

CHAPTER 6 – ENVIRONMENTAL REVIEW

Introduction

Environmental Review is the examination of a project relative to the National Environmental Policy Act of 1969 (NEPA) and its related laws. NEPA was established to ensure environmental protection for federally funded projects.

Community Development Block Grant (CDBG) funded projects are subject to the provisions of NEPA [24 USC 432-14347] and the HUD regulations implementing NEPA [24 CFR Part 58]. Recipients of CDBG funds are required to complete an environmental review prior to receiving environmental clearance from the Nebraska Department of Economic Development (DED). The type of project a subrecipient is completing will determine the level of environmental review and the necessary documentation that will be required.

For every environmental review, three basic steps must be followed in order to correctly complete the review. These steps include:

1) **Project Aggregation:**

The subrecipient should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. The entire area in which the project will be located must be reviewed, regardless of what resources (CDBG or non-CDBG) are funding individual project activities.

2) **Determination of Level of Review:**

The subrecipient must determine which level of environmental review is appropriate for the project in order to correctly complete the necessary documentation for the project. A Determination of Level of Review (DLR) Form must be completed which provides a complete description of the project and the level of environmental review that will be completed.

NOTE: due to the nature and purpose of the determination, the subrecipient completes (including signatures) the DLR prior to undertaking of the balance of the Environmental Review Record (ERR). To illustrate, in the case of a non-exempt project, it would be inappropriate for the date of the DLR to be the same as that of the statutory checklist because it is unlikely that, if done properly, the work to complete these categories was done on the same day.

3) **Documentation:**

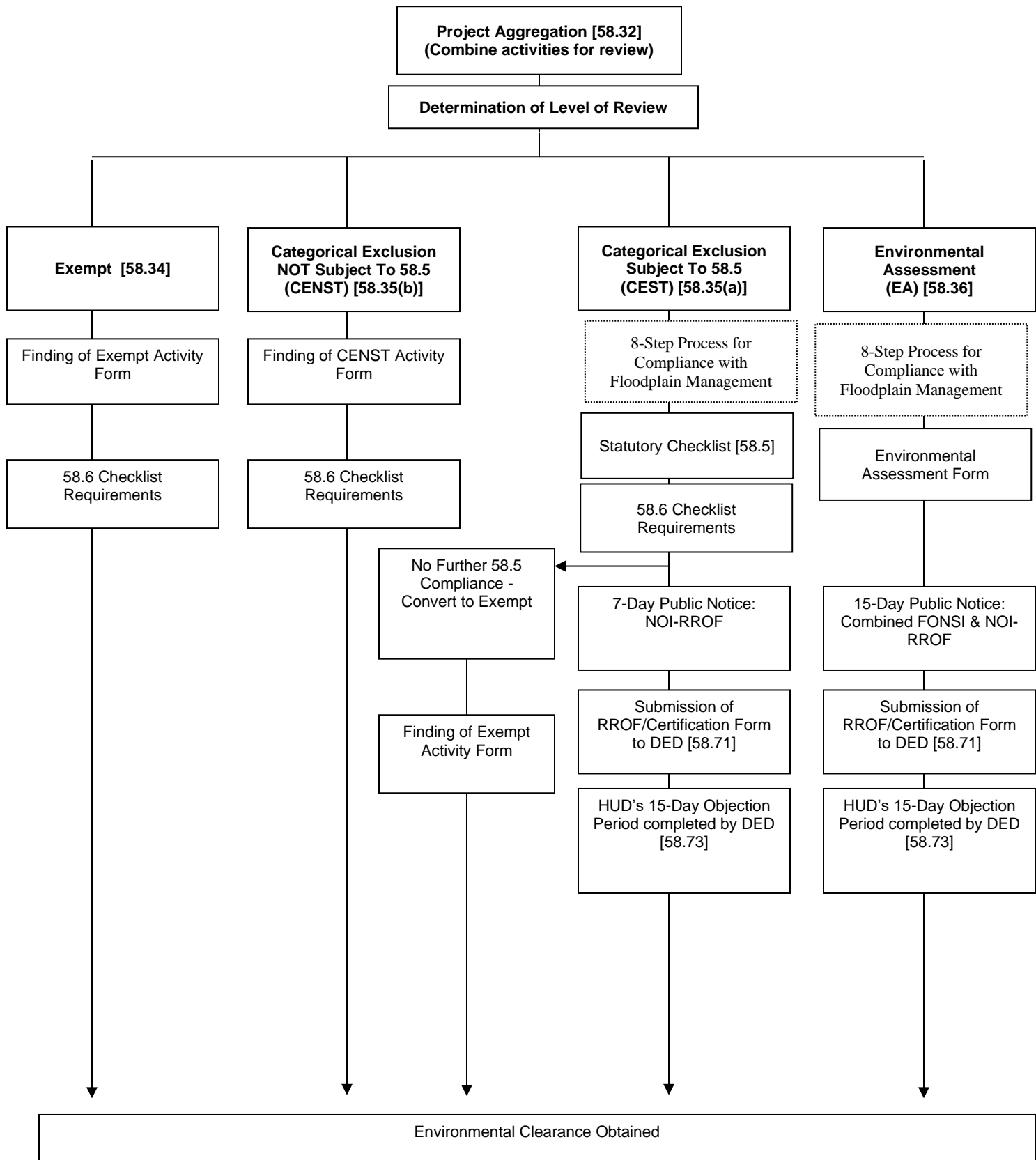
The subrecipient must complete the ERR and provide the necessary information that is required to fully document the environmental review. The ERR will vary in size. The project aggregation and the determination of level of review will help determine the ERR documentation.

IMPORTANT NOTE: Timing of events when completing the ERR is critical. Give careful review of the *Timing Considerations* section and make use of the appropriate timing worksheet(s). Timing worksheets can be found at: <https://opportunity.nebraska.gov/CDBG>

On the following two pages, included are a process flow chart and a table describing an overview of the environmental review process for CDBG-funded subrecipients.

ENVIRONMENTAL REVIEW PROCESS

CDBG PROJECTS



ENVIRONMENTAL REVIEW RECORD KEY TERMS

Term	Description
8-Step Process:	A process that relates to projects within a floodplain.
24 CFR 58:	The Code of Federal Regulations Section that details the HUD regulations for the environmental review process.
58.6 Checklist:	DED's form that must be completed for all environmental review projects.
Combined Notice (FONSI/NOI-RROF):	A public notice used for an EA review that combines the Finding of No Significant Impact notice and the Notice of Intent to Request Release of Funds (NOI-RROF) notice. Both notices are generally combined into a single publication for EA projects.
CEST:	Categorical Exclusion Subject To the requirements of 24 CFR 58.5 as defined under 24 CFR 58.35(a)
CENST:	Categorical Exclusion Not Subject To the requirements of 24 CFR 58.5 as defined under 24 CFR 58.35(b)
Certification of Continued Environmental Compliance:	Necessary where project conditions, scale, scope, etc. have changed since ERR received environmental clearance.
Certifying Officer:	The Responsible Entity (RE) Agency official responsible for completing the ERR
FONSI:	Finding of No Significant Impact is a determination that must be made by the Responsible Entity for projects that require an EA review.
Environmental Assessment:	DED's form and other necessary documentation that must be completed for a project that is not considered Exempt, CENST, or CEST as noted on the Determination of Level of Review.
Environmental Review:	NEPA Review of a project.
Environmental Review Record (ERR):	A well-organized written record of review, decision making, and action as required by 24 CFR 58.38. This includes the Department required forms and other required documentation.
Exempt:	A project that is defined under 24 CFR 58.34
NOI-RROF:	Notice of Intent to Request Release of Funds—A public notice that is completed for projects that require a CEST or EA review.
Project:	An activity or group of activities regardless of funding source.
Subrecipient:	The entity receiving assistance from HUD. This includes an entity that receives CDBG, HOME, NAHTF, or other funds from DED not directly from HUD.
Responsible Entity (RE):	State, Indian Tribe, or Unit of General Local Government.
RROF/Certification:	Request for Release of Funds/Certification Form that is completed for projects that require a CEST or EA review. Also referred to as HUD Form 7015.15.
Statutory Checklist:	DED's form and other necessary documentation that must be completed for a project that requires a CEST level of environmental review. This form includes an evaluation of 14 additional environmental review categories.

The Environmental Review Process

The basic environmental review process is described below and is divided into stages. Follow the stages and refer to the Table 1 Environmental Review Process Flow Chart for further information.

1. Stage 1—Project Aggregation and Project Description

The subrecipient should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. Defining the project should include determining all integrally related activities designed to accomplish a specific objective. This includes evaluating the entire project area, regardless of the funding source for any project activities, also known as project aggregation.

Write an appropriate Project Description that includes the following information:

- Purpose and need for the project;
- Identify the CDBG National Objective;
- Exact geographic location of the project, include common address;
- Geographic footprint of the project (may be included as a map);
- Estimated area of ground disturbance;
- General summary of the surrounding area (e.g., land use) where the project is proposed;
- Specific numbers related to the project (e.g., the number of dwelling units involved, linear feet of pipeline to be installed, new service connections to be installed, etc.);
- Brief description of the activities;
 - Identify if demolition, acquisition, construction, relocation, remodeling interior, etc. will be involved.
 - Indicate if and how activities effect the general public (e.g., road closures, noise, dust, cranes, change in traffic, etc.).
- Total estimated project cost including total estimated CDBG funds and non-CDBG amounts and their source (e.g., LB840, bank financing, bond, TIF, grant, etc.);
- Identify the applicant and the owner or manager of the project;
- Statement indicating that no residents, businesses, or farms will be displaced with this project; and
- If the sites have not been identified, the project description must include a statement that a Tier II environmental review will be conducted upon site selection.

2. Stage 2—Identifying Environmental Review Responsibilities

Entities eligible to receive CDBG funds from the State are local governments. These units of local government assume the role of Responsible Entity (RE) with respect to environmental reviews.

For CDBG awards, the chief elected official assumes the role of environmental “certifying officer” and accepts full responsibility for the completeness and accuracy of the reviews. The chief elected official must sign all certifications and findings. This environmental duty may not be delegated, although local staff, consultants, and/or State resources may provide technical assistance to support local efforts.

3. Stage 3—Determination of Level of Review

The subrecipient must first determine which level of environmental review is appropriate for the project to accurately complete the necessary documentation for the project. The subrecipient must review the HUD regulations to determine which level of review to classify the project in order to determine the appropriate Environmental Review Record for completion.

To inform your determination, refer to each level of environmental review as defined within the HUD regulations found at 24 CFR 58.

The four main levels of review that CDBG subrecipients will need to consider include:

- Exempt [24 CFR 58.34],
- CENST [24 CFR 58.35(b)],
- CEST [24 CFR 58.35(a)], or
- EA [All other projects that are not classified under 24 CFR 58.34, 58.35(b), or 58.35(a) and that do not require an Environmental Impact Statement (EIS)].

In addition to the four classifications, there is also an Environmental Impact Statement (EIS). This comprehensive review is for those projects that are larger in scope and will have a significant environmental impact. Consult DED if it is determined that an EIS is necessary.

Overall, review the HUD regulations to determine the appropriate level of environmental review for a project. Every CDBG project will be classified under one of the four levels of review. Based on the definitions, where a project cannot be classified as Exempt, CENST, or CEST, then the subrecipient will be required to complete an EA.

The DLR form is dated and signed on the date of determination and prior to completing any other required components of the ERR process (e.g., statutory checklist, 58.6, publication(s), etc.). Refer to the timing worksheets for additional guidance.

4. Stage 4—Environmental Review Completion

Once a subrecipient has determined the scope of a project through project aggregation and determined the appropriate level of review, the subrecipient must complete the appropriate Environmental Review for every project.

The four Environmental Review types include:

- **Exempt Project**—Projects that have been categorized under 24 CFR 58.34 must complete an ERR that includes a Determination of Level of Review Form, a Finding of Exempt Activity Form, and a 58.6 Checklist.
- **CENST Project**—Projects that have been categorized under 24 CFR 58.35(b) must complete an ERR that includes a Determination of Level of Review Form, a Finding of Categorical Exclusion Not Subject To Form, and a 58.6 Checklist.
- **CEST Project**—Projects that have been categorized under 24 CFR 58.35(a) must complete an ERR that includes a Determination of Level of Review Form, a Statutory Checklist Form, Timing Summary Worksheet, and a 58.6 Checklist. In addition, appropriate source documentation must include maps; records of review of websites, consulted agencies, including letters to and from those agencies; and other sources, as identified.
 - When a project's area can be defined, but specific site locations cannot be identified until later (e.g., projects involving housing or commercial rehabilitation), a Tiered Review ("Tier II") is required. The Tiered Review format will include only those categories from the Statutory Checklist that cannot be completed until a site-specific location is known. Examples include housing or commercial projects with unknown addresses that lie within an area covered under the broad-level review.
 - A Tiered Review requires a special NOI-RROF Tiered Review publication notice format. A project description must include a reference to a Tiered Review, if applicable.
 - If applicable, a CEST may convert to Exempt and a "Finding of Exempt Activity" form needs to be completed.

- **EA Project**—Projects that cannot be categorized as Exempt, CENST, or CEST must complete an ERR that includes a Determination of Level of Review Form, and an Environmental Assessment Form, and Timing Summary Worksheet. The Environmental Assessment Form is composed of four components: 1) Statutory Checklist, 2) 58.6 Checklist, 3) Environmental Assessment Factors, and 4) Finding of (No) Significant Impact Status. In addition, appropriate source documentation must include maps; records of review of websites, consulted agencies, including letters to and from those agencies; and other sources, as identified.

See also the *Overview of the Environmental Review Record Categories* section for more information on the categories needed for each Environmental Review Record.

5. Stage 5—Publication/Posting

Only those projects that require a CEST or EA review will be required to provide a NOI/RROF (CEST Projects) or Combined Notice for FONSI/NOI-RROF (EA Projects) public notice which needs to be completed through either publication or posting. Projects that are Exempt, CENST, or those CEST projects that convert to Exempt do not require any publication or posting.

Projects that require a CEST review will have a 7- (publish) or 10- (posting) day public comment period. Projects that require an EA review will have a 15- (publish) or 18- (posting) day public comment period.

If last day of posting/publication falls on a weekend (Saturday/Sunday) or a holiday, extend days accordingly.

NOTE:

- DED has Timing Summary Worksheets available on the website, <https://opportunity.nebraska.gov/CDBG>. To ensure the responsible entity meets the timing requirements identified in federal register. Errors within the timing of the public notice may require republishing and potentially delay the project.
- Obtain evidence of publication and include within the Environmental Review Record.
- For more information, see *Publication, RROF/Certification Form, & HUD Objection Period* section
- If a CDBG project occurs in a floodplain, publication is required for the *8-Step Process for Compliance with Floodplain Management*.

6. Stage 6 – Completion of RROF/Certification Form and Affidavit of Publication/Posting

Only those projects that require a CEST or EA review are required to complete a RROF/Certification Form. The most current HUD 7015.15 Form must be used. The form is available on the DED website.

The RROF/Certification must be completed, an original affidavit of publication, and a copy of the publication must be sent to the DED after the ERR is completed and sent no earlier than the day after the publication period has ended.

A failure to complete RROF/Certification Form correctly will result in DED requesting revision and resubmission of said form. The HUD 15-day objection period will not begin until the RROF/Certification Form is accurate.

7. Stage 7—HUD 15-Day Objection Period

Once the RROF/Certification Form, the affidavit of publication, and the copy of publication notice are received by DED (no earlier than the day after the publication period has ended), the HUD 15-day objection period begins. This form can be emailed to DED and this starts the 15-day objection period – however, a hard-copy original must also be submitted.

8. Stage 8—Obtaining Environmental Clearance

After the end of the HUD 15-day objection period, the project is eligible for environmental clearance. After DED receives all of the special conditions required by subrecipient’s CDBG Agreement and has approved the ERR, DED will provide a Release of Funds/Environmental Clearance letter to the subrecipient identifying environmental clearance and approval to use grant funds. Grant funds cannot be used prior to the date of the Release of Funds/Environmental Clearance letter.

NOTE: In some instances, circumstances surrounding a project change (e.g., change in scope, scale, environmental conditions, etc.). This requires re-evaluation for a project having previously received environmental clearance and a Certification of Continued Environmental Compliance form is required. For more information, see *Re-Evaluation and Certification of Continued Environmental Compliance of Previously Cleared Projects (24 CFR 58.47)*.

COMPREHENSIVE OVERVIEW OF ENVIRONMENTAL PROJECTS

For an overview of the four levels of review, see *Overview of Environmental Review Record (ERR) Categories*.

Exempt Projects

A project classified under **24 CFR 58.34** is considered “Exempt”, requiring limited environmental review.

An Exempt project is a project classified under one of the following categories below. See 24 CFR 58 for the official and complete list of categories.

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

The ERR for an Exempt project must include the completion of the following categories:

- Determination of Level of Review
- Finding of Exempt Activity (FOEA) Form
- 58.6 Checklist

NOTE: For Exempt Projects, the following do not apply publication of the NOI/RROF, RROF/Certification Form, and a 15-day HUD objection period required.

CENST Projects

A project that has been classified under **24 CFR 58.35(b)** is considered a Categorical Exclusion Not Subject To the requirements of 24 CFR 58.5 and requires a limited environmental review.

A CENST project is a project classified under one of the following categories below. See 24 CFR 58 for the official and complete list of categories.

- 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 buy-downs, 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 that 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 §58.47.

If a project cannot be classified under any of the above-mentioned categories, then the project is not CENST and a higher level of environmental review will need to be completed.

The ERR for a CENST project must include the completion of the following categories:

- Determination of Level of Review
- Finding of Categorical Exclusion Not Subject To Form
- 58.6 Checklist

NOTE: For CENST Projects, the following do not apply publication of the NOI/RROF, RROF/Certification Form, and a 15-day HUD objection period required.

CEST Projects

A project classified under **24 CFR 58.35(a)** is considered a Categorical Exclusion Subject To the requirements of 24 CFR 58.5 and requires the completion of a Statutory Checklist, and other evaluation, which evaluates 14 separate environmental laws.

A CEST project is classified under one of the following categories below. See 24 CFR 58 for the official and complete list of categories.

- 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, etc.).
- 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, and the land use is not changed;
 - (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 the structure or land acquired, financed, or disposed of will be retained for the same use.
- 6) Combinations of the above activities.

If a project cannot be classified under any of the above-mentioned categories, then the project is not CEST and an EA will need to be completed.

The ERR for a CEST project must include the completion of the following categories:

- Determination of Level of Review
- Statutory Checklist
 - If a project occurs in the flood plain, the *8-Step Process for Compliance with Floodplain Management* needs to be completed. Consult DED to determine if the work proposed in the floodplain is incidental.
- 58.6 Checklist
- Source Documentation including, but not limited to, a FIRM Map, an aerial map, letters sent to any agencies, agency websites consulted, agency responses, and any other relevant information that provides support for your findings within the Statutory Checklist.
- Finding of Exempt Activity (if applicable)
- NOI/RROF Publication, complete one of two types depending upon the nature of the project:
 - NOI/RROF Publication, completed where known are all sites for project activities.
 - NOI/RROF Tiered Review Publication, completed only where specific sites unknown (e.g., projects involving housing or commercial rehabilitation) but the broad review is complete.
- Tier II Template (if applicable)
- Timing Summary Worksheet
- Affidavit of Publication or Proof of Posting
- RROF/Certification Form – Original must be submitted to DED

NOTE: For CEST Projects (except where the project converts to Exempt), a Subrecipient must publish a NOI/RROF, submit an RROF/Certification Form, and a 15-day HUD objection period is required. Where a CEST project converts to Exempt, see section below.

NOTE: While completing the Statutory Checklist, if it is determined the project is within a floodplain, the Recipient will need to conduct the **8-Step Process for Compliance with Floodplain Management** unless there are specific exceptions to this requirement. For additional information, see also 24 CFR 55 and consult with your DED program representative.

CEST Project Converting to Exempt

In some instances, a CEST Project may convert to Exempt. This may occur if the subrecipient has completed the Statutory Checklist and has marked all authorities as Status “A”.

If Box “A” has been selected within the Determination Section of the Statutory Checklist, the subrecipient confirms that the project does not require any further compliance measure (e.g., further consultation, mitigation, permit, approval, or any other additional measure) with respect to any law or authority cited at 24 CFR 58.5.

When a project converts to Exempt, it will be necessary for the subrecipient to have completed the Determination of Level of Review, the Statutory Checklist, and the 58.6 Checklist, and provide the necessary source documentation for the project. After this information has been included in the ERR, the subrecipient then must complete a Finding of Exempt Activity Form and note that the project is converting to Exempt according to 24 CFR 58.34(a)(12). The Finding of Exempt Activity Form should be incorporated into the ERR and sent to DED.

NOTE: For CEST projects that convert to Exempt, neither a NOI/RROF Publication, RROF/Certification, nor is a 15-day HUD Comment Period required.

EA Projects

A project not meeting the classification of Exempt, CENST, nor CEST, but classifies under 24 CFR 58.36, requires the completion of an Environmental Assessment (EA). An EA includes a FONSI Determination, a Statutory Checklist, Environmental Assessment Checklist, 58.6 Checklist, and all other required information as noted in the Environmental Review Record.

The ERR for an EA project must include the completion of the following categories:

- Determination of Level of Review
- Environmental Assessment (EA) Form
 - Beginning in program year 2022, Climate Change needs to be addressed.
 - If a project occurs in the flood plain, the *8-Step Process for Compliance with Floodplain Management* needs to be completed. Consult DED to determine if the work proposed in the floodplain is incidental.
- Source Documentation including, but not limited to, a FIRM Map, an aerial map, letters sent to any agencies, agency websites consulted, agency responses, and any other relevant information that provides support for your findings within the Statutory Checklist.
- Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request a Release of Funds (NOI/RROF)
 - NOI/RROF Publication, complete one of two types depending upon the nature of the project:
 - NOI/RROF Publication, completed where known are all sites for project activities.
 - NOI/RROF Tiered Review Publication, completed only where specific sites unknown (e.g., projects involving housing or commercial rehabilitation) but the broad review is complete.
- Tier II Template (if applicable)
- Timing Summary Worksheet
- Affidavit of Publication or Proof of Posting
- RROF/Certification Form – A pdf of the original signed document must be submitted to the opportunity manager and uploaded within the grant management system.

See also information below on how to complete these individual forms and the HUD website for further information.

NOTE: For EA Projects, a Subrecipient must publish a Combined Notice (FONSI/NOI-RROF), submit an RROF/Certification Form, and a 15-day HUD objection period is required.

NOTE: If it is determined the project is within a floodplain, the subrecipient will need to conduct the **8-Step Process for Compliance with Floodplain Management** unless there are specific exceptions to this requirement. For additional information, see also 24 CFR 55 and consult with your DED program representative.

Publication, RROF/Certification Form & HUD

The HUD regulations at 24 CFR 58 defines the publication requirements for CDBG projects and the process for receiving environmental clearance after the subrecipient's environmental review record has been completed for CEST or EA Projects and has been signed by the RE Certifying Officer.

This process includes a public comment period publication:

- CEST Projects – uses the Notice of Intent to Request Release of Funds (NOI/RROF) or the NOI/RROF Tiered Review.
- EA Projects – uses the Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request a Release of Funds (NOI/RROF)

The completion of the RROF/Certification Form occurs after the objection period. **IMPORTANT:** Complete this process in the correct order or republication may be necessary.

24 CFR 58.21 defines time periods in regard to determining when a publication or objection period begins; time periods are defined as:

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.

The RE must consider the comments and make modifications, if appropriate, in response to the comments from the publication before completing the RROF/Certification Form. This process and undertaking must be documented and submitted with the completed ERR.

Publication Requirements for CEST Projects

For CEST Projects the subrecipient is required to complete the following:

- Timing Summary Worksheet (Submit to DED)
- Publication of the NOI-RROF
- A public comment period
- RROF/Certification Form with documentation
- Timing Summary Worksheet
- The HUD 15-Day Objection Period.

The NOI-RROF cannot be published until after the RE Certifying Officer has signed the ERR. For CDBG projects, this means that the ERR must be prepared and signed by Certifying Officer **at least one day before** publication. During the public comment period, the ERR will be on display for public review. Once the RE Certifying Officer signs the ERR it is proper to publish/post the NOI-RROF. Publication cannot be completed until at **least one day after** the RE Certifying Officer signs the ERR.

The NOI-RROF Notice is published or posted for a time period defined at 24 CFR 58.45, 7 days when published or, if no publication, 10 days when mailing and posting.

No earlier than the day after the public comment period has ended, the subrecipient completes the RROF/Certification Form and sends the original to the Department along with the appropriate documentation. This documentation includes an affidavit of publication (or posting) and a copy of the publication notice.

NOTE: To begin the 15-day objection period, it is acceptable practice to send an electronic version of the completed NOI-RROF Notice to DED. However, prior to DED issuing Notice of Release of Funds/Environmental Clearance, the original form must be provided to DED. The Responsible Entity's ERR must retain a copy of the NOI-RROF Notice.

Publication Requirements for EA Projects

For EA Projects the subrecipient is required to complete the following:

- Timing Summary Worksheet (submit to DED)
- Publication of the Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request a Release of Funds (NOI/RROF)
 - NOI/RROF Publication, complete one of two types depending upon the nature of the project (see above)
- Public Comment Period
- RROF/Certification Form with documentation
- The HUD Objection Period.

The FONSI notice and NOI-RROF publication process can be completed concurrently using a Combined Notice (FONSI/NOI-RROF) Publication. See Sample Combined FONSI/NOI-RROF Publication for the language that must be provided in the notice.

The Combined FONSI/NOI-RROF cannot be published until at **least one day after** the RE Certifying Officer has signed the ERR. For CDBG projects, this means that the ERR must be prepared and then signed by the RE Certifying Officer before publication.

The Combined Notice is published or posted for a time period defined at 24 CFR 58.45, 15 days when published or, if no publication, 18 days when mailing and posting.

Environmental Assessment (EA) Notes:

1. To begin the 15-day objection period, it is acceptable practice to send an electronic version of the completed combined FONSI/NOI-RROF Notice to the Department. However, prior to the Department issuing Notice of Release of Funds/Environmental Clearance, the original form must be provided to the Department. The Responsible Entity's ERR must retain a copy of the combined FONSI/NOI-RROF Notice.
2. While it is not recommended, if publishing the FONSI Notice and NOI-RROF separately (not combined), then two separate 15-day public comment periods must be provided when publishing and two separate 18-day public comment periods must be provided when posting. These notices could not run concurrently. No earlier than the day after the public comment period has ended, the subrecipient completes the RROF/Certification Form and sends it to DED, along with the appropriate documentation. Appropriate documentation includes:
 - An affidavit of publication (or posting), and
 - A copy of the publication notice.

SOURCE DOCUMENTATION

Source Documentation is used to supplement the ERR and provide justification for the information that has been detailed in the Compliance Documentation Section of the Statutory Checklist, the Environmental Assessment Form, and any other section of the ERR. The ERR must be a standalone document that will provide a complete picture of the environmental impacts of the project for a reviewer.

Examples of Source Documentation in CEST and EA Project reviews:

- Aerial map of site (identifying the project area(s))
- FIRM map (identifying the project area(s) and clearly noting the project location on the map)
- Agency websites reviewed (including a copy of the agency website information)
- Letters to Agencies
- Responses from Agencies

The RE may use an environmental review from another agency to help supplement the ERR for the Department. A copy of the review should be incorporated into the ERR and referenced in the Compliance Documentation Section of the Statutory Checklist or the Source Documentation Section of the Environmental Assessment Form.

In addition, any Engineering Reports, Phase I ESA Reports, Phase II ESA Reports, and any other relevant information should be included in the ERR. Consult with DED for additional guidance.

Completing the Statutory Checklist for a CEST or the Assessment Form for an EA

The Statutory Checklist evaluates 14 separate authorities/ statutes for environmental issues and impacts. Each of these 14 authorities must be evaluated for every project. Within the Statutory Checklist, the subrecipient must follow instructions detailed in the Checklist and select either Status A or Status B for each of the 14 authorities (<https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>). These regulations include:

1. Air Quality
2. Airport Hazards
3. Coastal Zone Management
4. Contamination and Toxic Substances
5. Endangered Species
6. Environmental Justice
7. Explosive and Flammable Operations
8. Farmlands Protection
9. Floodplain Management (includes Flood Insurance)
10. Historic Preservation (State Historical Preservation Office and Tribal Historical Preservation Office)
11. Noise Control
12. Water Quality (Sole Source Aquifers)
13. Wetlands Protection
14. Wild and Scenic Rivers

Selecting Status A: the subrecipient is documenting that the project is in compliance either because 1) the nature of the project does not implicate the authority under consideration or 2) supporting information documents that the project compliance has been achieved. If Status A is marked, the subrecipient is noting that no further compliance is needed, and no further consultation, permitting, or additional evaluation are needed in regard to the Item evaluated.

Selecting Status B: the subrecipient is documenting that the project requires additional compliance. This includes an additional compliance step or action, including but not limited to, additional consultation with or approval from an oversight agency, performance of a study or analysis, completion of remediation or mitigation measures, obtaining a license or permit, or the specific project site has not been identified.

NOTE: Each of the 14 authorities' environmental regulations must be evaluated for the project. Unacceptable responses include leaving anything blank or providing a "not applicable" response. A failure to review all 14 categories result in the subrecipient having to correct the Statutory Checklist and resubmit the information to DED Department.

Statutory Checklist Process

A subrecipient must consult the appropriate statutes, authorities, executive orders, regulations, or policies as noted in each of the 14 categories. 24 CFR 58.5 provides more information on the Related Federal laws and authorities that must be reviewed.

In addition, utilizing the HUD Guide to Environmental Compliance (HUD Guide), as well as environmental information on the HUD Exchange, can also be used as a tool to assist the subrecipient with the completion of the Statutory Checklist. The HUD Guide provides guidance on how to appropriately provide compliance documentation. Review the Applicable Activities, Threshold for Action, Source Documentation, and Action Required Sections as a whole in order to assist the subrecipient.

The goal of the evaluation is to obtain environmental compliance with each of the 14 categories. Compliance can be obtained in some instances by the subrecipient providing an appropriate narrative and source documentation within the Compliance Documentation section of the Statutory Checklist. In other instances, it is necessary to provide additional source documentation, including referencing website information (print relevant pages), providing letters sent to agencies, agency responses, and any other relevant information.

The RE must retain all documentation (letters, maps, notes on comments of authorities contacted, etc.) to support the Compliance Documentation in the ERR. The subrecipient should use the best available information to achieve compliance.

Federal or State Agency consultation may be necessary to provide a proper environmental evaluation. Agency responses may concur with a subrecipient's findings and result in no need for further action, may place conditions on the project prior to environmental clearance, or may halt the project until mitigating measures are identified and steps have been taken to achieve compliance.

If permits are required, a listing of the specific permits needed and the procedures by which they will be obtained should be attached to the ERR. If mitigating actions are required, the RE should fully describe the actions the subrecipient will take to assure compliance.

The Statutory Checklist must be prepared and signed by the Preparer prior to being signed by the RE Certifying Officer. A failure to have the Preparer sign the Statutory Checklist before the RE Certifying Officer will result in the subrecipient having to correct the Statutory Checklist and resubmit the information to DED.

Completing the 24 CFR §58.6 – Other Requirements (58.6 Checklist) Form

The 58.6 Checklist must be completed for every project. For Exempt, CENST, or CEST projects the 58.6 Checklist is a separate form that must be completed. For EA projects the 58.6 Checklist is incorporated into the Environmental Assessment form and must be completed.

There are three main sections of the 58.6 Checklist that have to be reviewed. These include:

- **Airport Runway Clear Zones and Clear Zone Notification** [24 CFR Part 51.303(a)(3)]
- **Coastal Barrier Resources Act** [Coastal Barrier Improvement Act of 1990 (16 USC 3501)]
- **Flood Disaster Protection Act** [Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4128)]

The 58.6 Checklist provides a set of “yes” or “no” questions that have to be answered and must be supplemented with proper source documentation. Source documentation may include an aerial map, FIRM map, Agency website information, and any other relevant information that would substantiate the information provided in the 58.6 Checklist.

For the Flood Disaster Section, if “No” is answered for the first question, then it is not appropriate to answer the remaining questions. The responsible entity must provide an applicable FIRM Map when it is necessary to provide evidence that a project is not being located within a Special Flood Hazard Area (SFHA). If a FIRM map is attached then it would be necessary to cite the appropriate year and panel number of the FIRM map.

If “Yes”, the responsible entity must provide an applicable FIRM Map when it is necessary to provide evidence that a project is being located within a Special Flood Hazard Area (SFHA). If a FIRM map is attached then it would be necessary to cite the appropriate year and panel number of the FIRM map. Flood Insurance is required in order to receive HUD Funds and use those funds within the Special Flood Hazard Area. A copy of the flood insurance policy declaration must be kept on file in the ERR.

NOTE: *If a project site is not mapped, then the best available information should be used to ascertain whether or not a project is located within a SFHA. In this instance, it may be necessary to contact the Department of Natural Resources for this information. Consult with your program representative for additional alternatives.*

Special Considerations for Projects Involving Housing Activities

Additional requirements apply for projects involving housing activities, in particular those triggering Environmental Site Assessments (ESA) Phase I, which are required for multi-family residential, but strongly recommended for other residential situations. However, if project involves housing activities and an ESA is not ordered, the ERR preparer must document evidence of taking Minimum Review Steps as described below.

An ESA is recommended when 1) acquiring property for residential or commercial purposes, or 2) when converting a property from non-residential to residential use. In addition, an ESA may limit legal liability from a release of hazardous substances or a range of contaminants found within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (or “CERCLA”). An ESA is considered an appropriate inquiry and accepted as good commercial standards and practice. Remember, there are serious public health and legal implications to the potential or current property owners pertaining to CERCLA rules, and the developer should seek legal counsel to assess all possible issues.

An ESA is an engineering report assessing known and potential risks associated with a particular site. The standard for such reports has changed over time. The current standard follows ASTM E1527-13 (which was expected to be revised “E1527-21” and updated by the EPA by the end of 2023), which more clearly identifies circumstances meeting Recognized Environmental Conditions (REC):

- Controlled Recognized Environmental Conditions (CRECs) are defined as a site with risk-based closure of contamination and no further remediation is required, but with residual contamination that still exists above residential levels, hence the property becomes subject to land-use restrictions.
 - A CREC property is limited to commercial and industrial use only.
 - A CREC property has contamination and **no residential development is allowed**
- It is advised that an ESA includes a hazard assessment of asbestos (which is often omitted as a “non-scope” item).
- It is not required that an ESA include radon hazard assessment (as that is subject to licensed radon specialists).
- An ESA Phase I is required for multi-family, (and multi-unit) new construction residential housing projects, and should include conclusions from the ESA preparer pertaining to suitability of the soil from prior farmland (converted to residential use) from agricultural chemicals used in the past including common agricultural pesticides and herbicides, heavy metals such as mercury, fluorine, chromium, cadmium, lead, copper, nickel and zinc and arsenic.
 - The ESA should conclude as to any RECs pertaining to their findings.
 - This conclusion may require additional soil testing and should include vapor intrusion.
 - Costs of the ESA Phase I or II can be included in project costs (and are not considered administrative costs).
 - ESA preparers can suggest mitigation.

When reviewing ESAs, be sure to look for the new standard and any CRECs, which might prohibit residential land-use. Depending upon the project and the entity completing the ESA may be based on outmoded standards.

Minimum Review Steps

If an ESA is not ordered, the ERR preparer must **document evidence** of taking these minimal review steps:

1. Conduct a site visit/inspection.
2. Describe Historical Use using Sandborn maps or any other available resources as appropriate.
3. Review the EPA's website for contaminant neighbors, noting nearby business with toxic contamination issues that have continuing violations. Further, additional assessment is required for businesses having remediation and/or fines. Conclude as nearby contamination risk.
4. Request an ESA if any situations make the preparer uncomfortable or suspicious of underlying contamination issues.
5. Conclude with stated explanations and reasons for why an ESA is not needed.

Radon Mitigation for Projects Involving Housing Activities

Radon mitigation is included under Contamination and Toxic Substances of the Statutory Checklist. Designated by the nature of the housing activities, guidance below extends into the impact of the ERR on project implementation. A proactive approach will reduce liability potential for all vested parties. For more information, see Chapter 4.

Timing Considerations

For projects that require publication notices (i.e., CEST projects that do not convert to Exempt and EA projects) it is critical to ensure the public received the proper time period in which to comment and review the environmental record that was prepared by the subrecipient. After the public comment period, information is sent to DED and the public has an additional period of time in which to object to environmental review process, the HUD 15-Day objection period.

Below is additional information on drafting the public notices for projects and in ensuring the proper timing requirements are met for each project. For additional guidance and resources, reference the *Other Resources & Timing Worksheets* section at the end of this chapter.

Drafting the NOI-RROF for CEST projects

Once the RE Certifying Officer signs the environmental record, the Notice of Intent to Request Release of Funds (NOI-RROF) can be published in the newspaper or posted, but no earlier than the day after the RE Certifying Officer signs the environmental record. The specific DED-approved NOI-RROF notice language must be used for the publication (see DED's website for template language). The timing worksheet can assist in ensuring that the language of the Notice is properly written in order to ensure the subrecipient provides the proper comment period for the public to review the environmental record.

It is important to know the exact date that the newspaper will publish the NOI-RROF public notice as this will determine the date of the **last day of the public comment period** and the earliest date in which the RE Certifying Officer can sign the RROF/Certification Form. DED recommends adding a day or two to the end of the comment period to ensure meeting of the appropriate HUD public comment period.

The first paragraph of the NOI-RROF notice notes "On or about" the RE will undertake a specific project. This "On or after" language is referencing the earliest date that the RE can sign the RROF/Certification Form. The RROF/Certification Form cannot be signed until the day after the end of the public comment period. Using the Timing Summary Worksheet on the website to ensure proper timing.

For example, if the RE signs the environmental record (all CEST required categories) on July 10 then the earliest date that the NOI-RROF could be published would be on July 11.

EXAMPLE Timing Worksheet for NOI-RROF Publication Notice

Date DLR signed by RE Certifying Officer <u>07/09</u> Stage 3: Date is prior to preparation and completion of Stat. Checklist and 58.6.	Date(s) RE signs: Stat. Checklist & 58.6 Checklist. <u>7/10</u> Stage 4: Date of or after completion Stat. Checklist and 58.6.	Date of Publication, NOI-RROF <u>7/11</u> Stage 5: Date is no earlier than day after RE signs. Enter DATE of the NOTICE.	Begin Counting... 1 <u>7/12</u>	2 <u>7/13</u>	3 <u>7/14</u>	4 <u>7/15</u>
5 <u>7/16</u>	6 <u>7/17</u>	Last Day of Comment Period 7 <u>7/18</u> Clearly identify this date in the NOTICE.	Earliest Date can sign RROF/Cert Form <u>7/19</u> Stage 6: Occurs day after comment period ends. In the NOTICE this is the “On or about” date.			

If the Notice is published on July 11th, then the subrecipient would begin counting for the 7-day public comment period on the next day (July 12th). The last day of the public comment period as identified within the public notice within the “All comments received by” section would be July 18 (as this includes seven complete days for the public to comment).

PUBLIC COMMENTS

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

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Date of Notice

Name of Responsible Entity [RE]

Address (e.g., Street No. or P.O. Box)

City, State, Zip Code

Telephone Number of RE

On or about at least one day after the end of the comment period the name of RE will if the RE is not also the grant recipient, insert the following language here: “authorize the [name of grant recipient] to” submit a request to the HUD/State administering agency for the release of name of grant program funds under Title/Section [] of the name of the Act of [year], as amended, to undertake a project known as project title for the purpose of nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location if applicable.

Because the last day of the public comment period is July 18th, the earliest date that the RE can sign the RROF/Certification Form would be July 19 and this is the date that is added to the “On or about” portion of the Notice.

Drafting the Combined Notice (FONSI/NOI-RROF) for EA projects

Once the RE Certifying Officer signs the environmental record, the Combined Notice (FONSI/NOI-RROF) Finding of No Significant Impact and Notice of Intent to Request Release of Funds can be published in the Newspaper or posted, but no earlier than the day after the RE Certifying Officer signs the environmental record. The specific required Combined Notice language must be used for the publication. (See the Sample Notice language). A Timing Summary Worksheet will ensure that the language of the Notice is properly written in order to ensure the subrecipient provides the proper comment period for the public to review the environmental record.

It is important to know the exact date that the newspaper will publish the Combined Notice as this will determine the date of the last day of the public comment period and the earliest date in which the RE Certifying Officer can sign the RROF/Certification Form. Adding a day or two to the end of the comment period may be appropriate to in order to ensure that the HUD public comment period is met.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the RE designated office responsible for receiving and responding to comments. All comments received by if notice is published: publication date plus fifteen days; if notice is mailed and posted: mailing and 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.

The first paragraph of the Combined Notice notes “On or about” the RE will undertake a specific project. This “On or about” language is referencing the earliest date that the RE can sign the RROF/Certification Form. The RROF/Certification Form cannot be signed until the day after the end of the public comment period. Using the Timing Worksheet above will assist the subrecipient in ensuring proper timing.

For example, if the RE signs the environmental record (all EA required categories) on July 10 then the earliest date that the Combined Notice could be published would be on July 11. You will notice that counting for the 15-day public comment period does not begin until the day after the Combined Notice is published.

EXAMPLE Timing Worksheet for Combined Notice (FONSI/NOI-RROF)

Date DLR signed by RE Certifying Officer <u>07/09</u> <i>Stage 3: Date is prior to preparation & completion of Stat. Checklist, 58.6, and EA.</i>	Date(s) RE signs: Stat. Checklist, 58.6, & EA <u>7/10</u> <i>Stage 4: Date of or after completion Stat. Checklist and 58.6.</i>	Date of Publication, Combined Notice <u>7/11</u> <i>Stage 5: Date is no earlier than day after RE signs. Enter DATE of NOTICE.</i>	<i>Begin Counting ...</i> 1 <u>7/12</u>	2 <u>7/13</u>	3 <u>7/14</u>	4 <u>7/15</u>
5 <u>7/16</u>	6 <u>7/17</u>	7 <u>7/18</u>	8 <u>7/19</u>	9 <u>7/20</u>	10 <u>7/21</u>	11 <u>7/22</u>
12 <u>7/23</u>	13 <u>7/24</u>	14 <u>7/25</u>	15 <u>7/26</u> <i>Clearly identify this date in the NOTICE.</i>	Earliest Date RE can sign RROF/Cert Form <u>7/27</u> <i>Stage 6: Occurs day after comment period ends. In the NOTICE this is the "On or about" date.</i>		

If the Notice is published on July 11th, then the subrecipient would begin counting for the 15-day public comment period on the next day (July 12th). The last day of the public comment period as identified within the public notice within the “All comments received by” section would be July 26 (as this includes fifteen complete days for the public to comment).

**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 (e.g., Street No. or P.O. Box)

City, State, Zip Code

Telephone Number of RE

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the name of RE or grant recipient.

REQUEST FOR RELEASE OF FUNDS

On or about at least one day after the end of the comment period the name of RE will if the RE is not also the grant recipient, insert the following language here: “authorize the [name of grant recipient] to” submit a request to the HUD/State administering agency for the release of name of grant program funds under Title/Section [] of the name of the Act of [year], as amended, to undertake a project known as project title for the purpose of nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location if applicable.

Because the last day of the public comment period is July 26th, the earliest date that the RE can sign the RROF/Certification Form would be July 27 and this is the date that is added to the “On or about” portion of the Notice.

Completing the RROF/Certification Form

As noted above the RE Certifying Officer cannot sign the RROF/Certification Form until after the end of the public comment period. Using the Timing Summary Worksheet ensures that proper timing was provided within the public notice and to ensure that the RE does not sign the RROF/Certification Form too early – either of which may trigger republication.

Once the public comment period has ended, the RE can sign the RROF/Certification Form. This informs the public that the subrecipient has completed the environmental review public comment period; that they are preparing to begin the HUD 15-Day objection period; and are ultimately requesting environmental clearance for the project.

HUD 15-Day Objection Period and Obtaining Environmental Clearance

Using the Timing Summary Worksheet will help determine the earliest date that the RE can sign the RROF/Certification Form for CEST and EA projects. It also assists in identifying when the HUD 15-Day Objection Period will begin and note that the Objection Period cannot begin until after DED receives the signed RROF/Certification Form, an Affidavit of Publication (or Posting) and a copy of the publication notice.

For example, if the earliest date that the RE could sign the RROF/Certification Form was on July 27 (and did sign the Form on that date) then the subrecipient would have to send the signed RROF/Cert Form, the affidavit of publication, and a copy of the publication notice to DED. If this information was faxed or emailed on the same day that the Form was signed then DED would note that the proper documentation was received on July 27th. Based on this information, counting for the HUD 15-Day Objection Period would begin on the next day (July 28th) and would run through August 11th. From the table below you will see that the earliest date that environmental clearance could be obtained for the project would be on August 12th.

Earliest Date RE can sign RROF/Cert Form	Date RE signs the RROF/Cert Form	Date DED receives the RROF/Cert, the affidavit of publication, and a copy of the notice	Begin Counting For HUD 15 Day Objection Period				
<u>7/27</u> <i>Stage 6: Occurs day after comment period ends. In the NOTICE this is the “On or about” date.</i>	<u>7/27</u>	<u>7/27</u> Stage 7	1 <u>7/28</u>	2 <u>7/29</u>	3 <u>7/30</u>	4 <u>7/31</u>	
5 <u>8/1</u>	6 <u>8/2</u>	7 <u>8/3</u>	8 <u>8/4</u>	9 <u>8/5</u>	10 <u>8/6</u>	11 <u>8/7</u>	
12 <u>8/8</u>	13 <u>8/9</u>	14 <u>8/10</u>	Last Day of HUD Objection Period 15 <u>8/11</u>	Earliest Date to obtain environmental clearance <u>8/12</u> <i>Stage 8: Occurs day after comment period ends.</i>			

NOTE: A failure to provide an appropriate public comment period and a failure to sign the RROF/Certification Form on the correct date will result in the subrecipient having to republish, which could result in delays to the project.

NOTE: The last day of an objection period cannot fall on a weekend or holiday (in which case, more days should be added).

8-Step Process for Compliance with Floodplain Management

If a project has been determined to be located within a Special Flood Hazard Area (SFHA) as indicated on a Flood Insurance Rate Map (FIRM) or located in a wetland as determined by consultation with the Natural Resources Conservation Service and/or U. S. Army Corps of Engineers, then it may be necessary for the subrecipient to complete the 8- Step Process as required by 24 CFR 55.20. This process must be completed prior to finalizing the Statutory Checklist or Environmental Assessment form.

Projects, including aggregating all CDBG and non-CDBG funded activities, that meet an exception under 24 CFR 55 would not have to complete the 8-Step Process, or may be able to complete the 5 Step Process. All other projects would need to complete the 8-Step Process if they are located within a SFHA (i.e. 100 year floodplain) or even those considered to be a ‘critical action’ in which case those projects located within a 500 year floodplain.

In some situations, a modified “5-Step” process is allowed, consult the regulations DED for details.

Complete the 8-Step Process Form and instructions. Complete the required publications including the *Notice for Early Public Review* and the *Notice and Public Explanation*.

Tiered Environmental Review (24 CFR 58.15)

A tiered environmental review is a process in which a subrecipient completes a CEST or EA Project review, but, due to the nature of the project activities, has not identified any or all of the sites where the project activities will be completed.

To properly complete a tiered environmental review, the subrecipient must complete a two-step process. The first step is to complete the CEST or EA Environmental Review Record by identifying and evaluating those issues that can be reviewed without having sites identified (“broad review”).

The issues that cannot be evaluated without having specific sites identified would be reviewed once sites have been selected and noted within the Tier II evaluation. Language within the Compliance Documentation section of the Statutory Checklist would note **“A Tier II evaluation will be conducted as sites are identified”** and additional compliance documentation language would be provided.

In addition, attached to the Statutory Checklist is a Site Specific Tier II Environmental Review Template, identifying all the topics that will be reviewed within the Site Specific Review for the project and identify the methods that will be used to obtain the information.

Following issuance and receipt of the Environmental Clearance/Release of Funds from DED and once a potential site has been identified, the subrecipient completes a Site Specific Tier II Environmental Review for that site. The subrecipient would identify and evaluate those issues that were noted in the Statutory Checklist (CEST Projects) or the Environmental Assessment Form (for EA projects) that required further evaluation once sites had been identified.

- For owner occupied rehabilitation activity, this may include, but would not be limited to Contamination and Toxic Substances, Floodplain Management, Historic Preservation, Noise Control, Environmental Justice, and Flood Disaster Protection.
- For commercial rehabilitation activity, this may include, but would not be limited to, Contamination and Toxic Substances, Floodplain Management, Historic Preservation, and Flood Disaster Protection.

Recordkeeping Considerations

The Tier II environmental review supplements the broad review for which DED issued environmental clearance. Reference to the Site Specific Tier II Environmental Review must be included within the project description and found within the Determination of Level of Review Form, the Statutory Checklist, the Environmental Assessment Form, 58.6 Checklist, and the NOI-RROF Publication.

The subrecipient must maintain records of all Site Specific Tier II environmental reviews completed. Each review should follow the template provided on DED's website and is part of the ERR that is retained in the subrecipient's project files. This Site Specific Tier II Environmental Review must reference the CEST or EA Environmental Review Record completed previously, and had received environmental clearance. Retain Site Specific Tier II Environmental Reviews for all sites within the appropriate client/property file. For ease of reference, retain a listing all sites/properties having completed a Tier II with the ERR, this would also include records of any mitigation or re-evaluation undertaken throughout implementation of the project.

Following completion of the Site Specific Tier II Environmental Review and where identified is "Status A" for all areas not resolved within the broad review, which required completion of this the tiered review, **the subrecipient must acknowledge the site has environmental clearance.** Including reference to environmental clearance may be included within the Notice to Proceed or other such official written notice to be included within the client/property files. Any such notices should be on official letterhead and signed and dated by the appropriate party as identified within the project's Program Guidelines or otherwise acknowledged.

Each Site Specific Tier II Environmental Review needs to be signed by the preparer and the Responsible Entity (RE). For more information about the threshold for selecting "Status A", see *Completing the Statutory Checklist* section.

NOTE: An additional public comment period or HUD Objection Period is not required for a Tier II Environmental Review after the subrecipient has already received environmental clearance for the broad review. DED does not require submission of Tier II reviews as they are completed; however, such documentation is reviewed as a part of compliance monitoring and records must be complete.

NOTE: Tier II reviewed projects may also result in **conditions requiring re-evaluation** while undertaking project activities following environmental clearance. It is the subrecipient's responsibility to assess and re-evaluate in such situations, retaining records of any resulting action and/or determination taken.

Re-Evaluation and Certification of Continued Environmental Compliance of Previously Cleared Projects (24 CFR 58.47)

In some instances, circumstances surrounding a project change (e.g., change in scope, scale, environmental conditions, etc.). This requires re-evaluation for a project having previously received environmental clearance. Where projects are revised, delayed or otherwise changed such that a re-evaluation of the environmental review is necessary, **submission of the Certification of Continued Environmental Compliance is required.** Depending on the situation, this may or may not require and accompany submission of an agreement amendment request and/or necessitate completion of a new ERR by the responsible entity (RE).

The purpose of the RE's re-evaluation is to determine if, given the new circumstances, the original findings are still valid for which environmental clearance was issued. Where the RE completes the Certification of Continued Environmental Compliance form and the original findings are still valid, but the data and conditions upon which they were based have changed, the responsible entity must amend the original findings and update their ERR by including their re-evaluation and determination based on its findings. These materials are considered supplemental to the ERR for which environmental clearance was issued.

Upon completion of the Certification of Continued Environmental Compliance (including any associated attachments), **send a copy to DED for concurrence.** For recordkeeping and to acknowledge approval of the submitted materials, DED shall return a copy for the subrecipient to retain within in the ERR.

NOTE: if additional funds are being received for a project that has previously received environmental clearance describe why the project can be classified as **supplemental assistance** as defined at 24 CFR 58.35(b)(7). In this instance, the subrecipient would complete an environmental review packet for CENST projects and include a Certification of Continued Environmental Compliance form.

NOTE: ERRs may only be re-evaluated within a five-year period after the original Record received Environmental Clearance. If the ERR is **older than five years**, the subrecipient must conduct a new Environmental Review.

Re-Evaluation Threshold and Process

The purpose of re-evaluation is to determine if the new circumstances still justify and support the environmental finding originally issued. The RE should re-evaluate its environmental findings when:

- The subrecipient 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;
 - Example 1: original geographic footprint of project activities has expanded into an area not previously reviewed in the existing ERR.
 - Example 2: due to increased amount of local funds available, the scale of the project increased allowing for installation of more linear feet of pipeline.
- There are new circumstances and environmental conditions or mitigation that may affect the project or the environment, such as concealed or unexpected conditions discovered during implementation; or
 - Example 1: a disaster event (e.g., flooding, fire, etc.) occurred within the area.
 - Example 2: when breaking ground, contractors uncovered a previously unknown underground storage tank.
- The subrecipient proposes the selection of an alternative not in the original environmental finding.
 - Example: the mitigation did not identify an alternative now being considered.

If the original finding is still valid, the RE must affirm the original findings by completing the Certification of Continued Environmental Compliance Form and update the ERR. Under these circumstances, if a FONSI notice has already been published, no additional FONSI notice is required.

- If the re-evaluation is the result of **a change in the scope, scale, nature, magnitude and/or location of a project, or additional funds are added to a project** with previous environmental clearance, then the RE must submit to DED a Certification of Continued Environmental Compliance form with a CDBG Amendment Request Form for approval.
- For more information about what triggers an amendment request, see CDBG Agreement Amendment Request Form.

If the RE determines that the original finding is no longer valid, it must re-initiate an additional CEST or EA review process if its evaluation indicates potentially significant impacts. The Certification of Continued Environmental Compliance Form is available on DED's website.

OTHER RESOURCES & TIMING WORKSHEETS

Provided below is a non-exhaustive listing of further reading related to the information included within this chapter. Chapters specifically referenced in the above sections include:

- Chapter 2 – Administrative Overview
- Chapter 3 – CDBG National Objectives & Fundability
- Chapter 4 – Developing Program Guidelines
- Appendix | Section 2 – Environmental Compliance
- Timing Worksheets
- HUD Exchange, <https://www.hudexchange.info/programs/environmental-review/>

OVERVIEW OF ENVIRONMENTAL REVIEW RECORD (ERR) CATEGORIES

The following categories will be needed in a recipient's ERR depending on the type of project the recipient is completing. Complete the Environmental Review Record using one of the four levels of review.

Exempt Activities [24 CFR 58.34]

- Determination of Level of Review
- Finding of Exempt Activity
- 58.6 Checklist

Categorical Exclusion Not Subject To (CENST) Activities [24 CFR 58.35(b)]

- Determination of Level of Review
- Finding of CENST Activity
- 58.6 Checklist
- Supporting Documentation (if necessary)

Categorical Exclusion Subject To (CEST) Activities [24 CFR 58.35(a)]

- Determination of Level of Review
- Statutory Checklist
- 58.6 Checklist
- Supporting Documentation
- Timing Summary Worksheet
- 7-Day Public Notice NOI/RROF Publication¹
- RROF/Certification
- 8-Step Process for Compliance with Floodplain Management (if necessary)
- Site Specific Tier II Template (if necessary)²
- Certification of Continued Environmental Compliance (if necessary)
- Finding of Exempt Activity (if applicable)

Environmental Assessment [24 CFR 58.36]

- Determination of Level of Review
- HUD Environmental Assessment
- Supporting Documentation
- Timing Summary Worksheet
- 15-Day Public Notice FONSI & NOI/RROF Publication¹
- RROF/Certification
- Supporting Documentation
- 8-Step Process for Compliance with Floodplain Management (if necessary)
- Site Specific Tier II Template ²
- Certification of Continued Environmental Compliance (if necessary)

¹ There are two types of this notice. More detailed information provided within the above sections.

² Where project required a tiered review process, all Site Specific Tier II Environmental Reviews are retained for recordkeeping. Unless otherwise directed, these do not need to be submitted to DED but must be maintained within the ERR file(s).