

Note: See Required Contract Provisions in Appendix Folder (F:Users/CDBG/Environmental Reviews/Policy Manual Appendix).

Environmental Review

CDBG regulations require the preparation of a project Environmental Review Record (ERR) and environmental clearance before funds are expended or costs incurred. The overall governing legislation is the National Environmental Policy Act (NEPA). The City must also determine whether the CDBG activities meet other applicable statutory and regulatory requirements such as those of the State of Iowa Historic Preservation Office, the Advisory Council on Historic Preservation and the Environmental Protection Agency.

General Responsibilities

Federal regulations require that the City of ██████████ determine if project activities will cause adverse impacts to the human environment. The human environment is defined as the natural and physical environment and the relationship of people with that environment. In essence, the environmental review process must consider the total environmental effects of a proposed project, including the potential effects of both the CDBG and related project activities. For example, if CDBG funds are being used to extend a water line to a site for a new affordable housing project, then the total environmental effects of the project is not only the new water line, but also the new housing. Therefore, the environmental review must address the impacts of both the CDBG-funded water line and the privately financed development of the new housing project. The scope of an environmental review encompasses this definition of a project. This is referred to as project aggregation, and further described under 24 CFR 58.32.

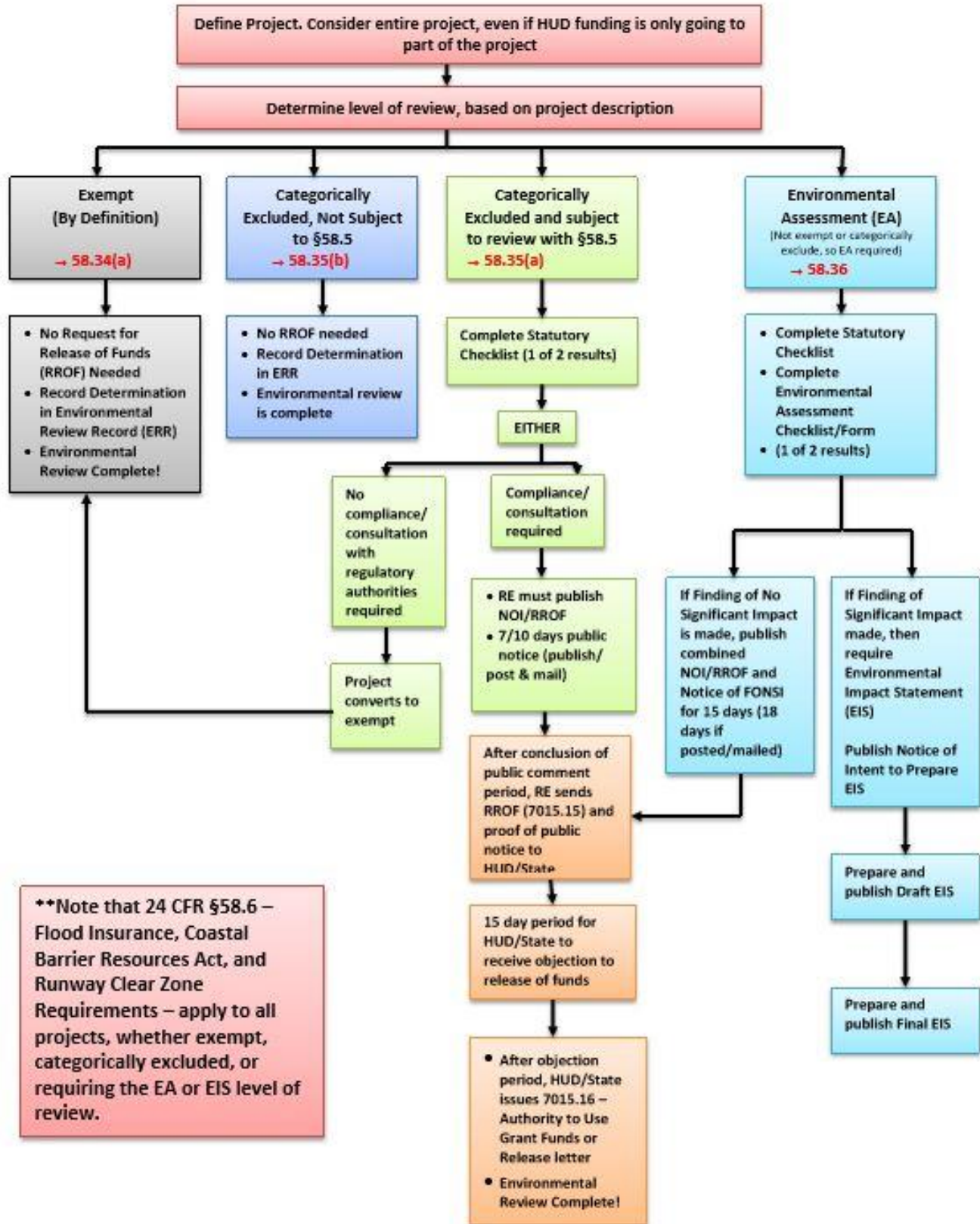
The environmental review must identify and address the physical, social, and economic impacts of each proposed activity prior to the grantee taking *a choice-limiting action* on that activity. Therefore, no contract may be let or work done on the site, whether publicly or privately funded, until the environmental review has been completed and funds released by HUD.

Environmental Review Process

The City ██████████ staff will complete the Environmental Review Record (ERR). The time required for completion of the ERR can vary from three weeks to three months. If the initial Environmental Assessment determines that a Phase 1 or 2 Environmental Site Assessment or an Environmental Impact Statement (EIS) is necessary, the costs are to be reimbursed by the project developer.

After completing the Environmental Review Record, staff must publish a notice in a local newspaper declaring the intent to request release of project funds from HUD. After the release of the funds by HUD, the appropriate staff will send the project developer an agreement with a written notice to begin the project. **Project activities shall not be implemented or any project costs incurred until receipt of the notice from HUD to proceed.**

The flow chart for environmental reviews will be followed for all CDBG Undertakings:



What is Tiering?

When used appropriately, tiering, as defined in 40 CFR 1508.28, is a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review” (40 CFR 1502.20). A tiered review consists of two stages: a broad-level review and subsequent site-specific reviews. The broad-level review should identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews. As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete environmental review addressing all required elements. Funds cannot be spent or committed on a specific site or activity until both the broad-level review and the site-specific review have been completed for the site.

When to Use Tiering

Tiering is a specialized form of conducting environmental reviews and is not appropriate for all activities, funding sources, or grantees. However, using tiering may increase efficiency when at the planning level HUD or the RE does not yet fully know the specific timing, location, or environmental impacts. For HUD environmental reviews, tiering may be appropriate when evaluating a collection of projects that would fund the same or very similar activities repeatedly within a defined local geographic area and timeframe (e.g., rehabilitating many single family homes within a city district or neighborhood over the course of 1 to 5 years) but where the specific sites and activities are not yet known.

When Not to Use Tiering

There are many situations in which environmental reviews should not be tiered. Tiering should not be used to review an entire funding source or HUD program unless all tiered activities are sufficiently alike to make a tiered review meaningful and effective. Tiering is also not appropriate for projects where specific locations have been identified, and for which the development of site-specific reviews is feasible.

Defining the Project

As with every environmental review, a tiered review must open with a complete and clear project description that defines the maximum anticipated scope of the project as specifically as possible. The broad-level review must start with a project description that communicates the scale of the project, including the type of activities, all proposed funding sources, maximum number of units (where applicable), average cost per unit, clearly defined geographic range (e.g. neighborhood or block group), and length of time considered by the review. Without a sufficient project description, environmental conditions and impacts cannot be accurately evaluated.

Broad-Level Reviews

The purpose of the broad-level review is to address those issues that are ripe for decision and define the procedures to be used at the site-specific level for those that are

not. A good broad-level review addresses general concerns and issues and provides the basis for decisions to be made at the site-specific level (e.g., areas where activities can and cannot be conducted and mitigation measures that will be required).

At the broad level, the City must consider each of the environmental laws and authorities that require compliance, depending on the level of review. If the full scope of the project including all potential activities can be determined to comply with an environmental law, authority or factor, then that particular compliance topic can be resolved at the broad level. For example, if the entire project area considered by the review is outside of the floodplain and in a county without a coastline, then the broad-level review may find that the project complies with the Coastal Barrier Resources Act, the Coastal Zone Management Act, the Flood Disaster Protection Act, and Executive Order 11988 on Floodplain Management (EO 11988).

Where compliance cannot be determined, the broad-level review must define a protocol for how compliance will be achieved at the site-specific level. This protocol should not merely state that the factor will be addressed in the site-specific review; rather, the broad review must define a strategy including procedures to be followed to determine compliance, mitigate impacts where possible, and dismiss sites that cannot be made compliant. For example, if a broad-level review covers an area that is partially in the Coastal Zone and considers activities that could impact the Coastal Zone, a determination cannot be made at the broad level that the project is in compliance with the Coastal Zone Management Act. In that case, the broad-level review would establish the procedures to be followed to determine whether each specific site is in the Coastal Zone and, if so, how determinations of compliance and any necessary consultation with the State Coastal Management Agency will proceed. Alternatively, it could define a policy that the broad-level review will not apply to projects in the Coastal Zone; in this case, any sites identified in the Coastal Zone would require a separate environmental review.

The requirements depend on the level of review. Tiered reviews that are Categorically Excluded Subject to Section 58.5 (CEST) must include an analysis of all of the related laws and authorities listed in 24 CFR 58.5 and 58.6. Environmental Assessments (EAs) must also consider the full range of factors and analysis that would normally go into an EA. It is especially important to have a clearly defined protocol to be followed at the site-specific level when completing EAs, as tiered EAs must contain detail and limitations sufficient to reach a Finding of No Significant Impact (FONSI). A FONSI cannot be made unless there are procedures in place to ensure that no activities covered by the tiered review will have significant impacts.

Clear public notice with a clear project description is crucial for tiered reviews, as the public must understand the nature and scope of anticipated projects in order to understand the potential impacts.

Site-Specific Reviews

When the site of an individual project is identified, Program Staff must complete the site-specific review. A site-specific review must be completed prior to committing HUD funds to the project. This review should not repeat the completed analysis and decisions, but should concentrate on the issues that were not resolved in the broad-level review (see 40 CFR 1508.28). Using the protocols established at the broad level, the site-specific review must determine and document the project's adherence to all established protocols and remaining requirements as defined in the broad-level review.

In cases where a particular site-specific activity does not conform to the limits established in the broad-level review, the broad-level review cannot be employed for that site. For example, sites that are outside the defined geographic boundaries, do not fit within the defined protocols for a particular law or authority, or involve activities that are not part of the project description for the broad-level review will require a new environmental review, separate from the tiered review.

Environmental Review Record for Tiered Reviews

Maintaining an organized environmental review record is especially important with regard to tiered reviews, as tiered environmental review records are not complete without both the broad-level and site-specific tiered reviews. All site-specific reviews must identify the corresponding broad-level review and should be filed together in HEROS.

Davis Bacon Prevailing Wage Requirements

The Davis-Bacon Act requires contractors and subcontractors to pay laborers and mechanics minimum wages based on each particular trade classification as established by the Department of Labor prevailing wage determination and to pay time and one half for any work in excess of 40 hours per week. The **CDBG Program cannot reimburse funds unless all the laborers and mechanics have been paid the correct wage rates**. Workers who have been underpaid must be paid restitution to meet the minimum wage rates before all CDBG funds can be disbursed.

Note: See specific Davis Bacon process in Appendix folder (F:Users/CDBG/Environmental Reviews/Policy Manual Appendix).

Section 3

The U.S. Department of Housing and Urban Development Economic Opportunities for Low and Very Low-Income Person, Section 3, requires that subrecipients maintain records of the income, racial/ethnic, and jurisdiction of their residence for any new hires and of business/contractors/subcontractors hired for certain projects funded with CDBG funds. The CDBG staff will provide forms on which the data must be collected.

Note: See City's Section 3 Plan and process in Appendix folder (F:Users/CDBG/Environmental Reviews/Policy Manual Appendix).