



NEW MEXICO MORTGAGE FINANCE AUTHORITY

ENVIRONMENTAL REVIEW GUIDE



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New Mexico Mortgage Finance Authority Environmental Review Guide

General Information

Introduction:

The purpose of this guide is to establish the policies of the New Mexico Mortgage Finance Authority (MFA) with regard to its duties for environmental review, decision making, and action that would otherwise apply to HUD under the *National Environmental Policy Act of 1969*, as amended (*NEPA*).

Every project funded with HOME and other federal funds from the New Mexico Mortgage Finance Authority (MFA) is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA) and the regulations at 24 CFR Part 58 and in some cases 24 CFR Part 50. The primary purpose of these Acts is to protect and enhance the quality of our natural environment.

Other laws and regulations which contain environmental provisions with which MFA and other Responsible Entities (RE's) must comply include:

Noise	Historic Properties	Coastal Zones
Air Quality	Floodplains	Manmade Hazards
Water Quality	Wetlands	Endangered Species
Farm Land Protection	Environmental Justice	

All Responsible Entities must document that their projects and activities are in compliance with NEPA and all other environmental requirements through the procedures and records explained in this Guide.

Definition of a Responsible Entity:

There are 5 of characteristics which define an RE under 24 CFR 58.2a7:

- a. A recipient under the program
- b. A state, unit of local government, Indian tribe
- c. Non-recipient responsible entities are defined as:
 - a. Qualified Housing Finance Agency
 - b. The State
 - c. Unit of general local government
 - d. Indian tribe whose jurisdiction contains the project site
- d. For public housing agencies, the unit of general local government within which the project is locate that exercises land use responsibility.
- e. For Indian housing authorities (outside the state 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

What a Responsible Entity is not:

<http://www.hud.gov/offices/cpd/energyenviron/environment/compliance/qa/entities.cfm>

Governmental entities with special or limited purposes powers such as public housing agencies and redevelopment authorities cannot serve as "responsible entities" assuming HUD's environmental review responsibilities under 24 CFR part 58.

RE Certifying Officer: 24.58.13

Once federal funding from MFA has been awarded, each RE must designate a Certifying Officer to serve specifically as the “responsible” official for carrying out the RE’s environmental requirements.

The RE’s Certifying Officer has three (3) primary responsibilities:

1. Represent the RE for environmental review matters and be subject to the jurisdiction of the Federal courts if the RE becomes involved in environmental litigation.
2. Make sure all environmental procedural and record requirements are fully and properly satisfied.
3. Ensure and/or perform all necessary coordination functions required for environmental reviews. This includes consultation with all appropriate agencies directly concerned with environmental issues or having environmental responsibilities associated with the RE’s project; and the public comment process.

Sub-grantees who meet the definition of a Responsible Entity must forward the name/position of the Certifying Officer to the Environmental Review Officer of the MFA. Additionally, they must submit evidence this person/position meets the statutory requirements of a Certifying Officer (i.e. legal authority to act in this capacity). This information will be kept on file at MFA. In cases where a Certifying Officer has not been identified or the documentation of legal authority has not been received, the MFA Certifying Officer will assume the role and the ERR will be sent to HUD for release.

MFA’s Certifying Environmental Officer:

The Executive Director of the MFA, acting under the direction of the Board of Directors, shall designate a “Certifying Environmental Officer” whose responsibilities and duties shall include the following:

1. Complete applicable training and maintain any required certification to remain knowledgeable regarding compliance with environmental requirements applicable to programs administered by MFA.
2. Review and monitor programs and projects administered by MFA to assure compliance with all environmental requirements established under federal statutes, regulations, and executive orders.
3. Review the following documents submitted to MFA from sub-grantees/recipients seeking to use federal funds under eligible programs or projects:
 - Statutory Checklist with all Required Attachments including State Historic Preservation Office Letter, Fish and Game Letter; Air Quality Letter, and the Eight-Step Process for Floodplains (if Applicable) etc.;
 - Environmental Assessment Checklist with all Required Attachments.
 - Notice of Intent to Request Release of Funds for activities requiring the Statutory Checklist;
 - Combined Public Notice and Affidavit of Publication for activities requiring the Environmental Assessment Checklist.
 - Request for Release of Funds and Certification (RROF)

After review of the above noted documents, and depending on the role MFA assumes in the Environmental Review process, the Certifying Environmental Officer will either sign and issue the *Authority to Use Grant Funds* or forward the package to HUD for their review and release. Once the Authority to Use Grant Funds has been issued, the Recipient may initiate the activity.

Responsibilities of the Responsible Entity:

There are five (5) basic environmental responsibilities for each RE.

1. **Conducting an Environmental Review:** The RE must determine what type of environmental review to conduct. For those projects/activities which are not **Exempt** or **Categorically Excluded** (defined elsewhere in this text), the RE is required to conduct an environmental assessment in order to determine what possible environmental impacts may be involved.
2. **Maintaining an Environmental Review Record:** The RE must establish and maintain an ERR. Additionally, a copy of the ERR will be maintained at MFA by the Environmental Review Officer. The ERR must contain all documentation related to the determination, findings, public notices, consultation and coordination, certifications, and approvals involved in the environmental review process.
3. **Providing Public Comment Opportunities:** Except for “**exempt**” activities, the RE must provide a period of public comment related to the RE’s environmental findings and a period for objections to the Release of Funds. Comment period may be required in other procedures, most notably in the 8 Step Process implementing EO 11988 in relation to activities which may affect the floodplain.
4. **Complying with All Environmental Laws:** Re’s must comply with NEAP as well as other federal/state environmental requirements. This compliance responsibility remains for the entire life of the program.
5. **Environmental Certification and Funding Requests:** The initial environmental review process is not completed until the RE has properly certified its environmental findings and records to the MFA and clearance has been granted.

MFA as the Responsible Entity:

Where circumstances permit by statute, MFA shall undertake and assume the following environmental responsibilities for the above-cited HUD programs as identified in **24 CFR Part 58, §58.18(a)(1)(i)(ii) and (2)**:

1. Monitor and enforce programs for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.
2. Receive Request for Release of Funds and Certification (RROFs) from recipients pursuant to §§ 58.70 and 58.71 and perform other related review and approval responsibilities regarding release of funds.
3. Ensure that the time period set for the receipt and disposition of comments, objections and appeals (if any) on projects is followed.
4. After the recipient has satisfied all of the environmental review requirements including the required comment period and has submitted to MFA its environmental review package for review and approval, MFA will forward the ERR and RROF to HUD to issue an "Authority to Use Grant Funds". After this release is issued, MFA will forward a copy of the ATUGF to the recipient who may initiate its program activity.
5. **MFA cannot, by statute, act as the Responsible Entity and issue the Authority to Use Grant Funds.**

MFA’s Responsibilities:

MFA’s primary responsibilities relating to the environmental review include:

1. Assuming the role of RE when a sub-grantee, by definition, does not meet the requirement.
2. Withholding the RE’s activity/program funds until all the environmental review requirements have been satisfied.

3. Withholding the RE's activity/program funds for the required time period to allow for public comment or objections regarding the environmental certification.
4. Releasing the activity/program funds to RE once the proper environmental certification has been submitted to MFA, and the required comment period has transpired without negative comment or objection. MFA's release of activity funds does not constitute MFA approval of the RE's findings. It is only an acceptance of the certification requirements have been properly satisfied. If the findings are later found inaccurate or that the proper procedures were not followed, the RE shall remain legally responsible for its findings and any corrections needed.
5. If subsequent findings determine that the RE's certification or procedures were inadequate, MFA is required to again withhold further activity funding to the RE until these findings are resolved. That will usually require the RE to redo its environmental review along with a second public comment period; re-certification to MFA; and a revision to the ER's ERR.
6. Monitoring the RE during its project period including an examination of the RE's environmental review process and ERR.
7. Providing to the extent possible and as requested, both guidance and technical assistance to the RE for its environmental review process and ERR.

Time Periods:

All time periods described in this Guide for the environmental review process are counted in calendar days. The first day of a specific time period begins at 12:01 a.m. local time on the day following the publication of the required notice, which initiates the period or the date of submittal to the appropriate reviewing agency. Time periods cannot end on a weekend or federal holiday. Should the end of the time period land on one of these days, additional days must be added to the review time to ensure the end of the time period falls on a business day in which the reviewing office is open.

Spending limitations: (CPD Notice 99-01:2)

A recipient may not commit funds under a program covered by Part 58 on an activity or project until the environmental review has been completed, and, as relevant, HUD or MFA has approved the recipient's Request for Release of Funds (RROF) and the related certification of the responsible entity. In addition, until the environmental review has been completed and approved, the recipient may not commit non-federal funds on an activity or project under a Part 58 covered program if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

An approved RROF must be obtained for each program using federal funding (i.e. RHED, HOME, 542c, etc.).

Definitions:

1. Abbreviations –

CE	Categorically Excluded
CFR	Code of Federal Regulations
EA	Environmental Assessment
EO	Environmental Officer
EIS	Environmental Impact Statement
ERR	Environmental Review Record
FONSI	Finding of No Significant Impact
HPD	Historic Preservation Department
HUD	Department of Housing and Urban Development
NEPA	National Environmental Policy Act
NOI/RROF	Notice of Intent to Request Release of Funds

RE Responsible Entity
SHPO State Historic Preservation Officer

1. **Activities** – Those actions funded or authorized to be funded with federal assistance and those related actions which are not funded (or not authorized to be funded) but which are put forth by the applicant as part of its strategy for the treatment of a project area (24 CFR 58.2(a)(2)). **In the context of environmental review, it is not the source of funds for an activity, but the nature of the activity and its relationship to other activities which are relevant.**

For the purpose of environmental review requirements, an activity may be funded in whole or in part by federal funds, or not funded with federal funds, but nonetheless has been made a part of the project as contained within the funding application. Activities make up a project.

Categorical Exclusion (CE) – A category of activities or projects which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency (HUD) (40 CFR 1508.4). In such cases, neither an environmental assessment nor an Environmental Impact Statement is required. For Section 58.35(a) CE projects compliance, no circumstance requiring compliance with Section 58.5 listed non-NEPA statutes and authorities, and Section 58.6 Other Requirements, must be documented. Section 58.35(b) CE projects are not subject to compliance with Section 58.5 statutes and authorities, but are subject to Section 58.6 Other Requirements.

Environmental Assessment (EA) – A concise public document (40 CFR 1508.9) that serves to:

- Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact.
- Aid an agency's compliance with NEPA when no such EA exists.
- Identify and discuss alternatives considered.
- Identify and discuss mitigation when relevant.
- Facilitate preparation of an EA when one is necessary.
- Identify agencies and persons consulted and document their comments and concerns.

Environmental Impact - Any alteration of existing environmental conditions, or creation of a new set of environmental conditions either adverse or beneficial, caused in whole or in part, directly or indirectly, by a proposed project.

Environmental Impact Statement (EIS) – A detailed written statement describing, analyzing and assessing any alteration of environmental conditions or creation of a new set of environmental conditions either adverse or beneficial, caused or induced by the action or set of actions under consideration, and the alternatives to such action or group of actions. The document should include qualitative measures of importance of the environmental impact.

Environmental Review Process - All analysis and findings necessary for compliance by the funding recipient with NEPA and all related laws and authorities cited in 24 CFR Part 58 with respect to a project funded with federal funds.

Environmental Review Record (ERR) – The documentation of the environmental review process including all assessments or EIS, published notices, notifications and correspondence relating to a specific project or group of projects. The sub-grantee must use the current formats published in this manual.

Exempt Activities –

- a. Activities listed at 24 CFR 58.34(a)(1)-(11); activities for which the sub-grantee need only document compliance with 58.6 Other Requirements.
- b. Activities listed at 24 CFR 58.34(a)(12); CE activities for which the RE has documented no circumstance requiring compliance with the federal laws and authorities listed at 58.5.
- c. Each determination, for each activity or project, must be documented in writing to be exempt and meets the conditions specified for such an exemption, by the RE and a copy must be maintained in each project file.

Finding of No Significant Impact (FONSI) – A determination by the RE based on the EA that the activity/project is not an action that will result in a significant impact on the quality of the human environment.

RE - The unit of local government with which MFA has entered into a contract. The RE is responsible for compliance with the environmental requirements described in this Guide regardless of who the RE may subcontract with for the actual administration of the environmental review process.

Mitigation/Modification - Measures to reduce potential impacts, which can include:

- Avoiding the impact by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment. Can also be accomplished by changing the design or construction techniques).
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

Project – An activity or a group of integrally related activities designed by the sub-grantee to accomplish, in whole, or in part, a specific goal. Geographically or functionally related activities designed to accomplish a specific goal, irrespective of the funding sources of those activities, shall be grouped together for consideration as a single project. Because of the interrelationships of the activities comprising the project, the project as a whole shall be subject to a single environmental review in accordance with 24 CFR Part 58.

Statutory Checklist (SC)- A checklist that allows an RE to document environmental compliance required by other Federal laws and implementing regulations, Executive Orders and other HUD regulations (24 CFR 58.5). It must be completed for all projects in accordance with the instructions contained in this guide.

Determining the Level of Environmental Review:

There are four (4) types of environmental review categories that project activities can fall into:

1. **Exempt** activities;

2. **Categorically Excluded** activities;
3. activities requiring an **Environmental Assessment**;
4. activities requiring an **Environmental Impact Statement**.

Each of these categories involves a different set of requirements and procedures. These requirements and procedures involve a progressively more detailed and complex process moving from the Exempt to Environmental Impact Statement category. It is important to determine the appropriate level of review at the beginning of the project.

In general a sub-grantee/recipient should begin by reviewing the requirements for the Exempt category and then progress to the next and so on. **In all cases, MFA will assume the role of RE for Exempt category certifications.**

The sub-grantee/recipient must consult with the MFA Environmental Review Officer **prior** to the start of an Environmental Impact Statement. MFA may be of assistance in making this determination and complying with the necessary procedures.

Environmental Review Record (ERR):

The sub-grantee/recipient must compile and maintain a written record of the environmental review undertaken under Part 58 for each project. This document will be available for review to the public at the MFA office. The ERR must contain a description of the project/activities and all environmental review documents, public notices, and written determinations or environmental findings required by Part 58. MFA will document and certify activities under HOPWA, ESG, TBRA and CHDO Operating. These ERR's will be filed in the MFA master grant file with the HOME Program Manager.

In general the ERR must contain the following documents:

- Description of the project including the location, the total cost of the project, a list of funding sources and the amount each will contribute to the project.
 - Rehab project descriptions must comply with HUD definitions.
- Completed statutory checklist and environmental assessment checklist if applicable.
- Copies of all supporting documentation noted on the checklists above.
- Copy of the public notice, if applicable
- Copy of the affidavit of publication, if applicable
- Other documents as determined by the MFA Environmental Review Officer.

Exempt Activities 24 CFR 58.34(a):

The MFA will determine at the beginning of a project/activity meets the definition of an EXEMPT activity according to HUD guidance. If a project/activity is determined to be exempt, it is not subject to further environmental review or consultation as described for non-exempt activities. However, written documentation supporting the exempt determination must be kept by MFA in the ERR for the project/activity.

If one or more aggregated activities within a project are determined to be non-exempt, then the project itself cannot be determined to be exempt.

Exempt Activities:

1. Environmental or other studies, resource identification and development of plans and strategies.
2. Information and financial services.
3. Administrative and management activities (e.g. general administrative costs).
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. Inspection and testing of properties for hazards and defects.
6. Purchase of insurance.
7. Engineering or design costs – (except architectural, engineering or other detailed specifications ordinarily required for construction purposes).
8. Purchase of tools.
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 disaster, imminent threats or physical deterioration.
11. Payment of principal and interest on loans made or obligations guaranteed by HUD.
12. Any of the Categorical Exclusions listed in Section IV of this publication – provided that there are no circumstances where these activities require compliance with any other federal law and regulation pertaining to environmental concerns listed at Section 58.5.

Procedures for Exempt Activities:

For all of the items listed above with the exception of number 12, MFA will fill out and keep on file a Certification of Exemption with the accompanying Compliance Documentation Checklist.

For activities subject to number 12 above, the statutory checklist and all supporting documentation must be submitted to MFA for review and approval. On approval MFA will send the sub-grantee a certification of exemption which must be kept in the project file. This process is called, “converting”. Note, that there is no publication requirement and a 7015.15 is not submitted.

Categorically Excluded Activities Subject to 24 CFR Part 58.5

Categorical exclusion refers to activities for which no environmental impact statement or environmental assessment is required under the National Environmental Policy Act (NEPA). Compliance with the other applicable Federal environmental laws and authorities listed in 58.5 is required for any categorical exclusion.

Categorically Excluded Activities Subject to 24 CFR Part 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.
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons.
3. Rehabilitation of multifamily residential buildings and improvements **only when all of the following conditions are met:**
 - The unit density is not changed by more than 20%
 - The project does not involve changes in land use from residential to nonresidential; **and**
 - The estimated cost of the rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation.

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. Any combinations of the above activities.

Procedures for Categorically Excluded Activities Not Subject to 24 CFR Part 58.5:

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 24 CFR Part 58.5. When the following kinds of activities are undertaken, it is not necessary to publish a Notice of Intent to Request Release of Funds (NOI/RROF) or to submit a Request for Release of Funds.

Categorically Excluded Activities Not Subject to 24 CFR Part 58.5:

The following activities are Categorically Excluded and not subject to 24 CFR Part 58.5:

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 operation.
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.
7. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

Procedures for Categorically Excluded Activities Subject to 24 CFR Part 58.5:

Once a project/activity has been determined to be categorically exempt subject to 24 CFR Part 58.5 then the following steps must be followed:

1. Prepare and complete **project abstract** (found in this guide), and the statutory checklist.
2. In completing the statutory checklist, the sub-grantee must consult the appropriate local, State and Federal agencies that do or might have an environmental interest in the project or activities.

- a. The sub-grantee must document through letters or other forms of written communication that consultation has occurred.
- b. All letters and responses become part of the ERR.
- c. Records of discussions and telephone consultations become part of the ERR.
3. The sub-grantee must prepare a public Notice of Intent to Request a Release of Funds:
 - a. This Notice must be prepared in the manner shown in this guide.
 - b. The notice must be posted/published in a manner described in Sections 58.43, 58.45, and 58.70.
4. This Notice must allow for a period of at least 7 days if published, 10 days if posted and 15 days if it is a combined notice, for public review and comment on the ERR prior to the submission of the Request for Release of Funds (RROF) (HUD-7015.15).
5. A copy of the affidavit of publication is required with the submission of the ERR and the RROF.
6. Upon receipt of the ERR and the RROF, MFA, if not acting in the role of the RE, MFA must allow for a 15 day public objection period prior to taking any further action.
7. If no adverse public comments are received by MFA, an Authority to Use Grant Funds (AUGF) (7015.16) will be issued to the sub-grantee.
8. IF MFA assumes the role of the RE then ERR will be reviewed for completeness and forwarded on to HUD for release. HUD then has 15 days for the public to object to the project/activity before they can issue an AUGF (7015.16).
9. Once the sub-grantee has received approval from either HUD or MFA they may begin to obligate and draw down the released funds in accordance with MFA policies and procedures.

For programs such as owner-occupied rehabilitation, and where specific properties have not yet been identified, the Recipient should include in the RROF a notice that Statutory Checklists for individual sites will be prepared by the Recipient once individual project sites are identified. Notice should also be made that these Statutory Checklists, upon completion, will be made available for public review and will be subject to approval by MFA, and the appropriate level of review by the releasing authority (MFA or HUD).

Monitoring Note: During the annual monitoring review, MFA staff will review all client files specifically looking at the date of any and all contracts for services subject to ER requirements. These dates will be compared to the date issued on the Authority to Use Grant Funds.

A recipient may not commit funds under a program covered by Part 58 on an activity or project until the environmental review has been completed, and, as relevant, HUD or MFA has approved the recipient's Request for Release of Funds (RROF) and the related certification of the responsible entity. In addition, until the environmental review has been completed and approved, the recipient may not commit non-federal funds on an activity or project under a Part 58 covered program if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

An approved RROF must be obtained for each program using federal funding (i.e. RHED, HOME, CDBG, 542c, etc.).

Procedures for an Environmental Assessment:

If the project/activity is neither exempt nor categorically excluded from NEPA, the sub-grantee will have to undertake an Environmental Assessment (EA). An EA enable the MFA or HUD to determine the degree of impact that an activity or project may/will have on the environment and whether an Environmental Impact Statement (EIS) is required.

Under the MFA Owner-Occupied Rehabilitation Program, all projects which involve the demolition and reconstruction of an owner-occupied unit must complete an Environmental Assessment prior to the release of funds.

An EA permits all interested parties including public agencies, community groups, and individuals to examine the environmental data developed and to comment on the environmental impact findings and course of action determined by the MFA.

In some limited circumstances, an entity may forgo the EA and proceed directly to the EIS. An EIS is required for activities/projects which will have a significant impact on the environment. Prior to the start of any EIS, the sub-grantee must consult with the MFA Certifying Environmental Officer.

Initiating the Environmental Assessment

Three primary documents must be completed and submitted: project abstract, statutory checklist, environmental assessment checklist. All sections of these documents must be completed. Additional submission documents include the publication notice and affidavit of publication, and the request for release of funds (7015.15).

The following procedures must be followed in completing the ERR:

1. Sub-grantees must coordinate efforts with all appropriate local, state and federal agencies that may have an interest in, or responsibility for, the environmental laws and/or potential impacts of the project.
2. Sub-grantees must document the coordination/consultation and make this documentation a part of the ERR. Such documentation is normally in the form of written correspondence.
3. Sub-grantees must include in their ERR all supporting data for analyses and findings (e.g., maps, surveys, charts, tables, technical opinions) that are noted on the SC and EA checklist.
4. Sub-grantees must make a recommendation on the appropriate assessment finding at the end of the process and document this on the EA checklist.
 - A Finding of No Significant Impact (FONSI), means that the project is not an action that will result in a significant impact on the quality of the human environment; or
 - A Finding of Significant Impact (FOSI), meaning that the project is deemed to be an action which may significantly affect the quality of the human environment and will require an EIS
5. If the RE determines the result of the EA is an FONSI, then the sub-grantee may publish a notice this effect.

Required Public Notices

If the RE has concluded its review of the assessment and determined there is a Finding of No Significant Impact, then the sub-grantee must comply with the following procedures for posting/publishing notices informing the public of the FONSI and the Notice of Intent to Request Release of Funds (NOI/RROF) from MFA.

These notices may be posted/published separately or in a combined notice. A combined notice is preferred. If a decision is made to post/publish notices separately, then the NOI/RROF cannot be posted/published until one day after the last date for comments contained in the FONSI notice.

A combined notice which merges the FONSI and RROF is encouraged. This is simplest, fastest, and least costly method. If this format is used, the sub-grantee should use the format shown in this guide. This notice, which must be released for public review and comment, shall:

1. Be posted/published in accordance with Sections 58.43, 58.45, and 58.70; and
2. At a minimum, be distributed to local news media, individuals and groups interested in the project, and appropriate local, state and federal agencies.

3. This Notice must allow for the ERR to be open for public review and comment for a period of at least 15 days if published or 18 days if posted.
4. The minimum time required for public review and comment provided in this Notice is 7 days if published or 10 days if posted.
5. All comments based on the public notice process must be considered and made part of the ERR.
6. If any comments require a revision to the RROF/FONSI, follow the process in this guide called Re-evaluation of Environmental Assessments and other Environmental Findings.
7. Sample correction notices are included in this guide.

Time delay for Exceptional Circumstances

There are 3 circumstances when the MFA (RE) must make the FONSI Notice available for public review and comment for a minimum period of 30 days.

1. When there is considerable interest or controversy surrounding the project; or
2. When the proposed project is similar to other community development activities that normally require an EIS; or
3. When the project is unique and without precedent.

Re-evaluation of Environmental Assessments and other Environmental Findings

The purpose of the re-evaluation is to determine whether the findings are still valid and to update or correct the ERR. The following are situations that require the MFA (RE) to re-evaluate its environmental findings:

1. When the recipient proposes substantial changes in the nature, magnitude, or extent of the project. This includes adding new activities not anticipated in the original scope of the project.
2. When 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/activity which is proposed to be continued.
3. When the recipient proposes the selection of an alternative not in the original finding.

If one of these situations does not arise, the sub-grantee is required to do a re-evaluation following the procedures outlined in 58.47(b). And, if deemed necessary, comply with formal Release of Funds procedures outlined in this guide prior to obligating funds for re-evaluated activities/new activities.

Certification Procedures

Upon completion of the EA and the public notice requirements, the sub-grantee must follow the steps below:

1. The sub-grantee must complete and submit the Request for Release of funds.
2. Submit a copy of the public notice, and if published in a newspaper, a copy of the affidavit of publication, if posted, then a list of all places the notice was posted and the dates of posting.
3. Upon receipt of all these documents and forms, MFA/HUD must allow for a 15 day public objection period prior to taking any further action.

Environmental Impact Statements:

Sub-grantees determining that an Environmental Impact Statement (EIS) is required must contact the MFA Certifying Environmental Officer for guidance and assistance **prior** to starting the EIS.

Objections to Review Determinations:

Permissible Bases for Objections

MFA/HUD must consider objections claiming the RE's noncompliance with environmental review requirements, based on any of the grants listed at 58.75:

1. The certification was not if fact executed by the responsible entity's Certifying Officer.
2. The RE failed to make one of the two findings pursuant to Section 58.40 or to make the written determination required by Sections 58.35, 58.47 or 58.53 for the project, as applicable.
3. The RE has omitted one or more of the steps set forth at in number 5 below for the preparation, publication and completion of an EA.
4. The RE has omitted one or more steps for the conduct, preparation, publication and completion of an EIS.
5. The participants in the development process have committed funds, incurred costs or undertaken activities not authorized before the release of funds and approval of the environmental certification by MFA/HUD.
6. 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.

Procedures for Objections

A person or agency objecting to the RROF and certification shall submit their objections in writing to either MFA or HUD (as identified in the publication). The objections shall contain the information required by 58.76.

Upon MFA's receipt of an objection which follows the procedures outlined in this Guide, MFA must withhold the release of activity funds to the sub-grantee until a satisfactory resolution is achieved.

1. MFA will notify the sub-grantee of objection(s). The sub-grantee must respond to the objection(s), in writing, to MFA within 15 calendar days of the receipt of the request.
2. If the sub-grantee cannot adequately document that the objection is invalid, MFA will require the sub-grantee to properly stratify the regulation or procedure in question, and then reinitiate Release of Funds procedures.
3. If the sub-grantee is unable to document that the objection is invalid, MFA will notify the objecting party of this, and proceed to release project/activity funds to the sub-grantee.

Historic Preservation:

Section 106 of the National Historic Properties Act of 1966, as amended, mandates that Federal agencies with direct or indirect jurisdiction over a Federal, federally-assisted, or federally licensed activity afford the National Advisory Council on Historic Preservation and the relevant State Historic Preservation Officer (SHPO), a reasonable opportunity for comment on the project's impact on properties which have historic, archeological, and/or cultural significance. This includes relevant properties assisted with HUD funds administered by MFA.

The environmental review process must determine if a subject property is included or eligible for inclusion on the National Register of Historic Places. This inclusion or eligibility for inclusion is determined by consultation with the State Historic Preservation Officer. In New Mexico this function is administered by the State of New Mexico Office of Cultural Affairs, Historic Preservation Division.

The procedure by which this determination is made is as follows: The Recipient takes overall exterior photographs of the subject property. The Recipient submits a letter with the photographs and a map indicating the location of the property to the State Historic Preservation Officer (SHPO) for review and determination (see Appendix II for a sample letter). A copy of the determination is submitted to MFA as an attachment to the appropriate checklist (Statutory Checklist or Environmental Assessment Checklist) and Request for Release of Funds and Certification.

For New Mexico, the address to submit the SHPO request for determination is as follows:

State Historic Preservation Officer
New Mexico Historic Preservation Division
Office of Cultural Affairs
228 Palace Avenue
Santa Fe, New Mexico 87501

If the SHPO determines that the proposed project is not included or eligible for inclusion on the National Historic Register, the Recipient may proceed with its activity. If the SHPO determines that the proposed project will directly or indirectly affect a property that is included or eligible for inclusion, the SHPO will consult with the Recipient to assure that the nature and scope of the undertaking give proper consideration to historic, architectural, and/or cultural values.

For tribal properties, a copy of the tribal historic/archaeological clearance (if applicable) must accompany the consultation letter from the SHPO.

A copy of this approval must be submitted to MFA with the applicable checklist and Request for Release of Funds and Certification.

Floodplain Management and Wetland Protection:

Under the Flood Disaster Protection Act and the Federal Executive Order 11988, 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 the community in which the property is located participates in the National Flood Insurance Program. Flood insurance is to be obtained and maintained as a condition of providing the assistance.

The sub-grantee should first determine if the proposed project is located in a floodplain or wetland. This is done by identifying the project on a Flood Map (indication must include Map and Panel Number) www.fema.gov. If the project is determined not to be located in a floodplain or wetland, the sub-grantee may proceed without further regard to this requirement. If the property is determined to be located within a floodplain, **and** there is no practical alternative to providing assistance, the sub-grantee must complete the Eight-Step Process for Floodplain and must make the assistance conditional upon the sub-recipient obtaining and maintaining Flood insurance. If the property is determined to be in a wetland, certain measures might be required to minimize potential harm to the wetland. The sub-grantee should seek consultation with the Certifying Environmental Officer prior to providing assistance.

Eight-Step Process for Floodplain Management:

1. Determine whether or not the site is to be located in an identified 100-year floodplain.
2. If the site is located in a floodplain, follow steps 2 through 8.
3. Identify and evaluate practicable alternatives to locating the 100-year floodplain. In discussing practicality of alternatives, address:

- a) Natural environment
 - b) Social concerns
 - c) Economic aspects
 - d) Legal constraints
4. Discuss direct or indirect adverse impacts associated with the modification of the floodplain.
 5. Mitigate adverse impacts.
 6. Re-evaluate alternatives and mitigation measures:
 7. Publish a second public notice explaining the final decision and that there are no practicable alternatives to locating in a floodplain.
 8. Review implementation and post-implementation of flood proofing measures to insure that they are in compliance with mitigation measures.

NOTE: If the above procedures are not followed, MFA will not participate in the projects.

Steps 1 through 7 must be completed prior to publishing the Finding of No Signification Impact (FONSI) and/or Request for Release of Funds (RROF) notice(s).

All steps must be thoroughly documented. Documentation must be submitted to MFA for review and approval.

Coastal Zone Management Requirements:

Under the Coastal Barrier Resource Act and 24 CFR Part 58.6, HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System. There are no locations in the state of New Mexico in the Coastal Barrier Resources System.

To adequately document this item on all checklists mark the box indicated, “NA” **and** in the comments box indicate “Nearest Coastal Zone is 790 miles west”.

Sole Source Aquifer Requirements:

Under Section 1424(e) of the Safe Water Drinking Act (SWDA) of 1974 and 24 CFR Part 58.5, no commitment of Federal financial assistance may be made for projects which the Administrator (of EPA) determines may contaminate an aquifer designated as the sole or principle source of drinking water for an area. There are currently no locations in the state of New Mexico subject to this requirement.

To adequately document this item on all checklists mark the box indicated, “NA” **and** in the comments box indicate “Not within EPA designated Sole Source Aquifers Recharge Zone”. Attach a copy of the website to checklist <http://www.epa.gov/OGWDW/swp/ssa/reg6.html>.

Endangered Species Requirements:

Under procedures mandated in the Endangered Species Act of 1973, as amended (P.O. 93-205) the Recipient must determine whether the proposed project is likely to affect endangered species or Critical Habitats listed periodically under Section 7(a) of the Act.

The Recipient should consult with the U.S. Department of the Interior to ensure that a proposed project is not likely to affect the continued existence of an endangered or threatened species nor result in the destruction or adverse modification of critical habitats of plants and animal life. This consultation is

initiated by a written notification and request for information from the Recipient to the Regional Director of the U.S. Fish and Wildlife Service (see Appendix II for sample letter) .

For New Mexico the Regional Office is located:

State of New Mexico
Department of Game & Fish
P.O. Box 25112
Santa Fe, New Mexico 87504

A copy of this approval is to be submitted to MFA with the applicable checklist and Request for Release of Funds and Certification.

Wild and Scenic Rivers Requirements:

Under the provisions of the Wild and Scenic Rivers Act of 1968 (16 U.S.C.1271-1257) Federal actions can not affect rivers designated under the Act or rivers proposed for designation. The sub-grantee should consult with the Certifying Environmental Officer if it determines that the proposed action may affect a river area. Information on the designated wild and scenic rivers in New Mexico can be found on the following website: <http://www.nps.gov/rivers/wsr-rio-grande-new-mexico.html>. Distance to the nearest wild and scenic river must be included in the comments portion of the statutory checklist.

Air Quality Management Requirements:

Under the Clean Air Act of 1970, as amended in 1977, the U.S. Environmental Protection Agency (EPA) has established controls on HUD funded projects in urban areas that are in “non-attainment” status with National Ambient Air Quality Standards (NAAQS). There are currently a few areas in New Mexico which are designated as “non-attainment” areas. Information regarding their location can be found on the following website: <http://www.nmenv.state.nm.us>.

Farmland Protection Requirements:

The Farmland Protection Policy Act (1981) (P.L. 97-98-Dec. 22, 1981) (Subtitle I Sec. 1539-1554) was enacted in an effort to assure that the direct or indirect actions of the Federal Government do not cause United States farmland to be irreversibly converted to nonagricultural uses.

If the sub-grantee is proposing that a project be located on existing farmland, the agency should first consult with the Department of Agriculture District Conservationist to assess whether or not the proposed project will convert farmland unnecessarily.

Noise Abatement and Control Requirements:

The Quiet Communities Act of 1978 amended the Noise Control Act of 1972 to encourage noise control programs. Recipients of funding under HUD programs must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise sensitive areas.

The sub-grantee must perform a Noise Analysis of Site and Environs if the proposed project site is determined to be within any of the following distances: **fifteen (15) miles to a civilian/military airport; one thousand (1000’) feet of all significant roads (four lanes or greater); and three thousand (3000’) feet of all railroads.** The *Noise Assessment Guidelines (HUD-953-CPD(1))* contain guidance in the

analysis and determination of noise impact on a proposed project site. The specific procedures for determining the noise exposure levels for a site are clearly spelled out in this publication. Noise assessment guidebooks may be found on-line at the following address:

www.hud.gov/offices/cpd/energyenviron/environment/resources/guidebooks/noise/index.cfm

NOTE: Noise assessments must be conducted on homes in the owner-occupied rehab program which are scheduled for demolition.

If it is determined by the analysis that the noise level at the proposed site exceeds acceptable standards, then appropriate action must be taken to mitigate the level of noise. These mitigating actions are spelled out in the Guidelines. Prior to funding, the Recipient should consult with the Certifying Environmental Officer regarding the acceptability of any mitigating measures proposed.

Siting of Projects Near Hazardous Facilities Requirements:

Under 24 CFR Part 51 Subpart C, “*Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature*”, HUD established standards for the location of proposed HUD assisted projects near certain hazardous facilities. The purpose of the standards is to minimize the possible loss of life and property damage and loss from such hazards.

The sub-grantee should determine by sight and map survey any potential hazards within the vicinity of the proposed project. The agency should determine if the proposed site is within the following distances:

- one mile of storage tanks containing petroleum products or chemicals of an explosive nature;
- within 300 feet of either an operating or abandoned oil or gas well;
- within 660 feet of an underground pipeline; or
- was ever impacted by any toxic or radioactive materials in a hazardous waste site.

Potential hazards also include, but are not limited to, the following:

- pressurized and unpressurized petroleum product storage tanks,
- natural gas holders with floating tops,
- tank trucks and railroad tank cars.

If a potential hazard exists, the sub-grantee should consult the guidebook *Siting of HUD-Assisted Projects Near Hazardous Facilities (HUD-1060-CPD)* to calculate the Acceptable Separation Distance (ASD) and determine if the potential hazard is within that distance. If the sub-grantee determines that the proposed project site is not within the ASD, the sub-grantee may proceed without further regard to this requirement. If the sub-grantee determines that the proposed project site is within the ASD, the Recipient should consult with the Certifying Environmental Officer prior to funding to determine if mitigation measures may be applied.

Siting of Projects in Runway Clear Zones, Clear Zones and Accident Potential Zones Requirements:

In the early 1970’s the General Services Administration looked at the issue of compatible development around Federal airfields and found that the general increase in development surrounding federal airfields had not always considered the noise levels and safety factors of flight operations. In 1975 the GSA issued a Federal Management Circular (FMC-75-2, *Compatible Land Uses At Federal Airfields*) that directs all Federal agencies to make sure that their actions were compatible with the land use recommendations prepared by the operating agencies for Federally owned airports and airfields.

The sub-grantee should determine if the proposed project or acquisition site lies within a designated general aviation “Runway Clear Zone” (Federally owned airport) or a military aviation “Clear Zone” or “Accident Potential Zone”. Maps identifying these zones should be available from the operator of the subject airport. If the sub-grantee determines that the proposed project or acquisition site does not lie within a subject “zone”, it may proceed without further regard to this requirement.

If it is determined that the proposed project or acquisition site lies within one of the subject “zones”, the sub-grantee is required to notify the potential subrecipient or buyer that there is a possibility that the property may, at a later date, be acquired by the airport operator. The subrecipient or buyer must sign a statement acknowledging receipt of this information.

Water Quality:

The Safe Drinking Water Act of 1974 provides protection by regulating the public supply of drinking water. Subsequent amendments to the act extend this protection to the sources of drinking water as well, i.e. rivers, lakes, reservoirs, springs, and groundwater wells. Private wells which serve less than 25 people are exempt from the act.

The sub-grantee must determine if the water supply to the proposed project meets the national standard for safe drinking water. Within the state of New Mexico that function is provided by the New Mexico Water Quality Control Commission. Information concerning public water sources is available from their website at: <http://eidea.state.nm.us/SDWIS/>. If the water system which serves the project is determined to be in non-compliance or violation of the established standards, the sub-grantee must address this as a mitigation measure related to their project.

Environmental Justice:

Executive Order 12898 was enacted by President Clinton in 1994. It provides for the following:

1. created an interagency federal working group on environmental justice managed by the EPA;
2. required federal agencies to develop environmental justice strategies;
3. required research on human health or the environment to include poor and minority communities;
4. required guidelines for subsistence consumption of fish and wildlife; and
5. required opportunities for public participation and access to information.

As it applies to HUD programs; it must address environmental justice in minority populations and low-income populations. Specifically, it applies to the acquisition of housing, the acquisition of land for development, and new construction. Specific issues may include, but are not limited to, continued or historically disproportionate potential for high and adverse human health and environmental effects on minority or low-income populations. The sub-grantee must determine if the project is disproportionately adversely impacted in terms of health and the overall environmental affects relative to the community at large. Additional information can be obtained from: http://www.epa.gov/compliance/environmental_justice/

Lead Based Paint Hazards Requirements:

The *Lead-Based Paint Act*, as amended prior to 1992 requires the Secretary of HUD to “establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage or housing assistance payments under a program administered by the Secretary”. HUD interpreted the phrase housing and applied the requirement to virtually all HUD programs. In 24 CFR Parts 35, 36, and 37 the requirements relating to inspection, assessment, and abatement are addressed.

Rehabilitation Programs: Subpart L-Rehabilitation of 24 CFR Part 36 establishes the level of review and action that is required when rehabilitation assistance is provided to housing. The levels of review and actions, as determined by the amount of funding provided, are as follows:

Less than \$5,000 per unit:

Agency must... "conduct a visual inspection of all painted surfaces to identify deteriorated paint. Before occupancy of a vacant building or, where a dwelling unit is occupied, before rehabilitation work begins, the subrecipient or other entity (defined to include an owner) shall repair deteriorated paint surfaces and perform cleanup in accordance with subpart D of Part 37."

"All tenants or owner occupants shall be provided with the lead hazard information pamphlet by the grantee" (agency).

From \$5,000 to \$25,000 per unit (hard costs only):

Agency must... "conduct a paint inspection of surfaces to be disturbed in the course of the rehabilitation. A paint inspection must be completed before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, in accordance with subpart C of Part 37. In addition ... recipient shall complete a risk assessment in

a sample of the federally assisted dwelling units (including common areas and exteriors) in accordance with subpart B of Part 37. A risk assessment must be completed before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, and may be done in conjunction with the paint inspection. Hazard reduction

Lead Based Paint Hazards Requirements (continued):

activities are required to address any lead-based paint hazards found."

"All tenants or owner occupants shall be provided with the lead hazard information pamphlet by the grantee" (agency).

More than \$25,000 per unit (hard costs only):

Agency must... "conduct a paint inspection of surfaces to be disturbed in the course of the rehabilitation*. A paint inspection must be completed before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, in accordance with subpart C of Part 37. In addition ... recipient shall complete a risk assessment in a sample of the federally assisted dwelling units (including common areas and exteriors) in accordance with subpart B of

Part 37. A risk assessment must be completed before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, and may be done in conjunction with the paint inspection. Abatement of lead-based paint hazards identified on a surface to be disturbed by rehabilitation is required. "...recipient shall conduct hazard reduction activities if lead-based paint hazards are identified in the risk assessment on a surface not to be disturbed by rehabilitation."

"All tenants or owner occupants shall be provided with the lead hazard information pamphlet by the grantee" (agency).

*** Rehabilitation that does not disturb a painted surface is exempt from these requirements.**

Also exemption from these requirements may be allowed if the Recipient certifies to the Certifying Environmental Officer that a dwelling unit undergoing rehabilitation has been previously abated of all lead-based paint; or if the Recipient certifies to the Certifying Environmental Officer that a paint inspection has been completed and indicates the absence of lead-based paint. Supporting documentation of these activities must accompany the certification.

Acquisition, leasing, tenant based rental assistance, operating or support services: Subpart M-Community Planning and Development (CPD) Non-Rehabilitation Programs of 24 CFR Part 36 establishes the level of review and action that is required when acquisition, leasing, tenant based rental assistance, operating or support services type assistance is provided. The level of review and action that is required is determined by the type of activity undertaken. The levels of review and actions, as determined by the type of activity provided, are as follows:

Acquisition and Homebuyer: All tenants or owner-occupants shall be provided with the lead hazard information pamphlet by the agency. Before providing financial assistance to an owner, the agency shall conduct a visual evaluation of all painted surfaces to identify deteriorated paint. For housing constructed before 1950, the agency shall also conduct

Lead Based Paint Hazards Requirements (continued):

dust sampling to determine the presence of lead-contaminated dust.

Before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, immediately after receipt of financial assistance the agency shall repair any deteriorated paint surfaces and perform cleanup of the worksite in accordance with Part 37.

For housing constructed before 1950, if dust sampling identifies lead-contaminated dust, the agency shall conduct cleanup of the horizontal surfaces in the room, dwelling unit, or common areas where lead-contaminated dust is located.

The agency will be exempt from the requirement to repair a specific deteriorated paint surface if a limited

paint inspection has been completed in accordance with part 37 and indicates the absence of lead-based paint on the specific surface.

Tenant Based
Rental Assistance:

All tenants shall be provided with the lead hazard information pamphlet by the agency.

Prior to the leasing of a dwelling unit to **households that have a member or members under the age of six years**, the agency must provide the following:

For dwelling units constructed prior to 1950, an HQS inspector shall conduct a visual evaluation of all painted surfaces to identify deteriorated paint and conduct dust sampling in accordance with Part 37 (the HQS inspector need not be certified as a paint inspector or risk assessor, but is required to be trained in lead-based paint hazard evaluation that includes the proper procedure for the handling dust samples). The owner shall repair deteriorated paint surfaces before occupancy of a vacant dwelling unit or of an occupied dwelling unit

within thirty (30) days of notification of the results of the visual evaluation. If dust sampling identifies lead contaminated dust above the applicable level, cleanup of the horizontal surfaces in the room, dwelling unit, or common areas where lead contaminated dust is located must be completed prior to occupancy.

For dwelling units constructed after 1949, an HQS inspector shall conduct a visual evaluation of all painted surfaces to identify deteriorated paint. The owner shall repair deteriorated paint surfaces and perform cleanup of the worksite prior to occupancy, or if the unit is

Lead Based Paint Hazards Requirements (continued):

unoccupied, within thirty (30) calendar days of the result of the visual evaluation.

If the sub-grantee determines that any rental or homeowner household member under the age of six is identified with Elevated Blood Level (EBL) for lead, the sub-grantee shall immediately consult with the Certifying Environmental Officer to conduct further assessment.

Environmental Review Regulatory Checklist Guidance:

Agencies involved in the environmental analysis of HUD assisted projects should use two checklists in preparation of their assessments. These checklists will focus these efforts and assure that all regulatory requirements are met.

Statutory Checklist Guidance:

The first checklist is the “Statutory Checklist” and covers statutes, regulations and Executive Orders, other than NEPA. This addresses the requirements to which all activities respond (except for those activities that are exempt under §58.34). Those activities that are categorically excluded under §58.35 should use this checklist. Owner occupied rehabilitation programs should also use this checklist.

The checklist allows for the following finding as the result of each area of compliance:

Not Applicable to this Project - Check this box only when it is known that the project is not located in an area where the environmental condition or resource is nonexistent (e.g., project is not located in a delineated floodplain).

Consultation Required - This requires that there has been coordination with appropriate individuals at Federal or federally authorized agencies and documented through attached notes and correspondence.

Review Procedures Required - This where the agency works with an authorized agency in determining the scope of the activity (e.g., consultation with the State Historic Preservation Office in the preparation of a proposed work write up for a rehabilitation project).

Determination of Consistency, Approvals and Permits Obtained - In areas requiring Federal permits, licenses or other forms of approval which demonstrate consistency with established requirements.

Conditions or Mitigation Actions Required - These should be listed and attached including any correspondence from reviewing agencies and a designation of responsibility for implementation.

For each checklist category there may be more than one applicable law or regulation. Therefore it is important that the sub-grantee check all laws and regulations regarding that review area. Sub-grantees are reminded that they must certify that they have complied with the obligations and requirements of all other applicable laws and authorities.

Environmental Assessment Checklist Guidance:

For all activities and projects subject to NEPA procedures (new construction), the “Environmental Assessment Checklist” is required. Completion of the checklist constitutes a quick, yet, well documented review of environmental issues surrounding a specific project.

In some cases the Recipient will want to contract the preparation of the Environmental Assessment Checklist with an environmental professional. For agencies wishing to prepare and submit their own Environmental Assessment Checklist for a HUD assisted activity that is subject to NEPA, it is advised that the agency first consult with the Certifying Environmental Officer to review the process.

Environmental Review Record for Homeownership Assistance of Existing Properties:

For MFA Homeownership Assistance programs, such as downpayment assistance or principal reduction programs, the requesting agency should use the Environmental Review Record for Homeownership Assistance of Existing Properties form.

Checklist Forms

PROJECT ABSTRACT

Name of Sub-grantee: _____

Contract Number: _____

Total Project Funding: _____

Total Funding to be released with this action: _____

Name and Title of Certifying Environmental Officer (if Applicable) _____

Project Name _____

Locations of Physical Development or Rehab: _____

Scope of Work to be done during project: _____

Status of the Project: _____

Existing Conditions: _____

Name of Consultant (if applicable): _____

STATUTORY CHECKLIST

Contract # _____

Project # _____

Project Name and Identification No. (i.e. address): _____

Area of Statutory-Regulatory Compliance (Citations for applicable statutes and regulations are printed in the "Environmental Review" guide. Full Discussion of each is provided the Guide)	Not Applicable to This Project	Consultation Required*	Review Required*	Permits Required*	Determination of Consistency Approvals, Permits Obtained*	Conditions and/or Mitigation Actions Required	Reference to Notes Providing Documentation Sources and Correspondence
HISTORIC PROPERTIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attached letter: Letter signed on Letter signed by
FLOODPLAIN MANAGEMENT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attach copy of FEMA Map with panel number
WETLANDS PROTECTION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attached letter: Letter signed on Letter signed by
NOISE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Distance to & name of nearest railroad: Distance to & name of nearest airport: Distance to & name of nearest major hiway:
MANMADE HAZARDS Thermal/Explosive Hazards Toxic Sites	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AIRPORT CLEAR ZONES/APZ	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The nearest airport is ___miles from the site and is a (commercial, either heavy, or light, or military) _____ kind of airport. See attached copy of website
AIR QUALITY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attached letter: Letter signed on Letter signed by
WATER QUALITY-SOLE SOURCE AQUIFERS	X						There are currently no areas in the State of New Mexico designated as "Sole Source Aquifer Recharge Zones". See attached.
COASTAL BARRIER ZONES	X						The nearest coastal area to New Mexico is the Pacific Ocean located approximately 790 miles to the west.
ENDANGERED SPECIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attached letter: Letter signed on Letter signed by
FARMLANDS PROTECTION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

*Attach evidence that required actions have been taken.

STATUTORY CHECKLIST (continued):

Other Areas of Statutory and Regulatory Compliance Applicable to Project	Not Applicable to This Project	Consultation Required*	Review Required*	Permits Required*	Determination of Consistency Approvals, Permits Obtained*	Conditions and/or Mitigation Actions Required	Reference to Notes Providing Documentation Sources and Correspondence
WILD & SCENIC RIVERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Nearest Wild and Scenic River located See attached copy of website.
WATER QUALITY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SOLID WASTE DISPOSAL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
FISH and WILDLIFE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attached letter: Letter signed on Letter signed by
SITING OF PROJECT IN RUNWAY CLEAR ZONES/CLEAR ZONES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The nearest airport is ___miles from the site and is a (commercial, either heavy, or light, or military) _____ kind of airport. See attached copy of website.
Environmental Justice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
STATE OR LOCAL STATUTES (If applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

*Attach evidence that required actions have been taken.

Prepared By: _____

Title: _____

Signature: _____

Date: _____

Environmental Assessment Checklist

P. 1

Project Name and Identification No.

	1	2	3	4	5	6	7
Impact Categories	No Impact Anticipated	Potentially Beneficial	Potentially Adverse Requires Documentation Only	Potentially Adverse Requires More Study	Needs Mitigation	Requires Project Modification	Source or Documentation (Note date of contract or page reference) Additional material may be attached
Land Development							
Conformance with Comprehensive Plans and Zoning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Compatibility and Urban Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Slope	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Erosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Soil Suitability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Hazards and Nuisances, including Site Safety	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Energy Consumption	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Noise							
Effect of Ambient Noise on Project and Contribution to Community Noise Level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Air Quality							
Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Environmental Design and Historic Values							
Visual Quality--Coherence, Diversity, Compatible Use, and Scale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Historic, Cultural, and Archeological Resources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Environmental Assessment Checklist

P. 2

Project Name and Identification No.

	1	2	3	4	5	6	7
Impact Categories	No Impact Anticipated	Potentially Beneficial	Potentially Adverse Requires Documentation Only	Potentially Adverse Requires More Study	Needs Mitigation	Requires Project Modification	Source or Documentation (Note date of contract or page reference) Additional material may be attached
Socioeconomic							
Demographic/Character Changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Displacement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Employment and Income Patterns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Community Facilities and Services							
Educational Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Commercial Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Health Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Social Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Solid Waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Waste Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Storm Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Water Supply	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Public Safety: Police	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Public Safety: Fire Protection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Public Safety: Emergency Medical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Open Space	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Recreation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Cultural Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Transportation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Environmental Assessment Checklist

P. 3

Project Name and Identification No.

Natural Features							
Water Resources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Surface Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floodplains	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wetlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coastal Zone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unique Natural Features and Agricultural Lands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vegetation and Wildlife	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Summary of Findings and Conclusions:

Summary of Environmental Conditions:

Environmental Assessment Checklist

P. 4

Project Name and Identification No.

Project Modifications and Alternatives Considered:

Additional Studies Performed: (Attach study or summary)

Mitigation Measures Needed:

Environmental Assessment Checklist

P. 5

Project Name and Identification No.

Conclusions:

1. Is project in compliance with applicable laws and regulations?

Yes

No

2. Is an Environmental Impact Statement Required?

Yes

No

3. Can a Finding of No Significant Impact (FONSI) be made?

Yes

No

(Project will not significantly affect the quality of the human environment.)

This Environmental Assessment was prepared by:

NAME

TITLE

Date:

Additional Notes:



ENVIRONMENTAL REVIEW RECORD HOMEOWNERSHIP ASSISTANCE OF EXISTING PROPERTIES

For Properties Which are Categorically Excluded From NEPA

ACTIVITY _____

RECIPIENT'S NAME _____

STREET ADDRESS _____

LOCALITY _____

(City or County, State)

FLOOD DISASTER ACT

1. Is activity in a Special Flood Hazard Area in accordance with a FEMA Flood Map?
 Yes No, Community Number _____,
Panel Number _____, Date of Map _____.
2. Is the Community participating in the National Flood Insurance Program?
 Yes No (Note: If the answer to question 1 is Yes and the answer to
question 2 is negative, Flood Insurance is not available, and the activity will be
rejected.)
3. If the answer to number 1 is Yes, has the recipient been informed of the
necessity of Flood Insurance and the need to maintain Flood Insurance for the
property during the period of affordability? Yes No.

COASTAL BARRIERS RESOURCE ACT

1. This requirement does not apply to any area in the State of New Mexico. Project
is located within the geographic area of the State of New Mexico: Yes No

RUNWAY CLEAR ZONE OR CLEAR ZONE

1. Is the activity located within a runway clear zone of a civil airport, or the clear
zone of a military airfield? Yes No.
2. If yes, has the purchaser been advised and signed a statement acknowledging
receipt of information regarding the possible future acquisition by the airport
operator? Yes No.

UNIFORM RELOCATION ACT

1. Preparer certifies that the unit being purchased is not occupied by anyone other than the home owner:
 Yes No.

2. Preparer certifies that the unit was not occupied by a renter at the time the offer to purchase the unit was made:
 Yes No.

SIGNATURE OF PREPARER _____ DATE _____

Sample Certifications

Certification of Exemption for HUD Funded Projects

Determination of activities not subject to 24 CFR 58.34(a)
May be subject to provisions of Section 58.6, as applicable

Project Name: _____

Project Description (include all actions which are either geographically or functional related): _____

Location: _____

Funding Source: HOME RHED Other _____

Funding Amount: _____ Contract Number: _____

I hereby certify that the abovementioned project has been reviewed and determined as an Exempt activity per 24 CFR 58.34(a) as follows:

	1. Environmental & other studies, resource identification & the development of plans & 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.

If your project falls into any of the above categories, no Request for Release of Funds (RROF) is required, and no further environmental approval from MFA will be needed by the recipient for the draw-down of funds to carry out exempt activities and projects. The Responsible Entity must maintain this document as a written record of the environmental review undertaken under this part for each project.

By signing below the Responsible Entity certifies in writing that each activity or project is exempt and meets the conditions specified for such exemption under section 24 CFR 58.34(a). A copy of this certification must be kept in the project files.

Responsible Entity Certifying Official Name

Title (please print)

Responsible Entity Certifying Official Signature

Date

Federal Forms

Reserved for 7015.15

Reserved for page 2 of 2 of 7015.15

Sample Letters

Sample State Historic Preservation Letter

Date

State Historic Preservation Officer
Historic Preservation Division
Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, New Mexico 87501

Dear :

This is to inform you that the (name of agency) , is proposing to (activity)
the following identified residential property located in County, New Mexico:

Site address and location

Enclosed is the map, photos and scope of work.

Since the proposed construction and financing will involve the use of federal funds, it is required by the agency to conduct a review and obtain a clearance under Section 106 of the National Historic Preservation Act, 36 CFR 800.

Should you have any questions or require further information, please contact at 505-555-1111. Please also provide the Clearance and/or Guidance directly to (agency) , (agency address) .

Thank you for your assistance.

Sincerely,

HOME Program Representative
Requesting Agency

Enclosures

Sample Game And Fish Letter

DATE

State of New Mexico
Department of Game & Fish
P. O. Box 25112
Santa Fe, New Mexico 87504

Dear :

This is to inform you that the name of agency, is proposing to rehabilitate the following identified residential property located in county County, New Mexico:

address

Enclosed is a map indicating the approximate location of the subject property.

Since the proposed construction and financing will involve the use of federal funds, it is required by the agency to conduct an environmental assessment. The assessment requires that the Department of Game and Fish be notified in the event that your office has any concerns regarding the proposed project. If you feel the project will affect or endanger threatened and endangered wildlife, fish and game, and designated wetlands within the surrounding area, feel free to contact name of contact at phone number so that mitigating measures can be discussed and acted upon. If this project is approved by your agency, please mail the approval to agency name and mailing address.

Sincerely,

HOME Program Representative
Requesting Agency

Enclosures

Sample Air Quality Letter

DATE

State of New Mexico Environment Department
Air Quality Bureau
1190 St. Francis
Suite 4050 N.
Santa Fe, NM 87502

Dear;

This is to inform you that the [agency name] is proposing to rehabilitate single family residential property(ies) located in [name of county(ies)] at the following locations:

[Site address here]

Since the proposed projects will be rehabilitated utilizing federal funds, it is required that [agency name] conduct an Environmental Assessment. This assessment requires that [agency name] consult with your office to determine the effect on air quality and to determine if mitigation measures are required or recommended. If you determine concerns regarding these projects, please respond to me at:

[Agency name and address]

Should you have any additional questions, or if you require additional information, please contact [contact person] at [phone number]. Otherwise, please provide written clearance and/or guidance directly to [agency name] at [agency address].

Sincerely,

[name]
[agency]

Enclosures

Sample Public Notices

Floodplains And Wetlands Notices

*Date of Publication

Early Public Notice

The (Name of Applicant) is considering (_____ brief description of project, ex., Main Street Improvements from Avenue D to Avenue J) as a HOME Project. The project is located in the 100-year floodplain. Fifth street is the city's primary commercial area and it is experiencing deterioration. To repair existing damage to the roadway and to improve subsurface drainage, it is necessary to carry out this project in the floodplain. The (Name of Applicant) is interested in discussing alternatives to their project and securing public perceptions of possible adverse impacts that could result from the project and possible mitigation measures. Please send written comments to New Mexico Mortgage Finance Authority, P. O. Box 2047, Albuquerque, NM, 87103, Attn: Certifying Environmental Officer). Comments will be received until (Date)**.

***Date of Publication

Notice of Explanation

The (Name of Applicant) intends to undertake improvements to (Main Street from Avenue D to Avenue J). These improvements are needed to improve surface conditions, hook into the west side storm drainage out fall, and provide better street lighting. This project is located in the 100year floodplain. Proposed improvements to Main Street cannot be undertaken in any other location. There is, therefore, no practicable alternative to the proposed project. (If there are alternatives, you must discuss them here.)

[The proposed improvements to the existing street conform to all applicable state floodplain protection standards. Improvements to Fifth Street's storm sewer capacity and hookup to the new west side drainage out fall are part of the city's long-range floodplain management plan. (If mitigation measures are required, they must be discussed here.) The proposed action will not affect natural or beneficial floodplain values as it represents an improvement of an existing roadway].

(Failure to provide these improvements would result in a continued deterioration of the city's primary commercial district. It is the city's judgment that the continued viability of the Main Street commercial area outweighs consideration of Executive Orders 11988 and 11990.)

The other agency involved in the project is the New Mexico Mortgage Finance Authority. (List all agencies providing funding and/or approvals and permits.)

Comments on the proposed project will be accepted until Date****. Please send your comments to New Mexico Mortgage Finance Authority, P. O. Box 2047, Albuquerque, NM, 87103, Attn: Certifying Environmental Officer.

A more detailed description of the project and the FIA flood maps are available for citizen review at the above address.

(Publish the two notices a minimum of 16 days apart in a general circulation newspaper.)

Justification for Locating in a Floodplain

The (Name of Applicant) has determined that (Fifth Street) ties with the 100-year floodplain and has published an Early Public Notice.

[There are no alternatives to this project that would meet the city's objective of improving its primary commercial district. The No Project Alternative would result in continued deterioration of the commercial district and Fifth Street roadway, which is unacceptable to the city.]

[The project's impact on the floodplain will be minimal, as it is an improvement of an existing roadway. It will not support additional development in the floodplain as the area is fully developed. It will reduce local flooding, as the storm sewer will be connected to the new West Side out fall. The city judges that the safety and local flooding improvements associated with the project justify expending funds for improvements in the floodplain.]

Environmental Certifying Officer's Signature

(The justification is not published but must be part of the applicant's Environmental Review Records).

* Date of Early Notice Publication

** No less than 15 days after date of publication*

*** Date of Notice of Explanation Publication

**** No less than 7 days after date of publication***

Sample Notice of Intent to Request Release of Funds

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

(MFA as the Responsible Entity)

Date of Notice

New Mexico Mortgage Finance Authority

344 4th Street

Albuquerque, NM, 87102

505-843-6880

To All Interested Parties:

On or about *At least one day after the end of the comment period* the New Mexico Mortgage Finance Authority will submit a request to the U.S. Department of Housing and Urban Development for the release of *Name of grant program* funds under *Title/Section []* of the *Name of the Act* of 19____, as amended, to undertake a project known as *Project title*, for the purpose of *Nature/Scope of project, estimated funding, and project location if applicable*.

The activities proposed are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act requirements. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at the New Mexico Mortgage Finance Authority, 344 4th Street, Albuquerque, NM and *the sub-grantee office* where ERR can be examined and may be examined or copied weekdays 8 A.M. to 5 P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the New Mexico Mortgage Finance Authority. 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 New Mexico Mortgage Finance Authority Certifying Environmental Review Officer prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

RELEASE OF FUNDS

The New Mexico Mortgage Finance Authority certifies to the U.S. Department of Housing and Urban Development that Karen Dunning in her capacity as the Certifying Environmental Review Officer 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. The U.S. Department of Housing and Urban Development's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the *Name of Grantee* to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

HUD will accept objections to its release of funds and the New Mexico Mortgage Finance Authority'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 New Mexico Mortgage Finance Authority; (b) the New Mexico Mortgage Finance Authority has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by HUD; 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 U.S. Department of Housing and Urban Development, 625 Silver, SW, Suite 100, Albuquerque, NM 87102, Attention: Environmental Review Official. Potential objectors should contact HUD to verify the actual last day of the objection period.

Karen Dunning, Certifying Environmental Review Officer
New Mexico Mortgage Finance Authority

Sample Notice of Intent to Request Release of Funds

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

(MFA as the Releasing Authority)

Date of Notice

Name of the Responsible Entity (RE)

Address

City, State, Zip Code

Phone Number of RE Preparer Agency

To All Interested Parties:

On or about *At least one day after the end of the comment period* the *Name of the RE* will submit a request to the New Mexico Mortgage Finance Authority for the release of *Name of grant program* funds under *Title/Section []* of the *Name of the Act* of 19____, as amended, to undertake a project known as *Project title*, for the purpose of *Nature/Scope of project, estimated funding, and project location if applicable*.

The activities proposed are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act requirements. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at the New Mexico Mortgage Finance Authority, 344 4th Street, Albuquerque, NM and *the sub-grantee office* where ERR can be examined and may be examined or copied weekdays 8 A.M. to 5 P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the *Name of the RE*. 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 the RE* prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

RELEASE OF FUNDS

The *Name of the RE* certifies to the U.S. Department of Housing and Urban Development that *Name of the Certifying Environmental Review Officer* in *his/her* capacity as the Certifying Environmental Review Officer 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. The New Mexico Mortgage Finance Authority's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the *Name of Grantee* to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

The New Mexico Mortgage Finance Authority will accept objections to its release of funds and the *Name of 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 *Name of the RE*; (b) the *Name of 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 grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by HUD; 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 the New Mexico Mortgage Finance Authority, 344 4th Street SW, Albuquerque, NM 87102, Attention: Environmental Review Official. Potential objectors should contact MFA to verify the actual last day of the objection period.

Name of the Certifying Environmental Officer for the RE
Name of RE Organization

Combined Public Notice
(MFA as the Releasing Authority)
Sample Notice of Finding of
No Significant Impact and Notice of Intent
to Request Release of Funds

NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND
NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Date of Notice

Name of Responsible Entity [RE]

Address

City, State, Zip Code

Telephone Number of RE Preparer Agency

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the *Name of RE or Grantee*.

REQUEST FOR RELEASE OF FUNDS

On or about *At least one day after the end of the comment period* the *Name of RE* will submit a request to the New Mexico Mortgage Finance Authority for the release of *Name of grant program* funds under *Title/Section []* of the *Name of the Act* of 19__, as amended, to undertake a project known as *Project title*, for the purpose of *Nature/Scope of project, estimated funding, and project location if applicable*.

FINDING OF NO SIGNIFICANT IMPACT

The *Name of RE* has 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 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at the New Mexico Mortgage Finance Authority, 344 4th Street SW, Albuquerque, NM, 87102 and *Name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review* and may be examined or copied weekdays between 8:00 A.M. and 5:00 P.M.

PUBLIC COMMENTS

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments to the *RE designated office responsible for receiving and responding to comments*. All comments received by *If notice published: notice plus fifteen days; If notice posted: posting date plus eighteen days* will be considered by the *Name of RE* prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

RELEASE OF FUNDS

The *Name of RE* certifies to the New Mexico Mortgage Finance Authority that *Name of certifying officer* in *his/her* capacity as *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. The New Mexico Mortgage Finance Authority's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the *Name of grantee* to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

The New Mexico Mortgage Finance Authority will accept objections to its release of funds and the *Name of 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 *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 grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by the New Mexico Mortgage Finance Authority; 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 the New Mexico Mortgage Finance Authority at 344 4th Street SW, Albuquerque, NM 87102. Potential objectors should contact the New Mexico Mortgage Finance Authority to verify the actual last day of the objection period.

Name and Title of RE Certifying Officer
Name of the RE's Organization

Combined Public Notice
(MFA as the Responsible Entity)
Sample Notice of Finding of
No Significant Impact and Notice of Intent
to Request Release of Funds

NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND
NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Date of Notice

New Mexico Mortgage Finance Authority
344 4th Street SW
Albuquerque, NM 87102
505-843-6880

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the New Mexico Mortgage Finance Authority via its sub-grantee _____.

REQUEST FOR RELEASE OF FUNDS

On or about *At least one day after the end of the comment period* the New Mexico Mortgage Finance Authority will submit a request to the U.S. Department of Housing and Urban Development for the release of *Name of grant program* funds under *Title/Section []* of the *Name of the Act* of 19__, as amended, to undertake a project known as *Project title*, for the purpose of *Nature/Scope of project, estimated funding, and project location if applicable*.

FINDING OF NO SIGNIFICANT IMPACT

The New Mexico Mortgage Finance Authority has 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 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at the New Mexico Mortgage Finance Authority, 344 4th Street SW, Albuquerque, NM, 87102 and *Name and address of sub-grantee office where ERR can be examined and name and address of other locations where the record is available for review* and may be examined or copied weekdays between 8:00 A.M. and 5:00 P.M.

PUBLIC COMMENTS

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments to the Certifying Environmental Review Officer of the New Mexico Mortgage Finance Authority, 344 4th Street SW, Albuquerque, NM 87102. All comments received by *If notice published: notice plus fifteen days; If notice posted: posting date plus eighteen days* will be considered by the New Mexico Mortgage Finance Authority prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

RELEASE OF FUNDS

The New Mexico Mortgage Finance Authority certifies to the U.S. Department of Housing and Urban Development that Karen Dunning in her capacity as the Certifying Environmental Review Officer 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. The U.S.

Department of Housing and Urban Development's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the *Name of sub-grantee* to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

The U.S. Department of Housing and Urban Development will accept objections to its release of funds and the New Mexico Mortgage Finance Authority'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 New Mexico Mortgage Finance Authority; (b) the New Mexico Mortgage Finance Authority has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by the New Mexico Mortgage Finance Authority; 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 the U.S. Department of Housing and Urban Development, Office of Community Planning and Development, at 625 Coal Street SW, Suite 100, Albuquerque, NM 87102. Potential objectors should contact the U.S. Department of Housing and Urban Development to verify the actual last day of the objection period.

Karen Dunning, Certifying Environmental Review Officer
New Mexico Mortgage Finance Authority

Correction Notice

There are times when it is necessary to make a correction to a public notice. The following are suggested samples of correction notices.

Contact the MFA Certifying Environmental Officer prior to publishing any correction.

Correction notices must identify the notice being corrected, e.g., title of the notice, date of the notice, and the recipient name identified in the notice.

Only make the correction needed. If you are changing from one thing to another, not both, especially in the case of dates. Keep it simple – you are changing text or information.

The correction notice must be “signed” by the person who signed the original notice or by other person with the authority to make the correction.

The name and address of the sub-grantee must appear as it does in the original notice. If the name or address of the sub-grantee is what is being corrected, ignore this requirement.

Samples

Correction to (insert here the title of the notice being corrected), which was published (insert here the date of the notice to be corrected) by (insert here the name of the RE).

The final date for comments to the (insert the name of the grantee here) is changed from July 1, 2005 to July 25, 2005.

The name of the certifying Officer is changed from John Doe to Jane Smith.

Federal Regulations

24 CFR Part 58 -- Environmental Review Procedures for Entities
Assuming HUD Environmental Responsibilities

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 58 ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD
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Subpart A_Purpose, Legal Authority, Federal Laws and Authorities

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(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) [Reserved]

(3)(i) 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 McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento 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, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, 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);

(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);

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided

assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

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) With respect to Public Housing Programs under Sec. 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under Sec. 58.1(b)(6)(ii) or Section 8 assistance under Sec. 58.1(b)(6)(iii), a public housing agency;

(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 Program under 58.1(b)(8), a qualified housing finance agency;

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

(ix)(A) With respect to NAHASDA assistance under Sec. 58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under Sec. 58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under Sec. 58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) Release of funds. In the case of the FHA Multifamily Housing Finance Agency 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. In the case of the Section 184 Indian Housing Loan Guarantee program under Sec. 58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) Responsible Entity. Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in Sec. 58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in Sec. 58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) listed in Sec. 58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in Sec. 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. 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;

(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. 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.

(c) Particular responsibilities of Indian tribes. An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

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 (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).

(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. (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in Sec. 51.303(a)(3).

(2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

(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.

Subpart B_General Policy: Responsibilities of Responsible Entities

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 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.

Sec. 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in Sec. 58.1(b), except as otherwise provided in Sec. 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in Sec. 58.1(b). In doing so, the responsible entity 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.

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, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity 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 or joint environmental assessments (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. 58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must: (a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

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

(2) Receive public notices, RROFs, and certifications from recipients pursuant to Sec. Sec. 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.

(b) 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.

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) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit 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 HUD or the state has approved the recipient's 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 on 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.

(b) If a project or activity is exempt under Sec. 58.34, or is categorically excluded (except in extraordinary circumstances) under Sec. 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination

as required in Sec. 58.34(b) and Sec. 58.35(d), but the recipient must comply with applicable requirements under Sec. 58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) 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.

(e) Self-Help Homeownership Opportunity Program (SHOP). In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) 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 adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a 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 ensure 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 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:

(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.

(iii) 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)(i) An individual action on 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) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

(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.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that

conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

(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 Sec. Sec. 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 Sec. Sec. 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.

Required notices must afford the public the following minimum comment periods, counted in accordance with Sec. 58.21:

- | | |
|--|--|
| (a) Notice of Finding of No Significant Impact (FONSI). | 15 days when published or, if no publication, 18 days when mailing and posting |
| (b) Notice of Intent to Request Release of Funds (NOI-RROF). | 7 days when published or, if no publication, 10 days when mailing and posting |
| (c) Concurrent or combined notices..... | 15 days when published or, if no publication, 18 days when mailing and posting |

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 paragraph (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. 58.56 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 or other participants in the development process have 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 Sec. Sec. 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 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 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.

http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html