Chapter 2: Environmental Review

Introduction

All Small Cities grantees are required to comply with federal environment laws and regulations. These laws and regulations are contained in the National Environmental Policy Act (NEPA) of 1969 and 24 CFR Part 58 (rev. October 29, 2003). The executed grant agreement requires an environmental review to be completed prior to the obligation, expenditure, or draw down of program funds. The environmental review, and applicable public notification, becomes part of a written environmental review record (ERR) to be maintained by grantees. This record documents that CDBG funded and related activities are in compliance with NEPA, and other applicable federal laws, regulations, and executive orders. The goal of these federal laws is to ensure that federally assisted projects are compatible with environmental conditions, that projects do not adversely impact environmental conditions, and that the users of the project will be given a safe, healthy, and enjoyable environment.

In basic terms, grantees are required to determine the impact of the project on the environment as well as the impact of the environment on the project. A number of environmental review procedures and checklists have been developed to assist grantees in meeting this objective.

Section 2.1 Roles and Responsibilities

Grantee Responsibilities

- Develop Environmental Review Record
- Determine project scope
- Determine if project is exempt, categorically excluded or whether an environmental assessment or environmental impact statement is needed
- Publish findings in newspaper
- Hold public comment period
- Request release of funds (RROF)

State's Responsibilities

- Receive RROF
- Review for compliance with 24 CFR PT 58
- Hold for public comment period
- Release Funds as required
- Monitor ERR

Flow Chart

Enclosed is a flow chart (Attachment 2-1) to assist Grantees in determining project status, what documents to submit and how far their environmental analysis should proceed. This document should help determine the level of review, the notification requirements for different projects and the files required to document your decisions.

Attachment 2-1: ER Flowchart

Applicable Regulations

The HUD rules and regulations that govern the environmental review process can be found at 24 CFR Part 58. The provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508, and a myriad of other state and federal laws and regulations (some of which are enforced by state agencies) also may apply depending upon the type of project and the level of review required. These laws and authorities are referenced in the HUD and NEPA regulations and are listed in several of the chapter attachments.

The Responsible Entity

Under 24 CFR Part 58, the term "responsible entity" (RE) means the grantee under the state CDBG Program. Therefore, these terms are used interchangeably with grantee throughout this chapter and the attachments. (The term "funding agency" is used in place of DOH, but can be interpreted to include any agency that provides funds to a project and has environmental oversight responsibilities.) The responsible entity must complete the environmental review process. Environmental review responsibilities have both legal and financial ramifications. As part of the assurances and agreements signed by the responsible entity, the Chief Executive Officer (CEO) of the responsible entity agrees to assume the role of "responsible federal official" under the provisions of the National Environmental Policy Act (NEPA). This means that if someone brings suit against the responsible entity in federal court on environmental grounds, the CEO will be named as the defendant. There may be financial implications associated with any lawsuit and, of course, any fines, judgments or settlements that may result. The State of Connecticut accepts no responsibility or liability for the quality or accuracy of the local environmental review process. DOH's responsibility is to inform the grantee of the proper procedural requirements of various environmental statutes, regulations, and executive orders and review that process.

Environmental Certifying Officer

Under Part 58, the local chief elected, or appointed official must assume the role of the Environmental Certifying Officer (ECO) or formally designate another person to do so. If the CEO does designate a staff person to serve as the ECO, this designation must be made by ordinance or resolution and placed in the Environmental Review Record. The ECO accepts full responsibility for the completeness and accuracy of the review and compliance with applicable laws and regulations. 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. The responsibilities of the ECO include making findings and signing required certifications.

Other key points regarding the ECO designation include:

- The ECO must be a line officer of the responsible entity who is authorized to make decisions on behalf of the grantee.
- This person does not need to be a technical expert but should be credible if it becomes necessary to defend whether or not the required procedures were followed and completed. Further, that resolution and/or mitigation of adverse effect, if any, are incorporated into and accounted for in the project implementation.
- The ECO is not necessarily the one who conducts the review and completes the applicable documentation in the ERR. That responsibility is frequently given to a staff person or consultant that is hired by the grantee.

Section 2.2 Triggers & Advice to Start Environmental Review

Actions Triggering Environmental Review and Limitations Pending Clearance

All HUD-assisted activities must have some level of environmental compliance review completed for them. Compliance with the Part 58 requirements is initiated with the acceptance of applications from applicants for CDBG funds to the state.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the grantee or other project participant's own funds, prior to obtaining environmental clearance. If prohibited activities are undertaken after submission of an application but prior to receiving approval from the state, the applicant is at risk for the denial of CDBG assistance. The reason is that these actions interfere with the grantee's and the state's ability to comply with NEPA and Part 58. If prohibited actions are taken prior to environmental clearance, then environmental impacts may have occurred in violation of the federal laws and authorities and the standard review procedures that ensure compliance.

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58. For example, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards) or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions. Environmental compliance reviews for these activities may be completed early on, and even prior to the grantee's execution of a grant agreement with the state.

Limitations Pending Environmental Clearance

40 CFR 1500-1508

24 CFR Part 58

According to the NEPA and Part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and, if required, the grantee receives a release of funds from the state. This means that the grantee may not spend either public or private funds (CDBG, other federal or non-federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. In other words, grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made, that decision being based upon an understanding of the

environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social, and economic environment).

DOH considers once a project is publicly announced and federal funds will be sought (date the public hearing for the application is advertised), your project is subject to NEPA/CEPA.

HUD issued a policy in April of 2011 that states that a grantee (or other project participants) cannot go to bid on activities that would be choice limiting (e.g., construction, demolition) until an environmental review 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 environmental review. To comply with this policy, grantees must have a signed environmental clearance from DOH prior to bid advertisement.

Moreover, until the grantee has completed the environmental review process (and received a release of funds), these same restrictions apply to project participants as well. It is the responsibility of the grantee to ensure project participants are apprised of these restrictions.

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

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Expenditure of CDBG funds (e.g., hiring a consultant to prepare a preliminary design and engineering specifications or a Phase I Environmental Site Assessment);
- Use of any non-CDBG funds on actions that would have an adverse impact—e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be "choice limiting"—e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

It is acceptable for grantees to execute non-legally binding agreements prior to completion of the environmental review process and receiving DOH approval. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim to any amount of CDBG funds to be used for the specific project or site until the environmental review 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 grantee on the desirability of the property for the project as a result of the completion of the environmental review in accordance with Part 58; and
- The cost of the option is a nominal portion of the purchase price.

In a memo issued by HUD on August 26, 2011, the use of conditional contracts in acquisitions of existing single family and multifamily properties that involve the use of CDBG funds was clarified. A conditional contract for the purchase of property is a legal agreement between the potential buyer of a real estate property and the owner of the property. The conditional contract

HUD Memo: Conditional Contracts and Environmental Review

includes conditions that must be met for the obligation to purchase to become binding. Conditional contracts can be used in more limited circumstances than option contracts. As already mentioned, conditional contracts are allowed only for residential property acquisition.

Secondly, for single family properties (one to four units), the purchase contract must include the appropriate language for a conditional contract; and

- No transfer of title to the purchaser or removal of the environmental conditions in the purchase contract occurs unless and until the grantee determines, on the basis of the environmental review, that the transfer to the buyer should go forward and the grantee has received release of funds and environmental clearance; and
- The deposit must be refundable or, if a deposit is non-refundable, it must be in an amount of $1,000 or less.

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 grantee determines, on the basis of the environmental review, that the transfer to the buyer should go forward and the grantee 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.

Section 2.3 Classifying Activities and Conducting the Review

To begin the environmental review process, the responsible entity 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 program:

- Exempt activities;
- Categorically excluded activities not subject to Part 58.5;
- Categorically excluded activities subject to Part 58.5;
- Activities requiring an environment assessment (EA); or
- Activities requiring an environmental impact statement (EIS).

HUD Level of Environmental Review and Documentation Chart

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 Part 58.32 require the responsible entity to "…group together and evaluate as a single project all individual activities which are related geographically or functionally," whether or not HUD- assistance will be used to fund all the project

activities or just some of the project activities. Once this has been done, the responsible entity must decide if the project is exempt, categorically excluded, or the project requires an environmental assessment or an environmental impact statement. The level of environmental review will be dictated by whichever project activity that requires the higher level of review. For example, if one activity in a project requires an environmental assessment then the entire project must be assessed at this level of review.

2.3.1. Exempt Activities

Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. Listed below are examples which may be exempt from environmental review. For complete details refer to the environmental regulations at 24 CFR Part 58.34(a)(1) through (12).

- Environmental and other studies;
- Information and financial services;
- Administrative and management activities;
- Engineering and design costs;
- Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters, or imminent threats to public safety, or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training;
- Payment of principal and interest on loans made or guaranteed by HUD; and
- Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other federal laws and authorities listed at Part 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to Part 58.5.

If a project is determined to be exempt, the responsible entity is required to document in writing that the project is exempt and meets the conditions for exemption. The responsible entity must complete both Appendix 2-2: "Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5," **and** Appendix 2-18: Exempt Activity Determination Checklist. The forms must be signed by the certifying official, and copies sent to DOH for review.

Attachment 2-2: Environmental Review for Exempt/CENST Activity

Attachment 2-18: Exempt Activity Determination Checklist

The RE does not have to publish or post the Notice of Intent to Request Release of Funds (NOI/RROF) or execute the environmental certification.

2.3.2. Categorically Excluded Not Subject to Part 58.5 Activities

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

24 CFR 58.35(b)

- Tenant based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, 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 such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs with NO physical impact such as 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 to a project previously approved under Part 58, if the approval was made by the same RE that conducted the environmental review on the original project AND re-evaluation of the findings is not required under Part 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 Part 58.5, the responsible entity must make a finding of Categorical Exclusion Not Subject to 58.5 for activities that qualify under that category using Attachment 2-19. The responsible entity must complete **both** Appendix 2-2: Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 and Appendix 2-19: CENST Activity Determination Checklist. The forms must be signed by the certifying official, and copies sent to DOH for review.

Attachment 2-2: Environmental Review for Exempt/CENST Activity

Attachment 2-19: CENST Activity Determination Checklist

Finally, the RE must submit the completed Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 form (Attachment 2-2) to DOH.

The RE does not have to publish or post the Notice of Intent to Request Release of Funds (NOI/RROF) or execute the environmental certification.

2.3.3. Categorically Excluded Subject to Part 58.5 Activities

The list of categorically excluded activities is found at 24 CFR Part 58.35 of the environmental regulations. While the activities listed in 58.35(a) are categorically excluded from National Environmental Protection Act (NEPA) requirements, the grantee must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in 58.5.

24 CFR 58.35(a)

The following are categorically excluded activities subject to 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.
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
    1. For residential properties with one to four units:
        - The density is not increased beyond four units, and
        - The land use is not changed.
    2. 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 replacement cost after rehabilitation.
    3. 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, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- An individual action on up to four-family dwelling 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;
- 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 Part 58.5, the responsible entity must take the following steps:

1. Determine whether or not the project is located in or will have an impact on floodplains and/or wetlands.

   - It is highly desirable to 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 Wetlands Protection) 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 §§ 55.12(a)(3) and 55.20, whichever process is applicable.

   - If the project is located in the floodplain or proposes construction in a wetland, the RE 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.

2. Complete the Environmental Review for Activity/Project that is Categorically Excluded Subject (CEST) to Section 58.5 (NOTE Attachment 2-3 is a new HUD-prescribed form that includes the statutory checklist). The checklist helps to comply with the other (non-NEPA) federal laws.

   Attachment 2-3: Environmental Review for CEST

   - Send a letter describing the activities and the reviewer's determination if the activity (or activities) have an effect on historic preservation or not, to the State Historic Preservation Office (SHPO) allowing 30 days for comments. Respond to these comments as required and file all correspondence and evidence of response in your ERR. Be sure reliable sources are cited on each line of the checklist. All historic property reviews must be done prior to the responsible entity making a final determination of environmental status.

   - Consultation with tribal entities is also required. Refer to HUD Notice 12-006, Attachment 2-4, for more guidance.

   Attachment 2-4: Sample Tribal Consultation Letter

   CPD Notice 12-006

   - If a Phase I ESA was completed more than 365 days prior to completion of the HUD environmental review record, the ESA must be updated.

3. For those projects that cannot convert to exempt, publish and distribute the Notice of Intent to Request a Release of Funds (NOI/RROF). The Notice informs the public that the grantee will accept written comments on the findings of its ERR and of the grantee's intention to request release of funds from the state. At least seven (7) calendar days after the date of publication must be allowed for public comment. The notice also says that DOH will receive objections for at least 15 days following receipt of the grantee's request for release of funds (Attachment 2-5).

   Attachment 2-5: Notice of Intent to Request Release of Funds

4. The NOI/RROF must be published in a daily newspaper of general circulation (see Chapter 1, Attachment 1-6). The grantee must obtain a "publishers' affidavit" from the newspaper evidencing that the notice was published and on what date.

   Attachment 1-6: Newspaper List

5. The grantee must also send a copy of the notice (NOI/RROF) to interested parties (i.e., persons and entities that have commented on the environmental process or that have requested to be notified of environmental activities), local news media, appropriate local, state, and federal agencies, the regional Environmental Protection Agency (EPA) and the regional HUD Field Office.

6. The grantee ***may*** also post the notice in prominent public locations (e.g., library, courthouse, etc.); however, publication is still required.

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.

7. After the seven-day comment period has elapsed, the responsible entity must prepare and submit the actual Certification of Categorical Exclusion (Attachment 2-3); a Publishers Affidavit of the Notice of Intent to Request Release of Funds (NOI/RROF), and the Request for Release of Funds (Attachment 2-6) to DOH.

Attachment 2-6: Request for Release of Funds

2.3.4. Considering Radon in the Environmental Review

It is HUD's 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.

HUD CPD Notice CPD-23-103

24 CFR Part 58.5(i)

As radon is a radioactive substance, the grantee must consider it as part of the site contamination analysis for projects that:

- Require an environmental review at the level of Categorically Excluded Subject to 50.4 or 58.5 ("CEST"), Environmental Assessment, or Environmental Impact Statement; and
- Involve structures that are occupied or are intended to be occupied at least four (4) hours a day.

NOTE: HUD's contamination policy does not apply to projects that are Exempt or Categorically Excluded Not Subject to 50.4 or 58.5 ("CENST").

Exemptions from having to consider radon in the contamination analysis:

- Buildings with no enclosed areas having ground contact.
    - Buildings containing crawlspaces, utility tunnels, or parking garages would not be exempt, however buildings built on piers would be exempt, provided that there is open air between the lowest floor of the building and the ground.
- Buildings that are not residential and will not be occupied for more than 4 hours per day.
- Buildings with existing radon mitigation systems - document radon levels are below 4 pCi/L with test results dated within two years of submitting the application to DOH and document the system includes an ongoing maintenance plan that includes periodic testing to ensure the system continues to meet the current EPA recommended levels.

- Buildings tested within five years of the submission of application to DOH: test results document indoor radon levels are below current the EPA's recommended action levels of 4.0 pCi/L. For buildings with test data older than five years, any new environmental review must include a consideration of radon using one of the methods below.

How to consider Radon in the Environmental Review

This section details how environmental review preparers may consider radon in the environmental review. This section provides a recommended "best practice" method; however, preparers may utilize one of the alternate options if they choose not to implement the best practice.

Recommended Best Practice

ANSI/AARST Radon Testing Standards

When considering radon in the contamination analysis, HUD strongly recommends using the American National Standards Institute/American Association of Radon Scientists and Technologists (ANSI/AARST) radon testing standards for single- and multi- family buildings, schools, and large buildings, including those constructed using radon-resistant construction techniques. The ANSI/AARST standard describes how to conduct testing, interpret test results, and draft a Radon Test Report to document the process for the building owner (and to use as documentation for the ERR). The ANSI/AARST standards can be viewed online for free and are intended to be implemented by licensed radon professionals.

To find a licensed radon professional in your area contact the Connecticut radon program office at (860)509-7300 or DPH.RadonReports@ct.gov, the National Radon Proficiency Program (NRPP), or the National Radon Safety Board (NRSB).

Alternative Options

Using the ANSI/AARST radon testing standards is not the only option available for considering the risk that occupants may be exposed to high radon levels. If the environmental review preparer chooses not to conduct radon testing per the ANSI/AARST standards, one of the following alternative strategies must be used to consider radon in the contamination analysis. Review the HUD program office guidance in Section IV to ensure the strategy used to consider radon in the contamination analysis complies with specific program office requirements for the project.

1. Do-it-yourself (DIY) radon test kits may be used to measure radon levels in single-family dwelling units. In CDBG assisted single-family buildings with multiple units, one DIY test kit must be used for each dwelling unit. DIY radon test kits may be available for low or no cost through local health department offices and are available to purchase through the National Radon Program Services website. When using a DIY test kit, there can be quality control issues that affect the quality of the test results. To ensure the DIY test results are as accurate as possible, it is important to read the entire test kit instructions before activating the test device and to follow them fully. The EPA's Citizen's Guide to Radon and the ANSI/AARST standard for testing single-family housing are excellent resources for detailed instructions about conducting the radon test, including where to place the test device(s), how to prepare the home (whether to close the windows, turn off fans, the length of time to test), how to document the test process, and interpret the results. HUD encourages that test devices be approved by either the NRPP or NRSB. Contact the Connecticut Radon Program office at (860)509-7300 or DPH.RadonReports@ct.gov, the National Radon Program Services helpline, or the local health department for assistance.

National Radon Program Services Test Kits

2. In remote or other areas where there are no licensed/certified radon professionals and/or DIY test kits cannot be shipped to a lab in sufficient time, the local government, such as a local health department or environmental department, may decide to purchase radon monitoring equipment and train staff to use it. Monitoring equipment, such as continuous radon monitors, should be used in accordance with the manufacturer's instructions and intended use and staff should ensure proper quality control and quality assurance practices are adhered to.

Mitigating Radon

When radon testing determines indoor air radon levels are at or above 4 pCi/L or the scientific data review determines the project site is located in an area that has documented radon levels at or above 4 pCi/L, the Environmental Review Record (ERR) must include a mitigation plan.

When the determination is based on a scientific data review, if feasible, HUD recommends conducting radon testing (using one of the testing strategies described in the previous sections) to confirm radon levels in the building(s) proposed for CDBG funding. If testing then demonstrates that radon levels within the building are below 4 pCi/L, mitigation would not be required; environmental review preparers can simply document the test results in the ERR. The mitigation plan must identify the radon level; consider the risk to occupants' health; describe the radon reduction system that will be installed; whenever possible, establish an ongoing maintenance plan to ensure the system is operating as intended; establish a reasonable timeframe for implementation; and require post-installation testing. Where feasible, post-installation testing should be conducted by a licensed radon professional. In an area where there are no licensed radon professionals, there may be other personnel, such as trained staff, other professionals (i.e., engineers, geologist, scientists, public health staff) who have experience conducting radon testing or have the relevant skills and knowledge to follow the device instructions or ANSI/AARST test protocols and mitigation standards. For assistance Contact the Connecticut Radon Program office at (860)509-7300 or DPH.RadonReports@ct.gov, the EPA's local radon program office, the National Radon Program Services, or refer to the applicable ANSI/AARST standard for guidance. If using the ANSI/AARST mitigation standard to install the radon reduction system, follow the guidance in the standard to draft the mitigation and the operation, maintenance, and monitoring plans.

ANSI/AARST Radon Testing Standards

Documenting the Environmental Review Record

Under HUD's regulations, 24 CFR 58.38(a)(3) the Grantee is required to document the radon evaluation as part of the contamination analysis in the ERR. Radon documentation information should be included under "compliance determinations" in the Contamination and Toxic Substances section of the environmental format for CEST and EA projects. If testing is not conducted, the documentation will need to provide evidence of average documented radon test results covering the project site or its county, other science-based information suggesting radon levels at the project site, or evidence of a lack thereof.

In instances where radon testing will be conducted but cannot be conducted until after the environmental review record is certified (i.e., new construction or certain rehabilitation projects) then the initial documentation would not include a radon evaluation but must include a condition for post-construction radon testing followed by mitigation if needed.

The environmental preparer must update the environmental review record with the radon evaluation and proof of any required mitigation when complete. Acceptable methods to document radon consideration in the ERR include:

- ANSI/AARST standard: Include a copy of the test report and mitigation plan (if applicable) as described in the standard in the ERR. For Office of Housing programs, follow program guidance requirements on timing and documentation.
- DIY and other radon test strategies: Document the test device, time period of test, test conditions (HVAC system off windows closed, outside temperature), test results, and other conditions relevant to test conditions. Refer to the applicable ANSI/AARST standard as guidance.
- Review of CDC radon testing data, geologic studies/maps, other scientific data: Describe and cite the maps and data used to determine the area wide radon levels and include copies of all supporting documentation (maps/studies) in the ERR.
- In instances where Grantees are unable to obtain science-based data, environmental review preparers must consider the feasibility of radon testing if they have not already. If the Grantee determines that testing is infeasible or impracticable, the environmental review must document the basis for this determination. Acceptable documentation in these scenarios where testing is infeasible and science-based data is not available includes but is not limited to:
    - correspondence with state and local radon control agencies indicating a lack of scientific data evidencing radon levels at the project site, a copy of CDC Environmental Health Tracking Network information showing the project site is located in a county with a lack of scientific data, and a basis for the conclusion that testing would be infeasible or impracticable. The RE, grantee, applicant, or recipient is not required to submit additional documentation substantiating their decision that testing is infeasible or impracticable.
- When all this is documented in the ERR, no further consideration of radon is needed and no further action with respect to radon is needed for the environmental review.

Resources for Implementation of Radon Compliance

Costs for radon testing and mitigation are considered eligible program costs in the DOH Small Cities program. As such, costs for radon testing and mitigation can be included in the total project costs funded by DOH. However, costs for ongoing operation and/or maintenance of installed mitigation systems are **not** eligible under the DOH Small Cities program.

2.3.5. Projects in Floodplains and Wetlands (24 CFR Part 55)

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:

24 CFR Part 55

- The project is in a Federal Flood Risk Management Standard (FFRMS) floodplain ;
- The project is a “critical action” in the 0.2 percent-annual-chance (500-year) floodplain. A “critical action” means any activity for which even a slight chance of flooding would be too great because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that (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 (e.g., community stormwater management infrastructure, water treatment plants, data storage centers, principal utility lines, police and fire stations, and roads providing egress from flood prone areas; 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.,

24 CFR 55.2(b)(3)

hospitals, nursing homes, etc.). Housing for independent living for the elderly is not considered a critical action.; or

- The project proposes construction in a wetland.

There are two decision-making processes identified in Part 55 concerning floodplains and wetlands. They are the 8- step process (sec. 55.20) and the 5-step process (sec. 55.12(a)(3)). The 8-step process will apply unless a project falls under the allowed criteria for using the 5-step decision making process, which are:

- Disposition of multifamily and single family (1-4 unit) properties [sec. 55.12(a)(1)].
- Repair, rehabilitation, modernization, weatherization, or improvement of existing residential properties (multifamily, single family, assisted living, etc.) [Sec. 55.12.(a)(3)]
    1. Number of units is not increased more than 20%;
    2. Does not involve conversion from non-residential to residential; and
    3. Does not meet definition of "substantial improvement" [sec. 55.2(b)(10)(i)(A)(2)].
- Repair, rehabilitation, modernization, weatherization, or improvement of nonresidential properties (i.e., public facilities, commercial/retail, and industrial) [sec. 55.12(a)(4)]
    1. Does not meet the threshold of "substantial improvement" (i.e., the cost equals or exceeds 50% of the market value before damage occurred; and
    2. The structure footprint and paved area is not increased more than 10%.
- Repair, rehabilitation, modernization, weatherization, or improvement of a structure listed on the National Register of Historic Places of on a State Inventory of Historic Places. ["Substantial improvement" does not apply to historic properties, Sec. 55.2(b)(10)(ii)(B)].

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

NOTE: When a project is located in a floodplain AND also proposes construction in a wetland, the 8-Step decision process must be completed (Sec. 55.20(a)(3)). Below is an overview of each of the steps in the 8-Step decision process. When the 5-Step decision process is permissible for floodplains, only Steps 1, 4 through 6, and 8 are applicable. All steps must be documented in writing.

Attachment 2-7: 8-Step Floodplain Process

Attachment 2-8: 5-Step Floodplain Process

Step One: Floodplain Determination. Determine if the project is located in a Federal Flood Risk Management Standard (FFRMS) floodplain or a wetland.

The Final Rule published on April 23, 2024, establishes HUD's preference for a Climate Informed Science Approach (CISA) to determine the floodplain of concern for HUD funded projects.

- Check the following maps to determine if the project is located in the FFRMS floodplain or results in new construction that directly impacts an onsite wetland:

1. Determine if CISA data is available for the project area on the Federal Flood Standard Support Tool (FFSST) Status Map: https://floodstandard.climate.gov/pages/status-map.

2. Use the FFSST to determine if the project is located in a floodplain: https://floodstandard.climate.gov/tool/.

3. If the project area does not have CISA data in the FFSST, Grantees may use the Federal Emergency Management Agency (FEMA) Flood Map Service Center: https://msc.fema.gov/portal/home.

4. If there is no data on the FFSST and 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.

5. Determine if the project is in a wetland: https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper.

6. Use all available maps and data to make a determination if the project is located in a floodplain or wetland and document in the ERR. If the project activity does not occur in the FFRMS floodplain or include new construction directly impacting an onsite wetland, then no further compliance with this section is required.

Step Two: Early Public Review. Executive Order (E.O.) 11988 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 the floodplain. Involve the public in the decision- making process as follows:

- Publish the Floodplains and Wetlands Early Public Notice in a newspaper of general circulation or on an appropriate Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency. Refer to 24 CFR 55.20(a) for the minimum information that must be given in the notice. See also the sample in Attachment 2-9: Sample Floodplains and Wetlands Early Public Notice. The Floodplains and Wetlands Early Public Notice must be published (it cannot be posted).

Attachment 2-9: Sample Floodplains and Wetlands Early Notice

- The notice must provide a complete description of the proposed action.
- The notice must allow at least a 15-day comment period for public comments.

Step Three: Identify and Evaluate Alternate Locations. Determine if there is a practical alternative. This determination requires the responsible entity to consider whether the base floodplain 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.

Step Four: Identify Impacts of Proposed Project. Regardless of whether the location is located within a floodplain or outside a floodplain, both the direct and indirect potential impacts must be identified and reviewed.

If negative impacts are identified, methods must be developed to prevent potential harm as discussed in Step 5. The term harm, as used in this context, applies to lives, property, natural and beneficial floodplain values.

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.

- The concept of minimization applies to harm.
- The concept of restoration and preservation applies only in floodplain values.

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 floodplain values.

- If the proposed project is determined to be no longer feasible, you should consider limiting the project to make non-floodplain sites practicable.
- If the proposed project is outside the floodplain but 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.
- If neither is acceptable, the alternative is no action.

The reevaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed project located 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.

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 grantee must publish the Floodplains and Wetlands Notice of Explanation in a local newspaper of general circulation (Refer to sec. 55.20(a) and (g) for the minimum information that must be given in the notice. See also the sample in Attachment 2-10: Sample Floodplains Notice of Explanation).

Attachment 2-10: Sample Floodplains Notice of Explanation

- The Floodplains and Wetlands Notice of Explanation (described previously) may ***not*** be posted.
- It should be noted that when a project triggers the E.O. 11988 "Eight Step Process," the Notice of Early Public Review should be published first and the minimum 15-day comment period elapsed ***before*** the grantee can publish the Floodplains and Wetlands Notice of Explanation.
- The Floodplains and Wetlands Notice of Explanation can be published simultaneously with the 24 CFR Part 58 required Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF) (Attachment 2-14).
- Any written comments received in response to the above required notice must be addressed and filed in the ERR.
- Document compliance with E.O. 11988/11990 by using the sample documentation memorandum provided (See Attachment 2-11: Sample Documentation of Eight Step Process.)

Attachment 2-11: Sample Documentation of 8-Step Process

- 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 DOH 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. As stated previously, when the 5-Step decision process is required, only Steps 1, 4 through 6, and 8 are applicable.

2.3.6. Activities Requiring an Environmental Assessment

Activities which are neither exempt nor categorically excluded (under either category) will require an environmental assessment documenting compliance with NEPA and with the environmental requirements of other federal laws.

The responsible entity must be aware that if a project consists of several activities that by themselves would fall under various levels as outlined above, the responsible entity must conduct an environmental assessment on the entire project.

The responsible entity must take the following steps to complete environmental requirements for projects requiring an environmental assessment:

- Follow the instructions for categorically excluded projects subject to 24 CFR Part 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. The responsible entity must ensure that reliable documentation sources are cited for every item on this assessment checklist (Attachment 2-12).

Attachment 2-12: Environmental Assessment Format

- If a Phase I ESA was completed more than 365 days prior to completion of the HUD environmental review record, the ESA must be updated.
- 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. The Responsible Entity must select one of the following two findings/determinations:

    1. The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an environmental impact statement; or

    2. The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an environmental impact statement. Both the finding and the environmental assessment must be signed by your environmental certifying officer and included in the ERR. A sample checklist for completing the environmental assessment is included as Attachment 2-13.

Attachment 2-13: Environmental Assessment Checklist

2.3.7. "No Environmental Impact" Statement Required

In most instances, the environmental assessment 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 environmental impact statement. If this is the case, the responsible entity must complete the following:

- Provide public notice called the Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF) from the DOH. A sample notice is provided as Attachment 2-14.

Attachment 2-14: Sample Combined Notice

    1. The FONSI and NOI/RROF must be published in a newspaper of daily general circulation.

    2. The grantee must retain "publishers' affidavit" from the newspaper evidencing that the notice was published and on what date.

        - The notice must also be distributed to interested parties, local news media, appropriate local/ state/federal agencies, regional EPA, and Connecticut DEEP.

        - The notice must also be posted in public buildings within the project area.

- It is very important to remember this requires two separate 15-day review periods. A 15-day period for comment to the local government and, after that period, a 15-day period for comment to the DOH. The DOH 15-day comment period does not commence until the date the DOH receives the notice, or the date specified in the published notice, whichever is later. Call or email the DOH to verify dates on the combined/concurrent notice before publishing.

1. Any written comments received in response to these notices must be addressed and filed in the ERR. The persons that provided the comments should be added to the distribution list of interested parties.

2. The environmental certification, request for release of funds forms must be submitted to the DOH at least 16 days after publishing the combined/concurrent notice.

3. Check the ERR. Be sure this file contains all items listed on the ERR Checklist (Attachment 2-15).

Attachment 2-15: Environmental Review Record Checklist

2.3.8. Environmental Impact Statement

An Environmental Impact Statement (EIS) is required when a project is determined to have a potentially significant impact on the environment. Consult with DOH if an EIS is anticipated.

Section 2.4 Other Environmental Review Approaches

Tiered Reviews

HUD Guidance on Tiered Reviews

Attachment 2-16: Broad Level Tier Review Form

Due to the nature of housing rehabilitation programs, grantees will not know the specific structures to be rehabilitated until the program has been publicized and applications received. In such instances, grantees are allowed to complete an up-front programmatic Broad Level Tier Review (Attachment 2-16) that identifies potential applicable compliance areas. For many rehabilitation programs, applicable Broad Level Review compliance will be limited to historic preservation, floodplain protection, and wetlands protection. Using this process, grantees can publish a public notice and receive a Release of Funds based on the programmatic information. The Release of Funds for such situations will be conditional on the grantee completing an individual review for each specific rehabilitation project. This site-specific review for each individual rehabilitation project must then be completed prior to incurring hard costs for that project.

Attachment 2-3: Environmental Review for CEST

Make sure that you carefully review the Environmental Review for CEST (see Attachment 2-3) to assure that you are properly meeting program requirements.

Re-Evaluation of Previously Cleared Projects

Revisiting an Environmental Review

Attachment 2-17: Reevaluation of Previously Cleared Project

Sometimes, projects are revised, delayed or otherwise changed such that a re-evaluation of the environmental review is necessary. The purpose of the responsible entity'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 responsible entity must amend the original findings and update their ERR by including this re-evaluation and its determination based on its findings. A sample determination is provided as Attachment 2-17. It must document the following:

- Reference to the previous environmental review record,
- Description of both old and new projects 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 DOH with the Request for Release of Funds (RROF). If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if the evaluation indicates potentially significant impacts.

Section 2.5 Connecticut Environmental Protection Act (CEPA)

The purpose of the Connecticut Environmental Policy Act (CEPA) is to identify and evaluate the impacts of proposed state actions which may significantly affect the environment. The Connecticut Environmental Policy (CEPA) Intake Form provides information necessary for deciding whether or not further actions are needed which may include opportunities for public review and comment.

Grantees must submit all of the following to DOH.CEPA@ct.gov at the earlier of a) 40% completion of Drawings & Specifications, or b) 120 days prior to application submission (New Construction), or c) 60 days prior to application submission (Rehabilitation).

1. Completed CEPA Intake form
2. CEPA Environmental Review Checklist (ERC)
3. Location map with site and/or building flagged
4. FEMA Flood Map with outline of site boundary and an existing and proposed site plan

Connecticut Environmental Policy (CEPA) Intake Form

Environmental Review Checklist (ERC)

Forms submitted after 120 days (New Construction) or 60 days (Rehabilitation) of application submittal or at time of application may delay review and funding consideration.

DOH, as the sponsoring agency will utilize the Environmental Classification Document (ECD) to determine if a proposed action requires further evaluation under CEPA, and if so, to determine the appropriate level of analysis proportionate to the scale of the proposed action's potential impacts. The ECD is a list of typical agency actions that may have significant environmental impacts and is used by state agencies in determining if a proposed action warrants further evaluation and to what extent.

Environmental Classification Document (ECD)

In determining the need for public scoping, DOH must first consider the thresholds identified in the ECD, as well as other relevant factors, such as any direct, indirect, and cumulative impacts that may have significant environmental impacts if the proposed action were implemented. DOH will proceed with public scoping in situations where it has determined that:

a) the ECD specifically requires public scoping for the proposed action,
b) the proposed action includes other factors with the potential for significant environmental impacts, or
c) the agency's review is indeterminate.

DOH will document its decision and its rationale as a matter of public record.

If DOH determines that the action has the potential to significantly affect the environment, it will conduct public scoping. If, after public scoping, DOH determines that a more in-depth Environmental Impact Evaluation (EIE) is not warranted, it will complete its CEPA responsibilities by publishing a post-scoping notice.

Environmental Monitor

DOH will publish scoping notices in the Environmental Monitor and have a minimum 30-day public comment period. DOH may opt to hold a public hearing or may be required to hold one if requested in accordance with statutes and regulations. The post-scoping notice shall include a completed Environmental Review Checklist (ERC), and the agency's discussion and analysis of all factors listed in section 22a-1a-3 of the RCSA.