feasible, alternative sites should be considered.

CONTRIBUTION TO AIR QUALITY AND EFFECTS OF AMBIENT AIR QUALITY ON THE PROJECT

Overview

Air quality refers to the presence or absence of pollutants in the atmosphere. It is the combined result of natural background and emissions from many individual pollution sources. The intensity of contamination varies with:

- Size of the source (emission)
- Distance from the source
- Height of emission above the ground
- Meteorological conditions, including wind direction and speed, air temperature and humidity , and sunlight

- ❑ Height and location of human receptors in the project

Air pollutants vary in their characteristics. Primary pollutants such as carbon monoxide (CO) are most dangerous in peak concentrations near their source. Others undergo chemical reactions to form harmful substances, known as secondary pollutants once in the atmosphere. An example of this is creation of photochemical oxidants, known commonly as "smog." Because of the time required for mixing and reacting to take place, the effect of secondary pollutants is more closely relate to representative concentrations than to local peak concentrations. In addition, EPA has classified some industrial pollutants as "toxic." These are controlled primarily at the source.

Sources of air quality problems can be categorized at three scales of the urban environment:

1. Cumulative urban area effects resulting from both primary and secondary pollutants that can create large scale problems for a region. The area wide impact of the project is considered in this group.

2. A major source such as power station or industry including the sources of "toxic" pollutants that may be subject to specific emission controls.

3. A local source, such as an industrial operation, highway, busy street, etc., inside or outside of the project directly impacting project livability

Definition of Environmental Effects

The effect of air pollution on human health can vary from a source of irritation to the eyes and throat to a contributing factor in three often fatal diseases-heart disease, lung disease, and cancer. Air pollution can also damage plant growth, soil material, reduce visibility, and alter climatological conditions.

Some population groups-the sick, the elderly, pregnant women and children-are most seriously affected by air pollution than are others. The groups are sensitive receptors, suffering adverse effects at lower pollution levels than the general public. This fact should be incorporated in any consideration of the location and/or design of schools and parks, hospital, and housing.

Air Quality Standards

There are two general approaches to air pollution control: (1) setting standards for pollution levels in the ambient air; and (2) controlling emissions at the source. Ambient Air Quality Standards establish acceptable concentration levels for major classes of pollutants in the ambient air (defined as that portion of the atmosphere which is external to buildings and accessible to the general public). Under the Federal Clean Air Act of 1970, states are required to achieve the primary air quality standards set by EPA within specified time limits. Primary standards are set to protect public health. The states must institute air pollution regulation, which at least satisfy minimum Federal standards, such as prohibiting development which will

cause air quality to deteriorate below the standards, and mandating clean-up measures where violations are registered. Some states, such as Minnesota and California, have adopted air pollution regulations which are more stringent than Federal requirements.

Emission Control Regulations: Direct Source; Indirect Source

Emission control regulations are designed to restrict pollution at the source. They are directed toward stationary and mobile sources. The stationary sources include plant sources such as those created by large scale heating and cool systems, incinerators and power plants. Such facilities usually require installation and operation permits which demonstrate their ability to meet both Federal and applicable State or local standards.

An indirect source is a facility which generates vehicular activity resulting in the emission of significant levels of pollutants. These include any large traffic generator such as a parking facility, retail complex, apartment building, or a highway. In some states, indirect source permits may be required depending on the size and location of the proposed development.

Administering Agencies

Most larger metropolitan areas (above 200,000 pop.) are categorized as “Non-Attainment” areas by EPA which means that ambient air quality falls short of Federal standards. Each such area is required to prepare and submit to EPA for approval a Non-attainment Strategy Plan and a Transportation Control Plan. These plans are intended to specify the actions which will be taken to achieve compliance with national standards by a specified date. These plans are considered as subcomponents of the State Implementation Plan (SIP). By indicating how to attain and maintain ambient air quality standards the SIP’s exist in all states and are administered either by a state or a regional air quality control agency.

Air Quality Monitoring Stations

In most metropolitan areas, the air quality control agency maintains monitoring stations which measure pollution levels. This information is normally used to measure air quality in a particular locality and to identify violations of air quality. These readings may assist in formulating approximate measures of air quality at a nearby location for distant industrial sources (Sulfur Dioxide, SO2, Total Suspended Particulates, TSP, etc.), they are inadequate for estimation of traffic impacts, CO, etc. Use of a mobile lab can be expensive, may record only the existing situation, and requires extensive statistical analysis to provide useful results.

Assessment Questions

Consideration of air quality impacts is often a difficult and highly technical undertaking, involving a host of different standards for different types of emissions and types of development. For purposes of Environmental Assessment, the task can begin with a set of simple questions. These questions will not necessarily lead to a conclusion about a project’s acceptability but rather will help to indicate of there is a potential problem and if expert advice should be sought.

In many metropolitan areas this advice can be provided by the appropriate air quality control agency.

1. Does the project require an installation permit, operating permit or indirect source permit under local pollution control agency rules? If so, have permit requirements been satisfied?

2. Is the project located in the vicinity of a monitoring station where air quality violations have been registered? If so, will the project exacerbate air quality problems in the area?

3. If the project or its potential would be particularly sensitive to existing air pollution levels, or those expected 10 and 20 years hence, has the project been designed to mitigate possible adverse effects?

4. Will the proposal establish a trend which, if continued, may lead to violation of air quality standards in the future?

5. Will the proposed project have parking facilities for 1,000 cars (include an SMSA) or 2,000 cars (outside an SMSA) or generate traffic of a corresponding magnitude?

Analysis Techniques

Typical CDBG Project Air Quality Issues

Consideration of air quality involves both analyzing the impact of the proposed project on air quality in the community and the impact of the existing environment on the proposed project forecasting. It depends on project size, type, and its location (i.e., the suitability of the particular location for the type of project planned). Such consideration might, for example, argue against siting elderly housing adjacent to an expressway. Such consideration might also involve stipulating that a new in-town commercial complex be designed with a limited supply of parking in order to encourage transit usage and thereby reduce potential vehicular generated air pollutants. It should be noted that if the proposed project will utilize CDBG funds and be a housing development of more than four units, the project should also be reviewed for conformance with HUD Noise Policy.

Nearly all new development will have some effect upon air quality, however minor. The dilemma faced by many cities is how best to consider proposed new development in locations which are non-attainment areas for specific air pollutants. Under the 1977 Amendments to the Clean Air Act, a new approach was instituted to permit development when it can be established that the “source will not cause or exacerbate a violation of a national standard or any applicable PSD (prevention of significant deterioration) increment” (42 U.S.C. Section 7401-7642). An approved estimation technique should be used to assess the impacts. The statute also established a “trade-off) condition under which emissions from a new development may be traded for a reduction in emissions elsewhere.

Policy Base (Including Standards and Legal Requirements)

Air quality is an impact category for which specific Federal and non-Federal government standards exist.

Clean Air Act, as amended, 1970 and 1977; Executive Order 11738; and Implementing Regulations, especially

- ❑ National primary and secondary Ambient Air Quality Standards, EPA, 40 CFR 50, 1971 as amended.
- ❑ State Implementation Plans, EPA 40 CFR 51, 52.
- ❑ HUD Environmental Regulations 24 CFR Part 58.
- ❑ All other HUD regulations with Air Quality requirements, Section 701, Section 8, CDBG, etc.
- ❑ Applicable state legislation and regulations.

Sources and References

Basic Manuals

1. "HUD Interim Guide for Environmental Assessment," Interim Guide, 1975; Part IV-6, Climate and Air, Generation and Dispersion of Contaminants. **Environmental Manual**, #H-2080R.
2. "Air Quality Considerations in Residential Planning," SRI HUD 1980. Volume 1, **A Guide for Rapid Assessment of Air Quality at Housing Sites**, HUD-PDR-524-1. Volume 2, **Manual for Air Quality Considerations in Residential Location, Design, and Construction**, HUD-PDR-524-2.
3. "A Guide for Reducing Air Pollution through Urban Planning," Interim Guide, 1973; EPA/HUD. APDT-0937. **Planning Manual**.

Secondary Sources

1. State Implementation Plans (SIPs) required to meet the Federal Ambient Air Quality Standards.
2. Metropolitan-wide Air Quality Maintenance Area (AQMA) Plans

Experts to Contact

- ❑ Local and/or Air Pollution Agency
- ❑ Traffic Department or Engineer

- ❑ Weather Service Station
- ❑ Air Pollution Consultant, Meteorologist, or Engineer
- ❑ State Environmental Quality Agency
- ❑ Environmental Protection Agency Regional Office Staff

Mitigation Measures

In developing the design for a project there are recommended design practices that can be followed to reduce air quality impacts at the urban area, site and building scales.

Recommended Design Practices to Minimize Air Quality Problems

Urban Design Criteria

1. Separate as far as possible human activity from automobile and other pollution sources. Avoid residential uses close to highway air rights, elevated highways, tunnel exits, lower floors along a busy street, etc.

2. Assure easy flow of air around the buildings.

3. Arrangement of structures

    a. Avoid blocking valleys and other natural air flow ways with high rise structures.

Site Plan Design

1. Setbacks: Setback of structures or of heavily frequented areas of the site from major roadways can greatly reduce human exposure to pollution.

    a. Avoid long linear blocks of structures, avoid closed courts, deep angles which trap and stagnate air masses.

    b. Vary setbacks, vary building size and heights, plant irregular landscaping to increase turbulence and dispersion.

2. Landscaping: Landscaping improves dispersion of pollutants, reduces the temperature of pollutants, and reduces infiltration of pollutants into the building.

3. Parking Lots: Avoid large masses of parking spaces in favor of smaller parking areas more broadly distributed.

4. Grading: Avoid site grading that creates low pit areas since these spaces tend to trap pollution.

Building Design and Construction

1. Avoid balconies and cavities in the building shell and on the building side which is subject to heavy pollution impact.

2. Reduce infiltration of pollution.

    a. Install vapor barrier material with an effective permeability rating of approximately 2 perms per 100 square inches in exterior wall (see ASTM Standard C-355), use weather sealed windows and doors.

    b. Reduce outside polluted air input into the ventilation and air conditioning systems, use oxidizing agents wash in air conditioning, program air intake schedules, avoid or vent indoor pollution sources, etc.

3. Use construction technology and building equipment necessary to reduce indoor air pollution levels. Unless indoor pollution sources are reduced, a "tight" building may have worse air quality than one which has high permeability.

ENVIRONMENTAL DESIGN AND HISTORIC VALUES

- ❑ Visual Quality – Coherence, Diversity, Compatible Use; and Scale
- ❑ Historic, Cultural, and Archaeological Resources

VISUAL QUALITY – COHERENCE, DIVERSITY, COMPATIBLE USE; AND SCALE

Overview

Visual quality can be defined as the impacts of the project on the visual character of its surroundings and ultimately, on the residents, users and/or visitors of the project. Visual quality derives from the way elements of the natural and built environment relate to each other to create a sense of harmony. Ideally, the overall effect of these elements is to give the viewer a sense of orientation and comprehension, and to enable the viewer to orient himself in the area. Visual impact should be examined in terms of the surrounding area of the project. Examine the project in view of how it fits in with its man made and natural surrounding areas. Will the project add to the attractiveness of the area or detract from it? Where changes are required, beneficial effects should be designed into the project (e.g., landscaping).

Elements that comprise the natural environment include the natural contours of the land, bodies of water, vistas of the sky, and trees and plants. These provide contrast to the built environment and create visual interest.

Any kind of physical construction related to the project will affect the natural elements. Construction which is not adapted to the contours of the land is out of character with the site. Buildings that block views or cast shadows, cut and fill operations that ignore natural contours, the filling of wetlands, removal of trees and vegetation are other examples of site use insensitivity.

Elements of the built environment include the surrounding buildings and streets. The different styles and types of buildings and their materials, colors, shapes, sizes, facades, details, and density all add to the character of the area. Their placement in relation to the street and to each other can help provide a sense of harmony or create interesting skylines and views.

Streets and streetscapes are another major component of the built environment. Variables here are the size, width, paving and curb materials, lighting fixtures, signs and street furniture such as benches. The vitality of activity strongly affects the character of an area. Projects that are closed, windowless, or undifferentiated at the sidewalk level may seriously mar the public perception of safety and livability of the surrounding area.

A number of factors should be examined in determining the compatibility of a new building with the existing area. Buildings which open up views or block or degrade them or which become themselves focal points will affect the visual quality. Other factors include the size, design, material, and siting of the building or buildings. However, buildings which do not copy their neighbors in materials or design are not necessarily incompatible.

Assessment Questions

1. Physical Alteration: Will there be demonstrable destruction or physical alteration of the natural or man-made environment? (For example, will there be clearance of trees or buildings, substantial regarding or alteration of the vegetative character or geomorphic form of the land? While alteration of the existing landscape is often negative, it can also provide opportunities to improve areas already disrupted by man – e.g., land may be regarded to prevent contaminated surface waters from flowing into a stream or pond, at the same time as creating more varied landscape).

2. Nonconformity with Existing Environment: Will there be intrusion of elements out of character or scale with existing physical environment? Dies the proposed building represent a significant change in size, scale (i.e., unrelated size or spacing of windows, floor levels, entrance patterns), placement or height in relation to neighboring structures in an inappropriate manner? Does it differ in materials, color, or style from its neighbors in an inappropriate manner?

   Are proposed signs and street furniture in character with existing architectural styles, particularly in historic areas? Are levels of activity reduced or detrimentally increased?

3. Will the proposed structure block views or degrade them, change skyline or create a new focal point? Is objectionable visual pollution introduced directly or indirectly due to loading docks, trash collectors, parking? Is this mitigated visually?

4. Disruption of the Ambient Environment: Will there be interference with or impairment of ambient (or existing background) conditions necessary for the enjoyment of the physical environment? (For example, increased ambient levels of air and noise pollution, vibration, dust, odor, heat and glare can seriously interfere with human health and the experience of natural conditions. These increases may also promote the deterioration of vegetation, wildlife habitats, and historic buildings.)

Analysis Techniques

Numerous techniques are available to better understand the visual effects of development. Some techniques are used by designers and planners to identify, measure, and evaluate visual effects; and other techniques are available for involving the community in the study of visual issues. Developers, officials, designers, and residents can have very different perceptions of the same environment, and very different evaluations of aesthetic benefits and costs.

For analyzing visual issues, techniques are available from the fields of landscape architecture, urban design, and social impact assessment. The analysis of views, light and shadow, and visual compatibility is typical of landscape architecture site analysis of both urban and rural contexts. Urban designers apply other techniques, focusing on the influence of the scale and design of structures. Tools that can be used in these analyses include overlay maps, perspective drawings, scale models, still and motion film, and computer mapping. The field of social impact assessment offers tools for studying residents' perception of the existing visual environment and their evaluation of future development. These tools include surveys to collect facts and to assess attitudes; focused group interviews and other community meetings; community demographics and social profiles; and quality of life indicators.

To achieve public acceptance of a project it is important to involve local citizens in identifying and evaluating visual effects. Community residents can help identify both physical and sociological effects and lend their judgment to the evaluation of these impacts. Since aesthetic judgments are based on past experiences, education, and personal taste, it is important to offer residents repeated opportunities to understand the aesthetic issues and to allow them to express their judgments.

Most importantly, methods selected for displaying aesthetic issues and collecting comments from citizens should be those proven effective in conveying aesthetic issues to laymen, and not techniques understood only be those in the field of development. Methods of collecting views should be designed to sort out the responses of various groups to aesthetic issues by such factors as potential project users, age groups, or economic classes.

Sources and References

Urban Design as Public Policy. Jonathan Barnett. New York: Architectural Record Books. 1974.

City Signs and Lights. Stephen Carr. MIT Press, Cambridge, Massachusetts. 1973.

Managing the Sense of a Region. Kevin Lynch. MIT Press, Cambridge, Massachusetts. 1976.

Guidelines for incorporating Design, Art, and Architecture into Transportation Facilities. Laos Heder. U.S. Government Printing Office, Washington, D.C. 1980. Report No. DOT OST p. 20-30.

Lessons from Local Experience, CDBG/Urban Environmental Design. U.S. Department of Housing & Urban Development. (#HA 5046) Superintendent of Documents, USGPO, Washington D.C. 1983.

Experts to Contact

- ❑ City Architect, Urban Design Staff.
- ❑ Local American Institute of Architects, American Society of Landscape Architects or American Planning Association
- ❑ Local Conservation and Historic Commissions

Mitigation Measures

To help resolve differences of opinion or visual impacts, a design review committee can be established to monitor development of detailed designs for the project. The committee reviews local sign and zoning codes to insure that the project complies with existing standards for height bulk, and signage materials.

HISTORICAL, CULTURAL, AND ARCHITECTURAL RESOURCES

Overview

The identity of a community or neighborhood can be intimately tied to those structures or areas which have historic, cultural, or architectural interest and significance. Such places help to define a community's past and provide a sense of place and character its current image.

The National Register of Historic Places is a Federal listing of properties and places which are of special historic, cultural, or architectural value. The request for inclusion of a property on the National Register is usually made by the local community jointly with the State Historic Preservation Office (SHPO) and forwarded to the Keeper of the National Register of Historic Places which reviews the application and decides on eligibility. Inclusion on the Federal Register helps protect the property from alteration or adverse impact by a Federally funded activity. It may also make the property eligible for Federal matching funds for certain renovation activities. In addition to individual buildings and sites, entire districts can be placed on the Nation Register, such as Boston's Beacon Hill or the Georgetown area in Washington D.C.

In addition to the National Register, some states have adopted their own inventories of histories places and many have established histories districts enabling legislation, such as Massachusetts, which enables localities to establish historic districts as types of overlay zoning. Further many counties, municipalities and metropolitan areas have their own inventories and districts.

The Department of Interior has issued specific criteria to help determine eligibility of properties for listing in the National Register. In summary, historic and cultural resources are those districts, sites, buildings, structures, and objects having significant associations with historic, architectural, archaeological, or cultural events, persons, groups, and social or artistic movements. In general, these resources include all districts, sites, buildings, structures, and objects which:

- Are associated with events that have made a significant contribution to the broad patterns of our history.
- Are associated with the lives of persons significant in our past
- Embody the distinctive characteristics of a type, period, or method of construction; represent a significant and distinguishable entity whose components may lack individual distinction
- Have yielded, or may be likely to yield, information important in prehistory or history.

Assessment Questions

1. Does the project area and environs contain any properties listed on the National Register of Historic Places? Does the locality have an inventory of historic places?

2. Is there a local historic commission that can provide historic information? What information on the project area does the State Historic Preservation Office (SHPO) have and has a survey of local historic properties been conducted?

3. Are there other properties within the boundaries or in the vicinity of the project t hat appear to be historic and thus require consultation with the SHPO as to eligibility for the National Register?

4. If so, can the applicant prepare documentation that reflects consultations with the SHPO as to what appears to eligible for the National Register, whether effected by the project or not?

5. Has the Department of the Interior been requested to make a determination of eligibility on properties the community or SHPO deems eligible and affected by the project?

6. Has the Advisory Council on Historic Preservation been given an opportunity to comment on the properties that are listed on or have been found eligible for the National Register and which would be affected by the project?

7. Does the Advisory Council response indicate that a Memorandum of Agreement is needed to avoid or reduce affects?

8. If so, has the Advisory Council's "106 Process" been completed, or does the applicant contemplate completing the process after applying for HUD funds but prior to requesting the release of funds?

Analysis Techniques

In order to determine if the proposed project will, in fact impact historic, cultural, or archaeologically significant properties, it is first useful to consult secondary source material. As part of the preparation of a data file, it is recommended that all of the properties having possible historic value be mapped or documented and discussed with the SHPO. Those that then appear to be eligible should be mapped as the example from Cambridge, MA. illustrates.

If such maps are not available, first examine the National Register along with state and local inventories of historical places to see if any are at, or close to the site of the proposed project.

If the community has not inventories its resources, it should conduct a site inspection to review the project area against criteria of eligibility for the National Register, described above in the Overview. Where the scale of anticipated projects is extensive, the community may elect to undertake an inventory of community resources, the cost of which is "eligible activity." Depending on the history of the project area, a systematic survey may be a prudent expenditure, using the best expertise available or the local historic commission. Such work is not a program requirement.

The community with the advice of the State Historic Preservation Officer must determine whether the project area contains and will affect property on or eligible for the National Register. The Department of the Interior makes final determinations of eligibility (36 CFR 1204). When Register or Register-eligible property will be affected consultation with the Advisory Council on Historic Preservation is required. (36 CFR 800 for CDBG; 36 CFR 801 for UDAG).

An adverse effect is defined by the following criteria:

- Destruction or alteration of all or part of the property
- Isolation from or alteration of its surrounding environment
- Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting
- Neglect of a property resulting in its deterioration or destruction (vandalism)
- Transfer or sale of a federally owned property without adequate restrictions regarding preservation maintenance or use.

Policy Base (Including Standards and Legal Requirements)

Historic preservation and the preservation of cultural and archaeological resources are protected under a number of legal authorities including the following:

National Historic Preservation Act of 1966 (P.L. 89-665) especially Sec. 106, an amended by P.L. 96-399. This is the basic legislation for historic preservation requirements.

Properties included or eligible for inclusion in the National Register are afforded protection under this Act.

HUD requires CDBG communities to take into account the effect of the undertaking on any district site, building or object that is included or eligible for inclusion in the National Register. The Advisory Council on Historic Preservation must be afforded a reasonable opportunity to comment with regard to such undertaking.

Executive Order (EO) 11593, Protection and Enhancement of the Cultural Environment, 1971 as amended. The Act as amended extends the protection of the National Historic Preservation Act to its districts, sites, and buildings that are eligible for listing in the National Register.

Advisory Council on Historic Preservation, Protection of Properties and National Register: Procedures for Compliance (36 CFR Part 800). These are the procedural requirements implementing Section 106 and EO 11593 which must be followed. HUD UDAG program is subject to 36 CFR 801.

Preservation of Historic and Archaeological Data Act of 1974 (P.L. 93-291). This Act deals with the preservation of scientific, historical, pre-historical, and archaeological data as a result of any Federally assisted construction project.

Whenever a Federal agency, including a CDBG grant recipient or State, in the case of the Small Cities Program, is notified by an appropriate historical or archaeological authority that its project

may cause irreparable loss or destruction of significant scientific, pre-historical, historical, or archaeological data, it shall notify the Department of the Interior and provide them with information concerning the project. Although some reasonable costs for data identification and recovery may come from project expense, other assistance for recovery or preservation may be provided by the U.S. Department of the Interior.

Sources and References

Advisory Council on Historic Preservation, **Procedures for the Protection of Historic and Cultural Properties**, 36 CFR Part 800. Also 36 CFR Part 801 applicable to HUD Urban Development Action Grants. Also various other guidelines, including:

Society for American Archaeology. **Archaeology and Archaeological Resources, A Guide for Those Planning To Use, Affect or Alter the Land's Surface.** Washington, D.C. Undated.

U.S. Department of the Interior. **Preparation of Environmental Statements: Guidelines for Discussion of Cultural (Historic, Archaeological, Architectural) Resources.** Washington, D.C. 1974.

U.S. Department of the Interior. **Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.** HCRS 1980 623-077113W.

Experts to Contact

- ❑ State Historic Preservation Officer (State Historical Commission) (required)
- ❑ Local Historical or Archaeological Societies or Commissions
- ❑ State, regional, or local planning agencies known to have prepared historic plans or surveys
- ❑ Keeper of the National Register, DOI's Washington D.C. and Regional Offices, DOI's Heritage Conservation and Recreation Services

Mitigation Measures

If it is determined that the project will result in an adverse effect on historic resources, it will be necessary to examine ways to modify the project by a variety of actions which might include:

- ❑ Relocating the project away from historic or cultural resources
- ❑ Modifying the project to avoid the adverse impact through actions such as the renovation of the historic property for use by the developer rather than the proposed demolition and construction of a new structure
- ❑ Establish design review criteria or procedures to be followed during project implementation

- ❑ Relocating the register eligible property

Local and state preservationists along with architects should be involved in the formulation of appropriate mitigation measures. The successful mitigation of a potentially adverse impact requires the preparation of a memorandum of agreement to be signed by the community, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation.

SOCIOECONOMIC

- ❑ Demographic/Community Character Changes
- ❑ Displacement
- ❑ Employment and Income Patterns

DEMOGRAPHIC/COMMUNITY CHARACTER CHANGES

Overview

Community is a term which commonly refers to people living within a defined geographic area such as a neighborhood or a small town. Communities can be highly diverse or highly homogeneous places, they can be strictly residential or can be characterized by mixed land uses. The CDBGF program is primarily intended to benefit low and moderate income households and has the objective of increasing housing opportunities, particularly outside areas of concentration, for all lower income households including minority households.

Central to the definition of community is both the presence of a residential population and a sense of common bond and collective identity which defines the community as distinct from other neighborhoods or communities. Community is often a difficult term to define because it carries a physical, social, and psychological dimension. The physical dimensions are the quality and type of housing units, commercial, public and social services. The social dimensions include demographic characteristics such as the population size, density, age, ethnic and minority composition, household size and composition as well as income and employment characteristics. Much of this data is found in the U.S. Census and in the applicant's Housing Assistance Plan.

The final dimension of community is psychologically derived, referring to the residents' sense of community, their perceived relationship with their surroundings. It can be measured from resident attitudes, and the strength of organizational ties both formal and informal. It should be observed, however, that change per se is not a negative or positive thing. In doing this assessment, it is important to be aware of a neighborhood. In many cities neighborhoods exist where residents have strong ties to the area, each other and local stores and institutions. Often these are ethnic areas where residents share a common cultural and religious heritage. It is

important that CDBG activities not destroy the social networks and institutional ties in these areas.

Assessment Questions

1. What are the identifiable communities within the sphere of likely impact of the proposed project? What are the factors which contribute to the character of the communities?

2. Will the proposed project significantly alter the demographic characteristics of the community?

3. Will the proposed project result in physical barriers or difficult access which will isolate a particular neighborhood or population group, making access to local services, facilities, and institutions, or other parts of the city more difficult?

4. Will the proposed project severely alter residential, commercial, or industrial uses?

5. Will the proposed project destroy or harm any community institution, such as a neighborhood church?

Analysis Techniques

Secondary Data

It is first necessary to define the boundaries of the neighborhoods to be impacted by the proposed project. These may be congruent with existing or newly defined planning districts.

The Bureau of the Census has recently begun a program, the 1980 Neighborhood Statistics Program, which can provide data for recognized neighborhoods that is identical to that produced for census tracts. Each community must define its own concept of neighborhood and precise boundaries in order to participate in the program. The Guidebook listed below provides assistance in participating. Census data should then be analyzed to establish the characteristics of the community. It is often helpful to map this information as part of the preparation of the data file.

Another potential source of updated demographic data is the local R.L. Polk directory which can be used to modify 1970 census data until 1980 data is available, although the modification must be done carefully.

Another secondary measure which can be consulted is the results of neighborhood attitudinal surveys which are conducted in many cities to assist in the identification of needed public services.

Primary Data

Field observation can be a useful method of assessing the character of a community. Measures to look for include: the quality and condition of the housing stock, any evidence of abandoned or vacant structures, both residential and commercial. Interviews with a cross section of area residents and business persons can be helpful, as can the opinions expressed at community meetings in defining local problems.

In some cases, it may be considered desirable to conduct an attitudinal survey in an affected neighborhood to document community needs and preferences.

Policy Base (Including Standards and Legal Requirements)

No Federal statutory requirement or standard exists for measuring this category of impact. While a number of data sources exist to assist in assessing impacts on community character, ultimately the determination of impact relies heavily on community comments and the professional judgment of the reviewer.

Sources and References

Christensen, K. **Social Impacts of Land Development: An Initial Approach for Estimating Impacts on Neighborhoods Usages and Perceptions.** Washington, D.C.: The Urban Institute, 1975.

Fitzsimmons, S. et al. **A Guide to the Preparation of the Social Well-Being Account: Social Assessment Manual.** Prepared for the U.S. Department of the Interior. Cambridge, Massachusetts: Abt Associates, Inc. 1975.

McEvoy, J. and T. Dietz**. Handbook for Environmental Planning: The Social Consequences of Environmental Change.** New York: John Wiley & Sons, 1977.

St. Paul City Planning Department. **Environmental Resource Data and Assessment Guide.** St. Paul, Minnesota, January 1977.

Neighborhood Identification: A Guidebook for Participation in the U.S. Census Neighborhood Statistics Program. Prepared for U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Office of Neighborhoods, Voluntary Association and Consumer Protection. Prepared by Institute foe Urban Studies, University of Notre Dame, April 1980 (Purchase Order No. HUD 5239-79).

Experts to Contact

- ❑ Neighborhood Planner at a local planning department
- ❑ Director of local neighborhood organizations

- ❑ Housing Code Compliance Office/local health or building department
- ❑ Local Community Action Agencies
- ❑ Local Advocacy Groups and/or Organizations

Mitigation Measures

1. Redesign or relocate project
2. Preserve or relocate community institutions
3. Establish a community advisory group to monitor project implementation

DISPLACEMENT

Overview

Displacement refers to the dislocation of people, businesses, institutions, or community facilities as a result of a project. There are several types of displacement: direct displacement and indirect displacement. Direct displacement is involuntary displacement of a person who occupies property that is acquired, rehabilitated or demolished for CDBG activity, or vacated to comply with CDBG-assisted code enforcement or specifically identified in a CDBG/UDAG application as the site of a leveraged activity (i.e., completion is contingent upon approval of the CDBG/UDAG). Only displacement as a result acquisition by a public agency is covered by the Uniform Relocation Act.

Indirect Displacement is involuntary displacement caused by an activity or event that is not CDBG-assisted but which is supported by concentrated CDBG activities. For example, this would include displacement caused by rapidly increasing rents made possible by revitalization of an area in which CDBG funded rehabilitation or street improvement are taking place.

Assessment Questions

1. Will the project directly displace individuals or families? How many persons? Is the displacement covered by the Uniform Relocation Act and are funds available for payment?
2. Will the project destroy or relocate existing jobs, community facilities, or any business establishments? Is the displacement covered by the Uniform Relocation Act and are funds available for payments?
3. Are relocation funds available for families or individuals who may be directly displaced?
4. Will identifiable groups be affected – older persons, females, single-parent families, racial/ethnic or income groups, or minority group members?

5. Are replacement facilities or housing units available within the community or in nearby neighborhoods? What will be the effect of relocation on these neighborhoods?

6. Will the project result in probable indirect displacement? If so, have measures been planned to alleviate the hardship on those affected whose displacement is not covered under the Act?

Analysis Techniques

The location of the project should first be plotted on a land ownership map in order to determine if any property will have to be purchased and whether there are residents, businesses, or institutional uses presently occupying the site. If it is determined that relocation is required, then an inventory of potential displacees should be prepared employing a city directory, city census, or other listing of current building occupants. In larger cities, a relocation specialist is usually responsible for this activity.

The Area Office Relocation Specialist can provide data on relocation requirements.

It is more difficult to assess and forecast any resulting indirect displacement. An analysis of trends in the local real estate market, vacancy rates, recent sales and rental prices along with income statistics of the area can help indicate an area which might likely experience indirect displacement.

Policy Base (Including Standards and Legal Requirements)

Under the Uniform Relocation Act individuals or businesses forced to relocate due to real estate acquisition by a public agency for CDBG Activity are entitled to certain payments and other assistance. Specific information concerning these requirements can be found in the following sources:

Uniform relocation Assistance and Real property Acquisition, 44 CFR 30 946; Effective Sept. 26, 1979, 24 CFR Part 42.

HUD Handbook 1376.1, “Relocation and Real Property Acquisition,” September 1979, and any revisions.

Experts to Contact

- Relocation Specialist at local community development agencies
- Relocation Specialist at HUD Field Office

Mitigation Measures

As mentioned, those directly displaced by a public acquisition are entitled to the assistance stipulated in HUD Handbook 1376.1, "Relocation and Real Property Acquisition, " September 1979, and any revisions.

Persons displaced due to other forms of direct acquisition or the indirect impacts of a project are not covered by the Act. However, actions can be taken by public agencies to mitigate potential adverse effects including making housing assistance available through Section 8 and other programs, constructing new housing for the group to be displaced, targeting job programs to the neighborhood, establishing home purchase subsidy programs in the neighborhood for low and moderate income families, and tax abatement for elderly and/or low income persons.

EMPLOYMENT AND INCOME PATTERNS

Overview

Employment related impacts of a project can be grouped in three broad categories: temporary jobs created in construction and allied fields as a result of constructing the project; permanent jobs created both directly and indirectly as a result of the project; and in the case of housing developments; the job requirements of new residents.

Employment and income patterns can be measured in two ways – by identifying the occupations and income levels characteristic of an area's resident population or by identifying major employers within the area. Some of the measures commonly used include: (1) resident income; (2) resident occupational distribution; (3) unemployment levels; (4) job types of major employers.

There are several ways in which a project can impact on employment and income patterns. Most CDBG and UDAG projects involve temporary construction jobs and permanent jobs required for the operation of a new facility. The purpose of the assessment is first to identify anticipated changes in employment and income patterns and then to evaluate the results. How many of what type of job will be created? While increased job opportunities are generally considered beneficial, it is important to determine both who will likely be employed (e.g., city residents or suburbanites, low income low skilled persons or upper income higher skilled individuals) and what the skills and income profile of new employment is likely to be. Some new developments serve to displace existing employment. For example, a UDAG assisted new commercial development may serve to displacement employment in existing small businesses which service a neighborhood, and thus displace jobs and incomes from these businesses.

Assessment Questions

1. Will the project either significantly increase or decrease employment opportunities? Will it create conditions favorable or unfavorable to commercial, industrial, or institutional operation or development?

2. How many temporary and how many permanent jobs will be created by the project?

3. What is the profile of new jobs created by the project? What is the distribution across the skills and income scale? How do these relate to the skills and income profile of project area residents?

4. Will the new jobs likely go to area residents, to lower income, unemployed and minority group members? Will construction jobs likely go to union or non-union works?

5. Where are the new employees likely to come from (i.e., inner city, suburb, outside SMSA)?

Analysis Techniques

It is first necessary to identify the existing employment and income characteristics of the project area. Income data can be obtained from the Census with current estimates often prepared by city, state, and area wide planning agencies.

As part of the preparation of the base data file it is suggested that employment and income data be mapped for the community. The City of St. Paul prepared three such maps, the first presented income status and trends by census tract. This map not only displayed low income areas but indicated which neighborhoods were finding their incomes increasing or decreasing significantly relative to the national average. Similarly an unemployment map both indicated the locations of chronic unemployment and presented recent trends of increase or decrease. The final base data map presented net change in number of businesses in each census tract. When viewed together these maps present a benchmark against which the impact of proposed changes created by the project can be measured.

It is next important to assess the likely employment generating effects of the project. Estimated construction and permanent employment may be known by project proponents. If not, estimates can be used which convert the size and value of the construction into numbers of workers and likely annual income. Based upon this, multipliers can then be used to calculate likely secondary employment effects. For example, 50% of the value of a project might be labor at an average cost of $16,000 per person per year. Retail employment might average one employee per 1,000 square foot, etc. While national formulas can be employed it is preferable to use likely employment multipliers which are tailored to the general geographic area.

Once the likely employment and income generating impacts of a project are known, it is next necessary to forecast the likely beneficiaries. What percentage of the new jobs will likely go to a project area residents, to lower income, unemployed and minority group members?

Will the project cause area residents to leave existing jobs for new jobs which may only be temporary or will the new employment and income opportunities "pull" or attract others from outside the immediate jurisdiction and possibly increase the demands for related services?

Will the project result in displacement of existing jobs or businesses?

Sources and References

Lansing, J.B., Mueller, E., and Barth, M., **Residential Location and Urban Mobility**, Ann Arbor, University of Michigan, Institute for Social Research,1964; and analysis of the interrelationships between location of residential housing and urban employment.

EPA and HUD. **Population and Economic Activity in the United States and Standard Metropolitan Areas – Historical and Projected, 1950-2020.** Springfield, Virginia, NTIS, 1972 (NTIS No. PB-216 607); provides description and projections of per capita income in SMSA; based on employment predictions through the year 2020.

Experts to Contact

- ❑ Local Industrial Development Authority
- ❑ Economist at State Employment Services
- ❑ Planner/Administrator at local planning or employment agency
- ❑ Chamber of Commerce

Mitigation Measures

In several large cities, Boston and Dayton among them, UDAG assisted commercial developments which required employers to hire a target percentage of CETA-trained referrals (The CETA program has since been discontinued). Boston has instituted a percentage residency requirement for the new Copley Place commercial development, of 20% minority and 50% city residents for both construction and permanent employment created by the project.

Often transportation is the critical link which is needed in assisting the unemployed to secure a job. In some situations, the development of public transportation, such as an express bus, from residential to job locations can serve to mitigate the problem of siting a new development project in a location which is removed from existing transportation lines.

COMMUNITY FACILITIES AND SERVICES

- ❑ Educational Facilities
- ❑ Commercial Facilities

- ❑ Health Care
- ❑ Social Services
- ❑ Solid Waste
- ❑ Waste Water
- ❑ Storm Water
- ❑ Water Supply
- ❑ Public Safety – Police, Fire, and Emergency Health
- ❑ Open Space, Recreation, and Cultural Facilities
- ❑ Transportation

EDUCATIONAL FACILITIES

Overview

There are two fundamental considerations regarding a CDBG activity's relationship to and/or impact on elementary, junior and senior high schools:

- ❑ Adequate capacity for children in the schools
- ❑ Safe access

In order to accurately establish the extent to which these two criteria should apply, an initial calculation must be made detailing the projected increase in student population to be created by the proposed development. This calculation must be accomplished by:

- ❑ Contacting the developer or sponsor for mix of unit types (i.e., 1-bedroom, 2-bedroom dwellings);
- ❑ Contacting the school administrator or superintendent for an estimated average number of school-age children per unit type.

If neither source has the appropriate information, other sources are:

- ❑ **The Fiscal Impact Handbook**, pgs. 276-299 (see references). This section deals with population projections.

- A chart entitled “pupil Generation Rates by Type of Dwelling” found in the Center for Urban Policy Research, **Housing Development and Municipal Costs**, Rutgers University, 1973.

This chart provides “pupil multipliers” for “grade level” and “bedrooms” for different types of dwellings. This will give a pupil estimate when no other sources are available.

If the proposed project will overcrowd the schools consider such alterative options as:

- Building additions to existing schools
- Locating classroom space in nearby buildings (i.e., community centers or other commercial facilities, possibly owner by the developer)
- Providing transportation to other schools

Safe access takes into account the possible need for transportation to school and attention to potential traffic hazards. Specific issues include:

- Existence of all-weather walking paths and their or existing paths’ proximity to bus stops as well as to the school itself and crosswalks
- Crossing guards (especially for elementary school children)
- Clearly marked intersections near school or bus stops

Assessment Questions

1. Will the additional school age children in the proposed development exceed the capacity of existing or planned school facilities?
2. Does the potentially affected schools have adequate and safe access facilities (i.e., walking paths, bus routes, crosswalks, and guards) given any calculations done for projected population increase? Are these adequate both in terms of safety and access?
3. Will additional or alternative facilities have to be provided to ensure safety and suitable access?
4. What measures will be taken by the superintendent or the school’s governing body to resolve potential problems/conflicts?

Analysis Techniques

If walking routes are prohibitively unsafe or if such routes exceed 1/3 mile (elementary); ½ mile (junior high), and 1 mile (senior high) in length (see table), then bus transportation should be instituted, provided the trip does not exceed ½ riding time for elementary children and ¾ hour

for junior and senior high school children. Early morning and late afternoon bus circuits should be arranged to accommodate those students wishing to arrive at school early or stay after normal school hours to participate in extracurricular activities.

	Walking	Bus Ride
Elementary	1/3 mile	1/2 hour
Junior High	1/2 mile	3/4 hour
Senior High	1 mile	3/4 hour

If school children will be required to walk or to ride the bus longer than the distances suggested above, or more than prevailing local standards, consult the superintendent about how to alleviate the problem.

If it is determined that there exist inadequate facilities to accommodate school children or that safety to school children will be jeopardized and corrective action is not proposed, then the project will have an adverse effect.

Sources and References

School maps are helpful for identifying distances and safety issues.

A school district plan is helpful for analyzing capacity issues and determining the impact of potentially increased enrollment.

The following source is useful in identifying the number of children produced by different types of units.

Burchell, Robert W. and David Listokin, **The Fiscal Impact Handbook.** New Brunswick, New Jersey: The Center for Urban Policy Research, 1978, pgs 276-288.

Experts to Contact

- ❑ School Superintendent
- ❑ Developer or sponsor of proposed CDBG project
- ❑ Traffic Department

Mitigation Measures

Identify alternative schools or buildings to temporarily house students if problems are anticipated due to overcrowding. Expand an/or improve existing school access to alleviate

safety problems. Work with school officials and city traffic engineer to identify options and costs.

COMMERCIAL FACILITIES

Overview

There are two considerations in assessing commercial facilities. The first is an evaluation of the adequacy of existing commercial facilities to service the development. Are these facilities located conveniently to the proposed development? Are the available retail goods within the income capacity of the proposed project users or residents? Are there serious gaps in the range of available goods and services?

The second analysis involved the impact which a proposed development will likely have on surrounding commercial establishments. For example, a new UDAG sponsored commercial development might displace existing small scale retail establishments which become uncompetitive when compared to new enterprises. Similarly, a new office building or hotel may draw business away from existing hotels and office buildings.

There are generally three types of retail areas which are recognized by type and function; any of these might be affected by the proposed project.

Neighborhood – consists of small businesses usually within 5-10 minutes travel time which include food, drug, cleaning, and convenience stores. The neighborhood shopping site is usually organized around a supermarket.

Community – or central business district contains multi-functional economic and service enterprises including banks, specialty stores with access provided either by auto or public transit. In larger metropolitan areas, a food store is often not included.

Regional – may be either the central business district of a metropolitan area or may be a regional shopping center, usually with two or more department stores and various specialty stores.

Assessment Questions

1. Is there adequate and convenient access to retail services? In the case of the elderly, this means that shopping for such essential items as food and medicine is within three blocks and services such as banks and other convenience shopping are within walking distance.

2. Do local retail services meet the needs of project occupants/users? Are they affordable and is the range of services adequate?

3. Will existing retail and commercial services be adversely impacted by the proposed project? Will existing businesses be placed at a competitive disadvantage or be displaced?

Analysis Techniques

The first task in the analysis of commercial facilities is to determine the nature of the facility (housing, hotel, etc.), its size, location, and socioeconomic characteristics of probable users or occupants. Next, using map, evaluate the relationship between the project and existing commercial facilities. In the case of a housing development, for example, locate the neighborhood, community and regional shopping areas from land use maps. Then determine their access to proposed occupants by probable mode (pedestrian, transit or private automobile). Determine likely transportation routes and travel time. Determine any transportation limitations such as infrequent or irregular bus service.

Make judgments concerning the quality of commercial services available, i.e., the range of goods and services and their relative price. Will these services meet the needs of project users and/or residents? Will access be adequate? If the project will cater to a population largely dependent on public transportation, special consideration must be given to shopping areas which can be reached either by transit or walking. If the project users and/or residents are elderly or handicapped, special consideration must be given to the availability or special transportation services and shopping areas which are accessible to the handicapped. In addition to income, demographic factors influence shopping needs and preferences. Young working adults have different shopping patterns than families with small children or elderly persons.

In order to access the impact of a new commercial development (hotel, shopping complex, etc.) on existing commercial enterprises it may first be necessary to identify existing potentially competitive establishments and to gather data concerning their sales, markets, and characteristics of patrons. Some new commercial enterprises help to strengthen a commercial area by generating new demand, which in turn benefits existing establishments. Other new establishments might serve to displace existing enterprises. For example, a new supermarket might draw business away from a “mom and pop” local food store. However, they usually serve a different clientele and there may be a need for both. The determination of likely impacts must be made on a case specific basis involving a careful analysis of both primary and secondary data. Consultation with real estate marketing experts and/or local commercial realtors may be helpful in gathering data and making judgments.

A determination of negative impact might result if it is found that existing commercial facilities are inadequate to meet the needs of the project users and/or residents. Most often, poor access is the problem; however, in some locations the existing commercial establishments are judged as having too limited a variety of goods available, or unusually high prices.

A determination of negative impact might also result from finding that existing businesses might be displaced by a new commercial development, such as a UDAG sponsored shopping mall or other commercial venture.

Sources and References

Schaenman, Philip. **Using an Impact Measurement System to Evaluate Land Development.** Washington, D.C., Urban Land Institute, 1976.

U.S. Department of Commerce, Bureau of Census. **Census of Retail Trade**.

Brourne, Larry S. **Internal Structure of the City.** Toronto University Press, Toronto, Ontario, 1971.

Muller, T. **Economic Impacts of Land Development**, Washington, D.C., Urban Land Institute, 1976.

Experts to Contact

- ❑ Local Chamber of Commerce
- ❑ Commercial Realtor
- ❑ Commercial Development Specialist
- ❑ Local Planning Agency

Mitigation Measures

When a housing development is poorly situated in relation to shopping, mitigation might include arranging additional or new transportation services, either through the local transportation authority or through a social service agency, especially in the case of elderly or handicapped housing. In some cases it may be appropriate for the developer or sponsor to purchase a minibus to transport residents, if other services are not available or are inadequate. The local planning agency might be asked to encourage new retailing in the area, perhaps through a package of incentive programs (i.e., low interest commercial development loans from Economic Development Administration (EDA) or Small Business Administration (SBA)). In Boston, a "food-mobile," a mobile food market, tours the city's elderly projects.

In case of existing retail or other commercial facilities facing the adverse effects of new commercial enterprises, various business improvement loan programs might be employed to assist local businesses in making needed improvement to become more competitive, such as SBA or EDA funded loan programs.

HEALTH CARE

Overview

Relevant issues to be considered regarding a proposed project's impact on health care services are:

- ❑ Adequate access to hospitals, emergency facilities, clinics, and physician services
- ❑ Potential effect of the proposed development on existing health care services' capacity and ability to accommodate an increase in use
- ❑ Are there adequate health services to accommodate the special needs of a potentially diverse population, i.e., families, elderly, handicapped.

Health care services can be defined as those regular and emergency dental and medical care services provided for by private doctors, dentists, and other trained medical staff at a hospital, outpatient clinic, public, private, or community health facility, home-care medical programs, or en emergency treatment facility (trauma unit, special cardiac pulmonary resuscitation (CPR) unit).

Assessment Questions

1. Are non-emergency health care services located within a reasonable proximity to the proposed project, i.e., less than a half-hour's drive or commute away? (In dense urban areas an even shorter time period may set standards.)
2. Are emergency health services within approximately three to five minutes? Such service can often be provided by police and fire personnel as well as by ambulance staff.
3. Can ambulance trips to a hospital or other health care centers be made within 10 to 15 minutes?
4. Is the number of doctors, dentists, nurses, and other trained medical staff in realistic proportion to any increase in residents/users? If not, can provision be made for additional skilled staff?
5. Will project residents/users require special medical services or skills such as geriatric clinics?
6. Will the local comprehensive health planning agency be contacted in the event that an increase in population from a proposed development causes a situation of increased or over capacity for area health care services? Consult the local area health systems agency to determine an estimate of number of hospital beds and other facilities needed. If over

capacity is anticipated, the local comprehensive health planning agency should be approached for possible alternative plans.

Analysis Techniques

By examining relevant data regarding the demographic characteristics of the new residents/users (i.e., age, sex), determine the specific types of medical services that will be required. Through discussion with the local comprehensive health planning agency determine if existing services will be adequate to meet the new and increased demand.

Determine the location of exiting health care services and their distances to the proposed project site. Find out whether public transportation from the project site to the services is available and how long the commute is.

If it is determined that the facilities are not within a half-hour commute for the new residents/users or that the additional residents/users will overburden existing facilities, then the proposed project will have an adverse effect.

Policy Base (Including Standards and Legal Requirements)

There is no legislation that mandates the level of health care services. Comprehensive plans and analyses of the local area health systems agency may include desired levels of services.

Sources and References

Economic/Demographic Assessment Manual – Current Practices, Procedural Recommendations, and a Test Case. J.A. Chalmers and E.J. Anderson. Mountain West Research, Inc., Tempe, Arizona, 1977, 300 pp.

How Effective Are Your Community Services? Procedures for Monitoring the Effectiveness of Municipal Services. Harry P. Hatry, Louis H. Blair, Donald M. Fisk, John M. Greiner, John R. Hall, Jr., and Philip S. Schaenmen. The Urban Institute and the International City Management Association, Washington, D.C., 1977, 320 pp.

Experts to Contact

- Area Health Systems Agency – can provide the Area wide Health System Plan which is an inventory of institutional health services and projected demand within the area.
- Local Public Health Department – can provide information on local demand for, and quality of health care.
- Council on Aging – can provide information on the size and location of the local elderly population.

- Local Red Cross – can be valuable resources for medical needs of the area.

Mitigation Measures

Mitigation measures to be considered, depending on specific problems and local resources, include:

- Special shuttle and emergency transportation to medical services
- Incorporation of a small clinic or emergency medical service area into a housing development, keyed to the special needs of the resident population
- Cooperation between the CDBG agency and medical service providers in improving the quality and/or availability of health services in the area.

SOCIAL SERVICES

Overview

Social services can be defined as those services provided by governmental social service agencies or public or private groups, including but not limited to: programs for drug addiction, alcoholism, and mental disorders; halfway houses and drop-in centers, family counseling centers, day care centers; services for senior citizens and the handicapped; nutrition centers, meals on wheels; income maintenance and man power programs, etc.

Social service by definition must cater tom and be easily accessible to those who need them. Therefore, access and adequacy are important considerations. Factors to consider regarding a proposed project's impact on an area's social services include:

- Availability and accessibility of day care, elderly centers and neighborhood centers to accommodate existing and future residents.
- If appropriate social service centers are not located within a reasonable proximity to the proposed development, alternate space and services may need to be developed to accommodate new residents/users.

Assessment Questions

1. Are social services currently located in close proximity to the prospective users/residents? Are they within walking distance or convenient to public transportation and less than one-half hour's commute?

2. Is the number of trained staff including social workers, counselors, psychologists, psychiatrists, and related administrative and managerial personnel in realistic proportion to

the anticipated increase in residents/users? If not, could provision readily be made for additional skilled staff?

3. Will the demand for the social services increase and overburden existing facilities, can provision be made to obtain alternative and/or additional space?

Analysis Techniques

By examining relevant data regarding the social services needs of the new residents/users (i.e., income level, age, number of children and teens per family) determine the specific types of services that will be required. Through discussions with the local Human and Social Services office, public welfare office, local youth services office, etc., determine if existing services will be adequate to meet the new and increased demand.

Determine the location of existing social services and their distances to the proposed development. Find out whether public transportation is available between the needed services and the project site and how long the commute is.

Determine whether new residents or users will overburden existing services and facilities. What provisions could be made to expand them?

Policy Base (Including Standards and Legal Requirements)

There is no legislation that mandates the level of social services. Local comprehensive plans may include desired levels of services. Local voluntary and public social service agencies and planning groups may have analysis of desired level of services.

Sources and References

Local Social Security Administration Office – can provide data concerning the size of retired population and the income level of the community.

Local Public Welfare Office – can provide data concerning the low-income population in the community.

Local Social or Human Services Department (City or County) – can provide information on local demand for social/human services and their availability/adequacy.

Youth Services Department – can provide data on the size and age of the local youth population.

Council on Aging – can provide information on the size, location, and special social and human service needs of the elderly population.

Local Child Care or Daycare Center – may have information on the size and characteristics of the pre-school population.

Local Health and Welfare Council or the United Fund – may have data on social and human service needs.

Economic/Demographic Assessment Manual – Current Practices, Procedural Recommendations, and a Test Case. J.A. Chalmers and E.J. Anderson. Mountain West Research, Inc., Tempe, Arizona, 1977, 300 pp.

How Effective Are Your Community Services? Procedures for Monitoring the Effectiveness of Municipal Services. Harry P. Hatry, Louis H. Blair, Donald M. Fisk, John M. Greiner, John R. Hall, Jr., and Philip S. Schaenmen. The Urban Institute and the International City Management Association, Washington, D.C., 1977, 320 pp.

Municipal Costs and Revenues Resulting from Community Growth. Walter Isard and Robert Coughlin. Federal Reserve Bank of Boston and the American Institute of Planners. 1957, 111 pp.

Experts to Contact

- ❑ Planner – Local Planning Department
- ❑ Administrator/Planner – Social Services Department
- ❑ Administrator/Planner – Public Welfare Office
- ❑ Administrator/Planner – Council on Aging
- ❑ Administrator/Planner – Social Security Office
- ❑ Administrator/Planner – Half-way House(s) in area
- ❑ Administrator/Planner – Drop-in Center(s) in area
- ❑ Administrator/Planner – Child Care or Daycare Center
- ❑ Administrator/Planner – Local Council on Voluntary Human Service Agencies

Mitigation Measures

Mitigation measures to be considered include:

- ❑ Special transportation – especially for elderly and children

- ❑ Potential CDBG cooperative funding for added social services
- ❑ Provisions of space for social service offices as part of a CDBG facility – elderly drop-in center, nutrition center, youth center, and so forth.

SOLID WASTE

Overview

Solid waste disposal is regarded as an essential service in urban areas. Its availability for supporting a newly proposed development can be an essential determinant of whether a project can be constructed. Solid waste materials are generally transported by trucks to a common, usually remote site for either recycling (rarely), incineration (where allowed), or burial/disposal in a sanitary landfill. In assessing this service two factors must be considered: first, the proximity of the service to the site and second, the capacity of the service to accommodate the project.

Assessment Questions

1. Will the existing or planned solid waste disposal system adequately service the proposed development?
2. As a result of the project, will the design capacity of these facilities be exceeded?
3. Will the proposed project be adversely affected by the proximity to these facilities?
4. Does the community have an adequate number of vehicles to provide the project with collection services?
5. Will the residents/users of the proposed project have to pay annual/monthly costs for these services? Will these costs create severe financial hardships for project residents? (This can be a real consideration if low income or the elderly are primary users.)

Analysis Techniques

An inventory of landfill locations and capacities with estimated life expectancies can aid in determining adequate disposal capabilities.

Determination of Potential Adverse Effects

- ❑ Estimated solid waste generation will significantly reduce life span of landfill.
- ❑ Estimated solid waste generation will significantly overtax existing collection system.
- ❑ Projected future costs of continued service will far exceed the financial capacity of users.

Policy Base (Including Standards and Legal Requirements)

Resource Conservation and Recovery Act (42 U.S.C. S3251 et seq.).

The project should first be analyzed to determine the location of the site in relation to services and infrastructure including: the location and design of solid waste storage facilities, if any, to determine the ease of removal; the location of sanitary land fill sites or solid waste recycling facilities in relation to the development to determine transportation needs.

Solid Waste Disposal Act (42 USC 6901-6987 et seq.) as amended by the Resource Conservation and Recovery Act of 1976.

Sources and Reference

Minimum Property Standards, U.S. HUD Field Office. "EPA Guidelines for Local Government on Solid Waste Management," **Public Works Magazine**, March 1972, p. 79-80.

Clark and Toftner, "Land Use Planning and Solid Waste Management," **Public Works Magazine**, March 1972, p. 79-80.

Experts to Contact

- ❑ Engineer – Local Solid Waste Disposal Agency, or City or County Engineering Department
- ❑ Engineer/Planner – HUD Field Office or Local Planning Department
- ❑ Engineer, Planner/Environmental Specialist – Regional EPA Office

Mitigation Measures

If there is a problem with the capacity of an existing or planned system, alternatives to explore include expansion of the existing landfill site adding one or more additional sites, better compaction methods to reduce the volume of waste, incineration, and recycling. If transportation to the site is a problem due to insufficient collection vehicles, likely solutions include either contracting with a private collection service or purchase by the community of new collection trucks.

WASTE WATER

Overview

Waste water treatment and disposal is an essential service for all new development. The availability of adequate waste water disposal service can be a determinant of whether or not a project is constructed. Waste water is usually collected in urban areas through a system of

sanitary sewers which convey the waste to a treatment facility located “downstream” from the city. After treatment the effluent is either recycled (rarely) or us discharged into surface water or a permeable recharge area for an underground aquifer. In less developed areas, on-site septic systems or package treatment plants are used. Generally, 80 gallons of sewage is generated per capita per day. In analyzing impacts to waste water treatment/disposal facilities, it is necessary to consider two factors: 1) proximity of the service to the site; and 2) the capacity of the service to accommodate the project.

Assessment Questions

1. Will existing or planned waste water systems adequately service the proposed development?

2. As a result of the project, will the design capacity of these facilities be exceeded?

3. Will the proposed project be adversely affected by proximity to these facilities?

4. In less developed areas, are soils suitable for on-site waster water disposal such as septic systems?

5. Where on-site disposal is necessary, will the state or local health agency issue a permit?

Analysis Techniques

The project should first be analyzed to determine the location of the site in relation to municipal services and infrastructure, including the location and design of waste water removal facilities, if any. If on-site disposal is planned, determine the potential for groundwater or surface water contamination. It is also necessary to determine the type and density of development in order to estimate likely water use and the likely volume of waste to be generated.

Likely adverse effects can be determined if:

- ❑ Estimated sewage generation will exceed capacity of sewers or treatment facilities.

- ❑ Project will utilize on-site liquid waste disposal system in an area not suited for its use.

- ❑ Waste water will be directed toward environmentally sensitive areas.

Policy Base (Including Standards and Legal Requirements)

Clean Water Act, as amended (33 U.S.C. S. 1251 et seq.)

Various states have laws which may be more stringent than Federal requirements.

Sources and Reference

Local Infrastructure Maps give the location and capacity of sewer and storm water drains. These are available from either the local planning or engineering departments.

The Soil Conservation Service Soils Maps indicate areas of impermeable soils and areas of highly permeable soils. The S.C.S. can also provide data on the depth of the water table which is useful in planning on-site waste water treatment facilities.

Area wide Wastewater Management Plans. Area wide 208 Agency.

Local Building and Health Codes, State and/or Local Building Department or Health Department.

Minimum Property Standards, U.S. HUD Field Office.

Soils Survey Ratings for On-Site Waste Disposal, U.S. Soil Conservation Service.

Experts to Contact

- Engineer – Local Sanitary District/Agency, City or County Engineering Department, 208 Planning Agency
- Engineer/Planner – Local Planning Department
- Soils Scientist – U.S. Soil Conservation Service
- Engineer – State Health and/or Environmental Quality Agency

Mitigation Measures

Potential problems can be mitigated through the construction of expanded capacity, such as sewer lines and treatment facilities. Contact the local 208 Agency for relevant plans and permit requirements.

STORM WATER

Overview

Storm water disposal is an essential service in most urban areas. Its availability to support a proposed new development can be an essential determinant of whether a project is to be constructed. Storm water is usually removed from an impermeable surface (e.g., pavement and buildings) by natural flow, storm, sewers, or combined (storm and sanitary) sewers. It is discharged into a surface water body or onto permeable recharge area or temporary storage

areas. In assessing impacts to storm water service facilities, two factors must be considered: 1) the proximity of the system to the site; and 2) the capacity of the system to accommodate the project.

Assessment Questions

1. Will existing or planned storm water disposal and treatment systems adequately service the proposed development?

2. Will the project overload the design capacity of these facilities?

3. Will the proposed project be adversely affected by proximity to these facilities?

Analysis Techniques

The project should first be analyzed to determine the location of the site in relation to services and infrastructure including: the location and design of storm water facilities to determine both the ease of removal and the planned course of water runoff. It is also necessary to determine the type and density of development to determine the volume of storm water likely to be generated.

Determination of Potential Adverse Effects

Likely adverse effects can be determined if:

- ❑ Estimated storm water generation will exceed capacity of storm sewers.

- ❑ Storm water will be directed toward environmentally sensitive areas.

Sources and References

Local Infrastructure Maps give the location and capacity of storm water drains. These are available from wither the local planning or engineering departments.

Minimum Property Standards, U.S. HUD Field Office.

Experts to Contact

- ❑ Engineer – City or County Engineering Department, Local or District Storm water Treatment/Disposal Agency

- ❑ Engineer/Planner – HUD Field Office or Local Planning Department

Mitigation Measures

Various measures can be taken to attenuate peak runoff including the use of controlled retention ponds on individual sites or along major drainage systems. Where storm sewers are not available, site grading patterns that increase flow distances over unpaved areas should be utilized. Detention/storage areas and the elimination of piped drains which discharge directly to surfaces will help minimize peak flow effects to existing storm drainage facilities. An expanded storm drainage system could be included in project plans if a potential deficiency is identified early in the project development process.

WATER SUPPLY

Overview

Adequate water supply refers to the delivery to a project site of sufficient quantities of potable water under adequate pressure at affordable cost. Approximately 100 galloons per day is the average urban domestic per capita water consumption rate.

Assessment Questions

1. Will either the municipal water utility or on-site water supply system be adequate to serve the proposed project?

2. Is the water supply quality safe from a chemical and bacteriological standpoint?

3. Will the project affect a sole source or other aquifer?

Analysis Techniques

Review the project plans to determine either the number and/or type of residential units proposed, or the type and size of proposed commercial, institutional or industrial uses. Estimate future water use by the project, and note any plans for conservation techniques. Then contact the local water authority or public works department to determine whether existing and future public water supply is adequate to meet the needs of the project. Check that the water supplies are of potable quality according to state and local public health standards.

If the existing public water supply system is inadequate to meet the needs of the project, discussions should be held with the water authority to learn if the system can be expanded by drilling new wells, making interconnections with other systems which have ample supplies or by other means. The willingness of the authority to do this and the economics are equally important.

Policy Base (Including Standards and Legal Requirements)

The quality and quantity of either surface or groundwater sources should meet HUD's Minimum Design Standards for Community Water Supply System. This would also be true if the alternative selected is purchase of water from a neighboring community. If a public system is not available to serve residential areas, then individual wells must meet HUD's Minimum Property Standards for One and Two Family Dwellings. Also applicable is the Safe Drinking Water Act (42 U.S.C.S. 300 et seq.) (This Act also protects sole source aquifers. Under the Safe Drinking Water Act Federal assistance cannot be approved for any project that could contaminate an aquifer that has been designated by EPA.

Sources and References

Dunne, Thomas and Luna Leopold, **Water in Environmental Planning**, W.H. Freeman, San Francisco, 1978.

Sargent Frederic and Blaine Sargent, **Rural Water Planning**, F.O. Sargent (330 Spear St., South Burlington, VT 05401), 1979.

Experts to Contact

- Municipal or private utility water supply planners and engineers
- Local public health agency staff

Mitigation Measures

In the event that no additional water supply can be furnished from the public system, an investigation could be undertaken to discover whether wells drilled on site could furnish adequate supplies and at affordable costs.

If on site wells will not produce adequate water at reasonable cost the project must be abandoned or postponed until a supply is secured.

PUBLIC SAFETY – POLICE, FIRE, AND EMERGENCY MEDICAL

Overview

Fire, police, and ambulance services are concerns that should be considered in terms of the adequacy of existing services for the project site. Although many communities have sophisticated protective services the consistency of adequate service is different from place to place. Within communities, one site may be better served than another.

Factors in the variability of protective services include the availability of funds for additional coverage and the degree to which building and growth are coordinated with provision of new municipal services. Key variables within each city are emergency equipment, emergency service personnel, response time, and access. These factors influence the availability and adequacy of emergency services that may be required at a proposed project.

Assessment Questions

1. Does the project location provide adequate access to police, fire, and emergency medical services? Does the project design provide easy access for emergency vehicles and individuals? Are there obstacles to access, such as one-way roads, narrow bridges, waterways, expressways, and railroads, which prohibit access in an emergency situation? Will the project create such obstacles?

2. Is the quality of the police and fire protection services available to the project adequate to meet project needs?

3. Does the area have a particularly high crime rate? Are there special plans for a security system which have been approved by the police department? Is the design and/or architectural configuration of the development such that it is easily patrolled by police from the street?

4. Will the project create a burden on existing facilities in terms of manpower and/or equipment? Can services either be expanded to be provided by the project, such as an in-house security force?

Analysis Techniques

Review the project plans in order to determine:

Location of the project in relation to each type of protective service

Size of the building and the number and type of users/residents, in order to estimate the demand for protective services;

Type of building materials as an indication of their resistance to fire and compliance with local codes

Access routes for accessibility for emergency vehicles and compliance with local regulations

Fire hydrant locations and availability of fire fighting equipment.

Next, secondary data should be consulted, including:

Fire-Service Maps: Obtained from the local fire department, these show the distance to the nearest fire station (and usually police station) which can be used to estimate response time.

Local Fire or Police Department: If provided with the location and size of the project, the police and fire departments can determine whether they will be able to service the project adequately without increasing their staffs. They can also help to estimate response time to the site.

Emergency Medical Service Plans: These may be obtained from local hospitals or health, fire and police departments.

Field observation may be useful to determine the age and condition of surrounding buildings, location of fire hydrants, emergency call boxes, and nearby police and stations, and evidence of high crime rate in the area. Consult with police and fire departments for additional information on local conditions. Consult with the fire department to determine if water pressure is adequate as well as road service, e.g., width of roads, space to turn around, etc., for fire equipment. The issue of access is critical for emergency fire service.

A determination of an adverse impact may result if protective services are presently strained and there are no plans to increase services; if the distance to the closest fire station is more than 1.5 miles (high density) or 2 miles (low density); if the nearest hydrant is more than 600 feet away; if police response time is greater than 3 minutes; or if access by ambulances is difficult and/or if response time by someone trained in emergency medical techniques is more than 3 to 5 minutes. The response time standards are drawn from nationally recognized standards. You may want to establish standards better suited to your community. In some communities, firemen and policemen are trained in such techniques as well as ambulance personnel.

Determine if the police and fire personnel are trained in basic paramedical skills and if they are available for such health emergencies as heart attacks.

Sources and References

The National Board of Fire Underwriters monitors the fire insurance risks and fire fighting capabilities of most cities in the U.S. and rates sections of cities for the purpose of establishing insurance rates and premiums. If these are unsatisfactory the Board will advise what improvements are needed to gain a better rating.

U.S. Fire Administration's Home and Public Building Safety Division. National Fire Data Center, P.O. Box 19518, Washington, D.C. 20036. Telephone: 202/634-7195. They have several publications: **(1) A Basic Guide for Fire Prevention and Control Master Planning; (2) An Urban Guide for Fire Prevention and Control Master Planning.**

There is no national agency which monitors crime and police efficiency on a nationwide basis. The International Association of Police Chiefs can offer guidance on how a particular police department can be studied and analyzed. Many police departments have established a Crime

Prevention Unit internally. They are eager and able to review site, development, and architectural plans of proposed projects and will point out potential crime inducing situations and suggest how these can be avoided.

Oscar Newman. **Design Guidelines for Creating Defensible Space.** National Institute of Law Enforcement and Criminal Justice. 1976.

Richard Gardiner. **Design for Safe Neighborhoods.** Law Enforcement Assistance Administration (LEAA), HUD, USGPO No. 027-000-00751-1. 1978.

Experts to Contact

- ❑ Chief of local fire department
- ❑ Local chapter or national Office of the National Fire Protection Association (NFPA)
- ❑ Chief of local emergency medical agency
- ❑ Administrator of local emergency medical agency such as the ambulance corp in the Department of Health or the local Rescue Squad
- ❑ Local medical society

Mitigation Measures

Specific measures include: a) expanding local police, fire, and emergency medical services in the community to adequately service the project; b) include safety features in the project such as fences, lighting, alarm systems, and private guards to increase public safety; c) redesigning project site plan to improve police surveillance, neighborhood resident surveillance, and roadway design for emergency access; d) if it is major development project, investigate how developers might contribute to additional service costs, or provide its own supplemental protective service by hiring a private security service; and e) add an alarm system if one has not been included in project plans.

OPEN SPACE, RECREATION, AND CULTURAL FACILITIES

Overview

The development of community services such as open space, recreation and cultural resources has become a necessary component of community development. These facilities can be operated by the government, such as public parks and libraries, or they can be operated by private entities such as YMCAs and privately owned museums. They have much to do with the “quality of life” and “quality environment” concepts of a community and are essential to maintenance and continuity of a viable neighborhood.

Recreation and open space resources include active recreation, such as ball fields and passive recreation such as nature trails, and gardens.

Cultural resources include art galleries, libraries, dance facilities, museums, theatres, other facilities for artistic and cultural purposes. These usually receive both public and private support.

Demand and supply for both specific recreation and cultural facilities is a function of factors which include the size of the community, density of development, income and demography. Wealthier communities have these services and facilities more often than poorer communities. Communities with a large percentage of children have greater needs for active recreational facilities than communities with a large number of elderly or handicapped persons who prefer passive recreation. High density communities with little private open space have a greater need for access to public parks and recreation areas than small towns with ample open spaces or suburban areas where the homes have large yards.

Assessment Questions

1. Are open space, recreational and cultural facilities within reasonable proximity (i.e., walking distance) to the project area? Is adequate public transportation available from the project to these facilities? (Note: Small children and elderly persons need such facilities to be in very close proximity to their residences.)

2. Is there an adequate supply of these resources for the users or resident population of the development?

3. Will the CDBG project cause any overloading of existing facilities?

4. Are the special needs of certain population groups able to be satisfied, such as small children or the elderly and handicapped? For example, are there tot lots for very small children, playgrounds for elementary school children, drop-in centers for senior citizens and ball fields for teenagers.

5. If the development is housing, has space for informal play for children of all ages been included on-site? Have areas for recreation for adults and the elderly been provided including places for passive recreation?

Analysis Techniques

Review plans to determine if such facilities have been included onsite. Locate the proposed site on a local land use map and determine the distance to the available open space, recreation and cultural facilities. Determine how many of these are within walking distance and are geared to project residents/users considering such factors as design and user fees. Determine if public transportation is available. Obtain data on the age and income of proposed project residents or users to determine the needs.

Review plans for the project to determine whether the proposed project will have any adverse effect on these facilities, such as making user access more difficult or impeding views to these facilities. Consult with facility operators or administrators to determine if the project will cause any of these facilities to become overloaded.

If there are inadequate facilities within a reasonable distance of the proposed project, or the project will overload existing facilities, explore appropriate mitigation measures.

Sources and References

Census data can help provide information on the size and location of population groups in the community who might need specialized recreation facilities.

The local cultural or arts commission can provide data on libraries and cultural resources including capacity, locations, and usage level.

The Statewide Comprehensive Outdoor Recreation Plan (SCORP) identifies resources and often provides usage data.

The local parks and recreation department can provide data on the size, location, and usage at various parks and open space areas. Utilize their standards or others listed below to determine whether facilities will be overlooked.

- ❑ Urban Park and Recreation Recovery Program, Heritage Conservation and Recreation Service, Regional Offices.
- ❑ Land & Water Conservation Fund, Heritage Conservation and Recreation Service, Regional Office

If no local standards exist contact the National Recreation and Park Association, 1601 N. Kent Street, Arlington, VA 22209 for relevant examples of standards.

Experts to Contact

- ❑ Planner at local parks and recreation department
- ❑ Administrator of Social Services Agency
- ❑ Administrator of Local Cultural Commission
- ❑ Local American Society of Landscape Architecture
- ❑ State Arts Office or Association

- ❑ Administrators of Private Non-Private Agencies such as YMCAs, YWCAs, Museums, Private Libraries, etc.
- ❑ State Liaison Officer
- ❑ State Historic Officer
- ❑ Heritage Conservation & Recreation Service
- ❑ Department of Interior
- ❑ National Park Service
- ❑ Bureau of Land Management

Mitigation Measures

Expand existing facilities. Develop more on-site facilities.

Review design to mitigate project impacts on open space and cultural resources in the vicinity.

Develop recreational resources for specific population groups, such as tot lots, playground, and passive park areas. Work with local school administrators to arrange after school use of school recreational facilities.

TRANSPORTATION

Overview

Definition

Assessing transportation impacts involves analyzing four sub-elements of transportation. These are:

Access

To have access which is the primary function of a transportation system, the user must be able to reach a destination within reasonable limits of time, cost, and convenience.

Balance

A balanced transportation system is one which provides reasonable options for travel by private automobile or public transit, or combinations of both as well as (car and bus) intermodal.

Safety

System design plays a strong role in safety, particularly elements such as traffic signals, turning lanes, and railroad grade crossings.

Level of Service

This term measures a number of operational factors including speed, travel delay, freedom o maneuver, safety, and frequency/hours of operation.

Assessment Questions

The assessment questions are organized by the four sub-elements described above:

Access

1. Will transportation facilities and services be adequate to meet the needs of the project's users? Is off-street parking available and adequate? Is adequate public transportation available?

2. Are there special transportation issues (programs for the elderly and handicapped, bridge clearances for trucks, emergency vehicle access) which have not been adequately provided for?

3. Will the project serve to reduce the mobility of any group?

Balance

4. Will the project encourage additional private vehicle trips and increase energy consumption?

5. Will the users of the project be encouraged to use both auto and public transit?

Safety

6. Will the project create any safety hazards? For example, have curbs been designed with wheelchair ramps, have pedestrian activated signal lights or pedestrian overpasses been included in plans where needed? Is traffic light timing adequate for elderly pedestrians?

Level of Service

7. Will the project be provided with an adequate level of transportation service? Will it overload existing or proposed transportation services or conversely, create a situation whereby facilities are seriously underused?

Elderly and Handicapped

8. Have special parking spaces been designated for exclusive use by the handicapped?

Analysis Techniques

Project plans should be reviewed to determine the location of the site with respect to transit services. Project data, such as the number of housing units or the square footage of office space, should be consulted to determine the type of transportation services that will be required. If the project will service an elderly population, their unique transportation needs will require special consideration.

Next, determine the location and adequacy of existing and planned services by reviewing:

- **Transit Maps, Schedules, and Time Tables**, available from the local Transit Authority
- **Transportation Improvement Plans**, available from local transportation planning agency (usually the Metropolitan Planning Organization)
- **Street Maps and Highway Improvement Plans**, available from the state or local highway department or transportation planning agency
- **Inventory of Public and Private Parking Spaces** within the project area.

Based upon the above data a determination of impact can be made: If a project is within one quarter mile of a bus route and if headways are fifteen minutes or less, transit access is adequate, The elderly and handicapped will most probably require special transportation services, such as Dial-a-Ride van service provided by a social service agency. New U.S. Department of Transportation Section 504 Regulations require handicapped accessibility for public transit systems. Poor public transit access should be noted. Similarly, projects which relocate a facility from a location of relatively good transit access, such as a central business district, to one of poor access must be regarded as having a negative impact. Other adverse effects include locating a project on a site which is poorly served by local streets and will generate traffic and congestion on local streets. Safety and adequate parking supply should also be evaluated.

Policy Base (Including Standards and Legal Requirements)

The Federal Highway Administration and many state transportation agencies have specific capacity and level of service standards for primary and secondary roadways that must be met in order to qualify for Federal funds. If it appears that the project will increase local traffic, the standards should be consulted.

Sources and References

Booz-Allen and Hamilton, Inc. **Transportation Facility Proximity Impact Assessment.** Prepared for California Department of Transportation. Philadelphia, PA. 1976. NTIS #PB-264 160.

The Urban Planning Guide, William Clair (ed.), American Society of Civil Engineers, NY, NY 1969.

Skidmore, Ownings, & Merrill, **Airport Planning and Environmental Assessment Notebooks.** Prepared for U.S. Department of Transportation, Washington, D.C., 1978. DOT P5600.5.

Skidmore, Ownings, & Merrill, **Environmental Assessment Notebook Series: Highways.** Prepared for U.S. Department of Transportation, Washington, D.C., 1975. DOT P5600.4.

Experts to Contact

- ❑ Planner at the Regional Transportation Planning Agency
- ❑ Planner at the Regional Transportation Authority
- ❑ Planner at the State Highway Department
- ❑ Local Transit Authority
- ❑ Local Traffic Department
- ❑ Local Parking Authority
- ❑ Federal Highway Administration Division Office in each State
- ❑ Urban Mass Transportation Administration Regional Office

Mitigation Measures

1. Work with local transit authority to add and/or reroute buses to serve the new project.
2. Work with public transportation providers or social service agencies to add services for the handicapped.
3. Redesign project entry and exit to reduce or relocate traffic impacts on adjacent streets/
4. If traffic impacts are significant, consider changing the mix of project uses and thus alternating traffic generation patterns.

5. Adjust the number of parking spaces, provide more parking to reduce parking on adjacent streets.

6. Reserve parking spaces which are close to the facility for the exclusive use of the handicapped.

7. Include wheelchair ramps in curb and sidewalk designs.

8. Include pedestrian activated traffic lights with timing intervals suitable for the elderly.

NATURAL FEATURES

- ❑ Water Resources
- ❑ Floodplain Management
- ❑ Wetlands Protection
- ❑ Coastal Zone Areas
- ❑ Unique Natural Features
- ❑ Vegetation and Animal Life
- ❑ Agricultural Land

WATER RESOURCES

Overview

Water resources can be divided into two subcategories: groundwater and surface water.

Groundwater

Groundwater refers to all of the water found below the ground's surface. While most groundwater comes directly from rainwater, some results from seepage from the sides and bottoms of lakes and streams. The water usually passes down through a layer of partially saturated material to a zone of saturation in which all of the pore spaces between the soil and rock particles are filled with water. The water table is the upper level at which this saturation occurs. The area in which the groundwater is stored is called an aquifer. Aquifers vary widely in size and depth, some cover hundreds of miles are used extensively for drinking water and irrigation, such as the Ogallala Aquifer in the Great Plains.

The supply of groundwater depends upon a balance between the amount of water entering the ground and the amount being withdraw. Urban land development reduces recharge to aquifers

by precipitation. Excessive pumping can cause wells to run dry; increase the concentration of dissolved minerals; cause salt water intrusion if near the ocean, and cause land subsidence. The depth of the water table can vary tremendously from year to year and seasonally depending on the amount of rainfall. High water tables can result in basement flooding and surface puddles. Discharge from poorly designed, installed or maintained septic systems to drinking water wells can cause health hazards.

Some areas have experienced ground subsidence due to the pumping of ground water and the dewatering of the underground strata including aquifers. In Gulf Coast communities, such as New Orleans, excessive pumping has lowered the ground level and has made the area more prone to coastal flooding.

In many types of surficial geological formations, groundwater quantity and quality is related to the quality and presence of surface waters. Excessive well pumping can induce infiltration from streams and ponds, causing surface water levels to drop. If these surface waters are polluted, groundwater quality will be degraded. Often, groundwater flows discharge to streams. Polluted groundwater can thus degrade the quality of otherwise unaffected surface waters.

Surface water

Surface water plays an important role in nearly every community, as a source of drinking water, as a means of transportation, as a recreational resource, as a source of water for irrigation, and as a fishery.

Surface waters can range from very large rivers and lakes to small ponds and streams. Urban development can, however, have a serious negative impact on water quality. Surface waters, chiefly rivers and large lakes, frequently suffer from the effects of pollution generated by factories, urban sewage systems, power plants, and agricultural runoff. Degraded surface water quality can have short-term and long-term human health implications, can affect aquatic habitats and species and can have aesthetic and olfactory consequences.

While most water quality problems are due to effluents from sewage treatment plants, sewer system overflows and industrial waste outfalls, new commercial and residential developments can have an adverse effect on surface water quality. The chief source of such pollution is from urban runoff, chiefly from impervious surfaces such as streets, parking lots, and sidewalks which oil and gasoline is carried by rain into surface water. Landscaped areas treated with insecticides and fertilizer can also introduce polluted runoff into surface water. Also, failing septic systems and other sources of polluted groundwater (landfills and waste disposal areas) can seep untreated sewage and other wastes to surface waters.

Assessment Questions

Groundwater

1. Is the site subject to rapid water withdrawal problems, which change the depth or character of the water table , affect water supply, and/or vegetation?

2. Will the project use groundwater for its water supply?

3. Are there a large number of wells, or wells that pump large quantities of water from the water table near the proposed project site?

4. Will a lowered water table require deep pumping for water?

5. Are septic systems being used?

6. Is there a large variance in the water table elevation? A high seasonal water table can prevent proper functioning of septic tank drain fields.

7. Have septic disposal systems been properly designed, installed, and maintained to prevent effluent from contaminating groundwater supplies?

8. Is there impact on a sole source aquifer?

Surface Water

9. Are there visual or other indication of water quality problems on or near the site?

10. Will the project involve discharge of sewage effluent into surface water bodies? If so, will it meet state, Federal, and other applicable standards?

11. Will the project involve a substantial increase in impervious surface area, and if so, have runoff control measures been included in the design?

12. Will the project affect surface water flows or water levels in ponds as a result of excessive groundwater well pumping?

Analysis Techniques

Groundwater

In order to provide answers to many of the above questions and to determine possible negative impact, it is first necessary to review the project plans to determine such things as water supply source location and type (municipal or on-site system; groundwater or surface water source), septic or municipal sewerage for waste water, the depth of foundations and the amount of

paved area proposed. While it is unlikely that a CDBG project would fail to meet the requirements of the Safe Drinking Water Act (42 U.S.C. 5.300 et. seq.), the regional office of the Environmental Protection Agency will be able to provide information on compliance procedures, as appropriate. Once this is established, the following can be useful in providing data on groundwater conditions in the area:

Secondary Sources

USGS or State Geological Survey Hydrologic Maps/Reports

USGS Topographic Maps

USDA Soil Conservation Service Soil Surveys

Field Observation

Field observation can sometimes indicate potential groundwater problems including the presence of springs, seeps, and perennial streams which are fed by groundwater. In addition, strips of distinctive vegetation, particularly deep rooted plants, may indicate the presence of subsurface water in semi-arid areas.

The impact evaluation consists of estimating the extent to which existing groundwater conditions are a hazard to the project, its users and others, and the extent to which the proposed project will alter groundwater resources at the site and in surrounding areas.

Surface Water

It is useful to review the project plans to determine if paved areas might likely generate polluted runoff into surface water. A review pf proposed landscaping, drainage, and grading plans can indicate potential problems along with a review of any wastewater treatment and water source facilities if they are not a part of a municipal system.

Other secondary sources which could be useful are:

USGS Topographic Quadrangle Maps which provide data on the location of surface water bodies.

208 Area wide Wastewater Management Plans, prepared by local agencies under this EPA program have information on local water quality conditions and plans for remedy.

Field observation can help indicate existing water quality problems on or near the site, such as the presence of odor, foam, or debris on surface water. Also, water discoloration and the existence of heavy industry nearby can by indicative of problems.

Policy Base (Including Standards and Legal Requirements)

The Federal Water Pollution Control Act as amended (33 U.S.C. S 1251 et. seq.) in 1972 and 1977 defines water quality criteria, permit requirements, and compliance dates, and establishes a program of water quality planning and monitoring. State and local standards exist in most communities particularly with respect to on-site sewerage disposal (e.g., septic systems). (See the Waste Water impact category for a further discussion of water pollution abatement requirements and techniques) Under the Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 et. seq., and 21 U.S.C. 349), sole source aquifers are protected. Under this Act, Federal assistance to projects cannot be approved for any project which might contaminate an aquifer that has been designated by EPA as the sole source of drinking water for that area. Local public health agencies and sewerage treatment facility operators should be contacted for data on existing conditions and plans. Also applicable in some localities is the Scenic and Recreational Rivers Act.

Experts to Contact

It is suggested that experts be consuilted to assit in determining the degree of impact and possible mitigation. Possible experts include:

- Planner and/or engineer – 208 area wide planning agency
- Hydrologist – USGS Geological Survey or State Geological Survey
- Soil Scientist – U.S. Soil Conservation Service
- Engineer – city and/or county engineering department

Sources and References

American Public Health Association, American Water Works Association, and Water Pollution Control Federation. **Standard Methods for the Examination of Water and Wastewater,** 13th ed., New York, APHA, 1971.

U.S. Federal Water Quality Administration (FWPCA) **Water Quality Criteria: Report of the National Technical Advisory Committee to the Secretary of the Interior.** Washington, D.C., GPO, 1968.

Dunne, Thomas and Luna Leopold. **Water in Environmental Planning.** W.H. Freeman, San Francisco, California, 1978.

Keys, D.L. **Land Development and the Natural Environment.** The Urban Institute, Washington, D.C., 1976.

Mitigation Measures

Mitigation measures vary with the specific problem and site features. In aquifer recharge areas, the amount of paved surfaces should be limited or porous surfaces should be used on roads and parking lots. However, porous road surfaces are practical only where traffic is light. In areas where pumping poses a problem, he amount of pumping should be limited to safe annual yields.

In locations with high water problems, underground spaces need to be designed to withstand pressure of groundwater and to pump out seepage. Also, special design may be required of waste water disposal systems to function properly in high water table conditions.

The objective of impact mitigation is twofold: to reduce the hazards to the project posed by polluted water and to reduce contamination of local surface waters by the project. In many cases the overloading of public wastewater treatment facilities can only be remedied by expanding those facilities. Old or poorly built sewers which permit seepage may need reconstruction. Proper construction of on-site facilities helps mitigate potential adverse effects. Runoff control measures, such as on-site storage or routing to settling basins prior to discharge into surface waters, can be included in site design.

FLOODPLAIN MANAGEMENT

Overview

Selection of sites outside the base (i.e., 100-year) floodplain is essential to projects for which Federal support may be requested , because Executive Order 11988 discourages Federal agencies from initiating or participating in new construction within area having special flood hazards.

The evaluation should consider both flood hazards to potential CDBG projects, and possible increased flood hazards and environmental impacts resulting from Title I project construction. Federal policy defines high flood risk areas (floodplains) as those subject to a one percent or greater statistical chance of flooding in any given year. Areas identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards are set forth in a Flood Hazard Boundary Map or a Flood Insurance Rate Map and are shown as Flood Zone A and V (also referred to as the “100-year floodplain”). Such areas are expected to flood at least once every one hundred years and are normally dry areas subject to partial or complete inundation due to overflow of inland and/or coastal waters, or accumulation of other surface waters. Typical floodplain areas include low land along rivers or the ocean, flat areas in which storm water accumulates due to clay soils, and riverine areas subject to flash floods. Impacts of locating a CDBG construction project in a floodplain may range from property to loss of life when a flood occurs. Even if a potential CDBG project construction may increase flood hazards elsewhere. For example, extensive paving may result in faster runoff and substantially increased water volumes being emptied into local rivers or lakes. Encroachment of

development onto a floodplain or wetland often results from actions taken outside the floodplain or wetland. For example, construction of major roads and utilities adjacent to these areas will often encourage additional development within them. Construction of a housing development could well have the same effect.

Assessment Questions

The most important questions to ask when conducting the initial flood hazard screening are:

- ❑ Will the project be located in the 100-year floodplain?
- ❑ Will the project change the 100-year floodplain, or affect the floodway? (The floodway is the portion of the floodplain that must reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point.)
- ❑ Are there available alternatives to locating the proposed project or activity in the floodplain?
- ❑ Is the proposed project in compliance with Executive Order 11988?
- ❑ Is the proposed project or activity subject to compliance with the Federally-approved State Coastal Zone Management Plans?
- ❑ Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

Analysis Techniques

The basic analysis technique is set forth in “Floodplain Management Guidelines,” of the U.S. Water Resources Council issued in accord with Section 2(a) of E.O. 11988. Among other considerations, the analysis must identify and evaluate practicable alternatives to locating in a floodplain including alternative sites outside of the floodplain; alternative actions which serve essentially the same purpose as the proposed project or activity, but which have less potential to affect the floodplain adversely; and the alternative of taking “no action,” e.g. not carrying out the project or activity.

For approximately 16,000 communities participating in the National Flood Insurance Program, determination of whether or not the project would be located in the floodplain can be made by consulting the Flood Hazard Boundary and/or Flood Insurance Rate Map. Determining floodway or floodplain effects of large projects may require computer modeling, or engineering assistance.

If the National Flood Insurance Program Maps are not available, the determination as to whether the proposed project or activity is located in a floodplain may be made by consulting other sources, such as:

- ❑ U.S. Army Corps of Engineers Floodplain Information Reports
- ❑ USGS Flood-Prone Area Map
- ❑ USGS Topographic Quadrangle Map
- ❑ State and local maps and records

An example of a local floodplain map is shown on the preceding page (Figure 7-2).

If the proposed project is to be located in, or might affect the floodplain, the impact evaluation must be performed in accord with requirements of E.O. 11988.

Experts and other references are listed in the next section to assist in this task. The impact analysis should include consideration of flood control, water quality, groundwater recharge, and protection of natural and man-made resources, and any alternatives to the project including the "no action" one.

Policy Base (Including Standards and Legal Requirements)

Use of Federal funds, including CDBG funs, for activities in floodplains is governed by:

- ❑ Executive Order 11988, Floodplain Management (42 FR 26951)
- ❑ HUD General Statement of Policy (44 FR 47623)
- ❑ Flood Disaster Protection Act of 1973 (PL 93-234), as amended by the Housing Authorization Act of 1976 (PL 94-375)
- ❑ National Flood Insurance Program (44 CFR Parts 59-75)
- ❑ Floodplain Management Guidelines (43 PR 6030)
- ❑ Community Development Block Grant Regulations (44 FR 30273)

Federal policy recognizes that floodplains have unique and significant public values and calls for protection of floodplains, and reduction of loss of life and property by not supporting projects located in floodplains, wherever there is a practical alternative. Policy directives set forth in E.O. 11988 are: (a) avoid long and short-term adverse impacts associated with the occupancy and modification of floodplains; (b) avoid direct and indirect support of floodplain development; (c) reduce the risk of flood loss; (d) promote the use of nonstructural flood protection methods to reduce the risk of flood loss; (e) minimize the impact of floods on human health, safety, and welfare; (f) restore and preserve the natural and beneficial values served by floodplains; and (g) involve the public throughout the floodplain management decision making process. Subsidized flood insurance is available to property owners in communities participating in the National Flood Insurance Program.

(See the Wetlands Protection, Water Quality Management, Fish and Wildlife Regulation, and Coastal Zone Management Sections of Appendix B for discussions of related statutes and regulations.)

Sources and References

Water Resources Council, **Floodplain Management Handbook**, Prepared by Flood Loss Reduction Associates, September 1981, U.S. Government Printing Office; **State and Local Acquisition of Floodplains and Wetlands**; "A Handbook on the Us of Acquisition in Floodplain Management," Prepared by Ralph M. Field Associates, Inc., September 1981, U.S. Government Printing Office.

"General Statement of Policy: Implementation of Executive Orders 11988 and 11990," published by HUD in August 14, 1979 Federal Register (44FR 47623).

Free floodplain maps and studies on flood elevations for many localities may be obtained by calling the toll-free number 800-638-6620. They are provided by the Federal Emergency Management Agency whose contractor will service such requests. The maps are indexed by locality and panel. Localities with large floodplain areas may require several panels. The index will be sent on request.

Water Resources Council, **Floodplain Management Guidelines**, (43 FR 6030), 1978; and **The Unified National Program for Floodplain Management,** 1979.

National Flood Insurance Program, **How to Read Flood Hazard Boundary Maps**, 1977; and **Community Assistance Series**, 1979, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C.

Department of the Interior, Office of Water Research and Technology, **A Process for Community Floodplain Management,** 1979, Washington, D.C. The manual is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161, Order No. PB 80-135296.

Tourbier, Joachim and Richard Westmacott, **Water Resources Protection Measures in Land Development – A Handbook, Final Report**, 1974. Prepared for U.S. Department of Interior, Office of Water Resources Research. Newark, Delaware: Water Resources Center, University of Delaware. (This work is especially useful as a guide for the development of mitigation measures and nonstructural flood protection methods.)

Amy, Gar, et. al., **Water Quality Management Planning for Urban Runoff**, 1974. Washington, D.C.: U.S. Environmental Protection Agency, (EPA Publication No. EPA 440/9-75-004).

Carstea, D., et al., **Guidelines for the Analysis of Cumulative Environmental Effects of Small Projects in Navigable Waters.** 1975. McLean, Virginia: Mitre Corporation, Mitre Technical Report NTR-6939.

Office of Water Planning and Standards, Methods to Control Fine-Grained Sediments Resulting from Construction Activity, 1976. Washington, D.C.: U.S. Environmental Protection Agency.

National Flood Insurance Program, **Elevated Residential Structures: Reducing Flood Damage Through Building Design: A Guide Manual**, February 1977; and **Economic Feasibility of Flood Proofing: Analysis of a Small Commercial Building**, June 1979; and **Design and Construction Manual for Residential Buildings in Coastal High Hazard Areas**, January 1981, Washington, D.C., Federal Insurance Administration, Federal Emergency Management Agency.

Urban Land Institute, American Society of Civil Engineers, and National Association of Home Builders, **Residential Erosion and Sediment Control: Objectives, Principles, and Design Considerations**, 1978. Washington, D.C.: Urban Land Institute.

Experts to Contact

1. Regional Director, Federal Emergency Management Agency (FEMA), Flood Insurance and Hazard Mitigation Division (for information on floodplain maps and the National Flood Insurance Program). If the field office address is not known, contact the Washington, D.C. offices.

2. HUD Field Office, Environmental Clearance Officer.

3. The staff of the State Coordinating Agency for flood insurance; and the staff of the Servicing Agent issuing flood insurance policies.

4. U.S. Army Corps of Engineers District Office Director (for information on general floodplain management issues, mapping assistance and wetland protection). If field office address is not known, contact: Chief, Floodplain Management Services, U.S. Army, Independence Avenue, SW, Washington, D.C. 20314.

5. U.S. Soil Conservation Service – Field Office Staff. If the state or field office address is not known, contact: Chief, Floodplain Management and Special Projects Branch, River Basins Division, soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013.

6. U.S. Geological Survey – Field Office, Hydrologist (for information on natural resources values and flood hazard evaluation)

7. State and local government agency engineers and planners working with flood control and mapping.

Mitigation Measures

Where floodplains cannot be avoided, the project or activity must be designed or modified so as to minimize the potential adverse impacts affecting floodplains, restore and preserve the natural and beneficial values served by floodplains, and to use measures which mitigate or reduce the risk of flood loss. Mitigation must achieve protection of life, of property, and of the natural and beneficial values of the floodplain. While specific mitigation measures depend on local circumstances, some major measures include:

Mitigation of Effect of Floodplain on Proposed CDBG Project

- ❑ Evaluate existing flood-free sited wherever available within a community; however for a community that is totally flood-prone, evaluate sites having the least risk on environmental impact
- ❑ Ensure that building foundations are above 100-year flood elevation and/or can resist inundation
- ❑ Consider grading or floodwalls to protect proposed projects from flooding, and to ensure that subsequent effects elsewhere will not be undesirable
- ❑ Provide for maintenance of at least one dry access and egress route
- ❑ Provide for protection of vital utilities (for example; power lines) in order to ensure the operability of utilities during the occurrence of flooding

Mitigation of Effect of Project on Floodplain

- ❑ Hold increased storm runoff on site through use of storage basins, vegetation, porous paving materials, and grading
- ❑ Retard runoff through grading and other methods of water diversion
- ❑ Design storm drainage to limit peak flow conditions
- ❑ Where appropriate, comply with floodplain zoning and watershed management regulations
- ❑ Restore and preserve the natural and beneficial values served by floodplains

WETLANDS PROTECTION

Overview

Selection of sites outside of wetlands is essential for projects for which Federal support may be requested, because Executive Order 11990 discourages Federal agencies from initiating or

participating in new construction within areas affecting wetlands. See also Coastal Zone Management requirements, if applicable. As defined in Executive Order 11990, the term "wetland" refers to those areas that are inundated by surface or groundwater with a frequency sufficient to support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. Wetlands can assist man through groundwater filtering, storage, and recharge, flood control, nurturing wildlife including food sources such as water fowl and fish, water purification, oxygen production, recreational locations, and aesthetics. Urbanization has heavily impacted wetlands in the U.S. Scientists have estimated that from over a third to a half of the wetlands in the U.S. have been destroyed. In addition to filling, creation of pollution threatens additional wetlands.

Assessment Questions

1. Does the proposed CDBG project have the potential to affect or be affected by a wetland?

2. Is the project in compliance with Executive Order 11990?

3. Are there available alternatives to locating the project or activity in the wetland?

4. Is the proposed project or activity subject to compliance with Federally-approved State Coastal Zone Management Plans?

5. Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

Analysis Techniques

The Executive Order 11990 procedure requires that among other considerations, the analysis must identify and evaluate practicable alternatives to locating in a wetland (including alternative sites outside the wetland, alternative actions which serve essentially the same purpose as the proposed project or activity, but which have less potential to affect the wetland adversely, and the alternative of taking "no action," e.g. not carrying out the project or activity.

The Executive Order 11990 also requires that the following factors relevant to a proposed project's or activity's effects on the survival and quality of wetlands be analyzed: public health, safety, and welfare (including water supply, quality, recharge and discharge, pollution, flood and storm hazards, and sediment and erosion); maintenance of natural systems (including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources), and other uses of wetlands in the public interest (including recreational, scientific, and cultural uses).

The U.S. Fish and Wildlife Service, Department of the Interior, is developing a National Wetlands Inventory, including detailed maps showing wetlands. Where these maps have been

completed, they should be the initial reference. Many states and localities have passed local wetland legislation, and will be able to provide maps and assistance.

Policy Base (Standards and Legal Requirements)

Wetland development is controlled by the following Federal legislation and regulations:

- Executive Order 11990, Protection of Wetlands
- Federal water Pollution Control Act, requiring anyone discharging dredge or fill material into a wetland to obtain a permit from the U.S. Army Corps of Engineers (42 FR 37136), 1977.
- EPA has an extensive program of grants to assist state and local governments in developing plans for comprehensive protection of water resources, including wetlands, under Section 208 of the Federal Water Pollution Control Act.
- EPA controls discharges of pollutants in all waters of the United States, including wetlands (40 FR 41296), 1975.
- HUD General Statement of Policy (40 FR 26853) Calls for the same sequence of review steps outlined for CDBG projects in the Floodplain Management of this handbook.
- Community Development Block Grant Programs (44 FR 30273)

Federal policy recognizes that wetlands have unique and significant public value and calls for the protection of wetlands. Policy directives set forth in Executive Order 11990 are: (a) avoid long- and short-term adverse impacts associated with the destruction or modification of wetlands; (b) avoid direct or indirect support of new construction in wetlands; (c) minimize the destruction, loss, or degradation of wetlands; (d) preserve and enhance the natural and beneficial values served by wetlands; and (e) involve the public throughout the wetlands protection decision making process.

See the Water Quality Management, Coastal Zone Management, Fish and Wildlife Regulation and Floodplain Management Sections of Appendix B for discussions of related statutes and regulations.

Sources and References

Department of Transportation, Federal Highway Administration, **A Method of Wetland Functional Assessment** (Volumes I & II), Final Report (Manual), March 1983, National Technical Information Services, Springfield, Virginia 22161; and

Environmental Law Institute, **Our National Wetland Heritage: A Protection Guidebook**, Dr. Jon A. Kusler, 1346 Connecticut Avenue NW, Washington, D.C. 20036.

The U.S. Fish and Wildlife Service, Department of the Interior, publication, **Existing State and Local Wetland Surveys**, 1976; and **Classification of Wetlands and Deepwater Habitats of the United States**, December 1979. U.S. Government Printing Office, Washington, D.C. 20240 (Stock Number 024-010-00524-6).

Horwitz, Elinor Lander. **Our Nation's Wetlands: An Interagency Task Force Report**, Coordinated by the Council on Environmental Quality, 1978. U.S. Government Printing Office, Washington, D.C. 20402 (Stock Number 041-011-00045-9).

"Proceedings of the American Shore and Beach Preservation Association," Library of Congress Catalogue No. 77-89048.

Galloway, G.E., **Assessing Man's Impact on Wetlands**, December 1978. This publication was cosponsored by the University of North Carolina and the Office of Sea Grant, NOAA, U.S. Department of Commerce, under Grant No. 04-8-MO1-66.

U.S. Army Corps of Engineers, Institute of Water Resources**, Wetlands Values: Concepts and Methods for Wetlands Evaluation**, February 1979. Fort Belvoir, Virginia 22060.

U.S. Department of Transportation, Federal Highway Administration, **Highways and Wetlands** (Volumes 1,2, & 3), July 1980. Washington, D.C.

Experts to Contact

For identification and classification of wetlands consult the Regional Wetland Coordinator or the National Wetlands Project Leader, U.S. Fish and Wildlife (FWS) Department of the Interior, who is able to provide information on local material completed as part of the National Wetlands Inventory.

In addition, FWS has fundamental responsibilities for protecting the natural values of floodplains, and should be contacted early to assist in developing mitigation measures. Consultation on mitigation is especially important if Federal permits will be needed in the future, since the FWS will review and provide recommendations on permit issuance under the Fish and Wildlife Coordination Act and related laws. Field Office Biologist should be consulted relating to mitigation and Federal permit matters.

EPA Section 208 Coordinator, Regional Office, Environmental Protection Agency.

State Coastal Zone Management Officer.

State and/or Local Wetland Officer.

Mitigation Measures

Where use of the wetlands cannot be avoided the project or activity must be designed or modified so as to minimize potential harm to wetlands which may result from such use, preserve and enhance the natural and beneficial values served by wetlands, and mitigate risk to public safety and health. The examples of mitigation measures outlined in the Coastal Zone Management section are also appropriate for wetlands. For construction activities, the type of impacts for which mitigation measures are needed are discussed in detail by Rezneat, M. Darnell, et al., in **Impacts of Construction Activities in Wetlands of the United States**, 1976. (EPA-600/3-76-045, Washington, D.C.:U.S. EPA, Office of Research and Development).

Department of Interior recently published, "Mitigation Policy of the Fish and Wildlife Service, " (46 FR 7644) on January 23, 1981, (and as corrected in the FR February 4, 1981). This document establishes policy for Fish and Wildlife Service recommendations on mitigating the impact of land and water developments on fish, wildlife, their habitats, and use thereof. It will help localities to assure consistent and effective recommendations by outlining policy on the levels of mitigation to be achieved and the various methods for accomplishing mitigation. It will help anticipate Fish and Wildlife Service recommendations and plan early for mitigation measures, thus avoiding delays and assuring adequate consideration of fish and wildlife along with other project features and purposes.

COASTAL ZONE MANAGEMENT

Overview

The coastal zone includes the coastal salt waters and adjacent shorelands, including intertidal areas, barriers and other islands, estuaries, and land whose use would have significant impact on coastal waters. The Great Lakes and their connecting waters, harbors, and estuary areas are included in the coastal zone; and in some cases – such as Hawaii and Florida – the entire land area of the island or state is in the coastal zone.

The Coastal Zone Management Acts of 1972, 1976, and 1980 require that all Federal grant activities which "directly affect" the zone be consistent with approved State Coastal Zone Management Plans. Coastal zone impact assessment is important so that CDBG activities do not cause, and are not affected by, problems associated with inappropriate coastal development. Such problems include development of areas subject to storm damage and associated destruction of property; costly disaster assistance efforts, and loss of life. Other problems include pollution of shellfish beds and fishing areas; beach and recreational access; activities which may affect water quality and local ecosystems; intrusions upon the zone; and any deviation from an approved State CZM Plan.

Assessment Questions

1. Does the State have an approved Coastal Zone Management Plan?

2. If so, does the proposed project directly affect the coastal zone? If so, is it consistent with the approved State CZM Plan?

Analysis Techniques

The approved state coastal zone management plan must be consulted when assessing coastal zone impacts. Each plan includes an inventory and designation of areas of particular concern which can assist in initial screening of potential impacts which may be caused by the CDBG project location. State coastal zone management agency and other staff indicated in the following section may provide additional assistance, if necessary. Since most State Plans are not very detailed, grant recipients should consult the appropriate State coastal zone management agency for advice if they believe that a project may in any way directly affect land or water of the coastal zone. Please note that a project does not necessarily have to be physically located in the land or waters of the coastal zone to affect the coastal zone.

Policy Base (Including Standards and Legal Requirements)

The Coastal Zone Management Act of 1972, (PL 92-583) as amended in 1976, (PL 94-370) and 1980 (PL 96-464) pursuant to Section 307 requires that Federal agency actions in States with approved Coastal Zone Management Plans, shall be consistent with the Plan. Program development and approval requirements are contained in 15 CFR Part 930.

The Coastal Barrier Resource Act of 1982 (PL 97-583) prohibits Federal Flood Insurance for any new construction or substantial improvements of a structure located on an undeveloped coastal barrier identified in Section 4 of the Act.

(See Act for exceptions) This Act prohibits Federal expenditures and financial assistance which may encourage development of Coastal barriers.

Sources and References

Coastal Zone and Management Act of 1972 (PL 92-583) and the amendatories of 1976 and 1980. Program development and approval requirements are contained in 15 CFR Part 930, June 25, 1979.

Coastal Energy Impact Program Project Assessments and Environmental Impact Statements: Environmental Guidelines for Preparation (42 FR 44400). (The Energy Impact Program is not the same as the consistency requirement; however, these guidelines may be helpful.)

Marine Protection, Research and Sanctuaries Act of 1972 (PL 92-532).

Richard S Weinstein, editor, **Shorefront Access and Island Preservation Study**, 1978; and Gilbert F. White and others, **Natural Hazard Management in Coastal Areas**, 1976, Office of

Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. (OCZM has available bibliographic and other sources.)

Coastal Environmental Management Guidelines for Conservation of Resources and Protection Against Storm Hazards, Federal Emergency Management Agency, Washington, D.C. 1980.

Experts to Contact

Your State Coastal Zone Management Agency. This is the best and most accurate source of information.

Director, Office of State Programs, OCZM, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven Street, SW, Washington, D.C. 20235

(Information on individual State Coastal Management Plans can best be obtained from the State agency.)

Local office of the Army Corps of Engineers.

HUD Field Office, Coastal Zone Management Coordinator (usually either the Environmental Officer or EO 12372 Clearinghouse Coordinator)

U.S. Fish and Wildlife Services, Department of Interior.

Mitigation Measures

Except for compatible activities such as certain recreational projects, CDBG projects should not be located in sensitive coastal zone areas. CDBG projects located outside such areas may also generate adverse impacts for which mitigation measures are important. Such impacts may include increased runoff, siltation, and pollution. Examples of mitigation measures include:

Design and control of construction methods to minimize erosion and sedimentation

Use of appropriate vegetation and porous paving materials to minimize excess storm runoff

Design of the project to ensure no potentially toxic material (e.g., sewage, industrial waste or seepage) reaches sensitive coastal areas.

Other important impacts may include blockage of scenic views; improper use of area in conflict with land use requirements; drainage which impairs a wetland or estuarine situation and causes disturbances of marine ecosystems and/or spawning grounds; dumping, fill, and dredging operations in the construction process, or as a continuing operation; blockage of or improper beach access; impairing the quality of dunes and beach areas; overuse of coastal zone areas,

or improper use (usually with reference to recreational uses); other uses in violation of an approved plan; construction in a tsunami or floodtide area.

UNIQUE NATURAL FEATURES

Overview

Unique natural features are primarily geological features which are unique in the sense that their occurrence is infrequent or they are of special social/cultural, economic, educational, aesthetic or scientific value. Development on or near them may render them inaccessible to investigators or visitors or otherwise limit potential future use and appreciation of these resources.

Examples of unique natural features include sand dunes, waterfalls, unique rock outcroppings, caves especially with limestone or gypsum deposits, canyons, petrified forests. Also included are unique strands of trees, such as Redwoods, or unique colonies of animals, such as Prairie Dog Town.

The key criterion in defining a unique natural feature is the rareness of the feature, a characteristic often recognized by local landmarks. Another characteristic is information content. Some unique natural features contain a great deal of information concerning natural history, such as geologic evolution.

Assessment Questions

1. Will the proposed project location, construction, or activities of project users adversely impact unique natural features on or near the site?

2. Will the project either destroy or isolate from public or scientific access the unique natural feature?

3. Will the unique feature pose safety hazards for a proposed development?

Analysis Techniques

Review the project plans to determine its proximity to any unique natural features. Will the proposed project alter any views between public area and the unique natural feature? Will it alter access? Will runoff from the project erode the unique feature?

Policy Base (Including Standards and Legal Requirements)

There is no Federal legislation which protects unique natural features per se other than features which might qualify for historic or archaeological preservation or endangered species protection. Some unique features are protected by state and local legislation from development pressures.

Also many localities have elected to protect such lands through tax abatements and special zoning provisions.

Sources and References

Secondary sources which could be consulted include:

U.S. Geological Survey Topographic Quadrangle Maps and Surface and Bedrock Geology Maps. The "Quadrangle" maps indicate topographic features land use and often identify unique features. The Geologic Maps provide information concerning contours and mineral outcroppings in the area.

Aerial Photos are also helpful in identifying existing land uses, and unique features of the terrain.

Geological Reports and Maps prepared by State Universities and state agencies.

Experts to Contact

- ❑ State and Federal Park Service, Naturalists and/or Geologists
- ❑ Local University Natural Scientists, Geologists
- ❑ Sierra Club or Audubon Society Representatives
- ❑ State Resource Conservationist, Soil Conservation Service (SCS) – USDA
- ❑ District Conservationist, SCS
- ❑ County Planner, County Planning Department

Mitigation Measures

Natural Features:

Set feature aside as part of natural area for long term preservation; adopt legal protections

Provide visual or physical access to the feature

If feature must be destroyed, allow scientific research (such as excavation of fossil bed) before destruction is permitted.

VEGETATION AND ANIMAL LIFE

Overview

The abundance and survival of both plant and animal species is dependent upon the existence of a favorable environment and by their ability to adjust to conditions created by man. Urbanization has seriously altered natural ecosystems. In and near heavily urbanized areas, much of the native plant and animal species have been destroyed and have been replaced by species which are more successful in the urban environment, to the extent that it is often inappropriate to talk of native species in the urban environment. Some species flourish in cities (pigeon, starling, English sparrow). Others (bluejay, robin, gray squirrel, skunk, and raccoon) have learned to adapt and exist with man. Still other species have shunned urban areas altogether.

The impact of man on the environment through urbanization often results in water, air, and land pollution, while endangering many natural plant and animal species.

It is important to note that no organism lives alone but rather each lives as part of a population of its own species; a part of a community of several species; and as part of an ecosystem which includes the larger physical environment, including natural elements such as sunlight and water. These requirements or conditions for survival comprise the organism's habitat. Each ecosystem is in fact a complex chain of links, each dependent upon one another in a process known as a food web. Development which changes a sensitive ecosystem may adversely affect the diversity of species present, the productivity of the system or the rate of nutrient recycling.

Policy Base (Including Standards and Legal Requirements)

As a result of concern over the disappearance of many species Congress passed the Endangered Species Preservation Act in 1966, the Endangered Species Conservation Act in 1969, and in 1973, the Endangered Species Act. This 1973 Act was again amended in 1978 and in 1979. The 1978 and 1979 amendments provide a mechanism for getting an exemption and require that an economic analysis must be made when a Critical Habitat is designated. Many states have also passed legislation protecting endangered species and have developed their own endangered species list. Some state legislation protects specific species but not their habitat unless it is in designated wildlife sanctuaries. The existence of an endangered species or a Critical Habitat does not preclude development. The key factor is the effect that the proposed development will have on species. Development can occur if proper safeguards are taken to ensure that the action does not jeopardize the continued existence of the species or destroy or adversely modify their Critical Habitat.

Vegetation Definitions

Vegetation can receive two types of damage due to the development of a CDBG project. The first of these is disruption which refers to the killing or removal of plant communities as a direct

result of construction activity. The second category of damage is alteration of habitat which refers to changes in environmental conditions which, in turn, affect the existing vegetation such as contamination of the soil or air; grading or compaction in the root zone; dramatic changes in temperature or water level; and extension of imperious cover.

Succession refers to the natural replacement of one plant species by another as the plant community matures or changes. One succession problem common to urban areas is the creation of an environment which is favorable to weeds or other nuisance species, as in vacant lots and on polluted waterways.

Vegetation Assessment Questions

The first two questions deal with disruption; the last two deal with alteration of habitat.

1. Will the project damage or destroy existing remnant plant communities, especially rare or endangered species?

2. Will it damage or destroy trees without replacement and landscaping?

3. Will the project create environmental conditions which might threaten the survival of existing vegetation, particularly changes in the native plant community habitat?

4. Will it create conditions favorable to nuisance species?

Vegetation Analysis Techniques

When considering ecosystems it is first helpful to review existing documentation to determine the ecological features of the area. It is suggested that, as part of preparing a data file, maps be prepared which delineate the locations of endangered or rare species, remnant native plant communities and existing open space. Other maps which could be reviewed are vegetation maps, U.S. Soil Conservation Survey's Soils Survey which include data on woodland productivity, and aerial photography, particularly color infra-red photos which can present existing vegetation.

Field observation can be useful in determining the nature, viability, and degree of vulnerability of plant species on the site. Natural sites, sites on slopes and water tend to be more sensitive to development than sites which have been previously developed and have no surface water on or nearby.

A key factor in measuring the level of ecologic disturbance is the percentage of the site which will be developed or altered. No set formula fits all cases since the level of damage is a function of the sensitivity of the site and the amount of the site to be developed. For example, a condition of high ecological disturbance may result from a project of 30% site coverage on a highly sensitive site to 70% project coverage on a site of low sensitivity. This sort of evaluation requires the skills and experience of a vegetation and wildlife specialist.

Vegetation Experts to Contact

It is often best to consult an expert such as a biologist/ecologist from wither a university or a state natural resource agency. In more rural area representatives of the state forestry department or USDA Soil Conservation Service may also provide useful expert judgment.

Vegetation Mitigation Measures

Most of the mitigation measures involve modification of the project plans rather than alteration of the ecosystem itself such as clustering development and limiting tree cutting to those areas to be occupied by buildings. Other measures include avoiding construction in wetland areas, terracing downhill slopes, and plating native vegetation in open space areas.

Animal Life Definitions

An animal's habitat is the environment in which it normally lives and the one which meets its basic need for food, water, cover, breeding space and group territory. Urbanization has generally been at odds with the maintenance of natural habitats. Urban habitats are often found in neglected and unused areas such as along riverbanks and railroad alignments, in parks, institutional grounds and in vacant tracts of land. The protection of wildlife habitats can be at odds with urban development. However, certain actions can be taken to avoid undue disruption and to protect rare and endangered species.

Animal Life Assessment Questions

The assessment questions on animal life encompass the following five topics: disruption, habitat alteration or removal, endangered species, pest species and game species.

1. Will the project create special hazards for animal life? What types of animals will be affected and how?

2. Will the project damage or destroy existing wildlife habitats?

3. Will the project threaten any animal species listed by either state or Federal agencies as rare or endangered?

4. Will the project damage game fish habitats or spawning grounds?

5. Will the project create conditions favorable to the proliferation of pest species?

6. Will excessive grading alter the groundwater level and thus cause the slow death of trees and ground cover which in turn destroys animal habitat?

Animal Life Analysis Techniques

Secondary Sources

As with assessing impact on vegetation, it is first most useful to review lists of endangered species and to identify the location of the project in relationship to existing ecologically sensitive area, such as open space, wetlands, and undeveloped areas which can be prepared as part of the data file. Other documents to be reviewed include biotic surveys and threatened species lists prepared by state agencies and the USDA Endangered Species Technical Bulletin. Also relevant are the vegetation maps discussed previously.

Animal Life Experts to Contact

Technical studies can be supplemented with field observation of the site for signs of the likely presence of particular species. Consultation with biologists/ecologists with either state or Federal agencies may be helpful. The Fish and Wildlife Service of the Department of the Interior can also be contacted for information.

A determination of adverse impacts consists of a finding that a rare or endangered species or their habitat will be reduced in population or eliminated. Some CDBG projects may have a beneficial impact on species if park or conservation land is the proposed use.

Animal Life Mitigation Measures

Mitigation measures are threefold:

1. Alter project to avoid impact on critical habitat area.

2. Plant native vegetation to help feed and shelter protected species.

3. Establish a critical habitat area as a park or reserve.

Pests

The correction of conditions harboring pest species is a requirement of health and housing codes in most cities. Mice, rats, and insects are frequently a recurrent problem in cities. The problem is often most serious in alleys, abandoned structures, and in poorly maintained construction areas. The problem is best corrected by requiring that contractors be responsible for pest control as a condition of the contract.

AGRICULTURAL LANDS

Overview

Agricultural Lands are those lands currently used to produce agricultural commodities or lands that have the potential for such production. Agricultural commodities include food, seed, fiber, forage, oilseed, ornamental plant material and wood for all purposes. Development on or near them may destroy a valuable natural and economic asset. Infrastructure development in undeveloped agricultural areas may stimulate new commercial and residential development which would, in turn, threaten and destroy potential or future agricultural uses.

As urban expansion moves outward from cities into surrounding agricultural regions, highly productive lands are often converted to or adversely affected by urban development.

Farmlands are limited. Due to the importance of agriculture to the national economy and the importance to agricultural of maintaining the very best farmlands in production, many local and State governments are adopting policies and regulations to preserve farmlands or agricultural lands for this assessment factor refers to three specific categories: prime farmland, unique farmland, and farmland of statewide or local importance.

In some States agricultural lands are protected from development by agricultural districting and by other overlay zoning provisions which may result in lower property tax assessments for maintenance of agricultural uses.

Assessment Questions

1. Will the proposed project be located on or directly adjacent to land that is categorized as prime, unique, or of State or local importance?

2. Will drainage from the project adversely affect farmland?

3. Will the project location, construction, or activities of project users adversely affect important and productive farmlands on or near the site by conversion?

4. Will the project create problems by introducing nuisance species of vegetation which may spread to adjacent farmland?

Analysis Techniques

Review the project plans to determine its proximity to agricultural lands and the impact that is likely to occur using the Site Assessment Criteria in the regulations (7 CFR Part 658) or HUD guidance on Agricultural lands. Some major concerns include whether or not the proposed project will be a catalyst for substantial future development which will encourage more farmland conversion.

Policy Base (Including Standards and Legal Requirements)

The Farmland Protection Policy Act of 1981 (U.S.C. 4201 et. seq., Implementing Regulations 7 CFR Part 658) (Subtitle I of the Agriculture and Food Act of 1981) requires Federal agencies to minimize the extent to which their programs contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses. It further requires that where practical, Federal programs will be administered in such a manner that they will be compatible with State, local, and private programs and policies to protect farmland in the following categories:

- "prime" farmland – the highest quality land for food and fiber production having the best chemical and physical characteristics for producing;
- unique farmland – land capable of yielding high value crops such as citrus fruits, olives, etc., and;
- farmlands designated as important by State and local governments, with the approval of the Secretary of Agricultural.

Some States and localities protect agricultural lands from development activity either through State legislation, local codes and zoning provisions, or taxing policies.

Sources and References

U.S. Department of Agriculture, Soil Conservation Service (SCS), Mapping of Important Farmlands. Maps are prepared on a county by county basis for much of the United States. Maps provide information on the three categories of Farmlands.

SCS, Land Evaluation and Site Assessment System for counties is available from SCS District Conservationist or County Planners.

Aerial Photos are also helpful in identifying existing land uses, and unique features of the terrain.

Geological Reports and Maps prepared by State Universities and State agencies.

Experts to Contact

- State Resource Conservationist, Soil Conservation Service, USDA
- District Conservationist, SCS, USDA
- County Planner, County Planning Department
- State Department of Agricultural and/or Natural Resources

- ❑ HUD Regional or Field Office Environmental Clearance Officers

Mitigation Measures

1. Protect such lands through agricultural districting provisions, special zoning provision or tax abatements.

2. If project is adjacent to agricultural lands:

   - ❑ Minimize impervious surfaces and design the drainage system so that site runoff will be led to storm sewers or existing drainage ways

   - ❑ Limit human and pet access from project to adjacent agricultural lands with fencing, road patterns, and general site design.

   - ❑ Avoid the use of species in landscaping that are invasive and likely to establish themselves in adjacent croplands.

APPENDIX N

Environmental Internet and Governmental Agency Reference Guide

Additional information on specific environmental review areas of interest is available at the following Web URLs and through the following Federal contacts:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

HUD Environment/Energy Web page:
http://www.hud.gov/offices/cpd/environment/index.cfm

- HUD and Federal Environmental Laws & Regulations
  http://www.hud.gov/offices/cpd/environment/lawsandregs/
- HUD Environmental Resource Library
  http://www.hud.gov/offices/cpd/environment/library/
- HUD Environmental Review Requirements
  http://www.hud.gov/offices/cpd/environment/review/

HISTORIC PRESERVATION

Virginia State Historic Preservation Officer

Ms. Kathleen Kilpatrick, SHPO
Department of Historic Resources
2801 Kensington Avenue
Richmond, VA 23221

Deputy: Dr. M. Catherine Slusser
Phone: 804-482-6083
E-mail: Catherine.Slusser@dhr.virginia.gov

Website: http://www.dhr.virginia.gov/

Advisory Council On Historic Preservation, www.achp.gov
Old Post Office Building
1100 Pennsylvania Avenue NW, Suite 803
Washington, DC 20004
202-606-8530

Office of Federal Agency Programs - Don Klima, Director,
Federal Permitting, Licensing, and Assistance Section
Charlene Dwin Vaughn, assistant director
cvaughn@achp.gov 202-606-8533

USDI National Park Service:
http://www.nps.gov/

National Register of Historic Places
National Park Service
1201 Eye St., NW, 8th Floor (MS 2280)
Washington, DC 20005
(202) 354-2213

- USDI National Park Service, Keeper of the National Register
  Janet Matthews, Ph.D.
  Keeper of the National Register of Historic Places
  National Park Service
  1849 C Street, NW (2280)
  Washington, D.C. 20240
  (202) 208-7625

- Certified Local Governments (by state)
  http://www.nps.gov/history/hps/clg/

Native American Consultation Database, U.S. Department of the Interior, National Park Service
http://grants.cr.nps.gov/nacd/index.cfm
National Register of Historic Places
http://www.nps.gov/nr/

- Historic American Building Survey/Historic American Engineering Record (HABS/HAER)
  http://www.nps.gov/hdp/

U.S. Secretary of Interior's Standards for Treatment of Historic Properties
http://www.nps.gov/history/hps/tps/standguide/

ENVIRONMENTAL QUALITY

U.S. Environmental Protection Agency (EPA)

www.epa.gov

- EPA Regional Offices
  www.epa.gov/epahome/where.htm
- EPA Toxic Release Inventory, Community Right-to-Know
  www.epa.gov/tri and
  www.epa.gov/emergencies/content/epcra/
- EPA Envirofacts Data Warehouse – Queries, Maps & Reports
  http://www.epa.gov/enviro/

Virginia Department of Environmental Quality,

629 East Main Street, Richmond, VA 23219
(804) 698-4000
(800) 592-5482 (Toll free in VA)

- Superfund sites,
  http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/RemediationPrograms/Superfund.aspx

- Underground storage tanks, http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/PetroleumProgram/StorageTanks/UndergroundStorageTanks.aspx

HUD Enterprise Geographic Information System
http://egis.hud.gov/
American Society of Testing and Materials (ASTM)
www.astm.org
(Re: Standard Practice for Phase I Environmental Site Assessments)
100 Barr Harbor Drive, P.O. Box C700
West Conshohocken, PA 19428-2959
ASTM Customer Service: (610) 832-9585

U.S. EPA Map of Radon Zones (by state)
www.epa.gov/iaq/radon/zonemap.html
U.S. Department of HUD, Office of Healthy Homes and Lead Hazard Control
www.hud.gov/offices/lead/

U. S. Department of HUD
Office of Healthy Homes and Lead Hazard Control
Washington, D.C. 20410
Office: (202) 755-1785
U. S. Environmental Protection Agency, National Lead Information Center (NLIC)
http://www.epa.gov/lead/pubs/nlic.htm
U.S. EPA
Office of Pollution, Prevention and Toxics (Federal publications and information)
422 South Clinton Avenue
Rochester, NY 14620
Office: (800) 424-LEAD (5323),

NATURAL RESOURCES

National Wild & Scenic Rivers System (by State)[1]
www.rivers.gov/wildriverslist.html
Coastal Zone Management Act- Federal Consistency
http://coastalmanagement.noaa.gov/consistency/
Virginia Department of Environmental Quality, Federal Consistency Determination
http://www.deq.state.va.us/Programs/EnvironmentalImpactReview/FederalConsistencyReviews.aspx
629 East Main Street, Richmond, VA 23219
(804) 698-4000
(800) 592-5482 (Toll free in VA)

DEQ Coastal Regional Offices- Federal Consistency Determination

Northern Regional Office	Tidewater Regional Office
13901 Crown Court	5636 Southern Blvd.
Woodbridge, VA 22193	Virginia Beach, VA 23462
703/583-3895	757/518-2167

[1] List is maintained by U.S.D.I. National Park Service.

703/583-3871 FAX 757/518-2009 FAX
Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060-6295
804/527-5029
804/527-5106 FAX

Coastal Barrier Resources System:

- Federal Emergency Management Agency (FEMA)
  http://www.fema.gov/national-flood-insurance-program/coastal-barrier-resources-system
- U.S. Fish and Wildlife Service
  http://www.fws.gov/CBRA/

National Wetland Inventory (NWI)
http://www.fws.gov/wetlands/index.html

- NWI Regional Wetlands Coordinators, U.S. Fish and Wildlife Service (FWS)
  http://www.fws.gov/wetlands/NWI/RWC.html
- Wetlands Interactive Mapper Tool
  http://www.fws.gov/wetlands/Data/Mapper.html

Virginia Department of Environmental Quality,
http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Wetlands.aspx
629 East Main Street, Richmond, VA 23219
(804) 698-4000
(800) 592-5482 (Toll free in VA)

- **Comprehensive Wetland Program Plan, 2011 – 2015,**
  http://water.epa.gov/type/wetlands/upload/virginia_wpp.pdf
- **Permits, Fees and Regulations,**
  http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/PermitsFeesRegulations.aspx

U.S. Environmental Protection Agency, "The Wetlands Program Across the Country" www.epa.gov/owow/wetlands/regions.html
U.S. Army Corps of Engineers, "Map of USACE Civil Engineer Divisions and Districts"
http://www.usace.army.mil/Locations.aspx
(Re: Section 404 Permits)

National Flood Insurance Program, Federal Emergency Management Agency (FEMA) http://www.fema.gov/business/nfip/

- FEMA & NFIP Bureau & Statistical Agent Regional Offices
  http://www.fema.gov/business/nfip/nfip_regions.shtm
- The FEMA Flood Map Store
  www.msc.fema.gov/

- FEMA Map Service Center (MSC)
  MSC Customer Service
  P. O. Box 1038

Jessup, MD 20794-1038
Office: (800) 358-9616

- Make a FIRMette: www.msc.fema.gov/

EPA Sole Source Aquifer Protection Program
http://cfpub.epa.gov/safewater/sourcewater/sourcewater.cfm?action=SSA
(EPA Sole Source Aquifer Maps)

ENDANGERED SPECIES

U.S.D.I. Fish & Wildlife Service:
www.fws.gov/

- U.S. FWS, Endangered Species Program
  http://www.fws.gov/endangered/

U.S.D.C. National Marine Fisheries Service, Office of Protected Resources
http://www.nmfs.noaa.gov/pr/species/esa/
(Marine and anadromous species protected by the Endangered Species Act)

Virginia Department of Game and Inland Fisheries, http://www.dgif.virginia.gov/
(Consult their website for local office locations and contacts.)

CLEAN AIR ACT

Virginia Department of Environmental Quality
629 East Main Street
P.O. Box 1105
Richmond, VA 23218
804.698.4000
800.592.5482 (Toll Free in VA)

U.S. EPA, Office of Air & Radiation
www.epa.gov/oar/

- Air Data & Maps
  http://www.epa.gov/airdata/

FARMLAND PROTECTION POLICY ACT

U.S.D.A. Natural Resource Conservation Service
www.nrcs.usda.gov/

- Farmland Protection Policy Act (Legislation, Rules, Form AD-1006)
  http://www.farmlandinfo.org/index.cfm?function=article_view&articleID=29480

OTHER RESOURCES

U.S. Governmental Printing Office (GPO)
www.gpoaccess.gov
The GPO is the Federal Government's primary outlet for Federal Register and Code of Federal Regulations documents.

HUDUSER (HUD Office of Policy Development and Research Information)
http://www.huduser.org
Office: (800) 245-2691

HUDCLIPS (HUD Client Information and Policy System)
http://www.hud.gov/offices/adm/hudclips/index.cfm

GeocodeME – Geocode U.S. address. Geocoding is the process of converting addresses to latitude and longitude coordinates.
www.geocodeme.com

APPENDIX O

Notice to Prospective Buyers of Properties Located In Runway Clear Zones and Clear Zones

In accordance with 24 CFR 51.303(a)(3), this Notice must be given to anyone interested in using HUD assistance, subsidy or insurance to buy an existing property which is located in either a runway Clear Zone[2] at a civil airport or a Clear Zone at a military installation. The original signed copy of the Notice to Prospective Buyers must be maintained as part of the project file on this action. **[Instruction:** fill out the area shown in parentheses below.]

The property that you are interested in purchasing at **(Insert:** street address, city, state, zip code) is located in the Runway Clear Zone/Clear Zone for **(Insert:** the name of the airport/airfield, city, state).

Studies have shown that if an aircraft accident were to occur, it is more likely to occur within the Runway Clear Zone/Clear Zone than in other areas around the airport /airfield. Please note that we are not discussing the chances that an accident will occur, only where one is most likely to occur.

You should also be aware that the airport/airfield operator may wish to purchase the property at some point in the future as part of a clear zone acquisition program. Such programs have been underway for many years at airports and airfield across the country. We cannot predict if or when this might happen since it is a function of many factors, particularly the availability of funds but it is a possibility.

We want to bring this information to your attention. Your signature on the space below indicates that you are now aware that the property you are interested in purchasing is located in a Runway Clear Zone/Clear Zone.

_____

Signature of prospective buyer

_____

Typed or printed name of prospective buyer

[2] Also referred to as runway protection zone.

APPENDIX P

In-Depth Monitoring Checklist

Environmental Review for Program Year(s) _____

INSTRUCTIONS:

The purpose of this monitoring review is to determine if projects receiving HOME funds have the appropriate environmental review record (ERR) on file; and that HUD's environmental review and clearance requirements as outlined at 24 CFR Part 58 were achieved prior to funds being committed or spent.

The current Annual Plan (Date: _____) and Annual Performance Report (Date: _____) were used to select activities/projects for this review.

NOTE: Use the column "Recommendations/Notes" to explain responses of "No" or "N/A" (not applicable). "No" would generally indicate compliance was not achieved and the tribe is in violation of Part 58. "N/A" might be used to indicate that, at the time of the self-monitoring review, it was too early in the environmental review process to complete a particular step. In this situation, the self-monitoring review may be used to alert the tribe about remaining steps to be completed in the process. "N/A" might also be used to explain that comments were not received as a result of the tribe issuing the public notice, or that mitigation measures were not required.

TRIBES ASSUMING ENVIRONMENTAL REVIEW RESPONSIBILITIES	YES	NO	N/A	RECOMMENDATIONS/ NOTES
SECTION 1 - EXEMPT ACTIVITIES (§ 58.34) Following is a list of all exempt activities reviewed:				

TRIBES ASSUMING ENVIRONMENTAL REVIEW RESPONSIBILITIES	YES	NO	N/A	RECOMMENDATIONS/ NOTES
1. Was an environmental review completed for these projects? Was the current HUD-recommended (or an equivalent) format used for the ERR? If the answer is "No" to either question, explain why not.				
2. Does the ERR for each activity contain the following information (If the answer is "No", explain why not)?				
a) A project name and description of the exempt activities.				
b) A citation of § 58.34 that establishes the activity is exempt.				
c) Documentation establishing whether or not the "Other Requirements" cited in § 58.6 are applicable.				
d) The signature of the preparer of the review, as well as the signature and date of approval by the RE approving official for the tribe.				
SECTION 2 – CATEGORICALLY EXCLUDED <u>NOT</u> SUBJECT TO § 58.5 [§ 58.35(b)] Following is the list of all activities reviewed that were identified as categorically excluded NOT subject to § 58.5:				
1. Was an environmental review completed for the projects and was the current HUD-recommended (or an equivalent) format used for the ERR? If "No", explain why not.				
2) Does the ERR for each activity contain the following information (If the answer is "No", explain why not.)?				
a) A project name, location (if applicable) and description of the categorically excluded activities.				
b) A citation of § 58.35(b) that establishes the activity is categorically excluded NOT subject to § 58.5.				

TRIBES ASSUMING ENVIRONMENTAL REVIEW RESPONSIBILITIES	YES	NO	N/A	RECOMMENDATIONS/ NOTES
c) Documentation establishing whether or not the "Other Requirements" cited in §58.6 are applicable.				
d) The signature of the preparer of the review, as well as the signature and date of approval by the RE approving official for the tribe.				
SECTION 3 – CATEGORICALLY EXCLUDED SUBJECT TO § 58.5 [§ 58.5(a)] Following is the list of all projects reviewed that were identified as categorically excluded subject to § 58.5				
1) Was a Statutory Worksheet (or an equivalent format) completed for the projects? If "No", explain why not.				
2) Does the ERR for each activity contain the following information (If the answer is "No", explain why not.)?				
a) A project name, location, and description of the related activities (Aggregation of related actions funded with both HUD and non-HUD assistance.)				
b) A citation of § 58.35(a) establishing the activity is categorically excluded subject to § 58.5.				
c) Written documentation providing evidence compliance with the Federal laws and authorities was addressed (See Appendix A for the appropriate documentation and findings).				
d) Written determination the project converted to exempt [§ 58.34(b)], or did not convert to exempt.				
e) The signature of the preparer of the review, as well as the signature and date of approval by the RE approving official for the tribe.				

TRIBES ASSUMING ENVIRONMENTAL REVIEW RESPONSIBILITIES	YES	NO	N/A	RECOMMENDATIONS/ NOTES
3) If the project did not convert to exempt, does the ERR for each activity contain the following information (If the answer is "No", explain why not)?				
a) A copy of the *Notice of Intent to Request Release of Funds* either published (Proof of Publication or copy of newspaper notice and date) or posted/mailed.				

TRIBES ASSUMING ENVIRONMENTAL REVIEW RESPONSIBILITIES	YES	NO	N/A	RECOMMENDATIONS/ NOTES
b) Written public comments received, and letters of response from the tribe.				
c) A copy of the *Request for Release of Funds and Certification* (form 7015.15) submitted to HUD.				
d) A copy of the *Authority to Use Grant Funds* (form 7015.16) was received from HUD giving approval to commit and expend funds.				
e) Documentation that a copy for the notice was disseminated to known interested persons and agencies (§ 58.43).				
4) Documentation establishing whether or not the "Other Requirements" cited in § 58.6 are applicable.				

TRIBES ASSUMING ENVIRONMENTAL REVIEW RESPONSIBILITIES	YES	NO	N/A	RECOMMENDATIONS/ NOTES
5) Were project funds (HUD and non-HUD) committed or spent prior to completion of the environmental review process? Date Statutory Worksheet was completed. _____ Date tribe received HUD approval (form 7015.16) _____ Date contracts/agreements were signed by tribe and/or TDHE. _____ Date project funds (HUD and non-HUD) were first spent _____				
6) Were the mitigation measure and conditions for approval *identified* in the review?				
7) Were the mitigation measures and conditions for approval *implemented*?				
SECTION 4 – ENVIRONMENTAL ASSESSMENT (§ 58.36) Following is the list of all activities reviewed that required preparation of an environmental assessment (EA).				
1) Was a HUD-recommended Environmental Assessment form (or an equivalent format) completed for the projects? If "No", explain why not.				
2) Does the ERR for each activity contain the following information (If the answer is "No", explain why not.)?				
a) A project name and description of the related activities (Aggregation of related actions funded with both HUD and non-HUD assistance.)				

TRIBES ASSUMING ENVIRONMENTAL REVIEW RESPONSIBILITIES	YES	NO	N/A	RECOMMENDATIONS/ NOTES
b) Written documentation providing evidence compliance with the Federal laws and authorities was addressed (See Appendix A for the appropriate documentation and findings).				
c) Written documentation providing evidence compliance with NEPA was achieved (See Appendix B for the appropriate documentation).				
d) Written discussion of alternatives to the preferred action (including no action and other alternatives and project modifications considered).				
e) Signature of the person that prepared the EA.				
f) A finding of no significant impact (FONSI), and signature and date of approval by the RE approving official for the tribe.				
3) Does the ERR for each activity contain the following information regarding release for funds (If the answer is "No", explain why not)?				
a) A copy of the combined *Finding of No Significant Impact and Notice of Intent to Request Release of Funds* (FONSI/NOI-RROF) either published (Proof of Publication or copy of newspaper notice and date) or posted/mailed.				
b) Written public comments received, and letters of response from the tribe.				
c) A copy of the *Request for Release of Funds and Certification* (form 7015.15) submitted to HUD				
d) A copy of the *Authority to Use Grant Funds* (form 7015.16) received from HUD giving approval to commit and expend funds.				
4) Documentation that a copy of the notice was disseminated to known interested persons and agencies (§ 58.43).				
5) Documentation establishing whether or not the "Other Requirements" cited in §58.6 are applicable.				

TRIBES ASSUMING ENVIRONMENTAL REVIEW RESPONSIBILITIES	YES	NO	N/A	RECOMMENDATIONS/ NOTES
6) Were project funds (HUD and non-HUD) committed of spent prior to completion of the environmental review process? Date Statutory Worksheet was completed _____ Date received HUD Approval (form 7015.16) _____ Date contracts/agreements were signed by tribe and/or THDE _____ Date project funds (HUD and non-HUD) were first spent _____				
7) Were there mitigation measures and conditions for approval *identified* in the EA?				
8) Were the mitigation measures and conditions for approval *implemented*?				

SUMMARY OF FINDINGS AND CONCLUSIONS:

RECOMMENDED CORRECTIVE ACTIONS:

Reviewer's signature _____ Date of Review _____

Reviewer's Name/Title/Agency: _____

APPENDIX P - A

Compliance Documentation Required
For
Federal Laws and Authorities at § 58.5

Historic Preservation

- Letter from SHPO/THPO* that *no historic properties* will be affected, **OR**
- Responsible entity (RE) adequately documents its finding of *no historic properties affected* and SHPO/THPO does not object within 30 days, **OR**
- The RE documents the project meets stipulations of a *Programmatic Agreement* executed between the tribe and the SHPO/THPO, **OR**
- *Memorandum of Agreement* has been executed between the tribe and SHPO/THPO regarding mitigation measures that will be implemented to resolve adverse effects.

**State Historic Preservation Officer (SHPO); Tribal Historic Preservation Officer (THPO). Refer to the Advisory Council on Historic Preservation web site for a complete list of SHPO's and THPO's.*

Floodplain Management

- Evidence the proposed action is not within the 100 year floodplain (or 500 year floodplain for critical actions), **OR**
- There's documentation the decision making process is not applicable (sec. 55.12), **OR**
- There is *no practicable alternative*, according to the completed 8-step decision making process.

Wetlands

- Documentation that the proposed action does not include new construction or expanding the footprint of a building, **OR**
- Evidence the new construction will not occur in a designated wetland or expand the footprint of a building into a wetland, **OR**
- There is *no practicable alternative*, according to the completed 8-step decision making process. (U.S. Army Corps of Engineers issues a permit where they have wetland jurisdiction.)

Endangered Species (Federally listed or proposed species/habitat)

- Evidence that habitat will not be altered, or species affected---e.g., resource expert; biological assessment; existing documents and plans that include the project site, such as local land management plans, environmental reviews, special studies, **OR**
- If the proposed action <u>may affect</u> species or their habitat, there is evidence USFWS* or NMFS** has reviewed the biological assessment and agrees with the findings of *no effect*, **OR**

- If the proposed action will <u>likely adversely affect</u> species or their habitat, the USFWS or NMFS has issued either a "no jeopardy" or "jeopardy" biological opinion.

* *U.S. Fish and Wildlife Service has jurisdiction for most Federally listed and proposed species*

** *U.S. National Marine Fisheries Service have jurisdiction for Federally listed and proposed anadromous fish---i.e., ascend rivers from the sea to breed---or ocean species.*

Site Contamination

- Evidence the site is not contaminated, **OR**
- Evidence supporting a determination the hazard will not affect health and safety of the occupants, or conflict with the intended use of the site.

Explosive/Flammable Operations (Aboveground Storage Tanks)

- Documentation the proposed action meets the definition of a "HUD assisted project" (sec. 51.201), **OR**
- Documentation the field observations (or aerial photos) show no aboveground tanks within *one mile*, **OR**
- If tanks are within one mile, document:
  - there's an effective barrier, *or*
  - there's an *acceptable separation distance* for people and buildings, *or*
  - that people and buildings can be protected with mitigation measures.

Noise Abatement and Control

- Documentation the proposed action is not:
  - a noise sensitive land use, *or*
  - within 1,000 feet of a major roadway, 3,000 feet of a railroad, or 15 miles of an airport, **OR**
- If within those distances, documentation shows there's an effective noise barrier, **OR**
- If within those distances, documentation shows the noise level is *Acceptable* (at or below 65 DNL), **OR**
- Documentation shows the noise generated by the noise source(s) is *Normally Unacceptable*, and noise attenuation requirements (i.e., mitigation measures, including mechanical ventilation) are identified that will bring the interior noise level to 45 DNL and/or exterior noise level to 65 DNL (Acceptable).

Runway Clear Zones, Clear Zones, Accident Potential (Protection) Zones

- Documentation there are no FAA regulated airports (includes dual purpose airfields) within 2500 feet and/or Dept. of Defense airfields within 15,000 feet (about 2.8 miles) of the proposed action, **OR**
- There's documentation the rule is not applicable to the proposed action (i.e. acquisition of an existing structure, "minor" rehabilitation, emergency action), **OR**
- The project is within the specified distances, but the map of the civil airport and/or military airfield show the proposed action is not located within a Runway Clear Zone, Clear Zone, or Accident Potential Zone.

Coastal Zone (CZ) Management

- General location map or Coastal Zone Management Map establishes the project is not in the CZ, **OR**
- The State Coastal Commission verifies the proposed action is *consistent** with the Coastal Zone Management Plan.

* Federal assistance must be denied if the action is found *inconsistent.*

Wild & Scenic Rivers

- Evidence the proposed action is not within *one mile* of a designated Wild, Scenic, or Recreation River, **OR**
- Contact with the Federal agency that has administrative responsibilities for the river's management shows the proposed action will have no effect.

Farmland Protection Policy Act

- Evidence the current zoning classification is not for farmland use (i.e., residential, commercial, etc.), **OR**
- Information from NRCS* shows the site is not prime or unique farmland, **OR**
- Evidence from NRCS shows the site is classified *prime* or *unique* agricultural land, and the RE completed and submitted form AD-1006 to the NRCS for comment.

* U.S. Natural Resource Conservation Service (NRCS)

Clean Air Act

- Project is in an attainment area, **OR**.
- Project is in a non-attainment and in conformance with the State Implementation Plan (SIP), **OR**.
- For projects on tribal lands, the U.S. EPA Regional Office was consulted and their comments/determination were received.

Sole Source Aquifer Protection

- Documented the proposed action is not within the boundaries of an EPA designated aquifer, **OR**.
- Documented the action is not a regulated activity, **OR**.
- Documented that EPA has reviewed and commented on the proposed action

Environmental Justice

- Evidence that:
  - the proposed action is compatible with surrounding land use; **AND**
  - the site or surrounding neighborhood does not suffer from adverse environmental conditions; **AND**
  - the proposed action would not create a negative environmental impact or aggravate an existing impact.

APPENDIX P - B

National Environmental Policy Act (NEPA)

For each one of the environmental factors identified on the HUD Environmental Checklist form, the documentation provided should be credible, traceable and supportive of the environmental finding. Simply stating "not applicable" is not acceptable. Such determinations must be substantiated by documentation that makes this evident. There are five sources that should be used to document environmental findings and determinations (refer to HUD Handbook 1390.2). These are:

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

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

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

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

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

APPENDIX Q

Memorandum on "Guidance for Obtaining Waiver of 24 CFR Part 58", HUD Office of Environment and Energy, Washington, D.C., July 28, 2004.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

JUL 28 2004

MEMORANDUM FOR: Regional Field Environmental Officers, Field Environmental Officers

FROM: Richard H. Broun, Director Office of Environment and Energy, DPV

SUBJECT: Guidance for Obtaining Waiver of 24 CFR Part 58

Introduction

This memo provides guidance for obtaining a waiver of 24 CFR Part 58—"Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities." The Assistant Secretary for Community Planning and Development may grant a waiver of 24 CFR Part 58 where there is good cause to grant the waiver and no unmitigated adverse environmental impact will result.

It is anticipated that violations of the provisions in 24 CFR 58.22(a) may prompt recipients to apply for a waiver of 24 CFR Part 58 to enable the recipient to use HUD funds to complete the project. 24 CFR 58.22(a) states that a recipient and any participant in the development process may not commit HUD funds on an activity or project unless it is exempt under §58.34 or categorically excluded under §58.35(b), and may not undertake or commit non-HUD funds on an activity or project that would have an adverse environmental impact or limit the choice of reasonable alternatives, until the Request for Release of Funds (RROF) and related certification has been approved.[1]

[1] Please note that 24 CFR 58.22(e) and (f) allow funding from Self-Help Homeownership Opportunity Program (SHOP) and relocation funds to be committed in certain circumstances before the approval of a RROF and certification. Section 58.22(e) reflects a unique SHOP statutory provision and permits an organization, consortium, or affiliate receiving assistance under the SHOP to advance non grant funds to acquire land prior to completion of an environmental review and approval of a RROF and Certification. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only. Section 58.22(f) permits the commitment of relocation assistance before approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR Part 42.

I. Determining Whether Waiver is an Appropriate Option

Waivers cannot be used to address all violations and should only be used as a last resort and never if granting a waiver request would result in environmental harm. Waivers can be used for regulatory violations only where there is good cause to grant the waiver and no unmitigated adverse environmental impact will result. Waivers cannot be used where there is a statutory violation (unless the statute authorizes the Secretary to waive statutory provisions).[2]

A statutory violation occurs when, for example, a recipient has filed an application for a CDBG project and subsequently commits HUD CDBG program funds to the project for an activity that is not exempt under §58.34 or categorically excluded under §58.35(b), prior to submission of a RROF and certification. This is a statutory violation of Section 104 (g)(2) of the Housing and Community Development Act of 1974 (HCDA), and the recipient will be precluded from using program funds subject to the provisions of Section 104 (g)(2) of HCDA of 1974. A regulatory violation occurs when a recipient has filed an application for a CDBG project and subsequently commits non-HUD funds to begin construction on the project (a choice-limiting action) prior to the receipt of an approved RROF and certification. This is a regulatory violation of 24 CFR 58.22(a).

The Assistant Secretary for Community Planning and Development may provide waivers for violations of HUD's environmental regulation, 24 CFR Part 58. If a waiver is granted, then the recipient may use eligible HUD funding to complete the project.

Instances where a waiver may be used:

A. Non-HUD funds are committed or spent on a choice-limiting or environmentally adverse activity, or a choice-limiting or environmentally adverse activity is undertaken, after application for HUD assistance, but prior to submission or approval of a Request for Release of Funds and certification (RROF)

A recipient or a participant in the development process, after an application for HUD assistance for the project has been filed, undertakes, or commits or spends non-HUD funds on a project for, non-exempt activities which would have an adverse environmental impact or which would limit the choice of reasonable alternatives prior to the submission and approval of a RROF and certification.

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[2] The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) is currently the only statute that provides that the Secretary may waive statutory environmental review requirements. Section 105(d) of NAHASDA provides that the Secretary may waive the requirements under this Section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section: (1) will not frustrate the goals of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.] or any other provision of law that furthers the goals of that Act; (2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community; (3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1); and (4) may be corrected through the sole action of the recipient. This Memorandum does not include provisions for granting a waiver of Sec. 105 of NAHASDA pursuant to Sec. 105(d) of NAHASDA.

Such an action is a violation of 24 CFR 58.22(a). The recipient and other participants in the development process must:

(1) cease any expenditure and further commitment of funds;

(2) cease any choice limiting actions; and

(3) if justified, prepare a request for a waiver of the requirements of §58.22.

If a waiver request is not justified, or if prepared and not approved, then the recipient and other participants in the development process are not allowed to spend or commit further HUD funds that are subject to the statutory provision that was violated on the project or project site, unless such expenditure or commitment is on a new project substantially different from the project affected by the flawed environmental review. All environmental review requirements must be satisfied for any new project.

B. HUD funds committed or spent after RROF and certification submission, but prior to HUD (or state) approval of RROF and certification

The recipient can document submission of a RROF and certification, but the recipient committed or spent HUD funds prior to a HUD (or state) approval of RROF and certification.

Such an action is a violation of 24 CFR 58.22(a). The recipient and other participants in the development process must:

(1) cease expenditure and further commitment of funds;

(2) cease any choice limiting actions; and

(3) if justified, prepare a request for waiver of the requirements of §58.22.

If a waiver request is not justified, or if prepared and not approved, then the recipient and other participants in the development process are not allowed to spend or commit further HUD funds that are subject to the statutory provision that was violated on the project or project site, unless such expenditure or commitment is on a new project substantially different from the project affected by the flawed environmental review. All environmental review requirements must be satisfied for any new project.

C. HUD funds committed or spent on project prior to approval of RROF and certification in violation of statute, and recipient subsequently applies for *eligible HUD funds*[3] for the same project. See Appendix A to determine eligible HUD funds after statutory violation.

The recipient may apply for eligible HUD funds after the recipient committed or expended HUD funds prior to approval of RROF and certification in violation of program's statutory environmental requirements. However, the recipient will need to receive a waiver of 24 CFR Part 58 and an approved RROF and certification prior to the commitment of any funds under the new program and any further non-HUD funds. In order to apply for and commit eligible HUD funds, the recipient and participants in the development process must:

(1) cease expenditure and further commitment of funds;

(2) cease any choice limiting actions; and

(3) prepare a request for a waiver of the requirements of §58.22.

If a waiver request is not approved, then the recipient and other participants in the development process are not allowed to spend or commit HUD funds on the project site unless such expenditure or commitment is on a new project substantially different from the project affected by the flawed environmental review. All environmental review requirements must be satisfied for any new project.

II. Request for a Waiver

Once a violation of 24 CFR Part 58 has been found or reported, the HUD Field Office Program Director whose recipient has violated the regulations may request the Assistant Secretary for Community Planning and Development to waive 24 CFR Part 58.

A. Recipient

The recipient must make a request to waive a violation of 24 CFR Part 58 to the applicable HUD Field Office Program Director. The request for waiver must include:

(1) A description of the project, including list of activities to be undertaken, funding amounts and sources, and outcomes.

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[3] HUD cannot waive statutory violations, unless authorized by Congress in the statute (NAHASDA is the only statute that authorizes waiver of environmental requirements). The recipient is precluded from using all HUD program funds subject to the statute that was violated. One statute may have several HUD programs subject to its environmental review requirements. However, the recipient may use HUD funds from programs that are subject to a different statute's environmental review requirements. See Appendix A for details.

(2) A completed environmental review, minus environmental public notices and Request for Release of Funds and Certification.

(3) A description of the violation, including all relevant facts, chronology of events, and nature of violation. As described above, the violation must be regulatory (not statutory) to obtain a waiver. The request must identify the specific regulatory violation.

(4) Evidence that good cause exists to justify the extraordinary action of granting a waiver.

(5) Evidence that no unmitigated adverse environmental impacts will result from granting a waiver.

(6) Report from site inspection conducted by HUD Field Office staff or a HUD contractor. The report will independently determine whether granting a waiver will result in an adverse environmental impact.

B. Field Office

The Field Office Program Director whose recipient violated the regulations must review the request for a waiver in consultation with Field Environmental Officer and make a recommendation to the Assistant Secretary for Community Planning and Development whether to approve or disapprove the request. All documentation provided by the Responsible Entity shall be included with the Field Office's recommendation.

C. Headquarters Office

The Headquarters program office will have the opportunity to review and provide comments on the request to the Assistant Secretary for Community Planning and Development and accompanying information, including the site inspection report. The Assistant Secretary for Community Planning and Development may approve the waiver where there is good cause and no unmitigated adverse environmental impact will result.

III. Requirements for Assistant Secretary for Community Planning and Development to Grant a Waiver

The Assistant Secretary for Community Planning and Development will review the request and accompanying information, including the site inspection report, and seek comments from the Headquarters program office and the Office of Environment and Energy. The Assistant Secretary for Community Planning and Development may approve the waiver where there is good cause and no unmitigated adverse environmental impact will result.

A. Evidence of Good Cause

The party requesting the waiver must present evidence that there is good cause to grant a waiver. Evidence of good cause includes demonstration of good faith, i.e. did not willfully non-comply but, nevertheless, acted in error; demonstration that project furthers HUD program goals; and the

recipient is firmly committed to receive training and/or technical assistance in environmental review procedures.

B. Evidence that Granting a Waiver will not Result in Unmitigated Adverse Environmental Impacts

A waiver will not be granted if the waiver will result in unmitigated adverse environmental impacts. A waiver request must contain an analysis of the environmental information for the project and an on-site inspection. The report must include either:

(1) a finding that the project in question has not produced, and is not likely to produce, any adverse environmental impact; or

(2) an identification of actual or potential adverse environmental impacts, the specific actions necessary to mitigate such impacts, and a firm commitment from the recipient to complete all necessary mitigation.

IV. Responsibilities After Obtaining a Waiver

A. Environmental Review

The recipient must complete an Environmental Review in accordance with 24 CFR Part 58.

B. Mitigation

The recipient must make a firm commitment to complete all necessary mitigation

C. Remedial/Corrective Actions

Remedial or corrective actions will be required of the recipient if the waiver is granted. Such actions may include requiring the recipient to obtain appropriate technical assistance to overcome the performance problem or requiring attendance at HUD sponsored or approved training.

APPENDIX A

Issue:

This guidance describes the conditions under which a recipient or participant in the development process who has committed **HUD assistance funds** to a project prior to submission of a Request for Release of Funds (RROF) and certification to HUD (or the state), and is precluded from using those HUD assistance funds, may apply for and use other eligible HUD program funds for the same project. It is important to note that before the recipient or participant in the development process commits other eligible program funds, the recipient must first obtain a regulatory waiver of §58.22(a).

Background:

First, it is necessary to determine whether a recipient or participant in the development process committed a statutory violation, in addition to a regulatory violation, when it committed funds prior to a HUD (or state) approved RROF and certification. A commitment of **HUD assistance funds** for a choice limiting action prior to submission of a RROF and certification has been determined by the Office of General Counsel to be a statutory violation. Under the Part 58 regulations, a commitment of HUD assistance funds or non-HUD funds before HUD (or state) approval of a RROF and certification is a regulatory violation of §58.22(a). The following actions are regulatory violations of §58.22(a) and not statutory violations: 1) a commitment of HUD assistance funds or non-HUD funds for a choice limiting action after submission of a RROF to HUD (or the state), but prior to a HUD (or state) approved RROF, and 2) a commitment of non-HUD funds prior to submission of RROF and certification to HUD (or the state).

HUD cannot waive statutory violations (unless the statute authorizes the Secretary to waive statutory provisions) and neither the recipient nor any participant in the development process can use any HUD funding subject to the environmental review requirements of the statute that was violated for the same project. However, a statutory violation does not prevent the recipient or participant in the development process from obtaining a waiver of the regulatory violation of §58.22(a) and applying for and using HUD funds that are subject to a different statute's environmental review requirements.[1]

Once a regulatory violation or a statutory violation has been discovered, the recipient and participants in the development process **must** cease all choice-limiting action and cease commitment and expenditure of funds on the project. In order to preserve the ability to use any HUD funds in the project, the recipient and participants in the development

[1] In instances where the recipient used tiering as described in §58.15 for a project and subsequently committed a statutory violation by committing HUD assistance before submission of RROF and certification to HUD (or the state), the recipient will not be precluded from using HUD funds subject to the statutory violation, provided that the new project(s) is independent, site-specific, in accordance with the project aggregation provisions in §58.32 and provided that a waiver of §58.22(a) is granted and approval of a RROF and certification is properly obtained prior to commitment of any funds under the new program and any further non-HUD funds.

process will have to obtain a regulatory waiver of §58.22(a), which cannot be issued unless the recipient and participants in the development process stop expending and committing funding and take no further choice-limiting actions after the discovery of the violation.

Question: What HUD funding can be used in the situation where a recipient or party to the development process has committed **HUD funding** to a project before submitting a Request for Release of Funds (RROF) and certification to HUD (or the state), in violation of §58.22(a)?

Answer:

A commitment of HUD assistance funds prior to submission of a RROF and certification is a statutory violation, as well as a regulatory violation of §58.22(a).[2] Other than noted above, HUD cannot waive statutory violations and the recipient and other participants in the development process are precluded from using any further HUD assistance funds subject to the statute that was violated. One statute may have several HUD programs subject to its environmental review requirements. A recipient or any participant in the development process may, however, use HUD funding that is subject to a different statute's environmental review requirements, but only if the recipient first obtains a waiver of §58.22(a) from the Assistant Secretary for Community Planning and Development for the regulatory violation committed when the recipient or participant in the development process committed HUD fund assistance prior to an approved RROF and certification.

Appendix B lists seven different statutes and the HUD programs and assistance that are subject to each statute's environmental provisions. If there is a violation of the environmental provisions of a statute in Group A, then the recipient and any participant in the development process may not use any of the funds listed in Group A. In order to use the funding in any of the other Groups, the recipient first needs to obtain a waiver of §58.22(a) because it violated the regulations by committing funds from Group A before receiving an approved RROF and certification.

For example, if a recipient or participant in the development process commits HOME grants to a project before submitting a RROF and certification, the recipient and any participant in the development process are precluded from using HOME funds as well as

[2] Please note that 24 CFR 58.22(e) and (f) allow funding from Self-Help Homeownership Opportunity Program (SHOP) and relocation funds to be committed in certain circumstance before the approval of a RROF and certification. Section 58.22(e) reflects a specific SHOP statutory provision and permits an organization, consortium, or affiliate receiving assistance under the SHOP to advance nongrant funds to acquire land prior to completion of an environmental review and approval of a RROF and Certification. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only. Section 58.22(f) permits the commitment of relocation assistance before approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

grants to State and local governments for lead-based paint hazard control for the same project, because both funding is in Group A and subject to the same statute, Section 288 of the Cranston-Gonzalez National Affordable Housing Act. However, the recipient or any participant in the development process could use any HUD assistance funds from Groups B, C, D, E, F, or G (subject to program eligibility requirements) for the project provided that a waiver of §58.22(a) is granted and approval of a RROF and certification is properly obtained prior to commitment of any funds under the new program and any non-HUD funds. It is important to note that although the recipient or participant in the development process may use HUD assistance funds from Groups B, C, D, E, F, or G, the recipient has still committed a regulatory violation of §58.22(a) since it committed HUD funds before HUD (or state) approval of a RROF and certification, and it will be necessary to obtain a waiver of §58.22 before the recipient or any participant in the development process commits eligible HUD funds for the project.

Question: What HUD funding can be used when the recipient or participant in the development process has committed both **HUD assistance funds and non-HUD funds** to a project prior to submission of the RROF and certification?

Answer:

A commitment of **HUD assistance funds** prior to submission of RROF and certification is a statutory violation as well as a regulatory violation of §58.22(a). In contrast, a commitment of **non-HUD funds** prior to submission or HUD (or state) approval of a RROF and certification is only a regulatory violation of §58.22(a)— (i.e. not a statutory violation).

The process discussed above applies. The recipient and any participant in the development process are precluded from using HUD assistance funds that are subject to the statute that was violated on the project. After obtaining a waiver of §58.22(a) from the Assistant Secretary for Community Planning and Development for committing HUD assistance funds and non-HUD funds prior to an approved RROF and certification, the recipient or any participant in the development process may commit and use HUD assistance funds that are subject to a different statute's environmental requirements provided that a waiver of §58.22(a) is granted and approval of a RROF and certification is properly obtained prior to commitment of any funds under the new program and any further non-HUD funds. (The waiver request needs to specify that the recipient violated §58.22(a) because it committed HUD assistance funds and non-HUD funds to the project before a HUD (or state) approval of a RROF and certification.)

APPENDIX B

GROUP A

Section 288 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12838)

·HOME
·Grants to State and local governments for lead-based paint hazard control

GROUP C

Section 542(c)(9) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note)

·FHA Multifamily Housing Finance Agency Program

GROUP B

Section 26 of the United States Housing Act of 1937 (42 U.S.C. 1437x)

·Public Housing Assistance (Capital Improvements)
·HOPE VI Revitalization Grants
·Capital Fund Grants
·Mixed Finance Assistance under the USHA of 1937
·Conversions under Section 202 of USHA of 1937
·Section 8 (except the special allocation programs)
·Section 8 Moderate Rehabilitation for Single Room Occupancy for Homeless Individuals under Title IV, Subtitle E of the McKinney-Vento Homeless Assistance Act

GROUP D

Section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547(c))

·Emergency Shelter Grants
·Shelter Plus Care Grants
·Supportive Housing Grants
·Shelter Plus Care Section 8 Moderate Rehabilitation Single Room Occupancy for Homeless Individuals
·Self-Help Homeownership Opportunity Program
·Special Project Grants

GROUP E

Section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g))

·Community Development Block Grant (entitlement)
·Community Development Block Grant (for States and Small Cities)
·Section 108 Loan Guarantees
·Brownfield Economic Development Initiative (BEDI) Grants
·Indian Community Development Block Grant

GROUP F

Section 105 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 (25 U.S.C. 4115)*

·Indian Housing Block Grants
·Federal Guarantees for Financing for Tribal Housing Authorities
·Indian Housing Loan guarantees authorized by section 184 of the Housing and Community Development Act of 1992

GROUP G

Section 806 of NAHASDA of 1996 (25 U.S.C. 4226)

·Native Hawaiian Housing Block Grants

*Note: Section 105(d) of NAHASDA provides that the Secretary may waive the requirements under this Section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section: (1) will not frustrate the goals of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.] or any other provision of law that furthers the goals of that Act; (2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community; (3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1); and (4) may be corrected through the sole action of the recipient.

APPENDIX R

ENVIRONMENTAL REVIEW TERMS

The following acronyms and terms are commonly used in reference to various processes, requirements, laws, regulations, and entities involved in the environmental review.

Acronym	Definition/Term
AC	Advisory Council on Historic Preservation (36 CFR 800)
APZ	Accident Potential Zone (military airfield) (also known as *Accident Protection Zone*, 24 CFR 51, Subpart D)
APE	Area of Potential Effect (36 CFR 800)
ASD	Acceptable Separation Distance (24 CFR 51, Subpart C)
CAA	Clean Air Act
CBRA	Coastal Barrier Resources Act (as amended by the Coastal Barriers Improvement Act of 1990)
CE	Categorical Exclusion (24 CFR 58.35)
CEQ	Council on Environmental Quality (24 CFR Part 58 and 40 CFR Parts 1500-1508)
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act (“Superfund”)
CFR	Code of Federal Regulations
CZ	Clear Zone (military airfield, 24 CFR Part 51, Subpart D)
CZMA	Coastal Zone Management Act
DNL	Day-Night Average Sound Level System (24 CFR Part 51, Subpart B)
EA	Environmental Assessment (24 CFR 58.36)
EHS	Extremely Hazardous Substances
EIS	Environmental Impact Statement (24 CFR58.37)
EPA	U.S. Environmental Protection Agency
ERR	Environmental Review Record (24 CFR 58.38)
ESA	Endangered Species Act

EJ	Environmental Justice (Executive Order 12898)
FAA	Federal Aviation Administration, U.S. Department of Transportation
FEMA	Federal Emergency Management Agency
FHBM	Flood Hazard Boundary Map (no flood elevations shown)
FIRM	Flood Insurance Rate Map (flood elevations shown)
FOSI	Finding of Significant Impact [24 CFR 58.40(g)(2)]
FONSI	Finding of No Significant Impact (24 CFR Part 58, Subpart E)
FONSI/NOI	Finding of No Significant Impact & Notice of Intent to Request Release of Funds [24 CFR 58.45(c)]
FPPA	Farmland Protection Policy Act
FWS	Fish and Wildlife Service (U.S. Department of the Interior)
HOME	HOME Investment Partnerships Program (24 CFR Part 92)
HUD	U.S. Department of Housing and Urban Development
LOMA	Letter of Map Amendment (24 CFR Part 55)
LOMR	Letter of Map Revision (24 CFR Part 55)
MOA	Memorandum of Agreement
NAAQS	National Ambient Air Quality Standards
NAHA	Cranston-Gonzalez National Affordable Housing Act of 1990
NAL	Noise Assessment Location (*The Noise Guidebook* issued by HUD)
NEPA	National Environmental Policy Act of 1969
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NMFS	U.S.D.C., National Marine Fisheries Service
NOI/EIS	Notice of Intent to Prepare an Environmental Impact Statement (24 CFR 58.55)
NOI/RROF	Notice of Intent to Request Release of Funds (24 CFR 58.70)
NPL	National Priority List

NR	National Register of Historic Places
NRCS	Natural Resource Conservation Service (formerly the Soil Conservation Service, U.S. Department of the Interior)
PJ	Participating Jurisdiction (state, unit of local government, or consortium participating in the HOME Program)
RACM	Regulated Asbestos Containing Material
RCRA	Resources Conservation Recovery Act
RCZ	Runway Clear Zone (civil airport)
RE	Responsible Entity (includes the participating jurisdiction for the state, unit of local government or consortium) [24 CFR 58.2(a)(7)]
ROF	Release of Funds (i.e., *Authority to Use Grant Funds*, HUD form 7015.16)
RROF	Request for Release of Funds [i.e., *Request for Release of Funds and Certification* (HUD form 7015.15)]
SARA	Superfund Amendments and Reauthorization Act
SHPO	State Historic Preservation Officer (36 CFR Part 800)
SFHA	Special Flood Hazard Area (designated by FEMA)
SSA	Sole Source Aquifer (Safe Drinking Water Act of 1974; 40 CFR Part 149)
UST	Underground Storage Tank
W&SR	National Wild and Scenic Rivers System (established by the Wild and Scenic Rivers Act)

APPENDIX S

24 CFR Part 58, Environmental Review Procedures

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

Subpart B—General Policy: Responsibilities of Responsible Entities

Subpart C—General Policy: Environmental Review Procedures

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

Subpart E—Environmental Review Process: Environmental Assessments (EA's)

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

Subpart H—Release of Funds for Particular Projects

AUTHORITY: 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O 11991, 3 CFR 1977 Comp., p. 123.

SOURCE: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

§58.1 Purpose and applicability.

(a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) *Applicability.* This part applies to activities and projects where specific

statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

(1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) [Reserved]

(3)(i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading ''Annual Contributions for Assisted Housing'' in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note);

(9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat. 834), in accordance with section 11(m));

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z–13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning

with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56127, Sept. 29, 2003]

§58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying Officer* means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13.

(3) *Extraordinary Circumstances* means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) *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.

(5) *Recipient* means any of the following entities, when they are eligible recipients or grantees under a program listed in §58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) With respect to Public Housing Programs under §58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under §58.1(b)(6)(ii) or Section 8 assistance under §58.1(b)(6)(iii), a public housing agency;

(vi) Any direct grantee of HUD for a special project under §58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program under §58.1(b)(9), any direct grantee of HUD.

(ix)(A) With respect to NAHASDA assistance under §58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under §58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) *Release of funds*. In the case of the FHA Multifamily Housing Finance Agency Program under §58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) *Responsible Entity*. Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq*.) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(8) *Unit Density* refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) *Tiering* means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) *Vacant Building* means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

(1) CDBG—Community Development Block Grant;

(2) CEQ—Council on Environmental Quality;

(3) EA—Environmental Assessment;

(4) EIS—Environmental Impact Statement;

(5) EPA—Environmental Protection Agency;

(6) ERR—Environmental Review Record;

(7) FONSI—Finding of No Significant Impact;

(8) HUD—Department of Housing and Urban Development;

(9) NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990;

(10) NEPA—National Environmental Policy Act of 1969, as amended;

(11) NOI/EIS—Notice of Intent to Prepare an EIS;

(12) NOI/RROF—Notice of Intent to Request Release of Funds;

(13) ROD—Record of Decision;

(14) ROF—Release of Funds; and

(15) RROF—Request for Release of Funds.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.4 Assumption authority.

(a) *Assumption authority for responsible entities: General.* Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) *Particular responsibilities of the States.* (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any nongovernmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD's responsibilities in accordance with § 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

(c) *Particular responsibilities of Indian tribes.* An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h–2).

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971–1975 Comp., p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-

making process in 24 CFR part 55 and this part, see § 55.10 of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, particularly sections 2 and 5.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) *Sole source aquifers.* (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h–3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) *Air quality.* (1) The Clean Air Act (42 U.S.C. 7401 *et. seq.*) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

(h) *Farmlands protection.* (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

(i) *HUD environmental standards.* (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in § 51.303(a)(3).

(2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) *Environmental justice.* Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by the responsible entity under the laws cited in § 58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(12) and/or the applicability of § 58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under § 58.34 or categorically excluded under § 58.35(a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain flood insurance.

(c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

Subpart B—General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), except as otherwise provided in § 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

[68 FR 56128, Sept. 29, 2003]

§ 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

§ 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71, a responsible entity's certifying officer is the ''responsible Federal official'' as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in § 58.5. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

§ 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in § 58.5 and § 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

[63 FR 15271, Mar 30, 1998]

§ 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for

meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§ 58.17 [Reserved]

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

(a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs, and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

[68 FR 56129, Sept. 29, 2003]

Subpart C—General Policy: Environmental Review Procedures

§ 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) *Self-Help Homeownership Opportunity Program (SHOP).* In accordance with section 11(d)(2)(A) of the Housing

Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) *Relocation.* Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

[68 FR 56129, Sept. 29, 2003]

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental review process.

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with § 58.32.

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

§ 58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: *functional aggregation* when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or *a combination of aggregation approaches*, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) *Multi-year project aggregation*—(1) *Release of funds.* When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the

source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in § 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

§ 58.34 Exempt activities.

(a) Except for the applicable requirements of § 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental and other studies, resource identification and the development of plans and strategies;

(2) Information and financial services;

(3) Administrative and management activities;

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

(5) Inspections and testing of properties for hazards or defects;

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to § 58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in § 58.5:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;

(ii) 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.

(iii) 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.

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) 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.

(6) Combinations of the above activities.

(b) *Categorical exclusions not subject to § 58.5.* The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

(1) Tenant-based rental assistance;

(2) 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;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) 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;

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

(6) 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.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

(c) *Circumstances requiring NEPA review.* If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003]

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.

§ 58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In

such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where §58.53 is applicable.

(e) *Recommended EIS Format.* The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

§58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the ''Environmental Review Record'' (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

(a) *ERR Documents.* The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in §58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) *Other documents and information.* The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

Subpart E—Environmental Review Process: Environmental Assessments (EA's)

§58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

(a) 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.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) 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.

(d) 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.

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity 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 to § 58.43.

(2) 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 responsible entity must then proceed with its environmental review under subpart F or G of this part.

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also 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 citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by § 58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which ''notice'' their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§ 58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with § 58.21:

(a) Notice of Finding of No Significant Impact (FONSI).	15 days when published or, if no publication, 18 days when mailing and posting
(b) Notice of Intent to Request Release of Funds (NOI-RROF).	7 days when published or, if no publication, 10 days when mailing and posting
(c) Concurrent or combined notices.	15 days when published or, if no publication, 18 days when mailing and posting

[68 FR 56130, Sept. 29, 2003]

§ 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b)(1) If the original findings are still valid but the data or conditions upon which they were based have changed,

the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in § 58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the FEDERAL REGISTER for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to § 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§ 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under § 58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.59 Public hearings and meetings.

(a) *Factors to consider.* In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) *Procedure.* All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.

§ 58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

(3) Copies made available in the responsible entity's and the recipient's office;

(4) Copies or summaries made available to persons who request them; and

(5) FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant

new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

Subpart H—Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by § 58.43 and § 58.45 before the certification is signed by the responsible entity.

§ 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in § 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.72 HUD or State actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in § 58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated § 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time

of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in § 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to § 58.40 or to make the written determination required by §§ 58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

§ 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§ 58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(b).

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review monitoring and other inspection and enforcement

actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) *Responsibility for monitoring and training.* (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under §58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

PART 60—PROTECTION OF HUMAN SUBJECTS

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 300v–1(b) and 3535(d).

SOURCE: 61 FR 36463, July 10, 1996, unless otherwise noted.

§60.101 Cross-reference.

The provisions set forth at 45 CFR part 46, subpart A, concerning the protection of human research subjects, apply to all research conducted, supported, or otherwise subject to regulation by HUD.

PART 70—USE OF VOLUNTEERS ON PROJECTS SUBJECT TO DAVIS-BACON AND HUD-DETERMINED WAGE RATES

Sec.

AUTHORITY: Sec. 955, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437(j), 5310 and 12 U.S.C. 1701q(c)(3); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 57 FR 14756, Apr. 22, 1992, unless otherwise noted.

§70.1 Purpose and authority.

(a) This part implements section 955 of the National Affordable Housing Act (NAHA), which provides an exemption from the requirement to pay prevailing wage rates determined under the Davis-Bacon Act or (in the case of laborers and mechanics employed in the operation of public housing projects, and architects, technical engineers, draftsmen and technicians employed in the development of public housing projects) determined or adopted by HUD, for volunteers employed on projects that are subject to prevailing wage rates under Title I of the Housing and Community Development Act of 1974 (including Community Development Block Grants, section 108 loan guarantees, and Urban Development Action Grants), under section 12 of the

APPENDIX T

24 CFR Part 51, Noise Abatement, Aboveground Tanks, Airport Clear Zones

§ 50.42 Cases when an EIS is required.

(a) An EIS is required if the proposal is determined to have a significant impact on the human environment pursuant to subpart E.

(b) An EIS will normally be required if the proposal:

(1) Would provide a site or sites for hospitals or nursing homes containing a total of 2,500 or more beds; or

(2) Would remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 50.20), or which would result in the construction or installation of 2,500 or more housing units, or which would provide sites for 2,500 or more housing units.

(c) When the environmental concerns of one or more Federal authorities cited in § 50.4 will be affected by the proposal, the cumulative impact of all such effects should be assessed to determine whether an EIS is required. Where all of the affected authorities provide alternative procedures for resolution, those procedures should be used in lieu of an EIS.

§ 50.43 Emergencies.

In cases of national emergency and disasters or cases of imminent threat to health and safety or other emergency which require the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 and of any applicable § 50.4 authorities which provide for emergencies shall apply.

PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

Subpart A—General Provisions

Sec.

Subpart B—Noise Abatement and Control

Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

AUTHORITY: 42 U.S.C. 3535(d), unless otherwise noted.

SOURCE: 44 FR 40861, July 12, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 51.1 Purpose.

The Department of Housing and Urban Development is providing program Assistant Secretaries and administrators and field offices with environmental standards, criteria and guidelines for determining project acceptability and necessary mitigating measures to insure that activities assisted by the Department achieve the goal of a suitable living environment.

§ 51.2 Authority.

This part implements the Department's responsibilities under: The National Housing Act (12 U.S.C. 1701 *et seq.*); sec. 2 of the Housing Act of 1949 (42 U.S.C. 1441); secs. 2 and 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 and

3535(d)); the National Environmental Policy Act of 1969 (42 U.S.C. 4321); and the other statutes that are referred to in this part.

[61 FR 13333, Mar. 26, 1996]

§ 51.3 Responsibilities.

The Assistant Secretary for Community Planning and Development is responsible for administering HUD's environmental criteria and standards as set forth in this part. The Assistant Secretary for Community Planning and Development may be assisted by HUD officials in implementing the responsibilities established by this part. HUD will identify these HUD officials and their specific responsibilities through FEDERAL REGISTER notice.

[61 FR 13333, Mar. 26, 1996]

§ 51.4 Program coverage.

Environmental standards shall apply to all HUD actions except where special provisions and exemptions are contained in each subpart.

Subpart B—Noise Abatement and Control

§ 51.100 Purpose and authority.

(a) It is the purpose of this subpart B to:

(1) Call attention to the threat of noise pollution;

(2) Encourage the control of noise at its source in cooperation with other Federal departments and agencies;

(3) Encourage land use patterns for housing and other noise sensitive urban needs that will provide a suitable separation between them and major noise sources;

(4) Generally prohibit HUD support for new construction of noise sensitive uses on sites having unacceptable noise exposure;

(5) Provide policy on the use of structural and other noise attenuation measures where needed; and

(6) Provide policy to guide implementation of various HUD programs.

(b) *Authority.* Specific authorities for noise abatement and control are contained in the Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*); and the General Services Administration, Federal Management Circular 75–2; *Compatible Land Uses at Federal Airfields.*

[44 FR 40861, July 12, 1979, as amended at 61 FR 13333, Mar. 26, 1996]

§ 51.101 General policy.

(a) It is HUD's general policy to provide minimum national standards applicable to HUD programs to protect citizens against excessive noise in their communities and places of residence.

(1) *Planning assistance.* HUD requires that grantees give adequate consideration to noise exposures and sources of noise as an integral part of the urban environment when HUD assistance is provided for planning purposes, as follows:

(i) Particular emphasis shall be placed on the importance of compatible land use planning in relation to airports, highways and other sources of high noise.

(ii) Applicants shall take into consideration HUD environmental standards impacting the use of land.

(2) *Activities subject to 24 CFR part 58.* (i) Responsible entities under 24 CFR part 58 must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise exposed areas. Responsible entities shall address deviations from the standards in their environmental reviews as required in 24 CFR part 58.

(ii) Where activities are planned in a noisy area, and HUD assistance is contemplated later for housing and/or other noise sensitive activities, the responsible entity risks denial of the HUD assistance unless the HUD standards are met.

(3) *HUD support for new construction.* HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with unacceptable noise exposures and is discouraged for projects with normally unacceptable noise exposure. (Standards of acceptability are contained in § 51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, manufactured home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, redevelopment or any other provision of

facilities and services which are directed to making land available for housing or noise sensitive development. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales egistration, or any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.

(4) *HUD support for existing construction.* Noise exposure by itself will not result in the denial of HUD support for the resale and purchase of otherwise acceptable existing buildings. However, environmental noise is a marketability factor which HUD will consider in determining the amount of insurance or other assistance that may be given.

(5) *HUD support of modernization and rehabilitation.* 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.

(6) *Research, guidance and publications.* HUD shall maintain a continuing program designed to provide new knowledge of noise abatement and control to public and private bodies, to develop improved methods for anticipating noise encroachment, to develop noise abatement measures through land use and building construction practices, and to foster better understanding of the consequences of noise. It shall be HUD's policy to issue guidance documents periodically to assist HUD personnel in assigning an acceptability category to projects in accordance with noise exposure standards, in evaluating noise attenuation measures, and in advising local agencies about noise abatement strategies. The guidance documents shall be updated periodically in accordance with advances in the state-of-the-art.

(7) *Construction equipment, building equipment and appliances.* HUD shall encourage the use of quieter construction equipment and methods in population centers, the use of quieter equipment and appliances in buildings, and the use of appropriate noise abatement techniques in the design of residential structures with potential noise problems.

(8) *Exterior noise goals.* It is a HUD goal that exterior noise levels do not exceed a day-night average sound level of 55 decibels. This level is recommended by the Environmental Protection Agency as a goal for outdoors in residential areas. The levels recommended by EPA are not standards and do not take into account cost or feasibility. For the purposes of this regulation and to meet other program objectives, sites with a day-night average sound level of 65 and below are acceptable and are allowable (see Standards in § 51.103(c)).

(9) *Interior noise goals.* It is a HUD goal that the interior auditory environment shall not exceed a day-night average sound level of 45 decibels. Attenuation measures to meet these interior goals shall be employed where feasible. Emphasis shall be given to noise sensitive interior spaces such as bedrooms. Minimum attenuation requirements are prescribed in § 51.104(a).

(10) *Acoustical privacy in multifamily buildings.* HUD shall require the use of building design and acoustical treatment to afford acoustical privacy in multifamily buildings pursuant to requirements of the Minimum Property Standards.

[44 FR 40861, July 12, 1979, as amended at 50 FR 9268, Mar. 7, 1985; 61 FR 13333, Mar. 26, 1996]

§ 51.102 Responsibilities.

(a) *Surveillance of noise problem areas.* Appropriate field staff shall maintain surveillance of potential noise problem areas and advise local officials, developers, and planning groups of the unacceptability of sites because of noise exposure at the earliest possible

time in the decision process. Every attempt shall be made to insure that applicants' site choices are consistent with the policy and standards contained herein.

(b) *Notice to applicants.* At the earliest possible stage, HUD program staff shall:

(1) Determine the suitability of the acoustical environment of proposed projects;

(2) Notify applicants of any adverse or questionable situations; and

(3) Assure that prospective applicants are apprised of the standards contained herein so that future site choices will be consistent with these standards.

(c) *Interdepartmental coordination.* HUD shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Department of Veterans Affairs. HUD staff shall utilize the acceptability standards in commenting on the prospective impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process.

[44 FR 40861, July 12, 1979, as amended at 54 FR 39525, Sept. 27, 1989; 61 FR 13333, Mar. 26, 1996]

§ 51.103 Criteria and standards.

These standards apply to all programs as indicated in § 51.101.

(a) *Measure of external noise environments.* The magnitude of the external noise environment at a site is determined by the value of the day-night average sound level produced as the result of the accumulation of noise from all sources contributing to the external noise environment at the site. Day-night average sound level, abbreviated as DNL and symbolized as L_{dn}, is the 24-hour average sound level, in decibels, obtained after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m. Mathematical expressions for average sound level and day-night average sound level are stated in the Appendix I to this subpart.

(b) *Loud impulsive sounds.* On an interim basis, when loud impulsive sounds, such as explosions or sonic booms, are experienced at a site, the day-night average sound level produced by the loud impulsive sounds alone shall have 8 decibels added to it in assessing the acceptability of the site (see appendix I to this subpart). Alternatively, the C-weighted day-night average sound level (L_{Cdn}) may be used without the 8 decibel addition, as indicated in § 51.106(a)(3). Methods for assessing the contribution of loud impulsive sounds to day-night average sound level at a site and mathematical expressions for determining whether a sound is classed as ''loud impulsive'' are provided in the appendix I to this subpart.

(c) *Exterior standards.* (1) The degree of acceptability of the noise environment at a site is determined by the sound levels external to buildings or other facilities containing noise sensitive uses. The standards shall usually apply at a location 2 meters (6.5 feet) from the building housing noise sensitive activities in the direction of the predominant noise source. Where the building location is undetermined, the standards shall apply 2 meters (6.5 feet) from the building setback line nearest to the predominant noise source. The standards shall also apply at other locations where it is determined that quiet outdoor space is required in an area ancillary to the principal use on the site.

(2) The noise environment inside a building is considered acceptable if: (i) The noise environment external to the building complies with these standards, and (ii) the building is constructed in a manner common to the area or, if of uncommon construction, has at least the equivalent noise attenuation characteristics.

SITE ACCEPTABILITY STANDARDS

	Day-night average sound level (in decibels)	Special approvals and requirements
Acceptable	Not exceeding 65 dB(1)	None.
Normally Unacceptable	Above 65 dB but not exceeding 75 dB	Special Approvals (2) Environmental Review (3). Attenuation (4).

SITE ACCEPTABILITY STANDARDS—Continued

	Day-night average sound level (in decibels)	Special approvals and requirements
Unacceptable	Above 75 dB	Special Approvals (2). Environmental Review (3). Attenuation (5).

Notes: (1) Acceptable threshold may be shifted to 70 dB in special circumstances pursuant to § 51.105(a).
(2) See § 51.104(b) for requirements.
(3) See § 51.104(b) for requirements.
(4) 5 dB additional attenuation required for sites above 65 dB but not exceeding 70 dB and 10 dB additional attenuation required for sites above 70 dB but not exceeding 75 dB. (See § 51.104(a).)
(5) Attenuation measures to be submitted to the Assistant Secretary for CPD for approval on a case-by-case basis.

[44 FR 40861, July 12, 1979, as amended at 49 FR 12214, Mar. 29, 1984]

§ 51.104 Special requirements.

(a)(1) *Noise attenuation.* Noise attenuation measures are those required in addition to attenuation provided by buildings as commonly constructed in the area, and requiring open windows for ventilation. Measures that reduce external noise at a site shall be used wherever practicable in preference to the incorporation of additional noise attenuation in buildings. Building designs and construction techniques that provide more noise attenuation than typical construction may be employed also to meet the noise attenuation requirements.

(2) *Normally unacceptable noise zones and unacceptable noise zones.* Approvals in Normally Unacceptable Noise Zones require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels. Noise attenuation measures in Unacceptable Noise Zones require the approval of the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58. (See § 51.104(b)(2).)

(b) *Environmental review requirements.* Environmental reviews shall be conducted pursuant to the requirements of 24 CFR parts 50 and 58, as applicable, or other environmental regulations issued by the Department. These requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) *Normally unacceptable noise zone.* (i) All projects located in the Normally Unacceptable Noise Zone require a Special Environmental Clearance except an EIS is required for a proposed project located in a largely undeveloped area, or where the HUD action is likely to encourage the establishment of incompatible land use in this noise zone.

(ii) When an EIS is required, the concurrence of the Program Assistant Secretary is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

(iii) All other projects in the Normally Unacceptable zone require a Special Environmental Clearance, except where an EIS is required for other reasons pursuant to HUD environmental policies.

(2) *Unacceptable noise zone.* An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects in or partially in an Unacceptable Noise Zone shall be submitted to the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58, for approval. The Assistant Secretary or the Certifying Officer may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor noise sensitive activity will take place on the site. In such cases, an environmental review shall be made

pursuant to the requirements of 24 CFR parts 50 or 58, as appropriate.

[44 FR 40861, July 12, 1979, as amended at 61 FR 13333, Mar. 26, 1996]

§51.105 Exceptions.

(a) *Flexibility for non-acoustic benefits.* Where it is determined that program objectives cannot be achieved on sites meeting the acceptability standard of 65 decibels, the Acceptable Zone may be shifted to L_{dn} 70 on a case-by-case basis if all the following conditions are satisfied:

(1) The project does not require an Environmental Impact Statement under provisions of §51.104(b)(1) and noise is the only environmental issue.

(2) The project has received a Special Environmental Clearance and has received the concurrence of the Environmental Clearance Officer.

(3) The project meets other program goals to provide housing in proximity to employment, public facilities and transportation.

(4) The project is in conformance with local goals and maintains the character of the neighborhood.

(5) The project sponsor has set forth reasons, acceptable to HUD, as to why the noise attenuation measures that would normally be required for new construction in the L_{dn} 65 to L_{dn} 70 zone cannot be met.

(6) Other sites which are not exposed to noise above L_{dn} 65 and which meet program objectives are generally not available.

The above factors shall be documented and made part of the project file.

[44 FR 40861, July 12, 1979, as amended at 61 FR 13334, Mar. 26, 1996]

§51.106 Implementation.

(a) *Use of available data.* HUD field staff shall make maximum use of noise data prepared by others when such data are determined to be current and adequately projected into the future and are in terms of the following:

(1) *Sites in the vicinity of airports.* The noise environment around airports is described sometimes in terms of Noise Exposure Forecasts, abbreviated as NEF or, in the State of California, as Community Noise Equivalent Level, abbreviated as CNEL. The noise environment for sites in the vicinity of airports for which day-night average sound level data are not available may be evaluated from NEF or CNEL analyses using the following conversions to DNL:

$DNL \approx NEF + 35$
$DNL \approx CNEL$

(2) *Sites in the vicinity of highways.* Highway projects receiving Federal aid are subject to noise analyses under the procedures of the Federal Highway Administration. Where such analyses are available they may be used to assess sites subject to the requirements of this standard. The Federal Highway Administration employs two alternate sound level descriptors: (i) The A-weighted sound level not exceeded more than 10 percent of the time for the highway design hour traffic flow, symbolized as L_{10}; or (ii) the equivalent sound level for the design hour, symbolized as L_{eq}. The day-night average sound level may be estimated from the design hour L_{10} or L_{eq} values by the following relationships, provided heavy trucks do not exceed 10 percent of the total traffic flow in vehicles per 24 hours and the traffic flow between 10 p.m. and 7 a.m. does not exceed 15 percent of the average daily traffic flow in vehicles per 24 hours:

$DNL \approx L_{10}$ (design hour)—3 decibels
$DNL \approx L_{eq}$ (design hour) decibels

Where the auto/truck mix and time of day relationships as stated in this section do not exist, the HUD Noise Assessment Guidelines or other noise analysis shall be used.

(3) *Sites in the vicinity of installations producing loud impulsive sounds.* Certain Department of Defense installations produce loud impulsive sounds from artillery firing and bombing practice ranges. Noise analyses for these facilities sometimes encompass sites that may be subject to the requirements of this standard. Where such analyses are available they may be used on an interim basis to establish the acceptability of sites under this standard. The Department of Defense uses day-night average sound level based on C-weighted sound level, symbolized L_{Cdn}, for the analysis of loud impulsive

sounds. Where such analyses are provided, the 8 decibel addition specified in § 51.103(b), is not required, and the same numerical values of day-night average sound level used on an interim basis to determine site suitability for non-impulsive sounds apply to the L_{CDn}.

(4) *Use of areawide acoustical data.* HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised contours become available for airports (civil or military) and military installations they shall first be referred to the HUD State Office (Environmental Officer) for review, evaluation and decision on appropriateness for use by HUD. The HUD State Office shall submit revised contours to the Assistant Secretary for Community Planning and Development for review, evaluation and decision whenever the area affected is changed by 20 percent or more, or whenever it is determined that the new contours will have a significant effect on HUD programs, or whenever the contours are not provided in a methodology acceptable under § 51.106(a)(1) or in other cases where the HUD State Office determines that Headquarters review is warranted. For other areawide acoustical data, review is required only where existing areawide data are being utilized and where such data have been changed to reflect changes in the measurement methodology or underlying noise source assumptions. Requests for determination on usage of new or revised areawide data shall include the following:

(i) Maps showing old, if applicable, and new noise contours, along with brief description of data source and methodology.

(ii) Impact on existing and prospective urbanized areas and on development activity.

(iii) Impact on HUD-assisted projects currently in processing.

(iv) Impact on future HUD program activity. Where a field office has determined that immediate approval of new areawide data is necessary and warranted in limited geographic areas, the request for approval should state the circumstances warranting such approval. Actions on proposed projects shall not be undertaken while new areawide noise data are being considered for HUD use except where the proposed location is affected in the same manner under both the old and new noise data.

(b) *Site assessments.* Compliance with the standards contained in § 51.103(c) shall, where necessary, be determined using noise assessment guidelines, handbooks, technical documents and procedures issued by the Department.

(c) *Variations in site noise levels.* In many instances the noise environment will vary across a site, with portions of the site being in an Acceptable noise environment and other portions in a Normally Unacceptable noise environment. The standards in § 51.103(c) shall apply to the portions of a building or buildings used for residential purposes and for ancillary noise sensitive open spaces.

(d) *Noise measurements.* Where noise assessments result in a finding that the site is borderline or questionable, or is controversial, noise measurements may be performed. Where it is determined that noise measurements are required, such measurements will be conducted in accordance with methods and measurement criteria established by the Department. Locations for noise measurements will depend on the location of noise sensitive uses that are nearest to the predominant noise source (see § 51.103(c)).

(e) *Projections of noise exposure.* In addition to assessing existing exposure, future conditions should be projected. To the extent possible, noise exposure shall be projected to be representative of conditions that are expected to exist at a time at least 10 years beyond the date of the project or action under review.

(f) *Reduction of site noise by use of berms and/or barriers.* If it is determined by adequate analysis that a berm and/or barrier will reduce noise at a housing site, and if the barrier is existing or there are assurances that it will be in place prior to occupancy, the environmental noise analysis for the site may reflect the benefits afforded by the berm and/or barrier. In the environmental review process under § 51.104(b), the location height and design of the berm and/or barrier shall be evaluated

to determine its effectiveness, and impact on design and aesthetic quality, circulation and other environmental factors.

[44 FR 40861, July 12, 1979, as amended at 61 FR 13334, Mar. 26, 1996]

APPENDIX I TO SUBPART B OF PART 51—DEFINITION OF ACOUSTICAL QUANTITIES

1. *Sound Level.* The quantity in decibels measured with an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4–1971. Fast time-averaging and A-frequency weighting are to be used, unless others are specified. The sound level meter with the A-weighting is progressively less sensitive to sounds of frequency below 1,000 hertz (cycles per second), somewhat as is the ear. With fast time averaging the sound level meter responds particularly to recent sounds almost as quickly as does the ear in judging the loudness of a sound.

2. *Average Sound Level.* Average sound level, in decibels, is the level of the mean-square A-weighted sound pressure during the stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals.

Day-night average sound level, abbreviated as DNL, and symbolized mathematically as L_{dn} is defined as:

$$L_{dn} = 10 \log_{10} \left[\frac{1}{86400} \left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10} dt + \int_{0700}^{2200} 10^{L_A(t)/10} dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10} dt \right) \right]$$

Time t is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. $L_A(t)$ is the time varying value of A-weighted sound level, the quantity in decibels measured by an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4–1971.

3. *Loud Impulsive Sounds.* When loud impulsive sounds such as sonic booms or explosions are anticipated contributors to the noise environment at a site, the contribution to day-night average sound level produced by the loud impulsive sounds shall have 8 decibels added to it in assessing the acceptability of a site.

A loud impulsive sound is defined for the purpose of this regulation as one for which:

(i) The sound is definable as a discrete event wherein the sound level increases to a maximum and then decreases in a total time interval of approximately one second or less to the ambient background level that exists without the sound; and

(ii) The maximum sound level (obtained with slow averaging time and A-weighting of a Type 1 sound level meter whose characteristics comply with ANSI S1.4–1971) exceeds the sound level prior to the onset of the event by at least 6 decibels; and

(iii) The maximum sound level obtained with fast averaging time of a sound level meter exceeds the maximum value obtained with slow averaging time by at least 4 decibels.

[44 FR 40861, July 12, 1979; 49 FR 10253, Mar. 20, 1984; 49 FR 12214, Mar. 29, 1984]

Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 49 FR 5103, Feb. 10, 1984, unless otherwise noted.

§ 51.200 Purpose.

The purpose of this subpart C is to:

(a) Establish safety standards which can be used as a basis for calculating acceptable separation distances (ASD) for HUD-assisted projects from specific, stationary, hazardous operations which store, handle, or process hazardous substances;

(b) Alert those responsible for the siting of HUD-assisted projects to the inherent potential dangers when such projects are located in the vicinity of such hazardous operations;

(c) Provide guidance for identifying those hazardous operations which are most prevalent;

(d) Provide the technical guidance required to evaluate the degree of danger anticipated from explosion and thermal radiation (fire); and

(e) Provide technical guidance required to determine acceptable separation distances from such hazards.

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§ 51.201 Definitions.

The terms *Department* and *Secretary* are defined in 24 CFR part 5.

Acceptable separation distance (ASD)—means the distance beyond which the explosion or combustion of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal radiation flux levels in excess of the safety standards in § 51.203. The ASD is determined by applying the safety standards established by this subpart C to the guidance set forth in HUD Guidebook, ''Siting of HUD-Assisted Projects Near Hazardous Facilities.''

Blast overpressure—means the pressure, in pounds per square inch, in excess of normal atmospheric pressure on the surrounding medium caused by an explosion.

Danger zone—means the land area circumscribed by the radius which delineates the ASD of a given hazard.

Hazard—means any stationary container which stores, handles or processes hazardous substances of an explosive or fire prone nature. The term ''hazard'' does not include pipelines for the transmission of hazardous substances, if such pipelines are located underground or comply with applicable Federal, State and local safety standards. Also excepted are: (1) Containers with a capacity of 100 gallons or less when they contain common liquid industrial fuels, such as gasoline, fuel oil, kerosene and crude oil since they generally would pose no danger in terms of thermal radiation of blast overpressure to a project; and (2) facilities which are shielded from a proposed HUD-assisted project by the topography, because these topographic features effectively provide a mitigating measure already in place.

Hazardous substances—means petroleum products (petrochemicals) and chemicals that can produce blast overpressure or thermal radiation levels in excess of the standards set forth in § 51.203. A specific list of hazardous substance is found in appendix I to this subpart.

HUD-assisted project—the development, construction, rehabilitation, modernization or conversion with HUD subsidy, grant assistance, loan, loan guarantee, or mortgage insurance, of any project which is intended for residential, institutional, recreational, commercial or industrial use. For purposes of this subpart the terms ''rehabilitation'' and ''modernization'' refer only to such repairs and renovation of a building or buildings as will result in an increased number of people being exposed to hazardous operations by increasing residential densities, converting the type of use of a building to habitation, or making a vacant building habitable.

Thermal radiation level—means the emission and propagation of heat energy through space or a material medium, expressed in BTU per square foot per hour (BTU/ft.^{2} hr.).

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 5204, Feb. 9, 1996; 61 FR 13334, Mar. 26, 1996]

§ 51.202 Approval of HUD-assisted projects.

(a) The Department will not approve an application for assistance for a proposed project located at less than the acceptable separation distance from a hazard, as defined in § 51.201, unless appropriate mitigating measures, as defined in § 51.205, are implemented, or unless mitigating measures are already in place.

(b) In the case of all applications for proposed HUD-assisted projects, the Department shall evaluate projected development plans in the vicinity of these projects to determine whether there are plans to install a hazardous operation in close proximity to the proposed project. If the evaluation shows that such a plan exists, the Department shall not approve assistance for the project unless the Department obtains satisfactory assurances that adequate mitigating measures will be

taken when the hazardous operation is installed.

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§ 51.203 Safety standards.

The following standards shall be used in determining the acceptable separation distance of a proposed HUD-assisted project from a hazard:

(a) *Thermal Radiation Safety Standard*. Projects shall be located so that:

(1) The allowable thermal radiation flux level at the building shall not exceed 10,000 BTU/sq. ft. per hr.;

(2) The allowable thermal radiation flux level for outdoor, unprotected facilities or areas of congregation shall not exceed 450 BTU/sq. ft. per hour.

(b) *Blast Overpressure Safety Standard*. Projects shall be located so that the maximum allowable blast overpressure at both buildings and outdoor, unprotected facilities or areas shall not exceed 0.5 psi.

(c) If a hazardous substance constitutes both a thermal radiation and blast overpressure hazard, the ASD for each hazard shall be calculated, and the larger of the two ASDs shall be used to determine compliance with this subpart.

(d) Background information on the standards and the logarithmic thermal radiation and blast overpressure charts that provide assistance in determining acceptable separation distances are contained in appendix II to this subpart C.

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§ 51.204 HUD-assisted hazardous facilities.

In reviewing applications for proposed HUD-assisted projects involving the installation of hazardous facilities, the Department shall ensure that such hazardous facilities are located at an acceptable separation distance from residences and from any other facility or area where people may congregate or be present. The mitigating measures listed in § 51.205 may be taken into account in determining compliance with this section.

§ 51.205 Mitigating measures.

Application of the standards for determining an Acceptable Separation Distance (ASD) for a HUD-assisted project from a potential hazard of an explosion or fire prone nature is predicated on level topography with no intervening object(s) between the hazard and the project. Application of the standards can be eliminated or modified if:

(a) The nature of the topography shields the proposed project from the hazard.

(b) An existing permanent fire resistant structure of adequate size and strength will shield the proposed project from the hazard.

(c) A barrier is constructed surrounding the hazard, at the site of the project, or in between the potential hazard and the proposed project.

(d) The structure and outdoor areas used by people are designed to withstand blast overpressure and thermal radiation anticipated from the potential hazard (e.g., the project is of masonry and steel or reinforced concrete and steel construction).

§ 51.206 Implementation.

This subpart C shall be implemented for each proposed HUD-assisted project by the HUD approving official or responsible entity responsible for review of the project. The implementation procedure will be part of the environmental review process in accordance with the procedures set forth in 24 CFR parts 50 and 58.

[61 FR 13334, Mar. 26, 1996]

§ 51.207 Special circumstances.

The Secretary or the Secretary's designee may, on a case-by-case basis, when circumstances warrant, require the application of this subpart C with respect to a substance not listed in appendix I to this subpart C that would create thermal or overpressure effect in excess of that listed in § 51.203.

[61 FR 13334, Mar. 26, 1996]

§ 51.208 Reservation of administrative and legal rights.

Publication of these standards does not constitute a waiver of any right:

(a) Of HUD to disapprove a project proposal if the siting is too close to a potential hazard not covered by this subpart, and (b) of HUD or any person or other entity to seek to abate or to collect damages occasioned by a nuisance, whether or not covered by the subpart.

APPENDIX I TO SUBPART C OF PART 51—SPECIFIC HAZARDOUS SUBSTANCES

The following is a list of specific petroleum products and chemicals defined to be hazardous substances under §51.201.

HAZARDOUS LIQUIDS

Acetic Acid	Ethyl Benzene
Acetic Anhydride	Ethyl Dichloride
Acetone	Ethyl Ether
Acrylonitrile	Gasoline
Amyl Acetate	Heptane
Amyl Alcohol	Hexane
Benzene	Isobutyl Acetate
Butyl Acetate	Isobutyl Alcohol
Butyl Acrylate	Isopropyl Acetate
Butyl Alcohol	Isopropyl Alcohol
Carbon Bisulfide	Jet Fuel and Kerosene
Carbon Disulfide	Methyl Alcohol
Cellosolve	Methyl Amyl Alcohol
Cresols	Methyl Cellosolve
Crude Oil (Petroleum)	Methyl Ethyl Ketone
Cumene	Naptha
Cyclohexane	Pentane
No. 2 Diesel Fuel	Propylene Oxide
Ethyl Acetate	Toluene
Ethyl Acrylate	Vinyl Acetate
Ethyl Alcohol	Xylene

HAZARDOUS GASES

Acetaldehyde	Liquefied Natural Gas (LNG)
Butadiene	Liquefied Petroleum Gas (LPG)
Butane	Propane
Ethene	Propylene
Ethylene	Vinyl Chloride
Ethylene Oxide	
Hydrogen	

(Primary Source: ''Urban Development Siting with respect to Hazardous Commercial/Industrial Facilities,'' by Rolf Jensen and Associates, Inc., April 1982)

[49 FR 5105, Feb. 10, 1984; 49 FR 12214, Mar. 29, 1984]

APPENDIX II TO SUBPART C OF PART 51—DEVELOPMENT OF STANDARDS; CALCULATION METHODS

I. Background Information Concerning the Standards

(a) *Thermal Radiation:*

(1) *Introduction.* Flammable products stored in above ground containers represent a definite, potential threat to human life and structures in the event of fire. The resulting fireball emits thermal radiation which is absorbed by the surroundings. Combustible structures, such as wooden houses, may be ignited by the thermal radiation being emitted. The radiation can cause severe burn, injuries and even death to exposed persons some distance away from the site of the fire.

(2) *Criteria for Acceptable Separation Distance (ASD).* Wooden buildings, window drapes and trees generally ignite spontaneously when exposed for a relatively long period of time to thermal radiation levels of approximately 10,000 Btu/hr. sq. ft. It will take 15 to 20 minutes for a building to ignite at that degree of thermal intensity. Since the reasonable response time for fire fighting units in urbanized areas is approximately five to ten minutes, a standard of 10,000 BTU/hr. sq. ft. is considered an acceptable level of thermal radiation for buildings.

People in outdoor areas exposed to a thermal radiation flux level of approximately 1,500 Btu/ft^2 hr will suffer intolerable pain after 15 seconds. Longer exposure causes blistering, permanent skin damage, and even death. Since it is assumed that children and the elderly could not take refuge behind walls or run away from the thermal effect of the fire within the 15 seconds before skin blistering occurs, unprotected (outdoor) areas, such as playgrounds, parks, yards, school grounds, etc., must be placed at such a distance from potential fire locations so that the radiation flux level is well below 1500 Btu/ft^2 hr. An acceptable flux level, particularly for elderly people and children, is 450 Btu/ft^2 hr. The skin can be exposed to this degree of thermal radiation for 3 minutes or longer with no serious detrimental effect. The result would be the same as a bad sunburn. Therefore, the standard for areas in which there will be exposed people, e.g. outdoor recreation areas such as playgrounds and parks, is set at 450 Btu/hr. sq. ft. Areas covered also include open space ancillary to residential structures, such as yard areas and vehicle parking areas.

(3) *Acceptable Separation Distance From a Potential Fire Hazard.* This is the actual setback required for the safety of occupied buildings and their inhabitants, and people in open spaces (exposed areas) from a potential fire hazard. The specific distance required for safety from such a hazard depends upon the nature and the volume of the substance. The Technical Guidebook entitled ''Urban Development Siting With Respect to Hazardous/Commercial Industrial Facilities,'' which supplements this regulation, contains the technical guidance required to compute Acceptable Separation Distances (ASD) for those flammable substances most often encountered.

(b) *Blast Overpressure:* The Acceptable Separation Distance (ASD) for people and structures from materials prone to explosion is

dependent upon the resultant blast measured in pounds per square inch (psi) overpressure. It has been determined by the military and corroborated by two independent studies conducted for the Department of Housing and Urban Development that 0.5 psi is the acceptable level of blast overpressure for both buildings and occupants, because a frame structure can normally withstand that level of external exertion with no serious structural damage, and it is unlikely that human beings inside the building would normally suffer any serious injury. Using this as the safety standard for blast overpressure, nomographs have been developed from which an ASD can be determined for a given quantify of hazardous substance. These nomographs are contained in the handbook with detailed instructions on their use.

(c) *Hazard evaluation:* The Acceptable Separation Distances for buildings, which are determined for thermal radiation and blast overpressure, delineate separate identifiable danger zones for each potential accident source. For some materials the fire danger zone will have the greatest radius and cover the largest area, while for others the explosion danger zone will be the greatest. For example, conventional petroleum fuel products stored in unpressurized tanks do not emit blast overpressure of dangerous levels when ignited. In most cases, hazardous substances will be stored in pressurized containers. The resulting blast overpressure will be experienced at a greater distance than the resulting thermal radiation for the standards set in Section 51.203. In any event the hazard requiring the greatest separation distance will prevail in determining the location of HUD-assisted projects.

The standards developed for the protection of people and property are given in the following table.

	Thermal radiation	Blast overpressure
Amount of acceptable exposure allowed for building structures.	10,000 BTU/ft² hr.	0.5 psi.
Amount of acceptable exposure allowed for people in open areas.	450 BTU/ft² hr ...	0.5 psi.

Problem Example

The following example is given as a guide to assist in understanding how the procedures are used to determine an acceptable separation distance. The technical data are found in the HUD Guidebook. Liquid propane is used in the example since it is both an explosion and a fire hazard.

In this hypothetical case a proposed housing project is to be located 850 feet from a 30,000 gallon liquid propane (LPG) tank. The objective is to determine the acceptable separation distance from the LPG tank. Since propane is both explosive and fire prone it will be necessary to determine the ASD for both explosion and for fire. The greatest of the two will govern. There is no dike around the tank in this example.

Nomographs from the technical Guidebook have been reproduced to facilitate the solving of the problem.

ASD For Explosion

Use Figure 1 to determine the acceptable separation distance for explosion.

The graph depicted on Figure 1 is predicated on a blast overpressure of 0.5 psi.

The ASD in feet can be determined by applying the quantity of the hazard (in gallons) to the graph.

In this case locate the 30,000 gallon point on the horizontal axis and draw a vertical line from that point to the intersection with the straight line curve. Then draw a horizontal line from the point where the lines cross to the left vertical axis where the ACCEPTABLE SEPARATION DISTANCE of 660 feet is found.

Therefore the ASD for explosion is 660 feet

Since the proposed project site is located 850 feet from the tank it is located at a safe distance with regards to blast overpressure.

30

ACCEPTABLE SEPARATION DISTANCE
BLAST OVERPRESSURE
(NO BLAST BARRIERS)
HAZARDOUS GAS CONTAINER

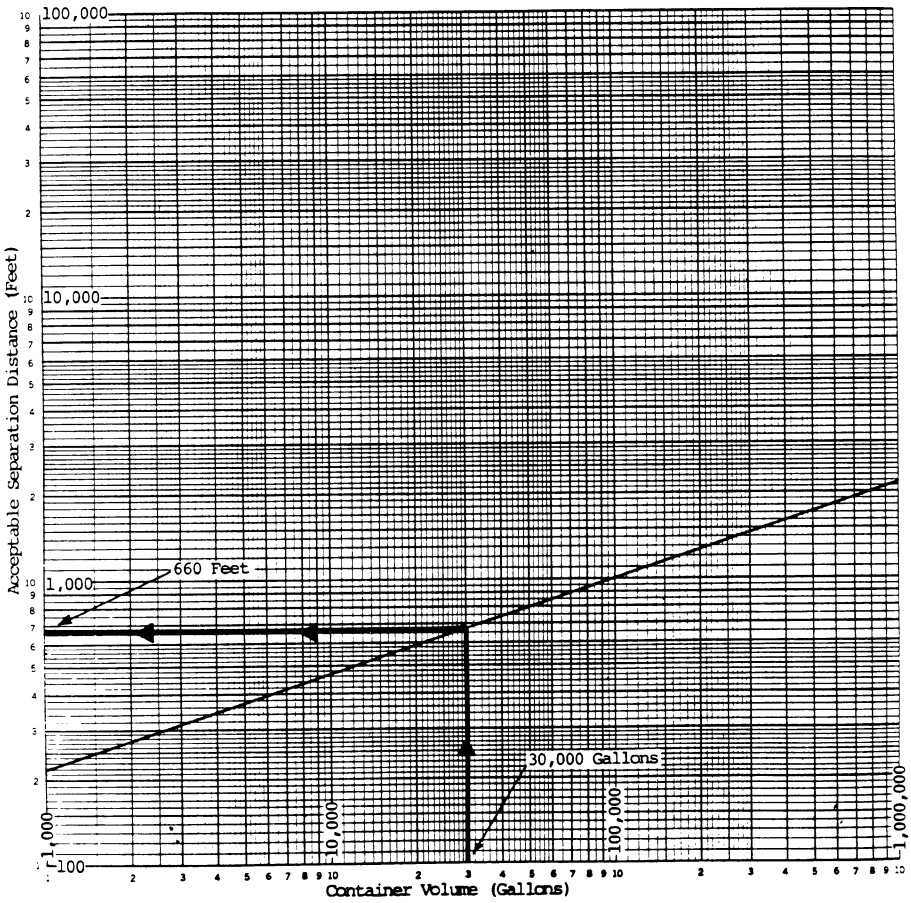

Figure 1

ASD For Fire

To determine the ASD for fire it will be necessary to first find the fire width (diameter of the fireball) on Figure 2. Then apply this to Figure 3 to determine the ASD.

Since there are two safety standards for fire: (a) 10,000 BTU/ft^2 hr. for buildings; and (b) 450 BTU/ft^2 hr. for people in exposed areas, it will be necessary to determine an ASD for each.

To determine the fire width locate the 30,000 gallon point on the horizontal axis on *Figure 2* and draw a vertical line to the straight line curve. Then draw a horizontal line from the point where the lines cross to the left vertical axis where the FIRE WIDTH is found to be *350 feet*.

Now locate the 350 ft. point on the horizontal axis of *Figure 3* and draw a vertical line from that point to curves 1 and 2. Then draw horizontal lines from the points where the lines cross to the left vertical axis where the ACCEPTABLE SEPARATION DISTANCES of *240 feet* for buildings and *1,150 feet* for exposure to people is found.

Based on this the proposed project site is located at a safe distance from a potential fireball. However, exposed playgrounds or other exposed areas of congregation must be at least 1,150 feet from the tank, or be appropriately shielded from a potential fireball.

(Source: HUD Handbook, ''Urban Development Siting With Respect to Hazardous Commercial/Industrial Facilities.'')

FIRE WIDTH - UNCONFINED SPILL
HAZARDOUS GAS CONTAINER
NOT DIKED

32

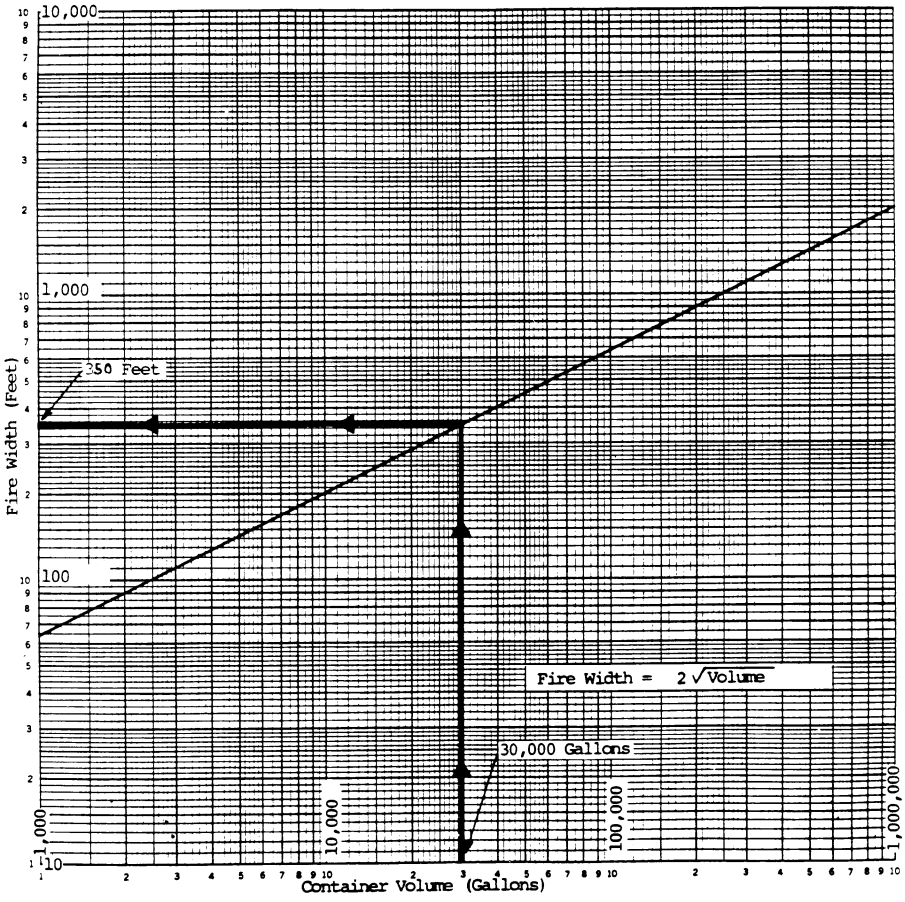

Figure 2

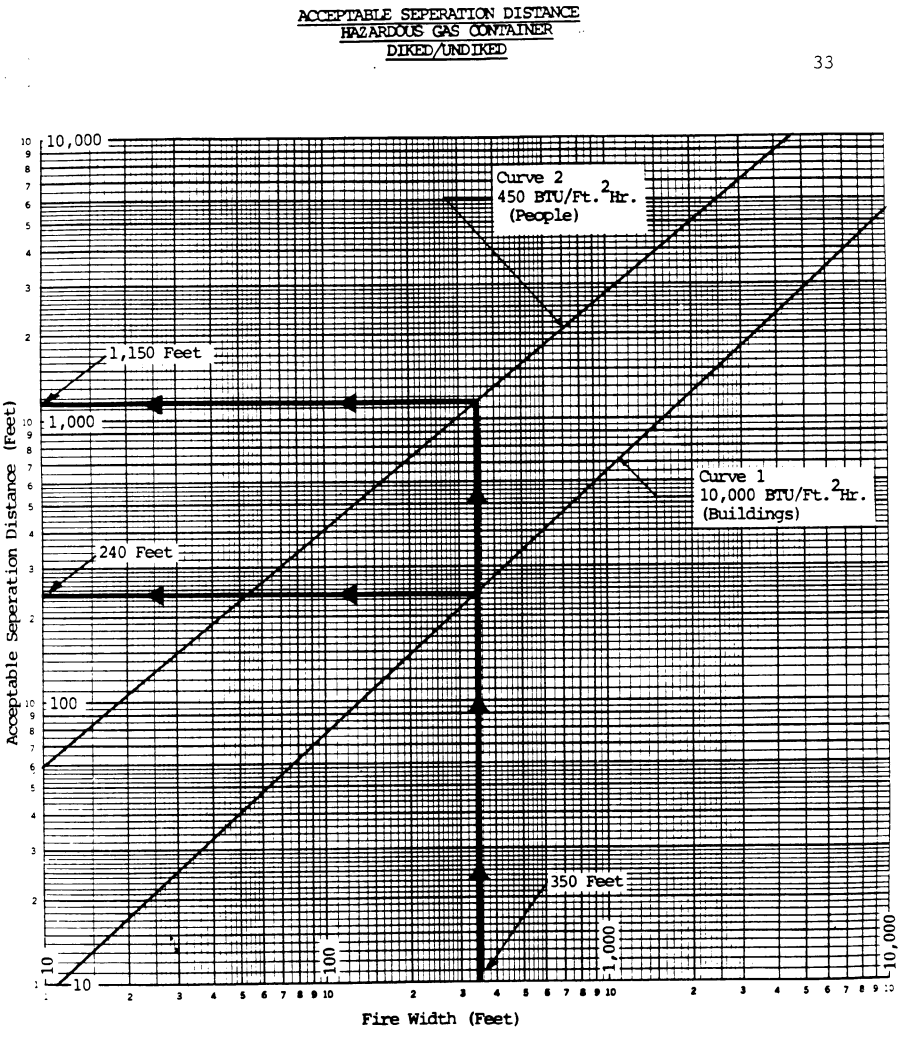

Figure 3

[49 FR 5105, Feb. 10, 1984; 49 FR 12214, Mar. 29, 1984]

Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

AUTHORITY: Sec. 2, Housing Act of 1949, as amended, 42 U.S.C. 1441, affirmed by sec. 2, HUD Act of 1969, Pub. L. 90–448; sec. 7(d), HUD Act of 1965, 42 U.S.C. 3535(d); OMB, Fed'l Mgmt. Cir. 75–2: Compatible Land Uses At Federal Airfields.

SOURCE: 49 FR 880, Jan. 6, 1984, unless otherwise noted.

§ 51.300 Purpose.

It is the purpose of this subpart to promote compatible land uses around civil airports and military airfields by identifying suitable land uses for Runway Clear Zones at civil airports and Clear Zones and Accident Potential Zones at military airfields and by establishing them as standards for providing HUD assistance, subsidy or insurance.

[49 FR 880, Jan. 6, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§ 51.301 Definitions.

For the purposes of this regulation, the following definitions apply:

(a) *Accident Potential Zone.* An area at military airfields which is beyond the Clear Zone. The standards for the Accident Potential Zones are set out in Department of Defense Instruction 4165.57, ''Air Installations Compatible Use Zones,'' November 8, 1977, 32 CFR part 256. There are no Accident Potential Zones at civil airports.

(b) *Airport Operator.* The civilian or military agency, group or individual which exercises control over the operations of the civil airport or military airfield.

(c) *Civil Airport.* An existing commercial service airport as designated in the National Plan of Integrated Airport Systems prepared by the Federal Aviation Administration in accordance with section 504 of the Airport and Airway Improvement Act of 1982.

(d) *Runway Clear Zones and Clear Zones.* Areas immediately beyond the ends of a runway. The standards for Runway Clear Zones for civil airports are established by FAA regulation 14 CFR part 152. The standards for Clear Zones for military airfields are established by DOD Instruction 4165.57, 32 CFR part 256.

§ 51.302 Coverage.

(a) These policies apply to HUD programs which provide assistance, subsidy or insurance for construction, land development, community development or redevelopment or any other provision of facilities and services which are designed to make land available for construction. When the HUD assistance, subsidy or insurance is used to make land available for construction rather than for the actual construction, the provision of the HUD assistance, subsidy or insurance shall be dependent upon whether the facility to be built is itself acceptable in accordance with the standards in § 51.303.

(b) These policies apply not only to new construction but also to substantial or major modernization and rehabilitation and to any other program which significantly prolongs the physical or economic life of existing facilities or which, in the case of Accident Potential Zones:

(1) Changes the use of the facility so that it becomes one which is no longer acceptable in accordance with the standards contained in § 51.303(b);

(2) Significantly increases the density or number of people at the site; or

(3) Introduces explosive, flammable or toxic materials to the area.

(c) Except as noted in § 51.303(a)(3), these policies do not apply to HUD programs where the action only involves the purchase, sale or rental of an existing property without significantly prolonging the physical or economic life of the property.

(d) The policies do not apply to research or demonstration projects which do not result in new construction or reconstruction, to interstate land sales registration, or to any action or emergency assistance which is provided to save lives, protect property, protect public health and safety, or remove debris and wreckage.

[49 FR 880, Jan. 6, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§ 51.303 General policy.

It is HUD's general policy to apply standards to prevent incompatible development around civil airports and military airfields.

(a) HUD policy for actions in Runway Clear Zones and Clear Zones.

(1) HUD policy is not to provide any assistance, subsidy or insurance for projects and actions covered by this part except as stated in §51.303(a)(2) below.

(2) If a project proposed for HUD assistance, subsidy or insurance is one which will not be frequently used or occupied by people, HUD policy is to provide assistance, subsidy or insurance only when written assurances are provided to HUD by the airport operator to the effect that there are no plans to purchase the land involved with such facilities as part of a Runway Clear Zone or Clear Zone acquisition program.

(3) Special notification requirements for Runway Clear Zones and Clear Zones. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, HUD (or the responsible entity or recipient under 24 CFR part 58) shall advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

(b) HUD policy for actions in Accident Potential Zones at Military Airfields. HUD policy is to discourage the provision of any assistance, subsidy or insurance for projects and actions in the Accident Potential Zones. To be approved, projects must be generally consistent with the recommendations in the *Land Use Compatibility Guidelines For Accident Potential Zones* chart contained in DOD Instruction 4165.57, 32 CFR part 256.

[49 FR 880, Jan. 6, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§ 51.304 Responsibilities.

(a) The following persons have the authority to approve actions in Accident Potential Zones:

(1) For programs subject to environmental review under 24 CFR part 58: the Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: the HUD approving official having approval authority for the project.

(b) The following persons have the authority to approve actions in Runway Clear Zones and Clear Zones:

(1) For programs subject to environmental review under 24 CFR part 58: The Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: the Program Assistant Secretary.

[61 FR 13335, Mar. 26, 1996]

§ 51.305 Implementation.

(a) Projects already approved for assistance. This regulation does not apply to any project approved for assistance prior to the effective date of the regulation whether the project was actually under construction at that date or not.

(b) Acceptable data on Runway Clear Zones, Clear Zones and Accident Potential Zones. The only Runway Clear Zones, Clear Zones and Accident Potential Zones which will be recognized in applying this part are those provided by the airport operators and which for civil airports are defined in accordance with FAA regulations 14 CFR part 152 or for military airfields, DOD Instruction 4165.57, 32 CFR part 256. All data, including changes, related to the dimensions of Runway Clear Zones for civil airports shall be verified with the nearest FAA Airports District Office before use by HUD.

(c) Changes in Runway Clear Zones, Clear Zones, and Accident Potential Zones. If changes in the Runway Clear Zones, Clear Zones or Accident Potential Zones are made, the field offices shall immediately adopt these revised zones for use in reviewing proposed projects.

(d) The decision to approve projects in the Runway Clear Zones, Clear

Zones and Accident Potential Zones must be documented as part of the enviornmental assessment or, when no assessment is required, as part of the project file.

PART 52—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS AND ACTIVITIES

Sec.

AUTHORITY: 31 U.S.C. 6506; 42 U.S.C. 3334, 3535(d).

SOURCE: 48 FR 29216, June 24, 1983, unless otherwise noted.

§ 52.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 52.2 What definitions apply to these regulations?

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled ''Intergovernmental Review of Federal Programs.''

Secretary means the Secretary of the U.S. Department of Housing and Urban Development or an official or employee of the Department acting for the Secretary under a delegation of authority.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

[48 FR 29216, June 24, 1983, as amended at 61 FR 5205, Feb. 9, 1996]

§ 52.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 52.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

APPENDIX U

24 CFR Part 55, Floodplain Management

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 52.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for—

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to §52.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in §52.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 52.12 [Reserved]

PART 55—FLOODPLAIN MANAGEMENT

Subpart A—General

Subpart B—Application of Executive Order on Floodplain Management

Subpart C—Procedures for Making Determinations on Floodplain Management

AUTHORITY: 42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

SOURCE: 59 FR 19107, Apr. 21, 1994, unless otherwise noted.

Subpart A—General

§ 55.1 Purpose and basic responsibility.

(a) This part implements the requirements of Executive Order 11988, Floodplain Management, and employs the principles of the Unified National Program for Floodplain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58. This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department's interpretation of the executive order in the project approval decision making processes of HUD and of grant recipients subject to 24 CFR part 58. The implementation of Executive Order 11988 under this part shall be conducted by HUD, for Department-administered programs subject to environmental review under 24 CFR part 50, and by authorized recipients of HUD financial assistance subject to environmental review under 24 CFR part 58.

(b) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction

purposes in any ''area having special flood hazards'' (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) and the State-administered Rental Rehabilitation Program (24 CFR 511.51), Emergency Shelter Grant amounts allocated to States (24 CFR parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839).

(c) Except with respect to actions listed in §55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to:

(1) Any action, other than a functionally dependent use, located in a floodway;

(2) Any critical action located in a coastal high hazard area; or

(3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if:

(i) In the case of new construction or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements):

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed; or

(B) If the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

§55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988 and in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) issued by the Water Resources Council; and the terms ''criteria'' and ''Regular Program'', shall follow the definitions contained in FEMA regulations at 44 CFR 59.1.

(b) The definitions of the following terms in Executive Order 11988 and related documents affecting this part are modified for purposes of this part:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V1–30, VE, or V. (FIRMs as well as Flood Hazard Boundary Maps (FHBM) shall also be relied on for the delineation of ''100-year floodplains'' (§55.2(b)(8)), ''500-year floodplains'' (§55.2(b)(3)), and ''floodways'' (§55.2(b)(4)).

(2)(i) *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. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:

(A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(B) Provide essential and irreplaceable records or utility or emergency

services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

(C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

(ii) Critical actions shall not be approved in floodways or coastal high hazard areas.

(3) *500-year floodplain* means the minimum floodplain of concern for Critical Actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. (See §55.2(b)(1) for appropriate data sources.)

(4) *Floodway* means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term ''floodway'' as used here is consistent with ''regulatory floodways'' as identified by FEMA. (See §55.2(b)(1) for appropriate data sources.)

(5) *Functionally dependent use* means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, water-front park, and many types of bridges).

(6) *High hazard area* means a floodway or a coastal high hazard area.

(7) *100-year floodplain* means the floodplain of concern for this part and is the area subject to a one percent or greater chance of flooding in any given year. (See §55.2(b)(1) for appropriate data sources.)

(8)(i) *Substantial improvement* means either:

(A) Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(*1*) Before the improvement or repair is started; or

(*2*) If the structure has been damaged, and is being restored, before the damage occurred; or

(B) Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be onsite at any one time for a commercial or industrial project.

(ii) *Substantial improvement* may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

(B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered ''minor improvements''.

§55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development* (CPD) shall oversee: (i) The Department's implementation of the order and this part in all HUD programs, and

(ii) The implementation activities of HUD program managers and grant recipients for HUD financial assistance subject to 24 CFR part 58.

(2) In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary assistance, training, publications, and procedural guidance.

(b) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA)* shall: (1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain;

(2) Ensure that actions approved by HUD or grant recipients are monitored and that any prescribed mitigation is implemented;

(3) Ensure that the offices under their jurisdiction have the technical resources to implement the requirements of this part; and

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) *Recipient Certifying Officer.* In accordance with section 9 of Executive Order 11988, Certifying Officers of grant recipients administering activities subject to 24 CFR part 58 shall: (1) Comply with this part in carrying out HUD-assisted programs, and

(2) Monitor approved actions and ensure that any prescribed mitigation is implemented.

Subpart B—Application of Executive Order on Floodplain Management

§55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA) including a finding of no significant environmental impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17 (a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.36. For types of proposed actions that are categorically excluded from National Environmental Policy Act (NEPA) requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial (SAMA, conditional, etc.) approval (or the conditional commitment or approval by a grant recipient subject to 24 CFR part 58) of proposed actions in a floodplain.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35) does not exclude those actions from compliance with this part.

§55.11 Applicability of subpart C decision making process.

(a) Before reaching the decision points described in §55.10(a), HUD (for Department-administered programs) or the grant recipient (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988 and this part apply to the proposed action.

(b) If Executive Order 11988 applies, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is to ''avoid direct or indirect support of floodplain development.''

(c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing Executive Order 11988 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment)	Type of proposed location			
	Floodways	Coastal high hazard areas	100-year floodplain outside high hazard area	Area between 100- and 500-year floodplain
Critical actions as defined in §55.2(b)(2).	Critical actions not allowed.	Critical actions not allowed.	Allowed if the proposed critical action is processed under §55.20[1].	Allowed if the proposed critical action is processed under §55.20[1].
Non-critical actions not excluded under §55.12 (b) or (c).	Allowed only if the proposed action is a functionally dependent use and processed under §55.20[1].	Allowed only if the proposed action: (1) Is either (a) designed for location in a coastal high hazard area or (b) a functionally dependent use; and (2) is processed under §55.20[1].	Allowed if the proposed action is processed under §55.20[1].	Any non-critical action is allowed without processing under this part.

[1] Or those paragraphs of §55.20 that are applicable to an action listed in §55.12(a).

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decision making steps in § 55.20 (b), (c) and (g) (steps 2, 3 and 7) shall not apply to the following categories of proposed actions: (1) HUD actions involving the disposition of HUD-acquired multifamily housing projects or ''bulk sales'' of HUD-acquired one-to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(2) HUD's actions under section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)) for the purchase or refinancing of existing multifamily housing projects (including hospitals, nursing homes, board and care facilities, and intermediate care facilities) in communities that are in good standing under the NFIP.

(3) HUD mortgage insurance actions for the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, and the footprint of the structure and paved areas is not significantly increased.

(b) The decision making process in § 55.20 shall not apply to the following categories of proposed actions: (1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or coastal high hazard area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for ''substantial improvement'' under § 55.2(b)(8);

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties; and

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted exempt activities described in 24 CFR 58.34;

(2) Policy level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701–1720);

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain;

(6) HUD's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, but only if: (i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the 100-year floodplain or the 500-year floodplain (for Critical Actions);

(ii) Appropriate provision is made for site drainage; and

(iii) A covenant or comparable restriction is placed on the property's

continued use to preserve the floodplain;

(7) An action for interim assistance, assistance under the section 232(i) Fire Safety Equipment Loan Insurance Program, or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;

(8) HUD's approval of financial assistance for a project on any site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);

(10) An action that was, on May 23, 1994, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §§ 55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Order 11988 before May 23, 1994 shall be completed;

(11) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.*, do not involve site-specific subsidies); and

(12) Secondary mortgage operations of the Government National Mortgage Association (GNMA).

[59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994; 62 FR 15802, Apr. 2, 1997]

Subpart C—Procedures for Making Determinations on Floodplain Management

§ 55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) *Step 1.* Determine whether the proposed action is located in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) *Step 2.* Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

(1) The consideration of practicable alternatives to the proposed site or method may include:

(i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);

(ii) Alternative methods to serve the identical project objective; and

(iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain (or 500-year floodplain for a Critical Action).

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

(1) Preparation of and participation in an early warning system;

(2) An emergency evacuation and relocation plan;

(3) Identification of evacuation route(s) out of the 500-year floodplain; and

(4) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain;

(ii) A list of the alternatives considered; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

(2) In addition, the public notice procedures of § 55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.

(h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

§ 55.22 Conveyance restrictions for the disposition of multifamily real property.

(a) In the disposition (including leasing) of multifamily properties acquired by HUD that are located in a floodplain (a 500-year floodplain for a Critical Action), the documents used for the conveyance must: (1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

(b)(1) For disposition of multifamily properties acquired by HUD that are located in a 500-year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant concerning: (i) The hazards to life and to property for those persons who reside or work in a structure located within the 500-year floodplain, and

(ii) The availability of flood insurance on the contents of their dwelling unit or business.

(2) The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

[59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994]

§ 55.23 [Reserved]

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain, and are currently under review by the Department (or by a grant recipient subject to 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in § 55.20.

§ 55.25 Areawide compliance.

(a) A HUD-approved areawide compliance process may be substituted for individual compliance or aggregated compliance under § 55.24 where a series of individual actions is proposed or contemplated in a pertinent area for HUD's examination of floodplain hazards. In areawide compliances, the area for examination may include a sector of, or the entire, floodplain—as relevant to the proposed or anticipated actions. The areawide compliance process shall be in accord with the decision making process under § 55.20.

(b) The areawide compliance process shall address the relevant executive orders and shall consider local land use planning and development controls (e.g., those enforced by the community for purposes of floodplain management under the National Flood Insurance Program (NFIP)) and applicable state programs for floodplain management. The process shall include the development and publication of a strategy that identifies the range of development and mitigation measures under which the proposed HUD assistance may be approved and that indicates the types of actions that will not be approved in the floodplain.

(c) Individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance do not require further compliance with § 55.20 except that a determination by the Department or a grant recipient subject to 24 CFR part 58 shall be made concerning whether the individual action accords with the areawide strategy. Where the individual action does not accord with the areawide strategy, specific development and mitigation measures shall be prescribed as a condition of HUD's approval of the individual action.

(d) Areawide compliance under the procedures of this section is subject to the following provisions: (1) It shall be initiated by HUD through a formal agreement of understanding with affected local governments concerning mutual responsibilities governing the preparation, issuance, implementation, and enforcement of the areawide strategy;

(2) It may be performed jointly with one or more Federal departments or agencies, or grant recipients subject to 24 CFR part 58 that serve as the responsible Federal official;

(3) It shall establish mechanisms to ensure that: (i) The terms of approval of individual actions (e.g., concerning structures and facilities) will be consistent with the areawide strategy;

(ii) The controls set forth in the areawide strategy are implemented and enforced in a timely manner; and

(iii) Where necessary, mitigation for individual actions will be established as a condition of approval.

(4) An open scoping process (in accordance with 40 CFR 1501.7) shall be used for determining the scope of

issues to be addressed and for identifying significant issues related to housing and community development for the floodplain;

(5) Federal, state and local agencies with expertise in floodplain management, flood evacuation preparedness, land use planning and building regulation, or soil and natural resource conservation shall be invited to participate in the scoping process and to provide advice and comments; and

(6) Eligibility for participation in and the use of the areawide compliance must be limited to communities that are in the Regular Program of the National Flood Insurance Program and in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24), thereby demonstrating a capacity for and commitment to floodplain management standards sufficient to perform responsibilities under this part.

(7) An expiration date (not to exceed ten years from the date of the formal adoption by the local governments) for HUD approval of areawide compliance under this part must be stated in the agreement between the local governments and HUD. In conjunction with the setting of an expiration date, a mechanism for HUD's reevaluation of the appropriateness of areawide compliance must be provided in the agreement.

§ 55.26 Adoption of another agency's review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under the executive order by another agency, that review may be adopted by HUD or by a grant recipient authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management;

(b) The adopting agency makes a finding that:

(1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency; and

(2) There has been no material change in circumstances since the previous review was conducted; and

(c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) shall require that the following actions be documented: (1) Under § 55.20(c), practicable alternative sites have been considered outside the floodplain, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government (as defined in 24 CFR 570.3), whichever geographic area is more appropriate to the proposed HUD action. Actual sites under review must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain as identified in § 55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with § 55.24, § 55.25, or § 55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

APPENDIX V

36 CFR Part 800, Historic Preservation

PART 800—PROTECTION OF HISTORIC PROPERTIES

Subpart A—Purposes and Participants

Subpart B—The Section 106 Process

Subpart C—Program Alternatives

AUTHORITY: 16 U.S.C. 470s.

SOURCE: 65 FR 77725, Dec. 12, 2000, unless otherwise noted.

Subpart A—Purposes and Participants

§ 800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies, and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The agency official must complete the section 106 process ''prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.'' This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action

for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State historic preservation officer.* (i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to

ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Indian tribes and Native Hawaiian organizations.* (i) *Consultation on tribal lands.* (A) *Tribal historic preservation officer.* For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) *Tribes that have not assumed SHPO functions.* When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) *Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian

tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) *Applicants for Federal assistance, permits, licenses, and other approvals.* An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

(5) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public*—(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) *Use of agency procedures.* The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B—The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) *Coordinate with other reviews.* The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process

with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with §800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The agency official shall invite any local governments or applicants that are entitled to be consulting parties under §800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in §800.2(d).

§800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in §800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to §800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to §800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation,

oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance*—(1) *Apply National Register criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's standards and guidelines for evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) *Results of identification and evaluation*—(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available

for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv) (A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

[65 FR 77725, Dec. 12, 2000, as amended at 69 FR 40553, July 6, 2004]

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a

historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with, or no objection to, finding.* Unless the Council is reviewing the finding pursuant to papagraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) *Disagreement with finding.* (i) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in § 800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants it, the head of the agency, with a written opinion objecting to the finding, the agency shall then proceed according to paragraph (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(iii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request the Council to review and object to the finding pursuant to paragraph (c)(2)(ii) of this section.

(3) *Council review of findings.* (i) When a finding is submitted to the Council pursuant to paragraph (c)(2)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled.

(ii)(A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of agency responses to Council opinions on their findings of no adverse effects. The Council shall make this information available to the public.

(d) *Results of assessment*—(1) *No adverse effect.* The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

[65 FR 77725, Dec. 12, 2000, as amended at 69 FR 40553, July 6, 2004]

§ 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(3) *Provide documentation.* The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects*—(1) *Resolution without the Council.* (i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of

the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) *Memorandum of agreement.* A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.* (i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) *Concurrence by others.* The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a memorandum of agreement may amend it. If the Council was not a signatory

to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies.* The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) *Comments by the Council*—(1) *Preparation.* The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination With the National Environmental Policy Act.

(a) *General principles*—(1) *Early coordination*. Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a ''major Federal action significantly affecting the quality of the human environment,'' and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles*. SHPO/THPOs, Indian tribes, and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues*. Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA*. If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes*. An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with Section 106*. During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and (v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.* (i) The agency official shall submit the EA, DEIS, or EIS to the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS, or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS, or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.

(4) *Approval of the undertaking.* If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) A binding commitment to such proposed measures is incorporated in:

(A) The ROD, if such measures were proposed in a DEIS or EIS; or

(B) An MOA drafted in compliance with § 800.6(c); or

(ii) The Council has commented under § 800.7 and received the agency's response to such comments.

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3

through 800.6 will be followed as necessary.

[65 FR 77725, Dec. 12, 2000, as amended at 69 FR 40554, July 6, 2004]

§ 800.9 Council review of section 106 compliance.

(a) *Assessment of agency official compliance for individual undertakings.* The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants*—(1) *Agency responsibility.* Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) *Consultation with the Council.* When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) *Information from participants.* Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) *Adequacy of documentation.* The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) *Format.* The agency official may use documentation prepared to comply

with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality*—(1) *Authority to withhold information.* Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of agreement.* When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a memorandum of agreement. Documentation shall include:*

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) *Agency procedures.* The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries*—(1) *Using a programmatic agreement.* An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process

without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

§ 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the FEDERAL REGISTER and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the FEDERAL REGISTER.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements.* The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements.* A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs.* (i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an

agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing programmatic agreements for complex or multiple undertakings.* Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow §800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) *Prototype programmatic agreements.* The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) *Exempted categories*—(1) *Criteria for establishing.* The Council or an agency official may propose a program or category of undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as ''undertakings'' as defined in §800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph

(c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The proponent of the exemption shall publish notice of any approved exemption in the FEDERAL REGISTER.

(d) *Standard treatments*—(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the FEDERAL REGISTER.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the FEDERAL REGISTER 30 days before the termination takes effect.

(e) *Program comments.* An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the FEDERAL REGISTER of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being

carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) *Results of consultation.* The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

[65 FR 77725, Dec. 12, 2000, as amended at 69 FR 40554, July 6, 2004]

§ 800.15 Tribal, State, and local program alternatives. [Reserved]

§ 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's ''Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act'' provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's

actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) *Senior policy official* means the senior policy level official designated

by the head of the agency pursuant to section 3(e) of Executive Order 13287.

[65 FR 77725, Dec. 12, 2000, as amended at 69 FR 40555, July 6, 2004]

APPENDIX A TO PART 800—CRITERIA FOR COUNCIL INVOLVEMENT IN REVIEWING INDIVIDUAL SECTION 106 CASES

(a) *Introduction.* This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) *General policy.* The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) *Specific criteria.* The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to §800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

PART 801—HISTORIC PRESERVATION REQUIREMENTS OF THE URBAN DEVELOPMENT ACTION GRANT PROGRAM

Sec.

AUTHORITY: Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 94–422, 90 Stat. 1320 (16 U.S.C. 470(i)); Pub. L. 96–399, 94 Stat. 1619 (42 U.S.C. 5320).

SOURCE: 46 FR 42428, Aug. 20, 1981, unless otherwise noted.

§801.1 Purpose and authorities.

(a) These regulations are required by section 110(c) of the Housing and Community Development Act of 1980 (HCDA) (42 U.S.C. 5320) and apply only to projects proposed to be funded by the Department of Housing and Urban Development (HUD) under the Urban Development Action Grant (UDAG) Program authorized by title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301). These regulations establish an expedited process for obtaining the comments of the Council specifically for the UDAG program and, except as specifically provided, substitute for the Council's regulations for the ''Protection of Historic and Cultural Properties'' (36 CFR part 800).

APPENDIX W

40 CFR 1500 – 1508, NEPA Regulations

CHAPTER V—COUNCIL ON ENVIRONMENTAL QUALITY

PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

§1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains ''action-forcing'' provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act)

except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase ''to the fullest extent possible'' in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501—NEPA AND AGENCY PLANNING

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to ''utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment,'' as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in §1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§1508.22) in the FEDERAL REGISTER except as provided in §1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under §1507.3(c). An agency may give notice in accordance with §1506.6.

(2) Determine the scope (§1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in §1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§1502.7).

(2) Set time limits (§1501.8).

(3) Adopt procedures under §1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed

action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided*, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the

Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report.

On proposals (§ 1508.23).

For legislation and (§ 1508.17).

Other major Federal actions (§ 1508.18).

Significantly (§ 1508.27).

Affecting (§§ 1508.3, 1508.8).

The quality of the human environment (§ 1508.14).

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such

as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§ 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision-making process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

§ 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements

in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11 through 1502.18, in any appropriate format.

§ 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice

among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under §1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in §1502.18(d) and unchanged statements as provided in §1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

§1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material

may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, ''reasonably foreseeable'' includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the FEDERAL REGISTER on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A–95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is ''unsatisfactory from the standpoint of public health or welfare or environmental quality,'' section 309 directs that the matter be referred to the Council (hereafter ''environmental referrals'').

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews

must be made available to the President, the Council and the public.

[43 FR 55998, Nov. 29, 1978]

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

[43 FR 55998, Nov. 29, 1978]

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered

not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

§ 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A–95 (Revised), part I, sections 6(c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement,

agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (*e.g.* long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of

a judicial action which is not final, the agency shall so specify.

§ 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility.

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments.* If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements.* Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor.* An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A–95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the ''detailed statement'' required by statute; *Provided,* That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a

rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) and the Wilderness Act (16 U.S.C. 1131 *et seq.*)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

(a) Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252–A, Room 7220, 1200 Pennsylvania Ave., NW., Washington, DC 20460. This address is for deliveries by US Postal Service (including USPS Express Mail).

(b) For deliveries in-person or by commercial express mail services, including Federal Express or UPS, the correct address is: US Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Room 7220, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

(c) Statements shall be filed with the EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and §1506.10.

[70 FR 41148, July 18, 2005]

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under §1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see §1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

§1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507—AGENCY COMPLIANCE

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

§1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by §1507.3 to the requirements of other applicable laws.

§1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the FEDERAL REGISTER, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements

which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in §1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by §1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508—TERMINOLOGY AND INDEX

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

§1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§1508.2 Act.

Act means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*) which is also referred to as ''NEPA.''

§1508.3 Affecting.

Affecting means will or may have an effect on.

§1508.4 Categorical exclusion.

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in §1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§1508.5 Cooperating agency.

Cooperating agency means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

Council means the Council on Environmental Quality established by title II of the Act.

§ 1508.7 Cumulative impact.

Cumulative impact is the impact on the environment which results from the incremental impact of the action 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.

§ 1508.8 Effects.

Effects include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

Environmental assessment:

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

Environmental document includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

Environmental impact statement means a detailed written statement as required by section 102(2)(C) of the Act.

§ 1508.12 Federal agency.

Federal agency means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

Finding of no significant impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not

repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human environment.

Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of ''effects'' (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction by law.

Jurisdiction by law means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

Lead agency means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

Legislation includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

Major Federal action includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*, with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.;* treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

Matter includes for purposes of part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§ 1508.20 Mitigation.

Mitigation includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

§ 1508.21 NEPA process.

NEPA process means all measures necessary for compliance with the requirements of section 2 and title I of NEPA.

§ 1508.22 Notice of intent.

Notice of intent means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 Proposal.

Proposal exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 Referring agency.

Referring agency means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§ 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental

consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

§ 1508.26 Special expertise.

Special expertise means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

Significantly as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

§ 1508.28 Tiering.

Tiering refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement

subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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EDITORIAL NOTE: This listing is provided for information purposes only. It is compiled and kept up-to-date by the Council on Environmental Quality, and is revised through July 1, 2009.

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