

The City of Reading CDBG, ESG, and HOME Environmental Review Record Procedures

The following is a list of the key regulations which must be complied with in the creation of the environmental review record.

- 24 CFR Part 58; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities
- 24 CFR Part 51; Environmental Criteria and Standards
- 24 CFR Part 55; Floodplain Management
- 35 CFR Part 800; Protection of Historic Properties
- 40 CFR Parts 1500-1508; Council on Environmental Quality Implementation of NEPA Procedural Provisions

The environmental review addresses the physical, social, and economic impacts of the entire proposed activity. The environmental review process must consider the ultimate effect of a proposed project, including the potential effects of the CDBG, ESG, HOME and related project activities.

The City's first objective in the environmental review process is to determine a "level of clearance" finding.

Exempt from NEPA

NEPA requirements and related Federal laws and authorities under 58.5 are not applicable to the project. However, requirements under 58.6 are applicable as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities considered Exempt include the following:

- Environmental and planning studies.
- General administrative costs.
- Payment of costs for eligible public services that will not have a physical impact or result in any physical changes, including but not limited to services addressing employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- Inspections and testing of properties for hazards and defects.
- Preliminary and final engineering and design costs incurred for an eligible CDBG program activity;
- Technical assistance and training.
- 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;

Activities that are Categorically Excluded and subject to 58.5, but have converted to Exempt.

ENVIRONMENTAL PROCEDURES

Document the reasons for the finding and prepare a "Finding of Exemption".

Categorically excluded from NEPA and not subject to 58.5 (58.35(b))

NEPA requirements and related Federal authorities under 58.5 are not applicable to these projects. Again, requirements under 58.6 are applicable as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities, which fall under this category, include the following:

- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating costs and similar costs not associated with construction or expansion of existing operations.
- Payment of CDBG eligible operating costs.
- Payment of CDBG eligible supportive service costs, including but not limited to, health care, housing services, permanent housing placement, day care, and nutritional services.
- Activities to assist homebuyers to purchase existing dwelling units, or dwelling units under construction where the foundation is already in place at the time the buyer applies for assistance, including closing costs and down payment assistance, interest buydowns, and similar activities that result only in the transfer of title.
- Affordable housing predevelopment costs.
- Payment of assessments for households, such as the upgrading of a water quality or a sewage treatment facility, where the project is not dependent on CDBG funding. In other words, the project would move forward with or without CDBG funding.

If any additional activities are taking place, such as rehabilitation or new construction, or if the project is associated with the expansion of existing operations, the project does have to meet a higher environmental clearance level, even if CDBG funds are not paying for the additional activities.

ENVIRONMENTAL PROCEDURES

An activity determined to be categorically excluded and not subject to 58.5 must be documented as such and does not convert to exempt, but remains excluded.

File the completed Environmental Finding Form indicating “Categorically Excluded, not subject to 58.5”.

Categorically Excluded from NEPA, but subject to 58.5 (58.35 (a))

NEPA requirements are not applicable, however the requirements of 24 CFR Part 58.5 are applicable to projects in this category.

Requirements under 24 CFR Part 58.6 are also applicable as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities, which fall under this category, include the following:

- Payment of assessments for households, for example the upgrading of a water quality or a sewage treatment facility, when the project is dependent on CDBG funding, and with a less than 20% increase in system capacity,
- The acquisition, reconstruction, rehabilitation, or installation of eligible public works and improvements when the facilities and improvements are in place and will be retained in the same use with less than a 20% change in size or capacity (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

- Special projects directed to the removal of material and architectural barriers that restrict mobility of and accessibility to elderly and handicapped persons.
- The rehabilitation of buildings and improvements when the following conditions are met:
- For a residential building with one to four units:
 - The density is not increased beyond four units,
 - The land use is not changed,
 - The footprint of the building is not increased in a floodplain or in a wetland.
- For multifamily residential buildings:
 - Unit density is not changed more than 20 percent;
 - There are no changes in land use from residential to non-residential; and
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

For non-residential structures:

- The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
- The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
- An individual action on 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. (This does not apply to the rehabilitation of a building for residential use (with one to four units.)
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
- Acquisition of an existing structure provided that the structure acquired will be retained for the same use.
- Combinations of the above activities.

ENVIRONMENTAL PROCEDURES

Document compliance with 58.5 by completing a “Statutory Worksheet”.

If the City is administering a rehabilitation program, the City Historic Preservation Specialist (HPS) must write to the State Historic Preservation Officer (SHPO) describing the program and how the HPS will evaluate each unit for historic or archaeological status. A Programmatic Agreement (PA) may be negotiated, between the HPS and the SHPO.

If there are no secondary findings, the project converts to exempt status pursuant to 24 CFR 58.34 (a)(12):

For the files:

1. A description of the project
2. A completed Form 58.6
3. A completed and documented Statutory Worksheet with primary findings only.

4. Supporting documentation, including the Programmatic Agreement and HPS correspondence where applicable.
5. A completed Environmental Finding Form, indicating Categorically Excluded, per section 58.35(a) and conversion to Exempt.

If there are secondary findings on The Statutory Worksheet:

For the files:

1. A description of the project
2. A completed Form 58.6
3. A completed and documented Statutory Worksheet identifying secondary findings.
4. A copy of supporting documentation, including the Programmatic Agreement and HPS correspondence where applicable.
5. An Environmental Finding Form indicating a "Finding of Categorical Exclusion"
6. Documentation of publication of the NOI/RROF notice in a local newspaper of general circulation. If the notice is not published, then it must be prominently displayed in the local post office and in other public buildings as established by the citizen participation process. Provide for 7 calendar days after the date of publication of the notice for public comment or 10 calendar days if the notice was not published, but mailed and posted instead.
7. Comments received during the 7-day comment period for newspaper publications or 10-day period for mailed/posted notifications and responses.
8. A completed "Request for Release of Funds and Certification" Form

Submit a copy of the above forms to HUD for review and approval. HUD will require an additional 15 days to receive any objections prior to releasing an environmental clearance letter after receiving the Release of Funds and Certification Form. File all documents including the environmental clearance letter in the file.

Environmental Assessment (58.36)

If the activity is not found to be exempt or categorically excluded from NEPA, an Environmental Assessment (EA) will be required. This document is used to evaluate the environmental ramifications of proposed CDBG, ESG, HOME funded and related program activities. Depending upon the magnitude and complexity of the proposed project, the Environmental Assessment can lead to two types of clearances or findings. These include a Finding of No Significant Impact (FONSI) or a Notice of Intent to Prepare an Environmental Impact Statement (EIS).

Activities, which fall under this category include but are not limited to the following:

- The construction of a community facility such as a Child Care facility, a Homeless Shelter, or a Community Center.
- Public Works activities in which the size and capacity of the system or facility will be increased by more than 20 percent.
- Infrastructure activities in support of a new construction project.
- An individual action on a project of 5 or more units when the units are located within 2,000 feet of each other.

ENVIRONMENTAL PROCEDURES

Prepare an EA in accordance with 24 CFR Part 58 Subpart E using the Environmental Assessment to include the City's name and address, a description of the project and location map, a determination of existing conditions, identification of project impacts with data sources and explanation, a discussion of project alternatives, a discussion of any measures that will be implemented to mitigate project impacts, and a discussion of any irreversible project impacts. In addition, the other applicable laws and authorities must also be addressed and documented as part of the Environmental Assessment.

The Environmental Assessment will result in either 1) a Finding of No Significant Impact (FONSI) or 2) a finding of significant impact requiring preparation of an Environmental Impact Statement.

Finding of No Significant Impact (FONSI). Most CDBG, ESG, HOME projects will result in a FONSI as they do not usually constitute major Federal actions or comprise part of a larger project that has already completed an environmental study.

For the files:

1. A full description of the project
2. A completed Form 58.6
3. A completed and documented Environmental Assessment
4. A copy of supporting documentation, including HPS correspondence where applicable
5. An Environmental Finding Form
6. Documentation, as described in Section 58.43, of the dissemination of a combined "Notice of FONSI and Notice of Intent to Request Release of Funds". In addition, copies of the FONSI should be sent to the appropriate State, federal and local agencies, the headquarters and appropriate regional office of the Environmental Protection Agency (EPA) and HUD.
7. A copy of the aforementioned distribution list
8. A copy of the published combined Notice of FONSI/NOIRROF in a local newspaper of general circulation. Provide for 15 calendar days after the date of publication of the notice for public comment or 18 calendar days if the notice was not published, but mailed and posted instead. If the notice is not published, then it must be prominently displayed in the local post office and in other public buildings as established by the citizen participation process.
9. Comments received during the 15-day comment period for newspaper publications or 18-day period for mailed/posted notifications and responses.
10. A completed "Request for Release of Funds and Certification" Form

Submit a copy of each form to HUD for review and approval. After receiving the Request for Release of Funds and Certification form, HUD must allow an additional 15 days to accept any objections to its release of funds and the grantee's certification prior to releasing an environmental clearance letter. The 15-day period begins on the date that the HUD receives the Request for Release of Funds or the date identified in the combined Notice, whichever is later.

Finding of Significant Impact. If you determine that the CDBG project will have a potentially significant impact on the human environment, then an Environmental Impact Statement must be prepared.

Environmental Impact Statement (58.37)

If the Environmental Assessment results in a finding that an activity will have “potentially significant” impact on the human environment, the City must publish a notice of intent to prepare an Environmental Impact Statement (EIS). “Potentially significant” incorporates significant development, regional impact, long-term effects on the environment, violation of existing laws and authorities or highly controversial development where in each case procedural resolution is not feasible. 24 CFR Part 58.37 describes certain types of projects that require an EIS because of their size or nature.

Consultation with the State Historic Preservation Officer (SHPO)

American history, architecture, archeology, engineering and culture are embodied in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

- that are associated with events that have made a significant contribution to the broad patterns of our history; or
- that are associated with the lives of persons significant in our past; or
- that display the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- that have yielded, or may be likely to yield, information important in prehistory or history

The City Historic Preservation Specialist must consult with SHPO if there are potentially any historical properties (including archaeological and cultural resources) on the project site or if the project could have an effect on historical properties, including possible historic or archaeological properties not yet identified. Public involvement is a primary ingredient in successful Section 106 compliance. It is imperative that all affected parties be invited to comment early in the review process and that all historical information from interested sources be documented to determine the reasonable, good faith effort on the part of the individuals preparing the determination.

For rehabilitation activities, the HPS must evaluate whether the proposed activity will affect a property on or eligible for the National Register of Historic Buildings, and must consult with SHPO.

Please note that, in the absence of a Programmatic Agreement or Letter of Understanding between the City and the SHPO, for any housing rehabilitation project that involves exterior work, even if the structure is less than 50 years old, the HPS shall consult with SHPO in determining if there is an impact and in developing mitigation measures.

The Advisory Council on Historic Preservation has formalized the review period. Requests for comment to the SHPO must receive a response within 30 days of receipt of the request. Requests for comment should be sent certified mail. If the SHPO fails to respond to an “adequately documented finding” within that review period, compliance with Section 106 is complete. An adequately documented finding is one for which the grantee has completed the research necessary to make a determination prior to formally consulting with the SHPO. If the information is inadequately documented, SHPO is allowed an additional 30 days to respond to a resubmittal. The HPS must carefully follow the documentation standards in 36 CFR Part 800.

Descriptions and photographs of structures to be affected by rehabilitation should be submitted to the SHPO for review as part of the environmental review procedures by the HPS. Consultation with the SHPO can be made during preparation of the Statutory Worksheet however each structure must be evaluated on a case-by-case basis.

When an activity will have an affect on a property on, or eligible for, the National Register and the HPS and the SHPO disagree or require additional counsel, or if an identified consulting party requests the Council’s participation, the Advisory Council on Historic Preservation must be given the opportunity to comment. An additional 30-day review and comment period will apply.

Floodplain Management

Executive Order 11988 is referenced in environmental regulation 24 CFR Part 58. It establishes Federal policy to assure that Federal Programs, including HUD, avoid adverse impacts to floodplains, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and to the extent possible, restore the natural beneficial values served by the floodplain. Only when it can be demonstrated that there is no practical alternative does it allow provision of direct or indirect Federal assistance for floodplain development or other actions that would adversely affect floodplain areas.

E.O. 11988 applies to acquisition, new construction, and most rehabilitation activities that are undertaken with any HUD assistance within special flood hazard areas designated as within the 100-year or 500-year floodplain by Federal Emergency Management Agency's Flood Hazard Boundary Maps and Flood Insurance Rate Maps. If the activity is located in a floodplain the City is required to complete an 8-step Floodplain and Wetlands Assessment described in federal floodplain management regulations, 24 CFR Part 55.

Compliance with the Flood Disaster Protection Act of 1973 as amended is also referenced in 24 CFR 58, Section 58.6. Expenditure of Federal funds, including mortgage insurance, is prohibited in special flood hazard areas if a community is not a participant of the National Flood Insurance Program. The Act requires that flood insurance must be purchased and maintained on those structures located within special flood hazard areas that receive Federal assistance for construction, reconstruction, or rehabilitation.

In general, with a few exceptions, HUD assisted actions are approvable in a special flood hazard area only if the 8-Step decision record supports that there is no practicable alternative, the community is a participant in the National Flood Insurance Program and flood insurance is obtained as a condition of approval.

Urgent Need

An activity designed to alleviate an existing condition of particular urgency can perform a modified review. The condition must pose a serious and immediate threat to the health or welfare of the City, must have occurred or become urgent within the last 18 months, and the City must document that it has been unable to finance the activity because the community's other resources have been depleted by the emergency and other Federal programs are not sufficient to cover all the costs.

Records must include: 1) a description of the condition, documenting both the timing and the nature and degree of seriousness of the threat, 2) local certification that the CDBG activity was designed to address the urgent need, i.e. a resolution, 3) evidence that other financial resources are unavailable to alleviate the need.

Certain Categorically Excluded activities may be deemed Exempt in emergency situations under Section 58.34(a)(10). Specifically, this clearance level addresses "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". They will follow the recordkeeping requirements for exempt projects as outlined earlier in the chapter and for emergency projects as documented above. For an activity that, under non-emergency circumstances, would typically require noticing, Section 58.33 applies. "If funds are needed on an emergency basis and when adherence to separate comment periods would prevent the giving of assistance, the combined Notice of FONSI and the NOI/RROF may be disseminated and/or published simultaneously with the submission of the RROF. The combined NOI/RROF shall state that the funds are needed on an immediate emergency basis due to a Presidentially declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to the City to assure that these comments will receive full consideration." In effect, the combined FONSI notice to the public and the state will require only 15 days total for comment. All other review and recordkeeping requirements remain the same.

Note: All notices, RROF's, letters, etc. shall be prepared by the consultant. The City will be responsible to place the notice in the Reading Eagle newspaper.

Sample Publication, Public Comment, and Public Objection Schedules

Notice of Intent to Request Release of Funds (NOI/RROF)

Newspaper Publication

Published	July 1
Public Comments (7 calendar days)	July 2 to July 8
Public Objections submitted to HUD (15 calendar days)	July 9 to July 23

OR

Mailed or Posted

Mailed/Posted	July 1
Public Comments (10 calendar days)	July 2 to July 11
Public Objections submitted to HUD (15 calendar days)	July 12 to July 26

Combined Notice of Finding of No Significant Impact (FONSI)/Notice of Intent to Request Release of Funds (NOI/RROF)

Newspaper Publication

Published	July 1
Public Comments (15 calendar days)	July 2 to July 16
Public Objections submitted to HUD (15 calendar days)	July 17 to July 31

OR

Mailed or Posted

Mailed/Posted	July 1
Public Comments (18 calendar days)	July 2 to July 19
Public Objections submitted to HUD (15 calendar days)	July 20 to August 3