

Environmental Review Procedures: Interim Guidance HOMERent Program 2014

The National Environmental Protection Act of 1969 (NEPA), and several other laws and authorities stipulate the minimum environmental standards that projects and activities receiving Federal money must meet. Following the enactment of NEPA, Federal agencies incorporated these environmental standards and responsibilities into their own regulations.

The U.S. Department of Housing and Urban Development (HUD) incorporated NEPA into Parts 50, 51, 55, and 58 of Title 24 of the Code of Federal Regulations (CFR). In Part 50, HUD assumes responsibility for performing environmental reviews and ensuring that environmental standards are met. In Part 58, grantees of certain HUD programs, like the HOME Program, must assume this responsibility. Participating Jurisdictions (PJs), state recipients, and insular areas are recognized as the Responsible Entities (RE's) charged with ensuring that environmental standards are met when implementing the HOME Program.

The West Virginia Housing Development Fund, in its capacity as the PJ for the State HOME Program, is the RE that must ensure that all HOMERent projects and activities financed through the State HOME Program comply with NEPA and all other environmental review standards.

The "Environmental Review Procedures: Interim Guidance, HOMERent 2014" was prepared to provide sponsors and environmental professionals with an overview of the environmental review process and procedures related to the HOMERent Program.

I. Level of Environmental Review

The WVHDF will review the area affected by the proposed HOMERent project and determine the level of review required. Some activities are more likely to impact the environment than others and therefore, may require a greater, more substantial level of review. The WVHDF will determine the level of review by looking at where its project's activities fall under the requirements of **24 CFR Part 58**. Activities can be classified as one of the following:

- **Exempt (24 CFR 58.34(a)(1-11))**

Activities that by their very nature will have no physical impact upon the environment are exempt from NEPA requirements as well as **§ 58.5**. In these cases, the WVHDF does not need to check for compliance with the requirements or perform an environmental review, consultation, or other action under NEPA. Some examples of activities exempt from NEPA requirements include:

- Technical assistance;
- Administrative and management activities;

- Information and financial services; and
- Purchase of tools.

- **Categorically excluded from NEPA requirements (24 CFR 58.35(a))**

Activities that are categorically excluded from NEPA review (environmental assessment or environmental impact statement) requirements receive this designation because they do not individually or collectively have a significant impact on the environment. However, compliance with other applicable federal environmental laws listed in § 58.5 is required for activities designated under this part. Examples of activities categorically excluded from NEPA is the acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements when the facilities and improvements are in-place and will be retained in the same use without change in size or capacity of more than 20 percent.

A HOMERent project that involves the rehabilitation of buildings and improvements may be considered as a Categorically Excluded activity not subject to 58.5 under the following conditions.

- i. *In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;*
- ii. *In the case of multifamily residential buildings:*
 - a. *unit density is not changed more than 20%;*
 - b. *the project does not involve changes in land use from residential to nonresidential; and*
 - c. *the estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation.*

The WWHDF would be required to document the environmental review through the completion of Statutory Checklist and Determination of Categorical Exclusion.

- **Categorically excluded, not subject to § 58.5 (24 CFR 58.35(b))**

Activities in this section are categorically excluded from the requirements at § 58.5, due to HUD's determination that such activities will not alter any conditions that would require a NEPA review or a compliance determination under § 58.5. When performing a categorically excluded activity not subject to § 58.5, the WWHDF does not need to publish a NOI/RROF (Notice of Intent/Request for Release of Funds). Following the award of program funds, no further approval from HUD (or the State) is required with respect to environmental requirements. An example of an activity categorically excluded from § 58.5, but not NEPA

would be an activity to assist homebuyers with purchasing existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, and similar activities that result in the transfer of title.

The WVHDF will still need to file a statement in the Environmental Review Record that the activity was determined to be Categorically Excluded, Not Subject to § 58.5.

- **Categorically excluded, but may be converted to an exempt activity (24 CFR 58.34(a)(12))**

Any of the categorically excluded activities in § 58.35(a) are exempt from NEPA, provided that there are no circumstances that require compliance with any other federal law and authorities cited in § 58.5. Using the statutory checklist, and after consulting with applicable agencies and organizations, the WVHDF can designate an activity as exempt if it can show that none of the federal laws and authorities are triggered through funding this activity. The statutory checklist deals with non-NEPA regulations to which HOME grantees must adhere, such as historic and wildlife preservation rules and water quality standards. The WVHDF would need to file a completed Statutory Checklist and a statement in the Environmental Review Record.

- **Subject to a environmental assessment (24 CFR 58.36)**

If a project is not exempt or categorically excluded under the above sections, the WVHDF must prepare an Environmental Assessment (EA). An EA is a concise public document that includes all the evidence and analysis supporting the WVHDF's decision as to whether an environmental impact statement is warranted, or if an activity will result in no significant impact to the environment. The contents of a standard environmental assessment are found at § 58.38.

A HOMErent project that involves the construction of buildings and improvements will require an Environmental Assessment.

- **Subject to an environmental impact statement (24 CFR 58.37)**

If a project is subject to a full EA and is determined to have a potentially significant impact on the human environment, then an Environmental Impact Statement (EIS) is required. An EIS is also required if the project fits at least **one** of the following criteria:

1. it would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds;
2. it would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (not including rehab projects categorically excluded under § 58.35) or would result in the construction or installation

- of 2,500 or more housing units, or would provide sites for 2,500 more housing units; or
3. it would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. See Section 58.37 for further information about when an EIS is necessary and when it may be able to be avoided.

Please do not hesitate to contact the W VHDF if you have any questions regarding the level of review that will be required for your HOMErent Project.

II. Special Instructions

ESAs that do not satisfy the W VHDF environmental review requirements or are incomplete will result in processing delays. ***Prior to final environmental approval, any negative site impacts or REC's must be adequately resolved and all associated environmental costs must be accurately documented and submitted.*** Abatement cost for Asbestos, Lead-Based Paint, UST/LUST remediation, soil remediation and/or soil vapor remediation must be reported in the ESA. Remedial work must be performed by licensed and insured contractors.

Use of Federal Funds

HOMERent projects are required to be in compliance with the National Environmental Protection Act (NEPA) 24 CFR Part 58. In order to commit HOME Program funds, W VHDF must document compliance with HUD's Environmental Review (ER) process to satisfy both the NEPA mandated items and the additional federal statutory and regulatory requirements administered by EPA, SHPO, etc. The Sponsor is responsible for retaining a qualified consultant to produce a NEPA report conforming to a HUD Approved Format. The W VHDF is responsible for making the environmental determination and maintaining the environmental review record as required by HUD.

The NEPA sequence has three components requiring that: 1) written approvals from appropriate federal and state agencies be obtained, 2) W VHDF makes a determination and publishes a public notice which includes a public comment period and addresses any public comments received, and 3) W VHDF ensures that no choice-limiting actions on the part of the sponsor are taken prior to completion of the environmental review process.

For activities requiring public notice, the publication process routinely requires roughly 45 days to complete once the NEPA record has been approved by W VHDF. Incomplete or inaccurate NEPA documentation increases the amount of time necessary to complete W VHDF review and ultimately delays the publication process.

Development proposals involving construction in environmentally sensitive areas identified under NEPA such as wetlands, floodplains or near adverse impacts such as landfills, railroads, above ground or underground storage tanks, or freeways may

disqualify your project from using federal funds or require additional review time beyond the time periods noted above.

Mitigation measures may be required to address impacts identified through the NEPA review. The costs for any mitigation measures need to be identified in the project budget and any resulting architectural/engineering modifications incorporated into the project plans and specifications.

Any construction activities proposed in a wetland (regulated or unregulated) or in a 100-year flood plain area or where site contamination cannot be effectively remediated or mitigated are strongly discouraged and may prohibit the use of federal funds.

Business Environmental Risks

The Business Environmental Risk (BER) designation is allowed under ASTM 1527-05/13. However, this designation is generally unacceptable. WWHDF reserves the right to return any report with BERs to the Sponsor for re-evaluation.

III. Phase I Environmental Site Assessment (ESA)

The Phase I Environmental Site Assessment (ESA) must be submitted for WWHDF HOMErent projects. ESA's must be conducted to either the ASTM E 1527-05 or E 1527-13 Standard Practice. The Phase I ESA is designed to satisfy the underwriting guidelines of the WWHDF by addressing federal environmental review requirements.

The ASTM E 1527-05/13 Standard Practice defines "good commercial and customary practice" for conducting an ESA, thereby allowing the user to satisfy one of the requirements to obtain an innocent landowner, a contiguous property owner, or bona fide prospective purchaser defense to CERCLA liability. These defenses are also referred to as "Landowner Liability Protections" (LLPs). The ASTM E1527-05/13 practice satisfies the "due diligence" requirements established by 40 CFR Part 312 for conducting All Appropriate Inquiry (AAI), one of the elements to obtain CERCLA liability protections.

Proposed development sites should exhibit no obvious negative site impacts or Recognized Environmental Conditions (RECs) which cannot be cost-effectively corrected or mitigated to residential standards. ASTM 1527-05 defines a REC as "the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property due to release to the environment or under conditions that pose a material threat of future release. *De minimis* conditions are not recognized environmental conditions." ASTM 1527-13 defines a RECs as "the presence or likely presence of any *hazardous substances or petroleum products* in, on, or at a *property*. (1) due to any *release to the environment*; (2) under conditions indicative of a *release to the environment*; or (3) under conditions that pose a *material threat* of a future *release to the environment*. *De minimis* conditions are not *recognized environmental conditions*."

Negative site impacts include, but are not limited to: excessive noise or physical hazards from railroad, vehicular, or air traffic; high tension power lines or high pressure gas transmission pipelines, sanitary landfills or auto salvage yards; sewage treatment plants; stored hazardous materials on or near sites; above ground or underground storage tanks; buried or spilled hazardous wastes/plumes; operating oil wells; mine shafts; gravel pits; wetlands; orchards; and prime agricultural soils classification.

The WWHDF will not approve developments requiring construction in the Special Flood Hazard Area (SFHA) unless all necessary governmental permits are obtained and all buildings, parking areas, and pedestrian and vehicular ingress and egress areas are elevated at least one foot above the base flood elevation (also referred to as "BFE" or the 100-year flood plain) when the development is completed. SFHA is defined as an area with a 1 percent annual chance of flooding at or above BFE; this is equivalent to a 26 percent chance of flooding over the life of a 30-year mortgage. SFHA developments receiving any federal funding source (Home, CDBG, Project-Based Vouchers, etc.) are generally discouraged but may be allowed in cases that have satisfied HUD's "Eight Step" decision making process for determining what if any impact the development may have on either the 100-year flood plain or a wetland area. The "Eight Step" decision making process can be costly and can require a significant amount of time to complete.

Non-ASTM Issues and Considerations

ASTM Phase I ESA should also address the following issues:

1. **Friable and non-friable ACM's:** Regardless of the date of construction, structures that are undergoing rehabilitation shall include the following documentation regarding asbestos: 1) a NESHAP-compliant survey from a licensed asbestos contractor/supervisor, 2) asbestos abatement plan including provisions for independent third party air monitoring, 3) a copy of the trade payment breakdown and associated supporting documentation identifying all cost associated with the asbestos abatement activities and identified as a separate line item.
2. **Lead-Based Paint (LBP):** If a structure was built prior to January 1, 1978, a Lead Based Paint Risk Assessment and Inspection must be submitted prior to closing. LBP documentation will include at a minimum:
 - a. A completed Lead Based Paint Risk Assessment and Inspection that complies with HUD's "Guidelines for the Evaluation and Control of Lead-Based Paint in Housing" from an appropriately certified Lead Risk Assessor.
 - b. Multi-family projects with HOMERent funding must comply with HUD's Lead Safe Housing Rule (24 CFR Part 35). Abatement is required for all projects with greater than \$25,000 federal assistance per unit, hard costs. Projects that don't meet this

requirement may use a combination of EPA lead-safe renovation and/or HUD interim controls, as appropriate, to address deteriorated LBP and its associated hazards.

- c. The following LBP documentation must be submitted prior to initial closing: 1) LBP Risk Assessment/Inspection report, 2) a remediation plan including provisions for a dust wipe clearance conducted by a certified, independent third party, 3) bid(s) from licensed and insured contractors who will be conducting lead remediation activities, and 4) a copy of the trade payment breakdown identifying all cost associated with the proposed LBP remediation activities and identified as a separate line item.
3. **Wetlands:** The Phase I ESA must address the presence of any regulated or non-regulated wetlands on the subject site. These areas must be accurately noted on the development site plan.

For all applications, any wetlands and their relation to the building footprint must be clearly located on the proposed development site plan and included in the Phase I report.

4. **Noise analysis:** A noise assessment is required at the time of the Phase I submission for sites located within: 1) 1,000 feet of a limited access highway or "busy roadway" (as defined by HUD), 2) 3,000 feet of a railroad line, or 3) 15 miles of a civil or military airport. (See WWHDF Primary and Commercial Airport List)

The noise assessment **must** follow the procedures and worksheets contained in the "*HUD Noise Guidebook*". The "online" noise calculators (assessment, barrier, etc.) provided by HUD are acceptable provided that adequate documentation, such as traffic count data, railroad activity verification from yardmaster, location map showing distance between airport, etc., should be attached to noise analysis.

Noise mitigation measures may be required for any site with a DNL of 65 dB or greater. The project architect or engineer must document the effectiveness of any proposed noise mitigation measures to the WWHDF.

5. **Special Flood Hazard Area (SFHA):** The Phase I ESA must include a copy of the FEMA Flood Hazard map including the Community Panel Number in the report. The site boundaries on the FEMA map must be clearly noted. FIRMette Floodplain maps are available online from FEMA at <http://www.msc.fema.gov>. All buildings, parking areas, and pedestrian and vehicular ingress and egress areas must be elevated at least one foot above the base flood elevation when the development is completed.

If a project is located adjacent to or in a flood prone area, the base flood elevation boundary and its relation to the buildings and other improvements must be clearly located on the proposed development site plan and included in the Phase I report.

IV. HUD Environmental Assessment (EA) (24 CFR 58.36)

The purpose of the EA is to determine the significance of environmental effects and to assess alternative means to achieve the project's objectives. Once actual and potential impacts of project alternatives are identified, the WVHDF must then assess if mitigation measures are needed to undertake the project. If significant impacts are anticipated with no reasonable means of mitigation apparent, the WVHDF may reject the project or require the preparation of an Environmental Impact Statement (EIS). In all circumstances, the EA must provide sufficient evidence and analysis for determining whether to prepare an EIS.

Statutory Checklist Laws and Related Authorities

HOMErent Projects must demonstrate compliance with the following federal laws and related authorities through completion of the Environmental Assessment checklist. The NEPA statutory checklist must be completed by an Environmental Professional qualified to conduct such a review.

□ Historic Properties (16 USC 470 Section 106):

- Cover letter to SHPO
- SHPO Section 106 Project Information Form
- Attachments to Section 106 Form
- SHPO response letter(s) – always responds
- Cultural Resource Survey, if applicable
- Memorandum of Agreement, if applicable, or documentation of other mitigation measures as agreed to by all consulting parties

□ Floodplain Management (EO 11988):

- FEMA Flood Insurance Rate Map (FIRM) map or FEMA FIRMette Map w/ project keyed
- If not in floodplain, nothing more required. EA/Statutory Checklist form must be complete.
- If in floodplain, HUD 8-Step Process may be required. Engineer/architect is resource for help.

□ Flood Insurance (24 CFR Part 55): (Particularly relevant if project lies in floodplain. The participating community where the subject property is located must be a member in good standing with NFIP if project is in floodplain. If not in floodplain, documentation should still be attached.)

- Page(s) from FEMA Community Status Book for NFIP status
- Other:
- **Wetland Protection (EO11990):** (If project is in a wetland, the HUD 8-Step Decision Making Process applies.)
 - Color US Fish & Wildlife (US F&W) National Wetlands Inventory (NWI) Map
 - Letter & attachments to US F&W
 - DEP response
 - Permitting requirements, as applicable
 - Other:
- **Coastal Zone Management (16 USC 1451, Section 307) (Not Applicable in WV)**
 - None in West Virginia; not used. (See EPA Region III)
- **Airport Hazards (24 CFR Part 51, Subpart D) -** Protection of project & project beneficiaries from airport accident areas.
 - Maps indicating nearest airports in relation to the project area
 - If project proposed w/in thresholds of airport accident areas, HUD process must be completed
- **Endangered Species (50 CFR Part 402) -** Includes threatened and endangered plants and animals, and their habitat.
 - Letter & attachments to US F&W for Federally designated species
 - Response from US F&W
 - Conditions by agencies, as applicable
- **Wild & Scenic Rivers (16 USC 1271) -**Project impacts to designated rivers & river segments; impacts to project by rivers & river segments.
 - Federally designated river- Website documentation & map river in relation to project
- **Farmland Protection (7 CFR Part 658) -** Does project convert prime or unique farmland to other uses.
 - Color aerial photograph of project area and surrounding area
 - Letter & attachments to USDA Natural Resources Conservation Services (NRCS), including
 - Farmland Conversion Impact Rating Form AD 1006
 - All correspondence from USDA NRCS
 - Mitigation measures recommended, if applicable

- **Noise Control (24 CFR 51 Subpart B)** –Noise made by project, noise around the project, construction noise.
 - Color aerial photograph
 - Color photos of project site & surrounding area
 - Color maps showing project in relation to noise sources or sensitive noise uses
 - Field visit checklist or other form of documented site visit
 - Noise Assessment, if applicable
 - Noise attenuation measures, as appropriate
- **Explosive & Flammable Operations (24 CFR Part 51, Subpart C)** – Hazards by the project and/or project subjected to nearby hazards.
 - Field visit checklist or other form of documented site visit
 - Color photographs of project site & adjacent sites
 - Statement from fire department/fire marshal
 - Statement from local emergency management agency/individual
 - HUD Acceptable Separation Distance calculations, if applicable
 - Mitigation measures, if applicable.
- **Sole Source Aquifers (40 CFR Part 149)**
 - None in West Virginia; not used. (See EPA Region III)
- **Air Quality** (Air emissions from project or project subjected to air emissions).
 - EPA designated non-attainment areas from EPA website
 - EPA/ DEP air permits or permitting requirements
 - Conformance with local air codes, ordinances, & standards by finished project & construction activities
- **Contamination & Toxic Substances (24 CFR 58 (5)(i)(2))**: Contamination by the project or impacts to the project.
 - ASTM Phase I Environmental Site Assessment (ESA)
 - Consider contamination to/of: Groundwater, Air, Surface Water, Vapor Encroachment, Soil
 - ASTM Phase II ESA, if applicable
 - Response Activity Plan to DEP, if applicable
 - No Further Action letter, if applicable
- **Environmental Justice (EO 12898)** - Disproportionately high adverse impacts on low income & minority persons.
 - Planning and zoning information, if available

- Public involvement in the project (should coincide with citizen participation in an EA)
- Map or other documentation to show if project occurs on or near low income or minority neighborhood
- Positive and negative impacts on people by the project

V. Documents and Forms

The Sponsor of a HOMERent project shall document compliance with the HUD Environmental Assessment requirements through the completion and submission of the following documents:

1. Phase I Environmental Site Assessment (ASTM 1527-05/13)
2. "Environmental Assessment Determinations and Compliance Findings for HUD-assisted Projects 24 CFR Part 58". (Must Include Supporting Documentation.)

A copy of the "Environmental Assessment Determinations and Compliance Findings for HUD-assisted Projects 24 CFR Part 58" format published by the HUD has been attached hereto for your reference and use.

VI. Conclusion

This document provides an overview of the Phase I ESA and "NEPA review" process required for HOMERent projects. Environmental reviews are required for all projects that use federal funds. Sponsors are encouraged to work with a qualified environmental review professionals.

If you have any questions regarding the HOMERent environmental review process, please contact Robert F. Cary, Director of Federal Compliance and Policy Development, WVHDF at (800) 933-9843 or bcary@wvhdf.com.