

**CITY OF KINGSTON**  
**OFFICE OF COMMUNITY DEVELOPMENT**  
**STANDARD OPERATING PROCEDURES**  
  
**FOR**  
  
**Environmental Review**

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## 1.0 Introduction

The purpose of the environmental review process is to analyze the effect of a Community Development Block Grant (CDBG) funded project on the human and natural environment of a project area and determine compliance with all applicable federal environmental laws and authorities. The City of Kingston (CoK) Office of Community Development (CoK OCD), as the grantee with responsibility for the CDBG funds, is the responsible entity (RE) for making these determinations and must complete an environmental review of all project activities prior to committing any funds (U.S. Department of Housing and Urban Development (HUD) and non-HUD funds) to a project.

Every project, and all activities related to that project, undertaken with COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) funds, is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 CFR Part 58. The primary purpose of NEPA is to protect and enhance the quality of the natural and human environment. The provisions of NEPA and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508, and other local and federal laws and regulations (some of which are enforced by local agencies) also may apply depending upon the type of project and the level of review required. These laws and authorities are referenced in the HUD and NEPA regulations.

In addition, the HUD environmental review process *must* be completed before any funds are committed for program-eligible activities. No work may start on a proposed project before the environmental review process is completed, even if that work is being done using non-HUD funds. In other words, environmental clearance must be obtained for each project prior to the commitment of federal or non-federal funds to any expenses or contracts related to a project. A violation of this requirement may jeopardize federal funding and disallow all costs that were incurred before the completion of the environmental review.

This manual provides an overview of the environmental regulations and requirements that must be followed as well as the roles and responsibilities of the CoK OCD, subrecipients, Implementation Partners, and contractors in the environmental review process.

## 2.0 Definitions, Acronyms or Terminology

Please reference these terms for explanation of commonly used names, acronyms, and phrases used within this Section.

1. **ERR** – Environmental Review Record – The complete environmental file.
2. **FONSI** – Finding of No Significant Impact – A determination by the responsible entity that the project is not an action that will result in a significant impact on the quality of the human environment.
3. **NEPA** – National Environmental Policy Act of 1969 – The basic National charter that provides policies, goals and tools for the protection of the environment
4. **RROF** – Request for Release of Funds – A Recipient’s request for approval granting funds to an activity. (This request is executed through HUD form 7015.15).
5. **AUGF** – Authority to Use Grant Funds – HUD’s issuance of an approval letter. (This

release is executed through HUD form 7015.16).

6. **RE** - Responsible Entity – The entity that assumes environmental responsibility for HUD under NEPA and executes the environmental review. For the City of Kingston Office of Community Development’s CDBG Programs, the RE is the grant recipient, the CoKOCD and/or other eligible governmental agencies as determined by CoKOCD. See 24 CFR Part 58.2(a)(7) for additional information.

## **3.0 Roles and Responsibilities**

The section below defines roles and responsibilities for the environmental review process.

### **3.1 CoKOCD**

As mentioned above, CoKOCD, as the grantee with responsibility for the COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) funds, is the responsible entity (RE) and must complete an environmental review of all project activities prior to committing any funds. The Mayor, by virtue of his/her position, serves as the Certifying Officer. In addition to the Certifying Officer, CoKOCD will rely on CoKOCD staff to conduct environmental reviews on administration and programming activities and internal Environmental Specialist(s) to conduct all other environmental reviews as well as review environmental reviews submitted by subrecipients, Implementing Partners and contractors to ensure compliance with all applicable 24 CFR Part 58 and NEPA environmental requirements.

As needed, CoK will enlist the use of Environmental contractors to develop supporting documentation and research in completing the environmental review. In addition, CoKOCD will require subrecipients/Implementing Partners to supply all available and relevant environmental review documentation for their projects; however, CoKOCD as the RE and CoK Environmental Specialist, will make the final determination that a project is compliant with all applicable environmental requirements. CoKOCD will also provide training and technical assistance to sub-recipients/Implementing Partners as needed. CoKOCD will also ensure that no COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) grant funds are committed until the applicable level of environmental review is complete, signed by the designated Certifying Officer, and an AUGFs has been issued from HUD, when applicable. CoKOCD will then notify the sub-recipient in writing when funds may be committed to the project. See the attached Flow Charts in that outline the necessary steps for each potential scenario: 1) CoKOCD completes the review; 2) Contractor completes the review; or 3) the subrecipient/Implementation Partner completes the review.

#### **3.1.1 Certifying Officer**

The Certifying Officer is the Mayor of CoK, by virtue of the position as the Mayor, and has the authority to assume legal responsibility for certifying that all environmental requirements have been followed. However, all preliminary reviews and forms will be completed by designated staff. *For the COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) funds, this function may not be assumed by administering agencies, sub-recipients or contractors. If the CoKOCD enters into a Sub-recipient Agreement with the City of Kingston for any Public Works projects, the City of Kingston Mayor, City Engineer and Superintendent of Public Works or their agents will*

*ensure that all environmental requirements have been met and will provide the CoK OCD with all necessary paperwork to ensure compliance. Once the paperwork is submitted, the City of Kingston Certifying Officer will review and sign off.*

Under Part 58, the Certifying Official means the official who is authorized to execute the Request for Release of Funds (RROF) and Certification and has the legal capacity to carry out the responsibilities in 58.13. The Certifying Official is considered the “responsible Federal Official” as outlined in NEPA and is responsible for all requirements of Section 102 of NEPA, related provisions in 40 CFR 1500 through 1508, and 24 CFR Part 58. The Certifying Official accepts full responsibility for the completeness and accuracy of the review and compliance with applicable laws and regulations including making official environmental findings including Finding of No Significant Impacts (FONSI) and signing required Request for Release of Funds (RROFs) and Certifications. If the Certifying Official wishes to designate an Environmental Specialist to serve as the Certifying Officer, this designation must be made in writing, signed by the official, and submitted to HUD for approval.

As outlined in 24 CFR Part 58.13, the Certifying Officer must also:

- Represent the responsible entity and be subject to the jurisdiction of the Federal courts if the RE becomes involved in environmental litigation; and
- Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact of the recipient’s program.

### **3.1.2. Environmental Specialist –**

CoK’s Environmental Specialist will be responsible for conducting Part 58 environmental reviews, including such tasks as writing the project narrative; obtaining maps of the project area; soliciting comments from appropriate local and federal agencies; and facilitating responses to comments received on the environmental findings. The Environmental Specialist will use the HEROS system to complete reviews and will utilize HUD recommended environmental formats and other resources available on HUD Exchange.

CoK’s Environmental Specialist will also conduct Quality Control (QC) reviews for all Part 58 environmental documentation submitted by contractors and sub-recipients to ensure the environmental reviews are compliant prior to approval by the CoK OCD’s Certifying Officer. Contractors and sub-recipients will complete reviews using HUD recommended formats, Partner Worksheets, and other resources available on HUD Exchange.

Overall, the CoK OCD COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) Environmental Specialists responsibilities and duties shall include the following:

1. Complete any required environmental training and technical assistance for CoK OCD contractors and sub-recipients;
2. Maintain any required certifications necessary to ensure compliance with environmental requirements applicable to programs administered by CoK OCD’s COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) Program;

3. The Environmental Specialist will prepare all the necessary documents (Statutory Checklists, NEPA Checklists, RROFs, etc.). These documents are then transmitted to COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) Director and CO for review, approval and signature of CO.
4. When the environmental review is conducted by a subrecipient or contractor, the Environmental Specialist will complete a Quality Control review and work with the subrecipient/contractor to ensure the project is compliant with all applicable environmental requirements. This will include the review of all environmental information submitted by the contractor/sub-recipient as outlined in Sections 3.1.3 and 3.1.4 below.
5. Responsible for review of all HEROS submissions and/or data uploads (if applicable).
6. Completion of the Public Notification process (as outlined in Section 5.3) including Notice of Intent to Request a Release of Funds (NOI/RROF) for Categorically Excluded reviews, Combined Notices for Environmental Assessments, completion of HUD form 7015.15 RROF and Certifications to be submitted to HUD.
7. A Sub-recipient may prepare environmental documents but cannot be considered a Responsible Entity. The CoK OCD must retain that role.

### **3.1.3. Contractors**

As part of the mini-bid process if needed, contractors will conduct environmental reviews including preparation of the applicable HUD environmental checklists, all required supporting documentation including correspondence with cognizant agencies, and applicable public notices on an as-needed basis. As CoK OCD is acting as the RE for all COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) projects, only CoK OCD or Environmental Specialist can complete the 7015.15 RROF and Certification. Its contractors and subrecipients/Implementing Partners can assist with the environmental review process but may not legally take responsibility for completing an environmental review. As such, subrecipients and consultants will use HUD's Partner Worksheets to submit information regarding compliance with all 58.5 and 58.6 federal environmental laws and authorities to CoK OCD who will make the final compliance determination.

Environmental reviews must, at a minimum, comply with the requirements of the National Environmental Policy Act (NEPA) including implementing regulations at 40 CFR Part 1500, 24 CFR Part 58, and all applicable local environmental review requirements. For each project, the contractor will create a full and compliant Environmental Review Record (ERR) meeting the above legal requirements and documenting CoK OCD's compliance with the related federal authorities listed in 24 CFR §§ 58.5 and 58.6.

Overall, Contractor responsibilities and duties shall include the following:

1. Prior to beginning each review, contractors will submit a Level of Review Determination Form (e.g. Environmental Impact Statement, Environmental Assessment, Categorically Excluded not Subject to 58.5, Categorically Excluded Subject to 58.5, or Exempt) to CoK's Environmental Specialist for review and approval to ensure the appropriate level of review is completed.

2. Once approved by CoK Environmental Specialist the contractor will begin the environmental review process and will alert CoKOCOD if a different level of environmental review is needed or if any additional assessments or studies are required. The ERR will be submitted to the CoK's Environmental Specialist using HUD approved forms, Partner Worksheets, and all required supporting documentation. Partner Worksheets are available on HUD Exchange at: <https://www.hudexchange.info/resource/5119/environmental-review-record-related-federal-laws-and-authorities-partner-worksheets/>. Specific ERR submission requirements are outlined in
3. Contractors will also support CoKOCOD in conducting Asbestos and Lead-Based Paint testing, the 8-step decision making process for Floodplain Management and Wetlands Protection, historical and archaeological surveys, Phase I Environmental Site Assessments (ESAs), and other 58.5 and 58.6 compliance requirements as needed.
4. CoK's Environmental Specialist will complete a Quality Control (QC) review of the submitted ERR and work with the contractor to make any required changes or corrections.
5. Once the ERR is complete, the ERR will be sent to the CoK's Environmental Specialist and CoKOCOD Director for review and approval.
6. Upon review and approval by the Environmental Specialist and Director, the ERR will be sent to the Certifying Officer for signature.
7. Once the review has been signed and dated by the Certifying Officer, the Public Notice process can begin as outlined in Section 5.3. Contractors may be asked to submit draft Public Notices or CoKOCOD may complete this process internally.

### **3.1.4 Subrecipient and Implementing Partners Roles and Responsibilities**

Subrecipients and Implementing Partners receiving COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) funds will be responsible for supplying CoKOCOD all the documentation required to complete the environmental review process for their projects. They must also determine what type of environmental review is appropriate for each of their specific projects/activities and submit a Level of Review Determination Form to CoKOCOD prior to beginning the environmental review process.

As stated above for CoKOCOD's contractors, CoKOCOD is acting as the RE for all COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) projects, and as such only CoKOCOD and CoK's Environmental Specialist can make the final environmental compliance determinations, conduct the public notification process, and complete the HUD form 7015.15 RROF and Certification submission to HUD. Thus, subrecipients (including developers and nonprofits) can assist with the environmental review process but may not legally take responsibility for completing an environmental review. Therefore, subrecipients and Implementing Partners will follow the same process outlined above for Contractors. They must also use HUD recommended formats and Partner Worksheets to complete their ERR and submit it in the requested format to CoK Environmental Specialist for review and approval.

On a case by case basis, CoKOCOD may also allow subrecipients/Implementing Partners who are **eligible** to use the HEROS system to submit reviews electronically pending their existing capacity and availability of training.

### **3.1.5 Tribal Consultation**

In the event that a project would include certain types of activities that have or would have the potential to affect historic properties of religious and cultural significance to tribes, then, in such event, the CoKOCOD, in its capacity as the RE would undertake tribal consultation for such project. Such circumstances would be rare due to the nature of most projects undertaken using HUD funds, but should such tribal consultation be necessary, the applicable provisions of Section 106 of the National Preservation Act (167 U.S.C 470f) would be observed and complied with.

## **4.0 Timetable and Limitations on activities Pending Clearance**

Each project is unique as to the amount of time it will take to complete the environmental review process. Many factors contribute to this timetable. For example, a project that does not require compliance with any of the 58.5 or 58.6 laws and authorities will require a shorter amount of time to complete the ERR than a project that is located in the 100-year floodplain and/or wetland and requires the completion of the 8-step process or a project that has the potential to impact properties listed on, or eligible for listing, in the National Register of Historic Places. Additionally, Exempt and Categorically Excluded Not Subject to 58.5 activities such as environmental studies, informational services, and down-payment assistance for existing dwellings may take only days to complete while new construction of an apartment complex or large infrastructure projects may take up to four or five months to complete.

A subrecipient may begin the ERR process at any time and is encouraged to begin as early as possible. CoKOCOD suggests that the subrecipient begin the ERR process once the activity is verified to be eligible and meets a national objective. If the Subrecipient submits a project scope and budget form and it is approved, there is ample assurance that the project will be approved. If no scope and budget form is submitted prior to the environmental review, the subrecipient must use its own judgment to determine when the risk is low enough that that the activity will not be denied. It should be noted that a subrecipient must properly procure any environmental contractor it hires if the subrecipient plans to be reimbursed for these services.

The environmental review process consists of all actions that a responsible entity must take to determine compliance with HUD's 24 CFR Part 58 requirements and all HUD-assisted activities require the completion of an environmental review. If prohibited actions are taken prior to completion of the environmental review and environmental clearance, then the subrecipient is in jeopardy of losing its COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) funds for that particular project. As outlined in 24 CFR Part 58.22, neither a recipient nor any participant in the development process (including public or private non-profits or for-profit entities or any of their contractors) may commit HUD assistance (including COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) funds) on an activity or project until HUD or the State has approved the recipients RROF and the related certification from the responsible entity.

## **5.0 Establishing the Environmental Review Record**

CoKOCOD, as the Responsible Entity, must prepare and maintain a written record of the

environmental review undertaken for each project. This written record or file is called the Environmental Review Record (ERR), and it must be available for public review. CoKOCOD and its subrecipients may contract with an environmental consulting firm to do the work and create the record; however, CoK's Environmental Specialist is responsible for verifying the accuracy of all material in the ERR to ensure compliance with all applicable environmental requirements. This ERR must contain a concise description of the proposed project/activity and a record of all relevant documentation pertaining to the environmental review process and results. Subrecipients should begin to establish this record as soon as the activity is approved by CoKOCOD.

The ERR shall contain all relevant environmental review documents including maps, narratives, complete project descriptions, public notices, and written determinations or environmental findings required by 24 CFR Part 58. In general, the document shall:

- Describe the project and each of the related activities comprising the project, regardless of individual activity funding source;
- Document compliance with applicable statutes and authorities in 58.5 and 58.6;
- Evaluate the effects of the project or the activities on the natural and human environment as required under NEPA for Environmental Assessments;
- Record the written determinations of the responsible entity and other review findings as required by 24 CFR Part 58;
- Contain all public notice requirements including any required notices (NOI/RROF and/or FONSI Notices; 8-step process public notices, etc.) including any responses/objections received and how they were addressed; and
- All HUD AUGF's and related correspondence from other federal agencies.

The ERR will vary in length and content depending upon the level of review required for the categories of proposed activities. Any public comments and/or objections received and their appropriate resolution by CoKOCOD are extremely important and must be fully documented in the ERR. CoKOCOD will complete any required public notices and notify the sub-recipient/Implementation Partner once an AUGFs has been received from HUD. A summary of the public notice process and applicable time frames is discussed in the Public Notification Section 5.3 below.

While each project site is unique, below is a list of the basic steps in the Part 58 environmental review process that should be followed to ensure successful completion of the COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) environmental review process. As stated above, it is vital that preparers start the process as soon as possible since some of the environmental review processes may become lengthy and complex.

## **5.1 Define and Aggregate the Project**

The term "project" means an activity, or a group of integrally related activities, designed to accomplish, in whole or in part, a specific goal. Aggregating (or grouping) projects and activities allows the preparer to consider the combined environmental effect of a project. Proper

aggregation is essential to ensuring compliance with NEPA and can reduce the number of Environmental Review Records that may be required.

As outlined in 24 CFR Part 58.32, a responsible entity must group together and evaluate as a single project all individual activities which are related either geographically or functionally or are logical parts of a composite of contemplated actions. For example, the aggregation of several activities carried out in one distinct neighborhood, such as housing rehabilitation, demolition, street, paving and construction of a water line would be grouped together as one project. Once all activities have been aggregated, the contractor or subrecipient should verify with CoK's Environmental Specialist that all activities have been properly aggregated for purposes of completion of the environmental review process to ensure the proper level of review can be determined.

## **5.2 Determine the Level of Review and complete the appropriate compliance requirements**

Once aggregated, projects will fall into one of five (5) environmental review categories:

1. Exempt;
2. Categorically Excluded Not Subject to 58.5;
3. Categorically Excluded Subject to 58.5;
4. Environmental Assessment (EA); or
5. Environmental Impact Statement (EIS).

Each of these categories involves a progressively more detailed and complex process of requirements and procedures. It is extremely important to determine the appropriate level of review at the beginning of the project/activity; therefore, before a contractor or subrecipient begins the review process, submission of the Level of Review Determination Form must be sent to CoK's Environmental Specialist for review and approval.

### **5.2.1 Exempt Activities [24 CFR Part 58.34(a)]**

Exempt activities are not subject to NEPA laws and regulations; however, they are subject to 24 CFR Part 58.6 requirements. Exempt activities are mainly planning activities and/or activities that will not have a physical impact and are reimbursable even if the rest of the project does not move to fruition.

Exempt activities are as follows:

1. Environmental and other studies, resource identification and development of plans and strategies. Examples include appraisals, archaeological surveys, wetland delineation and the like.
2. Information and Financial Services.
3. Administration and management activities. Examples include salaries and consultant costs.
4. Public Services that do not have a physical impact or result in physical changes, such as services concerned with employment, crime prevention, childcare, health,

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

5. Inspections and Testing of Properties for Hazards or Defects. Examples include inspections and testing of properties for lead-based paint or asbestos.
6. Purchase of Insurance. Examples may include flood insurance.
7. Purchase of Tools. Examples include payment of reasonable and eligible tool purchases. However, this does not include equipment purchases.
8. Engineering and/or Design Costs. Examples include architectural design.
9. Technical Assistance and Training.
10. Assistance for temporary or permanent improvement that does 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. This category has a very narrow window of use and can only be used immediately after a disaster.
11. Principal and Interest Payments. This category is for loans made or obligations guaranteed by HUD.
12. Any of the categorical exclusions in 58.35(a) provided that there are no circumstances which require compliance with any of the laws and authorities cited in 58.5. This determination cannot be made until all the 58.5 laws have been addressed either in HEROS or on the Statutory Checklist.5.4.2 Categorically Excluded Activities Subject to 58.5 [24 CFR part 58.35(a)]

### **5.2.2 Categorically Excluded Not Subject to 58.5 activities [24 CFR 58.35(b)]**

The following activities are Categorically Excluded NOT subject to 58.5 or NEPA requirements; however, like Exempt activities, are subject to 58.6 requirements:

1. Tenant-based rental assistance;
2. Support 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 and federal government benefits and services;
3. Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, Environmental Specialist/AHPD 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 buy downs and similar activities that result in the transfer of title;
6. Affordable housing predevelopment 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/activity 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 Section 58.47.

### **5.2.3 Procedures for Exempt/Categorically Excluded Activities Not Subject to 58.5 [24 CFR 58.35(b)]**

#### ***5.2.3a Contractors and subrecipients/Implementation Partners:***

1. Prepare the Environmental Review for Exempt or Categorically Excluded Not Subject to 58.5 activities form. See HUD Exchange for current formats: <https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/>
2. Attach all required supporting documentation including completion of the Partner Worksheets for each 58.6 compliance requirement (Airport Hazards, Coastal Barrier Resources and Flood Insurance) and submit to CoK's Environmental Specialist for Quality Control (QC) review. See HUD Exchange for the appropriate Partner Worksheets: <https://www.hudexchange.info/resource/5119/environmental-review-record-related-federal-laws-and-authorities-partner-worksheets/>
3. Once reviewed and approved, the CoK Environmental Specialist or CoK OCD will prepare a "Notice of Acceptance" that will be sent to the subrecipient/Implementation Partner to indicate that this grant condition has been satisfied.
4. The subrecipient/Implementation Partner may begin to obligate or incur the costs, and request payment of these funds. A more extensive review may be required if it is determined that a project/activity identified above may have a significant environmental effect, if there are extraordinary circumstances or conditions, or if the project changes in size or scope.

#### ***5.2.3b CoK Environmental Specialist:***

1. If a CoK Environmental Specialist completes the review, Environmental Specialist may complete the Exempt or CENST forms on HUD Exchange (as outlined above) or complete review in the HEROS system. As no public notice is required, the grantee can be notified that funds may now be expended for these activities.
2. If a contractor or subrecipient completes the review, CoK Environmental Specialist will perform a QC review of the ERR and provide the subrecipient a "Notice of Acceptance" that funds may now be expended for these activities.

### **5.2.4 Categorically Excluded Subject to the Laws of 58.5 [24 CFR part 58.35(a)]:**

The following activities are categorically excluded under NEPA, but are subject to 24 CFR Part 58.5 and 58.6 laws and authorities:

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 and/or capacity by

- more than 20%. For example, replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets fall into this category.
2. Special projects directed to the removal of material and/or architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
  3. Rehabilitation of buildings and improvements only when all of the following conditions are met:
    - a. In the case of residential buildings with one to four units:
      - i. The density is not increased beyond four units;
      - ii. The land use is not changed;
      - iii. The foot print of the building is not increased in a floodplain or in a wetland.
    - b. In the case of multifamily residential buildings:
      - i. The unit density is not changed by more than 20%;
      - ii. The project does not involve changes in land use from residential to non-residential;
      - iii. The estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation.
    - c. In the case of non-residential structures, including commercial, industrial and public buildings:
      - i. The facilities and improvements are in place and will not be changed in size or capacity by more than 20%;
      - ii. 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. Individual Actions
    - a. An individual action on a one-to-four family unit dwelling where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
    - b. 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 no more than four housing units on any one site
    - c. Paragraphs (a) (4) (i) and (ii) of 24 CFR 58.35 do not apply to rehabilitation of a building for residential use with one-to-four units. Paragraph (a)(3)(i) addresses this.
  5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure or acquisition (including leasing) of vacant land provided the structure or land acquired or disposed of or financed will be retained for the same use.
  6. Any combinations of the above activities.

## **5.2.5 Procedures for Categorical Exclusions Subject to 58.5 [24 CFR 58.35(a)]**

### *5.2.5a Contractors and subrecipients/Implementation Partners:*

1. Prepare and submit to CoK Environmental Specialist a Level of Review Determination

form. This determination must include a clear description of the activity, the location of the activity, and the total amount of funding sources so that the correct level of review can be verified.

2. Prepare and submit to CoK OCD or CoK Environmental Specialist the completed Statutory Checklist for Categorical Excluded Projects Subject to (CEST) 58.5. See HUD Exchange for the current format: <https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/>. The contractor and subrecipient/Implementation Partner must also submit the completed Partner Worksheets for each of the 58.5 and 58.6 laws and authorities along with the required supporting documentation. See HUD Exchange for the appropriate Partner Worksheets: <https://www.hudexchange.info/resource/5119/environmental-review-record-related-federal-laws-and-authorities-partner-worksheets/>. To complete their review, the contractor or subrecipient/Implementing Partner must consult with all the appropriate local and federal agencies as required to verify compliance with each of the laws and authorities. The preparer must include all consultation letters, site maps, and other forms of communication. All letters and responses become part of the ERR and must be available for public review.
3. The implementing Partner must then prepare a draft “Notice of Intent to Request a Release of Funds” (NOI/RROF) and submit to CoK OCD and CoK Environmental Specialist for review and approval. See <https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds/>.
4. CoK OCD or CoK Environmental Specialist will review and approve the NOI. Once approved, CoK OCD or CoK Environmental Specialist will complete the Public Notice process as outlined in Section 5.3. All comments based on the public notice process must be directed to TOICDA for consideration and made a part of the ERR.
5. Once CoK OCD receives the AUGFs from HUD, it will notify the subrecipient/Implementation Partner that it will now be able to commit funds to that specific project.

#### ***5.2.5b CoK Environmental Specialist:***

1. If a CoK Environmental Specialist complete the review inhouse, the Environmental Specialist will either complete the Statutory Checklist as outlined above or use the HEROS system to complete the review. This will then be submitted to the CoK OCD Director for review and approval.
2. Once approved by the CoK OCD Director, the Statutory Checklist will be sent to the Certifying Officer for review and signature.
3. Once the Certifying Officer has signed and dated the ER, the Public Notification process as outlined in Section 5.3 can begin.
4. If the environmental review is completed by the contractor or subrecipient/Implementation Partner, the CoK Environmental Specialist will conduct the QC review completing the QC checklist and follow-up with the preparer to ensure the review is complete and in compliance with all 58.5 and 58.6 requirements.
5. Once the review is complete and signed by the Certifying Officer, the Public Notice

process can begin as outlined in Section 5.3.

6.

## **5.2.6 Environmental Assessments**

If the project/activity does not fall in either the “exempt” or “categorically excluded” categories, a NEPA ENVIRONMENTAL ASSESSMENT (EA) must be completed. An EA enables the responsible entity to determine the degree of significant impact that an activity (by itself or in combination with other activities) may have on the environment.

## **5.2.7 Procedures for completing an Environmental Assessment**

The Statutory Checklist and the Environmental Assessment (EA) Factors checklist are the two primary forms that must be completed by the CoK Environmental Specialist, contractor, and/or subrecipient/Implementing Partner. The HUD recommended EA format is available on HUD Exchange at: <https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/>. The preparer must coordinate efforts with all appropriate local and federal agencies that may have an interest in, or responsibility for, the environmental laws and/or potential impacts of the project/activity. All sections of these documents must be completed, reviewed and approved.

### ***5.2.7a Contractors and subrecipients/Implementation Partners:***

1. Complete the HUD recommended EA form and attach all appropriate documentation including the completed Partner Worksheets to verify compliance with each law and authority or EA factor. Such documentation is normally in the form of written correspondence with the applicable federal or state agencies (State Historic Preservation Officer, US Fish and Wildlife Service, etc.); however, appropriate websites and mapping tools are becoming increasingly popular as an acceptable form of compliance (Wild and Scenic Rivers, Coastal Barriers, etc.).
2. Make a recommendation to CoK OCD and CoK Environmental Specialist of the appropriate EA Finding at the end of the review. 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) means that the project is an action that may significantly affect the quality of the human environment.
3. If a contractor or subrecipient/Implementation Partner EA results in a FONSI determination and CoK OCD and CoK Environmental Specialist is in agreement with the determination, then CoK OCD will proceed with the Public Notice Process as outlined in Section 5.3.
4. If the contractor or subrecipient/Implementation Partner recommended Finding is a FOSI and CoK OCD and CoK Environmental Specialist is in agreement with the determination, then an EIS must be completed or the project must be rejected.

### **5.2.7b CoK Environmental Specialist:**

1. If a CoK Environmental Specialist completes the review inhouse, the Environmental Specialist will either complete the recommended HUD EA form as outlined above or use the HEROS system to complete the review. This will then be submitted to the CoKOCOD Director for review and approval.
2. Once approved by the CoKOCOD Director, the EA will be sent to the Certifying Officer for review and signature.
3. Once the Certifying Officer has signed and dated the EA, the public notification process can begin as outlined below.
4. If the EA is completed by the contractor or subrecipient/Implementation Partner, CoK Environmental Specialist will conduct the QC review completing the QC checklist and follow-up with the preparer to ensure the review is complete and in compliance with all 58.5, 58.6 and NEPA requirements.
5. Once the review is complete and signed by the Certifying Officer, the Public Notice process can begin as outlined in Section 5.3.

## **5.3 Public Notice and Release of Funds Process**

### **5.3.1 Exempt and CENST activities**

As outlined in the Exempt and CENST sections above and in the regulations at 58.34(b), a recipient does not have to submit an RROF and certification, and no further approval from HUD will be needed in order for the recipient to draw down funds for these activities. Therefore, a public notice is not required for these levels of review. Once compliance with the laws and authorities in 58.6 has been completed and reviewed/approved by TOICDA, no further action is

### **5.3.2 Categorically Excluded activities that do not trigger compliance with 58.5 laws and authorities**

As outlined in the regulations at 58.34(a)(12), a public notice is also not required for any of the Categorical Exclusions listed in 58.35(a) *provided that* there are no circumstances which require compliance with any of the federal laws and authorities listed in 58.5. These CE activities can then revert to an exempt activity and no RROF or public notice is required. However, the responsible entity must first complete the applicable compliance review for all 58.5 and 58.6 laws and authorities (either the Statutory Checklist or in HEROS) and document that no compliance was triggered for any of the applicable laws and authorities to support their determination.

### **5.3.3 Categorically Excluded activities that trigger compliance with any of the 58.5 laws and authorities**

For Categorically Excluded projects that trigger compliance with any of the 58.5 requirements, a Notice of Intent (NOI) to Request a Release of Funds (RROF) must be either published or posted as outlined in 24 CFR Part 58.45, 58.70 and 58.71. The steps in the public notice process for

these activities are listed below:

1. The responsible entity (CoKOCOD) must complete the public notice process and consider any comments received during the public comment period. The public comment period is 7 days when published and 10 days when posted and must be a full 24 hours. Sample NOI/RROF public notices can be found on HUD Exchange at: <https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds/> . CoK Environmental Specialist may ask the contractor or subrecipient/Implementation Partner to prepare a draft Notice for their review or complete the public notice process internally by the CoK Environmental Specialists. If published, it should be published in a local paper in the affected community (obtain input from CoKOCOD on how they wish to accomplish this) and if posted, it must be displayed in a public building within the project area or in accordance with procedures established as part of the citizen participation process. All comments must be directed to the CoKOCOD for consideration.
2. After the comment period has expired and any comments received have been addressed by CoKOCOD, the Certifying Officer for CoKOCOD can sign and date the HUD Request for Release of Funds form 7015.15 and Certification and submit it to HUD, along with a copy of the public notice and verification of publication, for review and approval. The U.S. Department of HUD will hold this Request for a minimum of 15 days to allow for the opportunity for further public comment. If there are no valid objections received (as outlined in 58.75), HUD will send the CoKOCOD the “Authority of Use of Grant Funds”. See HUD Exchange for applicable HUD 7015.15 and 7015.16 forms: <https://www.hudexchange.info/programs/environmental-review/>.
3. Once CoKOCOD receives the AUGFs from HUD, it will notify the subrecipient/Implementation Partner that it will now be able to commit funds to that specific project.
4. All public notice documentation must be documented and included as part of the ERR or uploaded into the HEROS system, as applicable.

### **5.3.4 Environmental Assessments and FONSI Notifications**

If a responsible entity makes a Finding of No Significant Impact, it must prepare a FONSI notice using the current HUD recommended format. The responsible entity is also responsible for completing the notice to the public of its intent to request a release of funds from HUD. Therefore, for Environmental Assessments (EAs), there are two separate notices required: 1) a Notice of Intent (NOI) to Request a Release of Funds (RROF) and 2) the FONSI Notice (also known as the “Combined Notice”).

#### ***5.3.4a The steps in the public notice process for EA projects/activities are listed below:***

1. The Combined Notice must be either published or posted as outlined in 24 CFR Part 58.45, 58.70 and 58.71. The responsible entity (CoKOCOD) must complete the public notice process and consider any comments received during the public comment period. The public comment period is 15 days when published and 18 days when posted and

must be a full 24 hours. A Sample Notice can be found on HUD Exchange at: <https://www.hudexchange.info/resource/2755/sample-fonsi-and-rrof/>. CoKOCOD may ask the contractor or subrecipient/Implementation Partner to prepare a draft Combined Notice for their review or complete the public notice process internally by the TOICDA Environmental Specialists. If published, it should be published in a local paper in the affected community (obtain input from TOICDA on how they wish to accomplish this) and if posted, it must be displayed in a public building within the project area or in accordance with procedures established as part of the citizen participation process. All comments must be directed to the TOICDA for consideration.

2. Also, at a minimum the responsible entity must send the FONSI notice to individuals and groups known to be interested in the project, to the local news media, to the appropriate tribal, State and federal agencies; to the Regional Offices of EPA having jurisdiction over the project, and to the appropriate HUD Office.
3. After the comment period has expired and any comments received have been addressed by TOICDA, the Certifying Officer for TOICDA can sign and date the HUD Request for Release of Funds form 7015.15 and Certification and submit it to HUD, along with a copy of the public notice and verification of publication, for review and approval. The U.S. Department of HUD will hold this Request for a minimum of 15 days to allow for the opportunity for further public comment. If there are no valid objections received (as outlined in 58.75), HUD will send the TOICDA the “Authority of Use of Grant Funds” (See HUD Exchange and Exhibit \_\_).
4. Once TOICDA receives the AUGFs from HUD, it will notify the subrecipient/Implementation Partner that it will now be able to commit funds to that specific project.
5. All public notice documentation must be documented and included as part of the ERR or uploaded into the HEROS system, as applicable. See HUD Exchange for additional guidance on completing the RROF process in HEROS:  
<https://www.hudexchange.info/programs/environmental-review/heros-e-tutorials/>

## 6.0 Attachments/Forms

<b>Attachment</b>	<b>Description</b>
Attachment 1	Environmental Review Record Content and ER Review Process
Attachment 2	DOLOR – Determine level of Review
Attachment 3	Environmental Assessment
Attachment 4	Environmental Review for Project that is Exempt/Categorically Excluded Not Subject to Sect. 58.5
Attachment 5	Environmental Review for Project Categorically Excluded Subject to 58.5