

# Environmental Review

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## Introduction

The purpose of the environmental review (ER) process is to analyze the effect a CDBG-DR funded project may have on the people and natural environmental features of a project area. This chapter provides broad guidance to subrecipients on expected ER processes for projects funded through the State's CDBG-DR infrastructure programs. Additionally, DCA has an Environmental Policy Reference Guide for subrecipients and their contractors.

ER is required to support the following:

- Execution of a Grant Agreement between the subrecipient and DCA, followed by,
- Release of Funds from HUD to the Responsible Entity (DCA) – applies to categorically subject to [24 CFR 58](#) (CEST), Environmental Assessments (EA), and Environmental Impact Statements (EIS) levels of review
- A Notice to Proceed from DCA to the subrecipient, approving the ER with possible mitigating actions and conditions

- Funding disbursement from DCA to a subrecipient through the Authority to Use Grant Funds (AUGF)

For the purpose of compliance with State and federal environmental regulations, DCA will act as the Responsible Entity (RE). DCA is responsible for decision-making and actions that would otherwise apply to HUD under the National Environmental Policy Act (NEPA), and approvals, including reviews to determine whether activities are exempt or categorically excluded from environmental regulations and therefore not subject to federal requirements (CENST).

To facilitate this process, DCA will ask subrecipients to complete the ER of all project activities and submit them to DCA for approval using one of **two pathways** described below. Before choosing a pathway, subrecipients must have managed design and engineering efforts to achieve at least 30% completion of the proposed project design.

### **Pathway 1: Subrecipient completes Environmental Review:**

- Subrecipient manages ER either through procurement of a firm specializing in ER or using in-house staff, if available. The subrecipient will be responsible for conducting the ER, including Categorically Excluded and Subject to federal rules (CEST), EAs, and EIS and demonstrating compliance with all applicable regulations. To achieve compliance, DCA will determine the appropriate level of ER for a project (e.g., EIS, environmental assessment, categorically excluded subject to) and establish an Environmental Review Record (ERR) to support environmental clearances, in coordination with subrecipient, DCA will act as the RE reviewing and approving ER documentation.
- This process must be completed prior to grant execution, and therefore, costs of the ER will be borne by the subrecipient. Costs are not reimbursable. If the subrecipient chooses to follow this path, this chapter along with the Environmental Policy Reference Guide will act as guideline on the process and regulations of the ER Process.

### **Pathway 2: Subrecipient uses DCA's Construction Management Firm (CMF) to complete their ER**

- The subrecipient will work directly with DCA and the CMF to complete the ER.
- The subrecipient must manage design and engineering efforts to achieve a proposed project design sufficient for ER (30% design – Please see guidance in *30% Design Requirements*). Then the subrecipient will engage with CMF to conduct the ER. This process must be completed prior to grant execution, and the costs of the ER will be borne by DCA. If the subrecipient chooses to follow this path, this chapter along with the Environmental Policy Reference Guide will provide general information on the ER requirements and the responsibilities of the CMF conducting the ER.

Once the subrecipient decides how it will meet environmental review requirements (through Pathway 1 or Pathway 2), the project budget will be formally revised to reflect costs associated with environmental review and compliance.

## Applicable Regulations/Legal Responsibilities

As mentioned above DCA will act as the Responsible Entity, and will serve in this capacity under the DBG-DR award for all subrecipient infrastructure grants. DCA must sign off and submit a Request for Release of Funds (RROF) to HUD.

ER responsibilities have both legal and financial ramifications. As part of the assurances and agreements signed by DCA, the Chief Executive Officer (CEO) of the entity DCA agrees to assume the role of “responsible federal official” under the provisions of the NEPA.

DCA will formally designate a DCA official as the Environmental Certifying Officer (ECO) in accordance with 24 CFR Part 58.

The ECO accepts full responsibility for the completeness and accuracy of the review and compliance with applicable laws and regulations. The responsibilities of the ECO includes making findings and signing required certifications.

The ECO does not conduct the review or complete the applicable documentation in the ERR. That responsibility is given to the preparer of the ER – a subrecipient staff person, consultant hired by the subrecipient, or the CMF.

The ECO is responsible for initiating all formal consultation processes with state, federal and tribal agencies. The ER preparer hired to complete the review should prepare the consultation materials but may not consult directly with these agencies.

Local officials should review the municipal liability and indemnification statutes as well as the status and coverage of local liability insurance policies when accepting responsibility under environmental laws.

## Environmental Review Record (ERR)

Depending on the pathway, either the subrecipient or the CMF will prepare the ERR, which is the written record of the ER, and submit this to DCA for review and approval. DCA will coordinate with the subrecipient and the CMF and approve and maintain a written record of the ER undertaken for each project. DCA is providing approval for the ERR, not preparing the materials. The ERR must be available for public review, upon request. Subrecipients should direct **interested parties** (i.e., persons and entities that have commented on the environmental process or that have requested to be notified of environmental activities) requesting the ERR to DCA for access.

The ERR shall contain all the ER documents, public notices, and written determinations or environmental findings required by [24 CFR Part 58](#) as evidence of review, decision-making, and actions pertaining to a particular project. The document shall:

- Describe the project and each of the related activities comprising the project, regardless of individual activity funding source;
- Evaluate the effects of the project or the activities on the human environment;
- Document compliance with applicable statutes and authorities; and
- Record the written determinations and other review findings required by [24 CFR Part 58](#).

- Provide content (which could vary in length) depending upon the level of review required for the categories of proposed activities.
- Include public comments, concerns, and appropriate resolution with regard to public notices that have been issued by the subrecipient which are extremely important and must be fully documented.
- Be created and maintained for the project.

## Actions Triggering Environmental Review and Limitations Pending Clearance

### Actions Triggering the Requirements of 24 CFR Part 58

**All HUD-assisted activities must have some level of environmental compliance review completed for them.** Compliance with the [24 CFR Part 58](#) requirements begins when the State accepts applications from the subrecipients for CDBG-DR funds.

**Prior to obtaining AUGF from HUD, “choice-limiting actions,” including activities that have physical impacts or restrict the use of alternatives, cannot be undertaken, even with the subrecipient’s (or other project participant’s) own funds.** If prohibited activities are undertaken after submission of an application but prior to environmental clearance and AUGF, the subrecipient risks denial of CDBG-DR assistance, as these actions interfere with the subrecipient’s and the State’s ability to comply with NEPA and [24 CFR Part 58](#), and risk negative environmental impacts. In other words, subrecipients must avoid 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).

There are some activities that may be undertaken without violating [24 CFR Part 58](#). For example, hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), to complete an engineering design study or plan, or to conduct a study of soil and geological conditions, would be allowed. Environmental compliance reviews for these activities may be completed prior to the subrecipient’s execution of a grant agreement with the State.

### Limitations Pending Environmental Clearance

Note that HUD issued a policy in April 2011 which states that a subrecipient (or other project participants) cannot go to bid on activities that would be choice-limiting (e.g., construction, demolition) until an ER is complete. This policy is based on NEPA and requires the environmental process to be completed prior to bidding in order to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the ER. To comply with this policy, subrecipients must have signed environmental clearance from DCA prior to bid advertisement.

Moreover, until the subrecipient has completed the ER process, these same restrictions apply to project participants (e.g., developers, consultants, real estate agents, etc.) as well. It is the responsibility of the subrecipient to ensure project participants are apprised of these restrictions.

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

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Use of any non-CDBG-DR funds on actions that would have an adverse impact—e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG-DR funds on actions that would be “choice limiting” Choice limiting actions include acquisition, demolition, site clearance, bidding and construction.
- —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.

It is acceptable for subrecipients to execute non-legally binding agreements prior to completion of the ER process and receiving DCA approval. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim to any amount of CDBG-DR funds to be used for the specific project or site until the ER process is satisfactorily completed.

It is also acceptable to execute an option agreement for the acquisition of property when the following requirements are met:

- The option agreement is subject to a determination by the subrecipient on the desirability of the property for the project as a result of the completion of the ER in accordance with [24 CFR Part 58](#); and
- The cost of the option is a nominal portion of the purchase price.

A memo issued by HUD on August 26, 2011, clarified the use of conditional contracts in the acquisitions of existing single-family and multifamily properties involving the use of CDBG-DR funds. A conditional contract for the purchase of property is a legal agreement between a potential buyer and the property owner, including conditions that must be met for the purchase obligation to become binding. Conditional contracts are more restricted in their use compared to option contracts and are permitted only for residential property acquisition.

For single family properties (one to four units):

- The purchase contract must include the appropriate language for a conditional contract (See the text box below).
- No transfer of title to the purchaser or removal of the environmental conditions in the purchase contract occurs unless and until the subrecipient determines, based on the ER, that the transfer should proceed, and the subrecipient has received AUGF.
- The deposit must either be refundable or must not exceed \$1,000.

Finally, for multi-family properties:

- The structure may not be located in a Special Flood Hazard Area (100-year floodplain or certain activities in the 500-year floodplain);
- The purchase contract must include the appropriate language for a conditional contract (See the text box below);
- No transfer of title to the purchaser or removal of the environmental conditions in the purchase contract occurs unless and until the subrecipient determines, on the basis of the ER, that the transfer to the buyer should go forward and the subrecipient has received release of funds and environmental clearance; and
- The deposit must be refundable or, if a deposit is non-refundable, it must be a nominal amount of three percent of the purchase price or less.

Please contact DCA if assistance is needed with options or conditional contract language.

**Language that Must be Included in Conditional Contracts for Purchase of Residential Property**

“Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the property and no transfer of title to the Purchaser may occur, unless and until DCA has provided purchaser and/or seller with a written confirmation that: 1) a federally-required environmental review has been satisfactorily completed and the request for release of funds has been approved and subject to any other contingencies in this contract, (a) the purchase may proceed or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or 2) it has been determined that the purchase is exempt from federal environmental review and a request for release of funds is not required.”

## **Classifying Activities and Conducting the Review**

To begin the ER process, the subrecipient, CMF, and/or DCA must first determine the environmental classification of each activity in the project. This section will focus upon the five environmental classifications that are recognized under the CDBG-DR program:

- Exempt activities;
- Categorically excluded activities not subject to [24 CFR 58.5](#);
- Categorically excluded activities subject to [24 CFR 58.5](#);
- Activities requiring an EA; or
- Activities requiring an EIS.

This section discusses the types of classifications, and the steps required for each classification to ensure compliance with the applicable requirements.

The environmental regulations at [24 CFR 58.32](#) require the DCA to “...group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis,” whether HUD assistance will be used to fund all or only some of these activities. Once this has been done, DCA must decide if the project is exempt, categorically excluded, or requires an EA or an EIS. The level of ER will be dictated by whichever project activity requires a higher level of review. For example, if one activity in a project requires an EA then the entire project must be assessed at this level of review.

### **Exempt Activities**

Certain activities are unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of the ER. Listed below are examples of activities that may be exempt from the ER as per environmental regulations in [24 CFR 58.34\(a\)](#).

- Environmental and other studies, resource identification and the development of plans;
- Information and financial services;

- Administrative and management activities;
- Public service activities that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Engineering or design costs;
- 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;
- Payment of principal and interest on loans made or obligations guaranteed by HUD; and
- Any of the categorical exclusions listed in [24 CFR 58.35\(a\)](#) provided that there are no circumstances which require compliance with any other federal laws and authorities cited in [§ 58.5](#). NOTE: This decision is based upon the results of a “Finding of Categorical Exclusion Subject to [24 CFR 58.5](#).”

If a project is determined to be exempt, DCA must document in writing that the project is exempt and meets the exemption conditions. The subrecipient or CMF will provide DCA with this justification. The DCA must then complete the HUD form titled [Environmental Review for Activity/Project that is Exempt or Categorically Excluded not Subject to Section 24 CFR 58.5](#). The form must be signed by the certifying official and a copy sent to the appropriate funding agency for review.

### **Categorically Excluded not Subject to 24 CFR 58.5 Activities**

The following activities, listed at [24 CFR 58.35\(b\)](#), have been determined to be categorically excluded from NEPA requirements and are not subject to [§ 58.5](#) compliance determinations.

- Tenant-based rental assistance;
- Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government services and services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- Economic development activities, including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title;
- Affordable housing pre-development costs including legal, consulting, developer, and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact;

- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under [24 CFR Part 58](#) if the approval is made by the DCA that approved the ER on the original project and re-evaluation of the environmental findings is not required under [24 CFR 58.47](#). See the section later in the chapter on re-evaluation of previously cleared projects for further guidance.

To complete environmental requirements for Categorically Excluded projects not Subject to [24 CFR 58.5](#), DCA must make a finding of Categorical Exclusion Not Subject to [24 CFR 58.5](#) for qualifying activities. This finding must be included in the ERR using the [Environmental Review for Activity/Project that is Exempt or Categorically Excluded not Subject to Section 24 CFR 58.5](#) form. DCA must also carry out any applicable requirements of 24 CFR 58.6 and document the ERR.

DCA does not have to publish or post the Notice of Intent to Request a Release of Funds (NOI/RROF) or seek HUD approval for projects that are Exempt or Categorically Excluded not Subject to Section 24 CFR 58.5.

### **Categorically Excluded Subject to 24 CFR 58.5 Activities**

The list of categorically excluded activities is found at [24 CFR 58.35](#) of the environmental regulations. While the activities listed in [§ 58.35\(a\)](#) are categorically excluded from NEPA requirements, DCA must nevertheless demonstrate compliance with the laws, authorities, and Executive Orders listed in [24 CFR 58.5](#) and [58.6](#).

The following are categorically excluded activities subject to [24 CFR 58.5](#):

- 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).
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For residential properties with one to four units:
    - The density is not increased beyond four units, and
    - The land use is not changed.
  - For multi-family residential buildings (with more than four units):
    - Unit density is not changed more than 20 percent;
    - The project does not involve changes in land use from residential to 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 including commercial, industrial and public buildings:
    - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; 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-family 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
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
- Acquisition (including leasing) or disposition of or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
- Combinations of the above activities.

To complete environmental requirements for Categorically Excluded projects subject to [24 CFR 58.5](#), the ER preparer must take the following steps:

- Determine whether or not the project is located in or will have an impact on floodplains and/or wetlands.
- Where possible, avoid floodplains and wetlands when undertaking project activities. However, when this cannot be avoided, specific review procedures contained in [24 CFR Part 55](#) (Floodplain Management and Protection of Wetlands) must be completed. Since development in these areas is clearly an environmental issue, the effects of these actions must be clearly articulated in one of the decision processes described in [24 CFR 55.12\(a\)](#) and [55.20](#), whichever process is applicable.
  - If the project is located in the floodplain or proposes construction in a wetland, the DCA must provide written documentation of the decision process in the ERR. See the section, “Projects in Floodplains and Wetlands” later in this chapter for more information.
- Complete the ER for Activity/Project that is Categorically Excluded Subject to [24 CFR 58.5](#). The checklist helps to comply with the other (non-NEPA) federal laws.
- In regard to “Historic Properties,” ER preparer must have SOI-qualified historic preservation staff evaluate the proposed scope of work and the property and send consultation packages to DCA who will send them directly to the State Historic Preservation Office (SHPO) for review. Additionally, the subrecipient should consult with local historical preservation representatives and consult with tribal entities where applicable.

### **Conversion to exempt:**

Categorically Excluded Subject to [24 CFR 58.5](#) projects can convert to exempt if there are no circumstances that require compliance with any other federal laws and authorities cited in [24 CFR 58.5](#), including any mitigation requirements. Mitigation requirements or measures are actions adopted by DCA to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the requirements in [24 CFR 58.6](#). Projects that convert to exempt will not have mitigation requirements, as qualifying for exempt status requires

that the project does not fall under any of the statutes or related authorities in [24 CFR 58.6](#). Approval to convert to exempt must come from DCA. If a project can convert to exempt, no publication or RROF is necessary.

If a project does not convert to exempt, the ER preparer will draft and coordinate publication of the NOI/RROF with DCA. The Notice, which has been updated for 2015, informs the public that DCA will accept written comments on the findings of its ERR and of DCA's intention to submit request release of funds from HUD. At least seven (7) calendar days after the date of publication must be allowed for public comment. The notice also states that DCA will receive objections for at least 15 days following publication of the RROF.

**The DCA must also send a copy of the NOI/RROF to interested parties**, local news media, appropriate local, state, and federal agencies, and the appropriate regional offices of the Environmental Protection Agency (EPA) and HUD.

If the notice is not published, it must be prominently displayed in public buildings, such as the local post office and within the project area, or in accordance with procedures established in the Citizen Participation Plan.

**NOTE: All time periods for notices 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 of the notice.**

After the seven-day comment period has ended, the DCA must prepare and submit the RROF, Environmental Certification, and attachments to the appropriate funding agencies. The Environmental Certification ensures that responsible entities are in compliance with all the ER requirements.

Upon completion of the review, subrecipients should ensure the following documents are included:

- Completed ER for Activity/Project that is Categorically Excluded Subject to [24 CFR 58.5](#) (including statutory checklist and other elements as well as supporting documentation)
- Correspondence with the SHPO (including documentation of mitigating measures, if applicable);
- Floodplain notices and documentation of alternatives considered, if applicable;
- RROF Environmental Certification, and related correspondence; and
- DCA's approval of the RROF.

### Projects in Floodplains and Wetlands (24 CFR Part 55)

Executive Orders 11988 and 11990 - Floodplain and Wetlands Management requires federal activities to avoid impacts to floodplains and to avoid direct and indirect support of floodplain development to the extent practicable. HUD's regulations in [24 CFR Part 55](#) outline procedures for complying with EO 11988. [24 CFR Part 55](#) applies to all HUD actions that could be harmed or cause harm if located in a floodplain, including but not limited to proposed acquisition, construction, demolition, improvement, disposition, and financing actions under any HUD program.

On April 23, 2024, HUD published a new Federal Flood Risk Management Standard (FFRMS) rule which modified HUD's floodplain regulations to better address flood risk. The new FFRMS rule became effective on May 24, 2024, and the compliance date for most projects is June 23, 2024.

The new FFRMS Rule:

- **Redefines the floodplain of concern:**
  - Regulates to a newly defined, expanded FFRMS floodplain instead of the 100-year floodplain to account for increased flood risk over time
  - Will increase the number of HUD actions that require compliance with [Part 55](#) regulations
- Increases the required elevation for new construction across all applicable programs and substantially improved structures (for grant programs and multifamily FHA-insured projects)
- Clarifies and strengthens public notice and flood insurance requirements to increase awareness of flood risk to renters and homeowners
- Incorporates flexibilities in allowing HUD assistance for specific properties in floodways when specific criteria are met

For more information on the new FFRMS rule please refer to the Environmental Policy Reference Guide which contains relevant resources regarding the new rule.

### ***Regulatory Floodways***

A Regulatory Floodway comprises the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. This is the segment of the floodplain that will generally carry flow of flood waters during a flood and is typically the area of greatest risk to structures in the floodplain. HUD financial assistance is prohibited in floodways unless an exception in [24 CFR 55.12\(c\)](#) applies, or the project is functionally dependent (e.g. dams, marinas, and port facilities) or a floodplain function restoration activity.

### ***8-Step or 5-Step Process***

When a project meets one or more of the following criteria, the implementation of a specific decision-making process is required for compliance with Executive Orders 11988 and 11990 and [24 CFR Part 55](#):

- Is in a FFRMS floodplain [Climate-Informed Science Approach (CISA); 0.2 Percent-Annual-Chance Floodplain/ 500-year Floodplain Approach (0.2PFA) or Freeboard Value Approach (FVA)]
- Is a "critical action" in a 500-year floodplain ([§ 55.2\(b\)\(3\)](#)). A critical action is any activity where 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 (1) produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials; (2) provide essential and irreplaceable records or utility or emergency services that may become lost or

inoperative during flood and storm events; or (3) 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., hospitals, nursing homes, etc.). For more details, refer to [24 CFR Part 55](#); or

- Proposes direct impacts to onsite wetlands.

There are two decision-making processes identified in [24 CFR Part 55](#) concerning floodplains and wetlands. They are the 8-Step Process ([24 CFR 55.20](#)) and the 5-Step Process ([24 CFR 55.14](#)). The 8-Step Process applies unless a project meets criteria for the 5-Step Process, which include:

- Disposition of multifamily and single family (1-4 unit) properties ([24 CFR 55.14\(a\)](#))
- Purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities (etc.) in communities that are in good standing with NFIP ([24 CFR 55.14\(b\)](#))
- Repair, rehabilitation, modernization, weatherization, or improvement of existing residential properties (multifamily, single family, assisted living, etc.). ([24 CFR 55.14\(c\)](#))
  - Number of units has not increased by more than 20%;
  - Does not involve conversion from non-residential to residential; and
  - Does not meet the definition of “substantial improvement” ([24 CFR 55.2\(b\)\(12\)](#))
- Repair, rehabilitation, modernization, weatherization, or improvement of nonresidential properties (i.e., public facilities, commercial/retail, and industrial) ([24 CFR 55.14 \(d\)](#))
  - Does not meet the threshold of “substantial improvement” (i.e., the cost equals or exceeds 50% of the market value before the repair is started or damage occurred; and
  - The structure footprint and paved area is not significantly increased by more than 20%.
- Repair, rehabilitation, or replacement of existing nonstructural improvements including streets, curbs, and gutters, where an increase of the total impervious surface area of the facility is de minimis. This provision does not include critical actions, levee systems, chemical storage facilities (including any tanks), wastewater facilities, or sewer lagoons. ([24 CFR 55.14\(e\)](#))

DCA must document in writing which process is applicable and each step of the applicable process.

There are also two decision-making processes identified in [24 CFR Part 55](#) concerning proposed construction in wetlands. Typically, the 8-Step or 5-Step process is required. However, there may be circumstances for which the U.S. Army Corps of Engineers (COE) has issued an Individual Permit under section 404 of the Clean Water Act.

NOTE: When a project is located in a floodplain AND also proposes direct impacts to onsite wetlands, the 8-Step decision process must be completed regardless of the issuance of a Section 404 permit ([24 CFR 55.20\(a\)](#)). Below is an overview of each of the steps in the 8-Step decision process. When the 5-Step decision process is permissible, only Steps 1, 4 through 6, and 8 are applicable. For construction in wetlands, a secondary decision-making process can

be used specifically the 3-Step decision process which is permissible due to an Individual Section 404 permit, Steps 6-8 are applicable. All steps must be documented in writing.

**Step One: Floodplain / Wetland Determination.** Determine if the project is located in the FFRMS floodplain using CISA, 0.2PFA, or FVA, or directly impacts onsite wetlands. A floodplain refers to any land area susceptible to being inundated from any source of flooding including those which can be flooded from small and often dry water course. [24 CFR Part 55](#) requires HUD and Responsible Entities to rely on floodplain maps issued by the Federal Emergency Management Agency (FEMA) to evaluate flood risks and impacts. In general, this will be the current, effective Flood Insurance Rate Map (FIRM). However, when FEMA has issued interim flood hazard data, including Advisory Base Flood Elevations (ABFE) or preliminary maps or studies, these sources must be used as the best available information.

The maps identified below are published by FEMA. Check the following maps to determine if the project is located within a floodplain:

- Flood Hazard Boundary Map; and/or
- Flood Insurance Rate Map (both can be found here: [FEMA Flood Map Service Center | Welcome!](#)).
- Additional information on Floodplain Maps for HUD Projects can be found here: [Floodplain Maps for HUD Projects - HUD Exchange](#).
- If the community has been identified as flood-prone by FEMA, a copy of the community's most recently published map (including any letters of map amendments or revisions) should be obtained. The map will identify the community's special flood hazard areas.
- If the FEMA maps are not available, a determination of whether the project is located in a floodplain may be made by consulting other sources, such as:
  - U. S. Army Corps of Engineers - Hydrology, Hydraulics, and Coastal Team;
  - Local Soil Conservation Service District;
  - Floodplain Information Reports;
  - USGS Flood-prone Area;
  - Topographic Quadrangle maps; or
  - State and local maps and records of flooding.

DCA should request developers to provide an evaluation by an engineer or hydrologist for areas that are not covered by FEMA or these other sources.

- Use floodplain maps to make this decision and record the date in the ERR

**Step Two: Early Public Review.** [24 CFR Part 55](#) includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting of the rationale for the proposed action affecting a floodplain or wetland. Involve the public in the decision-making process as follows:

- Notify the public and interested agencies of the proposal to consider an action in the floodplain. The notice must provide a complete description of the proposed action.
- Publish the notice to allow for a minimum of 15 calendar days for public comment:

- On an appropriate government website or
- In a newspaper of general circulation in the affected community
- And sent to public agencies and individuals in the action
- [24 CFR 55.20\(b\)\(1\)](#) States notices must be bilingual or multilingual, as appropriate if the affected public has Limited English Proficiency. In addition, all notices must be published in a newspaper of general circulation in the affected community or on an appropriate government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency, 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.

**Step Three: Identify and Evaluate Alternate Locations.** Determine if there is a practical alternative. This determination requires the DCA to consider whether the base floodplain and/or wetland can be avoided:

- Through alternative siting;
- Through alternative action that performs the intended function but would minimize harm to/within the floodplain; or
- By taking no action.
- Include the costs of flood insurance and potential property losses from flooding in an economic consideration of the practicability of alternatives.

**Step Four: Identify the Impacts of the Proposed Project.** Identify and evaluate any direct and indirect support of other floodplain and wetland development that might result from the project, including taking into account impacts related to future climate-related flood levels and sea level rise.

**Step Five: Identify Methods to Restore and Preserve Potential Harm to Floodplains and Wetlands Area.** If the proposed project has identifiable impacts (as identified in Step 4), the floodplains and wetlands must be restored and preserved, if applicable and relevant to projects. The proposed project should minimize the impacts identified and restore and preserve the beneficial values served by floodplains and wetlands, mitigate impacts that cannot be minimized, and elevate for all new construction and substantial improvement projects. The proposed projects must also have a plan for safety which includes:

- An early warning system for critical actions;
- An evacuation plan for multifamily properties and residential healthcare facilities and;
- Evacuation routes for all healthcare facilities

Methods to be used to perform these actions are discussed in Step 6.

**Step Six: Re-evaluate Alternatives.** At this stage, the proposed project needs to be re-evaluated, taking into account the identified impacts, the steps necessary to minimize these impacts, and the opportunities to restore and preserve floodplains and/or wetlands natural and beneficial functions and values.

- Consider whether the alternatives rejected in Step 3 are now practicable in light of information gained in Steps 4 and 5.

- If the proposed project is determined to be no longer feasible, consider limiting the project to make non-floodplain or wetland sites practicable.
- If the proposed project has impacts that cannot be minimized, the recipient should consider whether the project can be modified or relocated in order to eliminate or reduce the identified impacts or, again, take no action.
- Discuss the economic costs due to locating the project in a floodplain or wetland.
- The reevaluation should include a comparison of the relative adverse impacts of the proposed project both in and out of the floodplain. The comparison should emphasize floodplain values and a site out of the floodplain should not be chosen if the overall harm is significantly greater than that associated with the floodplain site.
- If the project is located in or impacts an Environmental Justice community, the reevaluation must address public input provided during the public outreach process and document how the activity reduces historical environmental disparities related to flood risk or wetlands impacts in the community

**Step Seven: Publish the Floodplains and Wetlands Notice of Explanation.** If the re-evaluation results in the determination that the only practicable alternative is to locate the project in the floodplain, the DCA must notify the public of the final decision. The notification must describe why the project must be located in the floodplain, indicate a list of alternatives considered, and describe all mitigation measures to be taken. The DCA must publish the final notice for 7 days:

- On an appropriate government website of record.
- In a newspaper of general circulation in the affected community.
- The Floodplains and Wetlands Final Notice of Explanation can be published simultaneously with the [24 CFR 58](#) required Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and NOI/RROF.
- Any written comments received in response to the above-required notice must be addressed and filed in the ERR.
- Document compliance use procedures for making determinations for Floodplains/Wetlands. File all documentation and responses relating to the above-described procedures in the ERR.

**Step Eight: Implement the Proposed Project.** Implement the project with appropriate mitigation.

NOTE: If directional boring or drilling beneath a wetland is anticipated, please consult with DCA prior to undertaking the Eight-Step Process. HUD issued guidance in 2011 that exempts directional boring/drilling beneath wetlands from the Eight-Step Process *provided that* certain conditions are met. The memo on directional boring can be found on HUD Exchange at [Directional Boring Beneath Wetlands and EO 11990 \(hud.gov\)](#)

As stated previously, when the 5-Step decision process is required, only Steps 1, 4 through 6, and 8 are applicable. For construction in wetlands when the 3-Step decision process is permissible due to an Individual Section 404 permit, Steps 6-8 are applicable. The flow charts to follow show the 8-Step (for floodplains and wetlands), 5-Step (for floodplains and wetlands), and 3-Step (for wetlands only) processes. All steps must be documented in writing.

## **Circumstances Requiring NEPA Review**

If DCA finds that an activity or project mentioned in the above sections on categorical exclusions (both those subject to and not subject to [24 CFR 58.5](#)) may have a significant environmental impact due to extraordinary circumstances and conditions at the project's location, it must comply with all the requirements of [24 CFR 58.35\(c\)](#).

DCA is responsible for determining that a given activity qualifies under the definitions for exclusion and/or expedited procedures. Per [24 CFR 58.2\(a\)\(3\)](#), an activity's clearance level may be elevated if it exhibits extraordinary circumstances that affect its impact on the environment.

Such circumstances are defined as actions that are

- unique and without precedent;
- are substantially similar to those which would require an EA or EIS;
- are unlikely to alter HUD policy or HUD mandates;
- or due to unusual physical conditions on the site or in the vicinity, have a potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

The ERR must contain a well-organized written record of the process and determinations made per [24 CFR 58.38](#).

## **Activities Requiring an Environmental Assessment**

Activities that are not determined to be exempt or categorically excluded will require an EA to document compliance with NEPA, HUD environmental requirements, and other federal laws.

If a project consists of several activities that by themselves would fall under various levels as outlined above, an EA must be conducted on the entire project.

The following steps must be taken to complete environmental requirements for projects requiring an EA:

- Follow the instructions for categorically excluded projects subject to [24 CFR 58.5](#) to complete the statutory checklist, including historic preservation and floodplain requirements.
- The floodplain requirements do not apply if the project is not located within a floodplain.
- Complete the Environmental Assessment form. Reliable documentation sources must be cited and incorporated into the ERR for every item on the EA checklist.
- The final step in the process involves making a determination as to whether the project will or will not have a significant impact on the environment. This can be done once the review has been completed and all comments have been addressed appropriately. One of the following two findings/determinations must be selected:
  - The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an EIS; or
  - The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an EIS. Both the finding and the EA must be signed by your environmental certifying officer and included in the ERR. No EIS Required

In most instances, the EA will result in a finding that the project is not an action that significantly affects the quality of the human environment and, therefore, does not require an EIS. If this is the case, the following must be completed:

Provide public notice called the Notice of FONSI and NOI/RROF from the appropriate funding agency.

- The FONSI and NOI/RROF may **be published in a newspaper of general circulation** in the affected community or on an appropriate Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency.” ([24 CFR 58.43\(a\)](#)) The notice must also be distributed to interested parties, local news media, appropriate local/ state/federal agencies, regional EPA, and the New Jersey HUD Office.
  - If the notice is not published, it must be prominently displayed in public buildings within the project area or in accordance with procedures established as part of the citizen participation process.

It is very important to remember this requires two separate 15-day review periods.

- A 15-day period for comment to the city/county and, after that period,
- A 15-day period for comment to the appropriate funding agency.
  - The appropriate funding agency's 15-day comment period does not commence until the date the appropriate funding agency receives the notice or the date specified in the published notice, whichever is later.
  - Call or email the appropriate funding agency to verify dates on the combined/concurrent notice before publishing.

Any written comments received in response to these notices must be addressed and filed in the ERR.

The persons who provided the comments should be added to the distribution list of interested parties.

The environmental certification, request for approval of evidentiary materials, and RROF forms must be submitted to the appropriate funding agency at least 16 days after publishing the combined/concurrent notice.

## Environmental Impact Statement

An EIS is required when a project is determined to have a potentially significant impact on the environment. **Consult with DCA if an EIS is anticipated.**

## Re-Evaluation of Previously Cleared Projects

Sometimes, projects are revised, delayed, or otherwise changed such that a re-evaluation of the ER is necessary. The purpose of DCA's re-evaluation is to determine if the original findings are still valid. If the original findings are still valid, but the data and conditions upon which they were based have changed, the DCA must amend the original findings and update its ERR by including this re-evaluation and its determination based on its findings. The subrecipient should closely coordinate with DCA in the event that specified changes occur/trigger a reevaluation of ER.

It must document the following:

- Reference to the previous ERR,
- Description of both old and new project activities and maps delineating both old and new project areas,
- Determination if FONSI is still valid, and
- Signature of the certifying officer and date.
- Place the written statement in the ERR and send a copy to the appropriate funding agency with the RROF.

If it is determined that the original findings are no longer valid, the project must either be rejected or a new EA or EIS must be prepared if the reevaluation indicates potentially significant impacts.

### **Environmental Reviews Prepared by or for Other Federal Agencies**

For CDBG-DR projects DCA can adopt another federal agency's review where the HUD assistance supplements the other agencies' project. This can be done without a review or public comment, for any ER, approval, or permit performed by a federal agency.

The other agencies must cover all project activities funded by the HUD recipient for each project. The subrecipient is only required to supplement the other agency's ER to comply with HUD regulations (e.g., publication or posting requirements for FONSI, NOI/RROF, concurrent or combined notices, or HUD approval period for objections) if the activity is modified so the other agency's environmental review no longer covers the activity.

The recipient's ER obligations are considered complete when adopting another agency's ER. To be adequate:

1. DCA must obtain a completed electronic or paper copy of the federal agency's review and retain a copy in its environmental records.
2. DCA must notify HUD on RROF Form 7015.15 (or the state, if the state is acting as HUD under [24 CFR 58.18](#)) that another agency review is being used. The subrecipient must include the name of the other federal agency, the name of the project, and the date of the project's review as prepared by the other federal agency.

Under this process, the state may, upon receipt of an RROF and Certification, immediately approve the RROF for an activity or project assisted with CDBG-DR funds if the recipient has adopted an ER, approval, or permit under this section, or if the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA).

## Reference of Categorically Excluded Activities Based on Materials

Categorically Excluded Subject to 24 CFR 58.5 Activities	
<b>Asbestos</b>	<p>Asbestos is a mineral fiber that was commonly added to products to strengthen them and to provide heat insulation and fire resistance. Asbestos is commonly found in older homes where it was used for pipe and furnace insulation, in asbestos shingles, millboard and transite siding, floor tiles, and a variety of other coating materials. The only way to determine if a material contains asbestos (containing more than 1% asbestos by volume) is through Polarized Light Microscopy.</p> <p>The handling of asbestos-containing materials is regulated by the EPA under the National Emissions Standards for Hazardous Air Pollutants (NESHAP), <a href="#">40 CFR Part 61</a>, and the Occupational Safety and Health Administration (OSHA) under regulation delineated in <a href="#">29 CFR 1926.1101</a>.</p> <p>All construction, demolition, and rehabilitation that is done in whole or in part with CDBG-DR funds must comply with state and federal asbestos removal requirements. It is the responsibility of the subrecipient, developers, owners, and contractors to know and comply with local, state, and federal construction standards.</p> <p>*Note: Universally asbestos is considered to be a hazardous material even if it is not explicitly listed in <a href="#">24 CFR 58.5</a>.</p>
<b>Radon</b>	<p>Radon is a radioactive gas that cannot be seen, smelled, or tasted. Radon gas is a natural substance that can be found in the dirt and rocks beneath houses, in well water, and in some building materials. It can enter homes through soil, crawlspaces, foundation cracks, floors, and walls. Once inside, it can sometimes become trapped in your home. All homes have some radon gas. Breathing high levels of radon can put you at risk for lung cancer. Radon is measured in picoCuries per liter of air (pCi/L). Radon levels inside houses below 4 pCi/L are considered acceptable.</p> <p>The EPA recommends mitigation for residences with radon concentrations at or above 4.0 picocuries per liter of air (pCi/L) 2. The best way to mitigate radon is to prevent it from entering a building in the first place. Radon generally poses the greatest risk to occupants living at or below ground level. Occupants on the lower levels of structures are at risk of excess exposure if radon levels are elevated and these structures are not appropriately mitigated, or if they occupy new construction in areas with high radon that is not built using radon-resistant construction methods.</p> <p>Further information on mitigation strategies and maps of radon zones around the country can be found at <a href="#">Radon   US EPA</a>.</p>

<p><b>Lead</b></p>	<p>Lead is a naturally occurring element which can be found in all parts of our environment. Lead was present in paint in homes constructed prior to 1978. Lead poses a particular hazard to children under the age of six. Repeated lead exposure can lead to brain and nervous system disorders. Elevated blood lead levels in pregnant women can also result in exposure to the developing baby.</p> <p>Whenever federal funds, such as CDBG-DR, are used to assist housing built before 1978, steps must be taken to address lead hazards. HUD's Lead Safe Housing Rule (<a href="#">24 CFR Part 35</a>) applies to all housing units assisted with CDBG-DR funds, including single and multi-family units, whether publicly or privately owned. These requirements differ, however depending on the activity-rehabilitation or acquisition. The lead-based paint regulations consolidate all lead-based paint requirements for HUD-assisted housing.</p> <p>The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead. The regulation is divided into subparts:</p> <ul style="list-style-type: none"> <li>• Subpart A: Disclosure</li> <li>• Subpart B: General Requirements and Definitions;</li> <li>• Subpart J: Rehabilitation;</li> <li>• Subpart K: Acquisition, Leasing, Support Services, and Operations; and</li> <li>• Subpart R: Methods and Standards for Lead-based Paint Hazard Evaluation and Reduction.</li> </ul> <p>There are exemptions to the Lead Safe Housing Rule which include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Housing units constructed after 1978;</li> <li>• Emergency repairs to safeguard against imminent danger to human life, health, or safety. This exemption applies only to repairs necessary to respond to the emergency;</li> <li>• Property will not be used for human residential habitation;</li> <li>• Property has achieved clearance;</li> <li>• Property has no bedrooms;</li> <li>• Property is vacant and will remain vacant until demolition.</li> </ul> <p>EPA lead regulations are found under <a href="#">40 CFR Part 745</a> and include:</p> <ul style="list-style-type: none"> <li>• Subpart F: Lead Disclosure rule;</li> <li>• Subparts D, L, Q: Lead-Based Paint Activities Rule;</li> <li>• and Subparts E and Q: Renovation, Repair, and Painting (RRP) Rule.</li> </ul> <p>EPA's Renovation Repair and Painting Rule was issued on April 22, 2008, and describes steps required for lead-safe practices and other actions aimed at preventing lead poisoning. Under this rule, all contractors performing renovation, repair, and painting projects that disturb lead-based paint must be certified and must follow specific work practices in order to prevent lead contamination.</p>
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