

SECTION 6 - ENVIRONMENTAL REVIEW REQUIREMENTS

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OVERVIEW

The CDBG environmental review process is an integral part of the program. Before a grantee can commit funds to a project financed completely or in part with CDBG funds, the grantee must review the effects the project may have on the environment.

The purpose of the environmental review is to identify any significantly detrimental results, whether there are alternatives that would eliminate them or whether mitigating actions can be taken. Finally, if after thorough study the effects are found to be unavoidable, the grantee must weigh the costs to the environment against the public benefits gained by the project.

Prior to completing the environmental review, costs may be incurred for the following activities only:

- Administrative activities;
- Preliminary environmental studies;
- Preliminary engineering feasibility studies that are needed in order to complete the environmental review; and,
- Professional service contracts for any of the above activities.

Funding Sources in Addition to CDBG

Project that include other funding sources are also subject to 24 CFR 58.22 which states:

“(a) Neither a recipient nor any participant in the development process, including public or private nonprofit entities, or any of their contractors, may commit **HUD assistance** under a program listed in Sec. 58.1(b) on an activity or project until the state has approved the recipient’s Request for Release of Funds (RROF) and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit **non-HUD funds** or undertake an activity or project under a program listed in Sec. 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.”

The law set forth in 58.22 becomes applicable to a CDBG grant activity or project on the date the CDBG Program receives the grant application. Acquisition, ground disturbance and going to bid are considered adverse environmental impacts or choice limiting activities by HUD. The complete CFR is available in Attachment 6-R.



As grantees move forward with projects be aware that going to bid prior to completion of the CDBG environmental review is considered, by HUD, a choice limiting activity.

The environmental review process encompasses the following Acts:

State Environmental Policy Act (Described under Step 3 on the following pages)

National Environmental Policy Act (Described under Step 4 on the following pages. The HUD implementing regulation is 24 CFR Part 58.)

Laws and authorities required of various other federal agencies

Three of the laws and authorities may take more time. Whenever a proposed project will affect:

- a. A listed species or designated critical habitat, NEPA requires compliance with the Endangered Species Act (ESA).
- b. Sites, buildings and objects with national, state or local historic, cultural and or archeological significance, NEPA requires compliance with Section 106 of the National Historic Preservation Act. The Section 106 Review is implemented by 36 CFR Part 800. Compliance procedures for the Section 106 Review are detailed under the NEPA process on the following pages.
- c. A designated floodplain (100 or 500 year) or wetland, or occurs in a designated floodplain or wetland, NEPA requires additional steps be taken to ensure the project will not have unacceptable adverse affects, create a hazard, or be susceptible to flood damage. Projects **in a designated floodway are not eligible** for CDBG funding. For guidance, contact Contracts Administration Unit (CAU) Project Manager and review Attachment 6-Q.

Additional guidance is also available at

<http://www.hud.gov/local/shared/working/r10/environment/washington.cfm?state=wa#czm>.

When the grantee determines the SEPA and NEPA requirements have been satisfied, the grantee documents its decision and follow the procedures required by CDBG to proceed with the release of funds. The release of fund procedures will be discussed in each appropriate category. Samples of referenced documents are provided in **Attachments 6-A through 6-W**.

ASSUMPTION OF AUTHORITY/RESPONSIBLE ENTITY

The CDBG environmental review regulations for HUD require grantees to assume the responsibility for meeting the requirements and complying with the environmental laws. The grantee is the Responsible Entity (RE) and assumes the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA, as specified in 24 CFR Part 58.

CONDUCTING A TIERED REVIEW (24 CFR 58.15)

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a narrower or focused analysis is better done at a later date (*example: Housing Rehabilitation Projects.*) The site specific review need only reference or summarize the issues addressed in the broader review. A sample site specific review form is available in Attachment 6-S.

The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy standard or process to be followed in the site-specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site-specific reviews. Subsequent site-specific reviews will not require notices or a Request for

Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review.

MEMORANDUM OF UNDERSTANDING (MOU) WITH OTHER FUNDING AGENCIES

When working to complete a NEPA report within the MOU (effective August 1, 2000) between the Department of Commerce (Commerce), USDA Rural Development, USDA Forest Service, Department of Ecology and the Public Works Board, it is imperative to comply with and document all laws and authorities listed at 24 CFR 58.5.

There are additional environmental laws and authorities that may not be required in other funder's environmental review requirements, but are required in order to fully comply with CDBG/HUD Regulations at 24 CFR 58.5. These areas must be considered when completing an environmental report for other federal funders if CDBG is a funding partner and the report will also be used to satisfy CDBG's regulations. The four additional laws and authorities to consider are:

1. Noise Abatement and Control (24 CFR 51B),
2. Explosive and Flammable Operations (24 CFR 51C)
3. Toxics Chemicals and Radioactive Materials [24 CFR 58.5(i)(2)], and
4. Airport Clear Zones and Accident Potential Zones (24 CFR 51D).

Publication Requirements may also vary between agencies. For example, the USDA-RD Environmental Report has a publication process that is different from the CDBG process. CDBG does accept the USDA-RD Environmental Report, but the CDBG publication requirements must still be met. Contact CAU staff for guidance.

THE ENVIRONMENTAL REVIEW PROCESS--A STEP-BY-STEP GUIDE

STEP 1: Designate a person to prepare the Environmental Review

The Environmental Review Preparer may be city, town or county staff, an elected official or may be a consultant under contract with the grantee. If the grantee does not have such an officer it must appoint one. The Preparer is responsible for conducting the environmental review process, establishing an Environmental Review Record, and responding to concerns regarding the project's assessed effects on the environment. The Environmental Review Preparer then presents the results of the review process to the Chief Administrative Officer (CAO) for final signature and certification. Official correspondence required to complete a formal consultation process, such as those required for historic preservation, should originate from the CAO. The CAO is typically the Mayor or Chair of the Board of County Commissioners.

STEP 2: Set-Up an Environmental Review Record (24 CFR 58.38)

The Responsible Entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The Responsible Entity must use the current HUD-recommended formats or develop equivalent formats.

The ERR contains all the environmental review documents, public notices and written determinations or environmental findings required as evidence of review, decision making and actions pertaining to a particular project of a grantee. The record should include:

- Description of the project and activities that the grantee has determined are part of the project;
- Evaluation of the effects of the project or the activities on the human environment;
- Documentation of compliance with applicable statutes and authorities, in particular those cited in Sec. 58.5 and 58.6; and
- Documentation/certification of the written determinations and other review findings (e.g., Exempt and Categorically Excluded projects determinations, Findings of No Significant Impact).

The ERR must also contain verifiable source documents and relevant base data used or cited in Environmental Assessments, Environmental Impact Statements or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that is not otherwise generally available for public review can not be incorporated by reference but must be included in the ERR.

STEP 3: Complete the SEPA Review

Categorical Exemption (SEPA)

Determine if the proposed project is Categorically Exempt under SEPA WAC 197.11.800 (see Attachment 6-A). If the project is Categorically Exempt, complete the Finding of Categorical Exemption (SEPA) form (Attachment 6-H(1)-SEPA) for the ERR and proceed with the NEPA review.

If the proposal is not categorically exempt, a SEPA Environmental Checklist (Attachment 6-B) must be completed. In addition, either a Determination of No Significance (SEPA) Attachment 6-H (2) or a Determination of Significance (SEPA) Attachment 6-H (3) must be completed. If a Determination of Significance is made, an Environmental Impact Statement is required. The SEPA Checklist and Determination must be part of the ERR.

SEPA ENVIRONMENTAL REVIEW PROCESS

Categorically Exempt	Not Categorically Exempt	Environmental Impact Statement
1. Determine if the project is categorically exempt under SEPA WAC 197.11.800 (Att. 6-A) If not, go to next column. ➔ 2. If exempt, complete the Finding of Categorical Exemption (SEPA) form (Att. 6-H (1) SEPA) 3. Proceed to NEPA Review	1. Complete a SEPA Environmental Checklist (Att. 6-B). 2. Complete a Determination of No Significance (SEPA) (Att. 6-H (2)) <p style="text-align: center;">Or</p> 3. Complete a Determination of Significance (SEPA) (Att. 6-H (3)) If #3 applies, go to the next column. ➔	1. Preparation of an Environmental Impact Statement (EIS) is required.

STEP 4: Complete the NEPA Review

(The charts on pages 6-15 and 6-16 are helpful references for understanding the NEPA process.)

EXEMPT (24 CFR 58.34)

If the project is determined to be exempt according to the list of exempt activities (Attachment 6-C), complete a Determination of Exemption and Determination of Categorical Exclusion and “Other Requirements” Compliance Document Checklist (24 CFR 58.6) (Attachment 6-G (1-3)), place both forms in the ERR and forward copies to Commerce. At this point, assuming the SEPA process is complete, the environmental review process will be considered finished and the grantee may begin to draw CDBG funds for eligible costs associated with the project.

NOTE: Some planning activities may include elements which would not be exempt. For example any activity that requires ground disturbance (defined by HUD as more than one cubic foot of disturbed soil) would require further review under Section 106 of the Historic Preservation Act.

CATEGORICALLY EXCLUDED (24 CFR 58.35)

Some CDBG projects may be Categorically Excluded under NEPA per 24 CFR 58.35(a) and (b). These activities are listed in Attachment 6-D and are categorically excluded from the NEPA environmental requirements. Activities should be checked carefully to verify they meet all the conditions of exclusion. If the activity you wish to undertake is not listed in Attachment 6-D (24 CFR 58.35 (a) and (b)), proceed to the Environmental Assessment on page 6-8.

- **Categorically Excluded - Not Subject to 58.5 (24 CFR 58.35[b])**

The activities listed at 24 CFR 58.35(b), or on Attachment 6-G (1-2), would typically not alter any conditions that would require a review or compliance determination under the federal laws and authorities cited in Section 58.5. When 58.35(b) activities are undertaken, the responsible entity does not have to publish a notice of intent to request release of funds or execute a certification. Nor does the recipient have to submit a request for release of funds to Commerce unless, according to 58.35(c), an activity, because of extraordinary circumstances, may have a significant environmental effect, in which case a full NEPA review would be required.

If the activities are determined to be Categorically Excluded – Not Subject to 58.5, complete the determination and “Other Requirements” Checklist (Attachments 6-G (1-3)) and submit to Commerce.

- **Categorically Excluded – Subject to 58.5 (24 CFR 58.35[a])**

Activities listed under 58.35(a) are subject to the regulatory considerations and compliances outlined in 24 CFR 58.5. These laws and authorities are listed in more detail in Statutory Worksheet (Attachment 6-E) and the Summary of Procedures and Requirements (Attachment 6-O). The Statutory Worksheet should be used to identify the need for coordination, consultation, permits and approvals, and review of other Federal statutes and regulations (for example Section 106 National Historic Preservation Act and Endangered Species Act).

Determining compliance may include contact or consultation with regulatory agencies. Attachment 6-O is a summary of procedures and requirements of applicable federal laws and authorities. The table may be helpful in determining which requirements apply to the project, which actions need to be taken, and which agencies are involved in the regulated activities. The grantee must seek comments from those agencies involved in the regulated activities by sending a letter and copy of the completed Statutory Worksheet (Attachment 6-E) to those agencies, for example:

- DOH for projects related to drinking water;
- ECY, SEPA Unit, for projects related to wastewater;
- DAHP and Tribes with a historic interest in the project site for Section 106 consultation (Further instructions follow on page 6-9)

Agencies may also include:

- Federal Emergency Management Agency;
- U.S. Department of Interior/Fish and Wildlife Services; and
- National Marine Fisheries Service.

Whenever a proposed project will affect a floodplain or occurs in a floodplain, the grantee must take steps to assure that the project will not have unacceptable adverse effects on the floodplain, create a hazard, or be too susceptible to flood damage, including the publishing of a floodplain notice. Guidance regarding requirements and procedures for projects that affect floodplains is available in Attachment 6-Q.

Contact information is available at:

<http://www.hud.gov/local/shared/working/r10/environment/washington.cfm?state=wa>.

Grantees may contact their Regional Clearinghouse to receive local input and assistance on their particular project.

Steps for completing and documenting the review for Categorically Excluded activities subject to 58.5 are outlined below.

➤ **Categorically Excluded - Subject to 58.5 with NO Laws Impacted (24 CFR 58.35[a])**

If after careful review and completion of the Statutory Worksheet there are no circumstances which would require any mitigation or compliance with other Federal laws and authorities cited in 24 CFR 58.5 nor require any formal permit or licenses the project may convert to Exempt per 24 CFR 58.34(a)(12).

At this point, complete the Determination of Exemption (Attachment 6-G (1-3)), place all the documents in the ERR and forward copies of the checklists, determination and agency letters to Commerce. Also submit the SEPA Finding of Categorical Exemption (Attachment 6-H (1)) or the SEPA Environmental Checklist (Attachment 6-B). The environmental review process is considered finished and the grantee may begin to draw CDBG funds for costs associated with the project.

➤ **Categorically Excluded - Subject to 58.5 WITH Laws Impacted (24 CFR 58.35[a])**

If however, the Statutory Worksheet and Other Requirements Checklist identify one or more statutes/authorities require consultation or mitigation, under procedures of the appropriate Government agencies with jurisdictional responsibility, the project CANNOT convert to Exempt.

Complete required compliance actions (coordination, permitting or consultation) and document the environmental review record.

The grantee may now request Commerce to release its funds. The grantee must first publish a “Notice to the Public of Intent to Request Release of Funds” (Attachment 6-K), in a local newspaper of general circulation. Before requesting that funds be released to the project, the grantee must wait seven (7) days after the notice is published to allow for comments.

On the day after the seven-day local comment period, the grantee shall submit the following to Commerce:

- Copy of the completed SEPA Environmental Checklist (Attachment 6-B) **or** the Finding of Categorical Exemption under SEPA (Attachment 6-H (1) SEPA).
- Copy of the completed Statutory Worksheet and “Other Requirements” Checklist (Attachment 6-E).
- Determination of Categorical Exclusion (Attachment 6-G (4) - Subject to 58.5).
- A copy of the Notice of Intent to Request the Release of Funds (Attachment 6-K), and the Affidavit of Publication.
- Request for Release of Funds and Certification (Attachment 6-L).
- 8-Step Floodplain & Wetlands Decision Making Process and notices, if applicable (Attachment 6-Q (1-5)).
- Verification of correspondence with appropriate agencies and their responses.
- Copies of Section 106 review forms (EZ forms) sent to the DAHP and their response letter(s), as well as evidence of tribal consultation.
- Other items may be required per Section 7 of the Endangered Species Act (ESA) if it is determined that the project might affect a listed species or designated critical habitat.

When Commerce receives the request for release of funds (RROF), there is a fifteen (15) day comment period **beginning the day after receipt by Commerce.** When the comment period is complete and if no objections were received, the grantee will be notified by letter that as of the 17th day, it may begin to draw funds to pay for eligible costs already incurred on the project. The 15-day review period is intended to permit public comment on the grantee’s certification, particularly the areas of the review process and/or findings. If any such objections are found to be legitimate, Commerce will not proceed to release funds to the affected grantee until the objection(s) are resolved.

ENVIRONMENTAL ASSESSMENT (24 CFR 58.36)

If the project is not exempt or categorically excluded under NEPA, then the grantee must complete the Environmental Assessment, which is Attachment 6-F.

Attachment 6-O is a summary of procedures and requirements of applicable federal laws and authorities. The grantee may use this table to determine which requirements apply to the project, which actions need to be taken, and which agencies are involved in the regulated activities. The grantee must seek comments from those agencies involved in the regulated activities by sending a letter and copy of the completed Environmental Assessment (Attachment 6-F) to those agencies such as:

- DOH for projects related to drinking water;
- ECY, SEPA Unit, for projects related to wastewater;
- DAHP and Tribes with a historic interest in the project site for Section 106 consultation (Further instructions follow on page 6-9)

The Environmental Assessment (Attachment 6-F (1-8)) must also be submitted to the following agencies if the affected areas identified are applicable to them:

- Federal Emergency Management Agency;
- U.S. Department of Interior/Fish and Wildlife Services; and
- National Marine Fisheries Service.

Whenever a proposed project will affect a floodplain or occurs in a floodplain, the grantee must take steps to assure that the project will not have unacceptable adverse effects on the floodplain, create a hazard, or be too susceptible to flood damage, including the publishing of a floodplain notice. Guidance regarding requirements and procedures for projects that affect floodplains is available in Attachment 6-Q.

If after careful consideration of the responses on the Environmental Assessment, the grantee finds that there may be some detrimental effect on the environment that cannot be avoided or mitigated; the grantee must make a formal “Finding of Significant Impact and Determination of Significance.” The Finding is incorporated into the Environmental Assessment (Attachment 6-F). It may be necessary to prepare a more thorough study called an “Environmental Impact Statement.” Further instructions are available on page 6-9.

However, if there will be no significant environmental impacts or no anticipated adverse environmental effects caused as a result of the project, the grantee should:

- Complete a “Finding of No Significant Impact” (FONSI). The Finding document is included within the Environmental Assessment, Attachment 6-F; and
- Publish in a local newspaper of general circulation the Concurrent Notice (Attachment 6-J) which consists of:
 - A FONSI; and
 - Notice to the Public of Intent to Request Release of Funds.

Grantees must wait a minimum of fifteen (15) days after the date of publication of the Concurrent Notice to allow notified agencies and the public to review and, if they wish, to comment on the project and its environmental impact. If any legitimate issues about the project are raised during this review period, the grantee must respond to them and document this in its ERR. Comments may make it necessary to revise the assessment or to complete an entirely new Environmental Assessment. In that case, the grantee must start over. If no issues are raised, the grantee should submit the following to Commerce on the **day after** the 15-day local comment period:

- Copy of the completed SEPA Environmental Checklist (Attachment 6-B), or the SEPA Finding of Categorical Exemption (Attachment 6-H (1) - SEPA).
- Copy of completed NEPA Environmental Assessment and Finding (Attachment 6-F).
- Affidavit of Publication of the Concurrent Notice, and a copy of the Concurrent Notice (Attachment 6-J).
- Request for Release of Funds and Certification (Attachment 6-L).
- 8-Step Floodplain/Wetlands Decision Making Process and notices, if applicable (Attachment 6-Q).
- Verification of correspondence with appropriate agencies with their responses.
- Copies of Section 106 review forms (EZ forms) sent to the DAHP and their response letter(s), as well as evidence of tribal consultation.
- Other items may be required per Section 7 of the Endangered Species Act (ESA), if it is determined that the project might affect a listed species or designated critical habitat.

When Commerce receives the request, there is a 15-day Commerce review period **beginning the day after receipt by Commerce**. When the review period is complete and if no objections were raised, the grantee will be notified by letter that as of the 17th day it may begin to draw funds to pay for eligible costs. This 15-day review period is intended to permit public comment on the grantee's certification, particularly the areas of the review process and/or findings. If any such objections are found to be legitimate, Commerce will not proceed to release funds to the affected grantee until the objection(s) are resolved.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

If there is a Finding of Significant Impact under NEPA or a Determination of Significance under SEPA that cannot be avoided or mitigated, an Environmental Impact Statement is required. An EIS is usually associated with large-scale developments.

Due to the complexity and high cost of an EIS and because an EIS is not often required in a CDBG project, Commerce prefers to approach an EIS on a case-by-case basis. If it appears that an EIS will be required on a particular project, the grantee is asked to contact Commerce for information. Please note that CDBG funds will not be permitted to pay for the preparation of an EIS.

GUIDANCE FOR HISTORIC PRESERVATION/SECTION 106

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies, or in this case grantees, to take into account the effects that their federally funded activities and programs have on significant historic properties. The Act's purpose is to balance historic preservation concerns with the needs of federal undertakings. This review process ensures that grantees identify any potential conflicts between their undertakings and historic preservation and resolve any conflicts in the public interest.

The Section 106 process consists of four basic steps:

- Initiation of Consultation
- Identification and Evaluation of Historic Properties
- Assessment of the Affects
- Resolution of the Adverse Effects

If your project includes:

- repair, rehabilitation or conversion of existing properties;
- new construction;
- acquisition of undeveloped land; or
- any activity that requires ground disturbance (defined by HUD as more than one cubic foot of disturbed soil);

You must consult with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and any tribes or groups that may have an interest in the project to determine if the project is eligible for the National Historic Register.

Note: If your project involves a structure that is less than 45 years old, is not in a historic district and has no ground disturbing activities the Section 106 review is complete. The ERR must include documentation supporting your determination.

The consultation process includes the following steps:

- Define and consider the Area of Potential Effect (APE). The APE is the geographic area within which an activity may directly or indirectly cause changes in the character or use of historic properties. The APE is influenced by the scale and nature of an undertaking.
- Determine if there are tribes or groups that have an interest in the historic aspects of the project and invite them to participate in the consultation. For ground disturbing activities, you must make a reasonable and good faith effort to identify Indian tribes that may have an interest. HUD has a list interested tribes by county available at <http://www.hud.gov/offices/cpd/environment/tribal>.
- Consult the SHPO, or if the project is on certain tribal lands, the THPO, with details of the project, project site and your determination if it is eligible for the National Historic Register. The SHPO and THPO have 30 days from receipt to review a well-documented request for

review of your determination. We recommend sending the materials with a return receipt form to document the contact.

- Department of Archaeology and Historic Preservation review forms and instructions are available at: <http://www.dahp.wa.gov> under “Document/Forms.”
- THPO contact information is available at: <http://www.nathpo.org/map.html>
- Attachment 6-W is a sample tribal consultation letter specific to CDBG-funded projects with an explanation of HUD’s assumption of authority.

If they do not respond within the timeframe, or provide a description of additional information needed, you may proceed with the next step of the process based on your finding or consult with the Advisory Council on Historic Preservation (ACHP).

Grantees may proceed as appropriate based on the findings. Comments from the SHPO or THPO are first in the form of a determination of eligibility, then a determination of potential effect.

- **No Historic Property Affected:** The Section 106 Historic Preservation review is complete. Include the SHPO/THPO concurrence, copies of letters to and from other interested parties and the tribes, and your response to the ERR. If the SHPO/THPO did not respond within 30 days, your dated letter documents compliance. Record your determination of no historic properties affected on the Statutory Worksheet or Environmental Assessment.
- **No Adverse Effect on Historic Property:** The Section 106 Historic Preservation review is complete. Categorically Excluded projects (24 CFR Part 58.35(a)) **CANNOT** convert to Exempt with this determination. Include the SHPO/THPO concurrence, copies of letters to and from other interested parties and the tribes, and your response to the ERR. Record your determination of no adverse affect on historic properties on the Statutory Worksheet or Environmental Assessment.
- **Adverse Effect on Historic Property:** Resolve Adverse Effects per 36 CFR Part 800.6 in consultation with SHPO/THPO, the ACHP if participating, and any consulting parties. Grant funds will not be released until adverse effects are resolved according to 800.6 or you have complied with 36 CFR PART 800. Categorically Excluded projects (24 CFR Part 58.35(a)) **CANNOT** convert to exempt with this determination. Make sure the resolution is fully documented in the ERR with all SHPO/THPO correspondence, copies of letters to and from other interested parties and the tribes, surveys, memorandums of understanding, etc.

Suggestions to expedite the review

- Provide detailed information and submit the appropriate documentation early
- Provide all the information requested on the DAHP project review forms (EZ forms)
- Provide clear/quality pictures of structures or affected resources
- Submit forms electronically when allowed
- Provide actual street addresses and section-township-range to clearly identify project location
- Identify project funders. A review for state funding will not suffice for a project that is federally funded.

Legislation and Regulations

National Historic Preservation Act, 16 U.S.C. 470(f), Section 106
36 CFR Part 800
24 CFR Part 58.5(a)

HOUSING REHABILITATION PROJECTS

Single-family residential housing rehabilitation projects will require a determination of eligibility for the National Register by DAHP. Access DAHP's new online GIS mapping tool, called WISAARD, to locate designated historic sites listed on the state and national register. The system is accessible at <http://www.dahp.gov> and by "clicking" on the WISAARD icon.

RE-EVALUATION OF ENVIRONMENTAL ASSESSMENTS AND OTHER ENVIRONMENTAL FINDINGS (24 CFR 58.47) *(i.e. Contract amended to include additional activities.)*

If project plans change after completion of the environmental review, the Grantee must re-evaluate its environmental findings to determine if the original findings are still valid. For example if:

- The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project (includes contract amended to include additional activities);
- There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
- The recipient proposes the selection of an alternative not in the original finding.

If the original findings are still valid but the data or conditions upon which they were based have changed, the Grantee must affirm the original findings and update its ERR by including the re-evaluation and its determination based on its findings. Under these circumstances, if a Finding of No Significant Impact (FONSI) notice has already been published, no further publication of a FONSI notice is required. If the responsible entity determines that the original findings are no longer valid, it must prepare an environmental assessment or an environmental impact statement if its evaluation indicates potentially significant impacts. Contact the CAU Project Manager if there are any changes that might impact the original finding or you are considering a re-evaluation.

OBJECTIONS TO ENVIRONMENTAL REVIEW DETERMINATIONS**Permissible Basis for Objections to Commerce's Release of Funds**

(Objections should be made to the grantee, with a copy to Commerce, and responded to by the grantee.)

- The grantee's certification was not in fact executed by the grantee's Authorized Chief Administrative Official.
- The grantee failed to make one of the two findings of either a Finding of No Significant Impact or Finding of Significant Impact.

- The grantee omitted one or more of the steps required for the preparation, publication or completion of the Environmental Assessment. The grantee omitted one or more procedural steps required for the conduct, preparation and completion of an Environmental Assessment or an Environmental Impact Statement.
- The grantee or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification.
- Another federal agency submitted a written finding that the project was unsatisfactory from the viewpoint of environmental quality.

PROCEDURES FOR SUBMITTING OBJECTIONS

Objections submitted to Commerce regarding a grantee's environmental review process must:

- Be submitted in writing to the CAU's Managing Director.
- Include the name, address and telephone number of the objecting party or organization, and be signed by the person or authorized official of the agency objecting.
- Be dated when signed.
- Describe the basis for objection and the facts or legal authority supporting the objection.
- State when a copy of the objection(s) was mailed or delivered to the grantee's Chief Administrative Officer.
- Reach Commerce within the prescribed fifteen (15) day comment period.

DEPARTMENT OF COMMERCE ACTIONS

When COMMERCE receives an objection that includes the information described above, it must withhold the release of CDBG funds to the grantee until a satisfactory resolution is achieved. The following describes the process for achieving resolution:

- The department will notify the grantee of the objection(s) and require that the grantee respond to that objection in writing to Commerce within ten (10) days.
- If the grantee cannot adequately document that the objection is not legitimate, Commerce will require that the grantee properly satisfy the regulation or procedure in question, and then recertify to Commerce that all review procedures have been met. A second 15-day comment period will be required before Commerce can release CDBG funds.
- If the grantee can document that the objection is not legitimate, Commerce will then notify the objecting party of this fact and proceed to release CDBG funds to the grantee.

IMMINENT THREAT PROJECTS

In the case of a Declaration of Emergency, it is likely that an Imminent Threat project will be classified as exempt under NEPA with minimum required documentation. Attachment 6-A lists all **SEPA** categorically exempt activities. Specifically, WAC 197.11.800(13)(d) states that:

“Any actions undertaken by an agency to...cure any hazard to public health or safety are Categorically Exempt.”

Also, WAC 197-11-880 addresses emergencies and states that:

“Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt.”

Under NEPA, an activity that will provide assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration, may be considered Exempt according to 24 CFR 58.34(10).

For emergency circumstances where it is necessary to take an action with significant environmental impact without observing the provisions of these regulations, the federal agency taking the action should consult with the Council on Environmental Quality about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. This guidance is found at 24 CFR 58.33 and 40 CFR 1506.11. Other actions remain subject to a full NEPA review.

ENVIRONMENTAL REVIEW COMPLIANCE MONITORING PROCESS

Each CDBG grantee will be monitored by CAU staff to determine if the SEPA and NEPA environmental review requirements have been met. In addition, the grantee will be monitored for compliance with the laws and authorities of 24 CFR Part 58.5 and Part 58.6. The monitoring will be conducted in two parts consisting of a pre- and post- monitoring to ensure full coverage of requirements and conditions place on environmental reviews.

Level 1: Release of Funds desk monitoring will include review of requested documentation and backup to ensure a complete packet has been submitted for the level of review. Since the levels of review may vary for projects please refer to the Environmental Review Process Table on 6-15 for a detailed list of submission requirements. Documentation will be reviewed to ensure:

- materials include a clear project scope/description;
- dates on checklists, publications and certifications align; and,
- compliance determination on checklists is well documented for each law and authority.

Level 1 will include a review of backup documentation supporting determinations for Section 106, ESA, and Floodplain Management/Wetland Protection, as applicable.

Level 2: On-site Monitoring will take place on site and will include review of the local Environmental Review Record to determine the review process met standards of thoroughness and adequacy. The review will include review of:

- supporting compliance determinations and backup for each law and authority not reviewed in the Level 1 monitoring;
- records to show no grant funds were obligated or spent prior to release of funds;
- objections received during public comment period, as applicable; and,
- actions taken as required by mitigation measure/conditions placed on the project.

Monitoring results may require follow-up or technical assistance. The environmental review monitoring checklist is available in Section 15, Attachment 15-A CDBG Monitoring Checklist.

NEPA ENVIRONMENTAL REVIEW PROCESS TABLE

<p>EXEMPT (24 CFR 58.34)</p>	<p>CATEGORICALLY EXCLUDED 24 CFR 58.35 (b) (Not Subject to 24 CFR 58.5)</p>	<p>CATEGORICALLY EXCLUDED 24 CFR 58.35 (a) (Subject to 24 CFR 58.5) & (No 58.5 Laws Impacted)</p>	<p>CATEGORICALLY EXCLUDED 24 CFR 58.35 (a) (Subject to 24 CFR 58.5) & (58.5 Laws Impacted)</p>
<p>Project determined to be exempt per Att. 6-C.</p> <p>If not, go to next column. →</p> <ol style="list-style-type: none"> 1. Complete and submit documentation of exemption (Att. 6-G (1-3)) Determination of Exemption for NEPA and Att. 6-H (1) for SEPA. 2. Commerce notifies grantee of completion. 3. Grantee begins project and may draw down funds. (Exempt activities have no publication requirements.) 	<p>Project determined to be categorically excluded (Not Subject to 58.5) based on review of Att. 6-D criteria (Section 58.35(b)).</p> <p>If not, go to next column. →</p> <ol style="list-style-type: none"> 1. Complete and submit Att. 6-G (1-3) for NEPA and Att. 6-H (1) for SEPA. 2. Commerce notifies grantee of completion. 3. Grantee begins project and may draw down funds. <p>NOTE: If the activity has a significant environmental effect, a full NEPA review would be required. <u>Most likely</u>, with 58.35(b) activities, it will not be necessary to publish a NOI/RROF or submit a RROF to Commerce.</p>	<p>Project determined to be categorically excluded from NEPA environmental review. See Att. 6-D for Section 58.35(a) criteria.</p> <p>If not, proceed to Environmental Assessment column (Page 6-16).</p> <ol style="list-style-type: none"> 1. Complete documentation of exemption (Att. 6-G (4)), NEPA Statutory Worksheet and “Other Requirements” Checklist (Att. 6-E). Determinations must be documented. <p>If activities impact related laws and authorities, go to next column. →</p> <ol style="list-style-type: none"> 2. If activities do not impact the related laws and authorities, project is exempt. <p>Submit documentation listed in #1 above, as well as supporting documentation for Sec. 106, Floodplain Management and Wetlands Protection, and the Determination of Exemption Att. 6-G (1 & 2) for NEPA per 24 CFR 58.34(a)(12).</p> <ol style="list-style-type: none"> 3. Submit SEPA Environmental Checklist (Att. 6-B) if applicable or Determination of Exemption SEPA (Att. 6-H (1)). 4. Commerce notifies grantee of completion and project can begin and funds may be drawn. There are no publication requirements. 	<p>Project determined to be categorically excluded and Subject to 58.5. See Att. 6-D or Section 58.35(a) for criteria.</p> <p>If not, proceed to Environmental Assessment</p> <ol style="list-style-type: none"> 1. Project cannot convert to exempt due to required mitigation/consultation as determined by Statutory Worksheet (6-E). Contact appropriate local, state or federal agencies to complete consultation/mitigation requirements and obtain clearance. 2. Document determination using Att. 6-G (4). 3. Grantee publishes “Notice of Intent to Request Release of Funds” (Att. 6-K) in local newspaper and waits 7 calendar days for comments. 4. Grantee sends to commerce: <ul style="list-style-type: none"> • Request for Release of Funds and Certification (Att. 6-L) • SEPA Environmental Checklist (Att. 6-B) or Determination of Exemption (Att. 6-H (1)) • Statutory Worksheet and “Other Requirements” Checklist (Att. 6-E) with documentation for Section 106 review, Floodplain Management, Wetland protection • Determination of Categorical Exclusion (Subject to 58.5) (Att. 6-G (4)) • Affidavit of publication (Att. 6-K) 5. Upon receipt, Commerce conducts its 15 days comment period. If no objections, Commerce notifies grantee of environmental clearance and releases of fund on 17th day.

**ENVIRONMENTAL ASSESSMENT
(24 CFR 58.36)**

Environmental Assessment Finding

1. For projects determined to need an environmental assessment, complete the Environmental Assessment (Attachment 6-F). Explanations must be provided for all determination made (See Attachments 6-M through 6-P). Determinations must be well documented.
2. For all related laws and authorities impacted by the activity, contact the appropriate local, state or federal agency to complete consultation/mitigation requirements and obtain clearance (See Att. 6-M).
3. **Finding of No Significant Impact (FONSI).** (The Finding is within Att. 6-F)
4. Publish and distribute Concurrent Notice in local newspaper, see Att. 6-J (A) "Notice of Finding of No Significant Impact" and (B) "Notice of Intent to Request Release of Funds."
5. Grantee waits 15 calendar days for comments.
6. Grantee sends the "Request for Release of Funds and Certification" (Att. 6-L) to Commerce along with documentation for Section 106 review, Floodplain Management, Wetland protection, as applicable, as well as Attachments 6-B, 6-F, 6-J, and Affidavits of publication.
7. Upon receipt of the packet, Commerce conducts the 15-calendar days comment period.
8. If no objections, Commerce sends a letter notifying grantee of environmental clearance and release of funds on the 17th day.

Finding of Significant Impact.

1. Prepare Environmental Impact Statement (EIS).
2. Contact Commerce for assistance.

LIST OF REFERENCE MATERIALS

- Attachment 6-A-----SEPA Rule and WAC 197.11.800 - Categorically Exempt Activities
- Attachment 6-B-----SEPA Environmental Checklist (WAC 197-11-960)
- Attachment 6-C-----NEPA List of Exempt Activities
- Attachment 6-D-----NEPA List of Categorically Excluded Activities
- Attachment 6-E -----NEPA Statutory Worksheet & “Other Requirements” Checklist (58.6)
- Attachment 6-F -----NEPA Environmental Assessment & “Other Requirements” Checklist (58.6) (Includes the Finding of No Significant Impact (FONSI) and Finding of Significant Impact)
- Attachment 6-G (1-3)-----NEPA Determination of Exemption, Categorical Exclusion (NOT Subject to 58.5) & “Other Requirements” Checklist
- Attachment 6-G (4) -----NEPA Determination of Categorical Exclusion (Subject to 58.5)
- Attachment 6-H (1) -----SEPA Finding of Categorical Exemption
- Attachment 6-H (2) -----SEPA Determination of No Significance
- Attachment 6-H (3) -----SEPA Determination of Significance
- Attachment 6-I -----No Attachment*
- Attachment 6-J -----Concurrent Notice Form
- Attachment 6-K-----Notice to Public of Intent to Request Release of Funds Form
- Attachment 6-L -----Request for Release of Funds and Certification Form
- Attachment 6-M -----Addresses of Agencies and Regional Clearinghouses
- Attachment 6-N -----No Attachment*
- Attachment 6-O-----Summary of Procedures/Requirements of Applicable Federal Laws & Regulations
- Attachment 6-P -----Sources, Documentation & Preparation of a Base Data File/Matrix
- Attachment 6-Q-----Requirements and Procedures for Floodplain Management – 8-Step Decision Making Process (Also used for Wetland Management)
- Attachment 6-R-----Environmental Review Procedures: 24 CFR PART 58
- Attachment 6-S -----HUD Compliance Record for 1-4 Residential Units (24 CFR 58.35)
- Attachment 6-T -----A Guide to Biological Assessment
- Attachment 6-U-----“Take” Guidance under the Endangered Species Act
- Attachment 6-V-----ESA Salmon Recovery Regions in Washington State
- Attachment 6-W -----Tribal Consultation – Sample Letter

SEPA Rules

PART NINE – CATEGORICAL EXEMPTIONS

WAC 197–11–800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197–11–305.

(1) Minor new construction—Flexible thresholds.

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any license governing emissions to the air or discharges to water is required. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency.

(b) The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

(i) The construction or location of any residential structures of four dwelling units.

(ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iii) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles.

(iv) The construction of a parking lot designed for twenty automobiles.

(v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

(c) Cities, towns or counties may raise the exempt levels to the maximum specified below by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197–11–904) and sent to the department of ecology. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:

(i) 20 dwelling units.

(ii) 30,000 square feet.

(iii) 12,000 square feet; 40 automobiles.

(iv) 40 automobiles.

(v) 500 cubic yards.

(2) Other minor new construction. The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:

(a) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.

(b) The construction and/or installation of commercial on-premise signs, and public signs and signals.

(c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248–54–660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where

capacity is not significantly increased and no new right of way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

(d) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(e) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

(f) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance.

(g) The installation of impervious underground tanks, having a capacity of 10,000 gallons or less.

(h) The vacation of streets or roads.

(i) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(j) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(3) Repair, remodeling and maintenance activities. The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring

buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging;

(b) Reconstruction/maintenance of groins and similar shoreline protection structures; or

(c) Replacement of utility cables that must be buried under the surface of the bedlands. Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) Water rights. The following appropriations of water shall be exempt, the exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation:

(a) Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.

(b) Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of ground water, for any purpose.

(5) Purchase or sale of real property. The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to an authorized public use.

(c) The lease of real property when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.

(6) Minor land use decisions. The following land use decisions shall be exempt:

(a) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, but not including further short subdivisions or short platting within a plat or subdivision previously exempted under this subsection.

(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(c) Classifications of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(d) Annexation of territory by a city or town.

(7) **School closures.** The adoption and implementation of a plan, program, or decision for the closure of a school or schools shall be exempt. Demolition, physical modification or change of a facility from a school use shall not be exempt under this subsection.

(8) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(9) **Clean Air Act.** The following actions under the Clean Air Act shall be exempt:

(a) The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(b) The issuance, renewal, reopening, or revision of an air operating permit under RCW 70.94.161.

(10) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

(11) **Activities of the state legislature.** All actions of the state legislature are exempt. This subsection does not exempt the proposing of legislation by an agency (WAC 197-11-704).

(12) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezoning, conditional use permit or

other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(13) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(14) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities, including but not limited to cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities, including but not limited to peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies,

tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services, including but not limited to detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities, including but not limited to taxicabs, ambulances, and tow trucks: *Provided*, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution, including but not limited to restaurants, liquor, and meat.

(h) All animal control licenses, including but not limited to pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(15) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: *Provided*, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection (see also WAC 197-11-800(7)).

(16) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

(17) **Local improvement districts.** The formation of local improvement districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880.

(18) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

(19) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(20) **Procedural actions.** The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt. Agency SEPA procedures shall be exempt.

(21) **Building codes.** The adoption by ordinance of all codes as required by the state Building Code Act (chapter 19.27 RCW).

(22) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (and thus requires approval of the department of ecology under RCW 70.107.060(4)), SEPA compliance may be limited to those items which differ from state regulations.

(23) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(24) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (more than 55,000 volts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station or well: *Provided*, That additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: *Provided*, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(25) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) All Class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder.

(b) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

(c) Licenses or approvals to remove firewood.

(d) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(e) Issuance of leases for Christmas tree harvesting or brush picking.

(f) Issuance of leases for school sites.

(g) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(h) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(i) Periodic use of chemical or mechanical means to maintain public park and recreational land: *Provided*, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(j) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(k) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

(26) Watershed restoration projects. Actions pertaining to watershed restoration projects as defined in RCW 89.08.460(2) are exempt, provided, they implement a watershed restoration plan which has been reviewed under SEPA (RCW 89.08.460(1)).

(27) Personal wireless service facilities.

(a) The siting of personal wireless service facilities are exempt if the facility:

(i) Is a microcell and is to be attached to an existing structure that is not a residence or school and does not contain a residence or a school;

(ii) Includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence or school and does not contain a residence or school, and the existing structure to which it is to be attached is located in a commercial, industrial, manufacturing, forest, or agriculture zone; or

(iii) Involves constructing a personal wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "Personal wireless service facilities" means facilities for the provision of personal wireless services.

(iii) "Microcell" means a wireless communication facility consisting of an antenna that is either:

(A) Four feet in height and with an area of not more than five hundred eighty square inches; or

(B) If a tubular antenna, no more than four inches in diameter and no more than six feet in length.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

[Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. 97-21-030 (Order 95-16), § 197-11-800, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-800, filed 2/10/84, effective 4/4/84.]

State Environmental Policy Act (SEPA) Rule Amendments October 1997

AMENDATORY SECTION (Amending Order DE 83-39), filed 2/10/84, effective 4/4/84)

WAC 197-11-800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

**(1) Minor new construction—
Flexible thresholds.**

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any license governing emissions to the air or discharges to water is required. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency.

(b) The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

(i) The construction or location of any residential structures of four dwelling units.

(ii) The construction of a barn, loafing shed, farm equipment storage building, produce used only by the property owner or his or her agent in the conduct of

farming the property. This exemption shall not apply to feed lots.

(iii) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles.

(iv) The construction of a parking lot designed for twenty automobiles.

WAC 197-11-960 ENVIRONMENTAL CHECKLIST

Environmental Checklist

Purpose of checklist:

The State Environmental Policy Act (SEPA), chapter [43.21C](#) RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for nonproject proposals:

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:

2. Name of applicant:

3. Address and phone number of applicant and contact person:

4. Date checklist prepared:

5. Agency requesting checklist:

6. Proposed timing or schedule (including phasing, if applicable):

TO BE COMPLETED BY APPLICANT

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

10. List any government approvals or permits that will be needed for your proposal, if known.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

B. ENVIRONMENTAL ELEMENTS

1. Earth

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.
- b. What is the steepest slope on the site (approximate percent slope)?
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

TO BE COMPLETED BY APPLICANT

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

2. **Air**

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

TO BE COMPLETED BY APPLICANT

3. Water

a. Surface:

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

b. Ground:

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

TO BE COMPLETED BY APPLICANT

5. Animals

- a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:

Birds: hawk, heron, eagle, songbirds, other

Mammals: deer, bear, elk, beaver, other

Fish: bass, salmon, trout, herring, shellfish, other

- b. List any threatened or endangered species known to be on or near the site.

- c. Is the site part of a migration route? If so, explain.

- d. Proposed measures to preserve or enhance wildlife, if any:

6. Energy and natural resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

7. Environmental health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe.

- 1) Describe special emergency services that might be required.

TO BE COMPLETED BY APPLICANT

2) Proposed measures to reduce or control environmental health hazards, if any:

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

3) Proposed measures to reduce or control noise impacts, if any:

8. Land and shoreline use

a. What is the current use of the site and adjacent properties?

b. Has the site been used for agriculture? If so, describe.

c. Describe any structures on the site.

d. Will any structures be demolished? If so, what?

e. What is the current zoning classification of the site?

f. What is the current comprehensive plan designation of the site?

TO BE COMPLETED BY APPLICANT

- g. If applicable, what is the current shoreline master program designation of the site?
- h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
- i. Approximately how many people would reside or work in the completed project?
- j. Approximately how many people would the completed project displace?
- k. Proposed measures to avoid or reduce displacement impacts, if any:
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
- c. Proposed measures to reduce or control housing impacts, if any:

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

TO BE COMPLETED BY APPLICANT

b. What views in the immediate vicinity would be altered or obstructed?

c. Proposed measures to reduce or control aesthetic impacts, if any:

11. Light and glare

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

b. Could light or glare from the finished project be a safety hazard or interfere with views?

c. What existing off-site sources of light or glare may affect your proposal?

d. Proposed measures to reduce or control light and glare impacts, if any:

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?

b. Would the proposed project displace any existing recreational uses? If so, describe.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

TO BE COMPLETED BY APPLICANT

13. Historic and cultural preservation

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

- C Proposed measures to reduce or control impacts, if any:

14. Transportation

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

- c. How many parking spaces would the completed project have? How many would the project eliminate?

- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

TO BE COMPLETED BY APPLICANT

g. Proposed measures to reduce or control transportation impacts, if any:

15. Public services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any.

16. Utilities

a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____

Date Submitted: _____

TO BE COMPLETED BY APPLICANT

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS
(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Proposed measures to avoid or reduce such increases are:

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

3. How would the proposal be likely to deplete energy or natural resources?

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

Proposed measures to protect such resources or to avoid or reduce impacts are:

TO BE COMPLETED BY APPLICANT

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposed measures to avoid or reduce shoreline and land use impacts are:

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Proposed measures to reduce or respond to such demand(s) are:

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

LIST OF EXEMPT ACTIVITIES (NEPA)

[Code of Federal Regulations]
[Title 24, Volume 1]
[Revised as of April 1, 2003]
From the U.S. Government Printing Office via GPO
Access
[CITE: 24CFR58.34]

[Page 403-404]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 58--ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES--Table of Contents

Subpart D--Environmental Review Process:
Documentation, Range of Activities, Project
Aggregation and Classification

Sec. 58.34 Exempt activities.

(a) Except for the applicable requirements of Sec. 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in Sec. 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

- (1) Environmental and other studies, resource identification and the development of plans and strategies;
- (2) Information and financial services;
- (3) Administrative and management activities;
- (4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care,

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health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

- (5) Inspections and testing of properties for hazards or defects;
- (6) Purchase of insurance;
- (7) Purchase of tools;
- (8) Engineering or design costs;
- (9) Technical assistance and training;

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in Sec. 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in Sec. 58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

LIST OF CATEGORICALLY EXCLUDED ACTIVITIES (NEPA)

[Code of Federal Regulations]
[Title 24, Volume 1]
[Revised as of April 1, 2002]
From the U.S. Government Printing Office
via GPO Access
[CITE: 24CFR58.35]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

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Sec. 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see Sec. 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in Sec. 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) Categorical exclusions subject to Sec. 58.5. The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in Sec. 58.5:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent

(e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(ii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4) An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.

(5) Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.

(6) Combinations of the above activities.

(b) Categorical exclusions not subject to Sec. 58.5. The Department has determined

that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in Sec. 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under Sec. 58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) 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;

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning

approvals, and other related activities which do not have a physical impact.

(c) Circumstances requiring NEPA review. If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

STATUTORY WORKSHEET

Use this worksheet only for projects which are Categorically Excluded per 24 CFR Section 58.35(a)

PROJECT NAME and DESCRIPTION - Include all contemplated actions which logically are either geographically or functionally part of the project:

Directions: See Statutory Worksheet Instructions below. Compliance documentation must contain verifiable source documents and relevant base data.

Compliance Factors:

Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5

Status
A/B

Compliance Documentation

Historic Preservation [36 CFR Part 800]		
Floodplain Management [24 CFR 55, Executive Order 11988]		
Wetland Protection [Executive Order 11990]		
Coastal Zone Management Act [Sections 307(c), (d)]		
Sole Source Aquifers [40 CFR 149]		
Endangered Species Act [50 CFR 402]		
Wild and Scenic Rivers Act [Sections 7(b), and (c)]		
Clean Air Act - [Sections 176(c), (d), and 40 CFR 6, 51, 93]		
Farmland Protection Policy Act [7 CFR 658]		
Environmental Justice [Executive Order 12898]		
HUD ENVIRONMENTAL STANDARDS		
Noise Abatement and Control [24 CFR 51B]		
Explosive and Flammable Operations [24 CFR 51C]		
Toxic Chemicals and Radioactive Materials [24 CFR 58.5(i)(2)]		
Airport Clear Zones and Accident Potential Zones [24 CFR 51D]		

DETERMINATION:

- () This project converts to Exempt, per Section 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license (Status "A" has been determined in the status column for all authorities); **This** (now) EXEMPT project may now be initiated; OR
- () This project cannot convert to Exempt because one or more statutes/authorities require consultation or mitigation. Complete consultation/mitigation requirements, publish NOI/RROF and obtain Release of Funds Letter from COMMERCE per Section 58.70 and 58.71 before initiating the project; OR
- () The unusual circumstances of this project may result in a significant environmental impact. This project requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

PREPARER NAME & SIGNATURE: _____ DATE: _____

Jurisdiction Chief Administrative Official Printed Name, Title and Signature DATE: _____

INSTRUCTIONS for completing the STATUTORY WORKSHEET

For HUD funded projects that are categorically excluded per 24 CFR §58.35(a), the Responsible Entity (**RE**) must make a determination whether the proposal achieves compliance with each applicable statute, Executive Order or regulation with or without requiring formal consultation procedures, mitigation, permits or having adverse effects on the resources protected by the statute. These instructions are a brief description of the essential findings needed to establish compliance. These instructions are not intended to replace the applicable regulations. Applicable regulations take precedence over these brief instructions.

The Preparer of the Statutory Worksheet must DOCUMENT OR ATTACH THE SOURCES OF THE DETERMINATION.

Record the finding status on the STATUTORY WORKSHEET for each listed Federal statute, regulation, authority as follows:

Status “A” applies when compliance with the authority is achieved without adverse effects on the protected resource, without necessary mitigation or attenuation AND when no formal consultation, permit or agreement is required to establish compliance. In these situations, enter “A” in the STATUTORY WORKSHEET status column.

Status “B” applies when project compliance with the authority requires formal consultation, a permit or agreement, OR when the proposal may have an adverse effect on the protected resources. Part B summarizes what additional steps or formal procedures must be completed prior to submitting a Request for Release of Funds (RROF) to HUD or to the State. Evidence of completion and implementation of the required procedures or mitigation must be retained in the project Environmental Review Record (ERR).

Historic Properties (including archeology): A) The RE and SHPO agree that there are No Historic Properties Affected per 36 CFR 800.4, no adverse effects on historic properties per §800.5(b), or SHPO has not objected within 30 days to such fully documented determinations. **B)** The proposal has an adverse effect on historic properties. Consult with SHPO et al., per §800.5 et seq., to resolve or mitigate adverse effects.

Floodplain Management: A) The project does not involve property acquisition, management, construction or improvements within a 100 year floodplain (Zones A or V) identified by FEMA maps, and does not involve a “critical action” (e.g., emergency facilities, facility for mobility impaired persons, etc.) within a 500 year floodplain (Zone B). If FEMA has not published flood maps, the RE must make a finding based on best available data, e.g. from the City/County Engineer or local Flood Control Agency. **B)** Complete the 8-step decision making process according to 24 CFR Part 55.20 to document that there are no practicable alternatives to the proposal and to mitigate effects of the project in a floodplain.

Wetlands Protection: A) The project does not involve new construction within or adjacent to wetlands, marshes, wet meadows, mud flats or natural ponds per field observation and maps issued by the U.S. Fish & Wildlife Service or U.S. Corps of Engineers. **B)** Complete the 8-step decision making process in 24 CFR 55.20 to document there are no practicable alternatives and to mitigate effects of the project on wetlands. Such action also requires obtaining a permit from the U.S. Corps of Engineers under Section 404 of the Clean Water Act.

Coastal Zone Management: A) The project does not take place in one of the 15 counties covered by the Washington State Coastal Zone Management Program, **or** the project does not include new construction or major rehabilitation of existing structures, **or** the Washington State Department of Ecology has accepted the RE’s certification that the project is consistent with the Coastal Zone Management Program. **B)** Consult with the Washington State Department of Ecology to bring project into consistency with the CZMP.

Sole Source Aquifers (Safe Drinking Water Act): A) The project is not located within a U.S. EPA-designated sole source aquifer watershed area (including stream flow source areas) per EPA Ground Water Office, **OR** the project need not be referred to EPA for evaluation according to the HUD-EPA (Region X) Sole Source Aquifer Memorandum of Understanding of 1990 (Please see HUD checklist for Washington State for further guidance), **or** the EPA Ground Water Office has concurred that the project is “not likely to affect Sole Source Aquifer quality” in an informal consultation.

B) Consult with the Water Management Division of EPA to design mitigation measures to avoid contaminating the aquifer and implement appropriate mitigation measures.

Endangered Species: A) The RE determines that the proposal will have “no effect” **or** “is not likely to adversely affect” any federally protected (listed or proposed) Threatened or Endangered Species (i.e., plants or animals, fish, or invertebrates), nor adversely modify critical habitats. This finding is to be based on contact made with the U.S. Fish and Wildlife Service and NOAA Fisheries, or by special study completed by a professional biologist or botanist. Only a determination of “no effect” does not require being sent to U.S. FWS for concurrence. **B)** The proposal is “likely to adversely affect” any federally protected (listed or proposed) Threatened or Endangered Species. Consult with the U.S. FWS or with NOAA Fisheries, in accordance with procedural regulations contained in 50 CFR Part 402.

ATTACHMENT 6-E (3)
NEPA

Wild and Scenic Rivers: **A)** The project is not located within one mile of a listed Wild and Scenic River, **OR** the project will have no effects on the natural, free flowing or scenic qualities of a river in the National Wild and Scenic Rivers system. **B)** Consult with the U.S. Department of Interior, National Park Service for impact resolution and mitigation.

Air Quality: **A)** The project is located within an "attainment" area, **OR**, if within a "non-attainment" area, conforms with the EPA-approved State Implementation Plan (SIP), per contact with one of the Washington regional Clean Air Agencies, **AND** the project requires no individual NESHAP permit or notification (Please see HUD Washington State checklist for further guidance); **B)** Negotiate suitable mitigation measures with the relevant regional Clean Air Agency, obtain necessary permits, issue required notices. (For example, 40 CFR §61.145 requires 10-day prior notification to the Air Quality District Administrator whenever either 260 linear ft., 160 sq.ft., or 35 cubic ft., of asbestos containing material is to be disturbed).

Farmland Protection: **A)** The project site does not include prime or unique farmland, or other farmland of statewide or local importance as identified by the U.S. Department of Agriculture, Natural Resources Conservation Service NRCS (formerly the Soil Conservation Service), **OR** the project site includes prime or unique farmland, but is located in an area committed to urban uses; **B)** Request evaluation of land type from the NRCS using Form AD-1006, and consider the resulting rating in deciding whether to approve the proposal, as well as mitigation measures (including measures to prevent adverse effects on adjacent farmlands).

Noise Abatement and Control: **A)** The project does not involve development of noise sensitive uses, **OR** the project is not within 5 miles of a civil airport, 15 miles of a military airfield, within 1000 feet of major highways or busy roads, or with 3000 feet of a railroad, **OR** ambient noise level is documented to be 65 LDN (CNEL) or less, based upon the HUD Noise Assessment Guidelines (NAG) for calculating noise levels and Airport Noise Contour map; **B)** Apply the noise standard, per 24 CFR §51.101, to the decision whether to approve the proposal (see §51.104), and implement noise attenuation measures (NAG page 39-40) as applicable.

Explosive or Flammable Operations: **A)** The project is located at an Acceptable Separation Distance (ASD) from any above-ground explosive or flammable fuels or chemicals containers according to "Siting of HUD-Assisted Projects Near Hazardous Facilities" (Appendices F & G, pp. 51-52), **OR** the project will expose neither people nor buildings to such hazards; **B)** mitigate the blast overpressure or thermal radiation hazard with the construction of a barrier of adequate size and strength to protect the project (per 24 CFR 51.205).

Toxic Chemicals and Radioactive Materials: **A)** The subject and adjacent properties are free of hazardous materials, contamination, toxic chemicals, gasses and radioactive substances which could affect the health or safety of occupants or conflict with the intended use of the subject property. Particular attention should be given to nearby dumps, landfills, industrial sites and other operations with hazardous wastes. The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any hazards. **B)** Mitigate the adverse environmental condition by removing, stabilizing or encapsulating the toxic substances in accordance with the requirements of the appropriate Federal, state or local oversight agency; **OR** reject the proposal.

Environmental Justice: **A)** The proposed site is suitable for its proposed use and will NOT have a disproportionate environmental impact on low income or minority populations; **B)** Site suitability is a concern; the proposal is adversely affected by environmental conditions impacting low income or minority populations. Avoid such impacts or mitigate them to the extent practicable. Address and mitigate the disproportional human health or environmental effects adversely affecting the low income or minority populations **OR** reject the proposal.

Airport Clear Zones and Accident Potential Zones: **A)** The project is not located within an FAA-designated civilian airport Runway Clear Zone (RCA) or Runway Protection Zone, or within the military Airfield Clear Zone (CZ) or Accident Potential Zone/Approach Protection Zone (APZ), based upon information from the airport or military airfield administrator identifying the boundaries of such zones, **OR** the project involves only minor rehabilitation, **OR** the project involves only the sale or purchase of an existing property in the RCZ or CZ; **B)** It is HUD policy not to provide any development assistance, subsidy or insurance in RCZs or CZs unless the project will not be frequently used or occupied by people and the airport operator provides written assurances that there are no plans to purchase the project site.

“Other Requirements” Compliance Document Checklist 24 CFR 58.6

Jurisdiction Name: _____	Contract Number: _____
Project Description and Location: 	

Section 1. Flood Disaster Protection Act

Circle as appropriate

Are funds for acquisition or construction (including repair and rehabilitation) purposes?	Yes Continue	No Proceed to Section 2-Act does not apply
Is the Activity in an area identified as having special flood hazards (SFHA)? Identify FEMA flood map used to make this determination: _____ Community Name and Number _____ Map panel number and date	Yes Document and Continue	No (Document and Proceed to Section 2-Act does not apply)
Is the Community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?	Yes- Document and follow instructions below.	No- Federal Assistance may not be used for this project.
Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept on file.		

Section 2. Airport Runway Clear Zones (Civil) and Accident Potential Zones (Military)

Is the project located within 3,000 feet of a civil airport or 2 and 1/2 miles of a military airfield?	Yes Continue	No—Document and proceed with the project
Is the project located within an FAA-designated civilian airport Runway Clear Zone (RCA) or Runway Protection Zone, or within the military Airfield Clear Zone (CZ) or Accident Potential Zone/Approach Protection Zone (APZ), based upon information from the airport or military airfield administrator identifying the boundaries of such zones?	Yes Continue	No—Document and proceed with the project
Comply with 24 CFR Part 51, Subpart D which may include providing a written notice to a prospective buyer or leaser of the potential hazards from airplane accidents and the potential that an airport or airfield operator may wish to purchase the property at some point in the future as part of a clear zone acquisition program. Maintain copies of the signed notice. For properties located in a military clear zone, make and document a determination of whether the use of the property is generally consistent with DOD guidelines.		

Section 3. Coastal Barrier Resources Act.

Section 58.6 also requires compliance with the Coastal Barrier Resources Act. There are no Coastal Barrier Resource Areas in Washington State. Therefore, the Act does not apply.

Preparer Name and Title (print) _____

Preparer Signature _____ Date _____

Chief Administrative Official (CAO) Name and Title (print) _____

CAO Signature _____ Date _____

Environmental Assessment
(24 CFR 58.36) (Revised 8/04)

Grantee/Responsible Entity (City, Town or County):

Grantee/Responsible Entity Address:

Certifying Officer (Jurisdiction Chief Administrative Official):

Preparer:

Date (Month/Year):

Estimated Total Project Cost:

List Proposed Funding Sources and Amounts:

Project Name & Brief Description:

Project Location:

Project Representative:

Telephone Number:

Conditions for Approval:

(List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts or other relevant documents as requirements). [24 CFR 58.40(d), 40 CFR 1505.2(c)]

FINDING: [58.40(g)]

- Finding of No Significant Impact**
(The project will not result in a significant impact on the quality of the human environment)
- Finding of Significant Impact**
(The project may significantly affect the quality of the human environment)

Preparer Signature: _____ **Date:** _____

Title/Agency:

Jurisdiction Chief Administrative Official Signature: _____

Title: _____ **Date:** _____

**ATTACHMENT 6-F (2)
NEPA**

Statement of Purpose and Need for the Proposal: [40 CFR 1508.9(b)]:

Description of the Proposal: Include all contemplated actions, which logically are either geographically, or functionally a composite part of the project, regardless of the source of funding. [24 CFR 58.32, 40 CFR 1508.25]

Existing Conditions and Trends: Describe the existing conditions of the project area and its surroundings, and trends likely to continue in the absence of the project. [24 CFR 58.40(a)]

Statutory Checklist

[24CFR §58.5]

For each listed statute, executive order or regulation, record the determinations made. Note reviews and consultations completed as well as any applicable permits or approvals obtained. Attach evidence that all required actions have been taken. Record any conditions or mitigation measures required. Then, make a determination of compliance or consistency.

Factors	Determinations and Compliance Documentation
Historic Preservation [36 CFR 800]	
Floodplain Management [24 CFR 55, Executive Order 11988]	
Wetlands Protection [Executive Order 11990]	
Coastal Zone Management Act [Sections 307(c), (d)]	
Sole Source Aquifers [40 CFR 149]	
Endangered Species Act [50 CFR 402]	
Wild and Scenic Rivers Act [Sections 7 (b), (c)]	
Air Quality [Clean Air Act, Sections 176 (c) and (d), and 40 CFR 6, 51, 93]	
Farmland Protection Policy Act [7 CFR 658]	
Environmental Justice [Executive Order 12898]	

HUD Environmental Standards	Determinations and Compliance Documentation
Noise Abatement and Control [24 CFR 51 B]	
Toxic or Hazardous Substances and Radioactive Materials [HUD Notice 79-33]	
Siting of HUD-Assisted Projects near Hazardous Operations [24 CFR 51 C]	
Airport Clear Zones and Accident Potential Zones [24 CFR 51 D]	

Environmental Assessment Checklist

[Environmental Review Guide HUD CPD 782, 24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27]

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a finding of impact. **Impact Codes:** (1) - No impact anticipated; (2) - Potentially beneficial; (3) - Potentially adverse; (4) - Requires mitigation; (5) - Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional materials as needed.

Land Development	Code	Source or Documentation
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		

Socioeconomic	Code	Source or Documentation
Demographic Character Changes		
Displacement		
Employment and Income Patterns		

**Community Facilities
and Services**

	Code	Source or Documentation
Educational Facilities		
Commercial Facilities		
Health Care		
Social Services		
Solid Waste		
Waste Water		
Storm Water		
Water Supply		
Public Safety - Police		
- Fire		
- Emergency Medical		
Open Space and Recreation - Open Space		
- Recreation		
- Cultural Facilities		
Transportation		

Natural Features	Source or Documentation
Water Resources	
Surface Water	
Unique Natural Features and Agricultural Lands	
Vegetation and Wildlife	

Other Factors	Source or Documentation

NOTE: The Responsible Entity must additionally document and ensure compliance with 24 CFR §58.6 in the ERR, particularly with the Flood Insurance requirements of the Flood Disaster Protection Act and the Buyer Disclosure requirements of the HUD Airport Runway Clear Zone/Clear Zone regulation at 24 CFR 51 Subpart D.

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 external factors relating to the proposal should be modified in order to eliminate or minimize adverse environmental impacts.)

Additional Studies Performed
(Attach studies or summaries)

List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]

“Other Requirements” Compliance Document Checklist 24 CFR 58.6

Jurisdiction Name: _____	Contract Number: _____
Project Description and Location: 	

Section 1. Flood Disaster Protection Act

Circle as appropriate

Are funds for acquisition or construction (including repair and rehabilitation) purposes?	Yes Continue	No Proceed to Section 2-Act does not apply
Is the Activity in an area identified as having special flood hazards (SFHA)? Identify FEMA flood map used to make this determination: _____ Community Name and Number _____ Map panel number and date	Yes Document and Continue	No (Document and Proceed to Section 2-Act does not apply)
Is the Community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?	Yes- Document and follow instructions below.	No-Federal Assistance may not be used for this project.
Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept on file.		

Section 2. Airport Runway Clear Zones (Civil) and Accident Potential Zones (Military)

Is the project located within 3,000 feet of a civil airport or 2 and 1/2 miles of a military airfield?	Yes Continue	No—Document and proceed with the project
Is the project located within an FAA-designated civilian airport Runway Clear Zone (RCA) or Runway Protection Zone, or within the military Airfield Clear Zone (CZ) or Accident Potential Zone/Approach Protection Zone (APZ), based upon information from the airport or military airfield administrator identifying the boundaries of such zones?	Yes Continue	No—Document and proceed with the project
Comply with 24 CFR Part 51, Subpart D which may include providing a written notice to a prospective buyer or leaser of the potential hazards from airplane accidents and the potential that an airport or airfield operator may wish to purchase the property at some point in the future as part of a clear zone acquisition program. Maintain copies of the signed notice. For properties located in a military clear zone, make and document a determination of whether the use of the property is generally consistent with DOD guidelines.		

Section 3. Coastal Barrier Resources Act.

Section 58.6 also requires compliance with the Coastal Barrier Resources Act. There are no Coastal Barrier Resource Areas in Washington State. Therefore, the Act does not apply.

Preparer Name and Title (print) _____

Preparer Signature _____ Date _____

Chief Administrative Official (CAO) Name and Title (print) _____

CAO Signature _____ Date _____

Determination of Exemption & Determination of Categorical Exclusion (not subject to Section 58.5)

Determination of activities per 24 CFR 58.34(a) and 58.35(b)

Local Government Name and Number:	
Address:	
Activity Description and location:	
Funding Source:	
Other funding:	
√	The activity falls into the checked category below, and listed at 24 CFR 58.34(a) as Exempt.
	1. Environmental and other studies, resource identification, and development of plans and strategies
	2. Information and financial services
	3. Administrative and management activities
	4. Public services that will not have a physical impact or result in any physical changes including but not limited to services concerned with: <ul style="list-style-type: none"> ▪ Employment ▪ Crime prevention ▪ Child care ▪ Health ▪ Recreation needs ▪ Drug abuse ▪ Education ▪ Counseling ▪ Energy conservation ▪ Welfare ▪ Other _____
	5. Inspections and testing of properties for hazards or defects
	6. Purchase of insurance
	7. Purchase of tools
	8. Engineering or design costs
	9. Technical assistance and training
	10. Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair or arrest the effects of disasters or imminent threats to public safety, including those resulting from physical deterioration.
	11. Payment of principal and interest on loans made or obligations guaranteed by HUD
	12. Any of the categorical exclusions listed in Sec. 58.35(a) provided that there are no circumstances that require compliance with any other Federal laws and authorities cited in Sec. 58.5.
√	The activity falls into the checked category listed below, and is listed at 24 CFR 58.35(b) as a Categorically Excluded activity <u>not</u> subject to Section 58.5.
	1. Tenant-based rental assistance
	2. Supportive Services (including but not limited to): <ul style="list-style-type: none"> ▪ Health care ▪ Housing services ▪ Permanent housing placement ▪ Day care ▪ Nutritional services ▪ Short term payments for rent/mortgage/utility costs ▪ Assistance in gaining access to government benefits/services

	<p>3. Operating Costs:</p> <ul style="list-style-type: none"> <li style="display: inline-block; width: 45%;">▪ Maintenance <li style="display: inline-block; width: 45%;">▪ Furnishings <li style="display: inline-block; width: 45%;">▪ Security <li style="display: inline-block; width: 45%;">▪ Equipment <li style="display: inline-block; width: 45%;">▪ Operation <li style="display: inline-block; width: 45%;">▪ Supplies <li style="display: inline-block; width: 45%;">▪ Utilities <li style="display: inline-block; width: 45%;">▪ Staff training and recruitment
	<p>4. Economic Development Activities:</p> <ul style="list-style-type: none"> ▪ Equipment purchase ▪ Inventory financing ▪ Interest subsidy ▪ Operating costs ▪ Other expenses not associated with construction or expansion
	<p>5. Activities to assist homeownership of existing or dwelling units under construction not assisted with Federal funds:</p> <ul style="list-style-type: none"> ▪ Closing costs and down payment assistance to homebuyers ▪ Interest buydowns or other actions resulting in transfer of title
	<p>6. Affordable housing pre-development costs</p> <ul style="list-style-type: none"> ▪ Legal consulting ▪ Developer and other site-option costs ▪ Project financing ▪ Administrative costs for loan commitments, zoning approvals, and other activities which don't have a physical impact
	<p>7. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under Part 58, if :the same responsible entity conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Section 58.47</p>

NOTE: The activity is subject to compliance with “other requirements” per 24 CFR 58.6. Documentation of compliance must be determined and attached as part of the Environmental Review Record. See checklist on page 3 of this form.

A Request for Release of Funds (RROF) is not required. The activity is determined to be exempt or Categorically Excluded (not subject to Section 58.5) and may be initiated without further environmental review beyond 24 CFR Part 58.6.

Preparer Name and Title _____
Print

Preparer Signature _____
Date

Chief Administrative Officer Name and Title _____
Print

Chief Administrative Officer Signature _____
Date

“Other Requirements” Compliance Checklist
24 CFR 58.6

Local Government Name: _____	Contract Number: _____
Activity Description and Location: 	

Section 1. Flood Disaster Protection Act		Circle as appropriate
Are funds for acquisition or construction (including repair and rehabilitation) purposes?	Yes Continue	No Proceed to Section 2-Act does not apply
Is the Activity in an area identified as having special flood hazards (SFHA)? Identify FEMA flood map used to make this determination: _____ Community Name and Number _____ Map panel number and date	Yes Document and Continue	No (Document and Proceed to Section 2-Act does not apply)
Is the Community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?	Yes- Document and follow instructions below.	No-Federal Assistance may not be used for this project.
Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept on file.		

Section 2. Airport Runway Clear Zones (Civil) and Accident Potential Zones (Military)		
Is the project located within 3,000 feet of a civil airport or 2 and 1/2 miles of a military airfield?	Yes Continue	No—Document and proceed with the project
Is the project located within an FAA-designated civilian airport Runway Clear Zone (RCA) or Runway Protection Zone, or within the military Airfield Clear Zone (CZ) or Accident Potential Zone/Approach Protection Zone (APZ), based upon information from the airport or military airfield administrator identifying the boundaries of such zones?	Yes Continue	No—Document and proceed with the project
Comply with 24 CFR Part 51, Subpart D which may include providing a written notice to a prospective buyer or leaser of the potential hazards from airplane accidents and the potential that an airport or airfield operator may wish to purchase the property at some point in the future as part of a clear zone acquisition program. Maintain copies of the signed notice. For properties located in a military clear zone, make and document a determination of whether the use of the property is generally consistent with DOD guidelines.		

Section 3. Coastal Barrier Resources Act. Section 58.6 also requires compliance with the Coastal Barrier Resources Act. There are no Coastal Barrier Resource Areas in Washington State. Therefore, the Act does not apply.

Preparer Name and Title _____
Print

Preparer Signature _____
Date

Chief Administrative Officer Name and Title _____
Print

Chief Administrative Officer Signature _____
Date

Determination of Categorical Exclusion (subject to Section 58.5)

Determination of activities per 24 CFR 58.35(a)

Local Government Name:	Contract Number:
Project Description and Location:	
Funding Sources:	
The project falls into the checked category below, and listed at 24 CFR 58.35(a) as a Categorically Excluded activity subject to Section 58.5.	
1.	Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are already in place and will be retained in the same use without change in size or capacity for more than 20 percent. For example, replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets.
2.	Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and handicapped persons.
3.	Rehabilitation of buildings and improvements under the following conditions <ul style="list-style-type: none"> i. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland; ii. In the case of multifamily residential buildings: <ul style="list-style-type: none"> A. Unit density is not changed more than 20% B. The project does not involve changes in land use from residential to non-residential; and C. The estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation. iii. In the case of non-residential structures, including commercial, industrial, and public buildings: <ul style="list-style-type: none"> A. The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and B. The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
4.	An individual action <ul style="list-style-type: none"> i. Up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or ii. 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.
5.	Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use;
6.	Combinations of the above activities
The determination of the category listed above is supported by the following information (explain how you determined that the project satisfied the condition of the category you checked above and document as appropriate):	

NOTE: A STATUTORY WORKSHEET and “Other Requirements” Checklist Per 24 CFR 58.6 has been completed and source documentation maintained as part of the ERR. In order to determine if the activity can or cannot convert to exempt, consultation and mitigation must be completed as appropriate.

It has been determined that the **activity** _____ **CAN** or _____ **CANNOT** convert to Exempt (**Check one**). If the activity can convert to Exempt, a Request for Release of Funds (RROF) is not required. For projects that cannot convert to exempt, consultation and mitigation must be completed as appropriate, the NOI/RROF must be published (with a 7-day local comment period and later - a 15-day CTED comment period) and a Release of Funds letter from CTED must be obtained before the project is initiated. You do not, however, need to publish a FONSI.

Preparer Name and Title

_____ Print

Preparer Signature

_____ Date

Chief Administrative Official Name and Title

_____ Print

Chief Administrative Official Signature

_____ Date

FINDING OF CATEGORICAL EXEMPTION (SEPA)

It is the Finding of (city/town/county) that the following activities are Categorical Exempt under the Washington State Environmental Policy Act (SEPA) (RCW 43.21C.110 and WAC 197.11.800).

(NOTE: If project is Categorical Exempt under SEPA, the SEPA Checklist is not required.)

Location of Activities:

Description of Activities:

Reasons for Categorical Exemption under SEPA:

Date: _____

Signature of Environmental Review Officer

Date: _____

Signature of Chief Administrative Official

DETERMINATION OF NO SIGNIFICANCE (SEPA)

Description of proposal:

Location of proposal, including street address, if any:

Jurisdiction proposing action _____

The jurisdiction proposing this action has determined that it does not have a probable significant adverse impact on the environment. An environment impact statement (EIS) is not required under RCW 43.21C.0302 (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

_____ This DNS is issued under WAC 197-11-340 (2); the lead agency will not act on this proposal for 15 days from the date below.
Comments must be submitted by _____.

Chief Administrative Official _____
(Print Name)

Position/Title _____ Phone _____

Address _____

Date _____ Signature _____
(Chief Administrative Official)

DETERMINATION OF SIGNIFICANCE (SEPA)

Description of proposal:

Location of proposal, including street address, if any:

Jurisdiction proposing action _____

The jurisdiction proposing this action has determined that it does have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is required under RCW 43.21C.0302 (O) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

Chief Administrative Official _____
(Print Name)

Position/Title _____ Phone _____

Address _____

Date _____ Signature _____
(Chief Administrative Official)

CONCURRENT NOTICE

NOTICE TO THE PUBLIC OF FINDING OF NO SIGNIFICANT IMPACT ON THE ENVIRONMENT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

*Date of
Publication

CDBG Contract #: _____ *Date: _____

Name of Responsible Entity: _____ Telephone #: _____

Street, City, Zip Code: _____

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the (Name of Responsible Entity (RE)).

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS

***Date the Request for
Release of Funds &
supporting documents
will be received by
Commerce

On or about (***)Date) the above-named RE will request the Washington State Department of Commerce (Commerce) to release federal funds under Title I of the Housing and Community Development Act of 1974 (PL 93-383) for the following project:

Project Title or Name: _____

Purpose or Nature of the Project: _____

Location of Project: _____

Location (address, city, county, identifying information) of the Project: _____

Estimated Cost of the Project: \$ _____

FINDING OF NO SIGNIFICANT IMPACT

The (Name of RE) determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (PL 91-190) is not required. Additionally project information is contained in the Environmental Review Record (ERR) on file at (insert address or reference above address) and is available for examination and copying weekdays between (insert hours).

PUBLIC COMMENTS ON FINDING OF NO SIGNIFICANT IMPACT

All interested agencies, groups and persons disagreeing with this decision are invited to submit written comments to the RE designated office responsible for receiving and responding comments. Such written comments should be received at (the address specified) on or before (**Date). All comments received by the RE will be considered prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

**Date of end of
15-day local
comment period

RELEASE OF GRANT FUNDS

(Name of RE) certifies to Commerce that (Name of certifying officer) in his/her capacity as (insert Official title) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. Commerce's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the (City/Town) (County) to use State Community Development Block Grant (CDBG) Funds.

OBJECTION TO RELEASE OF FUNDS

Commerce will accept objections to its release of funds and the RE's certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: a) the certification was not executed by the Certifying Officer of the (insert Name of RE); b) the RE has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the RE has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by Commerce; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to Contracts Administration Unit, Managing Director, Department of Commerce, 1011 Plum Street SE, PO Box 42525, Olympia, Washington. 98504-2525. Potential objectors should contact the Contracts Administration Unit at (360) 725-4000 to verify the actual last day of the objection period.

Name of RE Certifying Officer: _____

Title: _____

- * Date of Publication
- ** Date of end of 15-day local comment period
- *** Date the Request for Release of Funds Certification is expected to be received by Commerce (the On or About Date)

**NOTICE TO THE PUBLIC OF
INTENT TO REQUEST RELEASE OF FUNDS**

CDBG Contract #: _____ Date: _____

Name of Responsible Entity: _____ Telephone #: _____

Street, City, Zip Code: _____

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS

***Date the Request for
Release of Funds &
supporting documents will
be received by Commerce**

On or about (*Date) the above-named Responsible Entity (RE) will request the Washington State Department of Commerce (Commerce) to release federal funds under Title I of the Housing and Community Development Act of 1974 (PL 93-383) for the following project:

Project Title or Name: _____

Purpose and Nature of the Project: _____

Location (address, city, county, identifying information) of the Project: _____

Estimated Cost of the Project: \$ _____

The activities proposed [Alternative #1: are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act requirements] or [Alternative #2: comprise a project for which a Finding of No Significant Impact on the environment was [published/posted] on [date of finding publication/posting]].

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the RE designated office responsible for receiving and responding to comments. All comments received by [If notice is published: notice date plus seven days; If notice is posted: posting date plus ten days] will be considered by the [Name of RE] prior to authorizing submission of a request for release of funds.

ENVIRONMENTAL REVIEW RECORD

An Environmental Review Record (ERR) for this project has been developed by the above-named RE. The ERR documents the environmental review for this project and contains all of the

required project information. The ERR is on file at (insert address or reference above address) and is available for examination and copying weekdays between (insert hours).

RELEASE OF GRANT FUNDS

(Name of RE) certifies to Commerce that (Name of certifying officer) in his/her capacity as (insert Official title) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. Commerce’s approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the (City/Town) (County) to use State Community Development Block Grant (CDBG) funds.

OBJECTION TO RELEASE OF FUNDS

Commerce will accept objections to its release of funds and the RE’s certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: a) the certification was not executed by the Certifying Officer of the (insert Name of RE); b) the RE has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the RE has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by Commerce; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to Contracts Administration Unit, Managing Director, Department of Commerce, 1011 Plum Street SE, PO Box 42525, Olympia, Washington 98504-2525. Potential objectors should contact the Contracts Administration Unit at (360) 735-4100 to verify the actual last day of the objection period.

Name of RE Certifying Officer: _____

Title: _____

Washington State Department of Commerce
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION

(Pursuant to Section 104 (g) of Title I of the Housing and Community Development Act of 1974 as Amended)

1. NAME OF RESPONSIBLE ENTITY	2. CDBG CONTRACT NUMBER
3. RESPONSIBLE ENTITY ADDRESS (include Street, City, State, and ZIP)	4. DATE OF REQUEST CERTIFICATION

5. **REQUEST FOR RELEASE OF FUNDS.** Release of approved grant funds for the following described project is requested:

6. **CERTIFICATION.** With reference to the above project, I, the undersigned chief administrative official of the Responsible Entity, certify:

That the Responsible Entity has, at least _____ days prior to submitting this request for release of funds and certification, published and disseminated in the manner prescribed by 24 CFR 58.43 a notice to the public (a copy of which is attached) in accordance with 24 CFR 58.70;

That the Responsible Entity has fully carried out its responsibilities for environmental review, decision making and action pertaining to the project named above; that the Responsible Entity has complied with the National Environmental Policy Act of 1969, as amended; that the Responsible Entity has complied with the environmental procedures, permit requirements and the statutory obligations of the laws cited in 24 CFR 58.5; that the Responsible Entity has assumed responsibility for and complied with and will continue to comply with Section 106 of the National Historic Preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian tribes and the public; and that the Responsible Entity has taken into account the environmental criteria, standards, permit requirements and other obligations applicable to the project under other related laws; and that the level of environmental clearance carried out by the Responsible Entity in connection with this said project [_____] did [_____] did not require the preparation and dissemination of an environmental impact statement;

That the dates upon which all statutory and regulatory time periods for review, comments, or other response or action in regard to this clearance began and ended as indicated below; that all such dates that are applicable to this aforesaid clearance are indicated below; and that with the expiration of each of the time periods indicated below, the Responsible Entity is in compliance with the requirements of 24 CFR Part 58;

ITEM	COMMENCE MO/DAY/YR	EXPIRE MO/DAY/YR
Notice of Intent to Prepare EIS: Publication Date		
Draft EIS: Comment Period		
Same: 90-Day Period (NEPA Regulations)		
Final EIS: 30-Day Period (NEPA Regulations)		
Publication Date of Attachment 6-K --- (if Categorically Excluded)		
Local Comment Period – 7 days required		
Notice of Intent to Request Release of Funds: (6-K) Cat. Excluded		
Publication Date of Attachment 6-J --- (if Environmental Assessment)		
Local Comment Period – 15 days required		
Notice of FONSI and RROF's (6-J) Environmental Assessment		
15-Day COMMERCE Decision Period		
Other (Specify)		

That I am authorized to, and do, consent to assume the status of responsible federal official under the National Environmental Policy Act of 1969 and each provision of law specified in 24 CFR 58.5 insofar as the provisions of these laws apply to COMMERCE responsibilities for environmental review, decision making and action assumed and carried out by the Responsible Entity; that by so consenting, I assume the responsibilities, where applicable, for the conduct of environmental review, decision making and action as to environmental issues; preparation and circulation of draft, final and supplemental environmental impact statements; and assumption of lead agency or cooperating agency responsibilities for preparation of such statements on behalf of federal agencies and COMMERCE when these agencies consent to such assumption;

That I am authorized to, and do, consent to accept on behalf of the Responsible Entity and personally, the jurisdiction of the federal courts for the enforcement of all these responsibilities in my official capacity as chief administrative official of the Responsible Entity.

(Signature of Chief Administrative Official)

(Print Name of Chief Administrative Official of Responsible Entity)

(Address)

(City/State/Zip)

WARNING: Section 1001 of Title 18 of the United States Code and Criminal Procedure shall apply to this certification. Title 18 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any department of agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

RESOURCES FOR COMPLETING ENVIRONMENTAL REVIEWS IN WASHINGTON

Visit: <http://www.hud.gov/local/shared/working/r10/environment/washington.cfm?state=wa>

ADDITIONAL RESOURCES:

Department of Commerce (Commerce)

1011 Plum Street SE
PO Box 42525
Olympia, WA 98504-2525
(360) 725-3090
<http://www.commerce.wa.gov/cdbg>

**Federal Emergency Management Agency
Federal Regional Center (FEMA)**

130 – 228th Street SW
Bothell, WA 98021-9796
(425) 487-4600

Washington State Department of Fish and Wildlife (WDFW)

600 Capitol Way N
Olympia, WA 98501-1091
(360) 902-2200
<http://wdfw.wa.gov>

Safe Drinking Water Act:

Department of Health. Only drinking water projects. Normally ECOLOGY will do the commenting.

Washington State DOH

PO BOX 47822
Olympia, WA 98504-7822
(800) 521-0323

Water Pollution Control:

Department of Ecology (Wastewater loans only.)

Water Quality Program
PO Box 47600
Olympia, WA 98504-7600

Department of Ecology - Water Quality Program

- **Northwest Region** (Whatcom/San Juan Island/Snohomish/King/Kitsap/mid-northern Pierce) (425) 649-7000
- **Southwest Region** (Clallam/Jefferson/Mason/Grays Harbor/Pacific/Lewis/Thurston/Wahkiakum/Cowlitz/Skamania/Clark/mid southern Pierce) (360) 407-6300

- **Eastern Region** (Ferry/Stevens/Pend Oreille/Lincoln/Spokane/Grant/Adams/Franklin/Whitman/Walla Walla/Columbia/Garfield/Asotin) (509) 329-3400
- **Vancouver Office** - (360) 690-7171
- **Central Office** - (509) 575-2490
- **Bellingham Field Office** – (360) 738-6250

National Oceanic and Atmospheric Administration (National Marine Fisheries Services)

Website: <http://www.nwr.noaa.gov/>

SW Washington	Dan Guy	(360) 534-9342
Northern Puget Sound	Tom Sibley	(206) 526-6121
Central Puget Sound	Matt Longenbaugh	(360) 753-7761
Eastern Washington	Dale Bambrick	(360) 753-7761
Portland Branch	Scott Carlin	(503) 231-2379

New NMFS Office (Handles King County to Whatcom County)

**United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries**

Dan Tonnes, (206) 526-4656, Fax (206) 526-6736
7600 Sandpoint Way NE
Seattle, WA 98115

NMFS Administrative Support Team, David Hirsh, Team Leader, (360) 753-9598

Department Of Transportation: If crossing highways, bridges, intersections, etc, contact:

Olympia Office:	(360) 705-7344	PO Box 47390, Olympia, WA 98504-7390
Seattle Office:	(206) 440-4691	Spokane: (509) 324-6010
Vancouver:	(360) 905-2001	Wenatchee: (509) 663-9673
Yakima:	(509) 575-2516	

Source of Section 106 Information:

Advisory Council on Historic Preservation “Working with Section 106” at:
<http://www.achp.gov/work106.html>

Washington Intergovernmental Review Process (WIRP):

Only a few counties have the clearinghouses available to gather comments. If you have already submitted comments during application, just make copies and put with environmental package.

Benton County
Benton-Franklin Regional Council
PO Box 217
1622 Terminal Drive
Richland, WA 99352-0217
(509) 943-9185
Fax: (509) 943-6756

Grant County
Big Bend Economic Development Council
226 West 3rd
Moses Lake, WA 98837
(509) 765-9072

Cowlitz County
Cowlitz-Wahkiakum Council of Governments
207 Fourth Avenue North
Kelso, WA 98626
(360) 577-3041

Grays Harbor County
Grays Harbor Regional Planning Committee
2109 Sumner Avenue, Suite 202
Aberdeen, WA 98520
(360) 532-8812

Lewis, Mason and Thurston Council of Governments
3603 Mud Bay Road Suite A
Olympia, WA 98502
(360) 664-2168
Fax: (360) 664-0791

Skagit County
Skagit Council of Governments
204 W. Montgomery
Mount Vernon, WA 98273
(360) 416-7875
Fax: (306) 416-7831

Whatcom County
Whatcom County Council of Governments
314 East Champion Street
Bellingham, WA 98225
(360) 676-6974
Fax: (360) 738-6232

**SUMMARY OF PROCEDURES AND REQUIREMENTS
OF
APPLICABLE FEDERAL LAWS AND REGULATIONS**

Legislation	Regulation	Applicability	General Requirements	Coordination/Consultation
Historic Preservation				
National Historic Preservation Act, 16 U.S.C. 470(f), Section 106	36 CFR Part 1294, 36 CFR Part 800	All action affecting properties on or eligible for National Register of Historic Places	Protect sites, buildings and objects with national, state or local historic or cultural significance. Identify effects of project on properties.	Coordinate with SHPO, ACHP, DOI (Keeper of the Register)
Floodplains				
E.O. 11988, Floodplain Management	24 CFR Part 55 (when it is issued)	Any action proposed for a floodplain	Avoid direct or indirect support of floodplain development wherever there is a practicable alternative.	
Wetlands				
E.O. 11990, Protection of Wetlands	24 CFR Part 55 (when issues)	Any action proposed for construction in a wetland	Avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.	
Noise				
Noise Control Act 42 U.S.C. 4903	24 CFR Part 51, Subpart B	All actions	Compliance with special provisions for CDBG projects required.	
Air Quality				
Clean Air Act 42 U.S.C. 7400, et. seq., Section 176 and Section 117		All actions Large stationary pollution sources All action	Federal actions must conform with the SIP Compliance with stationary source air pollution standards for major sources emitting 100 tons per year of a single air pollutant. Screen to determine if site is in a location in violation of ambient air quality standard-assess impacts on project.	Coordinate with EPA and state and local air pollution control agencies in making conformity determination as appropriate.
Hazards				
	HUD Noise 79-33, 24 CFR Part 51, Subpart C and D	All actions	Minimize the impact of environmental hazards on HUD-assisted activities, chemical and radioactive materials, activities of flammable or explosive nature, aircraft hazards.	Coordinate with EPA and other federal agencies, as appropriate.
Water Quality				
Clean Air Act, 33 U.S.C. 1251-1377, et. seq., Section 404	33 CFR Part 320-325, 33 CFR Part 230	Any activity involving disposal or placement of dredged or fill material in navigable waters.	The 404-permit program is administered by Corps of Engineers. EPA has authority to veto permit. Compliance with 208 plan.	Applicant must have permit before decision on appropriate environmental document.

Legislation	Regulation	Applicability	General Requirements	Coordination/Consultation
Water Quality continued				
Safe Drinking Water Act, 42 U.S.C. 300		Federally assisted projects that may contaminate an aquifer designated by EPA as the sole source of drinking water for a community.	Prohibits financial assistance of projects that EPA determines may contaminate a designated sole source aquifer.	Request from EPA a determination whether project may contaminate the aquifer.
Solid Waste Disposal				
Resources Conservation and Recovery Act, 42 U.S.C. 6901-6987		Any activity that generates solid waste.	Requires compliance with Section 209 guidelines.	Coordinate with EPA.
Coastal Areas				
Coastal Zone Management Act, 16 U.S.C. 1451-1464	15 CFR Part 930 44 FR 37142	Any proposed activity affecting areas covered by an approved coastal zone program.	Ensure that projects are consistent with coastal zone program.	Coordinate with State Coastal Zone Management Agency. If federally funded action is inconsistent with approved plan, coordinate with DOC Office of Coastal Zone Management.
Coastal Barrier Resource Act, 1982, 16 U.S.C. 3501, et. seq.		Any proposed construction or development action which may occur on an undeveloped coastal barrier listed in Section 4 of the Act (section 6 site exceptions).	Prohibits Federal Flood Insurance and other federal assistance on actions which encourage development of coastal barrier resources.	Coordinate with U.S. Fish and Wildlife Service and State Coastal Zone Management Agencies.
Endangered Species				
Endangered Species Act, 16 U.S.C. 1531, Section 7	50 CFR Part 402	Any action which might jeopardize continued assistance of endangered or threatened species or result in destruction or modification of critical habitat.	Federal agencies shall ensure that their actions conserve listed species and ensure, in consultation with FMS/NMFS, that their actions do not jeopardize listed species or modify critical habitat.	Coordinate with FMS concerning terrestrial and freshwater species, NMFS concerning marine species.
Farmland Protection				
Farmland Protection Policy Act of 1981, 7 U.S.C. 4201, et. seq.	7 CFR Part 658	Any federally assisted action which encourages the conversion of prime, unique, state/locally important farmlands.	Minimize the extent to which federal programs contribute to the unnecessary conversion of farmland to nonagricultural uses.	Coordination with SCS (USDA) State Resource Conservation Office
Wild and Scenic Rivers				
Wild and Scenic Rivers Act, 16 U.S.C. 1271-1257	President's Environmental Message, 8/2/79, CBQ Memorandum, 8/10/80, Interagency Consultation on Rivers in the Nationwide Inventory	Rivers designated under the Act. Proposed activity affecting rivers on the Nationwide Inventory of potential wild, scenic and recreational rivers.	Preserve wild and scenic rivers. Assure that federal actions to not foreclose designation under the Wild and Scenic Rivers Act.	Coordinate with HCRS and USDA Forest Service, as appropriate; coordinate with HCRS.

Sources, Documentation, and Preparation of a Base Data File

The key to preparing an accurate and responsive environmental assessment within a limited period of time is the ability to be able to draw on a sufficiently broad and current data file or data base. The term data file is viewed here in its widest context, including the following types of information:

- **Secondary Data Sources**—includes data such as community maps (e.g., floodplain or topographic), Census data, and comprehensive plans. Special studies such as feasibility reports for a development project or highway design reports also can provide relevant information.
- **Professional Expertise**—refers to the judgments and information provided by knowledgeable individuals such as the city engineer concerning a sewer or water system impact, or soils scientist and geologist concerning the impact on soils stability/suitability of a particular development site, or a school superintendent concerning the availability of classroom space.
- **Field Survey**—refers to detailed analysis of existing environmental conditions and site information such as topo surveys, permeability tests, hydrological characteristics, test borings, surveys of vegetation, animal life etc. and other site specific surveys of building conditions.
- **Field Observation**—refers to the findings gleaned from a site visit. Field observations are either made by a professional expert or a generalist depending upon the category of impact and the special skills required.
- **“How to” Handbooks and Manuals**—includes technical references which are intended to instruct the user in various techniques used to perform a particular type of impact assessment.

Because of the size and variety of data sources which are typically required in preparing a data file, it is suggested that the information be organized and referenced in a matrix similar to the one which follows. Frequently, as the matrix demonstrates, the same data can be used for multiple categories of impact.

While the data items listed consist primarily of maps, reports and statistical information which are usually available in most city planning and development agencies, some of the items listed may not be available within the community and must be obtained from various state and Federal agencies.

It should be kept in mind that in performing a typical assessment it is normally necessary to assemble only a small amount of the data shown. Preparing the total data and organizing it in matrix form is suggested only as a tool which can be employed to greatly speed up and simplify each individual review.

Some data are quite stable, e.g. topographic maps, soil surveys, floodplains, master plans. Other data are changed or recorded annually, e.g., traffic, property tax assessments, labor force and income data. Assessment data are often obtained from a number of sources in a large metropolitan area, are often bulky

in volume. Much of its value is lost if the information is not current. In these circumstances it may be better to have good contacts for obtaining current data when needed than it is to assemble a data bank which, more likely than not, will be out of date when you need it.

The same can be said of other data, if they can be readily obtained, from nearby municipal offices, the country court house, or other easily accessible government agency offices.

It should be stressed that some data should not only cover the documentation of existing conditions but also cover the projections of those conditions into the future. Along with the matrix, a description of each data element by general category is provided.

Project Data

1. **Previous EA Documents**—Previous Environmental Assessments and EIS's prepared by the recipient or other Federal agencies in the community. The U.S. Environmental Protection Agency's monthly publication, the **102 Monitor** (formerly published by the Council on Environmental Quality), contains a list of all EIS's filed, cross-referenced by Federal agency, and state and county location.
2. **U.S.G.S. & Other Base Maps**—U.S. Geological Survey maps of the study area: topography; surficial/bedrock geology; water resources. Base maps of the area prepared by Federal, state, local or recognized private commercial mapping organizations.
3. **Aerial Photographs**—Aerial photographs of the project area at various scales, obtained from public agencies or commercial photographers.
4. **Project Site Plans**—Location and boundary project site plans with maps and aerial photographs.
5. **Project Alternative Plans**—Project alternatives, including alternative site locations and alternative design features.
6. **Urban Environmental Design, Site Improvement Plans, Architectural, Engineering Construction Plans**—Proposed project construction features, such as proposed construction schedules, possible disruption of transportation activities, requirements for heavy equipment or blasting.
7. **Project Utility Plans**—Descriptions and plans of project showing such things as the use of local utilities (water, sewer, energy, etc.).
8. **Project Employment Statistics**—Listing of jobs related to project construction and future permanent employment by type and salary range including equal opportunity employment programs.
9. **Project Use/Occupant Characteristics Data**—In multi-use facilities, listing of proposed project tenants (e.g. commercial, government agency, leased concessions) for residential type and size, number of units and number of bedrooms per unit.

10. Site Access-Type/Location/Volume—Maps, description and volume data for all access transportation modes including public transit linkages.

Planning Data

11. Local/Areawide Comprehensive Plans—Master plans for land acquisition, land development and capital improvement programs, from local, regional or state comprehensive planning agencies. Housing data maps are often included.

12. Land Use Plans—Land use plans and analyses, from local, regional or state planning agencies and describing both the goals and objectives of jurisdictions in the project area and the existing and proposed future distribution of land uses (residential, commercial, industrial, institutional, etc.).

13. Zoning Maps—Local zoning ordinances and maps prepared by local jurisdictions in the project area, obtained from municipal planning departments or municipal clerk's office.

14. Population Density Statistics—Population density maps of the project area, developed from Census data, obtained from municipal or regional planning agencies.

15. Community Facilities/Services Maps/Data—Maps of major public facilities and services (schools, hospitals, police and fire protection, water supply, waste treatment, etc.) obtained from local agencies.

16. Open Space/Recreational Facilities Maps—Open space and recreation facility maps, depicting present and proposed publicly-owned areas (obtained in data elements 12 and 13). Data and maps from parks departments and voluntary organizations (see also data in elements 15 and 17).

17. Historic and Cultural Resource Maps—Historic and cultural resource lists and maps, including National Register sites as well as sites and resources identified by the State Historic Preservation Officer and local historic associations. This includes checking National Register lists and updates.

18. Community Characteristics/Boundary Maps—Socioeconomic data (and maps) obtained from the Census and locally prepared planning reports which identify the characteristics and boundaries of communities found in the study area.

19. Relocation Resource Lists/Maps—Summary of relocation resources in the appropriate study area for potential residential or business relocatees, obtained from local planning agencies and relocation departments.

20. Human and Social Service Plans—These often inventory existing programs and resources and identify needs of particular groups in the community such as elderly, handicapped, youth and preschool. May be available at city or county human or social service agency or from a private community council of social service agencies.

Economic Data

21. Employment Concentration Lists & Maps—Employment location and concentration maps, developed by the regional planning agency or from state economic development agency data.

22. Economic/Land Use Development Maps—Economic/land use development trends (past and projected), developed and mapped for the project area from information obtained at local or regional planning and development agencies, state economic development agencies or utility companies.

23. Property Tax Assessment Data—Property tax assessment data for areas which might receive impacts from a project alternative, obtained from local tax assessor's office.

24. Labor Force/Income Data—Income characteristics of residents in the project area, obtained from Census data. Summary of regional labor force characteristics identifying major sectors of employment and skill concentrations in region as enumerated in Census data. Updated information may be available at the state employment service research department or at local or regional planning agencies.

Physical Data

25. Building Location—Building location maps of the project area, such as Sanborn maps available from the local engineering department, USGS maps, or developed from aerial photographs.

26. Archaeological Resource Maps—Archaeological resource lists and maps, including National Register sites as well as sites identified by or of potential interest to state and local archaeological offices or groups.

27. Soil Survey Maps—Soil survey maps, obtained from the Soil Conservation Service or county agent.

28. Prime and Unique Agricultural Lands—Maps obtained from the Soil Conservation Service U.S. Department of Agriculture. Also consult maps showing agricultural lands of state and local importance.

29. Vegetation/Wildlife Maps—Vegetation/wildlife maps identifying general characteristics of vegetation, and wildlife movement and concentration patterns, available from state fish and game agencies and local conservation groups.

30. Rare or Endangered Species Lists—Rare and endangered species lists, obtained from the U.S. Fish and Wildlife Service, state and local agencies; and maps denoting designated habitats or sensitive areas.

31. Floodplain/Wetlands Data—Flood hazard boundary maps, flood insurance rate maps, and related flood insurance studies identifying the location of riverine or coastal floodplains are obtained from the Federal Emergency Management Agency. Wetland identification and classification studies identifying location of coastal or inland wetlands are obtained from the U.S.

Fish and Wildlife Service, and from State and local conservation commissions. Other sources for such data are the Army Corps of Engineers, U.S. Geological Survey, and regional and local planning agencies.

32. Water Quality Classification Maps—Water quality classification maps, obtained from state departments of water pollution control.

33. Water Quality Management Plans—Areawide plans for pollution abatement and sewage treatment facilities necessary to meet the area's needs.

34. Air Quality Implementation Plans of the State—Air quality implementation plans, obtained from state or regional air quality control agencies.

35. Available Noise Measurements/Lists & Maps—Data from previous assessments and other studies describing noise impact for airports, noise contours, highways, railroads and other major noise sources. If traffic data are available, noise levels may be determined by use of the HUD Noise Assessment Guidelines.

36. State and Substate Coastal Zone Management Plans—contain inventories and designation of areas of particular concern which can assist in initial screening of potential project impacts.

The Limitation of Existing Secondary Data

It is important to note that currently available secondary data may vary widely in its accuracy, in its coverage, scale, age and overall utility. The improper use of existing secondary data can lead to faulty judgments in assessing impacts. The following list of characteristics and limitations of secondary data indicates some of these limitations:

- **Scale/Coverage**—Frequently data, such as maps and Census Data, are presented in too gross a scale for effective use in a site specific assessment. A notable exception to this are the U.S. Geological Survey 7.5 minute topographic quadrangle maps (1" = 2000') and the U.S. Soil Conservation Service soil surveys which provide a wealth of data on a scale suitable to most projects. Generally, maps at a scale of 1" = more than 1 mile are not useful for site-specific applications other than in the most generalized way, except for projects which may be community-wide or areawide in scope.
- **Contents/Classification**—Frequently, certain maps and other data sources may be limited in content. For example, a map showing vegetation may be limited to commercially harvestable timber species. Data is often prepared to serve the purposes of a special user group rather than for environmental impact assessment purposes.
- **Age**—A frequent deficiency in secondary data is the age of the information contained in reports, maps, and Census reports. This is particularly true in growing communities where change is rapidly occurring. In many larger communities the research department of the planning agency frequently provides updated esti-

mates of Census data. In some states this is done by the state planning office or by a state university.

If the data resources of the particular community are deficient, assistance can be sought from the areawide planning agency and the HUD Field Office (the Environmental Officer).

A more detailed bibliography of sources of data and information specific to each of the impact categories can be found in Appendix A.

Professional Expertise

Some of the most important data required in an environmental assessment are not available in any secondary document and must be obtained from a knowledgeable individual. The table below is intended to serve as a guide to key agencies and personnel who can provide professional expertise. Most of these individuals can be contacted by looking in the local phone book or calling the information office of the appropriate government level shown. In the table the word "local" refers to county or municipal government, while "regional" refers to sub-state regions.

If you are still uncertain how to locate these individuals, you can contact the Environmental Officer in your HUD Field Office or Regional Office. The HUD Regional Offices and many other Federal offices are located in ten major cities. If you can't find a resource closer to your community, try the nearest of the following ten cities:

HUD Region	Location
I	Boston, MA
II	New York, NY
III	Philadelphia, PA
IV	Atlanta, GA
V	Chicago, IL
VI	Ft. Worth, TX
VII	Kansas City, MO
VIII	Denver, CO
IX	San Francisco, CA
X	Seattle, WA

Field Observation

Field observation can serve as a useful information gathering tool when properly done. Based upon a site visit after an initial review of project plans and area maps, a project reviewer can perform an initial screening and may be able to eliminate some environmental categories from further consideration. Conversely, a field visit can surface environmental factors which may have been overlooked and may require more in-depth analysis.

No matter what level of environmental expertise a reviewer has, the site visit is an effective method of gaining a sense of how all of the site characteristics are integrated. In addition to gathering impressions of the physical characteristics of the site, it is very often

useful to interview persons who live and work near the site to gain greater understanding of issues and concerns. It should be remembered, however, that a casual field visit has major limitations in assessing many impact categories which are not always readily evident. For certain categories of impact (e.g., groundwater, soils suitability) the field visit should be made with a professional expert. The expert can then conduct relevant tests such as gathering soil samples or taking soil borings.

Documentation

One of the most critical elements in performing a responsive and professionally competent assessment is proper documentation. It is, for example, not sufficient to simply write "Field Observation" beside an impact category. Instead, it is recommended that the name of the field observer, title, agency and date be included. Similarly, with secondary texts, a complete bibliographic reference with page number is recommended. With phone calls made to professional experts, the name, title, and date should be listed. To avoid repetition the full list of sources can be included in chronological order at the end of the assessment form and referenced with a numerical code in the body of the document similar to footnoting at the end of a report. While preparing a listing of sources as part of the development of a data base is suggested, references found in the assessments should be as specific as possible.

Map Preparation

An important part of preparing the data file is the preparation of a series of maps which delineate the various impact elements in the community such as wetlands, floodplains, historic sites and districts. The early mapping of this information makes the task of assessing the impact of a proposed project simple and relatively speedy. In most communities the Planning Department is one of the single best sources of maps and other needed data.

A brief list of data which lends itself to plotting on maps includes:

- Soils
- Locations of Air Quality Monitoring Stations and Violations, Location of Major Sources
- Slope and Topographic Features
- Surface Waters
- Locations of Rare and Endangered Plant and Animal Life
- Floodplains and Wetlands
- Shoreline Management Areas
- Recreation and Open Space
- High Noise Areas (highways, railroads, airports)
- Census Data such as Income, Race and Unemployment Status

- Neighborhood Boundaries
- Business Establishments
- Highways and Public Transit
- Human and Social Service Facilities
- Historic Sites and Districts
- Public and Private Utilities
- Community Services such as schools, fire, police and medical
- Location of hazardous waste sites
- Farmlands/Agricultural Lands of Local Importance
- Unique Natural Resources

Specific information concerning the preparation of various maps is included in **Appendix A: Assessment Techniques**.

Assembling Data

The CDBG program director may want to assign a staff person to data base preparation, schedule a portion of the data to be collected every 6 months, hire outside experts to put the data base and maps together, or some combination of the above. It is time well spent and saves a great deal of research effort each time an environmental assessment is prepared.

While the goal of preparing an extensive community data file is a good one, many smaller communities may lack both the data resources and staff to prepare an extensive data base. These communities should prepare a data base which is tailored to the needs and resources of their community. They should, however, also become familiar with the location of data in or near their community.

Updating the data base file is as important as the initial effort and must be scheduled each year as appropriate to local staffing needs. Reports and plans in a few categories may require yearly updating while other data may require updating every 5-7 years.

While most of the base data needs can be satisfied by contacting governmental agencies, private sources are of equal importance and should not be overlooked. For example, in many large communities private non-profit social and human service agencies can serve as important sources of data concerning the availability of local services and estimates of local needs. A particularly good source is the metropolitan council of social service agencies where such an agency exists. Private waste disposal companies can provide data on the storage and disposal of hazardous wastes (as can appropriate state environmental agencies). Other good private sector sources for data on employment and business activity include the Chamber of Commerce and major employers. Additionally, railroads often have data on hazardous materials (including waste) transportation routes or destinations.

Utility companies (electricity, water and sewer, gas) may have valuable information on current and future development trends based on hook-up applications and projected energy demand by population.

Base Data Matrix

Data Elements		Major Impact Categories							
		Noise	Air Quality	Land Development	Environmental Design and Historic Values	Socioeconomic	Community Facilities and Services	Natural Features	
Project	1	Previous EA Reports	●	●	●	●	●	●	●
Area	2	U.S.G.S. and Other Base Maps	●	●	●	●	●	●	●
	3	Aerial Photographs	●	●	●	●	●	●	●
	4	Project Site Plans	●	●	●	●	●	●	●
	5	Project Alternative Plans	●	●	●	●	●	●	●
	6	Design and Construction Documents	●	●	●	●	●	●	●
	7	Project Utility, Access and Energy Usage Plans		●	●	●	●	●	●
	8	Project Employment Statistics			●		●	●	
	9	Project Use/Occupant Characteristics Data			●		●	●	
	10	Site Access—Type/Location/Volume	●	●	●	●	●	●	●
	Planning	11	Local/Area Wide Comprehensive Plans	●	●	●	●	●	●
Data	12	Land Use Plans	●	●	●	●	●	●	●
	13	Zoning Maps	●		●	●	●	●	
	14	Population Density Statistics	●	●	●	●	●	●	
	15	Community Facilities/Services/Maps/Data	●		●	●	●	●	
	16	Open Space/Recreational Facilities Maps	●	●		●	●	●	●
	17	Historic and Cultural Resource Maps	●	●		●	●	●	
	18	Community Characteristics/Boundary Maps	●	●	●	●	●	●	
	19	Relocation Resource Lists/Maps			●	●	●	●	
	20	Human and Social Service Plans			●		●	●	
	Economic	21	Employment Concentration Lists and Maps			●		●	
Data	22	Economic/Land Use Development Maps	●		●	●	●	●	
	23	Property Tax Assessment Data				●	●	●	
	24	Labor Force/Income Data			●		●	●	
Physical	25	Building Location	●	●	●	●	●		
Data	26	Archaeological Resource Maps				●	●		
	27	Prime and Unique Agricultural Land Maps			●	●	●		●
	28	Soil Survey Maps			●				●
	29	Vegetation Wildlife Maps			●	●			●
	30	Rare or Endangered Species Lists							●
	31	Floodplain/Wetlands Data			●	●	●		●
	32	Water Quality Classification Maps			●	●	●		●
	33	Water Quality Management Plans			●		●	●	●
	34	Air Quality Implementation Plans		●	●		●		
	35	Available Noise Measurements/Lists and Maps	●		●	●	●	●	
	36	Coastal Zone Management Plans		●	●	●	●	●	

**ENVIRONMENTAL REVIEW REQUIREMENTS AND PROCEDURES
FOR PROJECTS THAT AFFECT FLOODPLAINS**

Whenever a proposed project will affect a floodplain or occurs in a floodplain, the grantee must take steps to assure that the project will not have unacceptable adverse affects on the floodplain, create a hazard, or be too susceptible to flood damage, including the publishing of a floodplain notice.

To determine if the proposed project is in a floodplain, the grantee should consult Flood Insurance Rate or Flood Hazard Boundary maps, which are available for almost every jurisdiction in Washington. These maps are either on record in the jurisdiction or they may be obtained by contacting the Washington State Department of Ecology. If there are no maps for the jurisdiction, the grantee should contact COMMERCE.

The following checklist can assist in determining the required steps that must be taken.

General Requirements	Legislation	Regulation
Avoid the adverse impacts associated with the occupancy and modification of floodplains. Avoid floodplain development whenever there are practicable alternatives	Executive Order 11988, 5/24/77	24 CFR Part 55

1. Is the project located in a FEMA-designated floodway or a 100 or 500-year floodplain?

- | |
|--|
| <ul style="list-style-type: none"> Maintain, in your ERR, the FEMA map panel that includes your project site. Make sure to include the map number and date. |
|--|

No: **STOP** here. The Floodplain Management regulations do not apply. Record your determination.

Yes: Floodway. **STOP.** The National Flood Insurance Program prohibits federal financial assistance for use in a floodway. The only exception is for functionally dependent uses, such as a marina, a port facility, a waterfront park, a bridge or a dam. If your project is a functionally dependent use in a floodway, proceed to #3.

Yes: 500-year floodplain (Zone B or X). Proceed to #2

Yes: 100-year floodplain (Zone A or V). Proceed to #3

2. Does your project involve a critical action, defined as an activity for which even a slight chance of flooding would be too great because it might result in loss of life, injury or property damage?

Specific examples include:

- Structures or facilities that produce use or store highly volatile, flammable, explosive, toxic or water-reactive materials.
- Structures or facilities that provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood or storm events (e.g., data storage centers, generating plants, principle utility lines).
- Structures or facilities that 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., persons who reside in hospitals, nursing homes). Housing for independent living for the elderly is not considered a critical action.

No: **STOP** here. The project can proceed without further analysis. Record your determination and attach floodplain map and documentation that project does not involve a critical action.

Yes: Proceed to #3.

3. Does your project meet one of the categories of proposed action for which the floodplain management regulations do not apply? (Below are several common exemptions – 24 CFR 55.12 contains additional proposed actions)

- Financial assistance for minor repairs or improvements on one-to-four-family properties that do not meet the thresholds for ‘substantial improvements’ under 55.2 (b)(8).
- A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain.
- HUD’s approval of a project site, an incidental portion of which is situated in an adjacent floodplain, but only with certain further conditions (see 24 CFR 55.12(c)(6)).
- A project on any site in a floodplain for which FEMA has issued a final Letter of Map Amendment or Letter of Map Revision that removed the property from a FEMA-designated floodplain location.
- A project on any site in a floodplain for which FEMA has issued a conditional LOMA or LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or LOMR.

Yes: **STOP** here. Maintain copies of all of the documents you have used to make your determinations.

No: Reject Project Site or Request a Letter of Map Amendment or Revision from FEMA or Complete the 8-step decision-making process on the next page (24 CFR Section 55.20). Please note that both options take time and resources. The 8-step decision-making process requires two notice and comment periods. If you find that there are not practicable alternatives to locating the proposal in a floodplain, you must notify any private party participating in a financial transaction for the property of the hazards of the floodplain location before the execution of documents completing the transaction.

8-STEP PROCEDURE FOR MAKING DETERMINATIONS ON FLOODPLAIN MANAGEMENT

24 CFR Part 55

55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) **Step 1.** Determine whether the proposed action is located in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) **Step 2.** Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

The "First Public Notice" should be published alone with a 15-day comment period.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) **Step 3.** Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

For State CDBG, HUD designates the local jurisdiction as the responsible entity.

(1) The consideration of practicable alternatives to the proposed site or method may include:

(i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);

(ii) Alternative methods to serve the identical project objective; and

(iii) A determination not to approve any action.

ATTACHMENT 6-Q (4)

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) **Step 4.** Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain (or 500-year floodplain for a Critical Action).

(e) **Step 5.** Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

- (1) Preparation of and participation in an early warning system;
- (2) An emergency evacuation and relocation plan;
- (3) Identification of evacuation route(s) out of the 500-year floodplain; and
- (4) Identification marks of past or estimated flood levels on all structures.

(f) **Step 6.** Reevaluate the proposed action to determine:

(1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) **Step 7.** (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

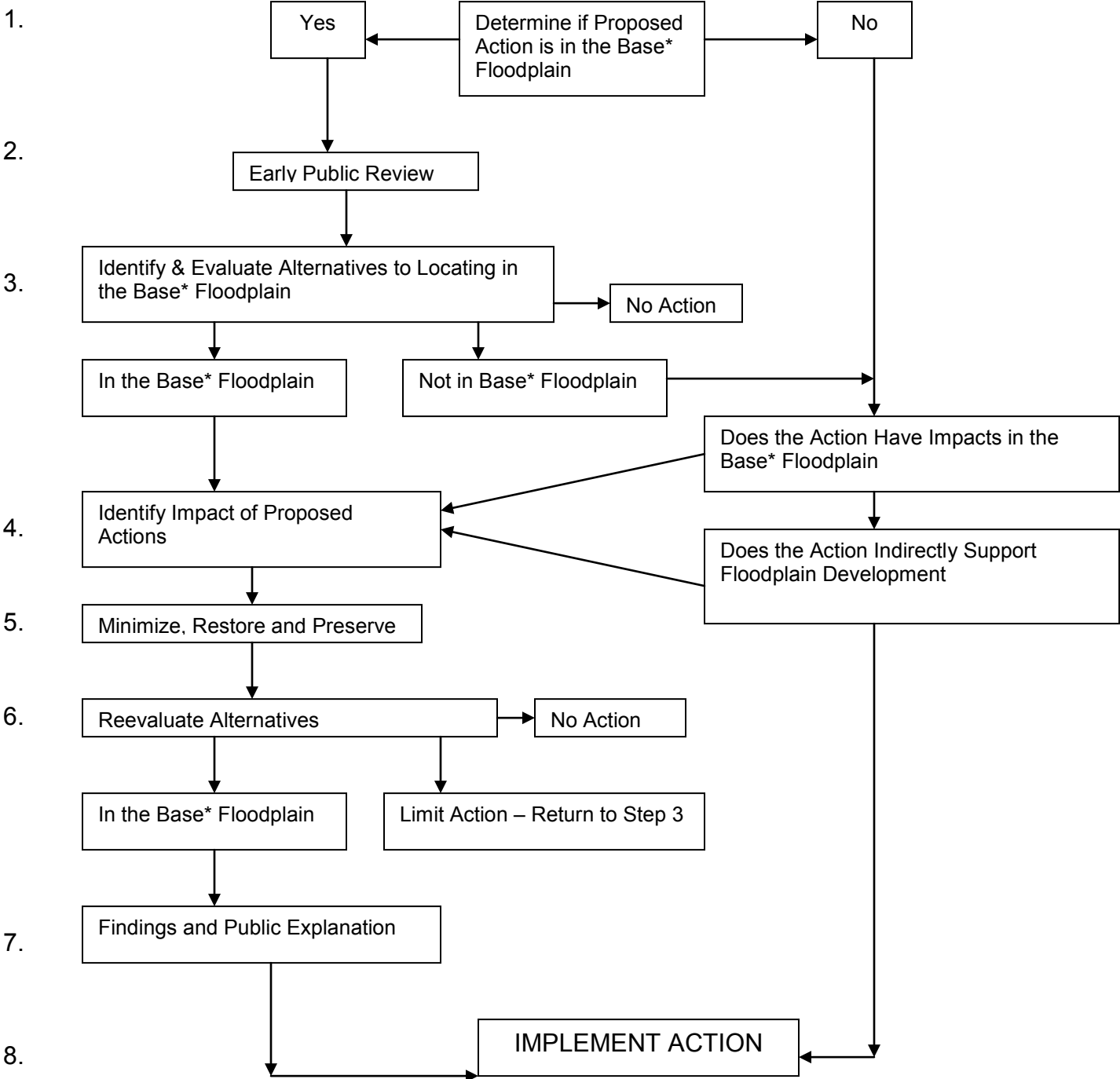
- (i) The reasons why the proposal must be located in the floodplain;
- (ii) A list of the alternatives considered; and
- (iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

The "Second Public Notice" may be published within Attachment 6-K (Request for Release of Funds) or within Attachment 6-J (Concurrent Notice). The comment period is for 7 days.

(2) In addition, the public notice procedures of Sec. 55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.

(h) **Step 8.** Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

8-Step, Decision-Making Process for EO 11988



*For Critical Actions Substitute "500 Year" for "Base"

24 CFR 58

ENVIRONMENTAL REVIEW PROCEDURES

PART 58--ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

Subpart A--Purpose, Legal Authority, Federal Laws and Authorities

Sec.

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Subpart H--Release of Funds for Particular Projects

- 58.70 Notice of intent to request release of funds.
- 58.71 Request for release of funds and certification.
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- 58.74 Time for objecting.
- 58.75 Permissible bases for objections.
- 58.76 Procedure for objections.
- 58.77 Effect of approval of certification.

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p.123.

Subpart A--Purpose, Legal Authority, Federal Laws and Authorities

Sec. 58.1 Purpose and applicability.

(a) Purpose. This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental

review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) Applicability. This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

(1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) The Rental Rehabilitation program and Housing Development Grant program authorized by section 17 of the United States Housing Act of 1937, in accordance with sections 17(i)(1) and 17(i)(2) with respect to projects and programs for which binding commitments have been entered into prior to October 1, 1991, since section 17 was repealed by the Cranston-Gonzalez National Affordable Housing Act enacted November 28, 1990 (42 U.S.C. 1437o(i)(1) and (2));

(3) Grants to States and units of general local government under the Emergency Shelter Grant Program, Supportive Housing program (and its predecessors, the Supportive Housing Demonstration program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the Stewart B. McKinney Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Indian Housing Programs under Title I of the United States Housing Act of 1937, including the Mutual Help Program, in accordance with section 26 (42 U.S.C. 1437x); and

(iii) Assistance administered by a public housing agency or Indian housing authority under section 8 of

the United States Housing Act of 1937, except for assistance provided under 24 CFR part 886, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading "Annual Contributions for Assisted Housing" in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note); and

(9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section 11(m)).

Sec. 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying Officer* means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of Sec. 58.13.

(3) *Extraordinary Circumstances* means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) *Project* means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

(5) *Recipient* means any of the following entities, when they are eligible recipients or grantees under a

program listed in Sec. 58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) (A) With respect to Public Housing Programs under Sec. 58.1(b)(6)(i), a public housing agency;

(B) With respect to Indian Housing Programs under Sec. 58.1(b)(6)(ii), an Indian housing authority;

(C) With respect to section 8 assistance under Sec. 58.1(b)(6)(iii), a public housing agency or Indian housing authority;

(vi) Any direct grantee of HUD for a special project under Sec. 58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Pilot Program under Sec. 58.1(b)(8), a qualified housing finance agency; and

(viii) With respect to the Self-Help Homeownership Opportunity Program under Sec. 58.1(b)(9), any direct grantee of HUD.

(6) *Release of funds*. In the case of the FHA Multifamily Housing Finance Agency Pilot Program under Sec. 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter.

(7) *Responsible Entity* means:

(i) With respect to environmental responsibilities under programs listed in Sec. 58.1(b)(1) through (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in Sec. 58.1(b)(6) through (9), a State, unit of general local government, Indian tribe or Alaska native village, when it is the recipient under the program. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(D) For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located, or if the project is located outside

of a reservation, the Indian tribe that established the authority; and

(E) For Indian housing authorities in Alaska, the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD.

(8) *Unit Density* refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) *Tiering* means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) *Vacant Building* means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

- (1) CDBG--Community Development Block Grant;
- (2) CEQ--Council on Environmental Quality;
- (3) EA--Environmental Assessment;
- (4) EIS--Environmental Impact Statement;
- (5) EPA--Environmental Protection Agency;
- (6) ERR--Environmental Review Record;
- (7) FONSI--Finding of No Significant Impact;
- (8) HUD--Department of Housing and Urban Development;
- (9) NAHA--Cranston-Gonzalez National Affordable Housing Act of 1990;
- (10) NEPA--National Environmental Policy Act of 1969, as amended;
- (11) NOI/EIS--Notice of Intent to Prepare an EIS;
- (12) NOI/RROF--Notice of Intent to Request Release of Funds;
- (13) ROD--Record of Decision;
- (14) ROF--Release of Funds; and
- (15) RROF--Request for Release of Funds.

Sec. 58.4 Assumption authority.

(a) Assumption authority for responsible entities: General.

Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in Sec. 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption

of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) Particular responsibilities of the States. (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD's responsibilities in accordance with Sec. 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the State, except for projects assisted by Section 17 Rental Rehabilitation assistance and Housing Development Grants. Approval by the State of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in Sec. 58.5.

(3) For section 17 Rental Rehabilitation projects and Housing Development Grants, the State agency shall meet the responsibilities set forth in Sec. 58.18. However, for section 17 projects, the State lacks authority to approve RROFs and therefore must forward to the responsible HUD Field Office the local recipient's certification and RROF, any objections to the release of funds submitted by another party, and the State's recommendation as to whether HUD should approve the certification and the RROF.

Sec. 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in Sec. 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in Sec. 58.17 for Section 17 projects.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C. 469a-1).

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see Sec. 55.10 of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, particularly sections 2 and 5.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) *Sole source aquifers.* (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency--40 CFR part 149).

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) *Air quality.* (1) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-- 40 CFR parts 6, 51, and 93).

(h) *Farmlands protection.* (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture--7 CFR part 658).

(i) *HUD environmental standards.* Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) (other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303 (a)(3)) and HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive

Materials, September 10, 1979).

(j) *Environmental justice.* Executive Order 12898--Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

Sec. 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in Sec. 58.5 for assumption by the responsible entity under the laws cited in Sec. 58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under Sec. 58.34(a)(12) and/or the applicability of Sec. 58.35(b).

However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under Sec. 58.34 or categorically excluded under Sec. 58.35(a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Under Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a

person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain the flood insurance.

(c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

Subpart B--General Policy: Responsibilities of Responsible Entities

Sec. 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in Sec. 58.1(b), the responsible entity must assume the environmental responsibilities for projects under programs cited in Sec. 58.1(b), and in doing so must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in Sec. 58.5.

Sec. 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, Indian housing, special project or self-help homeownership opportunity recipient objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental

review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with Sec. 58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

Sec. 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

Sec. 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by Sec. 58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in Sec. 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in Sec. 58.5. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

Sec. 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in Sec. 58.5 and Sec. 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2(b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or

provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

Sec. 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

Sec. 58.17 Historic Preservation requirements for prior section 17 grants.

A recipient of a section 17 grant shall comply with the historic preservation requirements of this part and existing grant agreements.

Sec. 58.18 Responsibilities of States Assuming HUD Responsibilities.

(a) States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The State must:

(1) Designate the State agency or agencies which

will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(i) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(ii) Receive public notices, RROFs and certifications from recipients pursuant to Secs. 58.70 and 58.71; accept objections from the public and from other agencies (Sec. 58.73); and perform other related responsibilities regarding releases of funds.

(2) Fulfill the State role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

(b) States administering section 17 Programs shall assume the responsibilities set forth in this section for overseeing the State recipient's performance and compliance with NEPA and related Federal authorities as set forth in this part, including receiving RROFs and environmental certifications for particular projects from State recipients and objections from government agencies and the public in accordance with the procedures contained in subpart H of this part. The State shall forward to the responsible HUD Field Office the environmental certification, the RROF and any objections received, and shall recommend whether to approve or disapprove the certification and RROF.

Subpart C--General Policy: Environmental Review Procedures

Sec. 58.21 Time periods.

All time periods in this part 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 or the mailing and posting date of the notice which initiates the time period.

Sec. 58.22 Limitations on activities pending clearance.

(a) A recipient may not commit HUD assistance funds under a program listed in Sec. 58.1(b) on an activity or project until HUD or the State has approved the recipient's RROF and the related certification of the responsible entity. In addition, until the RROF and related certification has been approved, the recipient may not commit non-HUD funds on an activity or project under a program listed in Sec. 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. If an activity is exempt under Sec. 58.34, or not subject to Sec. 58.5 under

Sec. 58.35(b), no RROF is required and a recipient may undertake the activity immediately after the award of the assistance.

(b) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(c) Relocation. Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

Sec. 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in Sec. 58.5 and Sec. 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

Subpart D--Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

Sec. 58.30 Environmental Review Process.

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with Sec. 58.32.

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

Sec. 58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for

aggregation when evaluating activities under more than one program, the responsible entity may choose: functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) Multi-year project aggregation. (1) Release of funds. When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in Sec. 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

Sec. 58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and when adherence to separate comment periods would prevent the giving of assistance, the combined Notice of FONSI and the Notice of the Intent to Request

Release of Funds may be disseminated and/or published simultaneously with the submission of the Request for Release of Funds (RROF). The combined Notice of FONSI and NOI/ROF shall state that the funds are needed on an immediate emergency basis due to a Presidentially declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to assure that these comments will receive full consideration.

Sec. 58.34 Exempt activities.

(a) Except for the applicable requirements of Sec. 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in Sec. 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental and other studies, resource identification and the development of plans and strategies;

(2) Information and financial services;

(3) Administrative and management activities;

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

(5) Inspections and testing of properties for hazards or defects;

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in Sec. 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in Sec. 58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must

document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

Sec. 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see Sec. 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in Sec. 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) Categorical exclusions subject to Sec. 58.5. The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in Sec. 58.5:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of multifamily residential buildings:

- (A) Unit density is not changed more than 20 percent;
- (B) The project does not involve changes in land use from residential to non-residential; and
- (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(ii) In the case of non-residential structures, including commercial, industrial, and public buildings:

- (A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
- (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4) An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.

(5) Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.

(6) Combinations of the above activities.

(b) Categorical exclusions not subject to Sec. 58.5.

The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in Sec. 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under Sec. 58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) 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;

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(c) Circumstances requiring NEPA review. If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

Sec. 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under Secs. 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under Sec. 58.37, the responsible entity should proceed directly to an EIS.

Sec. 58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under Sec. 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where Sec. 58.53 is applicable.

(e) Recommended EIS Format. The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that

there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

Sec. 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

(a) ERR Documents. The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in Sec. 58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) Other documents and information. The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

Subpart E--Environmental Review Process: Environmental Assessments (EA's)

Sec. 58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts,

whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in Sec. 58.5 and Sec. 58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in Secs. 58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to Sec. 58.43.

(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

Sec. 58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by Sec. 58.70. If the notices are released as a combined

notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which "notice" their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

Sec. 58.45 Public comment periods.

(a) Notice of finding of no significant impact: 15 days from date of publication or if no publication, 18 days from the date of mailing and posting.

(b) Notice of intent to request release of funds: 7 days from date of publication or if no publication, 10 days from date of mailing and posting.

(c) Concurrent or combined notices: Same as FONSI notice.

Sec. 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when: (a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

Sec. 58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b)(1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraphs (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

**Subpart F--Environmental Review Process:
Environmental Impact
Statement Determinations**

Sec. 58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in Sec. 58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

Sec. 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the Federal

Register for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to Sec. 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

**Subpart G--Environmental Review Process:
Procedures for Draft,
Final and Supplemental Environmental Impact
Statements**

Sec. 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

Sec. 58.56 Scoping process.

The determination on whether or not to hold a

scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under Sec. 58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

Sec. 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

Sec. 58.59 Public hearings and meetings.

(a) Factors to consider. In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) Procedure. All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.

Sec. 58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final

environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

(3) Copies made available in the responsible entity's and the recipient's office;

(4) Copies or summaries made available to persons who request them; and

(5) FEIS only--one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

Subpart H--Release of Funds for Particular Projects

Sec. 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by Sec. 58.43 and Sec. 58.45 before the certification is signed by the responsible entity.

Sec. 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in Sec. 58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in Sec. 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of

any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

Sec. 58.72 HUD or State Actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the State) may disapprove a certification and RROF if it has knowledge that the responsible entity has not complied with the items in Sec. 58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated Sec. 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

Sec. 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to Sec. 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State)

can refuse the RROF and certification on any grounds set forth in Sec. 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

Sec. 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

Sec. 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to Sec. 58.40 or to make the written determination required by Secs. 58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient has committed funds or incurred costs not authorized by this part before release of funds and approval of the environmental certification by HUD or the State.

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Sec. 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection. (d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

Sec. 58.77 Effect of approval of certification.

(a) Responsibilities of HUD and States. HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at Sec. 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in Sec. 58.1(b).

(b) Public and agency redress. Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) Implementation of environmental review decisions. Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) Responsibility for monitoring and training. (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under Sec. 58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

Dated: March 27, 1996.

Henry G. Cisneros, Secretary.

[FR Doc. 96-10467 Filed 4-29-96; 8:45 am]

Revisions Dated: March 13, 1998

Andrew M. Cuomo, Secretary

[FR Doc. 98-8221 Filed 3-27-98; 8:45am]

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMPLIANCE RECORD FOR 1-4 RESIDENTIAL UNITS (PER 24 CFR 58.35)

Jurisdiction: _____ Project: _____

Applicant: _____

Address: _____

Preparer: _____ Date: _____

COMPLIANCE FINDINGS

COMPLIANCE FACTOR	IS IN COMPLIANCE	ACTIONS TAKEN TO ACHIEVE COMPLIANCE			IS NOT IN COMPLIANCE	NOTE CONDITIONS AND/OR SOURCE DOCUMENTATION THAT SUPPORTS FINDING REFERENCE NOTES
		CONSULTATION	MITIGATION AND/OR MODIFICATION	SPECIAL STUDY		
1.						
2.						
3.						
4.						
5.						
Other						

A GUIDE TO BIOLOGICAL ASSESSMENT

Prepared by the National Marine Fisheries Services
 Washington Habitat Conservation Branch
 510 Desmond Drive SE, Suite 103
 Lacey, Washington 98503

Section 7 of the Endangered Species Act (ESA) requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (USFWS) if they determine that any action they fund, authorize or carry out may affect a listed species or designated critical habitat. Consultation with NMFS is required for projects affecting marine, estuarine and anadromous fishery resources and their habitats.

The purpose of a biological assessment (BA) is to determine if a project or action will have an effect on a listed species and if either informal or formal consultation is required. The BA may also be used to achieve compliance with the National Environmental Policy Act (NEPA).

- BAs are required for major construction projects under Section 7(c) of the ESA.
- BAs are recommended for all other federal activities (actions that are authorized, funded or carried out by a federal agency).
- The assessment may be completed as a section of a NEPA document or prepared as a stand-alone document.
- A BA is not required if only proposed species or proposed critical habitat may occur within a project area. However, should the listing/designation become final, a BA would be required.

The BA provides the analysis of project impacts to listed and proposed species/critical habitat that are likely to be found in the project area (candidate species are optional). Based on this analysis, the BA makes an “effect determination” for the proposed action. Effect determinations are further defined on page 3 of this document.

- If the project has “no effect” on listed species/critical habitat and it is not a major construction activity, there is no requirement to consult; however, this should be documented in your project files. If there is no effect, but the project is a major construction activity, you must seek concurrence with NMFS through consultation. Concurrence is generally provided in writing, but can occur via a meeting or phone call in limited circumstances.
- If the project “may affect, but not likely to adversely affect” (NLAA) listed species/critical habitat and it is not a major construction activity, consultation is not required; however, it is highly recommended that you seek concurrence with NMFS through informal consultation. If the project is NLAA and is a major construction activity, concurrence with NMFS is required.
- If the project “may affect, and likely to adversely affect” (LAA) listed species/critical habitat, you must initiate formal consultation with NMFS. Formal consultation involves the submittal of a BA to NMFS and the receipt of a Biological Opinion from NMFS. The Biological Opinion provides authorization for the incidental take of listed species.

- If the project is likely to jeopardize a proposed species or is likely to adversely modify proposed critical habitat, formal conference with NMFS is required. This requires submittal of a BA to NMFS and the receipt of a Conference Opinion from NMFS.

Attachment 1 provides reference material on biological assessments from the ESA Section 7 Consultation Handbook prepared by the U.S. Fish and Wildlife Service and National Marine Fisheries Service, March 1998.

Recommended Contents of Biological Assessments for Submission to NMFS

1. Project Description. Describe the type and scope of action proposed and provide a chronology of when activities will occur. Provide detailed information about project components specifically pertinent to the species. Cite any past consultations. If the project is presently being evaluated under NEPA and there is no preferred alternative for the project, each alternative must have a separate BA.
2. Description of the Project Area. Provide a legal description and a map of the project area. Describe the environmental baseline, which is the current (pre-project) condition of the habitat and project area. The description of the baseline should address all pertinent habitat parameters for the species. NMFS' preferred approach for assessing environmental baseline conditions is detailed in the attached report entitled "Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" (Attachment 2). The BA should also include information about past and present activities in the area that relate to the species or its habitat, and/or the proposed action.
3. List of Species. Cite a species list provided by NMFS or other source of information.
4. Description of the Species and Habitat. Describe the species and its habitat requirements in general and relate that to the local population(s). Describe the habitat in the project area and how local populations use it. This section often includes a brief compilation of a relevant scientific literature on the species. It may also be appropriate to discuss the local status of the species as well.
5. Inventories and Surveys. The BA should be based on current site-specific information about the species. Describe efforts to determine the status of the species in the project area, including information on the timing and method of surveys.
6. Analysis of Effects. Refer to NMFS' "Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" (Attachment 2) for definitions and examples of ESA effects. This document also contains a matrix of key aquatic and riparian habitat parameters for anadromous salmonids and a checklist to be used in conjunction with the matrix to describe the effects of the action on each habitat indicator.

The BA should provide a thorough analysis of potential direct, indirect and cumulative effects of the actions on the species and its habitat, including any interrelated and interdependent effects.

The evaluation of indirect effects should include consideration of immediate and future effects that may result from the project. (For example, a road built for a timber sale may result in long-term human access and continued effects on the species.) As defined by Section 7 of the ESA, the consideration of cumulative effects should include all future state or private actions that are reasonably certain to occur in the project area.

7. Management Actions Related to the Species. The BA should describe components of the project that may influence the species. Provide a full description of mitigation measures which are part of the project and have impact on the species. This section should include a description of any proposed monitoring of the species, its habitat and mitigation effectiveness.
8. Conclusion. Attachment 2 contains a dichotomous key (to be used in conjunction with the matrix and checklist) to assist in making effect determinations for anadromous salmonids.

The BA must contain a distinct statement of the effect of the project on the species. The determination must be one of the following.

- **No effect**—the appropriate conclusion when it is determined that the proposed action will not affect listed species or critical habitat.
 - **May affect, not likely to adversely affect**—the appropriate conclusion when the effects on the species or critical habitat are expected to be beneficial, discountable or insignificant. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impacts and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not (a) be able to meaningfully measure, detect or evaluate insignificant effects; or (b) expect discountable effect to occur.
 - **May affect, likely to adversely affect**—the appropriate conclusion if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but is also likely to cause some adverse effects, then the proposed action is “likely to adversely affect” the listed species or critical habitat. A “likely to adversely affect” determination requires formal Section 7 consultation.
 - **Likely to jeopardize proposed species or adversely modify proposed critical habitat**—the appropriate conclusion when the action agency or NMFS identifies situations in which the proposed action is likely to jeopardize the proposed species or adversely modify the proposed critical habitat. If this conclusion is reached, conference is required.
9. References. Refer to all appropriate project documents, particularly if the assessment depends on information located elsewhere (e.g., in the EIS). You should consider providing NMFS with copies of pertinent documents along with the BA. Provide citations for other information referred to in the BA, such as current literature and personal contacts used in the assessment (include name, affiliation and date).

3.4 BIOLOGICAL ASSESSMENT

“(c)(1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall...request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed by the Secretary and such agency, except that if a period or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefore) and before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency’s compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of the section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.”

Section 7(c) of the Endangered Species Act

By regulation, a biological assessment is prepared for “major construction activities” considered to be federal actions significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act of 1969 (NEPA (42 U.S.C. 4321 et seq.)). A major construction activity is a construction project or other undertaking having similar physical impacts, which qualify under NEPA as a major federal action. Major construction activities include dams, buildings, pipelines, roads, water resource developments, channel improvements, and other such projects that modify the physical environment and that constitute major federal actions. As a rule of thumb, if an Environmental Impact Statement is required for the proposed action and construction-type impacts are involved, it is considered a major construction activity.

A biological assessment is required if listed species or critical habitat may be present in the action area. It is optional if only proposed species or proposed critical habitat is involved. However, if both proposed and listed species are present, a biological assessment is required and must address both proposed and listed species. An assessment also may be recommended for other activities to ensure the agency’s early involvement and increase the chances for resolution during informal consultation.

If a biological assessment is required, formal consultation cannot be initiated until the biological assessment is completed. Some agencies submit an assessment early, benefiting from the informal consultation process; some need to be advised to do so. When Service biologists advise an action agency of the need for a biological assessment, the letter should indicate the importance of completing the assessment before letting contracts or beginning construction.

The federal action agency may designate the applicant or a non-federal representative (often a consultant) to prepare the biological assessment, although the action agency takes responsibility for the content of the assessment and for the findings of effect. The contents of the assessment are discretionary, but generally include results of on-site inspections determining the presence of listed or proposed species, and an analysis of the likely effects of the action on the species or habitat based on biological studies, review of the literature, and the views of species experts. The assessment also describes any known unrelated future non-federal activities (“cumulative effect”) reasonably certain to occur within the action area that are likely to affect the species. Sometimes information in other environmental analysis documents can substitute or be easily modified to produce the assessment.

The biological assessment should address all listed and proposed species found in the action area, not just those listed and proposed species that are likely to be affected. One of the purposes of the biological assessment is to help make the determination of whether the proposed action is “likely to adversely affect” listed species and critical habitat. To make such a determination, all species must be addressed. Such an assessment may help determine the need for conference as well as formal consultation. A biological assessment may be prepared (50 CFR §402.12(b)(1)) if the agency or the applicant may wish later to seek a permanent exemption from the Endangered Species Committee.

The agency is not required to prepare a biological assessment for actions that are not major construction activities; but, if a listed species or critical habitat is likely to be affected, the agency must provide the services with an account of the basis for evaluating the likely effects of the action. The services use this documentation along with any other available information to decide if concurrence with the agency’s determination is warranted.

Sometimes, biological assessment are confused with environmental assessments. The contents of biological assessments prepared pursuant to the Act are largely at the discretion of the action agency although the regulations provide recommended contents (50 CFR §402.12(f)). Biological assessments are not required to analyze alternatives to proposed actions. Environmental assessments are prepared pursuant to the National Environmental Policy Act.

GUIDANCE ON WHAT MAY BE “TAKEN” UNDER THE ENDANGERED SPECIES ACT

On July 1, 1994, (59 FR 34272) National Marine Fisheries Services (NMFS) and Fish and Wildlife Service published a policy committing the services to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of Section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species’ range. For a map of listed areas, please contact the Governor’s Salmon Recovery Office at (360) 902-2216.

This list is not exhaustive. It is intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of listed chinook salmon under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule and general inquiries regarding prohibitions and permits, should be directed to the National Marine Fisheries Service.

NMFS believes that, based on the best available information, the following actions will not result in a violation of Section 9:

- (1) Possession of chinook salmon from the listed Evolutionarily Significant Units (ESUs) acquired lawfully by permit issued by NMFS pursuant to Section 10 of the ESA, or by the terms of an incidental take statement pursuant to Section 7 of the ESA; and
- (2) Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which a Section 7 consultation has been completed, and when such an activity is conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanied by a biological opinion pursuant to Section 7 of the ESA. As described previously in this notice, NMFS may adopt 4(d) protective regulations that except other activities from Section 9 take prohibitions for threatened species.

Activities that NMFS believes could potentially harm, injure or kill chinook salmon in the listed ESUs and result in a violation of Section 9 of the ESA include, but are not limited to:

- (1) Land-use activities that adversely affect chinook salmon habitat in this ESU (e.g., logging, grazing, farming, road construction in riparian areas, and areas susceptible to mass wasting and surface erosion);
- (2) Destruction or alteration of chinook salmon habitat in the listed ESUs, such as removal of large woody debris and “sinker logs” or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow;
- (3) Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting listed chinook salmon;

- (4) Violation of discharge permits;
- (5) Pesticide and herbicide applications;
- (6) Interstate and foreign commerce of chinook salmon from the listed ESUs and import/export of chinook salmon from listed ESUs without an ESA permit, unless the fish were harvested pursuant to legal exception;
- (7) Collecting or handling of chinook salmon from listed ESUs (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species); and
- (8) Introduction of non-native species likely to prey on chinook salmon in these ESUs or displace them from their habitat.

Tribal Contact
Address

RE: Section 106 Consultation for (INSERT PROJECT NAME)

Dear (INSERT CONTACT NAME):

The (INSERT GRANTEE NAME) would like to invite (INSERT TRIBE NAME) to comment on a proposed project in (INSERT LOCATION AND BRIEF DESCRIPTION). The proposed project would use federal Community Development Block Grant (CDBG) funds awarded through the state of Washington and is an undertaking as defined in 36 CFR Part 800.16(y).

The state CDBG Program is funded by the U.S. Department of Housing and Urban Development. Section 104(g) of the Housing and Community Development Act of 1974, federally designates the local government grant recipient to assume the status of federal official responsible for complying with environmental laws specified in HUD regulations, including NEPA and NHPA. Section 104(g) is implemented by HUD regulations in 24 CFR Part 58, which also specifies the environmental authorities with which a local government grant recipient must comply as part of its assumption of environmental responsibilities.

Therefore, we provide you with the attached information regarding our proposed project and would appreciate hearing from you if the tribe knows of archeological, historic or cultural resources that might affect the project site (PACKET SHOULD INCLUDE PROJECT DESCRIPTION, SITE MAP, ANY SURVEY INFO, OR LETTERS FROM DAHP). Please be specific as you can with comments or information. Since this review is time sensitive and must adhere to the provision in 36 CFR Part 800, we request that you submit comments within 30 days from receipt of this letter.

Thank you in advance for any information you may be able to offer. If you have any questions please contact (INSERT CONTACT INFORMATION).

Sincerely,

(LOCAL GOVERNMENT OFFICIAL)

Enclosures: (LIST ENCLOSURES, for example, DAHP EZ forms or response letter, maps, etc.)

CC: (INSERT TRIBAL CHAIR NAME, if other than tribal contact)