

ReOregon

Subrecipient Manual

Version 1



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3 Environmental Review

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3 Environmental Review

3.1 Introduction

The purpose of the environmental review process is to analyze the effect a Community Development Block Grant Disaster Recovery (CDBG-DR) funded project may have on the people in and the natural environmental features of a project area.

This chapter will cover the environmental regulations and requirements that must be followed on all CDBG-DR funded projects. A basic overview and instructions are provided.

OHCS will be responsible for conducting the environmental reviews for each project. Subrecipients will provide the project work descriptions and other information as requested to OHCS's contractor in order for the environmental review of the project to be completed.

If subrecipients would like to undertake the environmental review themselves, they will provide advance notice to OHCS. In those cases, OHCS and their contractor will assist the subrecipients to make sure they understand requirements and conduct the environmental review process correctly.

Once a subrecipient or a project partner applies for CDBG-DR funds to the selection committee the project is considered federalized and must refrain from starting or continuing work ("stop work") on the project until the subrecipient receives environmental clearance from OHCS. (Note: not all activities are prohibited, but any "choice limiting" decisions taken after a stop work notice is provided would endanger federal funding for the project.)

Please see a diagram of the environmental review process on the last page of this document.

3.2 Basic Federal Requirement

The policies of the National Environmental Policy Act of 1969 (NEPA) are implemented in connection with the expenditure of funds under the Housing and Community Development Act, including any CDBG-DR funds. Implementing regulations issued pursuant to section 104(g) of the Housing and Community Development Act are contained in 24 CFR part 58.

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

- Avoiding or mitigating environmental effects that may cause harm to humans
- Avoiding or mitigating any harm to the surrounding environment
- Reducing the chances of legal action halting projects on environmental grounds
- Securing the value of public investment.

3.3 Responsible Entity (RE)

HUD uses the term the RE to describe the entity that is responsible for conducting and certifying the environmental review. OHCS is the RE and will conduct the environmental review, certify the results of the review, and submit the Request for Release of Funds form to HUD. Once HUD sends the Authority to Use Grant Funds (AUGF) form to OHCS, OHCS will inform subrecipients that the project can begin. (In some cases, projects with no foreseeable environmental effects may be classified as exempt. In such cases, OHCS will provide evidence to the subrecipient that the project has been found to be exempt.)

3.4 Commencing Work Prior to OHCS Environmental Clearance

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

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

According to the NEPA (40 CFR 1500-1508) and 24 CFR 58.22, the RE, subrecipient, and project partners are required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and an Authority to Use Grant funds has been issued by HUD.

The RE, subrecipient, and project partners may not spend either public or private (non-federal or other federal funds) or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until the environmental clearance has been achieved.

The RE, subrecipient, and project partners must avoid any and all actions that would preclude the selection of alternative choices before environmental clearance is provided. The purpose is to ensure that such decisions are based upon an understanding of the environmental consequences and the identification of any required project actions to avoid, minimize, or mitigate such impacts.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the RE's or other project participant's own funds, prior to obtaining environmental clearance.

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

- Execution of legally binding agreement
- Expenditure of CDBG-DR funds
- Use of CDBG-DR or non-CDBG-DR funds on actions that would have an adverse impact (e.g., demolition, dredging, filling, excavating, ground disturbing activities)
- Use of CDBG-DR or non-CDBG-DR funds on actions that would be "choice limiting" (e.g., bidding the project, acquisition of real property, leasing property, rehabilitation, demolition, construction of buildings or structures, relocating buildings or structures, conversion of land or buildings/structures)

3.5 The Environmental Review Record (ERR)

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

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

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

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

3.6 Applicability of Environmental Review Procedures

HUD environmental review procedures and requirements apply to all activities related to a project funded with CDBG-DR funding, including those activities that are paid for entirely with local or other funds.

3.7 Levels of Environmental Review

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

- Exempt — 24 CFR 58.34(a)
- Categorical exclusions not subject to 24 CFR 58.5 — 24 CFR 58.35(b) (CENST)
- Categorical exclusions subject to 24 CFR 58.5 — 24 CFR 58.35(a) (CEST)
- Environmental Assessment (Finding of No Significant Impact) — 24 CFR 58.36 (EA/FONSI)
- Environmental Impact Statement (Finding of Significant Impact) — 24 CFR 58.37 (EIS)

3.7.1 Related Federal laws and authorities (24 CFR 58.5)

A main component of the environmental review process is to determine if the project must comply with the Related Federal laws and authorities. The RE must consider the criteria, standards, policies, and regulations of these laws and authorities. The Related Federal laws and authorities are listed in 24 CFR 58.6 of the regulation:

Historic properties

- 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](#))

- 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)
- Federal historic preservation regulations as follows:
 - [36 CFR part 800](#) with respect to HUD programs other than Urban Development Action Grants (UDAG)
 - [36 CFR part 801](#), but only as it relates to UDAG
- 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](#))

Floodplain management and wetland protection

- 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.)
- Executive Order 11990, Protection of Wetlands, May 24, 1977 ([42 FR 26961](#)), [3 CFR](#), 1977 Comp., p. 121, as interpreted in HUD regulations at [24 CFR part 55](#), particularly sections 2 and 5 of the order

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 [\(d\)](#)).

Sole source aquifers

- 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\(e\)](#))
- Sole Source Aquifers (Environmental Protection Agency — [40 CFR part 149](#))

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](#)).

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 [\(c\)](#))

Air quality

- 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 [\(d\)](#))
- Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency — [40 CFR parts 6, 51, and 93](#))

Farmlands protection

- 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](#))
- Farmland Protection Policy (Department of Agriculture — [7 CFR part 658](#))

HUD environmental standards

- Applicable criteria and standards specified in [part 51 of this title](#), other than the runway clear zone notification requirement in [§ 51.303\(a\)\(3\)](#).
- 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.
- 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.
- 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 waste.
- The RE shall use current techniques by qualified professionals to undertake investigations determined necessary.

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

3.7.2 Other Requirements (24 CFR 58.6)

The RE remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless the level of review. The RE must comply with the following requirements.

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 FEMA as having special flood hazards, unless:
 - 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 1 year has passed since the FEMA notification regarding such hazards.
 - 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 RE is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.
3. Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.
4. 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:
 - The person had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance.
 - The person failed to obtain and maintain flood insurance.
5. 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.

6. 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 RE 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.

3.7.3 Environmental Assessment Process (24 CFR 58.40)

If the project is does not meet the requirements to be classified as exempt, categorically excluded subject to (CEST) or not subject to (CENST), then an Environmental Assessment (EA) must be performed, the RE must:

1. Determine existing conditions and describe the character, features, and resources of the project area and its surroundings and identify the trends that are likely to continue in the absence of the project.
2. Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
3. Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in § 58.5 and § 58.6.
4. Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.
5. Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.
6. Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§ 58.5 and 58.6.

3.8 Levels of Environmental Review: Definition and Process

3.8.1 Exempt Activities

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

- Environmental studies, plans, and strategies
- Information and financial services
- Administrative and management expenses, including subgranting funds
- Public services without any physical changes
- Inspections and testing of properties for hazards or defects
 - Purchase of insurance
 - Purchase of tools
- Engineering or design costs
- Technical assistance and training
- Payment of principal and interest on HUD loans

Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair, or arrest the effects of disasters or imminent threats to public safety, including those resulting from physical deterioration.

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description and request additional information as needed.
- OHCS will request additional project information to assist in complying with the required certifications of the other requirements as listed in 24 CFR 58.6.
- OHCS will complete the registration and recordation of the exempt finding in HEROS.
- Subrecipient will receive a notification from OHCS that the project is exempt and document the results of the 24 CFR 58.6 other requirements evaluation.
- Project can begin.

3.8.2 Categorically Excluded Activities Not Subject to §58.5

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

Activities determined to be Categorically Excluded under §58.35(b) require compliance with regulations at §58.6 only and are considered Exempt from NEPA and other related laws. Refer to Exhibit 3E for the Determination of Categorical Exclusion (not subject to 58.5) checklist. Such activities include:

- Tenant-based rental assistance
- Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government benefits and services
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs
- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations (For Economic Development Revolving Loan Fund projects, please see Chapter 4 for more guidance.)
- Activities that assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buy-downs, and similar activities that result in the transfer of title
- Affordable housing pre-development costs including legal, consulting, developer, and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under §58.5(b) of this part, if the approval is made by the same RE that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description and request additional information as needed.
- OHCS will request additional project information to assist in complying with the required certifications of the other requirements as listed in 24 CFR 58.6.
- OHCS will complete the registration and recordation of the exempt finding in the HUD Environmental Review Online System (HEROS).
- Notification from OHCS that the project is Categorical Exclusions Not Subject to §58.5 and document the results of the 24 CFR 58.6 other requirements evaluation.
- Project can begin.

3.8.3 Categorical Exclusions Subject to §58.5

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

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities are in place and will be retained for the same use without change in size or capacity of more than 20% (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets)
- Special projects for the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities
- Rehabilitation of buildings and improvements when the following conditions are met:
 - Multifamily residential buildings: (a) unit density is not changed more than 20%, (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% of the total estimated cost of replacement after rehabilitation

- 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% and (b) the activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another
- An individual action on one-to-four family dwelling units or an individual action on a project of five or more units on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site
- Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use
- Combinations of the above activities

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description and request additional project description information as needed.
- Subrecipient will receive a notification from OHCS that the project is Categorically Excluded Activities Subject to §58.5.
- OHCS will request additional project information to assist in complying with the required certifications of the related laws and authorities as listed in 24 CFR 58.6.
- OHCS will complete its review, enter the project into HEROS, and publish the Notice of Intent to Request Release of Funds from HUD. The public will have 7 days to comment to OHCS.
- After public comment has been completed, OHCS will submit to HUD the Request Release of Funds. The public will have 15 days to comment to HUD.
- After the public comment has ended and if there is no follow-up action needed, HUD will send to OHCS the Authority to Use Grant funds form.
- OHCS will notify subrecipient that the project can begin.

3.8.4 Environmental Assessment (EA)

An EA must be prepared for projects with activities that are neither Exempt nor Categorically Excluded (unless the RE immediately identifies an EIS is required). The EA is the basis for a determination by the RE that the proposed project is or is not a “major federal action which will significantly affect the quality of the human environment.” This is called a “level of clearance” finding.

The EA includes both a review of the related laws and authorities as listed in 24 CFR 58.5, the other requirements as listed in 58.6, and preparing the EA as listed in 58.40. The assessment also includes examining and recommending feasible ways to eliminate or minimize adverse environmental impacts and examining alternatives to the project itself, if appropriate. The EA will result in either a FONSI or a Finding of Significant Impact. If the EA results in a Finding of Significant Impact, the RE must proceed with an EIS.

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description and request additional project description information as needed. For construction projects, 30% design plans may be requested.
- Subrecipient will receive a notification from OHCS that the project needs an Environmental Assessment.
- OHCS will complete the registration and recordation of the exempt finding in HEROS for the design component of the project. OHCS will request additional project information to assist in complying with the certifications of the related laws and authorities as listed in 24 CFR 58.5, the other requirements as listed in 58.6, and preparing the Environmental Assessment as listed in 58.40.
- OHCS will complete its review, enter the project into HEROS and publish the Finding of No Significant Impact/Notice of Intent to Request Release of Funds from HUD. The public will have 15 days to comment to OHCS.
- After public comment has been completed, OHCS will submit to HUD the Finding of No Significant Impact/Request for Release of Funds. HUD will hold a 15-day public objection period.
- After the public comment has ended and if there is no follow-up action needed, HUD will send to OHCS the Authority to Use Grant funds form.
- OHCS will notify subrecipient that the project can begin.

3.8.5 Environmental Impact Statement (EIS)

An EIS is required when the project is determined to have a potentially significant impact on the human environment. It is not anticipated that any CDBG-DR projects will reach this level of review. Any required EIS would begin with a scoping exercise to identify the essential components of that individual EIS.

3.9 Sample Project Information Requested

Once OHCS completes their determination for the level of review required, they will provide a checklist to the subrecipient for additional project information to assist with the preparation and completion of the ERR. Information to be requested may include the following, in addition to other needs identified by OHCS:

Description of the Proposed Project [24 CFR 50.12 and 58.32; 40 CFR 1508.25]: A project description to include any land ownership transfers/purchases, land-use changes, address, assessor parcel number(s), as well as a description of any planned excavation, construction and demolition activities; existing and proposed use(s); site development features such as setbacks, height and general design, number of parking spaces; project sustainability features; and planned best management practices for construction and/or operations.

Construction details should include period of construction, types of activity involved, as well as foundation type, excavation depth, and cut/fills estimates. Depending on noise and air quality conditions identified during review, there may be additional construction details requested, such as construction haul truck trips. A proposed development site plan may also be requested.

Statement of Purpose and Need for the Proposal [40 CFR 1508.9(b)]: Basic statement of the purpose and need of the project, which may require follow-up.

Existing Conditions and Trends [24 CFR 58.40(a)]: Summary of existing uses on site including building age and utility connections (e.g., septic vs. sewer, etc.), current occupancy status, and any completed reports (e.g., geotechnical, arborist).

Funding Information [24 CFR 58.32(d)]: Grant number, HUD program title, and funding amount. Estimated total HUD funded amount, as well as total project cost (HUD and non-HUD funds).

Clean Air: If the project is located in an air basin/district that is in marginal or non-attainment for criteria pollutants additional construction details may be requested.

Contamination and Toxic Substances [24 CFR Part 50.3(i) and 58.5(i)(2)]: Dependent on the nature of the proposed project, including site acquisition, a Phase 1 Environmental Site Assessment may be needed.

Explosive and Flammable Hazards [24 CFR Part 51 Subpart C]: If the project involves new above ground storage tanks (e.g., fuel oil, gasoline, propane), additional details may be requested.

Noise: If an existing exterior level of above 65 to 75 decibel (dBA) day-night average sound level is identified for residential projects, sound attenuation measures in design of the building(s) are required and additional information may be requested to assure a maximum interior level of 45 dBA.

3.10 Starting the Project

Once the RE has received the notice to proceed from OHCS, they may begin implementation of the project and may incur expenses.

In cases in which OHCS has given notice that a project can proceed, but subsequently learns that the subrecipient or project partner violated 58.22 or otherwise failed to comply with the applicable environmental authority, OHCS is required to impose appropriate remedies and sanctions in accord with the law and regulations for the CDBG-DR program, under which the violation was found, in accordance with 58.72(c).

3.11 Compliance Monitoring

Each CDBG-DR subrecipient will be monitored to determine if project information requested was accurately given to OHCS to prepare the ERR. The monitoring will involve a review of the documentation provided as well as an on-site monitoring.

Environmental Review Process (To Be Conducted by Responsible Entity)

