

Instructions for completing the “Statutory Checklist”

For HUD-funded projects that are categorically excluded pursuant to 24 CFR Part 58.35(a), the Responsible Entity (RE) must make a determination of whether the proposal achieves compliance with each applicable statute, executive order, or regulation with or without requiring formal consultation, mitigation, permits, or having adverse effects on the resources protected by the federal laws and authorities of 24 CFR Part 58.5. These instructions are a brief description of essential findings needed to establish compliance and ARE NOT INTENDED TO REPLACE THE APPLICABLE REGULATIONS. Applicable regulations take precedence over these brief instructions. The preparer of the “Statutory Worksheet” must always document and/or attach reliable information/sources used in making these environmental determinations.

Record the finding/determination status on the “Statutory Checklist” for each listed federal statute, executive order, and regulation, as follows:

- Status “A” applies when compliance with the statute, executive order, and/or regulation is achieved without adverse effects on the Federally-protected resource, without necessary mitigation or attenuation, AND when no formal consultation, permit or agreement is required to establish compliance. In these situations, enter “A” in the “Statutory Checklist” status column.
- Status “B” applies when project compliance with the statute, executive order, and/or regulation requires formal consultation, a permit, or an agreement, OR when the proposal may have an adverse effect on the protected resources. Status “B” discussions below summarize what additional steps or formal procedures must be completed prior to submitting a Request for Release of Funds (RROF) to HUD/State government, as applicable. Evidence of completion and implementation of the required procedures or mitigation must be retained in the project Environmental Review Record (ERR).

Historic Properties (including archaeology):

- A) The Responsible Entity (RE) and the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), as appropriate, agree that there are No Historic Properties Affected per 36 CFR 800.4 OR the SHPO has not objected within 30 days to such a fully documented determination.
- B) The proposal has an effect on historic properties. Consult with SHPO et al., per 36 CFR Part 800.5 et seq., to resolve or mitigate adverse effects on historic properties.

Floodplain Management:

- A) The project does not involve property acquisition, management, construction, or improvements within a 100-year floodplain (Zones A, M, N, P, E, or V) identified by FEMA maps, and does not involve a “critical action” (i.e. emergency facilities, facility for mobility impaired persons, etc.) within a 500 year floodplain (Zones B, C, & X). If FEMA has not published flood maps, the RE must make a finding based on the best available data (i.e. from the City/County Engineer or local Flood Control Agency).
- B) Complete the 8-step decision making process pursuant to 24 CFR Part 55.20 to document that there are no practicable alternatives to the proposal and to mitigate the effects of the project in a flood hazard area of concern.

Wetlands Protection:

- A) The project does not involve new construction within or adjacent to wetlands, marshes, wet meadows, mud flats, or natural ponds per field observation, a formal wetland delineation, and/or maps issued by the U.S. Department of the Interior, Fish & Wildlife Service (USFWS) or the U.S. Army Corps of Engineers (USACE).
- B) Complete the 8-step decision making process pursuant to 24 CFR 55.20 to document there are no practicable alternatives to the proposal and to mitigate effects of the project on wetland areas. Such actions also require obtaining a permit from the U.S. Corps of Engineers under Section 404 of the Clean Water Act (CWA) for dredging and filling in wetland areas protected by the CWA.

Coastal Zone Management:

- A) All projects located in the States of Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming are considered as NOT having the potential to impact areas protected by the Coastal Zone Management Act of 1972.

Sole Source Aquifers:

- A) The project is not located within a U.S. Environmental Protection Agency (EPA) designated sole source aquifer watershed area per the EPA Ground Water Office, OR the project need not be referred to the EPA for evaluation according to the HUD-EPA (Region IX) Sole Source Aquifer Memorandum of Understanding of 1990.
- B) Consult with the Water Management Division of EPA to design mitigation measures to avoid contaminating the aquifer and implement appropriate mitigation measures.

Endangered Species:

- A) The RE determines that the proposal will have “no effect” or “is not likely to adversely affect” any federally protected (listed or proposed) Threatened or Endangered Species (i.e., plants, animals, fish, or invertebrates), nor adversely modify their critical habitats. This finding is to be based on contact made with the U.S. Fish and Wildlife Service or with the State government equivalent agency to the USFWS, or by a special study completed by a qualified professional biologist or botanist. Only a determination of “no effect” does not require being sent to USFWS for concurrence.
- B) Consult with the USFWS in accordance with procedural regulations contained in 50 CFR Part 402. Formal consultation with USFWS is always required for federally funded “major construction” activities and anytime a “likely to adversely affect” determination is made.

Wild and Scenic Rivers:

- A) The project is not located within one mile of a listed Wild and Scenic River, OR the project will have no effects on the natural, free flowing, and/or scenic qualities of a river segment in the National Wild and Scenic Rivers system.
- B) Consult with the U.S. Department of Interior, National Park Service for impact resolution and mitigation.

Air Quality:

- A) The project is located within an “attainment” area, OR, if within a “non-attainment” area, conforms to the EPA-approved State Implementation Plan (SIP), per contact with the State Air Quality Management District or Board, AND the project requires no individual NESHAP permit or notification.
- B) Negotiate suitable mitigation measures with the Air Quality Management District or Board; obtain necessary permits; and issue required notices. (For example, 40 CFR 61.145 requires a 10-day prior notification to the Air Quality District Administrator whenever 260 linear feet, 160 square feet, or 35 cubic feet of asbestos containing material is to be disturbed during rehabilitation/demolition activities in multi-family properties).

Farmland Protection:

- A) The project site does not include “Important Farmland” or other “Farmland of Statewide or Local Importance” as identified by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service, OR the project site includes such farmland, but is located in an area already committed to urban use (i.e. as determined by the NRCS or as determined by local planning and zoning classifications).
- B) Initiate and complete the “Land Evaluation and Site Assessment” (LESA) decision-making process in coordination with the NRCS, using interagency form AD-1006, “*Farmland Conversion Impact Rating*”, and consider the resulting rating in deciding whether to modify or approve the proposal, as well as determine appropriate mitigation measures (including measures to prevent adverse effects on adjacent farmlands).

Environmental Justice:

- A) The proposed project/activity is suitable for its proposed location and use and will NOT (1) disproportionately be adversely impacted by or (2) disproportionately adversely impact low income or minority populations.
- B) If the suitability of the proposed project/activity for its proposed location and use is a concern because it would likely disproportionately be adversely impacted by or disproportionately adversely impact low income or minority populations, such impacts should be avoided or mitigated to the extent practicable. Address and mitigate OR reject the proposal.

Noise Abatement and Control:

- A) The project does not involve the development of noise sensitive uses; OR the project is not within the line-of-sight threshold distances of a major or arterial roadway (1,000 feet), railroad (3,000 feet), or airport (15 miles) pursuant to the HUD publication, “*Noise Assessment Guidebook*” (NAG) (the implementation guidelines for complying with 24 CFR Part 51, Subpart B); OR the ambient noise level is documented by a reputable source to be 65 LDN (CNEL) or less based on the NAG for calculating noise levels or from a commercial airport or military airfield noise contour map.
- B) Apply the noise standard, per 24 CFR Part 51.101, to the decision whether to approve the proposal (see 24 CFR Part 51.104) and implement NAG noise attenuation measures as applicable.

Explosive and Flammable Operations:

- A) The project is located at an Acceptable Separation Distance (ASD) from any above-ground explosive or flammable fuels or chemicals containers according to HUD publication, *"Siting of HUD-Assisted Projects Near Hazardous Facilities"* (Appendices F & G, pp. 51-52), OR the project will expose neither people nor buildings to such hazards.
- B) Mitigate the blast overpressure or thermal radiation hazard with the construction of a barrier of adequate size and strength to protect the project pursuant to 24 CFR Part 51.205.

Toxic Chemicals and Gases, Hazardous Materials, Contamination, and Radioactive Substances:

- A) The subject and adjacent properties are free of toxic chemicals and gases, hazardous materials, contamination, and radioactive substances which could affect the health or safety of occupants or conflict with the intended use of the subject property. Particular attention should be given to nearby dumps, landfills, industrial sites and other operations with hazardous wastes. The EPA's Comprehensive Environmental Response, Compensation, and Liability Act CERCLIS listing of known hazardous/toxic waste sites, other similar databases related to this topic and the State government health agency with jurisdiction should be consulted as determined necessary to make a realistic determination in this matter. A State government health agency issued site clean-up and clearance letter, for example, may be obtained to reach closure on this issue.
- B) Mitigate the adverse environmental condition by removing, stabilizing, or encapsulating the toxic substances in accordance with the requirements of the appropriate Federal, state, and/or local oversight agencies; OR reject the proposal.

Airport Clear Zones and Accident Potential Zones:

- A) The project is not within a FAA-designated civilian airport Runway Clear Zone (RCZ) or Runway Protection Zone (RPZ), or within a military airfield Clear Zone (CZ) or Accident Potential Zone (APZ) or Approach Protection Zone (APZ), based on information from the civilian airport or military airfield administrator identifying the boundaries of such zones, OR the project involves only minor rehabilitation, OR the project involves only the sale or purchase of an existing property in the subject zones.
- B) It is HUD policy not to provide any development assistance, subsidy, or insurance in RCZs or CZs unless the project will not be frequently used or occupied by people and the airport operator provides written assurances that there are no plans to purchase the project site.