
**The State of West Virginia
Community Development
Block Grant Mitigation
(CDBG-MIT)
Capacity Building Session**



VIRTUAL MEETING NORMS



Today's presentation will be recorded and posted for future reference.



All participants will be muted by default.



We encourage participation in the following ways:

Use the "Questions" function to ask questions. This will allow WV CAD to have a written record of all questions.

Use "raise hand" button and WV CAD will unmute one participant at a time.



Following the meeting, any questions or comments can be emailed to CDBGmitigation@wv.gov



Register! Presentation slides will be emailed to participants who registered for the hearing.

Joined the presentation with a group? If you're sharing a computer or logging in with a group, we only have 1 person's contact info. Please provide us with the names and emails of others so they can continue to receive updates.



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CAPITAL ACCESS



PREPARING ENVIRONMENTAL REVIEWS FOR HUD FUNDED PROGRAMS

DAY 1: THE ENVIRONMENTAL
REVIEW PROCESS



PRESENTATION SCHEDULE

- Day 1 – The Environmental Review Process
- Day 2 – A Closer Look at Compliance Factors
- Day 3 – NEPA Assessment and Case Study Examples

DAY 1 AGENDA

1. Overview
2. Responsibilities
3. Process
4. Levels of Review

OVERVIEW



COMMONLY USED ACRONYMS

Acronym	Term
ERR	Environmental Review Record
NEPA	National Environmental Policy Act
RE	Responsible Entity
CEST	Categorically Excluded Subject to Part 58.5
CENST	Categorically Excluded NOT Subject to Part 58.5
EA	Environmental Assessment
NOI-RROF	Notice of Intent to Request Release of Funds
FONSI	Finding of No Significant Impact
AUGF	Authority to Use Grant Funds



WHAT IS AN ENVIRONMENTAL REVIEW?

- The process of evaluating the potential environmental impacts of a project to determine whether it meets federal, state, and local environmental standards
- Required for all HUD-assisted projects to ensure that:
 - The proposed project does not negatively impact the surrounding environment and
 - The project site will not have an adverse effect on the end users.
- Not every project is subject to a full environmental review (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the National Environmental Policy Act (NEPA), and other related Federal and state environmental laws



BEYOND THE PHYSICAL ENVIRONMENT

In addition to reviewing the physical setting of a proposed project, environmental reviews also consider criteria such as:

- Impacts on social infrastructure (e.g. school system, EMS services, sanitary sewer and water systems, transportation)
- Historic or tribal significance
- Environmental justice (could the project disrupt the cohesiveness of a community, will it disparately impact low/moderate income individuals or people who have been historically disadvantaged, etc)?
- Is the site in keeping with the general surrounding (not placing housing in areas zoned residential, infilling high density multifamily housing in a historically single family detached housing area, etc)?



DIFFERENT TYPES OF ENVIRONMENTAL REPORTS

- In this presentation we are focusing on creating an Environmental Review Record (ERR) that will fully satisfy HUD requirements
- There are other types of environmental reviews and reports such as:
 - Environmental Inspection Report
 - Phase I & II Environmental Site Assessment
 - Phase I, II & III Cultural Resource Assessment
- These reports may cover some of the same topics as the ERR and may even be part of it, but they are not the same thing
- Over the next few days we will go into more detail about these other reports



REGULATORY REFERENCES

- The HUD rules and regulations that govern the environmental review process can be found at 24 CFR Part 58
- The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508 also apply
- Additional federal and state laws and regulations apply depending on the type of project and level of review

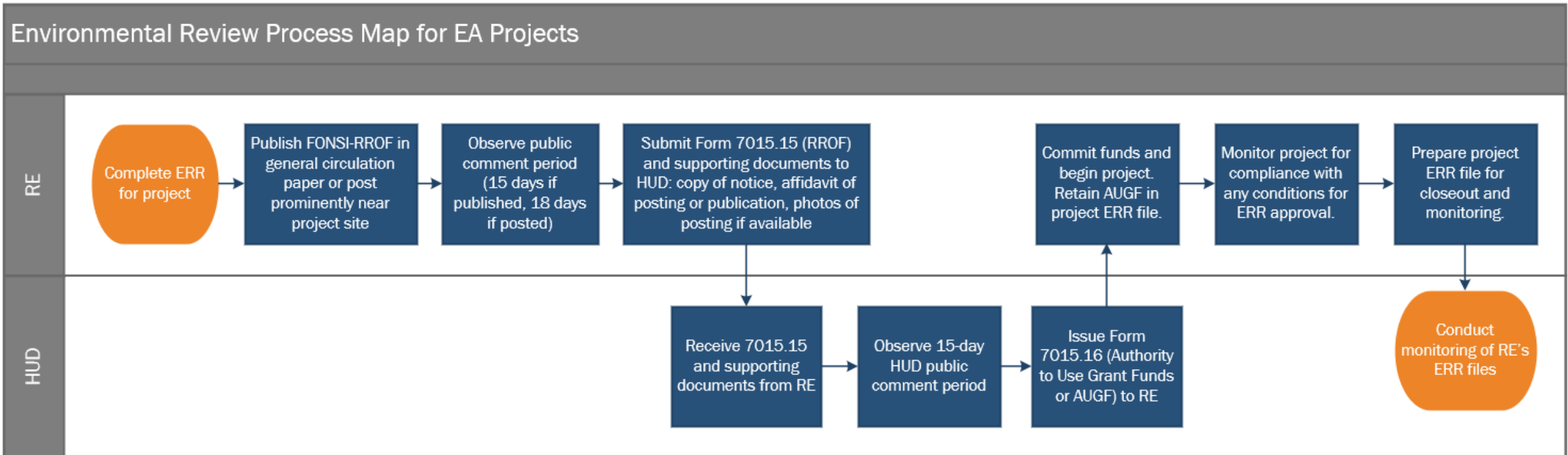
RESPONSIBILITIES



RESPONSIBLE ENTITY

- Under 24 CFR Part 58, the term “responsible entity” (RE) means the UGLG receiving CDBG assistance. The responsible entity must complete the environmental review and prepare an environmental review record (ERR).
- The RE must fulfill two roles:
 - **Environmental Officer** – Completes the ERR, which includes preparing the scope description, obtaining maps of the project area, performing analysis to identify any compliance issues, and soliciting and responding to comments from the public or other agencies. This role may be filled by a consultant or engineer.
 - **Certifying Officer** – Generally the chief elected official or other official designed by formal resolution of the governing body. This person ensures compliance with all applicable laws and regulations and submits the Request for Release of Funds. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.

ENVIRONMENTAL REVIEW PROCESS FLOW*



*This process map depicts the process for an Environmental Assessment. For CEST-level projects that require public notice and comment, the process is the same except that the RE should use the Notice of Intent to Request Release of Funds (NOI-RROF), not the FONSI-RROF notice, and the public comment period is 7 days if published, 10 days if posted.



AVOIDING CHOICE-LIMITING ACTIONS

- No funds **from any source** (public or private) can be committed or expended until the environmental review has been completed and the state receives a release of funds
- Activities that have physical impacts or which limit the choice of alternatives (“choice-limiting actions”) cannot be undertaken prior to obtaining environmental clearance
- Activities that are Exempt or Categorically Excluded Not Subject to 58.5 (CENST) may proceed as soon as the ERR is completed—no release of funds is needed. *(The various levels of review will be discussed later in this presentation.)*

WHAT DOES “COMMITMENT OF FUNDS” MEAN?

- For the purpose of environmental review, commitment of funds includes:
 - Execution of a legally binding agreement (such as a property purchase or construction contract)
 - Expenditure of CDBG funds
 - Use of non-CDBG funds on actions that would have an adverse impact or be choice-limiting
- REs may execute non-legally binding agreements such as conditional or option contracts prior to completion of the environmental review. For guidance, see the HUD memo on this subject:

<https://www.hudexchange.info/resource/5032/hud-memo-guidance-on-options-and-conditional-contracts-for-purchase-of-real-property-for-environmental-reviews-conducted-by-a-responsible-entity-under-24-cfr-58/>



WHAT IF THE PROJECT STARTS BEFORE FEDERAL FUNDS ARE COMMITTED?

Funds may have to be repaid if work starts before environmental clearance is obtained, with the following exceptions:

- For projects that use CDBG-MIT funds as HMGP match, the FEMA environmental review may be used
- The restriction on choice-limiting actions does not apply to projects that are begun with no intention to apply for federal funds.
- A party who begins a project in good faith as a private project is not precluded from later deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease further choice-limiting actions on the project until the environmental review process is complete.



- If there are multiple sources of project funding outside of federal assistance, are those funds also subject to the restriction on choice-limiting actions?
- If a grantee commits a choice-limiting action, what could be the end result?
- What constitutes “committing” CDBG-MIT funds?

PROCESS





STEP 1: CONDUCT A SITE VISIT

For physical projects, a site visit should be conducted to take photographs and evaluate for potential environmental conditions that may not be evident on maps, satellite images or aerial photos.

Examples of conditions to take note of during a site visit may include:

- Evidence of contaminants such as dead vegetation, residue, pipes protruding from the ground and/or storage containers of unknown substances
- Proximity of nearby businesses that may create environmental hazards such as auto repair shops, gas stations or dry cleaners
- Indications of high noise levels such as busy roads, planes flying low overhead, or railroad tracks

STEP 2: PREPARE THE PROJECT DESCRIPTION

The project description should:

- Fully describe the project and all activities undertaken as part of the project, including exact addresses and/or geographic boundaries
- Include activities funded by all public and private sources, not just federal funds
- Include supporting documentation such as maps and preliminary project specifications
- Be as broad as possible to avoid the need to amend the review if the project scope is increased (in general the project can be smaller, but not larger, than the ERR scope)
- Omit sensitive information such as the location of a domestic violence shelter, sacred site, or endangered species habitat from documents that can be viewed by the public
- Aggregate related activities to ensure the separate and combined impacts of a proposed project are adequately analyzed and addressed



WHAT IS PROJECT AGGREGATION?

Project aggregation means grouping activities that are related geographically or functionally or are logical parts of a group of contemplated actions. A single environmental review is then conducted on the aggregated activities.

In general, activities should be aggregated when they:

- Are in a concentrated area or are within unspecified sites
- Are multi-year activities
- Automatically trigger other actions
- Cannot or will not proceed unless other actions are taken beforehand or at the same time
- Are mutually dependent parts of a larger activity/action



WHAT IS A TIERED ENVIRONMENTAL REVIEW?

- Broad-level review of several similar activities in the same area and subsequent evaluation of each site for site-specific compliance factors.
- Appropriate when evaluating a collection of projects that would fund the same activities repeatedly within a defined local geographic area and timeframe but where the specific sites and activities are not yet known.
- Not appropriate for projects where specific locations have been identified, and for which site-specific environmental reviews are feasible.

STEP 3: DETERMINE THE APPROPRIATE LEVEL OF REVIEW

The level of environmental review required depends on the potential impacts of the project. There are five levels of review:

- Exempt
- Categorically excluded from NEPA and not subject to 24 CFR 58.5 (CENST)
- Categorically excluded from NEPA but subject to 24 CFR 58.5 (CEST)
- Environmental Assessment (EA)
- Environmental Impact Study (EIS)

The time and effort required to complete the review increases with each level.

**EIS reviews are very rare in the CDBG program so we will not cover them in depth*

STEP 4: COMPLETE THE REVIEW

- Perform all required analysis
- Consult with other agencies and individuals if appropriate
- Gather supporting documentation
- Make a determination (CEST and EA)
- Conduct public notice and comment periods (CEST and EA)
- Obtain release of funds from HUD (CEST and EA)
- Ensure any conditions for approval are incorporated into project contract documents
- Prepare the project ERR file for monitoring



- What are the four steps to completing an ERR?
- What are some examples of activities that should be aggregated?
- What should you look for during a site visit?

LEVELS OF REVIEW



Summary of the Levels of Review

Level of Review	Examples	Typical Length to Complete Review
Exempt	Architectural & Engineering, Preparation of Bid Package Administration & Planning	<1 Day
CENST	Economic Development Business Loans Acquisition of Property Down payment and closing cost assistance URA payments	1-3 days
CEST	Single family home rehabilitation Scattered site demolition of fewer than 4 units within a 2,000-foot radius	30-90 days depending on historic and tribal consultation and NOI-RROF comment periods
EA	New construction of public facilities, more than 4 units of housing within 2,000-foot radius Bodies of water bank stabilization and channel restoration	90-120 days depending on historic and tribal consultation and FONSI-RROF comment periods
EIS	Large-scale infrastructure, housing, transportation	6 months to 2+ years depending on factors such as level of impact, permits and consultation

EXEMPT

- Appropriate for projects that will have no effect on the physical environment
- Examples include environmental studies, engineering or design work, administrative and planning costs, permitting, professional services and many public services
- Request for Release of Funds is not necessary for Exempt activities—the activity may begin as soon as ERR documentation is complete
- A more thorough list of Exempt activities can be found at:

<https://files.hudexchange.info/resources/documents/Overview-Exempt-CENST-Activities.pdf>

TO COMPLETE AN EXEMPT ERR

1. Prepare project description (site visit should not be applicable)
2. Document in writing that the project is Exempt and meets the conditions for Exemption
3. Determine whether any of the following requirements are applicable and address as appropriate:
 - Flood Disaster Protection Act
 - Coastal Barriers Resources Act
 - HUD's requirement for disclosure of properties located in airport runway clear zones

(Specific compliance factors will be discussed on Day 2)

CATEGORICALLY EXCLUDED NOT SUBJECT TO 58.5

- Appropriate for activities that involve no direct impact on the environment but have the effect of linking people to a particular physical site, which could indirectly affect the environment or project users
- Examples include rental and homeownership assistance, supportive services related to housing and healthcare, and non-construction costs related to economic development
- Request for Release of Funds is not necessary for CENST activities—the activity may begin as soon as ERR documentation is complete
- A more thorough list of CENST activities can be found at:

<https://files.hudexchange.info/resources/documents/Overview-Exempt-CENST-Activities.pdf>

TO COMPLETE A CENST ERR:

1. Prepare project description (site visit should not be applicable)
2. Make a written determination of the RE's finding that a given activity or program is categorically excluded not subject to 24 CFR 58.5
3. Cite the applicable subsection of 24 CFR 58.35(b), identify and describe the specific activity or activities, and provide information about the estimated amount of CDBG and other funds to be used
4. Determine whether any of the following requirements are applicable and address as appropriate:
 - Flood Disaster Protection Act
 - Coastal Barriers Resources Act
 - HUD's requirement for disclosure of properties located in airport runway clear zones

CATEGORICALLY EXCLUDED SUBJECT TO 58.5

- Appropriate for activities that may have some impact on the physical environment
- Examples include:
 - Demolition of no more than 4 residential buildings within 2,000 feet of each other
 - Minor rehabilitation of single-family homes
 - Improvements to or reconstruction of existing infrastructure without change in size or capacity of more than 20 percent
 - Removal of architectural barriers to accessibility
- Request for Release of Funds IS required before funds can be committed or expended
- A more thorough list of CEST activities can be found at:

<https://www.law.cornell.edu/cfr/text/24/58.35>

TO COMPLETE A CEST ERR:

1. Complete site visit and prepare project description
2. Make a written determination of the RE's finding that a given activity or program is categorically excluded subject to 24 CFR 58.5
3. Cite the applicable subsection of 24 CFR 58.35(a), identify and describe the specific activity or activities, and provide information about the estimated amount of CDBG or other funds to be used
4. Complete the Statutory Checklist to document environmental findings
 - The Statutory Checklist lists compliance factors that must be analyzed such as air quality, presence of contaminants, noise, endangered species, historic preservation and more. We will cover these factors in detail during Day 2.
 - Include supporting documentation for compliance factors as appropriate

(continued)

TO COMPLETE A CEST ERR (CONT):

5. Completion of the Statutory Checklist will result in one of three findings:
 - A. There are no compliance issues and the project converts to Exempt.
 - B. There are one or more compliance issues and therefore approval from HUD is required.
 - C. The unusual circumstances of the project may result in a significant environmental impact and therefore compliance with NEPA is required. (This means an environmental assessment must be completed—see next slide.)
6. If the finding is option B above, the RE must publish or post a public notification known as the Notice of Intent to Request Release of Funds (NOI/RROF).
7. After the comment period has elapsed (7 days if published or 10 days if posted), the RE must prepare the Request for Release of Funds (RROF) that certifies compliance with all environmental review requirements. The RROF must be signed by the Certifying Officer and submitted to HUD.
8. HUD holds the FONSI-RROF for an additional 15 days for public comment, then issues the Authority to Use Grant Funds (AUGF)



ENVIRONMENTAL ASSESSMENT

- Applicable to projects or activities not covered under a categorical exclusion or exemption
- Examples include:
 - Demolition or new construction of five or more units within 2,000 feet of one another
 - Construction of new infrastructure or public facilities
 - Change in use or expansion of existing infrastructure by more than 20%

TO COMPLETE AN ENVIRONMENTAL ASSESSMENT:

1. Complete site visit and prepare project description
2. Complete the Environmental Assessment form, including supporting documentation and consultation with appropriate agencies
 - The EA form includes all compliance factors that are evaluated in the CEST review as well as several additional factors. We will cover these factors in greater detail during Days 2 and 3.
3. Make a determination of one of the following findings:
 - A. **Finding of No Significant Impact (FONSI):** 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.
 - B. **Finding of Significant Impact (FOSI):** The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an environmental impact statement.

(continued)

TO COMPLETE AN ENVIRONMENTAL ASSESSMENT (CONT):

4. Assuming a finding of no significant impact, the RE must publish and distribute a public notice called a Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI-RROF)
5. After observing the public comment period and responding to any comments received, the RE submits the FONSI-RROF and supporting documentation to HUD
6. HUD holds the FONSI-RROF for an additional 15 days for public comment, then issues the Authority to Use Grant Funds (AUGF)
7. The RE may proceed with the project



FONSI WITH CONDITIONAL APPROVAL

- From time to time a Finding of No Significant Impact may include conditions for approval
- Example: The Environmental Assessment identified contaminated soil at the project site. However, mitigating the contamination requires excavating the soil, which is part of site preparation and is a choice-limiting action. The RE issues a Finding of No Significant Impact on the condition that the contamination be mitigated as part of the site preparation and construction process.
- The RE must monitor the project to ensure all conditions are met. Failure to meet conditions for approval may result in monitoring findings and/or repayment of funds.

COMMENT PERIODS FOR FONSI-RROF

Public Comment Period

- 15 days if published in a newspaper of general circulation or 18 days if posted
- Comment period begins on the first full day after posting/publishing and extends for the required number of full calendar days
- Cannot submit RROF until the 16th day
- If Day 15 falls on a Sunday or holiday, must allow for one additional business day
- UGLG is required to have a copy of the full ERR available for public review during business hours
- Public Comment Period Calculator at: <https://www.cdbgsc.com/forms/environmental/>

HUD Comment Period:

- 15 calendar days beginning the first full day after RROF is received from grantee
- If Day 15 period falls on a Sunday or holiday, must allow for one additional business day

SUBMITTING THE FONSI-RROF TO HUD

- Form 7015.15 must be filled out completely, include wet ink signature by RE Certifying Officer, and be on TWO-SIDED paper
- Combined notice must reference fund source—see sample notice at <https://www.hud.gov/sites/dfiles/CPD/documents/Sample-FONSI-and-RROF.pdf>
- Must be published in its entirety in a newspaper of general circulation or posted prominently near the project site (take time-stamped photo) and sent to interested parties, local news media, appropriate local, state and Federal agencies, the Regional Office of the Environmental Protection Agency (EPA) and the HUD field office
- HUD does not specify the number of posting locations but more is better
- Documents to include with RROF: Copy of Combined Notice, affidavit of publication or posting, list of posting locations and photos of postings, copies of comments received and responses

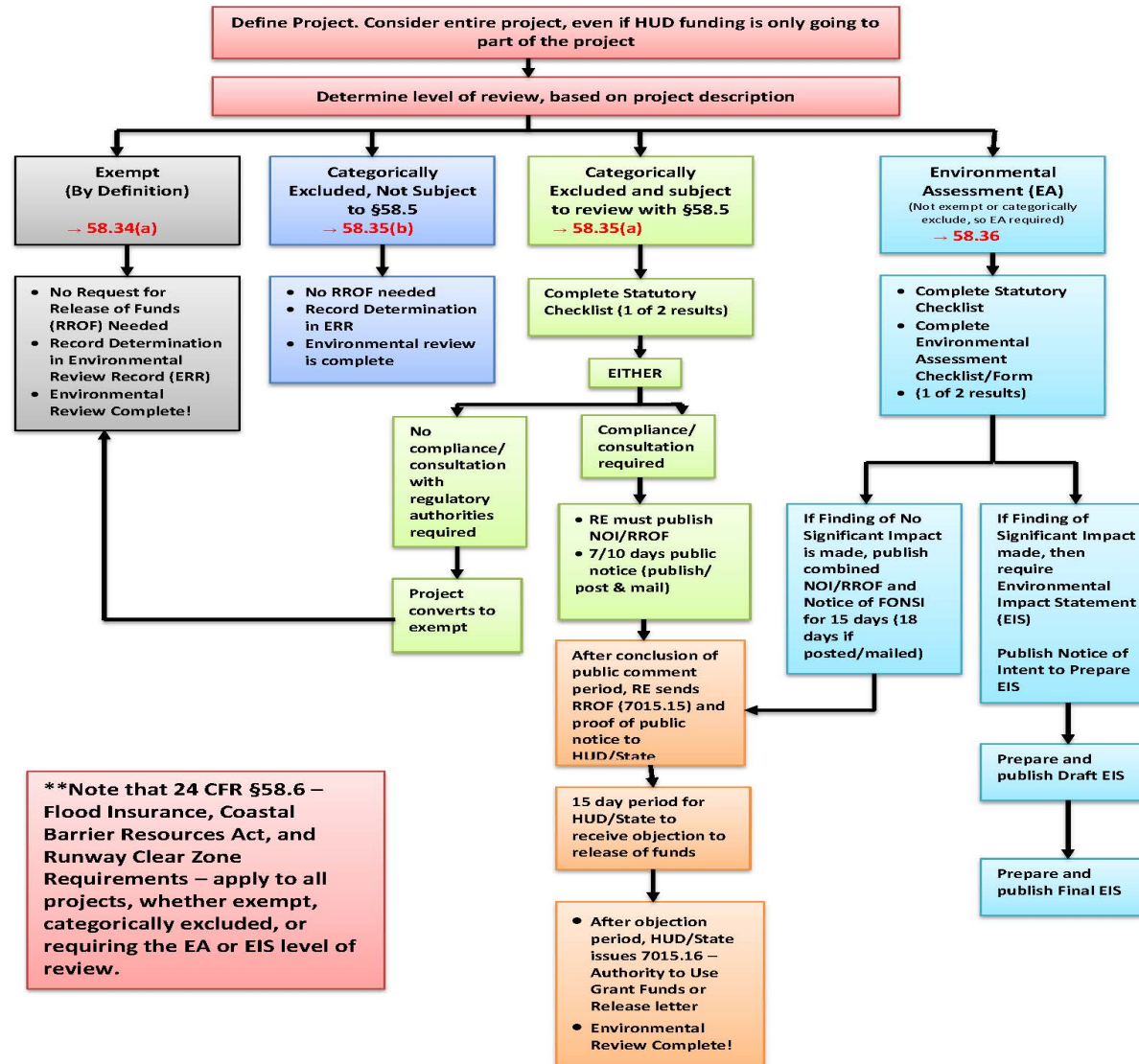


ENVIRONMENTAL IMPACT STATEMENT

Required when:

- An environmental assessment concludes in a Finding of Significant Impact
- The complexity of the project exceeds the scope of an environmental assessment
- Extraordinary circumstances exist and elevate the level of review
- Noise levels exceed 75 decibels (unacceptable noise zone)
- Noise levels are between 65 and 75 decibels (normally unacceptable noise zone) and the project site is largely undeveloped or will encourage incompatible development
- A project involves 2,500 or more housing units or beds

Environmental Review Process (To Be Conducted by Responsible Entity)



****Note that 24 CFR §58.6 – Flood Insurance, Coastal Barrier Resources Act, and Runway Clear Zone Requirements – apply to all projects, whether exempt, categorically excluded, or requiring the EA or EIS level of review.**



- What level of review is engineering and architectural work?
- When is a FONSI-RROF required?
- What level of review is improvement of existing infrastructure?

RESOURCES

HUD Exchange Environmental Review Webpage: <https://www.hudexchange.info/programs/environmental-review/>

Sample NOI-RROF: <https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds/>

Sample FONSI-RROF: <https://www.hudexchange.info/resource/2755/sample-fonsi-and-rrof/>

HUD Form 7015.15 Request for Release of Funds and Certification:

<https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/>

NEPA website: <https://ceq.doe.gov/>

24 CFR Part 58: <https://www.ecfr.gov/current/title-24/subtitle-A/part-58?toc=1>

HUD Memo on Conditional or Option Contracts: <https://www.hudexchange.info/resource/5032/hud-memo-guidance-on-options-and-conditional-contracts-for-purchase-of-real-property-for-environmental-reviews-conducted-by-a-responsible-entity-under-24-cfr-58/>

Public Comment Period Calculator: <https://www.cdbgsc.com/forms/environmental/>



PREPARING
ENVIRONMENTAL
REVIEWS FOR
HUD FUNDED
PROGRAMS

DAY 2: A CLOSER LOOK AT
COMPLIANCE FACTORS



PRESENTATION SCHEDULE

- Day 1 – The Environmental Review Process
- Day 2 – A Closer Look at Compliance Factors
- Day 3 – NEPA Assessment and Case Study Examples

DAY 2 AGENDA

1. Overview of Compliance and Assessment Factors
2. “Other Requirements”
3. Statutory Checklist



DISCLAIMER

Throughout this presentation you will notice that the text appears in two different colors:

- Black text comes directly from a HUD-approved source such as regulations, the HUD Exchange or an official HUD document.
- Blue text is advice, useful information and reminders that come from our direct experience completing ERRs—however, it has not been reviewed or approved by HUD for the purposes of this presentation.



WHERE DO THE ENVIRONMENTAL REVIEW REQUIREMENTS COME FROM?

- The requirement to conduct an environmental review on HUD-funded projects comes from laws passed by Congress, and HUD is the implementing agency
- Because the requirements are statutory, HUD does not have the authority to waive them
 - This is explicitly stated in the main CDBG-MIT Federal Register Notice, [FR-6109-N-02](#)
- The requirements that comprise 58.5, 58.6 and NEPA are implemented by several different federal agencies such as EPA, FEMA, U.S. Fish and Wildlife, National Park Service, and others
- HUD is the ambassador for ERRs, not the authority—your HUD environmental representative can assist you with interpreting the requirements but cannot waive or change them

OVERVIEW OF THE HUD EXCHANGE

- The HUD Exchange (<https://www.hudexchange.info/>) is an invaluable resource for completing ERRs
- On the ERR landing page of the HUD Exchange, you will find a link to each compliance factor under 58.5 and 58.6. Each link contains guidance for how to complete the analysis for that factor, including worksheets, checklists, flow charts, and sample letters and public notices
- Link to HUD Exchange ERR webpage:
<https://www.hudexchange.info/programs/environmental-review/>
- The Web-Based Instructional System for Environmental Review (WISER) is a set of online self-paced learning modules on the HUD Exchange that helps grantees understand and address the various ERR requirements

APPLICABLE LAWS AND REGULATIONS

24 CFR 58.6 – Other Requirements

- Required on ALL levels of environmental review (including Exempt and CENST)
- Three compliance factors: Airport Runway Clear Zones and Accident Potential Zones, Coastal Barrier Resources, and Flood Insurance

24 CFR 58.5 – Related Laws and Authorities AKA “Statutory Checklist”

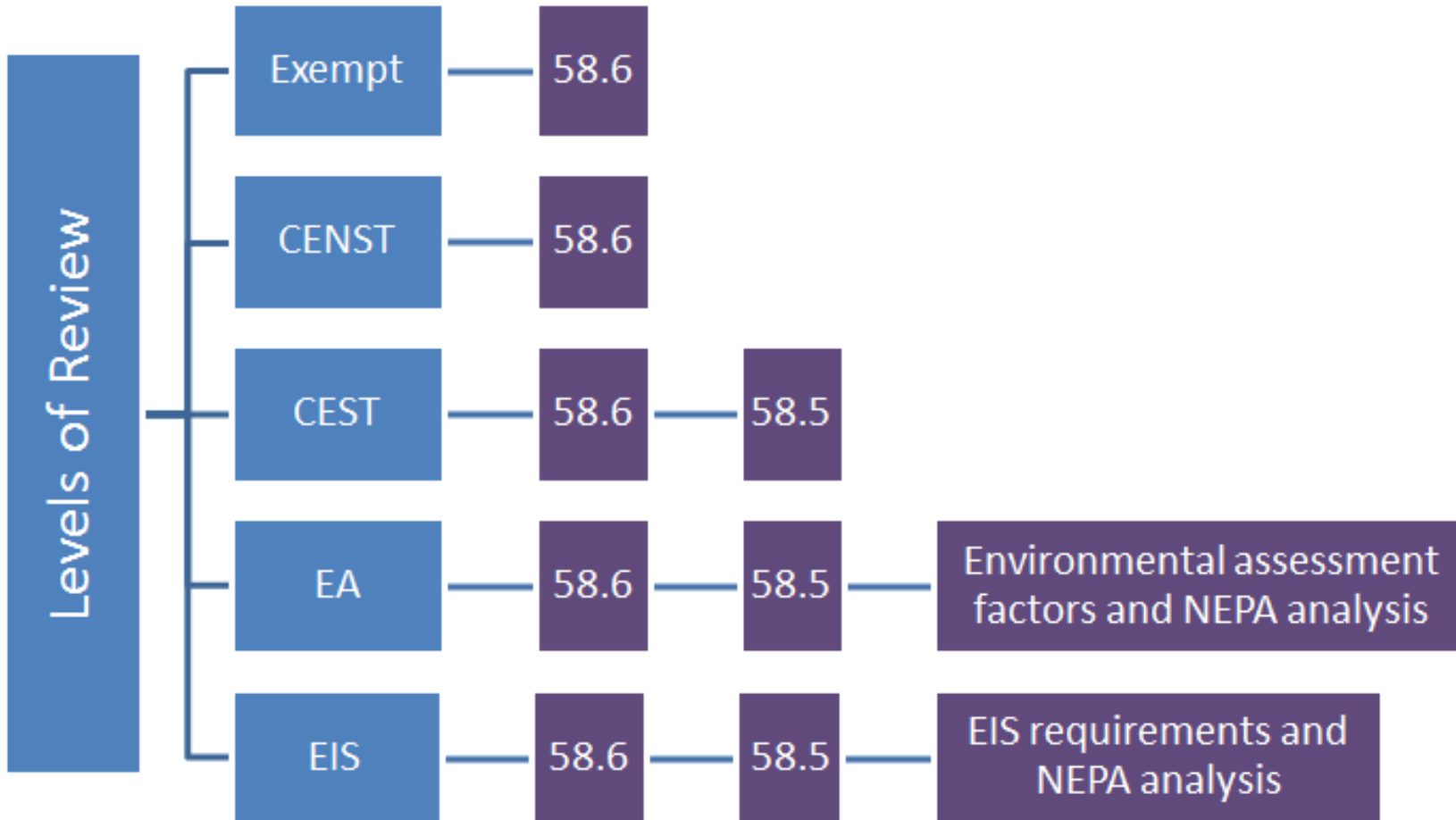
- Required for full Environmental Assessment (EA) and Categorically Excluded Subject to 58.5 (CEST)
- Fourteen factors that must be assessed for compliance or non-compliance

NEPA (National Environmental Policy Act) Analysis AKA “Environmental Assessment Factors”

- Required for full Environmental Assessment (EA)
- Several qualitative assessment factors that must be analyzed for potential impacts

Environmental Analysis (Part 58)

Part 58 reviews may be subject to the requirements of 24 CFR 58.6, 24 CFR 58.5, environmental assessment factors, and the analysis under the National Environmental Policy Act. See the chart below for a breakdown of which components are required for each type of review.



SAMPLE ERR FORMS

- Exempt/Categorically Excluded Not Subject to 58.5 (CENST)

<https://www.hud.gov/sites/dfiles/CPD/documents/Part-58-Exempt-CENST.pdf>

- Categorically Excluded Subject to 58.5 (CEST)

<https://www.hud.gov/sites/dfiles/CPD/documents/Part-58-CEST-Format.pdf>

- NEPA Environmental Assessment (EA)

<https://www.hud.gov/sites/dfiles/CPD/documents/Part-58-EA-Format.pdf>

On the following slides we will walk through how to complete each assessment factor and where to find the necessary resources.

HOW TO BE SUCCESSFUL AT COMPLETING ERRS

- Start the ERR early to allow time for required comment periods and consultation
- For 58.5 and 58.6, document compliance or noncompliance for each factor using HUD’s “decision tree” [worksheets](#) and related documentation
- For NEPA assessment factors, research and analyze potential impacts and then make the most appropriate determination
- Consult with organizations and individuals who have industry expertise or familiarity with the project and/or surrounding area to help inform your impact determinations
- Be a critical thinker—follow the requirements but understand that they may not perfectly apply to your unique project. Which brings us to the last point...
- Always “C.Y.A.” This stands for **C**an **Y**ou **A**rticulate. (Wait, what did you think it meant?!) Large-scale projects may attract scrutiny from the public, the media and HUD. Be prepared to defend (and document) your reasoning for making a particular determination.

<https://www.hud.gov/sites/dfiles/CPD/documents/Part-58-Exempt-CENST.pdf>





AIRPORT RUNWAY CLEAR ZONES (RCZ) AND ACCIDENT POTENTIAL ZONES (APZ)

- Restrictions apply to projects located in RCZs and APZs
- If project is located within 2,500 feet of a civil airport, or 15,000 feet of a military airfield, contact the airport to obtain a map of exact RCZ or APZ boundaries
 - There is currently no federal map available for this factor
 - Check with your Planning Department to see if there is a GIS map available or use the “Get Directions” tool in Google maps and convert the miles to feet
 - Save screenshots in the project ERR file
- If map shows project is located within RCZ or APZ, consult 24 CFR Part 51 Subpart D to determine what restrictions may apply
- To determine compliance, complete the appropriate worksheet at <https://www.hudexchange.info/environmental-review/airport-hazards/>

COASTAL BARRIERS ACT

- West Virginia is not located within a Coastal Barrier Resource System
- Document inapplicability and provide a general location map establishing there are no Coastal Barrier Resource System units in the city or county:
<https://www.fws.gov/CBRA/Maps/Mapper.html>
- No further action required on this compliance factor for West Virginia, but more information about Coastal Barrier Resource Systems is available at
<https://www.hudexchange.info/programs/environmental-review/coastal-barrier-resources/>



FLOOD INSURANCE

- Certain types of federal financial assistance may not be used in floodplains unless the community participates in the National Flood Insurance Program (<https://www.fema.gov/flood-insurance>) and flood insurance is both obtained and maintained
- This requirement applies to projects that involve mortgage insurance, refinance, acquisition, repairs, rehabilitation, or construction of a structure, mobile home, or insurable personal property
- To determine the applicable requirements for flood insurance for your project, complete the appropriate worksheet at <https://www.hudexchange.info/programs/environmental-review/flood-insurance/>

<https://www.hud.gov/sites/dfiles/CPD/documents/Part-58-CEST-Format.pdf>



58.5 STATUTORY CHECKLIST COMPLIANCE FACTORS

- Air quality
- Airport hazards
- Coastal zone management
- Endangered species
- Environmental justice
- Explosive and flammable facilities
- Farmlands protection
- Floodplain management
- Historic preservation
- Noise abatement and control
- Site contamination
- Sole source aquifers
- Wetlands protection
- Wild and Scenic Rivers

AIR QUALITY

- The U.S. Environmental Protection Agency (EPA) sets National Ambient Air Quality Standards (NAAQS) that set limits on how much of certain air pollutants can be in the air anywhere in the United States
- Geographic areas that are in compliance with standards are called “attainment areas,” while areas that do not meet standards are called “nonattainment” areas. The location of areas designated as polluted under the Clean Air Act is documented in the EPA’s Green Book on Nonattainment Areas for Criteria Pollutants
- States must develop State Implementation Plans (SIPs) to regulate their state air quality
- Projects funded by HUD must demonstrate that they conform to the appropriate SIP
- To determine compliance, complete the appropriate Air Quality worksheet at <https://www.hudexchange.info/environmental-review/air-quality/>

AIRPORT HAZARDS

- Some types of development are incompatible with locations in the immediate vicinity of airports and airfields due to the potential for aircraft accidents. If the proposed project is located near an airport or in the immediate area of the landing and approach zones, additional information is necessary to determine whether this issue is a concern and if so, how to mitigate it.
- HUD discourages or in some cases prohibits incompatible development around civil airports and military airfields.
- To determine compliance, complete the appropriate worksheet at <https://www.hudexchange.info/environmental-review/airport-hazards/>
- Note that this factor is similar to Airport Runway Clear Zones (RCZ) and Accident Potential Zones (APZ), which was covered previously, but both factors must be completed for CEST- and EA-level projects.

COASTAL ZONE MANAGEMENT

- West Virginia does not have a designated coastal zone
- Document inapplicability and provide a general location map establishing there are no coastal zones in the state: <https://koordinates.com/layer/20522-us-coastal-zone-management-act-boundary/>
- Note that this factor is similar to the Coastal Barriers Act, which was covered previously, but both factors must be completed for CEST- and EA-level projects.

ENDANGERED SPECIES

- Under the Endangered Species Act, each federal agency must ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species in the wild or destroy or adversely modify its critical habitat
- If project has the potential to affect endangered species or habitats, consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service is required and mitigation or selection of a different project site may be necessary
- To determine compliance, complete the appropriate worksheet at <https://www.hudexchange.info/environmental-review/endangered-species/>
- The Environmental Conservation Online System (<https://ecos.fws.gov/ecp/>) allows data to be filtered down to the County level
 - Be sure to incorporate State data and requirements for Rare, Threatened and Endangered (RTE) Species—covered in Day 3 of this presentation
- Note: This compliance factor should be analyzed early to allow sufficient time for consultation if necessary

ENVIRONMENTAL JUSTICE

- Environmental Justice (EJ) means ensuring that the environment and human health are protected fairly for all people regardless of race, color, national origin, or income.
- Executive Order 12898 requires certain federal agencies, including HUD, to consider how federally assisted projects may have disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- HUD strongly encourages starting the EJ analysis only after all other laws and authorities, including Environmental Assessment factors, if necessary, have been completed.
 - If no adverse effects are identified in the ERR, the project is considered compliant with EJ.
- To document compliance, complete the appropriate worksheet at <https://www.hudexchange.info/programs/environmental-review/environmental-justice/>
 - If additional analysis or mitigation is needed, see the additional information and resources at the above link for further guidance that is not specifically included in the worksheet.

EXPLOSIVE AND FLAMMABLE FACILITIES

- There are inherent potential dangers associated with locating HUD-assisted projects near hazardous facilities which store, handle, or process hazardous substances of a flammable or explosive nature.
- To address this risk, certain HUD-assisted projects are required to be separated from these facilities by a distance that is based on the contents and volume of the aboveground storage tank, or to implement mitigation measures
- To determine compliance, complete the appropriate worksheet at <https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/>
- Note that site visits are very useful for identifying above-ground storage tanks or facilities that may not be present aerial maps



FARMLANDS PROTECTION

- The importance of farmlands to the national and local economy requires the consideration of the impact of activities on land adjacent to prime or unique farmlands.
- This compliance factor applies to land that meets the definition of prime or unique farmlands or is determined to be of statewide or local significance (with concurrence by the U.S. Secretary of Agriculture)
- To determine compliance, complete the appropriate worksheet at <https://www.hudexchange.info/environmental-review/farmlands-protection/>

FLOODPLAIN MANAGEMENT

This requirement aims to preserve floodplains as well as protect life and property. Restrictions or required mitigation measures depend on the type of project and type of floodplain:

- **Floodway** – The waterway and its immediate banks. No HUD assistance may be expended unless project is a functionally dependent use (e.g. dam or bridge), a floodplain restoration activity or meets exception criteria at 24 CFR 55.12(c)
- **Special Flood Hazard Area** – Area that has a 5% chance of flooding each year (AKA 100-yr floodplain). Must complete 8-step decision-making process unless 5-step process is applicable 55.12(a) or project meets a specific exception under 55.12(b).
- **Non-Special Flood Hazard Area** – Includes areas with 0.2% chance of flooding each year (AKA 500-yr floodplain). If project is a “critical action” (e.g. hospitals, nursing homes, police stations, fire stations, and roadways providing sole egress from flood-prone areas) must comply with 24 CFR Part 55, including 8-step if applicable. Non-critical actions may be undertaken without 8-step or 5-step process under some circumstances.

Characteristics of a Floodplain



FLOODPLAIN MANAGEMENT – CONT.

- The 8-step (or 5-step) process is a prescriptive process for identifying floodplain impacts, engaging the public, and evaluating alternatives and mitigation measures.
- Note that floodplain management is separate from but related to flood insurance (discussed previously)—both must be analyzed for CEST- and EA-level projects.
- There are three separate categories of exceptions under 24 CFR 55.12:
 - Projects that fall under 55.12(a) must still complete the 5-step process (same as the 8-step process minus steps 2, 3 and 7)
 - Projects that fall under 55.12(b) are not required to complete the 8-step or 5-step process but ERR must still document that they comply with Part 55 due to being an exception
 - Projects that fall under 55.12(c) are not subject to floodplain management requirements at all (but still subject to flood insurance requirements discussed previously)

FLOODPLAIN MANAGEMENT & CDBG-MIT

- CDBG-MIT projects are subject to the same floodplain management requirements as other projects including:
 - No projects in floodway unless they meet an exception, are functionally dependent use or beneficial to floodplain—**8-step process still required for functionally dependent or floodplain restoration projects**
 - “Critical actions” (e.g. hospitals, nursing homes, police stations, fire stations, and roadways providing sole egress from flood-prone areas) are generally restricted in all floodplains unless they meet an exception under 55.12(a) or 55.12(b)
- Rehabilitation or improvement of existing buildings may qualify as an exception under 55.12(a)—5-step process still required
- Mitigation and floodproofing measures are addressed in steps 5 and 6 of the 8-step process
- The HUD Exchange has a Floodplain Management page that includes worksheets, flow charts, 8-step process guidance, sample public notices for floodplain activities, and more:
<https://www.hudexchange.info/programs/environmental-review/floodplain-management/>

7 STEPS YOU CAN TAKE TO ACHIEVE “FLOODPLAIN MANAGEMENT” COMPLIANCE BASED ON 58.5

1. Determine if project is located in a floodplain at <https://msc.fema.gov/portal/home>.
 - Must use FEMA map unless area is not mapped—then use best available data and document why data used was best available.
2. Determine if the project is a critical action (e.g. hospitals, nursing homes, police stations, fire stations, and roadways providing sole egress from flood-prone areas) or a non-critical action.
3. Determine if project meets an exception under [24 CFR 55.12](#).
4. Based on items 1-3 above, determine if project can proceed and if so, whether the 8-step or 5-step process is required.
5. If project can proceed, complete 8-step or 5-step process if either one is applicable.
6. If project can proceed, implement project incorporating any alternatives or mitigation measures identified in 8-step or 5-step process if applicable.
7. Document floodplain compliance in ERR file.

FLOODPLAIN COMPLIANCE DOCUMENTATION

The environmental review record should contain one of the following:

- Documentation supporting the determination that an exception at 55.12(c) applies.
- A FEMA map showing the project is not located in a Special Flood Hazard Area.
- A FEMA map showing the project is located in a Special Flood Hazard Area and an applicable citation to 55.12(b) demonstrating that the 8-Step Process is not required.
- A FEMA map showing the project is located in a Special Flood Hazard Area, documentation that the 5-Step Process was completed, and the applicable citation to 55.12(a).
- A FEMA map showing the project is located in a Special Flood Hazard Area along with documentation of the 8-Step Process and required notices.

HISTORIC PRESERVATION

- Section 106 of the National Historic Preservation Act (NHPA) directs federal agencies to protect historic properties and to avoid, minimize, or mitigate possible harm that may result from agency actions. The review and consultation process is called the “Section 106” process.
- The RE must consider properties that are listed in or eligible for listing in the National Register of Historic Places
 - This may include buildings, cemeteries, streets, alleys, curbs or even trees
 - “Historic” may refer to architectural features or to events that occurred at a site
- The Section 106 process requires consultation with various entities, including interested tribes and the State Historic Preservation Office (SHPO) so it is important to start the 106 review as early as possible
- To determine compliance with Section 106, complete the appropriate worksheet at <https://www.hudexchange.info/programs/environmental-review/historic-preservation/>

GETTING AHEAD OF THE 106 PROCESS

- **Remember the required timeframes.** The SHPO and interested tribes have 30 days to respond to a properly submitted 106 request. If a tribe requests a copy of the SHPO concurrence letter, their 30 days may not start until after the SHPO time period has elapsed. If SHPO or tribe does not accept electronic submissions, the comment period is 35 days to account for mail time. If additional consultation is needed due to objections or adverse effects, the process may take several more months.
- **Submit the proper info and documentation.** The Section 106 Project Information Form should be filled out completely and accompanied by a map of the project site and labeled color photos of at least 3 sides of the structure. The concurrence request letter should list all sources consulted and request concurrence (NOT determination).
- **Build relationships with the SHPO and tribal representatives.** Once they know you, they may be more willing to expedite your 106 requests and more open to discussion of your questions and concerns.
- **Be mindful of sensitive information that should not be publicly disclosed.**

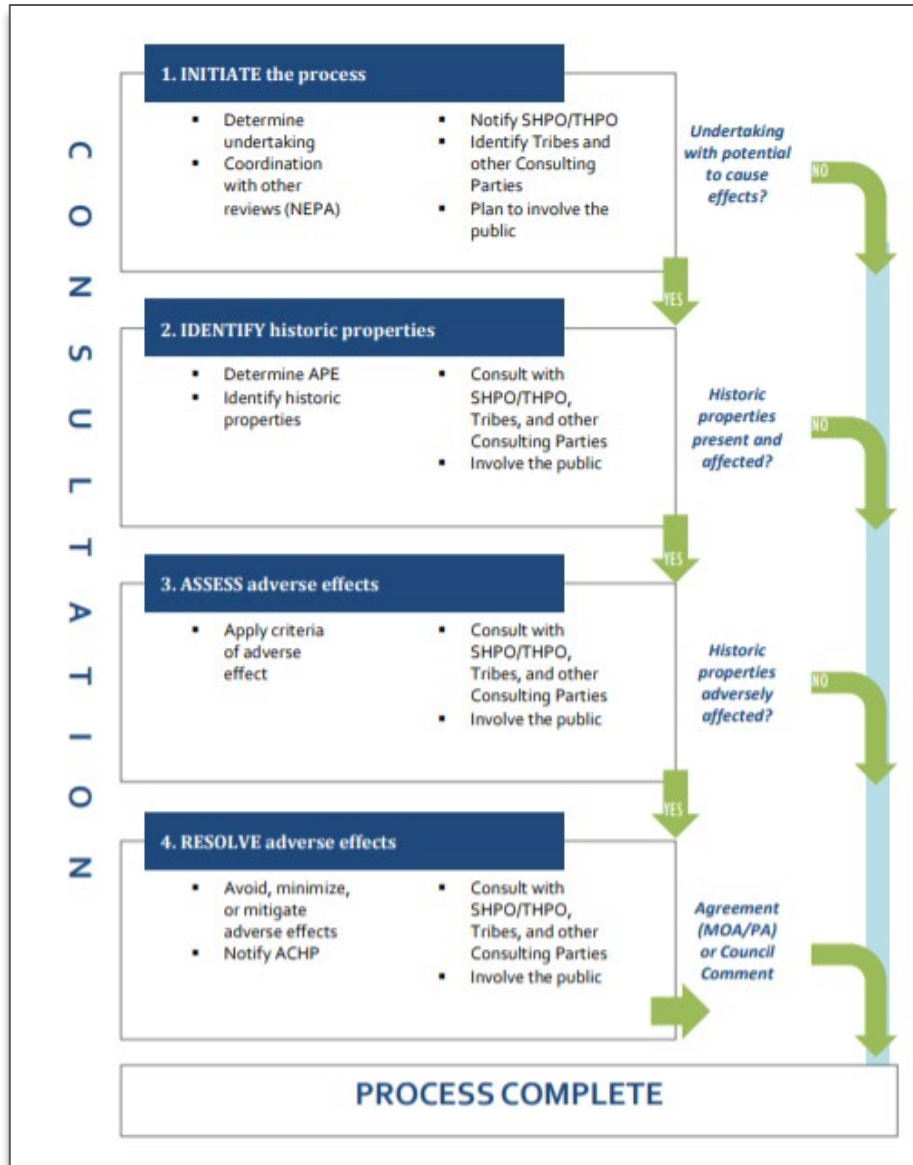
TRIBAL CONSULTATION 101

- Only the RE may consult with tribal representatives, not project partners or consultants
- West Virginia does not have any federally designated tribal lands, but consultation is still required as some tribes may have an ancestral interest in the project site
- For all CEST and EA projects, a “When to Consult with Tribes” checklist must be completed and retained in the project ERR file—even if it indicates consultation is not required
- Tribal consultation may be expedited by sending potentially interested tribes a preliminary letter listing all projects expected to be undertaken with MIT funds. Only tribes who indicate that they wish to consult would then be sent the project-specific documentation (which would mark the start of the 30-day response period).
- If a tribe does not respond within the 30-day time period, the RE may proceed with their determination. However, if a tribal representative responds after the time period has elapsed, the RE should still make a good-faith effort to honor their request to consult, if practicable.

WHAT DOES MITIGATING ADVERSE EFFECTS TO HISTORIC PROPERTIES LOOK LIKE?

Mitigation may take many forms, depending on the specific project. Here are some real examples of projects where an interested party requested that adverse effects at a historic property be mitigated:

- RE entered into a Programmatic Agreement with the Advisory Council on Historic Preservation to have an architectural historian create photographic records of a historic but blighted property that was going to be demolished
- A tribe requested that a Phase I Cultural Resource Survey be undertaken prior to implementing a project to determine the presence or absence of culturally significant resources at or near the project site
- A tribe requested that the RE procure an archaeological monitor to be present during excavation of the project due to the high probability of finding artifacts



[HTTPS://WWW.HUDEXCHANGE.INFO/RESOURCE/760/SECTION-106-FLOWCHART/](https://www.huexchange.info/resource/760/section-106-flowchart/)

NOISE ABATEMENT AND CONTROL

- Applicable to residential new construction/rehabilitation or projects involving noise-sensitive uses (e.g. office, school, park, place of worship)
- Project sites with Day Night Average Sound Levels (DNLs) of greater than 65 dB are considered noise-impacted
 - Above 65 dB to 75 dB requires noise mitigation
 - Greater than 75dB requires an Environmental Impact Statement (EIS)
- Site visits are useful for identifying potential sources of noise near the project site
- Noise mitigation can generally be resolved through specification work with your architect
- Also think about whether the end-use of the project will generate new noise that will impact the surrounding community. If so, consider noise mitigation or an alternative project site
- To determine compliance, complete the appropriate worksheet at <https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control/>

SITE CONTAMINATION

- All properties proposed for use in HUD programs must 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 intended utilization of the property
- ASTM Phase I Environmental Site Assessment (ESA) is required for project sites known or suspected to be contaminated, including those: (i) listed on an EPA Superfund National Priorities or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) List, or equivalent State list; (ii) located within 3,000 feet of a toxic or solid waste landfill site; or (iii) with an underground storage tank
- Multifamily and nonresidential properties must include evaluation of previous uses of the site and other evidence of contamination on or near the site—Phase I ESA strongly advised
- All projects must be screened for site contamination and issues mitigated or remediated
- Determine compliance by completing the appropriate worksheet at <https://www.hudexchange.info/environmental-review/site-contamination/> (use the multifamily worksheet for nonresidential projects)
 - Also refer to the State Leaking Underground Storage Tank (LUST) Report—discussed in more detail in Day 3 of this presentation

WHAT IS A PHASE I ENVIRONMENTAL SITE ASSESSMENT (ESA)?

- Analysis and report prepared by an environmental professional to identify possible contamination risks
- Based on the American Society for Testing and Materials (ASTM) Standard E1527-13
- Includes but is not limited to historical research into past ownership and uses of the property, records search physical visit to the site and surrounding area, and interviews with past and present owners and occupants of the site. Does not include sampling, testing or analysis of materials at the site
- Identifies Recognized Environmental Conditions (RECs) and may recommend follow-up actions such as a Phase II ESA, which can include sampling, testing and analysis
- If contamination is identified, the ERR may still be approved on the condition that contamination is remediated during site preparation. If so, this should be incorporated into project legal documents and the RE must monitor the project to ensure conditions for approval are met
- Note that the Phase I process takes at least a month, so allow for sufficient completion time.

NON-SCOPE CONSIDERATIONS

(INCLUDING MOLD, RADON, ASBESTOS, LEAD BASED PAINT AND OTHERS)

- In addition to releases of hazardous substances and/or petroleum products, HUD requires that the ERR also consider additional items that may pose a health or safety risk to site users
- These items are referred to as “non-scope” considerations because they are not within the scope of a standard Phase I ESA—they must be specifically requested at an additional cost
- Non-scope items that HUD recommends for inclusion in a Phase I ESA include but may not be limited to: asbestos, radon, lead-based paint, regulatory health and safety compliance; state and local compliance responsibilities related to toxic or hazardous substances, or corrective action relating to past noncompliance on the property; indoor air quality; and mold.
- Note that non-scope items may not be identified as RECs in a Phase I ESA, so the RE should review the findings of the report carefully and consult the engineer for next steps
- More information about Phase I ESAs can be found at:
<https://files.hudexchange.info/resources/documents/Using-a-Phase-I-ESA-in-HUD-Environmental-Review.pdf>



COMPLIANCE DOCUMENTATION FOR SITE CONTAMINATION

The ERR should contain one of the following:

- Evidence the site is not contaminated; a Phase I Environmental Site Assessment is strongly encouraged for multifamily and non-residential projects
- Evidence supporting determination that the hazard will not affect health and safety of the occupants or conflict with the intended use of the site, including any mitigation measures used
- Documentation the site has been cleaned up according to EPA or state standards, which requires a letter of “No Further Action” (NFA) required from the appropriate state department/agency, or a Response Action Outcomes letter from a Licensed Site Remediation Professional

SOLE SOURCE AQUIFER

- Requires protection of drinking water systems that are the sole or principal drinking water source for an area and which, if contaminated, would create a significant public health hazard
- There are no documented sole source aquifers in the State of West Virginia according to the EPA's map of sole source aquifer locations
<https://www.epa.gov/dwssa/map-sole-source-aquifer-locations>
- Document the project ERR file and include a map showing there are no sole source aquifers in West Virginia
- Because no sole source aquifers exist in West Virginia, no further action is needed to comply with this factor



WETLANDS PROTECTION

- HUD-assisted projects must avoid adverse impacts on wetlands
- The compliance process for wetlands protection is very similar to floodplain management and both are covered under 24 CFR Part 55—however, compliance must be documented separately for each factor
- To determine compliance, complete the appropriate worksheet at <https://www.hudexchange.info/environmental-review/wetlands-protection/>

WILD AND SCENIC RIVERS

- The Wild and Scenic Rivers Act provides federal protection for certain free-flowing, wild, scenic and recreational rivers designated as components or potential components of the National Wild and Scenic Rivers System (NWSRS) from the effects of construction or development
- If a project could have an adverse effect on a Wild and Scenic River, consult with the agency that manages the river to determine appropriate avoidance or mitigation measures
- **Note: This compliance factor should be analyzed early to allow sufficient time for consultation if necessary**
- To determine compliance requirements, complete the appropriate worksheet at <https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers/>

END OF CEST-LEVEL ERR

- If completing an EA, you must analyze these factors plus NEPA factors which we will cover in Day 3
- Compliance or non-compliance should be documented for each factor
- Now that you have completed all of the other factors, remember to go back and analyze Environmental Justice!
- If there are no compliance issues, the project can convert to Exempt and the project may proceed
- If there are compliance issues, you must request release of funds from HUD following the NOI-RROF process or proceed to an environmental assessment as applicable

RESOURCES

HUD Exchange Environmental Review Webpage:

<https://www.hudexchange.info/programs/environmental-review/>

Sample NOI-RROF: <https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds/>

Sample FONSI-RROF: <https://www.hudexchange.info/resource/2755/sample-fonsi-and-rrof/>

HUD Form 7015.15 Request for Release of Funds and Certification:

<https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/>

NEPA website: <https://ceq.doe.gov/>

24 CFR Part 58: <https://www.ecfr.gov/current/title-24/subtitle-A/part-58?toc=I>

Public Comment Period Calculator: <https://www.cdbgsc.com/forms/environmental/>



PREPARING ENVIRONMENTAL REVIEWS FOR HUD FUNDED PROGRAMS

DAY 3: NEPA ASSESSMENT AND
CASE STUDY EXAMPLES



PRESENTATION SCHEDULE

- Day 1 – The Environmental Review Process
- Day 2 – A Closer Look at Compliance Factors
- Day 3 – NEPA Assessment and Case Study Examples

DAY 3 AGENDA

1. NEPA Environmental Assessment (EA) Factors
2. Additional Requirements for West Virginia Subrecipients
3. Environmental Review Case Studies



DISCLAIMER

Throughout this presentation you will notice that the text appears in two different colors:

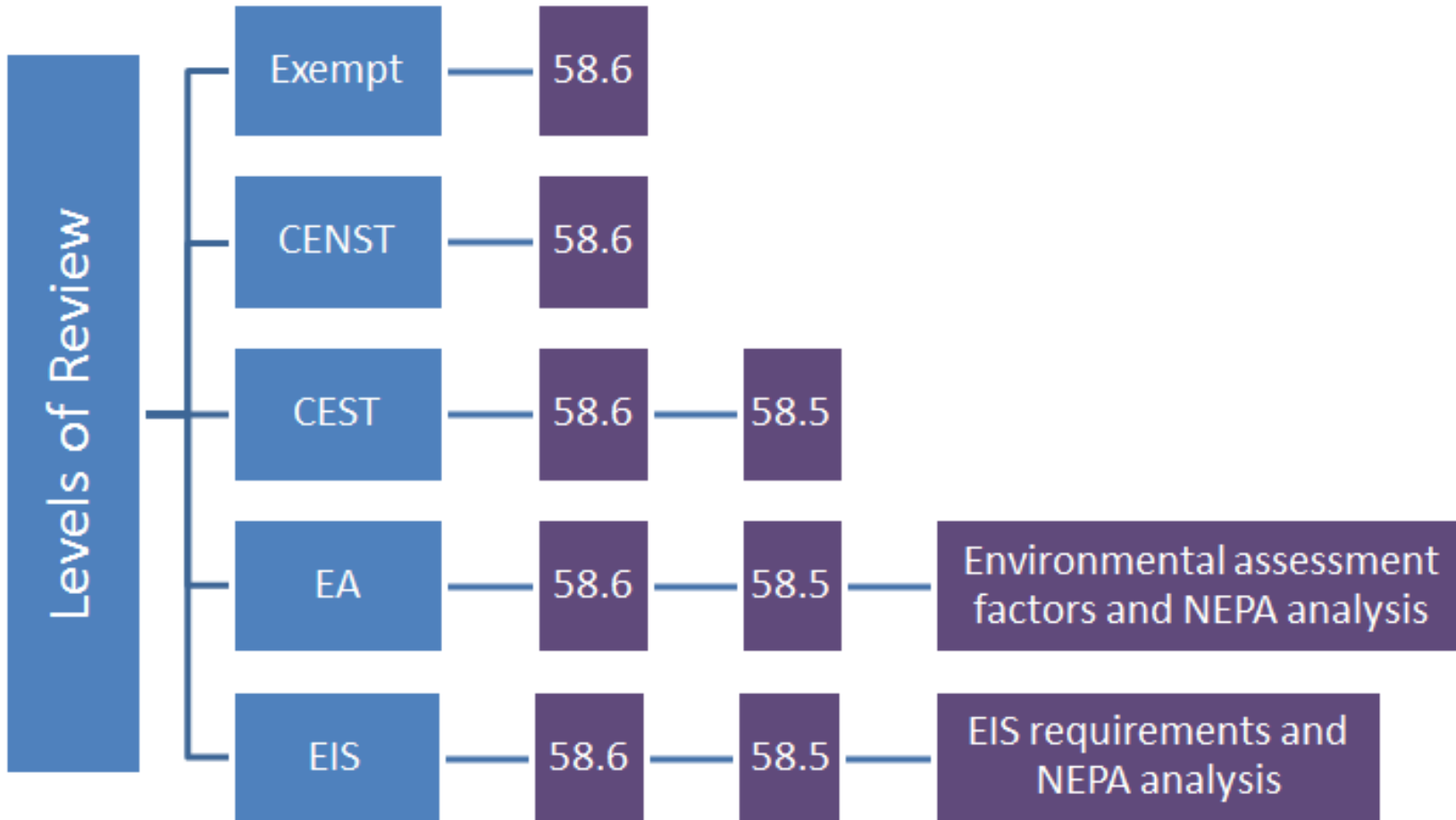
- Black text comes directly from a HUD-approved source such as regulations, the HUD Exchange or an official HUD document. For the discussion of State and local requirements, black text comes from a State source.
- Blue text is advice, useful information and reminders that come from our direct experience completing ERRs—however, it has not been reviewed or approved by HUD for the purposes of this presentation.

QUICK REFRESHER

- What are the five levels of environmental review?
 - Exempt
 - Categorically Excluded Not Subject to 58.5 (CENST)
 - Categorically Excluded Subject to 58.5 (CEST)
 - NEPA Environmental Assessment (EA)
 - Environmental Impact Statement (EIS)
- What are the main laws and regulations that govern environmental reviews?
 - 24 CFR 58.6 – ALL levels of review
 - 24 CFR 58.5 – CEST, EA, EIS
 - National Environmental Policy Act (NEPA) – EA, EIS

Environmental Analysis (Part 58)

Part 58 reviews may be subject to the requirements of 24 CFR 58.6, 24 CFR 58.5, environmental assessment factors, and the analysis under the National Environmental Policy Act. See the chart below for a breakdown of which components are required for each type of review.



[HTTPS://WWW.HUDEXCHANGE.INFO/RESOURCE/3140/PART-58-ENVIRONMENTAL-ASSESSMENT-FORM/](https://www.huexchange.info/resource/3140/part-58-environmental-assessment-form/)



NEPA ENVIRONMENTAL ASSESSMENT

- Used for projects that could potentially have a significant impact on the environment
- Incorporates all requirements from lower levels of review plus NEPA requirements
- Can take several months depending on the scope and complexity of the project
- NEPA requirements tend to be more qualitative—less emphasis on “right” and “wrong” and more emphasis on defending and documenting your determination
- Strong emphasis on consultation with other agencies and individuals
- An EA results in either FONSI (Finding of No Significant Impact) or FOSI (Finding of Significant Impact)
 - If result is FONSI, next step is to notify the public and request release of funds
 - If result is FOSI, next step is an EIS



ENVIRONMENTAL ASSESSMENT RESOURCES

HUD Exchange Environmental Assessment Webpage:

<https://www.hudexchange.info/programs/environmental-review/environmental-assessments/>

Environmental Assessment Factors Guidance:

<https://www.hudexchange.info/resource/3306/environmental-assessment-factors-guidance/>

- The EA Factors Guidance document contains an overview of each factor, questions to guide analysis, and a list of potential sources to consult with



LAND DEVELOPMENT CONFORMANCE FACTORS

- Conformance with Comprehensive Plans and Zoning
- Compatibility and Urban Impact
- Slope
- Erosion
- Soil Suitability
- Hazards and Nuisances Including Site Safety
- Energy Consumption
- Noise - Contribution to Community Noise Levels
- Air Quality-Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels
- Environmental Design Visual Quality - Coherence, Diversity, Compatible Use and Scale



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SOCIOECONOMIC FACTORS

- Demographic Character Changes
- Displacement
- Employment and Income Patterns



COMMUNITY FACILITIES AND SERVICES

- Educational Facilities
- Commercial Facilities
- Healthcare
- Solid Waste
- Wastewater
- Stormwater
- Water Supply
- Public Safety: Police, Fire, EMS
- Open Space and Recreation: Recreation, Open Space, and Cultural Facilities



NATURAL FEATURES

- Water Resources
- Surface Water
- Unique Natural Features and Agricultural Lands
- Vegetation and Wildlife

SUMMARY OF FINDINGS AND CONCLUSIONS

ALTERNATIVES TO THE PROPOSED ACTION

- **Alternatives and Project Modifications Considered** [24 CFR 58.40(e), Ref. 40 CFR 1508.9]
 - Identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.
- **No Action Alternative** [24 CFR 58.40(e)]
 - Discuss the benefits and adverse impacts to the human environment of not implementing the preferred alternative
- **Mitigation Measures Recommended** [24 CFR 58.40(d), 40 CFR 1508.20]
 - Recommend feasible ways in which the proposal or its external factors should be modified in order to minimize adverse environmental impacts and restore or enhance environmental quality.
- **Additional Studies Performed**
 - Attach studies or summaries
- **List of Sources, Agencies and Persons Consulted** [40 CFR 1508.9(b)]

END OF ENVIRONMENTAL ASSESSMENT

- For 58.6 and 58.5, compliance or non-compliance should be documented for each factor, an explanation of the basis for the determination should be provided, and supporting documentation included in the project ERR file
- Each Environmental Assessment factor should be evaluated according to the likelihood of adverse impact, an explanation of the basis for the determination should be provided, and supporting documentation included in the project ERR file
- Now that you have completed all of the other factors, remember to go back and analyze Environmental Justice!
- If the EA resulted in a Finding of No Significant Impact, you must notify the public and request release of funds from HUD FONSI-RROF combined notice
- If the EA resulted in a Finding of Significant Impact, an EIS will be required



STATE AND LOCAL REQUIREMENTS

- In addition to federal requirements, REs must also comply with State and local environmental requirements
- Many State environmental requirements are overseen by either the West Virginia Department of Environmental Protection (WVDEP) or the West Virginia Department of Natural Resources (WVDNR)
- Some State or local offices may maintain a searchable online database or other resources. In other cases, you may need to contact an official to obtain guidance or information that informs your ERR determination—remember to document all consultation efforts, whether with people or websites
- Other State and local requirements may be concerned with obtaining environmental permits for certain types of projects
- You are not required to use an Environmental Professional to complete your EA, but they may possess valuable knowledge of additional requirements
- Because requirements are subject to change, it is not possible to list here all applicable requirements that apply to your County or even the State of West Virginia. However, the next few slides provide some examples of requirements that may apply to your project



WEST VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

- Under the delegated National Pollution Discharge Elimination System (NPDES) permit program, most point source discharges of pollutants into state waters require a discharge permit from the Office of Water Resources
- West Virginia's point source pollution discharge permit program is broader than the federal NPDES program as West Virginia regulates discharges into all state waters including groundwater
- State law also requires a permit not only for discharge but also for the construction of a disposal system. The West Virginia Natural Streams Preservation Act (NSPA) requires a separate permit for certain designated streams.
- ***Potentially Relevant EA Factors:*** Water Resources, Surface Water, Site Contamination

See next slide for recommendations.

WEST VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS – CONT.

- Stream surveys are conducted by volunteers who then upload them into a database: <https://dep.wv.gov/WWE/getinvolved/sos/Pages/VAD.aspx>. The volunteers collect data on factors such as water quality, physical conditions and habitat conditions and can provide an overall assessment.
- Drawbacks: No guidance for interpreting the data, overall assessments are not completed consistently, and not all streams have current surveys on record.
- Recommendations: If potential pollution from a nearby waterway could impact your project, search the database for a recent survey on the waterway. If you need assistance interpreting the results or cannot locate the data that you are looking for, contact the Department of Environmental Protection at 304-926-0440. If there is indication of pollution that could negatively impact the project, further investigation and/or mitigation may be required.
- Document your results under the appropriate EA factor(s) and any agency contacts under the “List of Sources, Agencies and Persons Consulted.”

INTEGRATED WATER QUALITY MONITORING AND ASSESSMENT REPORT – INCL. IMPAIRED STREAMS

- The West Virginia Integrated Water Quality Monitoring and Assessment Report (IR) fulfills the reporting requirements under the federal Clean Water Act, Section 303(d) to provide a list of impaired waters and Section 305(b) to provide an overall assessment of West Virginia's waters to the U.S. Environmental Protection Agency.
- The term "waters" refers to lakes, wetlands, and streams. Impairments to streams could include pollutants such as acid rain, aluminum, fecal coliforms or other unknown pollutants.
- This report results in the creation of a “303(d) List” that is public and searchable
- The most recent data on the West Virginia Department of Environmental Protection (WVDEP) website is from 2016. WVDEP is currently developing a combined 2018-2020-2022 report.
- **Potentially Relevant EA Factors:** Water Resources, Surface Water, Site Contamination

See next slide for recommendations.

INTEGRATED WATER QUALITY MONITORING AND ASSESSMENT REPORT – INCL. IMPAIRED STREAMS (CONT.)

- Recommendations: If potential pollution from a nearby waterway could impact your project, search the most recent 303(d) report (https://dep.wv.gov/WWE/watershed/IR/Pages/303d_305b.aspx) for the waterway. If there is indication of pollution that could negatively impact the project, further investigation and/or mitigation may be required.
- Document your results under the appropriate EA factor(s) and any agency contacts under the “List of Sources, Agencies and Persons Consulted.”
- Print a copy or screenshot of the relevant section of the list and place it in the project ERR file.

WEST VIRGINIA PROTECTED STREAMS

- The West Virginia Natural Streams Preservation Act (NSPA) 20 charges the WVDEP with the protection of certain protected free flowing streams.
- West Virginia also uses stream protection designations for waters of special concern under the West Virginia Department of Natural Resources. This designation provides additional protection for natural reproducing trout streams in 19 counties.
- As of 2001, the following streams were statutorily designated as protected streams:
 - Greenbrier River from its confluence with Knapps Creek to its confluence with the New River
 - Anthony Creek from its headwaters to its confluence with the Greenbrier River
 - Cranberry River from its headwaters to its confluence with the Gauley River
 - Birch River from the Cora Brown bridge to the confluence of the Elk River
 - New River from its confluence with the Gauley River to its confluence with the Greenbrier River
- **Potentially Relevant EA Factors:** Water Resources, Surface Water, Recreation and Open Spaces

See next slide for recommendations.

WEST VIRGINIA PROTECTED STREAMS – CONT.

- Recommendations: If the project could potentially have a negative impact on any streams that are located nearby, consult the WVDEP to request an updated list of protected streams:

Callie Cronin Sams, Program Coordinator
West Virginia Department of Environmental Protection
47 School Street, Suite 301, Philippi WV 26416
Phone: (304) 341-6095; Email: Callie.C.Sams@wv.gov

- Consult with WVDEP to identify any potential mitigation measures that may be required and incorporate them into the project as applicable
- Check with the WVDEP to see if your project will require a water or waste permit
- Document the project ERR file with any consultation and mitigation measures, and monitor the project to ensure any required mitigation takes place

WEST VIRGINIA RARE, THREATENED & ENDANGERED SPECIES

- West Virginia is a permanent home to 22 federally endangered species (17 animals, four plants) and seven federally threatened species (five animals, two plants)
- Three additional listed species are considered occasional, or accidental visitors
- To conserve these species, the WVDNR maintains an active rare, threatened, and endangered species program (WVDNR RTE)
- A list of RTE species in West Virginia can be found at <http://wvdnr.gov/wp-content/uploads/2021/04/2021.03.05-Federally-Threatened-Endangered-Species-in-WV.pdf>. However, the list does not include information as to where in the State each species is found—consultation will be required if the project could have an adverse impact on RTE.
- **Potentially Relevant EA Factors:** Endangered Species

See next slide for recommendations.



WEST VIRGINIA RARE, THREATENED & ENDANGERED SPECIES – CONT.

- Recommendations: Per the WVDNR website, contact the WVDNR Coordination Unit (304-558-6200) to obtain RTE information for proposed development projects
- Initiate this consultation at the same time that you consult with U.S. Fish and Wildlife
- Work with WVDNR to identify and implement mitigation recommendations if applicable
- Document your consultation with WVDNR, as well as the presence or absence of RTE species near the project area
- Start this factor early, as consultation could take time

WEST VIRGINIA UNDERGROUND STORAGE TANKS

- An underground storage tank (UST) is defined as a tank or a combination of tanks including any associated or connecting pipes used to contain regulated substances where the volume is located at least 10% below the ground
- USTs contain petroleum or other hazardous substances and are found at sites such as gas stations, chemical plants, trucking depots, fuel distributors and airports
- WVDEP regulates active USTs, provides emergency response to suspected releases, and administers the Leaking Underground Storage Tank (LUST) Program, which oversees cleanup of releases
- WVDEP maintains a quarterly report of LUST sites throughout the State that can be filtered by County
- **Potentially Relevant EA Factor(s):** Site Contamination

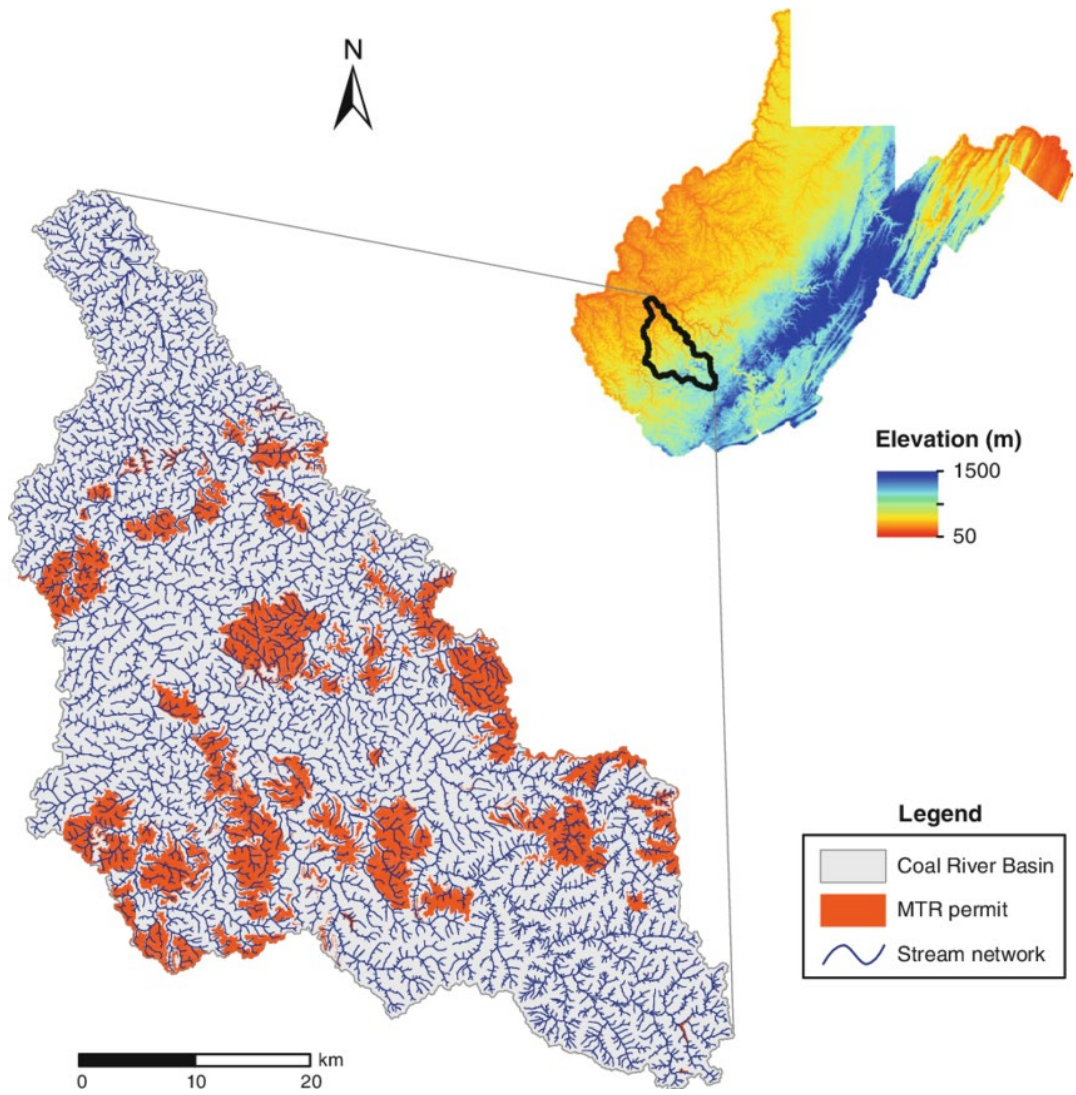
See next slide for recommendations.

WEST VIRGINIA UNDERGROUND STORAGE TANKS – CONT.

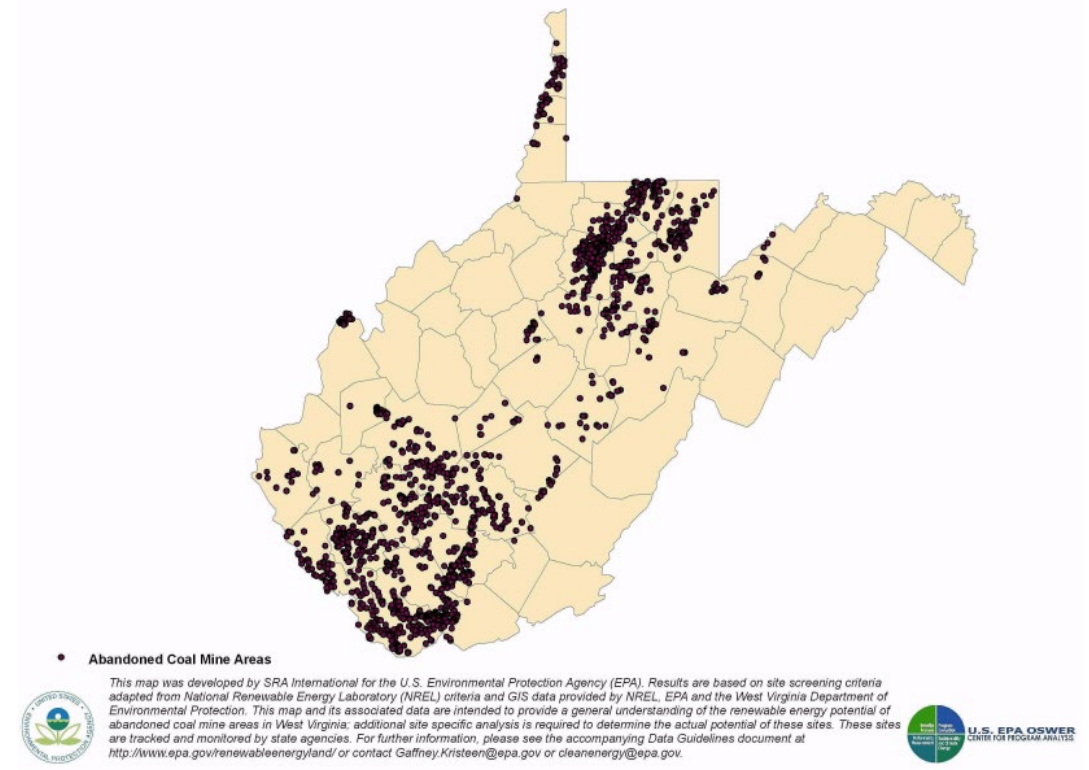
- Recommendations: Review WVDEP's most recent quarterly LUST report as part of your screening for site contamination
- If a LUST is identified that could potentially have a negative impact on the project site, consult with WVDEP to monitor cleanup efforts or explore options for remediation or mitigation
- Document the presence or absence of leaking underground storage tanks in the project ERR file, along with additional information on cleanup efforts if applicable. Also document the LUST report and applicable consultation with WVDEP officials in the list of agencies consulted.

SITE CONTAMINATION RESOURCES

- The following links navigate to various databases and maps listing possible or confirmed contamination sites such as mines, National Priorities List (NPL or Superfund) sites and Brownfields.
 - Superfund sites and Brownfields are two federal designations for sites that have either confirmed or potential contamination
- To determine compliance requirements, follow the site contamination guidance on the HUD Exchange (<https://www.hudexchange.info/programs/environmental-review/site-contamination/>) and review the guidance on Phase I Environmental Site Assessments we discussed during Day 2.
 - National Priorities List (NPL) Sites: [https://dep.wv.gov/dlr/oer/CERCLA/Pages/Remedial-\(NPL\)-Program.aspx](https://dep.wv.gov/dlr/oer/CERCLA/Pages/Remedial-(NPL)-Program.aspx)
 - List of Brownfield sites: [https://dep.wv.gov/dlr/oer/brownfieldsection/Voluntary%20Remediation%20Program/Documents/VRP%20Public%20Record%202021%20\(5.5.2021\).pdf](https://dep.wv.gov/dlr/oer/brownfieldsection/Voluntary%20Remediation%20Program/Documents/VRP%20Public%20Record%202021%20(5.5.2021).pdf)
 - Map of Underground and Surface Coal Mines: http://www.wvgs.wvnet.edu/GIS/CBMP/all_mining.html
 - Abandoned Coal Mine Methane Opportunities Database: https://www.epa.gov/sites/default/files/2016-03/documents/amm_opportunities_database.pdf



Abandoned Coal Mine Areas in West Virginia



Examples of Mine Area Maps



CASE STUDY I: RESILIENCY IMPROVEMENTS

- **Project:** Water Treatment Plant Resiliency Improvements – Johnson City, Broome County, NY
- **Funding Amount & Source:** \$980,000 in CDBG-DR funding
- **Project Details:** Demolish an existing storage building, construct a new administration & operations building at higher elevation, and flood-proof individual well houses at the existing water treatment plant site located in Johnson City, New York.
- **Level of Review:** Environmental Assessment
- **Determination:** Finding of No Significant Impact (FONSI)
- **Link to ERR including supporting documentation:**
https://stormrecovery.ny.gov/sites/default/files/uploads/2015%2011%2018%20Johnson%20City%20EA_Final.pdf

CASE STUDY 2: CULVERT REPAIR AND STORMWATER DRAINAGE IMPROVEMENTS

- **Project:** Gorge Creek Culvert Repair and Stormwater and Drainage Infrastructure Improvements, Village of Middleburgh, Schoharie County, NY
- **Funding Amount & Source:** \$3,000,000 in CDBG-DR funding
- **Project Details:** New box culvert, upstream expansion of the Gorge Creek floodplain and installation of a sedimentation pond, and a new or improved storm sewer system
- **Level of Review:** Environmental Assessment
- **Determination:** Finding of No Significant Impact (FONSI)
- **Link to ERR including supporting documentation:**
<https://stormrecovery.ny.gov/sites/default/files/crp/community/documents/Gorge%20Creek%20Stormwater%20Management%20Improvements%20EA%20100517.pdf>



RESOURCES

HUD Exchange Environmental Review Webpage: <https://www.hudexchange.info/programs/environmental-review/>

Sample NOI-RROF: <https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds/>

Sample FONSI-RROF: <https://www.hudexchange.info/resource/2755/sample-fonsi-and-rrof/>

HUD Form 7015.15 Request for Release of Funds and Certification:
<https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/>

NEPA website: <https://ceq.doe.gov/>

HUD Exchange Environmental Assessment Webpage:
<https://www.hudexchange.info/programs/environmental-review/environmental-assessments/>

Environmental Assessment Factors Guidance:
<https://www.hudexchange.info/resource/3306/environmental-assessment-factors-guidance/>

24 CFR Part 58: <https://www.ecfr.gov/current/title-24/subtitle-A/part-58?toc=I>

Public Comment Period Calculator: <https://www.cdbgsc.com/forms/environmental/>

QUESTIONS?



THANK YOU!

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