Environmental values shall be given appropriate consideration in decision making by Federal Agencies.

Environmental information must be made available to citizens & decision-makers before decisions made … before actions taken.

Certain entities – units of general local government – may assume HUD’s NEPA responsibilities under Part 58 and act as Responsible Entity (RE).

RE assumes responsibility for:
- Environmental review
- Environmental decision-making
- Environmental action that would apply to HUD under NEPA and related laws.
Environmental Review

- Evaluation of any HUD-assisted action and its relationship to NEPA & related environmental laws
- Part 58 reviews “projects,” not funds
- Environmental approval (aka, “clearance” or “release of funds”) is for the project, not the source of HUD funds

NEPA-Related Laws and Authorities (24 CFR Part 58.5 & 50.3/50.4)

- National Historic Preservation Act (1966)
- Wild and Scenic Rivers Act (1968)
- Clean Air Act (1970)
- Coastal Zone Management Act (1972)
- Noise Control Act (1972)
- Endangered Species Act (1973)
- Safe Drinking Water Act (1974)
- Floodplain & Wetlands Management (1977)
- Environmental Justice E.O. (1994)

Consider the Impacts of the project

- Project on the Environment
  Endangered species, wetlands, historic properties, air and water quality...
- Project on the Project
  Toxic contamination, radon, explosive operations, noise impacts, flooding, airport hazards...
- Adverse
- Beneficial
- No Affect
**Limitation on Action [§58.22]**

Prior to Release of Funds, Recipient may not:

- Commit HUD funds
- Commit ANY non-HUD funds (public or private), where the activity would have an adverse environmental impact or limit the choice of reasonable alternatives

On any Choice-limiting actions:
Bid letting, real property acquisition, leasing, disposition, demolition, rehabilitation, repair, renovation, construction, conversion and site improvements

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**Environmental Review Record [§58.38]**

- **ERR** = written evidence of review > decision-making > action
- Contains all evaluations, findings, decisions, documentation, public notices, approvals …
- RE’s only proof of procedural compliance with Federal environmental law and your defense against environmental challenges

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**The Environmental Review Process**

1. Define Project
2. Determine “Level-of-Review”
3. Perform Review
4. Publish Notices
5. Request Release of Funds (RROF)
6. Release of Funds Letter
7. Environmental Review Record (ERR)
Define the Project

- Capture maximum anticipated scope of the proposal

Maps, Aerials, Photos, Narrative, Budgets, Schedule

Define the Project

Evaluate as a single project all individual activities that are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions

Must include both HUD and non-HUD funds

Define the Project: Consider Alternatives

Alternative Sites…Design…Actions…Timeframes
Levels of Review

- Exempt
- Categorically Excluded Not Subject to 58.5
- Categorically Excluded Subject to 58.5
- Environmental Assessment
- Environmental Impact Statement

Exempt Activities [§50.34(a) / §50.19]

- Environmental studies or Planning
- Information & financial services
- Administrative & management activities
- Public services (no physical impact)
- Inspections & testing properties
- Purchase of tools & insurance
- Engineering or design costs
- Technical assistance & training
- Payment of principal and interest
- Temporary assistance for disaster or imminent threats

Categorical Exclusions (CE)

Category of actions that do not individually or cumulatively have a significant effect [40 CFR 1508.4]

HUD has two types of CE:
- CE "Not Subject" to Related Authorities (CENST) [§58.35(b) / §50.19]
- CE "Subject To" Related Authorities (CEST) [§58.35(a) / §50.20]
§58.35(b)  
(4) Economic development activities not associated with construction or expansion of existing operations.

Like: EDSA projects where we just purchase equipment

CE Not Subject to §58.5 authorities

§58.35(a)  
(1) Acquisition, repair, improvement, reconstruction or rehabilitation of public facilities and improvements when:
   - Facilities and improvements are in place
   - Less than 20% change in size or capacity
   - No change in land use

Like: re-lining/replacing water/sewer lines

CE Subject to §58.5 authorities

Let's talk more about.....
Less than 20% change in size or capacity:
- If improvement result in 20% or more treatment capacity = NOT categorically excluded subject to.
- If line size goes from 4" to 8" = lines are changing size by 50%. NOT categorically excluded subject to.
- Facilities and Services in Place = footprint of facility won’t change
§58.35(a)

(3) Rehab/improvement of buildings

(i) Single-Family residential (1-4 units)
- Density not over 4 units
- Land use not changed
  Like: HSG projects

(ii) Multifamily residential

(iii) Commercial, industrial, public, institutional
- No change in capacity beyond 20%
- Land use not changed
  Like: DTR projects

Note no increase/changes of size, density, cost, land use, building footprint

Requirement: ALL PROJECTS [§58.6/§50.4]

» Requirements apply “as appropriate”
  - Coastal Barrier Resources Act
  - National Flood Insurance Program
  - Airport Runway Clear Zones

» For CEST projects there is a separate form
  (24 CFR 58.6 Requirements Form)

» For EA projects it is incorporated into the document

“Statutory Checklist”

STATUTORY CHECKLIST

24 CFR §§ 605 - NEPA-Related Federal Statutes and Authorities

DIRECTORS: For each category, check one of the appropriate boxes under “Statute.”

20

21
Documenting Compliance

### Types of Support Documentation
- Field Observations (include photographs)
- Interviews (must include name/title/date)
- Printed Materials
  - letters, emails, phone log
  - plans, maps
  - aerials
  - reports, studies, analyses
  - web-based material (not just URL)
  - photographs

### Environmental Assessment [§58.36/§50.31]
- Required for any project not Exempt, not Categorically Excluded, and that does not meet EIS threshold
- Prepared using "Environmental Assessment" format and must follow §58.40
  - Includes Statutory Checklist
  - Includes 58.6 requirements (airports, flood insurance, coastal barriers)
- Includes assessment of land, socioeconomic, and community facilities and services in the project area

Like: Most CF and WS projects
Exercise Time

» Complete Level of Review Exercise
» By yourself or with friends
» 5 minutes and then we will review

Use of Prior/Other NEPA Review [§58.53]

- Request copy of other Federal, State or local agencies’ EA and use to the extent practicable
- **RE/HUD must independently review** the environmental analysis, prepare the EA, be responsible for the required environmental finding, and complete RROF process
  - Note: HUD’s unique requirements – 24 CFR Part 51 Airports/ Noise/ Explosive Operations
- **RE/HUD may only “adopt” another EA if Cooperating Agency Agreement exists** [§58.52]

Tiered Review [§58.15]

Appropriate when evaluating a proposal at the early stages of development or when site-specific analysis not yet feasible
- Generally, restrict Tiering to **CEST-level** reviews.
  - **Tier 1: Broad review** Address all laws and authorities possible and establish a plan (narrative) for the site-specific or subsequent review. Publish public notice (NOI/RROF) and submit RROF
  - **Tier 2: Site-Specific review** No public notice or RROF required unless unanticipated impacts or impacts not adequately addressed in prior review
Updating the ERR [§58.47]

» Re-evaluation of project is required when new activities added, unexpected conditions arise, or substantial changes made to nature, magnitude or extent of project.

✓ If original finding still valid: Update the ERR with memo to the file

✓ If original finding no longer valid or project significantly changed: RE must prepare new review and proceed with approval process (RROF)

Summary of RROF Process

Two Routes for Release of Funds & Notices:

» One, if project is “Categorical Exclusion Subject To” (CEST)
  • NOI-RROF – “Notice of Intent to Request the Release of Funds”

» Two, if project requires Environmental Assessment (EA):
  • NOI-RROF – “Notice of Intent to Request the Release of Funds” and FONSI notice – “Finding of No Significant Impact”
  • Typically these are combined
**Summary of RROF Process:**

**Categorical Exclusion (CEST) Projects**
1. RE mails & publishes/posts **NOI-RROF public notice**
2. RE observes 7/10-day comment period
3. RE addresses any comments received
4. RE signs RROF and submits to State, with proof of mailing, publication and/or posting
5. State observes 15-day comment period
6. State issues “Release of Funds Letter”
7. RE implements project, including any environmental conditions that apply

---

**Environmental Assessment (EA) Projects**
1. RE mails, publishes and/or posts **FONSI/NOIRROF (“combined notice”)**
2. RE observes 15/18-day or 30-day comment period
3. RE addresses any comments received
4. RE signs RROF Form and submits to State, with proof of mailing, publication and/or posting
5. State observes 15 day comment period
6. State issues “Release of Funds Letter”
7. RE implements project, including environmental conditions that apply

---

**Timing & Counting Days**

- RE starts counting the day **AFTER** publication
- If last day of comment period falls on Sat, Sun or Holiday, should accept comments through the following business day
- RE may extend comment period for any reason
- **RE Signs** and submits RROF the day **AFTER** last day of comment period
### Example: RE's Comment Periods

For CEST and EA projects

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### Key Points – ALL PUBLIC NOTICES

- Use HUD-recommended template for notice. It contains the minimum content - you may add language, but do not subtract
- FONSI and NOI-RROF notices must be mailed to interested groups and individuals
- RE must address and resolve any comments received **before** signing the RROF and before submitting the RROF to State
Key Points – ALL PUBLIC NOTICES

» Posting: Post notices within the neighborhood impacted and in a manner consistent with REs “Citizen Participation” process

» Publishing: Publish notice in newspaper of general circulation in the affected community

» Documentation:
  ▪ Publishing = Copy of publication and affidavit
  ▪ Posting = Copy of posted notice and signed statement of distribution
  ▪ Mailing = Signed statement of distribution

FONSI Notice

» RE must send FONSI to individuals & groups known to be interested, local news media, appropriate tribal, local, state and federal agencies, Regional EPA and local HUD office [§58.43(a)]

» EPA Region VII only wishes to see complex EA or EIS-level reviews

» “Appropriate” agencies depends on project, complexity, controversy, impacts…

Request for Release of Fund Form

- Must use HUD template. Link to the most current form found on IEDA website: https://www.hud.gov/sites/documents/7015.15.PDF

- Packet details what information goes in each section

- Form must be signed AFTER public comment has ended and only by the Mayor or Board Chair
Exercise Time

» Complete Publication Exercise
» By yourself or with friends
» 5 minutes and then we will review

IEDA Website

https://www.iowaeconomicdevelopment.com/Community/downloads

Let’s review

» Categorically Excluded Packet (on website):
  ✓ Step by Step sheet
  ✓ Level of Review Form
  ✓ 24 CFR 58.6 Form (Runway Protection and Flood Insurance)
  ✓ Statutory Checklist
  ✓ NOI/RROF notice
  ✓ RROF form (web link)

» Environmental Assessment Packet (on website):
  ✓ Step by Step sheet
  ✓ Level of Review Form
  ✓ Environmental Assessment (24 CFR 58.6 form, statutory checklist, and environmental assessment checklist)
  ✓ FONSI/RROF notice
  ✓ FONSI distribution list
  ✓ RROF form (web link)
Submission of Environmental Review to IEDA

- Upload to IowaGrants: ERR
- Send to IEDA via Mail:
  - Original RROF (HUD-7015.15)
  - copy of publication and affidavit

Break Time: 10 Minutes

Air Quality
Clean Air Act (CAA) of 1970

- Comprehensive – regulates air emissions from area, stationary, and mobile sources
- Act authorized EPA to establish National Ambient Air Quality Standards (NAAQS) – maximum pollution standards – to protect public health and environment
- Areas that do not meet these NAAQS are called “non-attainment areas”
- State must develop State Implementation Plans (SIPs) to regulate emissions in “non-attainment areas”

ERR Compliance & Documentation

Research if area is in a non-attainment area:

- Go to the EPA website: https://www3.epa.gov/airquality/greenbook/mapsnpoll.html
- If not in a non-attainment area = done
- If in a non-attainment area = document whether proposed action has potential for air emissions

If no potential for air emission reasonably exists, document using narrative statement that project complies with CAA because it will:
- not cause or increase violation of NAAQS standard
- nor delay compliance with any NAAQS standard

How do I show I have considered this.....

In the Statutory Checklist:

Two steps needed to show compliance documentation:

1. Description in the checklist
   - Make a statement: project is or is not in a non-attainment area
   - If it is in a non-attainment area, will the project add to the air contamination
2. Supporting documentation in Appendix
   - Map
ERR Compliance & Documentation

Only 2 in Iowa:
- Council Bluffs = lead (2008)
- Muscatine County = Sulfur Dioxide (2010)

Contamination & Toxics Substances

What is Site Contamination?

The release of a hazardous or toxic chemical or substance, including petroleum products, on or in proximity to the project site in sufficient quantity as may be harmful to the environment, humans or other living organisms.
What regulations apply to contamination?

24 CFR 58.5(i)(2) & 24 CFR 50.3(i)

“All property proposed for HUD program assistance shall be free of hazardous materials, contamination, toxic chemicals, gasses and radioactive substances where the hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.”

The Investigation for your ERR

- The investigation should take more than a few minutes to complete
- Do not include list upon list with no explanation
- Only include relevant information

Types of Investigation

Field Inspection (First Step)
- Site Visit
- Google Earth/Maps (birds eye view)

Environmental Compliance Search (MOST IMPORTANT)
- State: Contaminated sites Database: https://www.iowadnr.gov/contaminated/sites/

Historic Land Use Search (Optional)
- City Directory / Land Use Directory
- Sanborn Fire Insurance Rate Map
**Field Inspection**

What to look for:
- Vents, pipes
- Under & above ground tanks
- Monitoring well
- Distressed vegetation
- Drums, containers
- Pits, ponds or lagoons
- Stained soil or pavement
- Pungent, foul or noxious odors
- Dumped material, mounds of dirt, rubble, fill...

**Historic Land Use Search**

Best used for new construction sites or vacant land
What to look for:
- Gas/Service Station
- Dry Cleaner
- Auto Repair
- Manufacturing Facilities
- Industrial Uses
- Recycling/Salvage Facilities
- Timber/Wood Facilities
- Railroad yard/lines

**Environmental Compliance Search**

Where to look:
- Federal databases
  - ECHO
  - EnviroMapper
- State Databases
  - Contaminated Sites
  - UST/LUST

Look to see if any sites are on or near the project site AND Research to see if any of those sites will impact the project site
Search Distances

- **Federal RCRA Generators**: Site Location and adjacent properties.
- **Leaking Underground Storage Tanks (LUST)**: ½ mile radius. Researched on DNR LUST website.
- **Brownfield Sites**: ½ mile radius. Found on DNR Contaminated Sites Website.
- **CERCLIS**: ½ mile radius. Found on DNR Contaminated Sites Website.

DNR: Leaking Underground Storage Tanks

- [https://programs.iowadnr.gov/tanks/pages/advanced.aspx](https://programs.iowadnr.gov/tanks/pages/advanced.aspx)
- Click on LUST at top of page
- Enter City
- LUST
  - Risk (high)
  - City
  - Click on red arrow
- Include this page in your ERR

DNR: Leaking Underground Storage Tanks

- Determine if 118 main is adjacent or downhill from your project site. If it is then,
  - Click Remediation, CA/Teir 3, documents on the toolbar
  - In this case a document revealed that they are going to conduct testing.
  - Next course of action is to contact DNR
- Include this documentation and your conversations in your ERR
DNR Contaminated Sites

- [https://programs.iowadnr.gov/contaminatedsites/](https://programs.iowadnr.gov/contaminatedsites/)
- Click on Site Search on the landing page
- Investigate all that come up regardless of where they are in comparison with your project site.
- Click on ID number on left hand side

**Contaminated Sites**

- Jim’s tire service

**Contaminated Sites**

- Look at top left to make sure it says CLOSED
- Include this page in your ERR

US EPA

- [https://echo.epa.gov/](https://echo.epa.gov/)

**ECHO**

- Look to make sure none have Significant Violations
- If they do, see what the violation is about and if it will effect your project
- Include this screen shot and any other information in the documentation
Asbestos

Air Toxics – a.k.a “Hazardous Air Pollutants” (HAPS) - Pollutants known or suspected to cause cancer or other serious health problems, or cause adverse environmental effects

- 183 HAPs currently listed (carcinogens, mutagens or reproductive toxins), including:
  - asbestos
  - radon
  - benzene
  - perchloroethylene
  - mercury
  - lead compounds
  - chromium

Air Toxics and the Clean Air Act (1990 amd.)
Asbestos Hazards

- (EPA) Environmental Protection Agency
- (OSHA) U.S. Occupational Safety and Health Administration

State: NESHAP implementation is delegated to States, air quality programs have been delegated EPA’s responsibility for the regulation of asbestos inspection, abatement, cleanup & disposal

Applies to all building renovation or demolition activities

- NESHAP not triggered for:
  - small quantities - if the disturbed area is below threshold of 80 linear meters or 15 square meters
  - Residential buildings provided the project consists solely of a single one-to-four unit (SF) residential building (40 CFR 61.141), ALL HOUSING REHAB IS EXEMPT

NESHAP requirements include:
1. Notification to State
2. Inspection (thorough) for asbestos
3. Abatement of all friable and any non-friable asbestos that will become friable if it will be disturbed
4. Disposal in approved landfill

Licensed contractors required for abatement
Radon is an invisible killer that results when naturally occurring uranium 238 begins to radioactively decay in the soil.

- Radon is VERY common in the Midwest – we are in Zone 1= hotspot
- Radon is a colorless, odorless gas that permeates common building materials
- Radon is mostly found in basements and the 1st floor of homes
- Radon is the #2 cause of lung cancer
- Radon testing is the only way to know if it is present in the home
- Radon can be mitigated by venting it from below the slab/basement

Starting in 2016 ALL CDBG owner-occupied housing must be tested for radon:

- Radon information on IEDA website
- Activated Short Term Charcoal test will be used: ALA hotline 1-800-383-5992 to order kits
- Brochures for homeowners can be found here: [http://healthhouse.org/radon/](http://healthhouse.org/radon/)
- 12 hours prior to testing windows and doors should remain closed
- While testing – avoid whole house fans, AC set to recirculating mode, thermostat set at 75 degrees (+/- 5)
- Video about the radon testing process: [https://www.youtube.com/watch?v=7eQvyAvGHaY](https://www.youtube.com/watch?v=7eQvyAvGHaY)
Test Kit placement:
- Lowest *livable* area of the home
- Between 20 in. and 6 ft. from the floor
- At least 1 ft. from walls
- At least 3 ft. from doors and windows
- 4 in. away from any objects
- 20 ft. from any air flow devices (A/C, etc.)
- Away from furnaces or washer/dryers
- Test kits should be hung using clear plastic hook
- Test for 3-7 days

Submit Test:
- Test kit should have mailing instructions. The initial cost of the test includes processing
- On the submittal form fill out:
  - name of the homeowner
  - Address
  - grant administrator’s email address
- Each test includes a serial number which can be used to look up test results online at Radon.com: [http://www.radon.com/radon/radon_results.html](http://www.radon.com/radon/radon_results.html)

Test Results:
- If above 4 picocuries per liter, the home has radon above the recommended exposure
- If above, you can retest
- Have homeowner sign off that they have received the radon test results regardless of the level of radon in the home

Options:
- If the budget allows you should mitigate
- You are not required to mitigate

To find a mitigation specialist in your area: [http://idph.iowa.gov/radon/fix](http://idph.iowa.gov/radon/fix)
In the Statutory Checklist:

Two steps needed to show compliance documentation:
1. Description in the checklist
   - Make a statement: project will or will not be affected
   - Why is this true: field inspection, list websites
2. Supporting documentation in Appendix
   - Printouts from websites

Overview: Endangered Species Act (ESA)

- Primary federal statute is Endangered Species Act and its Section 7 Protocols
- Section 7 mandates that Federally-assisted activities not jeopardize the existence of plants and animals listed or proposed for listing on endangered species list
- RE must insure activities avoid adversely modifying or destroying species' habitat
Four ESA classifications...

1. **“Endangered”:** Species in danger of extinction in all or a significant portion of its range
   - Iowa: 8 animals, 0 plants

2. **“Threatened”:** Species likely to become endangered in foreseeable future
   - Iowa: 1 animal, 5 plants

3. **“Proposed”:** none in our area

4. **“Candidate”:** USFWS has sufficient information on biological status and threats to propose species as threatened or endangered. Candidate species **not subject to Section 7 consultation**
   - Iowa: 3 animals, 0 plants

ESA Section 7 Protocols

**USFWS must be consulted...**

- If proposal **may affect** T&E species or critical habitat – even if effect is positive – “informal consultation” required
- If proposal **may adversely affect** T&E species or critical habitat, “**formal consultation**” required

**USFWS does not need to be consulted...**

- If proposal will have **no affect** on T&E species or critical habitat

Section 7, Step-by-Step...

**Step 1** RE determines whether proposed action could, in any way – either positive or negative – have an effect on a T&E species or its habitat:

- **IPaC:** https://ecos.fws.gov/ipac/location/index
- Request a list, then
- Step by step instructions: https://www.fws.gov/midwest/endangered/section7/section7process/7a2process.html
- There is a HUD track for rehab projects
**ESA Section 7 Protocols**

**Step 2** If T&E could be present and critical habitat present, RE must consult with qualified sources to determine impact of the action on federally-listed species and/or habitat by:

- **Informal consultation** with USFWS ....OR
- Preparing biological assessment using qualified consultant

**Possible outcomes:** RE determines the impact of the action:

- **"MAY AFFECT, BUT NOT LIKELY TO ADVERSELY AFFECT"**
  - Informal Consultation required: RE submits finding and all documentation (e.g., Biological Assessment) to USFWS with request for concurrence.

- **"MAY AFFECT, LIKELY TO ADVERSELY AFFECT"**
  - Formal Consultation required: RE initiates with USFWS
    - USFWS provides Biological Opinion (135 days) finding either jeopardy or no jeopardy to listed species and adverse or no adverse modification of critical habitat
    - Provides measures to minimize impacts
    - Makes exceptions for “incidental takes” of listed species (otherwise illegal – high penalties)

**Final Step:** After consultation with USFWS, the RE’s decision completes the process

- Range of agency actions possible, including:
  - Adopt a reasonable & prudent alternative or mitigation measure, as recommended by USFWS
  - Not undertake the project
  - Modify proposed action or develop new alternative and continue consultation with USFWS
  - Agency must notify the USFWS of its final decision
How do I show I have considered this.....

In the Statutory Checklist:

Two steps needed to show compliance documentation:

1. Description in the checklist
   - Make a statement: project will have....
     - No effect
     - May effect, Not likely to adversely affect
     - May effect, likely to adversely affect
   - Give details: why the above statement is true

2. Supporting documentation in Appendix
   - Species list with habitat descriptions & printouts
   - Biological Assessment (if necessary)
   - USFWS opinions (if necessary)

Environmental Justice

Background..........................

Historically, low-income and minority populations have been more likely than other groups to live near areas of high contamination like....

...landfills, incinerators, chemical plants, hazardous waste treatment facilities ...
Environmental Justice
E.O. 12898

Executive Order signed in 1994

“Each agency shall address disproportionately high and adverse human health or environmental effects of its programs/activities on minority and low-income populations and American Indian tribes”

Environmental Justice

Key Considerations

- Does an EJ population exist in or near our project area? (low-income, minority population or Indian tribe)
- Does the project entail any adverse impact?
- Does the adverse impact disproportionately affect the EJ population?

EPA: EJScreen demographics, health and other data
https://www.epa.gov/ejscreen

* print out standard report: Type in address, click on generate reports, pick “get Printable Standard Report”
EPA EJScreen

Standard Report compares state and USA average:

- Minority
- Low Income
- Linguistically Isolated
- Less than HS education
- Population under 5
- Population over 64

Also, look to see if there are any EPA sites.

How do I show I have considered this.....

In the Statutory Checklist:

Two steps needed to show compliance documentation:

1. Description in the checklist
   - Make a statement: Area around project site does or does not suffer from disproportional impacts

2. Supporting documentation in Appendix
   - Census statistics
   - Map from EJview

Explosive and Flammable Operations
24 CFR Part 51 - Subpart C

- "Citing of HUD-Assisted Projects Near Hazardous AST Facilities"
- Explosive / Flammable Operations = Stationary commercial/industrial facilities which handle & store chemicals or petrochemicals of explosive or flammable nature – Above-Ground Storage Tanks (ASTs)

- HUD regulation requires achieving an Acceptable Separation Distance (ASD) from explosive and fire hazards
- Only 2 threats assessed
  - Blast overpressure (explosion)
  - Thermal radiation (fire)
- Threats from release of toxic chemicals or substances are NOT addressed by this HUD guidance [Rather, §58.5(i)(2)]

Remember: ONLY Above Ground Storage Tanks (ASTs)
Most common AST = Propane Tanks

Applicable Activities

- Applies where bringing people to the tanks...or tanks to the people
  - Does not apply to:
    - Owner-Occupied Rehabilitation
    - Water/Sewer Projects
    - Downtown Façade projects
  - Applies to:
    - Vacant spaces made habitable
    - Community Facilities: New construction only not rehabilitation or additions
    - Economic Development: New construction
Detecting Hazardous Operations

Determine if any AST within 1 mile Radius

Substances that must be evaluated

24 CFR Part 51: Appendix I to subpart C

Hazardous Liquids:
- Acetic Acid
- Acetic Anhydride
- Acetone
- Acetonitrile
- Ammonium Nitrate
- Benzene
- Butyl Acetate
- Butyl Alcohol
- Carbon Disulfide
- Carbon Tetrachloride
- Cresols
- Diphenyl
- Ethyl Alcohol
- Ether

Hazardous Gases:
- Acetaldehyde
- Ethylene
- Hexane
- Isobutane
- Isobutylene
- Liquefied Petroleum Gas (LPG)
- Propane
- Propylene

Gas or liquid – that is the question

Determines how ASD calculated

- **Gases are Pressurized** – calculates both Blast Overpressure and Thermal Radiation
- **Liquids are Unpressurized** – calculates only Thermal Radiation

Note: propane is a non-cryogenic liquified gas stored under pressure and gasoline is liquid not stored under pressure
Calculating ASD

Data needed…
1. size of the tank
2. contents (liquid/gas)
3. pressurized/ not under pressure
4. diked/not-diked (length & width)
5. distance from project to tank

Then perform the calculation….HUD’s ASD on-line tool
https://www.hudexchange.info/environmental-review/asd-calculator/

Mitigation

1. Construct a Barrier
   - Only Professional Engineers (PE) are permitted to design barrier
     - Civil engineer or Structural engineer
   - Construction oversight by same required

2. Bury the Tank

How do I show I have considered this…..

In the Statutory Checklist:

Two steps needed to show compliance documentation:

1. Description in the checklist
   - Make a statement:
     - Type of project is exempt from this review
     - Project is or is not near an AST

2. Supporting documentation in Appendix
   - If near, separation distance calculator results
   - Description of mitigation
AIRPORT HAZARDS

In 1975 GSA issued Federal Management Circular (FMC 75-2, Compatible Land Uses At Federal Airfields): directing all federal agencies, including HUD, to make sure their actions were compatible with land use recommendations prepared by the operating agencies for federally owned airports and airfields.

Background

In 1975 GSA issued Federal Management Circular (FMC 75-2, Compatible Land Uses At Federal Airfields): directing all federal agencies, including HUD, to make sure their actions were compatible with land use recommendations prepared by the operating agencies for federally owned airports and airfields.

24 CFR Part 51, Subpart D

Part 51- D, “Siting of HUD Assisted Projects in Runway Clear Zones at Civil airports and Clear Zones and Accident Potential Zones at Military Airfields”

Three zones where incompatible land uses can occur:

- **Runway Clear Zones (RCZs):** Area immediately beyond the ends of FAA **civilian** airport runways
- **Clear Zones (CZs):** Area immediately beyond the ends of **military** airfield runway
- **Accident potential Zones (APZs):** Area immediately beyond the Clear Zones of **military** airfield
24 CFR Part 51, Subpart D

HUD Restrictions on development

Prohibits certain HUD-funded activities in Clear Zones (RCZs & Czs) and discourages assistance in Military APZs

- New construction
- Substantial rehabilitation: Minor repair/rehab (<75% pre-rehab value) allowed
- Change in land use

Part 51-D applies to all civil airports designated by FAA in National Plan of Integrated Airport Systems (NPIAS)

www.faa.gov/airports/planning_capacity/npias/reports/

Information to obtain from civil airport: “Airport Layout Plan” — shows RCZ — get from airport operator or FAA regional office. Now called Runway Protection Zone (RPZ)

Information to obtain from military airfield: “AICUZ” study [A-Cooz] – shows CZ & APZ

How do I show I have considered this.....

In the Statutory Checklist:

1. Description in the checklist
   - Make a statement: project is or is not located near the end of a civil or military runway

2. Supporting documentation in Appendix
   - Map of airports near project location
   - Layout plans
Farmland Protection

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Historical Background

- National Agricultural Land Study of 1980-81: millions of acres of farmland being converted in the U.S. each year
- 1981 Congressional report, "Compact Cities: Energy-Saving Strategies for the Eighties": identified need for Congress to implement programs and policies to protect farmland

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Definitions

- Only special categories of farmland qualify for FPPA protection
- "Important Farmland" includes:
  - Prime farmland
  - Unique farmland
  - Farmland of statewide or local importance
- Farmland subject to FPPA requirements can be cropland, pastureland, or forest land – but not water or urbanized land

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Activities not subject to FPPA:

- Land “already committed to urban development”
  - Downtown Façade projects
  - Owner-occupied rehabilitation
  - Community facilities – rehab only
- Used for water storage
  - Water tower projects only

Land already zoned non-agricultural does not exempt the property from FPPA compliance

Website: https://websoilsurvey.nrcs.usda.gov/app/
- First define your Area of Interest:
  1. Zoom into the area with the magnifying glass
  2. Click on the AOI button
  3. Draw the area
  4. And then……
- Click on Soil data explorer tab
- Click on Land Classification on list at left
- Click on Farmland Classification on list at left
- Click on View Rating Button
**Land Evaluation & Site Assessment**

“Land Evaluation and Site Assessment” (LESA) Developed by USDA-NRCS, to evaluate farmland being considered for conversion from agricultural usage.

- If project contains prime/unique farmland, RE/HUD initiates intergovernmental evaluation of the property using Form AD-1006, “Farmland Conversation Impact Rating”
- Form AD-1006 can be downloaded at: [www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf)
- Parts I, III, VI, VII to be completed by Agency
- Parts II, IV, V to be completed by NRCS

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**Form AD-1006**

- Must access rating criteria at 7 CFR 658.5: [https://www.law.cornell.edu/cfr/text/7/658.5](https://www.law.cornell.edu/cfr/text/7/658.5)
- The criteria help you answer questions 1-12 on Part VI
- After completing sections I, II, VI send to NRCS field office: [https://offices.sc.egov.usda.gov/locator/app/?state=ia](https://offices.sc.egov.usda.gov/locator/app/?state=ia)
- Complete section VII after NRCS review, if value is 160 then consider alternative sites, modifications, or mitigation

---

**How do I show I have considered this…..**

Two steps needed to show compliance documentation:

1. Description in the checklist:
   - Project is or is not located in an area that includes prime farmland
   - Project is already committed to urban development
   - Project location already has a structure
   - Project does have prime farmland, LESA assessment conducted site below 160, no mitigation required
2. Supporting documentation in Appendix
   - Soil maps
   - USGS Map showing urban overlay
   - AD-1006 forms
National Flood Insurance Act of 1968

Established National Flood Insurance Program (NFIP) AND the 100-year elevation as regulatory baseline...which eventually lead to:

- **Floodplain Management** – implemented by 24 CFR Part 55 Triggered at 24 CFR §58.5
    - The “no practicable alternative” test of avoidance
    - The “8-Step” analysis process
- **Flood Insurance** – Flood Disaster Protection Act of 1973 (as amended) Triggered at 24 CFR §58.6
    - More stringent lender requirements
    - Mandatory insurance for buildings in 100 yr floodplain
    - Use of FEMA Form, “Std Flood Hazard Determination”

---

**Floodplain Management – “8 Step Process”**

If project is in a flood plain and does not meet an exception, start the 8-step process:

- **Step 1.** Determine whether the proposed action is located in 100-year floodplain (or 500-yr for critical action)
- **Step 2.** Publish “Early Public Notice” of the proposal to consider an action in the floodplain (15 day minimum comment period)
- **Step 3.** Evaluate practicable alternatives to locating the proposed action in a floodplain
- **Step 4.** Identify the potential impacts associated with occupancy and modification of the floodplain
- **Step 5.** Design or modify the action to minimize adverse impacts and preserve the beneficial values of the floodplain

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**Floodplain Management – “8 Step Process”**

- **Step 6.** Reevaluate whether proposed action is practicable
- **Step 7.** Publish “Final Public Notice” of decision to identify why there is “no practicable alternative,” and the alternatives and mitigation measures adopted (7 day minimum comment period)
- **Step 8.** Implement proposed action with mitigation measures

- 8-Step process shall be **concluded** prior to completion of the NEPA environmental review (§55.10)
- However, may publish “Final Public Notice” (Step 7) concurrent with FONSI and/or NOI-RROF notices
Step 1: Identify flood hazard [§55.20(a)]

» Use FEMA maps to determine if project is in flood hazard area (100 year or 500 year floodplain). Check for FEMA flood maps on-line or hard copy. Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map.

» FEMA Maps available at https://msc.fema.gov/portal
  - Create FIRMETTE, photocopy FEMA map and panel, or obtain flood information from other source
  - Mark the project's boundary on the map
  - Use to document the ERR

» Unmapped flood hazard areas
  - Contact Bill Cappuccio at DNR with a project map and ask if there are any special flood hazards
    Bill.Cappuccio@dnr.iowa.gov

Identify flood hazard [§55.20(a)]

Must determine if the project is in a Special Flood Hazard Area or if a critical action in a 500 year floodplain:

» Special Flood Hazard Area (SFHA)
  - aka, "100-year floodplain"
  - aka, "Base Flood Elevation" (BFE)
  - Shown on FEMA maps as Zone A

» "Critical Action" located in:
  - 500-year floodplain
  - Shown on FEMA maps as Zone B or Shaded X
**Flood Zone Terms**

Floodway

SFHA Zone A
“100-year” floodplain

Critical Action Zone B
Shaded X
“500-year” floodplain

---

**FEMA Flood Zones**

<table>
<thead>
<tr>
<th>Common Name</th>
<th>Official Name</th>
<th>Flood Risk</th>
<th>Old Maps</th>
<th>New Maps</th>
</tr>
</thead>
<tbody>
<tr>
<td>100-Year Floodplain</td>
<td>“Special Flood Hazard Area” aka, Regulatory floodplain</td>
<td>1% per year</td>
<td>A</td>
<td>A</td>
</tr>
<tr>
<td>500-Year Floodplain</td>
<td>Area of Moderate Flood Risk</td>
<td>0.2% per year</td>
<td>B</td>
<td>Shaded X</td>
</tr>
<tr>
<td>Outside the 100-year or 500-year floodplain</td>
<td>Area of Minimal Flood Risk</td>
<td>Less than 0.2% per year</td>
<td>C</td>
<td>X</td>
</tr>
</tbody>
</table>

---

**Floodway**

Floodplain portion carrying water flow and where the flood hazard is the greatest: Designated as Zone AE (hatched) on FIRM

CDBG assistance is prohibited in the floodway except for functionally dependent uses (dam, bridge, etc) or floodplain function restoration activity

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Activity for which even a slight chance of flooding would be too great and which might result in loss of life, injury or property damage [§55.2(b)(3)]

Example: Essential or irreplaceable records or emergency services

What is a Critical Action in the 500-year Flood Plain?

Critical Action: Sanitary Sewer Plant

Example: Occupants of hospital, nursing home, assisted living...

Assisted living center

Mobility restricted
Floodplain Management: Project Options

If your proposed project is in the 100-year floodplain or a critical action in a 500-year floodplain:

- **Reject** project site – Avoid the flood hazard
- Determine if Floodplain Management might be “inapplicable”/meet an exception
- Begin “8-step process” – 24 CFR Part 55.20
  Hard look at alternative sites, minimize flood hazards, restore beneficial values of the floodplain, engage the public

Floodplain Management: Exceptions

Exceptions at §55.12(a),(b) and (c)…a few of the most frequently used:

- **§55.12(c)(8)** Project site has obtained from FEMA:
  - LOMA – “Letter of Map Amendment” – correction to the map, e.g., better map data
  - LOMR – “Letter of Map Revision” – used where particular site has been elevated above the SFHA
  - CLOMR – “Conditional Letter of Map Revision” - used if the proposed changes are made to the project, then LOMR could be granted.

More Exceptions to the 8-Step Process

- **§55.12(c)(3)** Restoration/preservation of natural & beneficial values of floodplain or wetland – including land acquisition - provided
  - Property is cleared of all structures
  - Property dedicated to flood control, wetlands, park or open space
  - Permanent covenant to preserve floodplain or wetland from future development

- **§55.12(c)(7)** Project site with incidental portion in floodplain, provided:
  - No construction/modification of floodplain or wetland
  - Site drainage is adequate & w/o adverse effect on wetland
  - Permanent covenant to preserve floodplain or wetland use
Step 2 – Early Public Review [§55.20(b)]

- 15 day minimum comment period
- Include required elements in notice – see §55.20(b)
- Sample notice on IEDA website

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Step 3 – Identify & Evaluate Practicable Alternatives [§55.20(c)]

“Practicable” - general concept of site feasibility – natural, social, economic, legal factors

- Specific alternative sites must be identified that are outside floodplain
- Alternative methods that achieve the same project objective/purpose
- “No Action” – always an alternative

Burden is on RE to meet

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Step 4 – Identify Potential Direct & Indirect Impacts [§55.20(d)]

Two areas of concern:
- Impacts to Lives and Property
- Impacts to Floodplain

Three types of impact:
- Positive & Negative
- Concentrated & Dispersed
- Short- and Long-Term

Will project encourage future Floodplain development?
Step 5 – Minimize, Restore, Preserve [§55.20(e)]

- **Minimize** – rigorous, demanding standard – “reduce harm to smallest possible degree.” Far beyond mitigate or alleviate.
- **Restore** – re-establish environment in which the natural & beneficial floodplain values can operate.
- **Preserve** – prevent modification to natural floodplain or maintain as closely as possible to its natural state.

Step 6 – Re-Evaluate Proposal & Alternatives [§55.20(f)]

Is project still feasible considering:
- Impacts to floodplain (Step 4)
- Minimization actions and opportunities to restore & preserve floodplain values (Step 5)

If not, and in light of Steps 4 & 5, do alternatives rejected in Step 3 appear feasible? Prepare table to compare adverse impacts of alternatives.

If neither proposed project nor alternatives are acceptable, the alternative is No Action.

Step 7 – Public Explanation [§55.20(g)]

If no practicable alternative exists, inform the public. 7 day minimum comment period.

Notice must include:

1. Reasons why project must be located in floodplain
2. List of alternatives considered & addresses
3. All mitigation measures to be taken and actions to restore and preserve natural and beneficial values

Notice can be combined with NOI/RROF or FONSI/RROF

Sample final notice on HUD Exchange website

Sample 8-Step also on HUD Exchange: [https://www.hudexchange.info/resource/3190/floodplain-management-8-step-decision-making-process/](https://www.hudexchange.info/resource/3190/floodplain-management-8-step-decision-making-process/)
Step 8 – Implement Project [§55.20(h)]

RE has **continuing responsibility** to ensure that measures in Step 7 are implemented.

Documentation (§55.27) must show:
- that actual sites were identified & considered as practicable alternatives
- minimization measures have been applied to the project design & incorporated into agreements

How do I show I have considered this.....

In the Statutory Checklist:

Two steps needed to show compliance documentation:

1. Description in the checklist
   - Make a statement: is or is not in a floodplain
   - Give details: Map panel Number

2. Supporting documentation in Appendix
   - FEMA FIRM Maps
   - 8 Step decision making process
   - Publications

Flood Insurance 58.6 requirements form

National Flood Insurance Program (NFIP)

- In exchange for adopting and enforcing a local Floodplain Management (FPM) ordinance, Federally backed flood insurance is made available to property owners throughout the community but only within participating communities.
- FEMA list of communities participating in NFIP is “Community Status Book” [www.fema.gov/fema/statusbook](http://www.fema.gov/fema/statusbook)
- Most HUD programs require applicants to carry flood insurance if in a 100 year floodplain. However, CDBG state grant recipients are exempt from this requirement.
Floodplain Management – Additional Guidance

“Floodplain Management Guidelines for Implementing Executive Order 11988”
U.S. Water Resources Council
43 FR 6030, February 10, 1978

“Further Advice on Executive Order 11988 Floodplain Management”
Interagency Task Force on Floodplain Management, 1982

Noise Control

Congress passed the Noise Control Act of 1972, amended by the Quiet Communities Act of 1978

Implemented for HUD projects through regulation 24 CFR Part 51, Subpart B:
- **Acceptable** Range: < 65 dB
- **Normally Unacceptable** Range: 65 dB < 75 dB
- **Unacceptable** Range: > 75 dB

Background

Threshold of Hearing Damage
Threshold of Feeling
Threshold of Pain

Leaves Rustling
Average Office
Noisy Urban Street
Near Jet Engine
Conducting Noise Analysis

Determine whether project is noise sensitive. Any activity that is easily disturbed by high noise levels...

- Owner Occupied Housing
- Community Facilities – community center, day care center, etc.

However, DTR, Water & Sewer, Storm Water, Economic Development are NOT noise sensitive projects

Conducting Noise Analysis

Determine if the project is located within threshold distance. Calculate from the NAL: Noise Assessment Location:

- 1,000 feet of major/busy road
- 3,000 feet of railway
- 15 miles of airport

NAL is located 6.5 feet in front of the façade of the proposed building at the point that is closest to the noise source

If more than one building, use building nearest to noise source

Measuring Distance

- Use Google Maps
- Find location, right click, click on the first point, then drag to the second location.
If within 15 miles of an airport:

- Civil airports subject to Part 51-B are those designated in the FAA's "National Plan of Integrated Airport System" (NPIAS)

- Look up the Airport Master Record for the airport:
  [https://www.gcr1.com/5010WEB/](https://www.gcr1.com/5010WEB/)
  1. Under Operations:
     - #100 – should be below 9,000
     - #102 – should be below 18,000
     - #105 – should be below 18,000
     - #103+104 – should be below 72,000
  2. If below thresholds above, compliance complete
  3. If above ANY of these thresholds, obtain a noise contour plan. At Military Installations, ask for their "Air Installation Compatible Use Zone" Plan.

If within 1,000 ft of a roadways:

- DOT for Average Daily Traffic (ADT)

- Need to discover:
  1. Effective Distance? Site Visit
  2. Distance to Stop? Site Visit
  3. Average Speed? Site Visit
  4. Average Daily Trips (ADT)? Website
  5. Night Fraction? Default = .15% of ADT
  6. Road Gradient for Heavy Trucks? Default = 2%

**Conducting Noise Analysis**

**FHWA Vehicle Data**
County Road Data

- These are considered a "major" road according to the legislation
- County roads do not break down types of vehicle
- Defaults can be used:
  - Use the AADT range to determine the type of road
  - Most county roads are major or minor collectors
County Road Data

- County Road Example
  - House located on College Road within 1000' of County Highway P33
  - P33 has an ADDT of 2320
  - Major Collector (300 – 2,600)
  - Autos = 91.4% or 2,121
  - Medium Truck = 3.9% or 90
  - Heavy Truck = 4.7% or 109

Conducting Noise Analysis

If within 3,000 of a railroad

- Information found in Part II: Railroad Information

- Take crossing # from bungalow or signal mast, e.g., 668871J

- Need to discover:
  - How many Trains per day? Website
  - Number of Cars per train? Default = 50
  - Number of Engines per train? Default = 2
  - Diesel or electric? Diesel
  - Rails welded or bolted? Site Visit (most welded)
  - Speed of train? Website
  - Percent of night operations? Website
  - Horns? Y Quiet Zone? N (if quiet zone then no horns)

HUD's Noise Standards

Use the HUD on-line calculating tool: www.hudexchange.info/programs/environmental-review/dnl-calculator
Noise

HUD policy for housing and noise sensitive uses...

- **New Construction – Prohibit** (generally) HUD support for new construction of noise sensitive uses on sites having unacceptable (65 dB < 75 dB) noise exposure [24 CFR 51.101(a)(3)]

- **Rehabilitation – Encourage**, or strongly encourage, noise attenuation features, or convert to a land use compatible with high noise levels [24 CFR 51.101(a)(5)]
  
  - Rehab projects in all noise exposed areas: Responsible Entity shall encourage attenuation.
  - Housing rehab project in unacceptable noise zone: RE shall "strongly encourage" conversion to compatible land use.

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How do I show I have considered this.....

In the Statutory Checklist:

- **1. Description in the checklist**
  - Make a statement:
    - project is or is not a noise sensitive use
    - Project is or is not within threshold criteria

- **2. Supporting documentation in Appendix**
  - Map showing distances to threshold criteria
  - Noise calculation spreadsheet
  - Listing of attenuation features

---

Exercise Time

- Complete Noise Exercise
- By yourself or with friends
- 10 minutes and then we will review
Water Quality Protection
Sole Source Aquifers

SSAs Located within HUD Region VII

No SSAs currently designated in states of Region VII

Print map and put in EBR:

How do I show I have considered this.....

In the Statutory Checklist:

Two steps needed to show compliance documentation:

1. Description in the checklist
   Make a statement: Project is not located within the area of an EPA designated sole source aquifer

2. Supporting documentation in Appendix
   Map from website
Wetlands Protection

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What Are Wetlands?

Wetlands are “.....those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions”

- Clean Water Act, Section 404
- HUD 24 CFR 55.2(b)(11)

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What are Wetlands?

Wetlands generally require presence of three conditions to meet federal definitions

Hydric soils

Hydrophilic vegetation

Year-round & seasonal water

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Federal Authorities that Protect Wetlands

Executive Order 11990, “Protection of Wetlands” (1977)
“...avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative...”

Section 404 of the Clean Water Act (1977)
Dredging or Filling wetlands (“Waters of the US”) requires a Section 404 permit from the Army Corps of Engineers

24 CFR Part 55 implements E.O. 11990 – Requires “8-Step” decision making process at §55.20

Determine if a wetland is present

- National Wetlands Inventory (NWI) Mapper:
  [http://www.fws.gov/wetlands/data/Mapper.html](http://www.fws.gov/wetlands/data/Mapper.html)

- On Website:
  - Click on “Find Location” (upper right)
  - Unclick all boxes except Wetlands (Left side of screen)
  - Click on Legend (upper right)
  - Click on Print (upper right): Enter a title, print, Print Job – references title

Wetland Management – “8 Step Process”

If project is in a Wetland, start the 8-step process:

- Step 1. Determine whether the proposed action is located in a wetland
- Step 2. Publish “Early Public Notice” of the proposal to consider an action in the wetland (15 day minimum comment period)
- Step 3. Evaluate practicable alternatives to locating the proposed action in a wetland
- Step 4. Identify the potential impacts associated with occupancy and modification of the wetland
- Step 5. Design or modify the action to minimize adverse impacts and preserve the beneficial values of the wetland
Wetland Management – “8 Step Process”

- Step 6. Reevaluate whether proposed action is practicable
- Step 7. Publish “Final Public Notice” of decision to identify why there is “no practicable alternative,” and the alternatives and mitigation measures adopted (7 day minimum comment period)
- Step 8. Implement proposed action with mitigation measures

- 8-Step process shall be concluded prior to completion of the NEPA environmental review (§55.10)
- However, may publish “Final Public Notice” (Step 7) concurrent with FONSI and/or NOI-RROF notices

How do I show I have considered this…..

In the Statutory Checklist:

1. Description in the checklist
   - Make a statement: is or is not in a wetland
   - Give details: web address of wetland mapper

2. Supporting documentation in Appendix
   - National Wetlands Inventory Map
   - 8 step process
   - publications

Wild & Scenic Rivers
River Classifications

By 1960s, national trends identified some rivers in crisis...

To balance the physical alteration of waterways, Congress passed the **Wild and Scenic Rivers Act of 1968**

Three types of classifications:

- Wild
- Scenic
- Recreational

Three types of rivers are protected:

- Designated Rivers – protected under Section 7(a) – 0 in Iowa
- Study Rivers – protected under Section 7(a)– 1 in Iowa
- Potential Rivers - protection under Section 5 (d) – 5 in Iowa

Environmental Review Requirements

**NEPA protocol** to protect NWSR...

- Determine if proposed action could affect NWSR: Expansion, demolition, or new construction of buildings or facilities
- Appropriate “triggers”
  - Project 1 mile back from a NWSR
  - Project 10-20 miles upstream or 10 miles downstream from a NWSR
  - Project located on tributary in proximity to NWSR

Rivers in Iowa

- Identify if project is in proximity to NWSR
  
  [Link to NPS NRI page](http://www.nps.gov/ncrc/programs/icrc/nri/states/ia.html)
How do I show I have considered this.....

In the Statutory Checklist:

1. Wild and Scenic Rivers
   - Make a statement: Project is or is not within one mile of a designated Wild & Scenic River, or even though subject to a potential component of the Wild & Scenic River system will it have an affect
   - If it is, will it have an affect?

2. Supporting documentation in Appendix
   - Print map from website or use old list
   - Consultation with NPS (if necessary)

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Break Time: 10 Minutes

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Section 106
National Historic Preservation Act, 1966

- State Historic Preservation Offices
- Tribal Historic Preservation Offices
- Advisory Council on Historic Preservation
- National Register of Historic Places
- National Historic Landmarks
- Certification of Local Governments
- Section 106 of the National Historic Preservation Act and Title 36 CFR Part 800

"The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."

Section 106 Process

- Four Point Approach
  - 1. Initiate Section 106 Review Process
    - Identify projects that have the potential to affect cultural resources
  - 2. Identification and Evaluation of Historic Properties
    - Identify the Area of Potential Effects (APE) including sites within, adjacent to and directly or indirectly related to the undertaking which may be affected by the project
    - Evaluate resources within the APE that are listed on or eligible for listing on the National Register of Historic Places (NRHP)
  - 3. Assessing Effects
    - Consult with the State Historic Preservation Office (SHPO), interested and consulting parties and the public
  - 4. Resolve Adverse Effects
    - Memorandum of Agreement, which outlines agreed upon measures that IEDA will take to avoid, minimize or mitigate the adverse effect resulting from the undertaking

Section 106 Process

- Is this the type of project that has the potential to affect cultural resources?
  - Construction activities on a building more than 50 years old, activities that include ground disturbance, activities within the visual view shed of buildings, sites, districts or objects that are more than 50 years old, etc. – YES
  - Planning activities with no construction components – NO
  - Activities outlined as Categorically Excluded not Subject to 58.5 – NO

- Using a Programmatic Agreement (PA) that is in place between the RE or IEDA and the SHPO to expedite or streamline the Section 106 Process?
  - Your project may fall under an “Allowance” or “Exempt Activity” meaning you don’t have to consult with the SHPO on a project that without a PA in place you would otherwise have to. Please note that PA’s must be current, up to date and can not be used by any other agency than that specified in the agreement.
**Section 106 Process**

- **PA and PMOU**
  - Programmatic Memorandum of Understanding (PMOU)
    - No longer in Use
  - Programmatic Agreement (PA)
    - Executed August 23, 2016
    - Valid for all Current and Future CDBG funded projects administered by IEDA except 2008 Disaster Awarded Projects which will continue to comply with the 2008 Disaster PA.

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**PA – Excluded Form**

- Include a date with signature to record when the evaluation occurred.
- Site the actual section of PA that makes the property exempt.
- If less than 50 years old, state: "PA Appendix B Section 3. a. – less than 50. Building built in 1976."
Section 106 Process

2. Identification and Evaluation of Historic Properties

What is a Historic Property?
- Resources that are listed on or eligible for listing on the National Register of Historic Places (NRHP) including:
  - Buildings, Districts, Structures, Objects, Sites (including archaeological sites)

How do we identify historic properties?
- Check the National Register of Historic Places Database: https://npgallery.nps.gov/nrhp
- Check with IEDA! IEDA is currently in the processes of working with SHPO to take the inventory and put it on-line for recipients to check City inventory lists without contacting the SHPO.
- Check the State of Iowa Inventory by contacting the inventory coordinator Berry Bennett at 515.281.8742 or berry.bennett@iowa.gov

Area of Potential Effects (APE) – consider all properties in the APE as you move forward with Identification and Evaluation.
- Look Left and Right of your Project Location.
- Consider your project within the context of the neighborhood, commercial core, campus, plant, etc.
Section 106 Process

2. Identification and Evaluation of Historic Properties

- Don’t limit your APE to only the resource receiving federal funds.
- Affects can be:
  - Direct – Physical Changes
  - Indirect – View Shed, Setting, etc.
  - Immediate – occur at the time of the undertaking
  - Further Removed in Time – result of the undertaking that takes weeks, months or years to occur.

So think about possible Affects as you define your APE.

Section 106 Process

How do we evaluate previously unevaluated historic properties?

- Apply the National Register Criteria for Evaluation to determine if the resource is eligible for listing in the NRHP – note evaluation is not always limited to the exterior
  - **Age** – is the resource over 50 years old or of exceptional significance?
  - **Criterion A** – is the resource associated with an event that made a significant contribution to our history?
  - **Criterion B** – is the resource associated with the lives of significant persons?
  - **Criterion C** – does the resource embody the distinctive characteristics of a significant type, period, style, or method of construction/architecture?
  - **Criterion D** – does the resource yield or is likely to yield important information about our nation’s history or pre-historic times? (Archaeology)
- Complete an Iowa Site Inventory Form to document your evaluation for each resource in the APE.

Section 106 Process

How do we evaluate previously unevaluated historic properties?

- Provide existing condition photographs.
- Describe in detail any changes or alterations made to the building over time.
- Document any damage or deterioration that has occurred or is visible.
- Include a good map of the property location.
- Include any historic images or maps to help document the age of the structure and the integrity of the building.
Evaluation

» Period of Significance
- If a property is NRHP eligible you document the era (date range) for when it achieved significance.
- Typically for properties eligible for architecture/workmanship the Period of Significance is the date of construction.
- Typically for properties eligible for association with a significant person the Period of Significance is the date the significant person used the property.
- Typically for properties eligible for association with a significant event the Period of Significance is the time of the event. This can be a single event like a speech, rally, convention, tragic event, accident, etc. usually 1-3 days, or it can be a longer period such as the development and growth of a commercial corridor maybe 20-50 years.

Evaluation

» Integrity
- Does the building retain sufficient integrity to be eligible for the National Register?
- Seven Aspects of Integrity:
  • Location
  • Design
  • Setting
  • Materials
  • Workmanship
  • Feeling
  • Association
- Basically – would someone from the period of significance recognize the property today?

Evaluation

» Does the property retain integrity?
- Overlay or replacement siding material (vinyl siding, metal siding, slip cover, etc.)
- Replacement of windows and/or doors
- Non-sympathetic replacement roof – single seam metal roof on residential
- Significant addition – enclosed porch, removal of porch, large front addition
- Generally – if you have three or more strikes, the property likely does not retain sufficient integrity for listing on the National Register. Document these changes in the Iowa Site Inventory Form.

» Things that do not likely change the integrity of a property:
- Painting a different color (unless painting previously unpainted surface such as brick)
- Storm doors & windows that can be removed without damaging the original
- Deterioration or deferred maintenance (chipped peeling paint, old roof, cracked window glass)
Remember – Evaluation is needed for All Resources in your APE – Buildings, Districts, Objects, Structures and Sites

Section 106 Process

» 2. Identification and Evaluation of Historic Properties

District Evaluation
• Not just limited to DTR – applies to all types of projects
• May Require windshield survey (exterior of properties) of surrounding properties with either streetscape images of thumbnail photographs of surrounding buildings.
• Look at historic maps (Sanborn maps, historic aerials, etc.)
• Try to find historic photographs to show if the area retains sufficient integrity
• Includes a map of the area evaluated
• Includes a table of addresses with date of construction, property type, and NRHP eligibility (C/NC)
• Includes a narrative statement of the survey methodology and determination.
Section 106 Process

2. Identification and Evaluation of Historic Properties

District Evaluation – when do I need to consider this?
- When the structure you are using federal funds on is located in an area of similarly constructed resources:
  - Built at the same time
  - Similar Design
  - Same Plat Development
  - Commercial Corridor
  - Connected use (industrial plant, campus, etc.)
- When the structure you are using federal funds on is located in an area of connected context to its surroundings.

Levels of Survey

- Reconnaissance (“Windshield”)
  - Location & Photograph
  - Functions & Materials
  - Dates of Construction
- Intensive (all of the above, plus):
  - Description
  - History
  - Significance
  - Integrity
  - Individual Iowa Site Inventory Forms for Eligible Properties in Survey Area
Reconnaissance

Intensive

Section 106 Process
Completing an Iowa Site Inventory Form

https://iowaculture.gov/history/preservation/historic-site-archaeological-inventory
http://www.iowaeconomicdevelopment.com/Community/CDBG
C. Narrative Description
Include a narrative description of the property describing the size and form of the resource, how many stories it is, what the exterior materials are, what the roof form is, distinct details or characteristics and visible changes or alterations made to the building. If the resource is located within a neighborhood or collection of similar resources, briefly describe the setting as well.

I. Statement of Significance
Describe why the property is or is not eligible for listing in the National Register of Historic Places. Make sure this section matches the boxes you filled out on page 1 of the form and explain your “yes” or “no” determination for each of the NRHP criteria. Talk about any integrity issues and make your definitive statement about NRHP eligibility.

Continuation Pages can also be used for:
- Current Photographs
- Historic Images
- Maps
- Floor Plans
- Renderings
- Drawings
- Archival materials such as newspaper articles, pamphlets, brochures, etc.
Section 106 Process

» Tools for Completing an Iowa Site Inventory Form

Tips for Photographing Houses:
• Get at least one image that is the full front of the house.
Tips for Photographing Houses

• Get at least one image that is the full front of the house
• Try to photograph in the late fall, winter or early spring before leaves and blooms block the view. Consider taking one photograph of any house that might participate prior to award, or the first winter after award.

• Try to locate/ask property owner for historic image of the house, before trees and bushes were so tall. This will help you convey what the house looks like, but also help tell the story of what changes have occurred over time.
Section 106 Process

Tips for Photographing Houses

- Get at least one image that is the full front of the house.
- Try to photograph in the late fall, winter or early spring before leaves and blossoms block the view. Consider taking one photograph of any house that might participate prior to award, or the first winter after award.
- Try to locate/ask property owner for historic image of the house, before trees and bushes were so tall. This will help you convey what the house looks like, but also help tell the story of what changes have occurred over time.
- Consider the lighting and time of day – try to take pictures that don’t result in glare or hot spots.
- Keep orientation consistent on each page.

Photographs

Street

Street
Supplemental Information

New TA Process – Send Inventory Form to Leah for review and comment

Leah D. Rogers
Tallgrass Archaeology LLC
2460 S. Riverside Drive
Iowa City, IA 52246
319-354-6722
lrogerstallgrass@gmail.com
https://www.tallgrassarchaeology.com/
» TA is Open to any current and future CDBG-HSG awards

» Prepare your Iowa Site Inventory Form (as you do now – form can be found at IEDA’s website under Environmental Compliance: https://www.iowaeconomicdevelopment.com/Community/downloads along with other guidance)

» Share your Draft Iowa Site Inventory Form (with maps, photos, etc.) with Leah. You can do this however is best/easiest for you –
  - send via email
  - use a shared link
  - drop box, etc.
  I know these forms tend to be large so you may need to find ways to share with Leah and her team that work for everyone. Reach out to Leah to make sure she received your document.

» Tallgrass will review and comment on the form in no more than 10 working days from submittal.

» The Grant Administrator will incorporate the changes/comments into the form, then upload the final version of the Iowa Site Inventory Form into iowagrants.gov for Tier III Section 106 compliance.

» IEDA will review, and ultimately approved the Tier III Section 106 before any bidding/construction takes place.

Section 106 Process

» Complete your Iowa Site Inventory Form
  » Send to Tallgrass for Review and Comment
  » Update based on comments
  » Make sure form is consistent with project scope and finding
  » Submit to IEDA through Iowagrants.gov

» For complex historic properties
  » Contact Tallgrass right away and request a Full Evaluation
  » Tallgrass will probably request basic information
  » Tallgrass will likely make a site visit
  » Tallgrass will generate full Iowa Site Inventory Form
  » Make sure form is consistent with project scope and finding
  » Submit to IEDA through Iowagrants.gov

Section 106 Process

» Tips for a successful evaluation
  » Begin to consider all potential properties within the APE as early in project planning as possible.
  » Coordinate with those actually interacting with the properties (inspectors, property owners, etc.)
  » Try to document the actual existing conditions. The person writing the ISIF should be familiar with the house, and not just using photographs someone else took to write up the form.
  » If the property may be National Register eligible – gather additional information, such as interior photographs or history of ownership to help make final determinations.
Section 106 Process

» RE Must Make National Register Determination

» For all properties either never previously evaluated or evaluated more than 5 years ago, the RE must make a determination of National Register eligibility (documented on ISIF).
» Use best available data to make determination.
» Base determination on current existing condition of property.
» If, based on initial review, this determination is not clear to the RE – seek professional assistance from a qualified consultant.

3. Assessing Effects

» How will my project effect Cultural Resources:
  » No Potential To Cause Effects – No Consultation Required
  » No Historic Properties Effected – Consult
  » No Adverse Effect to Historic Properties – Consult
  » Adverse Effect to Historic Properties – Consult

» RE must make this determination.

3. How do I Assess Effects?

» No Historic Properties Effected – There are no historic properties in my APE.
» No Adverse Effect to Historic Properties – There are properties in my APE that are eligible for the National Register and my project has been designed to avoid any adverse effects (meets the Secretary of the Interior’s Standards – Doesn’t diminish the qualities that make the building NRHP eligible).
» Adverse Effect to Historic Properties – There are historic properties in the APE and there is no way to avoid altering the character defining features of the historic property.
Section 106 for CDBG DTR

» Secretary of the Interior’s Standards for Rehabilitation

1. A property shall be used for its historic purpose or be placed in a use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historical character of the property shall be retained and preserved. The removal of historic material or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the setting, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

http://www.nps.gov/tps/standards/rehabilitation.htm

Section 106 Process

» When should I consult interested parties?

» When you know the full scope of work for the project, including project plans, specifications, access areas, borrow sites, utilities, etc.

» After you’ve defined your Area of Potential Effects (APE)

» When you’ve completed your identification and evaluation of cultural resources within your APE

» When you’ve determined your effects assessment

» Approximately 3 months prior to an estimated construction start date, or earlier

Section 106 Process

» Who are interested parties?

» IEDA HPS – In lieu of SHPO Per Programmatic Agreement

» Local Historic Preservation Commissions (HPC) City or County

» Historical Society

» Tribes with an interest in the area (PA list and HUD portal)


» Any other party identified as having an interest in the federal project.
Section 106 Process

» Preparing a comprehensive Section 106 Submittal

» Cover letter from the RE (City or Grant Administrator) to interested party requesting review and comment on a CDBG funded undertaking or IowaGrants.gov form

» Select a finding (No Historic Properties, No Adverse Effect, Adverse Effect)

» Identification and Evaluation documents - Inventory Form for the individual building or district including current condition photographs and any available historic images. Even if the building or district is listed on the NRHP, current condition photographs are required with submittal. Or if new construction, archaeological figures to show previous use of the land and the potential for the site to contain archaeological resources.

» Assessor’s webpage for the property/parcel.

» Architects renderings including as much detail is possible in order to convey that the proposed project meets SOI standards, or will not result in an Adverse Effect to any Historic Properties

» Consultation should be an open process, where both the RE and the interested parties can discuss options, make suggestions and ultimately agree on a finding.

» The interested parties may be able to provide technical assistance or conditions related to a specific project, such as conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties or review of Archaeological Survey work.

» Consultation with the IEDA HPS does not replace the potential need to consult with federally recognized Native American Tribes and Tribal Preservation Officers. Use the PA and HUD database for the consultation process and Federal Tribal contacts. Note consultation with the Tribe MUST be on City letterhead from the Chief Elected Official and not the from the grant administrator.

» CDBG projects are often designed to avoid adverse effects, however when such effects can’t be avoided, IEDA works with the RE, SHPO and other identified interested parties to resolve those effects.

» Memorandum of Agreement outlines agreed upon measures that IEDA and the RE will take to avoid, minimize or mitigate the adverse effect resulting from the undertaking, developed in consultation with the SHPO, interested parties and the public.

» Consult with the SHPO on a finding of “Adverse Effects” (30 days)

» SHPO concurs with finding of “Adverse Effects”

» Notify the Advisory Council on Historic Preservation of the Adverse Effects and invite them to participate in resolution (15 days)

» Notify the public and interested parties of the Adverse Effect and solicit ideas for ways to avoid, minimize and mitigate the effect

» Through consultation with the SHPO and all identified interested parties select mitigation measures that are commensurate with the adverse effect

» Draft the MOA to outline those mitigation measures and the roles and responsibilities of who will implement them

» Distribute the draft MOA to all signatories and invited signatories for review and comment

» Once agreed upon, execute MOA

» Complete all stipulations of the MOA
Section 106 Process

4. Resolving Assessing Effects

Things to keep in mind when resolving adverse effects:

- Time frame to complete the mitigation measures as relates to the time frame of the Federal Funding Source
- The ability to pay for the Mitigation Measures – will it be covered by the Federal Funds or do you need to look for in-kind donations or other funds
- Identify projects that are most beneficial to Historic Preservation and the Public – stay away from private interests or isolated benefits
- Ensure that the mitigation measures are agreed upon by all parties, particularly the federal agency and the SHPO before including them in the MOA
- Make sure there are resources and administration available to implement the mitigation measures and the MOA clearly states who is responsible for each task

Example Mitigation Measures:

Resource Specific:
- Recordation and Documentation – typically completed before an historic building is demolished or altered by the federally funded project
- Booklet or other publication on the history and significance of the resource
- Signage or interpretive kiosk at the location of the resource

Alternate Mitigation:
- Survey and National Register Nomination of other nearby resources
- Historic Preservation Education and Technical Assistance Workshops
- Comprehensive Preservation Plan
- Bricks and Mortar repairs to other local historic properties
- Digitization of archival documentation for public use

When to upload your documents

EA
- If other agency (SRF, USDA, FEMA, etc.) completed Section 106 compliance – simply add that documentation to your EA and ERR.
- No other form is required.
- If no other federal agency is involved – complete a Section 106 Status Report form in iowagrants.gov for your project; Submit Form; Once “Approved” print copy of “Approval” and add to your EA and ERR.
Section 106 Documentation

» How IEDA Processes and Documents Section 106 Compliance
» iowagrants.gov
» Status Report (Compliance Forms)

Section 106 Process

» 106/Tier II Submittals

10. Historic Preservation

[36 CFR 800]

According to the Programmatic Agreement, CDBG recipients are to consult with IEDA’s Section 106 Coordinator instead of the SHPO. The section 106 consultation with IEDA was concluded on #/##/##. They agreed with the “no historic properties affected” finding. List of tribes interested in the project county are located here: http://egis.hud.gov/tdat/Tribal.aspx Tribes consulted on #/##/##. Letters to the tribes and IEDA consultation memo are located in the appendix.

OR (for HSG & DTR projects)

According to the Programmatic Agreement, CDBG recipients are to consult with IEDA’s Section 106 Coordinator instead of the SHPO. Each house/building as it is identified will be submitted to the IEDA Section 106 Coordinator for section 106 consultation. No rehabilitation will occur on the house/building prior to conclusion of this consultation. Due to the nature of the activity, the Tribes were not consulted. The “when to consult tribes” memo are located in the appendix.

Section 106 Process

» 106/Tier II Submittals

Photos must be integrated into the Iowa Site Inventory Form – separate documents will no longer be accepted.

IEDA prefers PDF documents for ALL uploads.

All submittals must have either:
» Signature Authorization Form (per program/city), or
» Request for Comment signed by City Official (per address).
Section 106 Process

» What is a site inventory number?
  » When properties are included in the SHPO inventory, they are assigned a unique number for that address. It consists of the two digit county code – followed by the assigned five digits (XX-XXXXX). This number is on the “city list” or any previous Iowa Site Inventory Forms. If your property has this number from the list or on an old form – use it on any new forms, and include it in the “Site Inventory Number” field in iowagrants.gov. Some properties are associated with a Review & Compliance (R&C) number this number (R&C# 170782012) is the year and month of Section 106 submittal followed by the county code and sequential number – this is not the Site Inventory Number and should NOT be entered in the inventory field in iowagrants.gov.

» What do I do if a property was previously evaluated?
  » Previous evaluations are good for 5 years. If the property was evaluated within the last 5 years, and looks the same as the photos in the evaluation you can just use that form in your consultation. If it has been more than 5 years, you need to complete a new Iowa Site Inventory Form. You can state a previous evaluation was conducted and what the determination was, but you must make a determination at the time the form is filled out – lots of things can affect a change in evaluation – age, integrity, etc. so never assume that an old evaluation is set in stone.

Questions

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