

ENVIRONMENTAL REVIEW MANUAL

***FOR THE
COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM***

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(Revised: January 2011)

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I. INTRODUCTION

Every project undertaken with state administered Community Development Block Grant (CDBG) funds is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA). In addition to the NEPA requirements there are other laws and authorities that contain environmental provisions with which CDBG grantees must comply.

The purpose of this manual is to aid CDBG recipients in fulfilling the requirements of the environmental review process. Prospective applicants and grant recipients should take special note that in all cases per 24 CFR Part 58.22(a-d) CDBG funds and non-CDBG funds cannot be obligated or expended until the environmental review process has been completed and accepted by the Wyoming Business Council (WBC). 24 CFR Part 58.22(a-d) reads:

- (a) Neither a recipient nor any participant in the development process including public or private nonprofit or for-profit entities, or any of their contractors may commit HUD assistance under a program listed in Section 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition until the RROF and the related certification have been approved neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in Section 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.*
- (b) If a project or activity is exempt under section 58.34 or is categorically excluded (except in extraordinary circumstances) under Section 58.35(b) no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in Section 58.34(b) and Section 58.35(d), but the recipient must comply with applicable requirements under section 58.6.*
- (c) If a participant is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this Section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.*
- (d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.*

If funds are obligated or expended prior to completion of the environmental review, the WBC must determine those expenses ineligible for reimbursement.

The forms referenced in this manual are available online at http://wyomingbusiness.org/community/cdbg_forms.aspx0. If you do not have access to the

internet, if you encounter issues while retrieving these documents from the website, or if you have any questions concerning any part of the environmental review process please contact the WBC at (307) 777-2812. Correspondence should be directed to:

Wyoming Business Council
Division of Investment Ready Communities
214 West 15th Street
Cheyenne, WY 82002

II. GRANTEE RESPONSIBILITIES

1. Environmental Review Record (ERR). The grantee is required to maintain written records and a file for documentation of the complete environmental review process. The ERR should contain the following:

- a. A description of the project including the project location and cost.
- b. Copies of all checklists.
- c. Public notices and public comments.
- d. Written determinations, such as the written clearance letter from the State Historic Preservation Office.
- e. Request for Release of Funds and Certification
- f. All correspondence from the WBC including the environmental release letter and HUD Form 7015.16
- g. Monitoring report and response

2. Conduct Environmental Review. The WBC determines what types of environmental provisions pertain to a specific project/activity and in turn requests the grantee to conduct the appropriate type of environmental review.

3. Public Comment Opportunities. For projects that are neither Exempt nor Categorically Excluded, the grantee must provide a period for public comment and review related to grantee environmental findings. All time periods are 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 that initiates the time period.

4. Public Comment Period. Notice of Finding of No Significant Impact (FONSI): 15 days from the date of publication or if no publication, 18 days from the date of mailing and posting. Notice of Intent to Release Funds (NOI/RROF): 7 days from date of publication or if no publication,

10 days from date of mailing and posting. Combined Notice: Same as FONSI.

The FONSI must be made available for public comments for 30 days when:

- a. There is considerable interest or controversy concerning the project
- b. The proposed project is similar to other projects that normally require the preparation of an EIS
- c. The project is unique and without precedent

5. Comply with All Environmental Laws. The grantee must comply with NEPA and other related federal laws and authorities.

6. Environmental Certification and Funding Requests. The environmental review process is not complete until the grantee has properly certified its environmental findings and records to the WBC. The certification process also serves as a request for release of CDBG funds.

7. Initiation of the Environmental Review Process. The environmental review process may begin as soon as the grant has been awarded by the WBC. However, if the local government wishes to proceed with the environmental review prior to grant award it may do so at its own risk with the understanding that a grant may not be awarded, and therefore the work conducted could prove unnecessary.

8. Project Aggregation. A grantee must group together and evaluate as a single project all individual activities that are related either geographically or functionally. For example, a project that would include curb and gutter, street paving and water and sewer lines should be grouped together and reviewed as one project. This may also include non-CDBG funded activities that are associated with a CDBG funded activity. For example, a non-CDBG funded industrial building served by CDBG funded water and sewer lines. (see 24 CFR Part 58.32)

9. Grantee Certifying Officer. Accepting CDBG funding means the grantee agrees to assume the responsibilities of the "responsible Federal official" as the term is used in the NEPA. Therefore, the grantee must select an individual who will be responsible for the overall environmental review and its conclusion. This individual is not required to actually perform the environmental review, but must be knowledgeable about how the review was conducted and the rationale behind any determinations. The mayor, city/town/county attorney, engineer, planner, clerk/treasurer, councilman, county board member or chairman are all potential certifying officers. However, if the certifying officer is other than the chief elected official or chief administrative officer, the certifying officer must be designated by a resolution passed by the governing body. Consultants and paid staff may provide technical assistance or perform the environmental review, but the certifying officer is ultimately responsible for the proper preparation of the environmental review.

III. TYPE OF PROJECT/ACTIVITIES

There are three types of projects/activities. They are: 1) exempt, 2) categorically excluded, and 3) project activities that are neither exempt nor categorically excluded. The level of environmental review required is determined by the project/activity type. The following is an explanation of each activity and the basic procedures that must be followed for each type of project/activity.

Exempt Projects/Activities.

1. Environmental and other studies, resource identification and the development of plans and strategies.
2. Information and financial services.
3. Administrative and management activities.
4. Public services that will not have a physical impact or result in physical changes.
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, imminent threats or physical deterioration.
11. Payment of principal and interest on loans made or obligations guaranteed by HUD.

A grantee does not have to submit to the WBC a Request for Release of Funds (RROF) and certification if the project activity is determined to be exempt. The WBC will notify the grantee in writing if the project is exempt and will provide the date costs can be incurred (when the grant agreement has been fully executed). No further environmental approval from WBC will be needed by the grantee for the draw down of funds. However, the grantee must place a copy of the letter from the WBC documenting the exempt status of the project in the ERR.

Categorically Excluded Projects/Activities.

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements when the facilities are in place and will be retained in the same use without change in size or capacity of more than twenty percent.
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons.
3. Rehabilitation of buildings and improvements when the following conditions are met:
 - a. In the case of multifamily residential buildings:
 - (1) Unit density is not changed more than twenty percent
 - (2) The project does not involve changes in land use from residential to non-residential
 - (3) The estimated cost of rehabilitation is less than seventy-five percent of the total estimated cost of replacement after rehabilitation
 - b. In the case of non-residential structures, including commercial, industrial, and public buildings:
 - (1) The facilities and improvements are in place and will not be changed in size or capacity by more the twenty percent
 - (2) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another
4. An individual action on a one to four unit family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are more than four units on any one site.
5. Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.
6. Combination of the above activities.

Even though a project is categorically excluded from the requirement of NEPA, a grantee must still comply with the environmental requirements of other related laws and authorities. This is done by completing the Statutory Checklist. When complete, this checklist must be made part of the ERR

and available for public review.

When completing the Statutory Checklist, the grantee must consult with the appropriate local, state, and federal agencies that do or might have an environmental interest in the project or activity. The grantee must show consultation through documented letters or other forms of communication. All letters and contact information must become part of the ERR. If after consultation, the grantee determines it must comply with certain other federal environmental laws or regulations, a public Notice of Intent to Request Release of Fund (NOI/RROF) must be prepared and published (see Appendix A for sample form). This notice must be published at least once in a general circulation newspaper in the project area. If there is no newspaper, the notice must be prominently posted at the local post office and other public buildings. The comment period for the published NOI/RROF is a full seven days, or ten days if posted. On the eighth day following the date of publication or eleventh day following posting, and assuming there are no adverse comments, the grantee may submit the Request for Release of Fund (RROF) and certification to the WBC. Along with the RROF, the grantee must also submit a copy of the completed Statutory Checklist and affidavit of publication.

After reviewing these documents, the WBC must allow a fifteen day comment period before taking any further action. If no adverse comments are received by the WBC during the fifteen day period, the grantee will be notified the environmental conditions have been satisfied. At this time, the grant agreement will be executed. The WBC will notify the grantee of the date they may incur costs assuming all other grant conditions have been met.

If the grantee has learned through the consultation process that there are no circumstances that require compliance with Federal laws and authorities identified in the Statutory Checklist, the project may be declared exempt. If this determination is made the WBC must be notified and documentation submitted indicating how the determination was made. After the WBC reviews and approves the determination, a NOI/RROF will not be required and the grant agreement will be executed and the grantee will be notified of the date they can incur costs assuming all other grant conditions have been met.

Categorically Excluded Activities that do not require the statutory checklist.

HUD has determined that there are some Categorically Excluded activities that would not alter any conditions that would trigger a review or compliance determination as cited in Sec. 58.5 and therefore would not require the completion of a statutory checklist but does require completion of ERR Guide #3 (page 13). These activities include:

1. Tenant-based rental assistance;
2. Supportive services including, but not limited to health care, housing services, permanent housing placement, daycare, 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 under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.
 6. Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
 7. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

If a grantee determines that an activity or project identified above, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, they will be required to complete the statutory checklist. Contact the WBC if you have questions.

Non-exempt and Non-categorically Excluded Projects/Activities.

If an activity or project is neither exempt nor categorically excluded, the grantee must prepare an environmental assessment by completing the Environmental Assessment and Statutory Checklist. The development of undeveloped land or changes in land usage or density will always require a full environmental assessment. The environmental assessment enables the grantee and others to determine the degree of impact an activity may have on the environment. An environmental assessment will permit all interested public agencies, community groups, and individuals to examine the environmental data developed and to comment on the environmental findings and course of action determined by the grantee.

The grantee is required to undertake the following procedures when completing an environmental assessment.

1. Grantees must coordinate their environmental review efforts with appropriate local, state, and federal agencies that have an interest in or responsibility for the environmental laws and/or potential impacts of the project.
2. Grantees must document the above coordination or consultation and make this documentation a part of the ERR. This is accomplished by completion of the Environmental Assessment Checklist.
3. Grantees must conclude the Environmental Assessment by making one of two

determinations. They are:

- a. Finding of No Significant Impact (FONSI), meaning the project is in compliance with all applicable environmental laws and regulations, and that an Environmental Impact Statement is not required, or
- b. Finding of Significant Impact (FOSI), meaning the project may or will have a significant environmental impact and will require an Environmental Impact Statement. If such a determination is made, the Wyoming Business Council must be contacted for further instructions.

If the environmental assessment concludes with a Finding of No Significant Impact (FONSI), the following procedures and notices are required:

1. **Finding of No Significant Impact Notice:** This notice must be released for public review and comment. At a minimum, the notice must be distributed to the local news media, individuals and groups interested in the project and appropriate local, state and federal agencies in particular the U.S. EPA.

The FONSI notice must be published at least once in a newspaper of general circulation in the affected community. If there is no newspaper the FONSI notice must be posted at the local post office as well as other public buildings.

The FONSI notice must be open for public review and comment at least fifteen days if published or eighteen days if posted, before proceeding to the next notice phase, that is the Notice of Intent to Request a Release of Funds (NOI/RROF). However, the FONSI must be made available for public comment for thirty days if; 1) there is considerable interest or controversy concerning the project, 2) the proposed project is similar to other projects that normally require the preparation of an EIS, or 3) the project is unique and without precedent.

2. **Notice of Intent to Request a Release of Funds:** This notice is required to signify the grantee intends to request, from the Wyoming Business Council, a release of the CDBG program activity funds. The grantee may wish to publish the NOI/RROF at the same time it publishes the FONSI notice. A combined notice, which is preferred by the WBC, consists of a single document containing the FONSI and the NOI/RROF. The minimum time required for public review and comment for the combined notice is fifteen days from the date of publication or eighteen days if posted. If a thirty-day FONSI comment period is used as described above, a thirty day comment period must be used for the combined notice.

Depending on the length of the comment period, on the first day following the last date of the comment period of the combined notice, and assuming there are no adverse comments,

the grantee must submit the Request for Release of Funds (RROF) and certification to the WBC. Along with the RROF, the grantee must also submit:

1. Environmental Assessment Checklist
2. Affidavit of publication for the combined FONSI and NOI/RROF notice. This can be obtained from the newspaper.
3. HUD Form 7015.15

After reviewing these documents, the WBC must allow a fifteen-day comment period before taking any further action. If no adverse comments are received by the WBC during the fifteen-day period, the grantee will be notified the environmental conditions have been satisfied. At this time the grant agreement will be executed and the grantee will be notified by the WBC when all grant conditions have been met and costs may be incurred.

24 C.F.R. PART 58 (GENERAL FLOWCHART)

