



Environmental Review Handbook

Maine Community Development Block Grant Program



www.meocd.org

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Introduction

The Community Development Block Grant Program provides funds for projects of all types. Under federal statute, these projects must be evaluated for their environmental impact prior to obligating project funds. This manual will assist you in creating your environmental review record, selecting the appropriate level of review, and filing the proper documents with us.

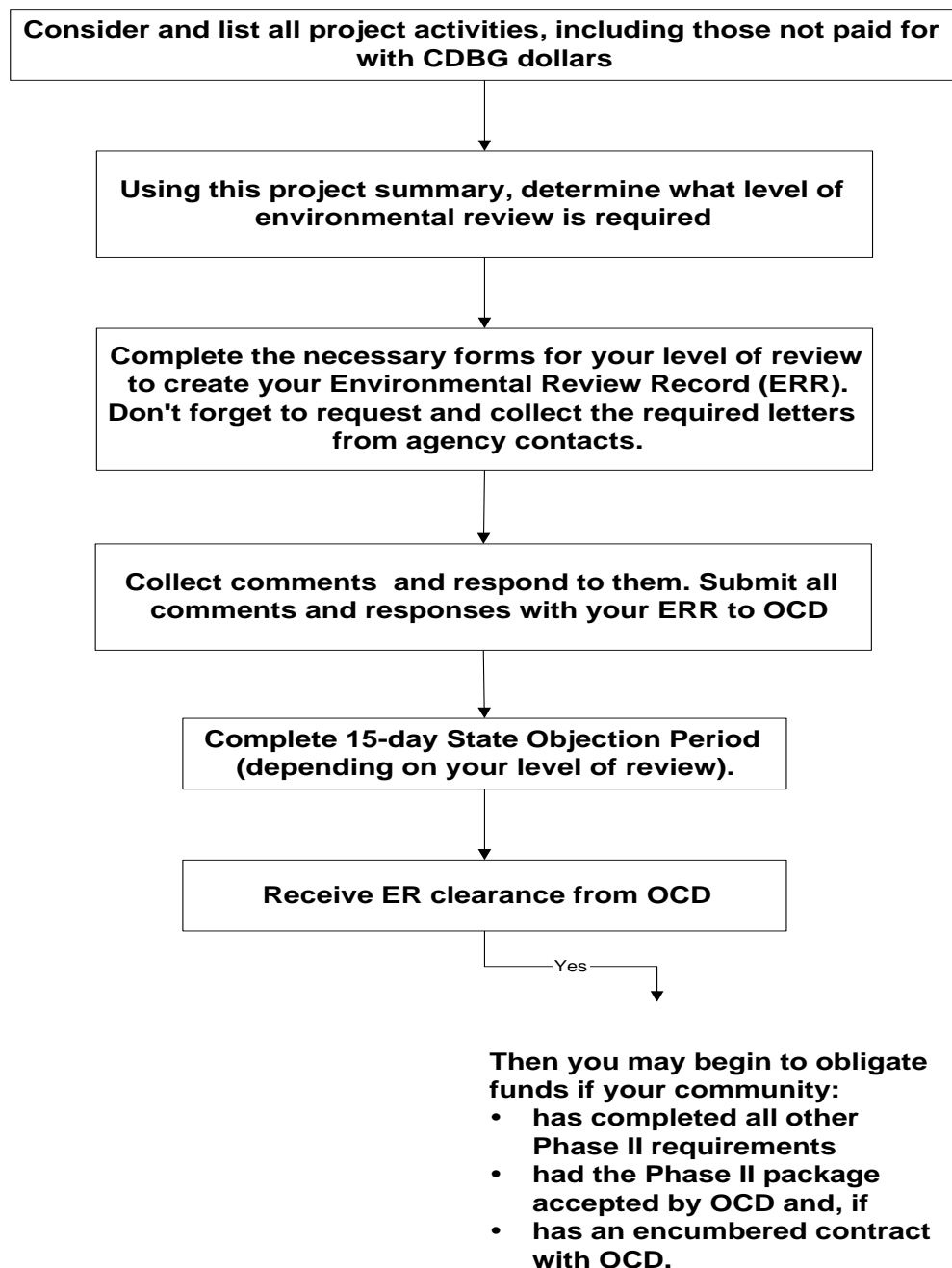
Several areas in the Environmental Review Handbook have a description of the topic on the left and the applicable CDBG regulations on the right. Blank forms are included in each Level of Review section. Examples of completed forms are provided for most Levels of Review. The appendix contains regulations relevant to environmental reviews, beginning with the CDBG Environmental Review Regulations (24 CFR Part 58), HUD Procedures for the Implementation of EO 11988 (24 CFR Part 55 with excerpts from Parts 50 and 200), and ending with the HUD Noise Abatement and Control, Hazardous Operations, Runway Protection Zones (24 CFR Part 51) regulations.

If you have questions after reviewing this material, feel free to contact the Office of Community Development (624-7484).

Sincerely,
The Office of Community Development Staff

Overview of the Environmental Review Process

This chart outlines the basic steps of an environmental review process. The length of the process depends on the level of review required and the timeliness of the community's efforts.



Environmental Review Terminology

The environmental review requirements of the Department of Housing and Urban Development (HUD) emerged from the **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**. This Federal statute requires recipients of Federal funds to review the impact of projects on the physical, social and human environment. The Act also directs Federal agencies to provide regulations that lead to appropriate reviews of projects and activities.

The Maine CDBG program must live up to HUD regulations. Understanding the following terms will give you a good basis for maneuvering through the environmental review process. Terms are listed in an order intended to build understanding of the process.

24 CFR Part 58 is the location of HUD regulations governing environmental review procedures.

ACTIVITY DEFINITION Activity means an action put forth as part of a CDBG-assisted project. An activity is included in a project whether or not it is paid for or eligible for CDBG funding. See 24 CFR 58.2(a)(1).

AGGREGATION Individual activities are considered part of a project when they are: (1) connected by geography; (2) linked by function; or (3) otherwise related logically to other activities in achieving an identified goal. A single environmental review will evaluate the separate and combined impacts of all activities that must be taken to accomplish the specific objective of a proposed project. See 24 CFR 58.2(a)(4); 58.32(a).

PROJECT DEFINITION Project means an activity or group of integrally related activities designed to accomplish, in whole or in part, a specific objective. Sources of project funds are linked with the activities they are funding.

PROJECT DESCRIPTION The description lists activities that make up the project, identifies how actions are connected, and notes impacts from activities. Impacts include individual, collective, and cumulative consequences of present and contemplated future actions. 24 CFR 58.32(b)(c)(1).

ERR CLEARANCE A notification letter is sent to the grantee showing the effective date of removal of environmental review requirements. CDBG funds cannot be obligated or expended for activities prior to the ERR Clearance date. Matching funds cannot be obligated or expended *for not exempt or nonexcluded/FONSI activities* prior to the ERR Clearance date. 24 CFR 58.22

ACTIVITY CATEGORIES HUD identified types or categories of typical CDBG activities and the minimum actions required for review by the National Environmental Policy Act (NEPA). Activity categories include 35b, categorically excluded, and nonexcluded. Once an individual project has been evaluated, a specific LEVEL OF REVIEW can be determined as appropriate for that individual project.

CHECKLISTS Every activity category requires a review for compliance with statutes and regulations. The 35(b) Checklist is for the activity category that requires review for statutes and regulations listed in 24 CFR 58.6. The Statutory Checklist is required for all other activity categories that require compliance review for statutes and regulations listed in 58.5 and 58.6. The Statutory Checklist includes other state statutes and regulations.

35(B) The activities in this category are either exempt by definition or categorically excluded. What these activities have in common is a HUD required compliance review with 24 CFR 58.6 and an *absence of physical or structural changes*. In addition, economic development activities cannot expand existing operations and remain eligible for this level of review.

CATEGORICALLY EXCLUDED Rehabilitation and public facility reconstruction are activities requiring more than minimal but less than a full NEPA review. A categorically excluded activity may stop fitting into this category if certain size, use, or other characteristics are present (24 CFR 58.35(a) or in case of extraordinary circumstances (24 CFR 58.2(a)(3)). All project activities must be examined for compliance with Federal and state laws, regulations, and Executive Orders (24 FR 58.5&6). **CONVERTED TO EXEMPT** and **NOT EXEMPT** are types of categorically excluded reviews. Review results could determine a project needs a nonexcluded/FONSI level of review.

CONVERTED TO EXEMPT Categorically excluded activities may meet all conditions and compliance requirements fully and unconditionally. The review process may be finalized upon acceptance of this determination. The Maine CDBG program requires submission of an Environmental Review and Clearance record prior to an ERR Clearance.

NOT EXEMPT When categorically excluded activities cannot meet all requirements and cannot become exempt, as in the case of unspecified housing rehabilitation sites and façade grants, additional review actions are needed. In the case of unspecified sites, review will be completed on each site prior to commitment of funds for that site. In other situations, this review will follow up or add to the original review. Refer to the discussion on tiering in the Project Activities, Aggregation, Tiering and Updates section of this handbook.

NONEXCLUDED/FONSI Non-excluded activities must complete a NEPA environmental review. This requires completion of the environmental assessment checklist. A project with at least one non-excluded activity must include all project activities in an environmental assessment. The assessment will conclude need for an Environmental Impact Statement (EIS) or determine a Finding of No Significant Impact (FONSI) 24 CFR 58.36 and 58.40. New construction, demolition (when reuse of the site is known), and site development are nonexcluded activities. Same site replacement housing is the only time new construction is categorically excluded. Categorically excluded activities that result in change, altered usage, or increased capacity become non-excluded activities and require an ENVIRONMENTAL ASSESSMENT (EA).

ENVIRONMENTAL ASSESSMENT CHECKLIST Includes seven major areas of evaluation for potentially significant impacts. Completion of the checklist will conclude no significant impact, identify additional data to be reviewed, or show need for an Environmental Impact Statement (EIS).

EIS When the consequence of a project is extensive, a comprehensive study of impacts becomes necessary. A project providing water capacity for 2,500 additional housing units requires an EIS. 24 CFR 58.37. A Finding of Significant Impact may require an EIS. See 24 CFR 58.40(g). Maine CDBG projects rarely require an EIS.

EXTRAORDINARY CIRCUMSTANCES Unusual, unique, unexpected, or unprecedented conditions may require additional review for project activities, regardless of activity category. See 24 CFR 58.2(a)(3).

NOTICES Published notices in newspapers and comment periods are required by the Maine CDBG program. CATEGORICALLY EXCLUDED, NOT EXEMPT and NON-EXCLUDED/FONSI reviews require published notices.

UPDATES Additional review actions are necessary if activities, alternatives, discoveries, conditions, etc. change the definition of the project. At a minimum, an Update to an ERR would require updating of all checklists and ERR materials. At a maximum, an Update could call for a different Level of Review. Refer to the Project Activities, Aggregation, Tiering and Updates section of this handbook for assistance. 24 CFR 58.47

ENVIRONMENTAL JUSTICE This requires review for a disproportionately high adverse effect on minority and low-income persons or populations. Siting of facilities, consequences of location, etc. are the subject of this review. Addressing as well as identifying adverse effects are purposes of this requirement. (EO 12898)

FLOODPLAIN All activities must be reviewed for location in a floodplain. Activities in floodplains require additional actions. In most cases, publication of special notices, comment periods, and floodplain permits are necessary (EO 11988). See Policy Letter #5 for more information.

WETLANDS All wetlands must comply with Executive Order 11990. Requirements include documentation of alternatives, determination of “no practicable” alternative, and a Natural Resources Protection Act (NRPA) permit. The Contact List includes the DEP contact for NRPA review and permit process. Review for wetlands in floodplains must comply with both EO 11988 and 11990. The review is done concurrently with both included in published notices and comment periods. See Wetlands in Guidance Questions for more information.

Environmental Review Record

As you complete your environmental review, you will collect several documents. These will include checklist forms discussed later in this manual, certifications, project definitions, permit applications, and a public comment record. These materials constitute an environmental review record (ERR) and must be kept as a record of your review process.

The ERR must be kept on file as evidence that an environmental review process was completed. More importantly, your ERR can demonstrate all your project tasks were completed in compliance with your ERR conclusions. The ERR is a public record and must be available for public review whether or not your level of review includes a local comment period.

Several forms in your ERR requires certification by an official of the unit of government awarded a grant. The official so designated must have been given the authority by the governmental legislative body. Signature of the certifying officer signifies review requirements are carried out as required and will represent the grantee in federal court if necessary. ERR forms have space for signature of the Chief Executive officer (Certifying Officer).

Depending on level of review, your ERR will include:

- Environmental review statement
- Appropriate checklist(s)
- Requests for Release of Funds and Certification Form
- Published Notice
- Letters from various agencies and regulatory authorities
- Comments and responses
- Notice to Interested Parties (Dissemination List)
- Copies of permit applications and permits

Remember, your ERR must document all of your review activities and demonstrate that you have considered your project in the context of all applicable environmental statutes and regulations. Guidance is included about what portions of your ERR must be sent to OCD. Your entire ERR does not have to be sent to this Office.

Regulatory Reference

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

(a) ERR Documents. *The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decision-making and actions pertaining to a particular project of a recipient. The document shall:*

- (1) Describe the project and the activities that the recipient has determined to be part of the project;*
- (2) Evaluate the effects of the project or the activities on the human environment;*
- (3) Document compliance with applicable statutes and authorities, in particular those cited in § 58.5 and 58.6; and*
- (4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).*

(b) Other documents and information.

The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties.

CONTACTS, COMMENTS AND DOCUMENTATION

Two documentations are necessary for all ERRs; The Floodplain map (including panel numbers) used to determine applicability is needed on all checklists, and except for 35(b) reviews, ALL PROJECTS MUST HAVE A COMPLIANCE LETTER FROM THE STATE HISTORIC PRESERVATION OFFICER (SHPO). The SHPO is on the Contact List. Except for the SHPO, contact with every person on the Contact List is not required for every ERR.

Contacts: Code enforcement officers, local documents, maps (including Maine Atlas and Gazetteer), studies, Contact List notations, websites, and regional planning commissions should be the first contacts. They could provide documentation to answer all compliance needs. Example: A *Coastal Barriers website noted on the Contact List lists municipalities with applicable sites. Also listed with the floodplain contact are two websites for accessing floodplain maps.* Review for some statutes may call for more than one step to check. *The Maine Endangered Species Contact List refers to “Beginning with Habitat” maps and also identifies conditions under which contact is required.* Some conclusions may need confirmation. *Your project map could show a wetland. Contact with the Natural Resource Protection Act can verify wetland location. If in a wetland, early contact could initiate the pre-application for a NRPA permit and advise current compliance requirements. If your project involves ground disturbance, especially for new construction, grantees must consult with the recognized tribes to determine whether a proposed project may adversely affect historic properties of religious and cultural significance, and if so, how the adverse effect could be avoided, minimized or mitigated. This applies to projects on and off tribal lands.* The Contact List gives you names of persons from whom assistance can be requested either in writing or by telephone. Guidance Questions (pages 68 – 75) provides general questions and some directive guidance useful in moving through the ERR process.

As you request assistance, keep in mind making the request means you need verification or clarification needed to your review. It follows, then, you cannot complete your ERR materials without a response to your assistance request. The following should facilitate this process.

COMPLIANCE REVIEW ASSISTANCE REQUESTS

COVER LETTER OR MEMO:

- State the compliance area you are concerned about (E.O. 11988?) (tidal waters?)
- Identify relevant known and/or potential compliance questions you have (project is located in a floodplain) (no habitat map was available and project disturbs undeveloped land)
- Focus on project characteristics that relate directly to the compliance area (reconstruction costs and the market value of a structure prior to improvement are relevant to floodplain. (sewer and water extension in an existing ROW may be important for Endangered Species review)
- Attach project description and site plan or site map (be sure you have aggregated activities). If your inquiry is for floodplain compliance, mark the project location on the flood map.

PROJECT DESCRIPTION

- What will be acquired, constructed, rehabilitated, improved, installed, etc. (land for a dam; multi-unit housing structure; water lines, etc.)
- Existing site or location characteristics (sizes, buildings, linear feet, etc.)
- Proposed site developments (acres or square footage, acres or square footage in previously undeveloped or undisturbed areas)
- Total Project Cost and Funding Sources
- What have you determined thus far in your compliance review?

- Has the project been in another ERR and/or State permitting process? Were there issues?
- Does the project site include areas within 75 feet of any protected natural resource(s)?
- Will the project be located within 75 feet of a stream, pond, or wetland?
- Will the project affect a waterbody and, if so, which one?
- Has the site been surveyed by a design professional or wetland scientist?
- Did review call for follow-up or additional review?

SITE MAP/SITE PLAN ATTACHMENT:

- show and identify adjacent water bodies, bogs, existing roadways and existing structures;
- indicate north arrow and scale (if reduced, show original scale and percentage of reduction);
- locate proposed construction, improvements, installations, etc. to scale; and
- identify other areas that will be disturbed because of the project.
- For floodplain review, photocopy the floodplain map and:
 - use the appropriate section of the FIRM as the base map, follow the above directions and
 - include a tax map copied at scale with site highlighted and elements drawn at scale.

Compliance determinations are needed to finish your ERR. A response to your request could take as long as 14 to 30 days. Complete, relevant, clear and concise information should minimize an agency's response time. Unusual circumstances could delay responses beyond 30. Complete, relevant, clear and concise information will expedite responses for unusual or unique situations. Compliance responses could say no action is required to show compliance or could call for additional information, more review, additional study, remediation, a permit, or other actions.

Comments: Questions, concerns or objections are always possible. The local government is obligated to consider and to respond to all objections, concerns and questions. OCD must be informed of comments and all must be resolved before the ERR is submitted.

Dissemination List: The FONSI level of review requires the FONSI notice be sent to interested groups and individuals. This is the same notice provided for newspaper publication. Guidance is given in the FONSI section. Contact List persons may be included.

Documentation: All compliance documents that defend or back up review conclusions must be in the files of the local government and available for public review. Checklists provide space to defend each decision, give the basis for conclusions, and summarize conclusions. All ERR checklists will include floodplain map identification and panel numbers and state whether or not a floodplain is involved. Date of the letter and conclusion from the SHPO must be written on the checklist. Other compliance areas are to be summarized in similar fashion.

Whenever historic properties or resources are on a checklist, you must submit the letter from the SHPO. A letter from the floodplain contact is necessary only when a floodplain is involved. A general project location map should be included.

Clear, concise, relevant and complete information will expedite responses to your requests. Responses will give the assistance you requested OR will ask for more information. **Lack of clear, concise, relevant and complete information will delay responses.** If after 30 days no response to your request or no response to additional information was received, follow up contact must be made. A "no response" does not constitute a determination of compliance. Remember to complete any actions or comply with all conditions called for and include documentation in your ERR.

Environmental Review Contact List

- National Historic Preservation Act.
• Protection and Enhancement of the Cultural Environment, E.O. 11593.
• Archeological and Historic preservation Act.
Kirk F. Mohny, Director
Maine Historic Preservation Commission
65 State House Station
Augusta, Maine 04333-0065
Phone 287-2132
- Coastal Zone Management Act. *Coastal Zone Consistency.*
Todd Burrowes, Public Service Coordinator
Maine Department of Conservation
22 State House Station
Augusta, Maine 04333-0022
Phone 287-1496
- The Clean Air Act. *USEPA Implementing Regulations.* Protection and Improvement of Air Law.
Eric Kennedy, P.E.
DEP Bureau of Air Quality
17 State House Station
Augusta, ME 04333-0017
Phone 287-5412
- Safe Drinking Water Act. Public Water Supply Source Protection Program.
Nathan S. Saunders, P.E.
Senior Environmental Engineer
Division of Environmental and Community Health
DHHS Drinking Water Program
11 State House Station
Augusta, Maine 04333-0011
Phone 287-5685
- Safe Drinking Water Act. Sole Source Aquifers (*Islesboro, Matinicus, Monhegan, North Haven, and Vinalhaven Islands have SSAs*)
John Hopeck, Senior Geologist
DEP Bureau of Land & Water Quality
17 State House Station
Augusta, Maine 04333-0017
Phone 215-4463
- Wild and Scenic Rivers Act. *Only Maine designated river is the Allagash Wilderness Waterway*
Rex Turner, AWW Plan Coordinator
Dept. of Conservation, Bureau of Parks & Recreation
22 State House Station
Augusta, ME 04333-0022
Phone 287-4920
- Federal Endangered Species Act. *Federal and Maine designations differ.*
➔ Send USF&WS a copy of assistance requests made to MDIFW.
Shay White
US Fish & Wildlife Service
Maine Fish & Wildlife Service Complex
306 Hatchery Road, PO Box A
East Orland, Maine 04431

- Maine Endangered Species Act.
Maine Designated Endangered and Threatened Species and Essential Habitat.
➔ Check the list of designated essential habitats by Towns at website www.maine.gov/ifw/wildlife/etweb/habitat/ehindex.htm to see if Town is listed. If so, refer to the location map attached to the list. If project is close or within area boundaries or activities impact that area, contact MDIFW immediately (with copy to USF&WS) and await results.
➔ Get “Beginning with Habitat” Maps from local CEO or Planner and review for impact. If maps not available or if site likely impacted by project, request assistance from MDIFW (with copy to USF&WS) and await results.
➔ If proposal will develop undeveloped land or disturb previously undisturbed soil or vegetation, request assistance from MDIFW (with copy to USF&WS) and await results.

- Rivers and Harbors Act (Section 10); Clean Water Act (Section 404). *Dredging, filling, discharging or constructing in navigable waters, wetland, or waterways.*

- Farmland Protection Policy Act.
Projects in Urbanized Areas shown on Census Bureau maps and “tint overlay” on USGS maps do not require a review by NRCS.
➔ If land use was recently or is currently farmland, NRCS must be contacted.

- Site Location Law. *Projects in excess of 20 acres or structures covering more than 3 acres.*
- Natural Resource Protection Act.
Executive Order 11990 (wetlands).
Dredging, filling, construction in, on, over, or adjacent to the following: dune system, river

For Threatened or endangered plant species or rare natural communities:
Maine Natural Areas Program
Department of Agriculture, Conservation and Forestry
177 State House Station
Augusta, ME 04333
maine.nap@maine.gov
(207) 287-8044

MDIFW Environmental Review Coordinator
41 SHS, 284 State Street
Augusta, ME 04333
Phone: 287-5254 / Cell: 446-5145
Fax: 287-6395
Email: IFWEnvironmentalreview@maine.gov

Jay Clement, U.S. Army Corps of Engineers
Maine Project Office
675 Western Avenue #3
Manchester, ME 04351
Jay.l.clement@usace.army.mil
Phone 623-8367

Bill Yamartino, Asst. State Conservationist
USDA-NRCS
967 Illinois Avenue, Suite 3
Bangor, ME 04401
Phone (207) 990-9100

OR

NRCS District Conservationist listed in:
www.me.nrcs.usda.gov/contact/directory/fieldoffices.html

Site Law Coordinator
DEP Land Resource Regulation Division
17 State House Station
Augusta, ME 04333-0017
Phone 287-7691

Brian Kavanah, Division Director

pond, stream, brook, coastal and freshwater wetlands.

- Storm Water Management Law.

DEP Water Resource Regulation
17 State House Station
Augusta, ME 04333-0017
Phone 287-7700

- Protection and Improvement of Waters Law. *All overboard wastewater discharges from municipalities and industries.*

Donald T. Witherill, Director
Division of Watershed Management
Bureau of Land & Water Quality
17 State House Station
Augusta, ME 04333-0017
Phone 287-7688

- Subsurface Wastewater Disposal Rules
- Minimum Lot Size Rules
- Seasonal Conversion Rules
- Rules for Site Evaluators
- Private Cemetery Regulations

James Jacobsen, Environmental Spec. IV
DHS Division of Health Engineering
10 State House Station
Augusta, ME 04333-0010
Phone 287-5695

- Safe Drinking Water Law. *Drinking Water Program*

Nathan S. Saunders, P.E.
Senior Environmental Engineer
Division of Environmental and Community Health
DHHS Drinking Water Program
11 State House Station
Augusta, Maine 04333-0011
Phone 287-5685

- Coastal Barriers Resources Act. *Ocean Beach and dune/coastal barrier areas.*
➔ Check listing at: www.maine.gov/doc/nrimc/pubedinf/factsht/mar-fact.htm. **If Town is listed, contact MGS immediately** and await results. Towns without a CBRS do not need to get compliance information from the MGS.

Stephen M. Dickson, Marine Geologist
Maine Geological Survey
22 State House Station
Augusta, ME 04333-0022
Phone 287-7174

- Submerged Lands Act. *Actions in tidal waters/tidal rivers, Great Ponds, and international boundary rivers (St. Croix, St. John, St. Francis) including dredging, filling, or placement of permanent structures.*
➔ Check for clarification at: www.maine.gov/doc/parks/programs/sublands and contact DOC immediately, name the affected waterbody, and await results.

Carol DiBello, Coordinator
Submerged Lands Program
Bureau of Parks & Land
Department of Conservation
22 State House Station
Augusta, ME 04333-0022
Phone 287-4922

- Protection and Improvement of Waters Law. *Sanitary sewer extensions that add wastewater to treatment facilities.*

DEP-Division of Water Quality Management
17 State House Station, 28 Tyson Drive
Augusta, Maine 04333-0017
Tel: (207) 287-7808

Marine Resources-Fisheries

Fisheries Scientist
Maine Dept. of Marine Resources
Bureau of Sea Run Fisheries and Habitat
650 State Street
Bangor ME 04401
(207) 941-4453

Waste Management

Karen Knuuti
Environmental Specialist in the Bureau of
Remediation & Waste Management
Maine DEP
(207) 287-6115
Karen.Knuuti@maine.gov

Native American Tribal Contacts for Maine
Review is required in projects with ground
Disturbance.

Donald Soctomah, THPO
Passamaquoddy Tribe of Indians
Indian Township Reservation
PO Box 301
Princeton ME 04668
soctomah@gmail.com

Chris Sockalexis, THPO
Penobscot Nation
Cultural & Historic Preservation
12 Wabanaki Way
Indian Island ME 04468
Chris.Sockalexis@penobscotnation.org
207-817-7471

Susan Young
Natural Resources Director
Houlton Band of Maliseet Indians
88 Bell Road
Littleton ME 04730
Ogs1@maliseets.com
<http://naturalresources.maliseets.com>
207-532-4273 ext. 202

Jennifer Pictou
Aroostook Band of Micmacs
7 Northern Road
Presque Isle ME 04769
jpictou@micmac-nsn.gov
207-764-1972

Project Activities, Aggregation, Tiering and Updates

Project description and aggregation are two very important concepts in identifying your appropriate level of review. Under the CDBG ER regulations, a **project** is defined as “an activity or group of integrally-related activities designed to accomplish in whole or in part, a specific objective.” Note that if an activity cannot proceed without completing other activities, all of these activities are part of the project definition. If an activity triggers other activities, all of these activities are included in the project definition.

To perform an environmental review, it is essential to include all project activities in your review, regardless of who is paying for them. Activities must be **aggregated**. Section 58.32 says individual activities, which are related by geography, function or logic must be evaluated as a single project. This means all individual activities associated with your project must be included in one environmental review.

If you are replacing water pipes in several areas in your community and they are part of the same system, the activities are functionally related. If water line replacement in a neighborhood will occur along with affordable housing construction, all activities are aggregated into one review because the activities are geographically related.

Your project may have a series of activities that are neither functionally nor geographically related but have a common outcome or goal or some other relationship. This falls under “combination of aggregation approaches” or “logical parts of a composite of contemplated actions”. If sewer line replacement cannot occur without treatment plant improvement, the activities are aggregated and included in one environmental review.

Part 58 also allows for identification of **tiers** or activity layers and doing your review in stages. You may be able to conduct a general review on the type of project you intend to undertake and complete the review as specific sites are included in the project. This is tiering.

REGULATORY REFERENCES

§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) **Activity** means an action that a grantee or recipient puts forth as part of an assisted project, **regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program...**

(4) **Project** means **an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.**

TIERING DEFINITION:

(9) **Tiering** means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

AGGREGATION AUTHORITY:

§ 58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: **functional aggregation** when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; **geographic aggregation** when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a **combination of aggregation approaches**, which, for various project locations, considers the impacts arising from each functional activity and its **interrelationship with other activities**.

AND AGGREGATION PURPOSE:

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) **Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).**

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and

Under many Community Enterprise and Housing Assistance programs, the types of activities usually are known and many review areas can be completed in a general sense. The Categorically Excluded, Not Exempt level of review applies in these situations. As specific sites become known, your community will update your ERR by finishing incomplete review areas for each specific site.

Updating of environmental reviews becomes necessary when activities, alternatives, discoveries, conditions, etc., require reevaluation due to changes to the definition of the project. If an activity is added to a project, the project definition has changed and must be updated. If previously unknown conditions are discovered, review could identify actions needed to demonstrate compliance with requirements or could identify necessary remediation.

At a minimum, all checklists and ERR materials must be updated and maintained in the Grantee's local and State file. A more complex update could require a FONSI/Environmental Assessment. Additional guidance is included in the Determining your Level of Review section of this Handbook. Consult with your DPM or environmental review coordinator to determine the extent to which the original ERR must be amended and/or expanded.

modifications to individual activities.

TIERING AUTHORITY:

§ 58.15 Tiering.

Responsible entities may **tier** their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. **Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date.** The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings when:

- (1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
- (2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
- (3) The recipient proposes the selection of an alternative not in the original finding.

(b) The purpose of the responsible entity's re-evaluation is to determine if the original findings are still valid. If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must amend the original findings and update its ERR by including this re-evaluation and its determination based on its findings. If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

Activities in Floodplains

All CDBG grantees are subject to the requirements of Executive Order 11988, Maine CDBG program, and the local Floodplain Management Ordinance. The intent of EO 11988 regulations is to prevent floodplain development with CDBG funds. Proposed CDBG activities in a floodplain must follow the review procedure and decision process summarized in Policy Letter #5 (beginning on the next page).

Proposed actions clearly not in a floodplain and not affecting a floodplain must be documented on your checklist(s) as to the basis of this conclusion. You must identify by number and panel number the FIRM or FHBM map you used to document your conclusion. Your Code Enforcement Officer must confirm your conclusion that your proposed actions are neither in nor impact a floodplain.

If your project involves or impacts a floodplain (even a portion of a floodplain), you must follow the eight-step process for Executive Order #11988. All EO 11988 comment periods and floodplain permitting must be finalized before compliance with Floodplain Management requirements can be concluded. Your environmental review, therefore, cannot be completed before requirements of both have been met.

What to Send to OCD:

- Copies of both published notices
- Explanation of “No Practicable Alternative” (step 6 of EO 11988 process; see chart)
- Copy of floodplain permit.

REGULATORY REFERENCES

§ 58.5 Related Federal laws and authorities.
*In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action **that would apply to HUD under the following specified laws and authorities.** The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and **must consider the criteria, standards, policies and regulations of these laws and authorities.***

§58.6 Other Requirements.
In addition to the duties under the laws

....

b) Floodplain management and wetland protection.

(1) **Executive Order 11988**, Floodplain Management, May 24, 1977 (3 CFR, 1977 Comp., p. 117), as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see § 55.10 of this subtitle A.)

(2) **Executive Order 11990**, Protection of Wetlands, May 24, 1977 (3 CFR, 1977 Comp. p. 121) particularly sections 2 and 5.



Department
Of
Economic and Community Development
59 Statehouse Station
Augusta, Maine 04333

POLICY STATEMENT #5

Subject: *CDBG Activities in Flood Zones and Executive Order 11988*

Revised: 10/12

Introduction

All Community Development Block Grant (CDBG) recipients must comply with federal Executive Order (EO) 11988 (Floodplain Management) and Sections 102 and 202 of the Flood Disaster Protection Act. This Policy Statement shows what has to be done when a CDBG project is located in a floodplain.

Terminology You Should Know

Flood: Temporary condition of inundation of normally dry land areas due to unusual overflow of inland or tidal waters or unusual accumulation or runoff of surface waters.

Floodplain: Any land area susceptible to being flooded. A 100-year floodplain has at least a 1% chance of flooding in any year; a 500-year floodplain has a .2% chance of flooding in any year.

SFHA (Special Flood Hazard Area): shows the area inundated in a 100-year flood. A coastal high hazard area is a 100-year floodplain with additional hazards due to wind and rain action.

Floodway: Includes a river channel or water course and the adjacent land area that during a flood has the greatest depth, velocity, and highest hazard within the floodplain.

Flood Maps: Both a **FHBM** (Flood Hazard Boundary Map) and a **FIRM** (Flood Insurance Rate Map) show 100-year flood areas, including coastal high hazard 100-year areas. Some FIRMs also show 500-year flood areas and base flood elevations; a few show floodway boundaries.

NFIP (National Flood Insurance Program): Federal program enabling property owners in participating communities to purchase flood insurance. Participant communities must adopt and enforce a floodplain management ordinance to reduce future flood risks in SFHAs.

Flood Hazard Development Permit: Proposed projects in floodplains may be allowed. One requirement is a local permit. Communities in the NFIP administer a permit system to prevent increased flood damage from development and redevelopment.

EO 11988: This Executive Order specifies the 8-step process that must be completed before CDBG – funded projects may be allowed in a floodplain. CDBG regulations (24 CFR Part 55) and relevant sections from other Parts are attached.

Critical Actions: An activity for which even a low chance of flooding is too great a risk in terms of loss of life, injury, or damage to property. Critical actions include maintenance or extension of useful life of facilities such as hospitals, nursing homes, emergency operations centers, and places that produce, use or store water-reactive materials, etc. **CRITICAL ACTIONS CANNOT BE APPROVED IN FLOODWAYS OR COASTAL HIGH HAZARD AREAS. Critical actions in 100 and 500-year floodplains always require a full review under EO 11988.**

Functionally Dependent Use: A land use that must be in proximity to water in order to perform its intended function, such as a marina, port facility, water-front park, dam, many types of bridges. Long-term storage or related manufacturing facilities are not functionally dependent uses. **Functionally dependent uses always require a full review under EO 11988.**

When should a community perform an EO 11988 Review?

Your community must find out first if your proposed project is located in any floodplain. To find out, locate your project on a Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map (FHBM) at your town office. Your local Code Enforcement Officer can help you find the maps and locate your project on them. In addition, you must consult with community officials to see if your project site is susceptible to being flooded or has a history of flooding. Remember, it is the community's responsibility to determine if your project is located in a floodplain.

If you determine your project is not in a SFHA or any other floodplain, **there are no additional requirements under EO 11988 and a Flood Hazard Development Permit is not required.**

Exempt activities in HUD's Environmental Review Regulations (24 CFR 58) and a minor change to a previously-approved project with no additional adverse impacts on a floodplain are not subject to EO 11988. If any activities are part of a larger project subject to an EO 11988 review, contact the Office of Community Development (OCD) for guidance. Other exemptions from an EO 11988 review for actions in floodplains are listed on page 15.

What if my project IS located in a Floodplain?

If you determine your project is in a SFHA or any other floodplain, you must identify how your project will meet requirements and allow time to complete EO 11988 and Flood Hazard Development Permit procedures. The best immediate action is to request technical assistance from the Floodplain Management Program at the Department of Conservation (DOC), and alert your Project Development Specialist. The time required to do EO 11988 and Flood Hazard Development Permit tasks makes your environmental review process longer.

If a functionally dependent use, floodway, or coastal high hazard area are issues in your project, you must alert your Project Development Specialist (PDS) in OCD and the Floodplain Management Program in DOC. If your activities are eligible, you should discuss your schedule to complete the EO 11988 8-step process and Flood Hazard Development Permit procedures with your PDS.

An EO 11988 review is required when:

- ✓ **critical actions** are proposed in 100 or 500 year floodplains;
- ✓ **functionally dependent uses** are proposed in floodways, coastal high hazard areas, or 100 year floodplains; and
- ✓ **any of the following are proposed in a SFHA or non-critical actions are proposed in a coastal high hazard area:**
 - acquisition
 - construction (i.e., new construction, infrastructure extensions)
 - disposition
 - **substantial improvement**
 - non-residential **minor improvement**
 - residential **minor improvement** in 5 or more units
 - financial assistance (assess what is being financed)
 - lease, rent, occupy, etc., properties

Substantial improvement means repair, reconstruction, modernization, or improvement that:

- 1) costs more than 50 percent of the market value of the structure prior to improvement or
- 2) increases the number of dwelling units or average peak number of customers and employees likely on-site at any one time by 20 percent or more.

Minor improvements are repair, reconstruction, modernization, or improvement actions on one to four family properties that do not qualify as substantial improvement.

Are there any exceptions?

Two exclusions to the “substantial improvement” standard exist. One is for actions necessary to assure safe living conditions in a structure when these actions are the only ones taken.

Compliance with Life Safety Code violations is an example of assuring safe living conditions. The second is alteration of a structure on the National Register of Historical Places or on a State Inventory of Historic Places. A variance from the Board of Appeals must be issued as well as complying with State Historic Preservation Officer requirements.

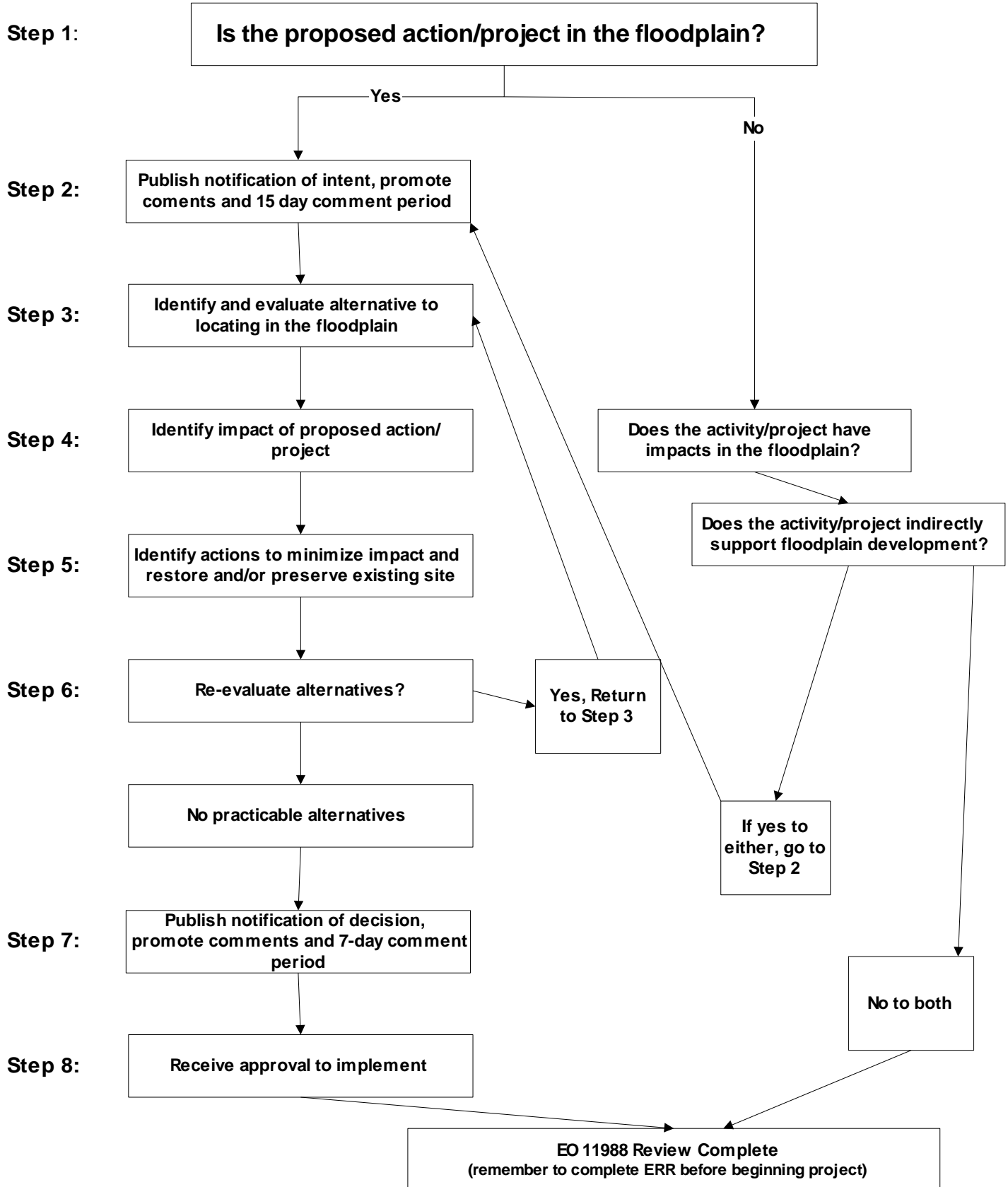
A full review is not required when only an incidental portion of the land area is in the floodplain, no action, not even landscaping, will occur in the floodplain, and three conditions are met. These conditions, designed to preserve the floodplain, are:

- 1. no actions will directly or indirectly impact the floodplain;**
- 2. provisions are made for site drainage;**
- 3. a covenant or comparable restriction is placed on use of the property.**

Requirements of an EO 11988 Review – An Overview

This presidential Executive Order calls for public review and comment on any proposed project located in a floodplain. This is **above and beyond what is required for a CDBG project not in a floodplain**. The eight steps in the process are shown in the following “Decision Tree for EO 11988 Process”. A narrative of the eight steps is attached.

Decision Tree for Executive Order 11988 Reviews



SUMMARY OF EO 11988 Process

STEP 1 – Is the proposed project located in a floodplain?

STEP 2 is the first formal and public review opportunity in the process. This 15-day comment period can fit into your local citizen participation, planning, or Phase II review or process. A notice is to be published that includes:

- name of the project/activity, map of proposed location, description of the activity
- why is it proposed to locate in the floodplain
- total number of acres of floodplain involved
- local official and phone number to contact for information and
- location of office and hours available of full description/documentation on the project

A separate public hearing is not required. Presenting the EO 11988 process and requirements during your CDBG Phase II Public Hearing is recommended.

STEPS 3 through 5 call for identification and evaluation of:

- practicable alternatives to the proposal [see 24 CFR 55.27(a)(1) for documentation requirements];
- direct and indirect potential impacts of alternatives (including the original proposal);
- mitigation measures that would minimize impacts from the proposal/alternatives [see 24 CFR 55.27(a)(2)].

STEP 6 requires reevaluation of all alternatives. Documentation of “no practicable alternative” to the project must be developed and prepared for submission prior to proceeding to Step 7.

STEP 7 is the Public Notification of Decision of “no practicable alternative” to the proposal. This is the second published notice in the process; the comment period is for seven days; the notice to be published includes:

- name of the project/activity, map of proposed location, and reference to earlier notice
- reasons why the proposal must locate in the floodplain and list of alternatives considered
- mitigation measures to be taken to minimize impacts
- local official, office, and phone number to contact for information and
- location and hours available of full description/documentation on the project

Compliance with FEMA elevation and construction requirements is necessary for actions approved in floodplains. These are in the Floodplain Management ordinances of communities participating in the NFIP and in 44 CFR 60.3 for non-participating communities. For approved actions in coastal high hazard areas, please see 24 CFR 55.1(c)(3). Other requirements include Notification of floodplain hazard (24 CFR 55.21), Conveyance restrictions for the disposition of real property (24 CFR 55.22), and Construction requirements (24 CFR 200.926d (4)).

STEP 8 is to implement the project. The environmental review process and other permit processes, including a Flood Hazard Development Permit, must be processed before implementation can be approved.

What do I do with the EO 11988 Review when it's complete?

EO 11988 documentation is part of your community's Environmental Review Record (ERR). EO 11988 documentation sent to OCD includes both published notices (with maps), an explanation of "No Practicable Alternative", report on comments received, and how comments were resolved. These documents are the back up for conclusions on your checklists. Your EO 11988 completion predates your ERR completion. Your local floodplain ordinance must be in compliance with the State's floodplain management requirements.

Do I need a Flood Hazard Development Permit?

In addition to the EO 11988 process, all projects using CDBG funds for construction or acquisition in a SFHA must either acquire a local Flood Hazard Development Permit or document through the local floodplain management system that a permit is not required. Your Code Enforcement Officer is a first step in your effort to comply with requirements and to complete the permitting process. Final steps include notification of the Maine Flood Insurance Coordinator if CDBG funded actions will occur in floodplains and notification to DECD through an ERR submission that the permit process is complete.

Definitions of development and substantial improvement are included in local floodplain ordinances. **Local floodplain ordinances must abide by the following definitions:**

Development means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement to a structure with a cost of 50 percent or more of the market value of the structure prior to construction. This includes structures which have incurred substantial damage. Not included are: (a) improvement to correct existing violations of state or local health, sanitary, or safety codes that are identified by the local code enforcement officer to be the minimum necessary to assure safe living conditions; or (b) alteration of an historic structure only if it will not preclude the structure's continued designation as an historic structure, and a variance is obtained from the community's Board of Appeals."

Actions in a SFHA cannot be considered without meeting the following:

- accomplish the work in the drier summer months and in the shortest possible time;
- gather all materials, equipment, and supplies and store them outside the floodplain;
- follow sound erosion and soil stabilization practices during construction and restore the site to its original contour; and
- review project actions in light of Floodplain Management Ordinance requirements and compliance with State Model Floodplain Ordinance.

Where can I get more information ?

Questions regarding NFIP standards, State Model Ordinance, floodplain boundaries, and Further Advice on EO 11988 may be addressed to the Maine Floodplain Management Program in the Maine Department of Conservation. Attached are the HUD regulations on Implementation of Executive Order 11988 (24 CFR Part 55 with portions of Parts 50 and 200). Questions regarding completion of the EO 11988 process may be addressed to OCD.

Floodplain management information and technical assistance is available through the Local Code Enforcement Officer and the Maine Floodplain Management Program. Contact the State program through the Department of Conservation, Eastside Campus, 18 Elkins Lane, 22 State House Station, Augusta, Maine 04333-0022 or call (207) 287-2211. For information on review and publication requirements of EO 11988, contact the Office of Community Development, 59 State House Station, Augusta, Maine 04333-0059 or call (207) 287-7484.

SAMPLE NOTICE (for Step No. 2)

NOTICE OF A PROPOSED DEVELOPMENT IN THE FLOODPLAIN

The (name of the unit of local government) is requesting financial assistance under the Community Development Block Grant (name of specific program) for a project known as (name of project).

If implemented, the proposal will (describe project and include purpose, numbers, linear feet, location, impact are, etc., as appropriate). The purpose of this notice is to inform the public that the proposed project is located in, or impacts, a floodplain. The (name of the unit of local government) is conducting a floodplain impact evaluation to determine if there is a practicable alternative to this proposed development by considering alternate sites, alternative actions, potential mitigation to minimize impacts, and restoration or preservation of the site.

Information on the proposal is available for review on (give days, hours, office location, telephone number) from (name of contact person). Any person may comment on the proposal by sending comments to (name and address of unit of local government) within 15 days of this publication (or give final date for receipt of comments).

(attach location map with floodplain delineated)

SAMPLE NOTICE (for Step No. 7)

NOTICE OF DECISION OF “NO PRACTICABLE ALTERNATIVE” TO PROPOSED DEVELOPMENT IN THE FLOODPLAIN

The (name of the unit of local government) published on (date of newspaper notice) in this same newspaper a NOTICE OF A PROPOSED DEVELOPMENT IN A FLOODPLAIN on (name and brief description of the project).

The (name of the unit of local government) has completed a floodplain impact evaluation and it is available for review on (give days, hours, office location, telephone number). This review included consideration of project impacts, site mitigation, restoration or preservation, alternative actions and alternate sites. Specific alternatives considered were (identify alternate sites, alternative actions, mitigations, etc., as appropriate). (If mitigation, restoration, or preservation actions are required, summarize them). The (name of the unit of local government) concludes no practicable alternative exists to the proposal.

Comments may be sent to (name and address of unit of local government) within 7 days of this publication (or give final date for receipt of comments). If no comments are received, the (name of the unit of local government) will conduct an environmental review on the project as described.

(attach location map with floodplain delineated)

Determining your Level of Review

The tasks you must complete during your environmental review depend on the level of review. Under Part 58 of the CDBG environmental regulations (included in the Appendix), projects are divided into different levels of review. They are:

- 58.35(b) Review
- Categorically Excluded, Converted to Exempt
- Categorically Excluded, Not Exempt
- Finding of No Significant Impact.

The next sections describe the levels of review and include what types of activities fall into each type of review. Action steps are described for each level. These steps must be completed for your community to be eligible for an ERR Clearance from the Office of Community Development. Note that each section lists what ERR materials must be sent to OCD to complete your review process. You are not required to send your entire ERR file to OCD.

Updates: Changes in the definition of a project already cleared through an ERR process calls for updating the ERR. Level of review for updates depends on the difference between the prior definition of the project and the proposed or current definition of the project. If it seems an Update could require a more complex Level of Review than the one needed for the original ERR Clearance, a re-review of activities referenced in each of the four Levels listed would be helpful.

If a FONSI was completed on the project as defined but a new activity would have qualified the project for a FONSI review, another FONSI review could be required. If an activity previously categorized as categorically excluded were found not to meet requirements, a FONSI would be needed. If rehabilitation changes to demolition, a FONSI could be required. Publishing a notice and conducting comment periods may be necessary. Assistance from your DPM as soon as an Update possibility is identified is strongly advised.

Level of Review: 58.35(b) Review

This level of review is defined through CFR 58.6 and CFR 58.35. Activities categorized as exempt or categorically excluded may require this review level. Flood Disaster Protection Act, Coastal Barriers Resources Act and the HUD Runway Protection Zone are minimal requirements to be met by all activities. If your project is limited to the activities listed below, consult with your assigned DPM to see if this level is appropriate. Eligible actions include:

- Tenant-based rental assistance
- Supportive services like health care, day care and other public service programs
- Operating costs like maintenance, security, utilities, furnishings, supplies, staff training and other incidental costs
- Economic development activities like equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs **not associated with expansion of existing operations or construction** (including rehabilitation)
- Activities to assist homeownership under certain conditions.
- Affordable housing pre-development costs which do not have a physical impact.
- Environmental, planning and strategy studies

If the project includes any physical or structural changes, this level of review is inappropriate. Replacing a window or adding a storm window means the project would not qualify for this level of review. Production increases, a new shift, additional shipments of materials or inventory, extended hours, etc., are considered expansions and a project would not qualify for this level of review.

The examples listed below met requirements and qualified for 58.35(b) Reviews:

- **Community Planning:** Hydrology Study of Brook; Tourism Strategy Development; Cooperative Housing Feasibility Study
- **Public Service:** Inventory and Supplies for Food Cupboard; Adult Education in a Public Housing complex; Job Training for Group Home Residents
- **Economic Development:** Equipment Purchase

REGULATORY REFERENCE

§ 58.6 Other requirements.

...the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, **regardless of whether the activity is exempt under § 58.34 or categorically excluded under § 58.35(a) or (b).**

(b) Categorical exclusions not subject to § 58.5.

The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs **not associated with construction or expansion of existing operations;**

(5) Activities to assist homeownership of existing "or new dwelling units not assisted with Federal funds" including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property;

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

Loan for Job Retention; Inventory and Working
Capital Loan for Job Retention; Skill Upgrading/Job
Training for Existing Employees

Environmental Clearance

Your community will be given an environmental clearance date by OCD the day AFTER your documentation is considered complete and is accepted by OCD. A letter stating the clearance date will be sent to your community sometime after this date.

Remember you cannot begin your project, obligate any project funds (CDBG or other federal funds), nor spend any project funds until after this clearance date. CDBG funds cannot be spent or obligated until you have executed your grant contract with OCD after successful completion of all Phase II requirements.

What to Send to OCD

The following are necessary to complete this level of review:

- Environmental Review Statement: 58.35(b)
- 58.35(b) Checklist
- Public Services Physical Impact Checklist (***only for Public Service projects***)
- Verification that the impact of job creation will not expand existing operations. Verification is required that no increase in production volume, transportation of raw materials or finished product, water and sewer usage or other indicators of expansion of operations will occur (***only for economic development projects***)

Blank forms can be found after this page.

ALERT! Community Planning Grant Recipients!

If you anticipate your planning will lead to future construction or changes to physical structures, your planning effort can help determine if a site or sites under consideration are in the floodplain, coastal barriers, or Runway Protection zone. It is recommended your 58.35(b) Checklist include notes that your planning process will consider these concerns. Your CPG could be an excellent beginning to identifying options to a floodplain location and can be a significant help in future EO 11988 floodplain review if a floodplain location is unavoidable.



Maine Community Development Block Grant Program

Environmental Review Statement: 58.35(b)

Project Name: _____
Project Location: _____
Contact Person: _____

After consultation with your assigned Development Program Manager in the Office of Community Development, the following activities has been reviewed under 24 CFR 58.34(a) and 58.35(b). Project activities listed have been found to be excluded from the provisions of the National Environmental Policy Act (NEPA) and Federal laws and authorities listed in 24 CFR 58.5. Activities have been reviewed and determined in compliance with laws and authorities listed in 24 CFR 58.6 and conditions of 58.35(c). Therefore, in accordance with 24 CFR 58.35(c) and (d), the submission of the following 58.35(b) Environmental Review Summary with appropriate attachments is sufficient evidence that no further environmental action is needed for project execution. This submission serves as a Request for Release of CDBG Funds for project activities. Signature certifies that environmental review responsibilities have been completed as required and information on comments received is included in this submission.

LIST PROJECT ACTIVITIES:

Signature of Environmental Review Officer

Date

Signature of Chief Executive officer (Certifying Officer)

Date

58.35(b) CHECKLIST

PROJECT NAME/LOCATION: _____

GRANTEE NAME: _____

Statutes, Regulations, Authorities	Not Applicable to Project;	Consultation or Review required	Permits in Hand	Describe/explain/provide basis for compliance decision; identify file documents that back this up; attach supportive materials as needed
Floodplain Management/ Flood Insurance				
Coastal Barriers Resources Act				
Runway Protection Zone				
OTHER APPLICABLE LOCAL, STATE, FEDERAL LAWS/STATUTES/AUTHORITIES				

Signature of Preparer

Telephone Number

Relationship to Grantee

Date Submitted to Grantee

Maine Community Development Block Grant Program

58.35(b) Review *Public Services* Physical Impact Checklist

Project:

Grantee:

Impact Areas	No Impact; No Conflict	Compatible with/ Supportive of Services	Potential Conflicts; Solutions in Place	Requires More Study	Needs Mitigation	Requires Project Modification	Sources or Documentation for Conclusions; Attach supportive descriptions as needed Each category should have an explanation for the conclusion you reached.
Community Noise Levels							
Solid Waste							
Waste Water							
Water Supply							
Public Safety, Police, Fire, Emergency/ Medical							
Transportation/Parking/ Pedestrian Access							
Site Hazards and Nuisance; Surface Water							
Site Characteristics, such as unique natural features, vegetation and wildlife							
Other							
Other							

Are there any structural changes taking place as a part of this public services project?

☐ Yes

☐ No

Will the public services project require structural changes to take place in the immediate future?

☐ Yes

☐ No

Our checklist review shows no need for a higher level of environmental review for this public services project.

☐ Yes

☐ No

Signature of Preparer

Date completed

Relationship to Grantee

Mailing Address

Telephone Number

Level of Review: Categorically Excluded, Converted to Exempt

This level of review covers a group of activities that involve more intense project activity. These activities (see the following definitions) can be “converted to exempt” of NEPA requirements under some circumstances. Your review of the project and comparison to a series of environmental statutes help determine if the statutes require no mitigation or compliance actions.

This level covers the following types of activities:

- **Public Facilities** – acquisition, repair, improvement reconstruction or rehabilitation of public facilities and improvements (other than buildings) 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%
- **Removal of Architectural Barriers** – handicapped access measures
- **Building Rehabilitation** – rehabilitation of buildings and improvements when the following conditions are met:
 - Multi-family structures** – unit density is Not changed more than 20% and the Estimated cost of rehabilitation is less Than 75% of the total estimated cost of replacement after rehabilitation; or
 - Non-residential structures** – the facilities and improvements are in place and will not be changed in size or capacity by more than 20% and the project does not involve a change in land use
- **Residential Action** – an individual action on a one-to-four family structure or an individual action on a project of five or more units on scattered sites when the sites are more than 2000 feet apart and there are not more than four units on any one site
- **Acquisition or Sale** – acquisition or disposition of an existing structure or the acquisition of vacant land provided the structure or land acquired will be retained for the same use
- **Combinations** – combinations of the above activities.

REGULATORY REFERENCE

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which **no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except** in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) Categorical exclusions subject to § 58.5.

The following activities are **categorically excluded** under NEPA, but may be subject to review under authorities listed in § 58.5:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) 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** (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(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 wetland;

(ii) in the case of multifamily residential buildings::

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings,

(A) The facilities and improvements are in place **and will not be changed in size or capacity by more than 20 percent;** and

Environmental Clearance

Your community will be given an environmental clearance date by OCD the day AFTER your documentation is considered complete and is accepted by OCD. A letter stating the clearance date will be sent to your community sometime after this date.

Remember you cannot begin your project, obligate any project funds (CDBG or other federal funds), nor spend any project funds until after this clearance date. CDBG funds cannot be spent or obligated until you have executed your grant contract with OCD after successful completion of all Phase II requirements.

What to Send to OCD

The following are necessary to complete this level of review:

- Environmental Review Statement: Categorically Excluded, Converted to Exempt
- Environmental Review and Clearance Record
- Statutory Checklist (with SHPO letter)

Samples of completed forms can be found after this page. Blank forms and Clearance Record outline follow these examples.

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section.

(5) Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.

(6) Combinations of the above activities.

Maine Community Development Block Grant Program

SAMPLE Environmental Review Statement: Categorically Excluded, Converted to Exempt Review

Project Name: Evergreen Infrastructure and Fire Station Project
Project Location: Hollyhaven, Maine
Contact Person: Holly Berry

The following activities have been reviewed under 24 CFR 58.35(a) and have been found to be categorically excluded from the provisions of the National Environmental Policy Act (NEPA). Further review under Section 58.35(c), and 58.35(d) determined that no compliance actions related to laws and authorities listed in Section 58.5 and 58.6 are required and no extraordinary circumstances exist as given in Section 58.2(a)(3). Therefore, in accordance with Sections 58.34(a)(12) and 35(c) and (d), the following Environmental Review and Clearance Record with appropriate attachments are submitted as sufficient evidence that no further environmental action is needed for execution of the project described. This submission serves as a Request for Release of CDBG funds for the categorically excluded and converted to exempt activities identified below. Signature certifies that the environmental review has been completed as required and information on comments received is included in this submission.

LIST PROJECT ACTIVITIES:

Fire station rehabilitation (existing building, no increase in capacity)
(see s. 58.34(a)(3))

Water Sewer Reconstruction (existing system, no increase in capacity)
(see s. 58.34(a)(3))

Street and Sidewalk Reconstruction (existing)
(see s. 58.34(a)(3))

Administration activities
(see 58.35(a)(1))



This level of review is appropriate for this activity as long as it does not result in a capacity increase of more than 20%.

Holly Berry
Signature of Environmental Review Officer

1/13/1998
Date

Jane Civic, Town Manager
Signature of Chief Executive

1/13/1998
Date

Maine Community Development Block Grant Program

Environmental Review Record EXAMPLE for Categorically Excluded, Converted to Exempt

Project Description

NAME/TITLE: Evergreen Infrastructure and Fire Station Project

Location: Evergreen Valley, Hollyhaven, Maine

Contact Person: Holly Berry, Code Enforcement Officer and Fire Chief
90210 Green Leaf Ave.
Hollyhaven, Maine 04451

Funding Summary: \$250,000 PFIG
\$100,000 Town of Hollyhaven
\$600,000 RDA

Grantee: Town of Hollyhaven
90222 Green Leaf Ave.
Hollyhaven, ME 04451

This document should provide a narrative of the process you used to identify project activities, classify them and fit them within the

Environmental Review Procedures

Define and describe project, including aggregation:

The Evergreen project is a public facilities replacement and rehabilitation project. PFIG funded activities are eligible under HUD CDBG program. PFIG, RDA (grant and loan), and Town will fund the project. PFIG activities are: (1) fire station rehabilitation (\$63,000 PFIG, \$48,000 Town); (2) water/sewer replacement (\$120,000 PFIG, \$600,000 RDA); (3) sidewalk and street repaving (\$67,000 PFIG; \$32,000 Town); (4) Administration (\$20,000 Town).

Activities (1)-(4) compose the entire project. These activities are geographically located in the Evergreen Valley neighborhood; functionally, water line replacement allows the Fire Station to have adequate supply and pressure to fulfill needs. Rehabilitation includes shower, rest room, and improved equipment cleaning facilities. Administration of PFIG, RDA and Town funds through the Town's Development Department is logical and functional. No other actions are occurring that could be part of this project.

Identify Potential Scope of Environmental Review Based on Project Activities

Activity (1) is rehabilitation of a fire station, a public building; activities (2) and (3) are public facilities improvements, involving replacement of water and sewer lines and reconstruction of disturbed surface infrastructure. All three are preliminarily categorically excluded. Appropriate notification has been sent to DECD for project administrator. No additional review is required for administration (activity 4).

Determine Continuation as Categorically Excluded Project

Activities (2) and (3) reconstruct in-place facilities with no change in use. Both size and capacity of water and sewer replacement will occur; the greatest change is in areas with 2" water lines, which will be replaced with 6" lines. Although change in size and capacity is greater than 20%, the results will be adequate for the existing service area and will not serve or encourage additional

development. Sidewalk and street reconstruction will not change size, capacity, or use. Activities (2) and (3) meet conditions of categorical exclusion of 58.35 (a)(1).

Activity (1) rehabs the Evergreen Fire Station, a public building, and connects the station to public water. Building size or capacity will not increase. The building will continue as a fire station. The only capacity issue is increased water availability and pressure. The fire department had to find other means of cleaning and sanitizing equipment, other sites for bathing and sanitary facilities, etc., after well was contaminated by a failed septic system. Connection to public water will reactivate prior water-dependent activities without a capacity increase of more than 20%. Activity (1) meets conditions of categorical exclusion of 58.35(a)(3)(ii).

Statutory Checklist and Review Results

All activities have gone through Statutory Checklist review and are compliant with laws in 58.5 and 58.6. Documents referenced are in the local files. SHPO letter is attached and FIRM map numbers are indicated. The project is the activities listed; present and future individual and cumulative impacts have been evaluated; alternatives studied; actions and completions scheduled appropriately; and appropriate safeguards taken and included in project/contract documents. No extraordinary circumstances relate to this project, as described in 58.2(a)(3) or found through review.

Compliance Actions

All permits needed are in place, as shown on the Statutory Checklist. DEP permits by rule and review for others needed were completed through joint RDA and CDBG environmental review completions. Local building and plumbing permits are coordinated through contractor/Town efforts and records. Planning Board site and plan reviews were completed some time ago. The project meets requirements for conversion to exempt as allowed in 24 CFR 58.34(a)(12).

Document Determination of Exempt Status

Documents and records in the Town's Development Department support the above descriptions and Statutory Checklist conclusions. The above and attachments reflect the project; submission of this information and materials, as listed, fulfills requirements of 24 CFR 58.35(d). No additional actions are necessary, unless unanticipated conditions arise.

The Statutory Checklist

The Statutory Checklist is an important piece of your Environmental Review Record. It summarizes your review of regulations, statutes, and Executive Orders outlined in 58.5 and 58.6 of the CDBG Environmental Review regulations. Every level of review EXCEPT for the 58.35(b) review must complete this checklist and submit it as part of the ERR clearance process.

Under 24 CFR 58.5 and 58.6, CDBG grantees must review their projects under the same regulations as HUD is required to do by the National Environmental Policy Act. On the Statutory Checklist, the first column called "Statutes and Regulations" references the regulations and statutes in 58.5 and 58.6.

To the right of the listing of statutes and regulations are columns for you to record the results of your reviews. Often, more than one column is marked.

- **No Addl. Compliance Needed** – After considering the nature, activities or location of your project, consulting with others, and/or completing compliance tasks, you determine the statute or regulation under examination does not require compliance action beyond what you have shown or already done.
- **Consultation Required** – Compliance with the statute or regulation requires you to consult with appropriate individuals to determine how or if the statute applies to your project.
- **Review Procedures Required**—This column shows that an additional review process is required in addition to your CDBG environmental review.
- **Permit(s) Procedure Required**—This column says an additional permit process must be followed to comply with the statute; evidence of progress in getting permits must be noted.

REGULATORY REFERENCES

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action **that would apply to HUD under the following specified laws and authorities.** The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and **must consider the criteria, standards, policies and regulations of these laws and authorities.**

(a) Historic properties.

- (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in § 58.17 for Section 17 projects.
- (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921) particularly section 2(c).
- (3) Federal historic preservation regulations as follows: (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and (ii) 36 CFR part 801 with respect to UDAG.
- (4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq), particularly section 3 (16 U.S.C. 469a-1).

(b) Floodplain management and wetland protection.

- (1) **Executive Order 11988, Floodplain Management, May 24, 1977** (3 CFR, 1977 Comp., p. 117), as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order ...
- (2) **Executive Order 11990, Protection of Wetlands, May 24, 1977** (3 CFR, 1977 Comp., p. 121) particularly sections 2 and 5.

(c) Coastal Zone Management. **The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), ...**

(d) Sole source aquifers.

- (1) **The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., ...**
- (2) Sole Source Aquifers (Environmental Protection Agency, 40 CFR part 149).

(e) Endangered species. **The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)** as amended, particularly section 7 (16 U.S.C. 1536).

(f) Wild and scenic rivers. **The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.)** as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) Air quality.

- (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
- (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-- 40 CFR parts 6, 51, and 93).

(h) Farmlands protection.

- (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).
- (2) Farmland Protection Policy (Department of Agriculture -- 7 CFR part 658).

(i) HUD environmental standards. Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) (other than the Runway Protection zone and clear zone notification

- **Determination of Consistency, Approvals and Permits Obtained** This column is marked when you have received all necessary permits, licenses or approvals and your project is consistent with other requirements in the statute
- **Conditions or Mitigation Action Required** This column calls for description of any other actions you must take to ensure that your project conforms to the statute's requirements.

The final column is the challenge. This is where you summarize content or identify conclusions of conversations, letters, memos, or other resources that support your conclusion. Consider this a summation of why your decision is what it is for the statute. All projects must give the map and panel number(s) for floodplain compliance. A LETTER FROM THE SHPO ON THE PROJECT MUST BE ATTACHED.

Your summation column represents conclusions of the more detailed content of your entire ERR. Memos, letters, permit applications, copies of other agency reviews, etc. are part of your entire ERR and must be kept on file at the Grantee's location. These will be useful to answer questions, to explain, or to defend the conclusions that you reached. You are not asked to send your entire ERR to OCD.

requirement in 24 CFR 51.303 (a)(3)) and HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).

(j) **Environmental justice.** Executive Order 12898 -- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629).

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by the responsible entity under the laws cited in § 58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(11) and/or the applicability of § 58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, **regardless of whether the activity is exempt under § 58.34 or categorically excluded under § 58.35(a) or (b).**

(a)(1) Under the **Flood Disaster Protection Act of 1973**, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where a recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Pursuant to the **Coastal Barrier Resources Act**, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(c) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a **Runway Protection Zone** or **Clear Zone**, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a Runway Protection zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

Maine Community Development Block Grant Program

Environmental Review - Statutory Checklist

PROJECT NAME: **Evergreen Infrastructure and Fire Station**

GRANTEE NAME: **Hollyhaven**

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Historic Properties (attach letter from SHPO)	X	X					Fire station not historic; infrastructure not invasive re: historical or archaeological entities. SHPO letter verifies.
Floodplain Management/ Flood Insurance (if in floodplain, attach letter from SPO)	X						FIRM review shows infrastructure and fire station <u>all</u> away from floodplain. Panel H Map 14.
Wetlands Protection	X	X					USGS map with location marked reviewed – no wetlands; DEP confirmed.
Coastal Zone Management	X						Inland – not in CZ
Coastal Barriers	X						Town not on CBRS list referenced by Marine Geologist
Water Quality-Aquifers	X						Public water; sewer improvements will protect; no aquifer.
Wild and Scenic Rivers	X						Not in Allagash vicinity.
Air Quality	X						No asbestos in fire station; no asbestos pipes – engineer letter.
Farmlands Protection Act	X						No conversion of prime farmlands.
Endangered/Threatened Species	X						No impact as shown by memo from State biologist.
Essential Wildlife Habitat/Fish and Wildlife	X						Town not on Maine IFW Essential Wildlife Habitat; project does not disturb undeveloped area..
Environmental Justice	X		town-	wide	56%	LMI	Town-wide positive benefit; 56% LMI. Environs impact unchanged
Airport Clear Zone	X		target	area	66%	LMI	Not in flight zone.
Solid Waste Disposal	X						Contracted service; construction desires in contract.
Water Quality and State Safe Drinking Water Law	X			X			Public water supply improved and protected. Permit by Rule.

Comments in this column should explain your conclusion and

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Protection of Waters	X						No overboard discharges.
Site Location Law	X						Existing infrastructure replacement; no capacity increase.
Natural Resources Protection Act	X	X					No wetlands involvement.
Submerged Land Law	X						Not in submerged/tidal lands.
Subsurface Wastewater Disposal	X				X		Public sewer improvements; DEP Permit by Rule.
Protection of Air Act	X						BMP included in construction contracts – no impact anticipated.
MANMADE HAZARDS							
Thermal/Explosive	X						None in project area.
Noise	X						Compliance noted to HUD and DEP requirements by engineer.
Toxic Sites	X						None in project area.
OTHER LOCAL, STATE, FEDERAL LAWS OR STATUTES APPLICABLE TO PROJECTS							

Holly Berry	555-1212	Employee	1/12/1998
Signature of Preparer	Telephone Number	Relationship to Grantee	Date



Maine Community Development Block Grant Program

Environmental Review Statement: Categorically Excluded, Converted to Exempt Review

Project Name: _____
Project Location: _____
Contact Person: _____

The following activities have been reviewed under 24 CFR 58.34(a) and have been found to be categorically excluded from the provisions of the National Environmental Policy Act (NEPA). Further review under Section 58.35(c) and 58.35(d) determined that no compliance actions related to laws and authorities listed in Section 58.5 and 58.6 are required and no extraordinary circumstances exist as given in Section 58.2(a)(3). Therefore, in accordance with Sections 58.34(a)(12) and 35(c) and (d), the following Environmental Review and Clearance Record with appropriate attachments are submitted as sufficient evidence that no further environmental action is needed for execution of the project described. This submission serves as a request for release of CDBG funds for the categorically excluded and converted to exempt activities identified below. Signature certifies that environmental review responsibilities have been completed as required and information on comments received is included in this submission.

LIST PROJECT ACTIVITIES:

Signature of Environmental Review Officer

Date

Signature of Chief Executive officer (Certifying Officer)

Date

Maine Community Development Block Grant Program

Environmental Review and Clearance Record-Categorically Excluded, Converted to Exempt

Project Description

Name/Title:

Location

Contact Person:

Funding Summary

Grantee and Address:

Define and describe project, including aggregation:

Identify potential scope of environmental review based on project activities:

Determine continuation as categorically excluded:

Statutory Checklist and review results:

Compliance actions:

Document determination of exempt status:

Maine Community Development Block Grant Program **Environmental Review - Statutory Checklist**

PROJECT NAME:

GRANTEE NAME:

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed Comments in this column should explain your conclusion and reference supporting documents.
Historic Properties (attach letter from SHPO)							
Floodplain Management/ Flood Insurance (if in floodplain, attach letter from SPO)							
Wetlands Protection							
Coastal Zone Management							
Coastal Barriers							
Water Quality-Aquifers							
Wild and Scenic Rivers							
Air Quality							
Farmlands Protection Act							
Endangered/Threatened Species							
Essential Wildlife Habitat/Fish and Wildlife							
Environmental Justice							
Airport Clear Zone							
Solid Waste Disposal							
Water Quality and State Safe Drinking Water Law							

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Protection of Waters							
Site Location Law							
Natural Resources Protection Act							
Submerged Land Law							
Subsurface Wastewater Disposal							
Protection of Air Act							
MANMADE HAZARDS							
Thermal/Explosive							
Noise							
Toxic Sites							
OTHER LOCAL, STATE, FEDERAL LAWS OR STATUES APPLICABLE TO PROJECTS							

Signature of Preparer	Telephone Number	Relationship to Grantee	Date
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Level of Review: Categorically Excluded, Not Exempt

This level of review is required when one of the following is present in your project:

- The specific site of your project is unknown at Phase II (housing rehabilitation or micro-loan)
- A MINOR compliance action is identified by your statutory checklist or environmental assessment

Most CDBG projects do not fit into this category - it is most commonly used by Housing Assistance and Micro-Loan grantees. When categorically excluded activities cannot meet all requirements and cannot become exempt, as in the case of unspecified housing sites or as yet undetermined loan recipients, additional review actions are needed. The review may be of sites as they are specified or it may be additional or follow-up evaluation; procedures require a public notice and other actions as necessary. The Maine CDBG Program requires the notice be published in the newspaper

Local Comment Period

This level of review requires a 7-day comment period. This period allows members of the community to review your ERR and make comments on the project. Your Notice of Intent to Request Release of Funds publicizes the comment period. The comment period begins the day AFTER your notice is published in the newspaper and continues for 7 days.

State Objection Period

Once your ERR is sent to OCD, a state objection period begins the day AFTER your package is received at OCD and continues for 15 days.

Environmental Clearance

Your community will be given an environmental clearance date by OCD (assuming your ERR is acceptable) the day

REGULATORY REFERENCE

§ 58.35 *Categorical exclusions.*

*Categorical exclusion refers to a category of activities for which **no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except** in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.*

*(a) **Categorical exclusions subject to § 58.5.** The following activities are **categorically excluded** under NEPA, but may be subject to review under authorities listed in § 58.5:*

- (1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) 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** (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).*
- (2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.*
- (3) Rehabilitation of buildings and improvements when the following conditions are met:*

*(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 wetland;***

*(ii) **in the case of multifamily residential buildings::***

- (A) Unit density is not changed more than 20 percent;*
- (B) The project does not involve changes in land use from residential to non-residential; and*
- (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and*

*(iii) **In the case of non-residential structures, including commercial, industrial, and public buildings,***

- (A) The facilities and improvements are in place **and will not be changed in size or capacity by more than 20 percent;** and*
- (B) **The activity does not involve a change in land use,** such as from non-residential to residential, commercial to industrial, or from one industrial use to another.*

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to

AFTER the 15-day state objection period ends. A letter stating the clearance date will be sent to your community sometime after this date.

Remember you cannot begin your project, obligate any project funds (CDBG or other federal funds), nor spend any project funds until after this clearance date. CDBG funds cannot be spent or obligated until you have executed your grant contract with OCD after successful completion of all Phase II requirements.

What to Send to OCD

The following are necessary to complete this level of review:

- Environmental Review Statement: Categorically Excluded, Not Exempt
- Request for Release of Funds/Certification Form
- Statutory Checklist (with SHPO letter)
- Notice of Intent to Request Release of Funds from the newspaper
- Information on comments received and how they were resolved

Samples of completed forms can be found after this page. Blank forms follow these examples.

rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section.

(5) Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.

(6) Combinations of the above activities. Finding of no significant impact: 15 days from date of publication or if no publication, 18 days from the date of mailing and posting.

§ 58.45 Public Comment Periods

(a) Notice of Finding of no significant impact: 15 days from date of publication or if no publication, 18 days from the date of mailing and posting.

(b) Notice of intent to request release of funds: 7 days from date of publication or if no publication, 10 days from date of mailing and posting.

(c) Concurrent or combined notices: Same as FONSI notice.

§ 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by § 58.43 and § 58.45 before the certification is signed by the responsible entity.

§ 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in § 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. ...

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, whichever is later.

Maine Community Development Block Grant Program

EXAMPLE of Environmental Review Statement: Categorically Excluded, Not Exempt

Project Name:	Dutch Street Refoliation and Revitalization Project
Project Location:	Dutch St. neighborhood, bordered by Gypsy, Rose Lee and Dutch Sts., Elmvile
Contact Person:	Robin Birdsong/Jay Wren

The following activities have been reviewed under 24 CFR 58.35(a) and **have been found to be categorically excluded** from the provisions of the National Environmental Policy Act (NEPA). **All the related laws and authorities cited in Section 58.5 and 58.6 cannot be applied to these activities until sites are specified and remaining compliance reviews completed for those sites.** Therefore, Release of Funds (ROF) as well as further environmental review requirements is necessary.

This text indicates the basis for choosing this level of review, the specific project sites have not been identified beyond the neighborhood designation

Attached is the Statutory Checklist completed for the laws and authorities that can be applied to project activities. Laws and authorities that cannot be applied until sites are specified are identified. The Statutory Checklist reviews will be completed for each specific site and appropriate action taken in compliance with ERR requirements. Signature certifies that information on comments received and responses made are included in this submission.

LIST PROJECT ACTIVITIES:

Housing Rehabilitation:

Housing rehabilitation programs must use this level of review unless all rehabilitation sites are known at the beginning of the

Tree Planting: Categorically Excluded, Converted to Exempt (already cleared)

General and Housing Rehabilitation Administration:

These activities have been cleared in an earlier submission, probably to access needed administration money and so tree planting

Robin Birdsong

Signature of Environmental Review Officer

7/7/1996

Date

Jay Wren

Signature of Chief Executive officer (Certifying Officer)

7/9/1996

Date

Maine Community Development Block Grant Program
EXAMPLE of SITE LIST IDENTIFYING LOCAL ERR CLEARANCES
CATEGORICALLY EXCLUDED, NOT EXEMPT PROJECT

ERR Categories requiring clearance:

Sites/Location Assisted	Dates and Areas cleared for ERR	Date of Initial Assistance
Lot 47 (Gypsy)	6/9-SHPO(State Historic Preservation Office) 6/9-FEMA 6/12-Aquifer	7/10
Lot 22 (Gypsy)	6/9-SHPO (State Historic Preservation Office) 7/12(elevate)-FEMA 6/12-Aquifer	8/4
Lot 52 (Lee)	6/9-(spec) SHPO (State Historic Preservation Office) 6/9-FEMA 6/12-Aquifer	7/7
Lot 42 (Gypsy)	6/9-SHPO (State Historic Preservation Office) 6/9-FEMA 6/12-Aquifer	Beyond rehab. Replacement
Lot 17 (Dutch)	7/3(spec)-SHPO (State Historic Preservation Office) 7/26(elevate)-FEMA 6/12-Aquifer	8/7

(copy and add additional pages as necessary)

This document allows you to update your general ERR to reflect the sites you have chosen for your project. Each lot noted is checked for compliance with the requirements in 58.5 and 58.6. Your statutory checklist should have noted the

Maine Community Development Block Grant Program

EXAMPLE of Environmental Review - Statutory Checklist

PROJECT NAME: *Refoliation/Revitalization*

GRANTEE NAME: *Elmville*

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Historic Properties (attach letter from SHPO)	Need site review	X	X	X	Specific Site Review Needed		
Floodplain Management/ Flood Insurance (if in floodplain, attach letter from SPO)	Need site review	X	X	X	Specific Site Review Needed		
Wetlands Protection	Need site review	X	X	X	Applies only to crossings on the Langley Rd., affecting wetlands. Nationwide permit, US Army Corp.		
Coastal Zone Management	X				Project not located in a CZM. USGS Map in file.		
Coastal Barriers	X				Project not located near any coastal barriers. USGS Map in file.		
Water Quality-Aquifers	X	X			No water quality issues as per CEO/LPI.		
Wild and Scenic Rivers	X						Not located anywhere close to the Alagash River or area.
Air Quality	X	X					Control of fugitive emissions required through BMP. Letter C. Wheeler 6/14/91.
Farmlands Protection Act	X						No prime or protected farmland within the project area; site inspection, soil map.
Endangered/Threatened Species	X						Project will not affect Federally Listed Endangered or threatened species. Letter G. Beckett 10/31/02. Ref. to Maine IFW.
Essential Habitat/Fish and Wildlife	X						Location appeared in proximity to Essential Wildlife; No impact, no compliance requirement; confirmed by Memo to File re: Maine IFW contact.
Environmental Justice	X						Positive benefit for eligible participants; LMI target area & homes.
Airport Clear Zone	X						No airports or approaches near any element of project. File map.
Solid Waste Disposal	X						Minimal increase. All disposals will be at licensed landfill. See municipal agreement with landfill.

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Protection of Waters	X						No OBD related to this project, see narrative.
Site Location Law	X						Project is exempt from review under site law. See statutory reference to exempt activities.
Natural Resources Protection Act	X	X	X	X	X		Road stream crossing only requires permit-by-rule in accordance w/ Chpt. 305. See file note.
Submerged Land Law	X						Project will not occur near any submerged tidal lands. See files and USGS Topo map.
Subsurface Wastewater Disposal	X				X		All necessary permits for subsurface obtained prior to installation.
Protection of Air Act	X	X					Control of fugitive emissions required through BMP. Letter C. Wheeler 6/14/91.
MANMADE HAZARDS							
Thermal/Explosive	X						No storage of explosives near project. No change in traffic/transport of hazardous materials. Site inspection.
Noise	X						Transient noise during road construction. Low density development area. Letter from M. Fraser.
Toxic Sites	Need site review						No asbestos known – specific site review needed
OTHER LOCAL, STATE, FEDERAL LAWS OR STATUES APPLICABLE TO PROJECTS							
State Plumbing Code				X			Internal plumbing permit obtained prior to completion

Robin Birdsong

Signature of Preparer

777-1111

Telephone Number

Environ. Review Officer 7/9/1996

Relationship to Grantee

Date



Maine Community Development Block Grant Program

EXAMPLE of Request for Release of Funds (RROF) and Certification Form

1. Program Title: Maine Community Development Block Grant Program		OMB Catalog No.
		14.228
2. Name and Address of Recipient:	Town of Elmville 6767 Gypsy Moth Drive Elmville, Maine 04666	
3. For Information Contact:	Robin Birdsong/Jay Wrenn 121-2555	
4. Date of this Request:	June 4, 1993	
5. Project Dates:	Application submission 10/15/95 Phase II invitation 1/15/96 Contract Executed 8/25/96	

Part 1. Request for Release of Funds

6. Send Request to: Department of Economic and Community Development (OCD)
33 Stone St., 59 State House Station
Augusta, ME 04333-0059

The recipient of assistance listed above requests the removal of environmental conditions and the release of grant funds for the following:

7. Program/Project Name: Dutch St. Refoliation and Revitalization Project	8. Location/Address of Program/Project: Dutch St. neighborhood, bordered by Gypsy, Rose, Lee and Dutch Sts.
---	---

9. Program Activity/Project description:

Housing rehabilitation, tree planting, approximately 17 homes will be rehabilitated through CDBG program. Approximately 35 Dutch Elm trees will be planted in the area. All eligible homes will be evaluated for compliance with flood zone and historic preservation requirements.

Part 2. Environmental Certification

With reference to the above Program Activity/Project, I, the undersigned Officer of the recipient, certify that: **(a)** the recipient has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named above. **(b)** The recipient has complied with National Environmental Policy Act of 1969, as amended, and with the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5 and 58.6. **(c)** The recipient has taken or will take into account the environmental criteria, standards, permit requirements and other obligations applicable to the project or program activity under other Federal, State and local laws that the recipient has the direct responsibility to comply with. **(d)** The recipient has assumed responsibility for and complied with, and will continue to comply with Section 106 of the National Historic preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian Tribes and the public. **(e)** After considering the type and degree of environmental effects identified by the environmental review completed for the enclosed project described in Part 1 of this request, I have found that the proposal ~~(did)~~ **(did not)** require the preparation and dissemination of an environmental impact statement. **(f)** The recipient has, prior to submitting this request for the release of funds and certification,

published in the manner prescribed by 24 CFR 58.43 a notice to the public in accordance with 24 CFR 70 and as evidenced by the attached copy. **(g)** The date upon which all statutory and regulatory time periods for review, comment or other action, following completion of the environmental review for the project/program activity, **began and ended as indicated below** in compliance with the procedures and requirements of 24 CFR 58.

Check level of review:

- ☐ **Notice of Intent to Request a Release of Funds (Categorically Excluded, Not Exempt, 7- day local comment period)**

Date Published in Newspaper	Comment Period
6/6/96	Date began: 6/7/96
	Date ended: 6/13/96

- ☐ **Combined Notice: Finding of No Significant Impact and Intent to request Release of Funds (Nonexcluded/FONSI, 15 – day local comment period)**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

- ☐ **Notice of Finding of No Significant Impact**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

- ☐ **Notice of Intent to Prepare an EIS**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

15-DAY STATE OBJECTION PERIOD (ESTIMATED BY GRANTEE)

DATE SENT TO DECD: 6/14/96	DATE BEGAN: 6/17/96	DATE ENDED: 7/1/96
--------------------------------------	-------------------------------	------------------------------

As the duly designated certifying official of the grantee/recipient, I also certify that:

(a) I am authorized to and do consent to assume the status of responsible federal official under the National Environmental Policy Act of 1969 and each provision of Law designated in the 24 CFR 58.5 and 58.6 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making, and actions that have been assumed by the grantee/recipient;

(b) by so consenting, I have assumed the responsibilities for the conduct of environmental review, decision-making, and actions as to environmental issues, preparation and circulation of draft, final and supplemental environmental impact statements, and lead agency or cooperating agency responsibilities for preparation of such statements on behalf of federal agencies including HUD, when these agencies consent to such assumptions; and

(c) I am authorized to act and do accept, on behalf of the recipient and personally, the jurisdiction of the federal courts for the enforcement of all these responsibilities, in my capacity as Chief Executive officer (Certifying Officer)/certifying officer of the grantee/recipient.

Signature of Chief Executive officer (Certifying Officer) of Grantee/Recipient

Address:
Elmville Town Office
6767 Gypsy Moth Drive
Elmville, ME 04666

Jay Wren

Title: Town Administrator

Warning: Section 1001 of Title 18 of the United States Code and the Criminal Procedure shall apply to this certification. Title 18 provides, among other things, that whoever knowingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any manner within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years or both. Adapted HUD-7015.15 (9-88)

Maine Community Development Block Grant Program

Notice of Intent to Request a Release of Funds *(for publication)*

Date of Notice: June 6, 1996
Grantee: Elmville Town Office
Address: 6767 Gypsy Moth Drive
Elmville, Maine 04666
Telephone: (207) 555-2121

On or about June 14, 1996, the Town/City of Elmville will submit a request to the Department of Economic and Community Development (DECD) for the release of CDBG funds under Title I of the Housing and Community Development Act of 1974, as amended, to undertake the Dutch St. Refoliation and Revitalization Project for Housing Rehabilitation, tree planting. Gypsy, Rose, Lee and Dutch Sts border Dutch St. neighborhood. Approximately 17 homes will be rehabilitated. Compliance with flood and historic requirements will be reviewed locally for specified sites. Total project cost estimate (cash and value of donations) is \$460,0000.

The activities proposed are categorically excluded under the HUD regulations at 24 CFR Part 58 from the National Environmental Policy Act requirements concerning preparation of an environmental assessment, provided the additional local reviews described above and in the Environmental Review Record (ERR) are completed. An ERR that documents the environmental determinations for this project is on file at the **Elmville Town Office, 6767 Gypsy Moth Drive, Elmville, ME** and may be examined or copied weekdays from **8am to 5pm Monday through Friday. Call (207) 555-2121** for general information.

Public Comments

Any individual, group, or agency, disagreeing with this determination or wishing to comment may submit written comments on the ERR to the **Town of Elmville** at the above address. All comments received by **June 13, 1996** will be considered by the **Town of Elmville** prior to authorizing a request for release of funds.

Release of Grant Funds

The **Town of Elmville** certifies to DECD that **Jay Wren** in his official capacity as Chief Executive officer (Certifying Officer) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process, and that these responsibilities have been satisfied. DECD's acceptance of the certification satisfies its responsibilities under NEPA and related laws and allows the **Town of Elmville** to use Program funds.

Objections to Release of Funds

DECD will accept objections to its release of funds and the **Town of Elmville** certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if it is on one of the following bases: **(a)** the certification was not executed by the Chief Executive officer (Certifying Officer) of the **Town of Elmville**; **(b)** the ERR indicates omission of a required step, decision or finding required by 24 CFR Part 58; **(c)** the grant recipient or other participants in the development process have incurred costs or undertaken project activities not authorized by 24 CFR Part 58 before approval of a release of funds by DECD; or **(d)** another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be address to DECD at 59 State House Station, Augusta, ME 04333-0059. Potential Objectors should contact DECD to verify the actual last day of the objection period.

Jay Wren Town of Elmville 6767 Gypsy Moth Drive, Elmville, ME 04666
Chief Executive officer (Certifying Officer)

Address



**Maine Community Development Block Grant Program
Environmental Review Statement: Categorically Excluded, Not Exempt**

Project Name: _____
Project Location: _____
Contact Person: _____

The following activities have been reviewed under 24 CFR 58.35(a) and have been found to be categorically excluded from the provisions of the National Environmental Policy Act (NEPA). Additional review is necessary before all funds can be released. In case of unspecified sites, all the related laws and authorities cited in Section 58.5 and 58.6 cannot be applied until sites are identified and reviewed. In case of a minor compliance action, once successfully completed, funds can be released.

Attached is the Statutory Checklist completed for the laws and authorities that can be applied to project activities. Laws and authorities that cannot be applied until sites are specified are identified. The Statutory Checklist reviews will be completed for each specific site and appropriate action taken in compliance with ERR requirements. Once the minor compliance requirement is cleared, funds will be released in compliance with ERR requirements. Signature certifies that environmental review responsibilities will be met as required and information on comments received and responses made are included in this submission.

LIST PROJECT ACTIVITIES:

Signature of Environmental Review Officer **Date**

Signature of Chief Executive officer (Certifying Officer) **Date**

Maine Community Development Block Grant Program
SITE LIST IDENTIFYING LOCAL ERR CLEARANCES
CATEGORICALLY EXCLUDED, NOT EXEMPT PROJECT

ERR Categories requiring clearance:

Sites/Location Assisted	Dates and Areas cleared for ERR	Date of Initial Assistance

(copy and add additional pages as necessary)

Maine Community Development Block Grant Program

Environmental Review - Statutory Checklist

PROJECT NAME:

GRANTEE NAME:

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Historic Properties (attach letter from SHPO)							
Floodplain Management/ Flood Insurance (if in floodplain, attach letter from SPO)							
Wetlands Protection							
Coastal Zone Management							
Coastal Barriers							
Water Quality-Aquifers							
Wild and Scenic Rivers							
Air Quality							
Farmlands Protection Act							
Endangered/Threatened Species							
Essential Habitat/Fish and Wildlife							
Environmental Justice							
Airport Clear Zone							
Solid Waste Disposal							
Water Quality and State Safe Drinking Water Law							

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Protection of Waters							
Site Location Law							
Natural Resources Protection Act							
Submerged Land Law							
Subsurface Wastewater Disposal							
Protection of Air Act							
MANMADE HAZARDS							
Thermal/Explosive							
Noise							
Toxic Sites							
OTHER LOCAL, STATE, FEDERAL LAWS OR STATUTES APPLICABLE TO PROJECTS							

Signature of Preparer	Telephone Number	Relationship to Grantee	Date
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Maine Community Development Block Grant Program

Notice of Intent to Request a Release of Funds for

Date of Notice: _____

Grantee: _____

Address: _____

Telephone: _____

On or about _____, the Town/City of _____ will submit a request to the Department of Economic and Community Development (DECD) for the release of CDBG funds under Title I of the Housing and Community Development Act of 1974, as amended, to undertake the project known as: _____ for the purpose of _____

Total estimated funding is: _____

The activities proposed are categorically excluded under the HUD regulations at 24 CFR Part 58 from National Environmental Policy Act requirements concerning preparation of an environmental assessment, provided the additional local reviews described above and in the Environmental Review Record (ERR) are completed. An ERR that documents the environmental determinations for this project is on file at: _____

Grantee: _____

Address: _____

Telephone: _____

The ERR may be examined or copied weekdays from _____ a.m. to _____ p.m.

Public Comments

Any individual, group, or agency, disagreeing with this determination or wishing to comment may submit written comments on the ERR to the Town/City of _____ at the above address. All comments received by _____ will be considered by the Town/City of _____ prior to authorizing a request for release of funds.

Release of Grant Funds

The Town/City of _____ certifies to DECD that (Chief Executive officer (Certifying Officer)) _____ in his/her official capacity consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process, and that these responsibilities have been satisfied. DECD's acceptance of the certification satisfies its responsibilities under NEPA and related laws and allows the Town/City of _____ to use Program funds.

Objections to Release of Funds

DECD will accept objections to its release of funds and the Town/City certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if an objection is on one of the following bases: **(a)** the certification was not executed by the Chief Executive officer (Certifying Officer) of the Town/City of _____; **(b)** the ERR indicates omission of a required step, decision or finding required by 24 CFR Part 58; **(c)** the grant recipient or other participant in the development process have incurred costs or undertaken project activities not authorized by 24 CFR Part 58 before acceptance of the release of funds by DECD; or **(d)** another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58.76) and shall be address to DECD at 59 State House Station, Augusta, ME 04333-0059. Potential Objectors should contact DECD to verify the actual last day of the objection period.

Chief Executive officer (Certifying Officer) _____

Address _____



Maine Community Development Block Grant Program
Request for Release of Funds (RROF) and Certification Form

1. Program Title: Maine Community Development Block Grant Program		OMB Catalog No. 14.228
2. Name and Address of Recipient:		
3. For Information Contact:		
4. Date of this Request:		
5. Project Dates:		

Part 1. Request for Release of Funds
6. Send Request to: Department of Economic and Community Development (OCD) 111 Sewall St., 59 State House Station Augusta, ME 04333-0059

The recipient of assistance listed above requests the removal of environmental conditions and the release of grant funds for the following:

7. Program/Project Name:	8. Location/Address of Program/Project:

9. Program Activity/Project description:

Part 2. Environmental Certification
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With reference to the above Program Activity/Project, I, the undersigned Officer of the recipient, certify that: **(a)** the recipient has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named above. **(b)** The recipient has complied with National Environmental Policy Act of 1969, as amended, and with the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5 and 58.6. **(c)** The recipient has taken or will take into account the environmental criteria, standards, permit requirements and other obligations applicable to the project or program activity under other Federal, State and local laws that the recipient has the direct responsibility to comply with. **(d)** The recipient has assumed responsibility for and complied with, and will continue to comply with Section 106 of the National Historic preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian Tribes and the public. **(e)** After considering the type and degree of environmental effects identified by the environmental review completed for the enclosed project described in Part 1 of this request, I have found that the proposal **(did) (did not)** require the preparation and dissemination of an environmental impact statement. **(f)** The recipient has, prior to submitting this request for the release of funds and certification, published in the manner prescribed by

24 CFR 58.43 a notice to the public in accordance with 24 CFR 70 and as evidenced by the attached copy.
(g) The date upon which all statutory and regulatory time periods for review, comment or other action, following completion of the environmental review for the project/program activity, **began and ended as indicated below** in compliance with the procedures and requirements of 24 CFR 58.

Check level of review:

- ☐ **Notice of Intent to Request a Release of Funds (Categorically Excluded, Not Exempt, 7- day local comment period)**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

- ☐ **Combined Notice: Finding of No Significant Impact and Intent to request Release of Funds (Nonexcluded/FONSI, 15 – day local comment period)**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

- ☐ **Notice of Finding of No Significant Impact**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

- ☐ **Notice of Intent to Prepare an EIS**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

15-DAY STATE OBJECTION PERIOD (ESTIMATED BY GRANTEE)

DATE SENT TO DECD:	DATE BEGAN:	DATE ENDED:
---------------------------	--------------------	--------------------

As the duly designated certifying official of the grantee/recipient, I also certify that:

(a) I am authorized to and do consent to assume the status of responsible federal official under the National Environmental Policy Act of 1969 and each provision of Law designated in the 24 CFR 58.5 and 58.6 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making, and actions that have been assumed by the grantee/recipient;

(b) by so consenting, I have assumed the responsibilities for the conduct of environmental review, decision-making, and actions as to environmental issues, preparation and circulation of draft, final and supplemental environmental impact statements, and lead agency or cooperating agency responsibilities for preparation of such statements on behalf of federal agencies including HUD, when these agencies consent to such assumptions;

(c) I am authorized to act and do accept, on behalf of the recipient and personally, the jurisdiction of the federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the grantee/recipient.

Signature of Chief Executive officer (Certifying Officer) of Grantee/Recipient

Title

Address:

Warning: Section 1001 of Title 18 of the United States Code and the Criminal Procedure shall apply to this certification. Title 18 provides, among other things, that whoever knowingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any manner within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years or both. Adapted HUD-7015.15 (9-88)

Level of Review: Finding of No Significant Impact

If your project does not fit into any of the previous categories, or if your project involves one of the following activities, you must perform a Non-Excluded/FONSI level of review.

The phrase "non-excluded/FONSI" means that this level of review is a NEPA review, that is, a National Environmental Policy Act (NEPA) review. This level of review requires the preparation of an additional checklist called an "Environmental Assessment" and a longer (15-day) local comment period. Remember, if your project is in a floodplain, you have to complete an EO 11988 before finalizing your ERR.

This level covers the following:

- New construction of buildings, public facilities and improvements, including extensions
- Rehabilitation or other work on existing buildings for a change in use
- Projects resulting in a change of capacity of more than 20%
- Site development
- Demolition (when reuse is known)

Under regulations at 58.36 and 37 and Subpart E of 58.40, communities doing projects with these types of activities must complete the Environmental Assessment and conclude, based on the Assessment, whether their project will have "no significant impact" or "significant impact" on the environment.

The regulations require a further Environmental Impact Statement (EIS) if it is determined that the project will have "significant impact". It is unlikely that your project would be found to have "significant impact" and therefore require an EIS. If you have questions about this, contact your Development Program Manager.

Local Comment Period

This level of review requires a 15-day local comment period. This period allows members of the community to review your ERR and make comments on the project. The comment period is

REGULATORY REFERENCES

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.

Requirements for the Environmental Assessment

Subpart E--Environmental Review Process: Environmental Assessments (EAs)

§ 58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in § 58.5 & 58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§ 58.5 and 58.6.

FINDING OF NO SIGNIFICANT IMPACT:

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to § 58.43.

(2) A finding of significant impact, in which

publicized by your Notice of Intent to Request Release of Funds and Notice of Finding of No Significant Impact. At the same time, copies of the above notices are sent to individuals and groups on your dissemination list. The Maine CDBG program requires the notice to be published in the newspaper. The comment period begins the day AFTER your notice is published in the newspaper and lasts for a full 15 days. Needed documentation can be delivered or sent to OCD the 16th day.

State Objection Period

A state objection period begins the day AFTER your package is received and considered complete at OCD. This also is a 15 day period.

Distribution to Interested Parties

If you are performing a FONSI level review, you must send a copy of your notice of a Finding of No Significant Impact to “individual and groups known to be interested in the activities” (24 CFR 58.43). The following is a list of suggested interested parties. You should add to or adapt this list to the focus of your activities and project.

- Local agencies
- Local Historic Commission, office or group
- Local Planning Office
- Local Conservation Commission or Office
- Local Building and/or Code Enforcement Department or Office
- Other Local Agencies or Officials
- Regional Planning Commission and other agencies or offices with interest or potential input on the project or activity
- State Agencies
- DECD, Office of Community Development
- State Historic Preservation Officer
- State Environmental Agency
- Other state agencies or offices with interest or potential input on the project or activity
- Federal Agencies as appropriate
- Other interested groups or individuals – local or regional media

the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subparts F or G of this part.

PUBLICATION REQUIREMENTS:

§ 58.43 Dissemination and publication of the findings of no significant impact.

*(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must **send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity [must] (sic) also publish the FONSI notice in a newspaper of general circulation in the affected community.***

*(b) The responsible entity may... **publish a FONSI notice at the same time it ... publishes the NOI/RROF** required by § 58.70. If the notices are released as a combined notice, the combined notice shall:*

- (1) Clearly indicate that it is intended to meet two separate procedural requirements; and*
- (2) Advise the public to specify in their comments which "notice" their comments address.*

Environmental Clearance

Your community will be given an environmental clearance date by OCD (assuming your ERR is acceptable) the day AFTER the 15-day state objection period ends. A letter stating the environmental clearance date will be sent to your community sometime after that.

Remember you cannot begin your project, obligate any project funds (CDBG or other al funds), nor spend any project funds until after your clearance date. CDBG funds cannot be spent or obligated until you have executed your grant contract with OCD after successful completion of all Phase II requirements.

What to Send to OCD

To complete this level of review, submit the following documentation:

- Environmental Review Statement: Finding of No Significant Impact
- Request for Release of Funds/Certification Form
- Statutory Checklist (including letter from SHPO)
- Environmental Assessment Checklist
- Combined Notice of Finding of No Significant Impact and of Intent to Request Release of Funds
- Information on comments received and how they were resolved
- List of Interested Parties to whom the Notice was sent

The following pages give guidance in completing ERR Checklists. Examples of completed forms follow the Guidance Questions. Blank forms follow the examples.

Completing the Environmental Assessment Checklist

The Environmental Assessment Checklist summarizes applicable statutes, regulations and policies that you must use to analyze your project for a Non-Excluded/FONSI review. The intent of the assessment is to gauge the “environmental appropriateness” of a project based on location, project activities and the purpose of the project. The environmental assessment guidance questions in this section will be helpful.

In addition to a list of topics for project examination, the checklist helps summarize how your project relates to the requirements and needs of different areas of community life.

These columns help you describe how your project affects or fits with “Impact Categories”:

- no impact anticipated
- potential benefit
- whether or not a potential exists for negative or adverse consequences
- whether more study is needed
- what you have done or will do to mitigate project impact, if necessary or required
- how you have or will modify part of your project to comply with laws or rules

Impact Categories <i>(This column lists areas that may be impacted by your project and includes air quality, socioeconomic changes, community services and natural features)</i>	No Impact Anticipated	Potentially Beneficial	Potentially Adverse, Requires Documentation	Potentially Adverse, Requires More Study	Needs Mitigation	Requires Project Modification	DESCRIPTION COLUMN Describe/Provide Basis for Compliance Decision, including sources of documentation as basis for conclusions and attach supportive material as required or needed

The last column is to state your conclusion and summarize the basis of your conclusion. Memos, letters, conversations, memos or other resources are summarized here as the basis for and a defense of your conclusion. Back up documentation can be identified that support your conclusion, including other agency reviews. Remember you are not required to send your entire ERR file to OCD. Your full ERR file must be available when your project is monitored and for public information.

SUMMARY: Each “Impact Category” must be completed with your conclusion stated. References to supportive materials are in the last column. You are not to send your entire ERR to OCD. All ERR documents are to be on file locally with the Grantee. The following Guidance Questions will be helpful in considering impact categories.

Guidance Questions

The questions below will help you check out potential concerns. In some cases, a resource given may further assist your efforts. Review could help you anticipate what might be asked by others and assist in prioritizing tasks.

HISTORICAL, CULTURAL, AND ARCHAEOLOGICAL

- Does the locality have an inventory of historic places? Has a recent survey of local historic properties been conducted? Is there a local commission that can provide historic information?
- Are any properties in the project area or vicinity on the National Register of Historic Places?
- What information is available from the State Historic Preservation Officer (SHPO) on the project area and properties, possible archeological sites, burial grounds or related historical resources, eligible but unlisted Register of Historic Places, and potential impact on historic resources?
- Following consultation with the SHPO, are there actions and/or studies necessary to show compliance with historical, cultural or archaeological requirements?
- Are there non-listed properties that appear to be historic? Do area properties appear to have a unique architectural appearance or design characteristics?
- Has the SHPO indicated a Memorandum of Agreement is needed to avoid or reduce affects? If yes, has the Section 106 process been completed?

FLOODPLAIN MANAGEMENT

- Will the project be located in the 100-year floodplain, change the 100-year floodplain, or affect the floodway?
- If yes, have at least three sites been examined as reasonable and available alternatives to the proposed site? Have alternative ways been evaluated to fulfill the purpose of the project? What are the consequences of not doing the project?
- Does the project timetable include sufficient time to conduct Executive Order 11988 review, including the 7-day and the 15-day comment periods? Does the record document completion of the 8-step process? Will the project be in compliance with EO 11988, NFIP regulations, and the local Floodplain Management Ordinance?
- Is the project required to be in the floodplain?
- Is the proposed project in compliance with U.S. Army Corps of Engineers conditions concerning permits for dredge and fill activity?

WETLANDS PROTECTION

- Is the project in a wetland? Does the project have the potential to affect or be affected by a wetland?
- If yes, have at least three sites been reviewed as reasonable and available alternatives to the proposed site? Have alternative ways been evaluated to address the purpose of the project? What are the consequences of not doing the project?
- If in a wetland, has the permitting process been initiated through the NRPA?
- Will the project comply with U.S. Army Corps permit conditions for dredge and fill activity?
- Does the ERR document compliance with Executive Order 11990? If also in a floodplain, does the 8-step process document both floodplain and wetland review?

COASTAL ZONE MANAGEMENT

- Will the project affect the coastal zone? If yes, is the project consistent with the approved CZM Plan?

- If the project is not consistent with the Plan, what actions are needed to be in compliance with the Plan?

AIR QUALITY

- Does the project require an installation permit, operating permit, or indirect source permit under local pollution control agency rules? If so, have permit requirements been satisfied?
- Is the project located in the vicinity of a monitoring station where air quality violations have been registered? If so, will the project exacerbate air quality problems in the area?
- Has the project been designed to mitigate possible adverse effects if the project or its potential users would be particularly sensitive to existing air pollution levels, or those expected 10 to 20 years hence?
- Will the proposal establish a trend that will lead to violation of air quality standards in the future? If so, what project changes could be made or what mitigation measures could be established?
- Will the proposed project have parking facilities for 1,000 cars in an SMSA or 2,000 cars outside an SMSA or generate traffic of a corresponding magnitude?

AGRICULTURAL LANDS

- Will the project be located on or directly adjacent to land categorized as prime, unique, or of State or local importance?
- Will drainage from the project adversely affect farmland?
- Will the project location, construction, or activities of project users adversely affect important and productive farmlands, including introduction of nuisance vegetation that may spread to adjacent farmland?

VEGETATION AND ANIMAL LIFE

- Will the project create environmental conditions which might threaten existing vegetation, particularly changes in native plant community habitats and rare or endangered species?
- Will the project create conditions favorable for the proliferation of pest or nuisance species?
- Will the project damage or destroy existing wildlife habitats or create special hazards for animal life? Are any affected species listed by Maine and/or Federal agencies as rare or endangered?
- Will the project damage game fish habitats or spawning grounds?
- Will it damage or destroy trees without replacement? Will excessive grading alter the groundwater level and thus cause the slow death of trees and ground cover which in turn destroys animal habitat?

AIRPORTS

- Is there a military airfield or commercial service airport in the vicinity of the proposed site?
- If yes, is the project site located in Runway Protection Zone (civil airports) or is it located in the Clear Zone or Accident Potential Zone (military airfields)? (Note: Airport operators will have this information)

SOLID WASTE

- Will solid waste generated by the project require special handling? Is the design capacity of the existing solid waste disposal system adequate to service the proposed development?
- Will the proposed project be adversely affected by proximity to these facilities?
- Does the community have an adequate number of collection vehicles to service the project?
- If residents/users pay periodic costs for solid waste services, will they pay more in order to service the project? Will increased rates or costs, if applicable, create financial hardships for residents/users?

WATER RESOURCES

- Are septic systems being used? If so, have the systems been properly designed, installed, and maintained to prevent effluent from contaminating groundwater supplies?
- Will the project involve discharge of sewage effluent into surface water bodies? If so, will it meet state, Federal and other applicable standards?
- Will the project involve a substantial increase in impervious surface area? If so, have runoff control measures been included in the design?
- Will the project affect surface water flows or water levels in ponds due to excessive groundwater well pumping?
- Will the project affect a sole source or other aquifer?

WATER SUPPLY

- Will the project use groundwater for its water supply? Are there a large number of wells or wells that pump large quantities of water from the water table near the proposed project site?
- If on-site water is supplied through a public water system, has prior approval been given for the system's construction and operation, including supply for this project? Is supply adequate to serve the project?
- Is the existing water supply safe from a chemical and bacteriological standpoint? Will there be a new or a replacement fuel tank in the vicinity of the water supply? What quality control measures are in place to assure continued adequate water quality?

WASTE WATER

- Will the existing or planned waste water system adequately service the proposed development?
- As a result of the project, will the design capacity of wastewater treatment systems be exceeded?
- Will the proposed project area be adversely affected by proximity to these systems?
- In less developed or undeveloped areas, are soils suitable for on-site wastewater disposal such as septic systems? Where on-site disposal is necessary, will a permit from the Local Plumbing Inspector be required?

HAZARDS

- Is the project within 3,000 feet of a toxic or solid waste landfill site? Is the project located on an EPA Superfund, CERCLA or comparable Maine list of contaminated sites? Is an underground storage tank on site? Is the site otherwise contaminated or suspected to be contaminated? (Contact DEP Remediation & Waste Management, 287-7853 for list information)
- (If any are yes, an ASTM Environmental Site Assessment is necessary.) (See HUD publication "Choosing an Environmentally Safe Site")
- Has the local fire department, emergency management offices, transportation agencies or other local resource been contacted to identify hazardous substance locations? Was follow-up contact made with local industries/commercial establishments regarding handling and storage of hazardous materials? (HUD regulation lists haz on hazardous substances is in the Handbook Appendix, 24 CFR Part 51 Subpart D.)
- For residential projects, are there above ground propane tanks on site and in the vicinity with capacity of 100 gallons or more? Have distances been measured to determine Acceptable Separation Distance (ASD) between the source and project site? (Guidebook entitled "Siting of HUD-Assisted Projects Near Hazardous Facilities: Acceptable Separation Distances from Explosive and Flammable Hazards" provides direction.)
- Does the project include building construction, residential rehabilitation increasing density, building conversion to residential use, and/or acquisition of undeveloped land? If yes, is project site in compliance with measures of ASD? (See Appendix B of "Siting of HUD-Assisted Projects Near Hazardous Facilities:

SITE SAFETY

- Have actions been taken to protect children from attractive nuisances? Have measures been taken to reduce the potential risk to residents from dust and temporary walkways and traffic around construction sites?
- Are there project users or nearby populations with special health and safety needs not anticipated in project design?
- Does the project site pose involve potential hazards, such as:
 - potential health and safety problems: noise, odor, vibration, lack of light, air pollution, toxic chemical dumps, uranium mill tailings, reclaimed phosphate land (radioactive), underground storage tanks
 - site characteristics: shadows, inadequate street lighting, uncontrolled access to lakes and streams, improperly screened drains catchment areas, steep stairs or walks, overgrown brush, hazardous waste dumps, facilities handling chemicals and/or petrochemicals of an explosive or flammable nature
 - traffic: circulation conflicts, road safety, exposure to radiation or toxic substances
 - natural hazards: wind, droughts, floods, lightning, hurricanes, tornadoes; erosion, landslides, earthquakes, infestations, allergies, bacterial, viral and fungal diseases

ENERGY

- Is the project located in proximity to transit, shopping, and services related to the project? Does the project or the project's location encourage additional private vehicle trips and increased energy consumption?
- Have the architectural plans taken full advantage of potential energy saving measures, such as insulation, window design and placement, lighting, heating, cooling, and hot water systems?
- Are energy saving measures in conformance with HUD Minimum Property Standards and other applicable energy saving codes?

NOISE CONTRIBUTION

- Is the project located within 1,000 feet of a major road, highway, or other major noise sources; within 3,000 feet of a railroad; or 1 mile from a civil airport or 5 miles from a military airfield? What land uses are adjacent to the project?
- Will the project introduce a major noise generator (such as external machinery emitting high decibel screeching sounds)? If yes, what mitigating measures are proposed for the project?
- Based on ambient noise and estimated future noise levels, is the site appropriate for the proposed activities and facilities?
- Are additional assessments or measurements needed to identify mitigating actions? (Refer to the HUD "Noise Guidebook" and "Sound Transmission...")

CONFORMANCE WITH COMPREHENSIVE PLANS AND ZONING

- Is the proposal consistent with completed components of the local or regional comprehensive plan, whether adopted or in draft stage? Is there a relevant state plan and is the proposal consistent?
- Is the proposed project consistent with other plans including those prepared by area wide planning agencies, special districts and boards, and state agencies in various functional areas?
- Is the proposed project consistent with adopted community or area wide policies and goals?
- Does the proposed project comply with existing zoning, land use, and subdivision regulations? If not, does the proposal require a zoning or land use variance?

LAND USE COMPATIBILITY

- What existing land uses are adjacent to the proposed project? Are the abutters and neighbors aware of the project? Do they view the project as compatible with existing uses?
- Will the project contribute to or encourage urban sprawl? Will it displace economic activity from a central business district?
- Will the proposed project induce development which will be incompatible with the existing scale and density of development? Does the community regard the project as beneficial or as negative?
- Does the proposed project contribute to reducing the racial, ethnic and income segregation of the area's housing?

SLOPE/EROSION

- Is there evidence of erosion or sedimentation in the project area? Does the project involve development of an erosion sensitive area (near water, on a steep slope, on sandy or silty soil)?
- If yes, is erosion control included in project plans? Do those plans include measures to overcome potential erosion, slope stability and runoff problems?
- Does site clearance require vegetation removal? How many acres will be cleared and for how long?
- Does the proposed project create slopes by cut and fill?
- In the project area environs, is there a history of slope failure? Is there visual indication of previous slides or slumps, such as cracked walls or tilted trees or fences?

SOIL SUITABILITY

- Is there any visible evidence of soil problems (i.e., foundation cracking or settling, basement flooding, etc.) in the neighborhood of the project site?
- Have soil borings been made for the area? Do they indicate marginal or unsatisfactory soil conditions?
- If yes and if the project involves either new construction or substantial rehabilitation, does project design include appropriate mitigation measures to address the problem of poor soil conditions?

VISUAL QUALITY

- Will the project alter or destroy the natural or man-made environment (clearance of trees or buildings; alteration of vegetative character or land surface elevations; etc.)? Will the project restore or improve areas, such as inadequate drainage ways, redirecting surface water away from streams or ponds, or restoring wetlands?
- Will it introduce elements that are out of character or scale with existing physical environment? Are proposed signs, street furniture, and buildings in character with the existing architectural styles, particularly in historic areas?
- If new construction, will the structure represent a significant change in size, scale, placement, height, etc. in relation to existing structures? Is the change inappropriate (i.e., size or spacing of windows, floor levels, entrance patterns, etc.)?
- Will a proposed structure block or degrade views, change the skyline, or create a new focal point? Does the presentation of loading docks, trash collectors, parking, and etc. result in visual pollution? Is this mitigated visually?
- Will the project interfere with or impair a positive experience of natural conditions (i.e., increased pollution, noise, vibration, dust, odor, heat, and glare)? Will these interfere with human health? Will increases promote the deterioration of vegetation, wildlife habitats, and historic buildings)?

DEMOGRAPHIC/COMMUNITY CHARACTER

- Are levels of activity reduced or increased? Are changes detrimental?
- What identifiable neighborhoods/communities are within the sphere of influence or likely impact of the project? What characteristics or identifiable factors help define the character of these communities or neighborhoods?
- Will the project result in physical barriers or difficult access resulting in isolation of a particular neighborhood or population group, making access to services, facilities, institutions or community areas more difficult?
- Will the project alter residential, commercial, or industrial uses? If yes, to what extent?
- Will the proposal eliminate or harm any community institution, such as a neighborhood church?

DISPLACEMENT

- Will the project displace individuals or families? If yes, how many? Will displacement/relocation be covered by the Uniform Relocation Act and are funds available for payment?
- Will the project require relocation of jobs, community facilities, or business establishments? Are actions being taken for Uniform Relocation Act coverage?
- Will identifiable groups be affected, such as older persons, females, single-parent families, racial/ethnic, income, or minority group members?
- Are replacement facilities or housing units available nearby in the community? What will be the effect of relocation on the community?
- Could indirect displacement result from this project? If so, what measures are planned to avoid displacement or to alleviate the hardship on those affected and not covered by The Act?

EMPLOYMENT AND INCOME PATTERNS

- Will the project either increase or decrease employment opportunities? Will it create conditions favorable or unfavorable to commercial, industrial, or institutional operation or development?
- How many temporary and how many permanent jobs will be created by the project?
- What is the profile of new jobs created by the project? What is the distribution across the skills and income scale in comparison to the skills and income profile of area residents?
- Will the new jobs likely go to area residents? Will lower income, unemployed and minority group members be potential employees? Will construction jobs likely go to union or nonunion workers?
- If employees likely will not be residents, where are the new employees likely to come from?

EDUCATIONAL FACILITIES

- Will the additional school age children exceed the capacity of existing or planned school facilities?
- Do the potentially affected schools have adequate and safe access facilities? Are these adequate both in terms of safety and access?
- Will additional or alternative facilities have to be provided to ensure safety and suitable access?

COMMERCIAL FACILITIES

- Is there adequate and convenient access to retail services? (In the case of elderly, this means that shopping for food, medicine, other essentials, is within three blocks and services such as banks are within walking distance.)

Do local retail services meet the needs of project occupants/users? Are they affordable and is the range of services adequate?

- Will existing retail and commercial services be adversely impacted by the proposed project? Will existing businesses be placed at a competitive disadvantage or be displaced?

SOCIAL SERVICES

- Are social services currently located in proximity to the prospective users/residents? Are services within walking distance or convenient to public transportation and less than one-half hour's commute?
- Is the size of professional/trained staff in realistic proportion to the existing and anticipated number of residents/users?
- Will demand for social services increase? Will an increase overburden existing facilities? Could alternative or additional space be found? Could additional skilled staff be added?

PUBLIC SAFETY

- Does the project location provide clear and easy access to police, fire and emergency medical services?
- Are there or will there be obstacles to access (i.e., one-way roads, narrow bridges, waterways, expressways, railroads, etc.) which would prohibit access in an emergency situation?
- Are available police and fire protection services adequate to meet project needs? If additional manpower or equipment is needed, will manpower and services be expanded to meet needs?
- Does the area have a particularly high crime rate? Are there special plans for a security system which have been approved by the police department?
- Does project design provide easy access for personnel and emergency vehicles? Is project configuration such that the area is easily patrolled by police?

EMERGENCY/HEALTH CARE

- Are non-emergency health care services within reasonable proximity to the project (i.e., less than a half-hour's drive or commute away)?
- Is emergency health service available within approximately three to five minutes?
- Can ambulance trips to a hospital or other health care center be completed within 10 to 15 minutes?
- Will project users/residents require special medical services or skills, such as geriatric clinics?
- Is the size of professional/skilled medical staff in realistic proportion to the existing and anticipated number of residents/users?

TRANSPORTATION

- Will transportation facilities and services be adequate to meet the needs of the project's users? Will traffic generated from the project overload existing or proposed roadway capacity? Is off-street parking available and adequate?
- Are there transportation issues (such as bridge clearances for trucks, emergency vehicle access, safety hazards, public transit, etc.) which have not been adequately provided for? I
- Have curbs been designed with wheelchair ramps? Are sidewalks adequate and in good condition? Are designated parking spaces available for handicapped persons?
- Are there pedestrian activated signal lights where needed? Will the timing of traffic signals be adequate for handicapped persons and elderly pedestrians?

OPEN SPACE, RECREATION, AND CULTURAL FACILITIES

- Are open space and recreational and cultural facilities within walking distance of the project area? If not, is adequate public transportation available to these facilities?
- Is there an adequate supply of resources for the users of the development as well as residents?
- Will the CDBG project cause any overloading of existing facilities?
- Can the special needs of certain population groups (small children, teens, handicapped and elderly persons), be provided for through this project? Examples include lots for very small children, playgrounds for elementary school children, drop-in centers for teens, senior citizens, etc.
- If the development is housing, is there on-site space for informal play for children of all ages as well as recreational areas for adults, including spaces for passive recreation?

UNIQUE NATURAL FEATURES

- Will the proposed project location, construction, or activities of project users adversely impact unique natural features on or near the site?
- Will the project either destroy or isolate from public or scientific access any unique natural feature or features on or near the site?
- Will the unique natural feature pose safety hazards for a proposed development?

Samples of completed Finding of No Significant Impact level of review forms are on the following pages.

Maine Community Development Block Grant Program

Environmental Review Statement: Finding of No Significant Impact

Project Name: Central Revitalization Program

Project Location: Savemoore, ME

Contact Person: Robert Knight, Town Administrator

The following Activities have been reviewed under 24 CFR Part 58. *Some project activities are neither exempt by definition under Section 58.34 nor categorically excluded under Section 58.35. Review of Section 58.37 and project activities documents that Environmental Impact Statement (EIS) under Subpart G of Part 58 is not required. Therefore an Environmental Assessment has been prepared in accordance with Subpart E of Part 58 and is maintained in local files. Required documents from the Environmental Assessment are attached to this statement. Signature certifies that information on comments received and responses made are included in this submission.*

LIST PROJECT ACTIVITIES:

Water, sanitary and storm sewer reconstruction
Sanitary sewer extension
Sewer hookups
Housing rehabilitation
Road and sidewalk reconstruction

Robert Knight

Signature of Environmental Review Officer

6/22/93

Date

Robert Knight

Signature of Chief Executive officer (Certifying Officer)

6/22/93

Date

Maine Community Development Block Grant Program

Environmental Review - Statutory Checklist

PROJECT NAME: **Savemoore Central Project**

GRANTEE NAME:

Savemoore

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Historic Properties (attach letter from SHPO)	X						Attached letter from the State Historic Preservation Office verifies no impact
Floodplain Management/ Flood Insurance (if in floodplain, attach letter from SPO)	X						Attached floodplain map with project location marked shows project out of floodplain
Wetlands Protection	X						Project will not affect wetlands; USGS map with project location in file
Coastal Zone Management	X						Is not CZ area. Code Enforcement Officer
Coastal Barriers	X						Not on CBRS list provided by MGS.
Water Quality-Aquifers	X						Area served by public water
Wild and Scenic Rivers	X						Not in Allagash or environs
Air Quality	X						No asbestos problems indicated
Farmlands Protection Act	X						Urban area. No conversion of prime farmland; site not used to farm
Endangered/Threatened Species	X						Urban area; extension in existing developed ROW; reviewed with Natural Resources (see memo 3/10/02 in file); US & State agrees no impact
Essential Habitat/Fish and Wildlife	X						Not on Maine IF&W list; not on habitat map; web site listing of wildlife habitats. No wildlife here; no endangered fish (see MIF&W memo 3/15/02))
Environmental Justice	X						Improves LMI area; health & safety improvements too
Airport Clear Zone	X						Not in zone, map review (in file)
Solid Waste Disposal	X		X				Environmental assessment cleared
Water Quality and State Safe Drinking Water Law	X	X					Public water supply will not be affected

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Protection of Waters	X						There will be no overboard discharges
Site Location Law	X						Individual rehabs and hookups are not subject to site location law; infrastructure replacements/ Extension not extensive enough as shown in DEP letter
Natural Resources Protection Act	X						Clearance as per report of telephone contact and DEP confirmation memo
Submerged Land Law	X						Project located inland; not in submerged tidal lands
Subsurface Wastewater Disposal	X	X					Permits, mandatory inspections required for individual sewer hook-ups
Protection of Air Act	X						Projects will not affect air quality; construction will follow Best Management Practices (BMP)
MANMADE HAZARDS							
Thermal/Explosive	X						Project will not have any upon completion; none stored in area; construction will follow BMP if any blasting takes place
Noise	X						Follows Town ordinance which is more stringent than HUD regs
Toxic Sites	X						None in project area; town planner inventory of potential sites showed none in Town
OTHER LOCAL, STATE, FEDERAL LAWS OR STATUTES APPLICABLE TO PROJECTS							

Robert Knight

333-1111

Town Manager/CEO

5/30/93

Signature of Preparer

Telephone Number

Relationship to Grantee

Date

Maine Community Development Block Grant Program

Environmental Assessment

Project Name:	CENTRAL REVITALIZATION PROJECT, SAVEMOORE, ME
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Impact Categories	No Impact Anticipated	Potentially beneficial	Potentially Adverse, Requires Documentation	Potentially Adverse, Requires More Study	Needs Mitigation	Requires Project Modification	DESCRIBE/PROVIDE BASIS FOR COMPLIANCE DECISION, INCLUDING SOURCES OF DOCUMENTATION AS BASIS FOR CONCLUSIONS AND ATTACH SUPPORTIVE MATERIAL AS REQUIRED OR NEEDED
Land Development							
Conformance with Comprehensive Plans and Zoning		X					<i>Residential and special business zone; comp plans idents. for upgrades; high priority</i>
Compatibility and Urban Impact		X					<i>Water, sewer, storm water supports neighborhood – no excess capacity created</i>
Slope	X						<i>No adverse slopes, slight slope at northern end and will not pose engineering problem</i>
Erosion	X						<i>Engineering report describes precautionary methods along with site, slope, soil, etc. conditions; no impact expected</i>
Soil Suitability	X						<i>Plaisted gravelly loam or sandy Adams soils both well drained; some shallow ledge</i>
Hazards and Nuisances including Site Safety	X						<i>OSHA required as part of construction contract; blasting and construction follows guideline; notification requirements in contract</i>
Energy Consumption	X						<i>Improved water, storm and sanitary services will make systems more efficient</i>

Impact Categories	No Impact Anticipated	Potentially beneficial	Potentially Adverse, Requires Documentation	Potentially Adverse, Requires More Study	Needs Mitigation	Requires Project Modification	DESCRIBE/PROVIDE BASIS FOR COMPLIANCE DECISION, INCLUDING SOURCES OF DOCUMENTATION AS BASIS FOR CONCLUSIONS AND ATTACH SUPPORTIVE MATERIAL AS REQUIRED OR NEEDED
Noise							
Effects of Ambient Noise on Project and Contribution to Community Noise Levels	X						<i>CD and on-site engineers memo re: compliance with HUD and local noise regulations and ordinance documents, project within regulations</i>
Air Quality							
Effect of Ambient Air Quality on Project and Contribution to Community Pollution Levels	X						<i>No new air emissions, no extraordinary construction conditions; BMP in contract</i>
Environmental Design and Historic Values							
Visual Quality, Coherence, Diversity, Compatible Use and Scale		X					<i>Project visually improves streetscapes; street, sidewalk, curb reconstruction occurs after other work; specs illustrate compatible design</i>
Historic Cultural and Archeological Resources	X						<i>No such resources impacted; access not impacted by project see SHPO letter attached to Statutory Checklist</i>
Socioeconomic							
Demographic/ Character Changes	X X						<i>Increased capacity adequate for neighborhood and emerging business subdivision; no excess development potential (Planning Board)</i>
Displacement	X						<i>No displacement; extension in existing ROW</i>
Employment and Income Patterns		X					<i>Supportive of interdependent development – neighborhood and small business; Planner/Planning Board approved</i>
Community Facilities and Services							
Educational Facilities	X						<i>No additional school age population</i>
Commercial Facilities		X					<i>Stabilizes neighborhood and business area; see Planner's report re: area continuation</i>

Impact Categories	No Impact Anticipated	Potentially beneficial	Potentially Adverse, Requires Documentation	Potentially Adverse, Requires More Study	Needs Mitigation	Requires Project Modification	DESCRIBE/PROVIDE BASIS FOR COMPLIANCE DECISION, INCLUDING SOURCES OF DOCUMENTATION AS BASIS FOR CONCLUSIONS AND ATTACH SUPPORTIVE MATERIAL AS REQUIRED OR NEEDED
Health Care	X						<i>Demand unchanged and accessible; no special requirements; Planner and Planning Board</i>
Social Services	X						<i>Supply of and demand for unchanged; adequate, Planner and Planning Board report p.3</i>
Solid Waste	X						<i>Capacity adequate for all activities; post construction demand unchanged; collection capacity unchanged</i>
Waste Water		X					<i>Studies, permits, engineers report all conclude project adequately addresses needed protection from pollution</i>
Storm Water		X					<i>Capacity adequate for project's purposes; decrease in pollution potential significant</i>
Water Supply		X					<i>Quality and capacity improved; infrastructure cumulative impacts positive; see Public Works summary (p.1) in file</i>
Public Safety							
Police	X						<i>All public safety access during construction handled via emergency plan (description in CD Office; has contact persons)</i>
Fire		X					<i>Improved quality helps fire fighting ability, all others help via pollution free utilities (see Fire Chief's letter)</i>
Emergency/Medical	X						<i>Construction completion results in no change re: access, capacity, etc.</i>
Transportation	X						<i>Emergency/detour plan will be in operation during construction. (Police and Planning Board reports in CD office)</i>
Open Space	X						<i>No open space "filled"; no increased potential to do so (Planning Board, p.2)</i>
Recreational/ Cultural Facilities	X						<i>No resources or access impacted</i>

Impact Categories	No Impact Anticipated	Potentially beneficial	Potentially Adverse, Requires Documentation	Potentially Adverse, Requires More Study	Needs Mitigation	Requires Project Modification	DESCRIBE/PROVIDE BASIS FOR COMPLIANCE DECISION, INCLUDING SOURCES OF DOCUMENTATION AS BASIS FOR CONCLUSIONS AND ATTACH SUPPORTIVE MATERIAL AS REQUIRED OR NEEDED
Natural Features							
Water resources		X					No sole source aquifer impact; wellhead protection in place and supply excellent; other infrastructure imp. protects resources
Surface Water		X					Sanitary/storm separation and improvements protects resources
Floodplains	X						Neither in nor impacts floodplain (FIRM map w/ locations marked; SPO double check)
Wetlands	X						No wetlands or wetlands soils in vicinity or impacted (COE and wetlands inventory maps referenced; engineer reports)
Coastal Zone	X						Not in coastal zone, does not affect coastal zone; management map from SPO reviewed. Also checked CBRS reference; Town not listed.
Unique Natural Features and Agricultural Lands	X						All construction in roadway/ROW; sites previously disturbed; construction contract provisions inhibit any other impacts
Vegetation and Wildlife	X						No rare, endangered species impacted; tree replacement plan on record; US and State info. Positive; Natural Areas also supportive. Check Stat. Checklist for file references

Environmental Assessment Summation

Summary of Findings and Conclusions:

Project integrates water, sanitary sewer and storm water reconstructions and extension into overall infrastructure improvement that eliminates public health threats and reduces pollution potential. An emergency access plan for residents and public safety personnel will be in operation during construction, housing rehab, utility hookups and major impact in Savemoore.

Summary of Environmental Condition:

Positive impacts outweigh temporary inconveniences associated with construction and emergency access plan. Conclusion of project protects human and physical environment, supports neighborhood and small business elements, and does not negatively impact social or economic environment

Project Modifications and Alternatives Considered:

Not doing the project was not feasible, given environmental hazards outlined by State agency reports and engineering studies. Doing parts as local financing allowed was not cost effective and became infeasible due to increased environmental dangers and impacts. Funding through loans was limited by debt ceilings and rate limits on various utilities. Combination loan, grant and local match donation was only financing plan. All site and location reviews resulted in the present physical location. Construction contract and manual reflect best management practices; modifications to drafts were based on input from agencies, engineers and other contact persons. Review identified solid waste system needed evaluation, the completed study identified the system is completely satisfactory.

Additional Studies Performed (Attach Study or Summarize):

List of engineering studies, local Town office reports, and correspondence from local and non-local consultants is attached and is in the local CD file.

Mitigation Measures Needed:

None needed.

Final Determination:

Is the project in compliance with laws and regulations?

☒ Yes or No

Is an EIS required?

Yes or ☒ No

As a result of the reviews completed, the project will not significantly affect the quality of the human environment and a Finding of No Significant Impact (FONSI) can be made.

☒ Yes or No

Robert Knight

6/4/93

Signature of Preparer

Date of Completed

Town of Savemoore, 9898 Solar Way, Savemoore, ME 04555

333-1111

Mailing Address

Telephone Number

Town Manager

Relationship to Grantee

Maine Community Development Block Grant Program

Combined Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds

Date of Notice: June 6, 1993
Grantee: Savemoore
Address: Savemoore Town Office, 9898 Solar Way
Savemoore, ME 04555
Telephone: (207) 555-2121

Request for Release of Funds: On or about June 23, 1993, the **Town of Savemoore** will submit a request to the Department of Economic and Community Development (DECD) for the release of CDBG funds under Title I of the Housing and Community Development Act of 1974, as amended, **to undertake the Central Revitalization Project to replace dilapidated sewer lines, sewer hook-ups, extend sewer 500 feet and housing rehabilitation that will revitalize the Central area of Savemoore. The town will replace water lines and reconstruct roads and sidewalks in the same area. Central neighborhood of the Town of Savemoore, bordered by North, South, East and Central Avenues. The total cost is \$750,000.** Specific sites for housing rehabilitation and hook-ups will be reviewed for historic or archeological influence.

Finding of No Significant Impact: The **Town of Savemoore** has determined through an environmental assessment that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 is not required. Additional project information is in the Environmental Review Record (ERR) is on file at:

Grantee: **Savemoore Town Office**
Address: **9898 Solar Way**
Savemoore, ME
Telephone: **(207) 555-1212**

The ERR may be examined or copied weekdays 8:30 a.m. to 4:00 p.m.

Public Comments

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments on the ERR to the **Town of Savemoore** at the **Savemoore Town Office**. All comments received by June 21, 1993 will be considered by **the Town of Savemoore** prior to authorizing a request for release of funds. Comments should specify which Notice they are addressing.

Release of Grant Funds

The **Town of Savemoore** certifies to DECD that **Robert Knight** in his official capacity consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process, and that these responsibilities have been satisfied. DECD's acceptance of the certification satisfies its responsibilities under NEPA and related laws allow the **Town of Savemoore** to use Program funds.

Objections to Release of Funds

DECD will accept objections to its release of funds and the **Town of Savemoore** certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if it is on one of the following bases: **(a)** the certification was not executed by the Chief Executive officer (Certifying Officer) of the **Town of Savemoore**; **(b)** the ERR indicates omission of a required step, decision or finding required by 24 CFR Part 58; **(c)** the grant recipient or other participants in the development process have incurred costs or undertaken project activities not authorized by 24 CFR Part 58 before approval of a release of funds by DECD; or **(d)** another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to DECD at 59 State House Station, Augusta, ME 04333-0059. Potential objectors should contact DECD to verify the actual last day of the objection period and specify which notice their comments address.

Robert Knight
Chief Executive officer (Certifying Officer)

Savemoore Town Office, Savemoore, ME
Address



Maine Community Development Block Grant Program

Request for Release of Funds (RROF) and Certification Form

1. Program Title: Maine Community Development Block Grant Program		OMB Catalog No. 14.228
2. Name and Address of Recipient:	Town of Savemoore 9898 Solar Way Savemoore, ME 04555	
3. For Information Contact:	Robert Knight/Jay Day	
4. Date of this Request:	7/24/1993	
5. Project Dates:	Application Submission 12/1/92 Phase II Invitation 3/15/93 Contract Executed 10/1/93	

Part 1. Request for Release of Funds

6. Send Request to: Department of Economic and Community Development (OCD)
111 Sewall St., 59 State House Station
Augusta, ME 04333-0059

The recipient of assistance listed above requests the removal of environmental conditions and the release of grant funds for the following.

7. Program/Project Name: Central Revitalization Program	8. Location/Address of Program/Project: Central area, bordered by North, South, East and Central, Savemoore, Maine 04555
---	--

9. Program Activity/Project description: Replace dilapidated sewer lines and sewer hook-ups. Extend sewer lines 500 ft. Rehabilitate 15 substandard homes. CDBG funds will be used for these activities. Other funds will be used for water line replacement, road reconstruction and sidewalk reconstruction.

Part 2. Environmental Certification

With reference to the above Program Activity/Project, I, the undersigned Officer of the recipient, certify that: **(a)** the recipient has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named above. **(b)** The recipient has complied with National Environmental Policy Act of 1969, as amended, and with the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5 and 58.6. **(c)** The recipient has taken or will take into account the environmental criteria, standards, permit requirements and other obligations applicable to the project or program activity under other Federal, State and local laws that the recipient has the direct responsibility to comply with. **(d)** The recipient has assumed responsibility for and complied with, and will continue to comply with Section 106 of the National Historic preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian Tribes and the public. **(e)** After considering the type and degree of environmental effects identified by the environmental review completed for the enclosed project described in Part 1 of this request, I have found that the proposal **(did) (did not)** require the preparation and dissemination of an environmental impact statement. **(f)** The recipient

has, prior to submitting this request for the release of funds and certification, published in the manner prescribed by 24 CFR 58.43 a notice to the public in accordance with 24 CFR 70 and as evidenced by the attached copy. **(g)** The date upon which all statutory and regulatory time periods for review, comment or other action, following completion of the environmental review for the project/program activity, **began and ended as indicated below** in compliance with the procedures and requirements of 24 CFR 58.

Check level of review:

- ☐ **Notice of Intent to Request a Release of Funds (Categorically Excluded, Not Exempt, 7- day local comment period)**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

- 4 Combined Notice: Finding of No Significant Impact and Intent to request Release of Funds (Nonexcluded/FONSI, 15-day local comment period)**

Date Published in Newspaper	Comment Period
6/6/93	Date began: 6/7/1993
	Date ended: 6/21/1993

- ☐ **Notice of Finding of No Significant Impact**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

- ☐ **Notice of Intent to Prepare an EIS**

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

15-DAY State Objection Period (estimated by Grantee)

DATE SENT TO DECD:	DATE BEGAN:	DATE ENDED:
6/22/1993	6/24/1993	7/8/1993

As the duly designated certifying official of the grantee/recipient, I also certify that:

- a) I am authorized to and do consent to assume the status of responsible federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making, and actions that have been assumed by the grantee/recipient;
- b) by so consenting, I have assumed the responsibilities for the conduct of environmental review, decision-making, and actions as to environmental issues, preparation and circulation of draft, final and supplemental environmental impact statements and lead agency or cooperating agency responsibilities for preparation of such statements on behalf of federal agencies including HUD, when these agencies consent to such assumptions; and
- c) I am authorized to act and do accept, on behalf of the recipient and personally, the jurisdiction of the federal courts for the enforcement of all these responsibilities, in my capacity as Chief Executive officer (Certifying Officer)/certifying officer of the grantee/recipient.

**Signature of Chief Executive officer (Certifying Officer) of
Grantee/Recipient**

Address:

Title: **Robert Knight** Town Manager
(designated Chief Executive officer
(Certifying Officer))

Town of Savemore, 9898 Solar Way
Savemore, ME 04555

Warning: Section 1001 of Title 18 of the U.S. Code and Criminal Procedure shall apply to this certification. Title 18 provides, among other things, that whoever knowingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any manner within the jurisdiction of any department or agency of the United States, shall be find not more than \$10,000 or imprisoned not more than five years or both. Adapted HUD-7015.15 (9-88)

Maine Community Development Block Grant Program

Environmental Review Statement: Finding of No Significant Impact

Project Name: _____
Project Location: _____
Contact Person: _____

The following Activities have been reviewed under 24 CFR Part 58. Some project activities are neither exempt by definition under Section 58.34 nor categorically excluded under Section 58.35. Review of Section 58.37 and project activities documents that Environmental Impact Statement (EIS) under Subpart G of Part 58 is not required. Therefore an Environmental Assessment has been prepared in accordance with Subpart E of Part 58 and is maintained in local files. Required documents from the Environmental Assessment are attached to this statement. Signature certifies that environmental review responsibilities have been completed as required and information on comments received and responses made are included in this submission.

LIST PROJECT ACTIVITIES:

Signature of Environmental Review Officer **Date**

Signature of Chief Executive officer (Certifying Officer) **Date**

Maine Community Development Block Grant Program

Environmental Review - Statutory Checklist

PROJECT NAME:

GRANTEE NAME:

Statutes and Regulations	No Additional Compliance Needed	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Historic Properties (attach letter from SHPO)							
Floodplain Management/ Flood Insurance (if in floodplain, attach letter from SPO)							
Wetlands Protection							
Coastal Zone Management							
Coastal Barriers							
Water Quality-Aquifers							
Wild and Scenic Rivers							
Air Quality							
Farmlands Protection Act							
Endangered/Threatened Species							
Essential Habitat/Fish and Wildlife							
Environmental Justice							
Airport Clear Zone							
Solid Waste Disposal							
Water Quality and State Safe Drinking Water Law							

Statutes and Regulations	Not Applicable to this project	Consultation Required	Review required	Permits required	Consistency and approvals determined: Permits in Hand	Requires mitigating actions; special conditions apply	Describe/provide basis for compliance decision; identify file documents and results of compliance reviews. Attach supportive materials as required or needed
Protection of Waters							
Site Location Law							
Natural Resources Protection Act							
Submerged Land Law							
State Plumbing Code							
Protection of Air Act							
MANMADE HAZARDS							
Thermal/Explosive							
Noise							
Toxic Sites							
OTHER LOCAL, STATE, FEDERAL LAWS OR STATUTES APPLICABLE TO PROJECTS							

Signature of Preparer	Telephone Number	Relationship to Grantee	Date
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Maine Community Development Block Grant Program

Environmental Assessment

Project Name:	
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Impact Categories	No Impact Anticipated	Potentially beneficial	Potentially Adverse, Requires Documentation or More Study	Needs Mitigation	Requires Project Modification	DESCRIBE/PROVIDE BASIS FOR COMPLIANCE DECISION, INCLUDING SOURCES OF DOCUMENTATION AS BASIS FOR CONCLUSIONS AND ATTACH SUPPORTIVE MATERIAL AS REQUIRED OR NEEDED
Land Development						
Conformance with Comprehensive Plans and Zoning						
Compatibility and Urban Impact						
Slope						
Erosion						
Soil Suitability						
Hazards and Nuisances including Site Safety						
Energy Consumption						

Impact Categories	No Impact Anticipated	Potentially beneficial	Potentially Adverse, Requires Documentation or More Study	Needs Mitigation	Requires Project Modification	DESCRIBE/PROVIDE BASIS FOR COMPLIANCE DECISION, INCLUDING SOURCES OF DOCUMENTATION AS BASIS FOR CONCLUSIONS AND ATTACH SUPPORTIVE MATERIAL AS REQUIRED OR NEEDED
Noise						
Effects of Ambient Noise on Project and Contribution to Community Noise Levels						
Air Quality						
Effect of Ambient Air Quality on Project and Contribution to Community Pollution Levels						
Environmental Design and Historic Values						
Visual Quality, Coherence, Diversity, Compatible Use and Scale						
Historic Cultural and Archeological Resources						
Socioeconomic						
Demographic/ Character Changes						
Displacement						
Employment and Income Patterns						
Community Facilities and Services						
Educational Facilities						
Commercial Facilities						

Impact Categories	No Impact Anticipated	Potentially beneficial	Potentially Adverse, Requires Documentation or More Study	Needs Mitigation	Requires Project Modification	DESCRIBE/PROVIDE BASIS FOR COMPLIANCE DECISION, INCLUDING SOURCES OF DOCUMENTATION AS BASIS FOR CONCLUSIONS AND ATTACH SUPPORTIVE MATERIAL AS REQUIRED OR NEEDED
Health Care						
Social Services						
Solid Waste						
Waste Water						
Storm Water						
Water Supply						
Public Safety: Police						
Fire						
Emergency/ medical						
Transportation						
Open Space						
Recreation/ Cultural Facilities						

Impact Categories						DESCRIBE/PROVIDE BASIS FOR COMPLIANCE DECISION, INCLUDING SOURCES OF DOCUMENTATION AS BASIS FOR CONCLUSIONS AND ATTACH SUPPORTIVE MATERIAL AS REQUIRED OR NEEDED
	No Impact Anticipated	Potentially beneficial	Potentially Adverse, Requires Documentation or More Study	Needs Mitigation	Requires Project Modification	
Natural Features						
Water resources						
Surface Water						
Floodplains						
Wetlands						
Coastal Zone						
Unique Natural Features and Agricultural Lands						
Vegetation and Wildlife						

Environmental Assessment Summation

Summary of Findings and Conclusions:

Summary of Environmental Condition:

Project Modifications and Alternatives Considered:

Additional Studies Performed (Attach Study or Summarize):

Mitigation Measures Needed:

Final Determination:

Is the project in compliance with laws and regulations?

Yes or No

Is an EIS required?

Yes or No

As a result of the reviews completed, the project will not significantly affect the quality of the human environment and a Finding of No Significant Impact (FONSI) can be made.

Yes or No

Signature of Preparer

Date of Completed

Mailing Address

Telephone Number

Relationship to Grantee

Maine Community Development Block Grant Program

Combined Notice of Finding of No Significant Impact and of Intent to Request a Release of Funds

Date of

Notice:

Grantee:

Address:

Telephone:

On or about _____, the Town/City of _____ will submit a request to the Department of Economic and Community Development (DECD) for the release of CDBG funds under Title I of the Housing and Community Development Act of 1974, as amended, to undertake the project known as:

for the purpose of _____

Total estimated funding is _____

Finding of No Significant Impact

The Town/City of _____ has determined through an environmental assessment that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 is not required. Additional project information is in the Environmental Review Record (ERR) on file at:

Grantee:

Address:

Telephone:

The ERR may be examined or copied weekdays from _____ a.m. to _____ p.m.

Public Comments

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments on the ERR to the Town/City of _____ at:

All comments received by _____ will be considered by the Town/City of _____ prior to authorizing a request for release of funds. Comments should specify which Notice they are addressing.

Release of Grant Funds

The Town/City of _____ certifies to DECD that (Chief Executive officer (Certifying Officer)) _____ in his/her official capacity consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. DECD's acceptance of the certification satisfies its responsibilities under NEPA and allows the Town/City of _____ to use Program funds.

Objections to Release of Funds

DECD will accept objections to its release of funds and the Town/City of _____ certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: **(a)** the certification was not executed by the Chief Executive officer (Certifying Officer) of the Town/City of _____ required by 24 CFR Part 58; **(b)** the ERR indicates omission of a required step, decision or finding; **(c)** the grant recipient or other participant in the development process have incurred costs or undertaken project activities not authorized by 24 CFR Part 58

before approval of a release of funds by DECD; or **(d)** another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58.76) and shall be addressed to DECD at 59 State House Station, Augusta, ME 04333-0059. Potential objectors should contact DECD to verify the actual last day of the objection period.

Signature of Chief Executive officer (Certifying Officer)

Address



Request for Release of Funds (RROF) and Certification Form

1. Program Title: Maine Community Development Block Grant Program OMB Catalog No. 14.228

2. Name and Address of Recipient:	
3. For Information Contact:	
4. Date of this Request:	
5. Project Dates:	

Part 1. Request for Release of Funds

6. Send Request to: Department of Economic and Community Development (OCD)
111 Sewall St., 59 State House Station
Augusta, ME 04333-0059

The recipient of assistance listed above requests the removal of environmental conditions and the release of grant funds for the following:

7. Program/Project Name:	8. Location/Address of Program/Project:

9. Program Activity/Project description:

Part 2. Environmental Certification

With reference to the above Program Activity/Project, I, the undersigned Officer of the recipient, certify that: **(a)** the recipient has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named above. **(b)** The recipient has complied with National Environmental Policy Act of 1969, as amended, and with the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5 and 58.6. **(c)** The recipient has taken or will take into account the environmental criteria, standards, permit requirements and other obligations applicable to the project or program activity under other Federal, State and local laws that the recipient has the direct responsibility to comply with. **(d)** The recipient has assumed responsibility for and complied with, and will continue to comply with Section 106 of the National Historic preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian Tribes and the public. **(e)** After considering the type and degree of environmental effects identified by the environmental review completed for the enclosed project described in Part 1 of this request, I have found that the proposal **(did) (did not)** require the preparation and dissemination of an environmental impact statement. **(f)** The recipient has, prior to submitting this request for the release of funds and certification, published in the manner prescribed by 24 CFR 58.43 a notice to the public in accordance with 24 CFR 70 and as evidenced by the attached copy. **(g)** The date upon which all statutory and regulatory time periods for review, comment

or other action, following completion of the environmental review for the project/program activity, **began and ended as indicated below** in compliance with the procedures and requirements of 24 CFR 58.

Check level of review:

Notice of Intent to Request a Release of Funds (Categorically Excluded, Not Exempt, 7- day local comment period)

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

Combined Notice: Finding of No Significant Impact and Intent to request Release of Funds (Nonexcluded/FONSI, 15 – day local comment period)

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

Notice of Finding of No Significant Impact

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

Notice of Intent to Prepare an EIS

Date Published in Newspaper	Comment Period
	Date began:
	Date ended:

15-DAY State Objection Period (Estimated by Grantee)

DATE SENT TO DECD:	DATE BEGAN:	DATE ENDED:

As the duly designated certifying official of the grantee/recipient, I also certify that:

(a) I am authorized to and do consent to assume the status of responsible federal official under the National Environmental Policy Act of 1969 and each provision of Law designated in the 24 CFR 58.5 and 58.6 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making, and actions that have been assumed by the grantee/recipient;

(b) by so consenting, I have assumed the responsibilities for the conduct of environmental review, decision-making, and actions as to environmental issues, preparation and circulation of draft, final and supplemental environmental impact statements, and lead agency or cooperating agency responsibilities for preparation of such statements on behalf of federal agencies including HUD, when these agencies consent to such assumptions; and

(c) I am authorized to act and do accept, on behalf of the recipient and personally, the jurisdiction of the federal courts for the enforcement of all these responsibilities, in my capacity as Chief Executive officer (Certifying Officer)/certifying officer of the grantee/recipient.

Signature of Chief Executive officer (Certifying Officer) of Grantee/Recipient
Title

Address

Warning: Section 1001 of Title 18 of the United States Code and the Criminal Procedure shall apply to this certification. Title 18 provides, among other things, that whoever knowingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any manner within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years or both. Adapted HUD-7015.15 (9-88)

Appendix

CDBG Environmental Review Regulations (24 CFR Part 58)

HUD Procedures for the Implementation of EO 11988 (24 CFR Part 55 [with excerpts from Parts 50 and 200])

HUD Noise Abatement and Control; Hazardous Operations; Runway Protection Zones (24 CFR Part 51)

CDBG Environmental Review Regulations
PART 58--ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING
HUD ENVIRONMENTAL RESPONSIBILITIES

Sets the legal stage and defines overall terms.

Subpart A--Purpose, Legal Authority, Federal Laws and Authorities

Sec.

58.1 Purpose, scope and applicability.

58.2 Terms, abbreviations and definitions.

58.4 Assumption authority.

58.5 Related Federal laws and authorities.

58.6 Other requirements.

General Responsibilities/Requirements

Subpart B--General Policy: Responsibilities of Responsible Entities

58.10 Basic environmental responsibility.

58.11 Legal capacity and performance.

58.12 Technical and administrative capacity.

58.13 Responsibilities of the certifying officer.

58.14 Interaction with State, Federal and non-Federal entities.

58.15 Tiering.

58.17 [Removed and Reserved]

58.18 Responsibilities of States Assuming HUD Responsibilities.

Overall Information and Clear Statement of No Funds/No Action without ERR Clearance

Subpart C--General Policy: Environmental Review Procedures

58.21 Time periods.

58.22 Limitations on activities pending clearance.

58.23 Financial assistance for environmental review.

Lots on Levels of Review. Project Definition, Exempt activities and Categorically Excluded activities outlined.

Subpart D--Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

58.30 Environmental Review Process.

58.32 Project aggregation.

58.33 Emergencies.

58.34 Exempt activities.

58.35 Categorical exclusions.

58.36 Environmental assessments.

58.37 Environmental impact statement determinations.

58.38 Environmental review record.

Specific to Environmental Assessment/FONSI Level of Review

Subpart E--Environmental Review Process: Environmental Assessments (EA's)

58.40 Preparing the environmental assessment.

58.43 Dissemination and/or publication of the findings of no significant impact.

58.45 Public comment periods.

58.46 Time delays for exceptional circumstances.

58.47 Re-evaluation of environmental assessments and other environmental findings.

Specific to Environmental Impact Statement (EIS) Level of Review

Subpart F--Environmental Review Process: Environmental Impact Statement Determinations

58.52 Adoption of other agencies' EISs.

58.53 Use of prior environmental impact statements.

Specific to EIS

Subpart G--Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

58.55 Notice of intent to prepare an EIS.

58.56 Scoping process.

58.57 Lead agency designation.

58.59 Public hearings and meetings.

58.60 Preparation and filing of environmental impact statements.

Mostly specific for published notices. Review 58.72(b)(c) and 58.75 for overall release of funds issues.

Subpart H--Release of Funds for Particular Projects

58.70 Notice of intent to request release of funds.

58.71 Request for release of funds and certification.

58.72 HUD or State actions on RROFs and certifications.

58.73 Objections to release of funds.

58.74 Time for objecting.

58.75 Permissible bases for objections.

58.76 Procedure for objections.

58.77 Effect of approval of certification.

AUTHORITY: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR 1977 Comp., p. 123.12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p.123.

Subpart A--Purpose, Legal Authority, Federal Laws and Authorities

§ 58.1 Purpose, scope and applicability.

The purpose is to show how HUD assisted entities can comply with the requirements of NEPA.

(a) Purpose. This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) Applicability. This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

The CDBG Program is specifically mentioned as covered by Part 58.

(1) **Community Development Block Grant programs** authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) [Reserved]

(3)(i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6) (i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading "Annual Contributions for Assisted Housing" in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section

542(c)(9)(12 U.S.C. 1707 note);

(9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section 11(m));

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) **Activity** means an action that a grantee or recipient puts forth as part of an assisted project, **regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.**

(2) **Certifying Officer** means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of § 58.13.

(3) **Extraordinary Circumstances** means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) **Project** means ***an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.***

(5) **Recipient** means any of the following entities, when they are eligible recipients or grantees under a program listed in § 58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and

Note the cost and eligible language here. This means that all project activities, HUD-funded or otherwise, must be considered as "activities" under this Part.

Extraordinary circumstances can change your level of review and lengthen the state objection period. If this may apply, contact your DPM immediately to discuss!

The definition of "project" means you have to **include all activities related to the accomplishment of your project's objective.** See 58.32(a)(b) for more.

Recipient.

Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) With respect to Public Housing Programs under § 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under Sec. 58.1(b)(6)(ii) or Section 8 assistance under Sec. 58.1(b)(6)(III), a public housing agency; a public housing agency;

(vi) Any direct grantee of HUD for a special project under § 58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Program under § 58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program under § 58.1(b)(9), any direct grantee of HUD; and

(ix) (A) With respect to NAHASDA assistance under Sec. 58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under Sec. 58.1(b)(11), the Indian tribe.

With respect to the Shelter Plus Care and Supportive Housing Programs under Sec. 58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) Release of funds. In the case of the FHA Multifamily Housing Finance Agency Program under Sec. 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under Sec. 58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) Responsible Entity. Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in Sec. 58.1(b)(1), (2), (3)(i), (4), and (5), **a recipient under the program.**

(ii) With respect to environmental responsibilities under the programs listed in Sec. 58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) listed in Sec. 58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in Sec. 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(D) For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located, or if the project is located outside of a reservation, the Indian tribe that established the authority; and

(E) For Indian housing authorities in Alaska, the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD.

(8) Unit Density refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) Tiering means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

Units of general local government.

Tiering is the concept used when you update your ER when you are performing a site specific review.

(10) **Vacant Building** means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

- (1) **CDBG - Community Development Block Grant;**
- (2) **CEQ - Council on Environmental Quality;**
- (3) **EA - Environmental Assessment;**
- (4) **EIS - Environmental Impact Statement;**
- (5) **EPA - Environmental Protection Agency;**
- (6) **ERR - Environmental Review Record;**
- (7) **FONSI - Finding of No Significant Impact;**
- (8) **HUD - Department of Housing and Urban Development;**
- (9) **NAHA - Cranston-Gonzalez Nat'l Affordable Housing Act of 1990;**
- (10) **NEPA - National Environmental Policy Act of 1969, as amended;**
- (11) **NOI/EIS - Notice of Intent to Prepare an EIS;**
- (12) **NOI/RROF - Notice of Intent to Request Release of Funds;**
- (13) **ROD - Record of Decision;**
- (14) **ROF - Release of Funds; and**
- (15) **RROF - Request for Release of Funds.**

§ 58.4 Assumption authority.

(a) **Assumption authority for responsible entities: General.** Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. **When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.**

(b) Particular responsibilities of the States.

(1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD's responsibilities in accordance with Sec. 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in Sec. 58.5.

(c) **Particular responsibilities of Indian tribes.** An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that **it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.**

(a) Historic properties.

(1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).

Note these acronyms ...

This section requires OCD to set up an ER process, which is why this Handbook exists...

and approve RROFs as a way of meeting the requirements of NEPA.

The first list of Federal statutes that you must compare your project's environmental impact to. This forms the basis of our "Statutory Checklist".

Contact with the State Historic Preservation Office (SHPO) at Maine Historic Preservation Commission is necessary.

Check with the Code Enforcement Officer first to see if a floodplain is impacted. Follow up with the State Floodplain Coordinator in the Maine State Planning Office if a floodplain is impacted or if questions arise.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921) particularly section 2(c).

(3) Federal historic preservation regulations as follows: (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and (ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq), particularly section 3 (16 U.S.C. 469a-1).

b) Floodplain management and wetland protection.

(1) Executive Order 11988, Floodplain Management, May 24, 1977 (3 CFR, 1977 Comp., p. 117), as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see § 55.10 of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (3 CFR, 1977 Comp., p. 121) particularly sections 2 and 5.

(c) Coastal Zone Management. The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) Sole source aquifers.

(1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency, 40 CFR part 149).

(e) Endangered species. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536).

(f) Wild and scenic rivers. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) Air quality.

(1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-- 40 CFR parts 6, 51, and 93).

(h) Farmlands protection.

(1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture -- 7 CFR part 658).

(i) HUD environmental standards.

(1) Applicable criteria and standards specified in part 51 of this title, other than the Runway Protection zone notification requirement in Sec. 51.303(a)(3).

(2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, **must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.**

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) Environmental justice. Executive Order 12898 -- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629).

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by the responsible entity under the laws cited in § 58.1(b), the responsible

All review levels must comply with 58.6

entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(11) and/or the applicability of § 58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, **regardless of whether the activity is exempt under § 58.34 or categorically excluded under § 58.35(a) or (b).**

(a) (1) Under the **Flood Disaster Protection Act of 1973**, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

- (i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and
- (ii) Flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where a recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Pursuant to the **Coastal Barrier Resources Act**, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(c) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a **Runway Protection Zone** or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a Runway Protection zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

Subpart B--General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in Sec. 58.1(b), except as otherwise provided in Sec. 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in Sec. 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

§ 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an

Maine CDBG Program adopted the policy that all requirements of the Flood Disaster Protection Act of 1973, as amended, will be adhered to.

OCD is the responsible entity in this case. OCD is required to assume the environmental responsibilities required by NEPA.

environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

§ 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in § 58.5. The Certifying Officer must also:

- (a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and
- (b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

§ 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult, as appropriate, environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in § 58.5 and § 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2(b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs (see 40 CFR 1501.5(b) and 1501.6). A single EIS may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

§ 58.15 Tiering.

Responsible entities may **tier** their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review.

Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§ 58.17 [Removed and Reserved]

§ 58.18 Responsibilities of States Assuming HUD Responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

This section allows a broad review followed by a site-specific review.

ERR clearance may be given for clearing some activities prior to other activities. Contact your DPM for this consideration.

This section outlines OCD

requirements. OCD is also required to monitor compliance with required comment periods.

This is the basis for counting comment and state objection period days.

Extremely important! This specifies recipient, participant, and contractor cannot commitment funds AND cannot undertake a project activity before OCD has issued an ERR clearance date.

Maine CDBG Program requires submittals for all projects.

Prior actions count.
Recipients need to know what prospects or beneficiaries have decided or done relative to a project

Option as part of acquisition process could be before an ERR clearance, **solely** at the risk of the purchaser.

(a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs, and certifications from recipients pursuant to Sec. 58.70 and 58.71; accept objections from the public and from other agencies (Sec. 58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

Subpart C -- General Policy: Environmental Review Procedures

§ 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

(a) **Neither a recipient nor any participant in the development process**, including public or private nonprofit or for-profit entities, or any of their contractors, **may commit HUD assistance** under a program listed in Sec. 58.1(b) on an activity or project **until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity**. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in Sec. 58.1(b) **if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives**.

(b) If a project or activity is exempt under Sec. 58.34, or is categorically excluded (except in extraordinary circumstances) under Sec. 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in Sec. 58.34(b) and Sec. 58.35(d), but the recipient must comply with applicable requirements under Sec. 58.6.

(c) **If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.**

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) Self-Help Homeownership Opportunity Program (SHOP). In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) Relocation. Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

The definition of an environmental review (ER).

This section explains how to view your project activities so your project description will be complete.

Review this section to be sure you are providing a **comprehensive project description** in your environmental review record (ERR).

This gives reasons why aggregation is important AND required!

Estimated total project cost has to be given.

Only in cases of a **declared** imminent threat, disaster or emergency can local and state comment periods be concurrent.

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

Subpart D -- Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental Review Process.

(a) **The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with § 58.32.**

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

§ 58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: **functional aggregation** when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; **geographic aggregation** when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a **combination of aggregation approaches**, which, for various project locations, considers the impacts arising from each functional activity and its **interrelationship with other activities**.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) **Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).**

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) Multi-year project aggregation.

(1) Release of funds. When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in § 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a **Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety**, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated

The beginning of the discussion on levels of review...

This may allow some projects to exempt part of their activities immediately...

Public Service projects under the Maine CDBG Program require at least a 35(b) Level of Review

(12) is the origin of the Categorically Excluded, Converted to Exempt level of review further discussed in 58.35.

ERR required! Maine program requires submittals.

Categorically Excluded, Converted to Exempt or Not Exempt review levels are discussed in this section.

Many of these activities are typical CDBG projects: Public Facilities, Roads, Sidewalks, etc. Note that a **change** of more than 20% capacity will lead to conducting a FONSI review.

Housing Rehabilitation differences: Note increase in units beyond 4 for these residential units ...and note **change** (increase or decrease) of 20% in density for multifamily residential units will lead to a FONSI review.

and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

§ 58.34 Exempt activities.

(a) Except for the applicable requirements of § 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

- (1) Environmental and other studies, resource identification and the development of plans and strategies;
- (2) Information and financial services;
- (3) Administrative and management activities;
- (4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- (5) Inspections and testing of properties for hazards or defects;
- (6) Purchase of insurance;
- (7) Purchase of tools;
- (8) Engineering or design costs;
- (9) Technical assistance and training;
- (10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters, imminent threats or physical deterioration;
- (11) Payment of principal and interest on loans made or obligations guaranteed by HUD;
- (12) **Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5.**

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. **However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.**

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which **no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except** in extraordinary circumstances (see § 58.2(a)(3) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) Categorical exclusions subject to § 58.5. The following activities are **categorically excluded** under NEPA, but may be subject to review under authorities listed in § 58.5:

- (1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) 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** (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- (2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- (3) Rehabilitation of buildings and improvements when the following conditions are

Commercial, industrial, public building rehabilitation. If the project is financing a change of use or a **change** in size or capacity of more than 20%, you must do a FONSI Review.

Other Housing.

This covers the 58.35(b) Level of Review. You must check with your DPM before doing this level of review! Check the 58.35(b) section for materials to submit for these projects.

Maine CDBG Program requires submittals.

Here's the list of projects that fit the 35(b) level of review....

Public services activities

Construction, rehabilitation, and **EXPANSION OF OPERATIONS** means many economic development projects do not come under this level of review.

Refer back to section 58.2(3) for the definition of "extraordinary circumstances"

met:

(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 percent; **(B)** the project does not involve changes in land use from residential to non-residential; and **(C)** the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings, **(A)** the facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and **(B)** the activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

(6) Combinations of the above activities.

(b) Categorical exclusions not subject to § 58.5. The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs **not associated with construction or expansion of existing operations;**

(5) Activities to assist homeownership of existing "or new dwelling units not assisted with Federal funds" including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property;

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact;

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

ERR!

This Section tells us that a project that does not fit into the above categories must complete the Environmental Assessment. See the section on Finding of No Significant Impact for checklists, forms and more...

If you believe that your project would require an EIS contact OCD immediately! Most projects do not require an EIS.

This section adds detail to the summary definition of ERR in 58.35(d). Note availability of the ERR for public review.

This section describes what the ERR must contain. OCD has created forms to reflect needs for each review level.

Checklist attachments are

(c) Circumstances requiring NEPA review. If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.

§ 58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project 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) The project would remove, demolish, convert or substantially rehabilitate **2,500** or more existing housing units (but not including rehabilitation 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** or more housing units.

(3) The project would provide enough additional water and sewer capacity to support **2,500** or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where § 58.53 is applicable.

(e) Recommended EIS Format. The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

(a) ERR Documents. The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in § 58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this

required by Section 58.38(b)

These EA requirements form the basis of the column headings on the Environmental Assessment Checklist

The "Finding of No Significant Impact" or FONSI level of review.

If you find significant impact contact your DPM at OCD immediately!

Additional requirements if you are performing the FONSI review:

Asking for comments from interested parties early in process is beneficial. See description of distribution or dissemination list in FONSI level of review.

Maine CDBG Program requires publishing the notice

Comments have to be addressed... whether from governmental agencies, local or regional groups, individual citizens, etc.

Note emphasis on comment

part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) Other documents and information. The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR **provided that each source document is identified and available for inspection by interested parties.** Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

Subpart E--Environmental Review Process: Environmental Assessments (EA's)
§ 58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

- (a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.
- (b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
- (c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in § 58.5 & 58.6.
- (d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.
- (e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.
- (f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§ 58.5 and 58.6.
- (g) **Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:**

(1) A **Finding of No Significant Impact (FONSI)**, in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to § 58.43.

(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subparts F or G of this part.

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must **send the FONSI notice to individuals and groups known to be interested in the activities**, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by § 58.70. If the notices are released as a combined notice, the combined notice shall:

- (1) Clearly indicate that it is intended to meet two separate procedural requirements; and
- (2) Advise the public to specify in their comments which "notice" their comments address.

(c) The responsible entity must consider the comments and make modifications, if

periods as minimum time periods.

Maine CDBG Program requires publishing the notice

Some reasons why comment periods may be extended...

Findings must be re-evaluated if...

If re-evaluation shows the original findings are no longer valid, then...

Sub-recipients must inform the recipient if conditions change.

appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§ 58.45 Public comment periods: Required notices must afford the public the following **minimum** comment periods, counted in accordance with Sec. 58.21:

(a) Notice of Finding of No Significant Impact (FONSI): 15 days when published or, if no publication, 18 days when mailing and posting.

(b) Notice of Intent to Request Release of Funds (NOI): 7 days when published or, if no publication, 10 days when mailing and posting.

(c) Concurrent or combined notices: 15 days when published or, if no publication, 18 days when mailing and posting.

§ 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project,

including adding new activities not anticipated in the original scope of the project;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b) The purpose of the responsible entity's re-evaluation is to determine if the original findings are still valid. If the original findings are still valid but the data or conditions

upon which they were based have changed, the responsible entity must amend the original findings and update its ERR by including this re-evaluation and its

determination based on its findings. If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

Subpart F--Environmental Review Process:

Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in § 58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF.

The decision to adopt an EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the Federal Register for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

- (a) The ERR contains a decision based on a finding pursuant to § 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:
 - (1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;
 - (2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;
 - (3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;
 - (4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.
- (b) The prior final EIS has been filed within five (5) years, and updated as follows:
 - (1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;
 - (2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.
- (c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

Subpart G--Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§ 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under § 58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.59 Public hearings and meetings.

- (a) Factors to consider. In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:
 - (1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.
 - (2) The degree of interest in or controversy concerning the project.
 - (3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.
 - (4) The extent to which public involvement has been achieved through other means.
- (b) Procedure. All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date.

The Notice must:

- (1) State the date, time, place, and purpose of the hearing or meeting.
- (2) Describe the project, its estimated costs, and the project area.
- (3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.
- (4) State the responsible entity's name and address and the name and address of its Certifying Officer.
- (5) State what documents are available, where they can be obtained, and any charges that may apply.

§ 58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

- (1) Five copies to EPA Headquarters;
- (2) Five copies to EPA Regional Office;
- (3) Copies made available in the responsible entity's and the recipient's office;
- (4) Copies or summaries made available to persons who request them; and
- (5) FEIS only -- one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1502.2.

Subpart H--Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by § 58.43 and § 58.45 before the certification is signed by the responsible entity.

§ 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in § 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.72 HUD or State Actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's

The Certifying Officer is the Chief Executive officer (Certifying Officer) of the local government.

Funds can be obligated or expended for exempt by definition activities if these activities are included in another environmental review process. DPM approval is needed.

environmental certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in Sec. 58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated § 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the RROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in § 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to § 58.40 or to make the written determination required by §§ 58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) **The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).**

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

§ 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§ 58.77 Effect of approval of certification.

(a) **Responsibilities of HUD and States.** HUD's (or, where applicable, the State's)

Requires a minimum of a 15-day State Objection Period **whenever a notice is required or published** before OCD approves any request for funds.

Refer to 58.21 for how days are counted.

Grounds for objecting to a request for funds.

approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(b).

(b) **Public and agency redress.** Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. **Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer.** Remedies for noncompliance are set forth in program regulations.

(c) **Implementation of environmental review decisions.** Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) **Responsibility for monitoring and training.** (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. **If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:**

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under § 58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

Possible sanctions resulting from failure to follow requirements of Part 58e.

Dated: March 27, 1996.

Henry G. Cisneros
Secretary

TITLE 24 HOUSING AND URBAN DEVELOPMENT 24 CFR PART 55 plus portions of Part 200, Subpart S--Minimum Property Standards, Sec. 200.926d. Construction requirements.

PART 55—FLOODPLAIN MANAGEMENT

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Authority:

42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

Source: 59 FR 19107, Apr. 21, 1994, unless otherwise noted.

Subpart A—General

§55.1 Purpose and basic responsibility.

(a) This part implements the requirements of Executive Order 11988, Floodplain Management, and employs the principles of the Unified National Program for Floodplain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58. This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department's interpretation of the executive order in the project approval decision making processes of HUD and of grant recipients subject to 24 CFR part 58. The implementation of Executive Order 11988 under this part shall be conducted by HUD, for Department-administered programs subject to environmental review under 24 CFR part 50, and by authorized recipients of HUD financial assistance subject to environmental review under 24 CFR part 58.

(b) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any “area having special flood hazards” (a flood zone designated by

the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) and the State-administered Rental Rehabilitation Program (24 CFR 511.51), Emergency Shelter Grant amounts allocated to

States (24 CFR parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839).

(c) Except with respect to actions listed in §55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to:

- (1) Any action, other than a functionally dependent use, located in a floodway;
- (2) Any critical action located in a coastal high hazard area; or
- (3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if:
 - (i) In the case of new construction or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or
 - (ii) In the case of existing construction (including any minor improvements):
 - (A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed; or
 - (B) If the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

§55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988 and in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) issued by the Water Resources Council; and the terms “criteria” and “Regular Program”, shall follow the definitions contained in FEMA regulations at 44 CFR 59.1.

(b) The definitions of the following terms in Executive Order 11988 and related documents affecting this part are modified for purposes of this part:

- (1) Coastal high hazard area means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V1–30, VE, or V. (FIRMs as well as Flood Hazard Boundary Maps (FHBM) shall also be relied on for the delineation of “100-year floodplains” (§55.2(b)(8)), “500-year floodplains” (§55.2(b)(3)), and “floodways” (§55.2(b)(4)).
- (2)(i) Critical action means any activities for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Actions include activities that create, maintain or extend the useful life of those structures or facilities that:
 - (A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

(C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

(ii) Critical actions shall not be approved in floodways or coastal high hazard areas.

(3) 500-year floodplain means the minimum floodplain of concern for Critical Actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. (See §55.2(b)(1) for appropriate data sources.)

(4) Floodway means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term “floodway” as used here is consistent with “regulatory floodways” as identified by FEMA. (See §55.2(b)(1) for appropriate data sources.)

(5) Functionally dependent use means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, water-front park, and many types of bridges).

(6) High hazard area means a floodway or a coastal high hazard area.

(7) 100-year floodplain means the floodplain of concern for this part and is the area subject to a one percent or greater chance of flooding in any given year. (See §55.2(b)(1) for appropriate data sources.)

(8)(i) Substantial improvement means either:

(A) Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(1) Before the improvement or repair is started; or

(2) If the structure has been damaged, and is being restored, before the damage occurred; or

(B) Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

(ii) Substantial improvement may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

(B) Any alteration of a structure that is either listed on or eligible to be listed on the National Register of Historical Places or on a State Inventory of Historic Places, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered “minor improvements”.

§55.3 Assignment of responsibilities.

(a)(1) The Assistant Secretary for Community Planning and Development (CPD) shall oversee:

(i) The Department's implementation of the order and this part in all HUD programs, and

(ii) The implementation activities of HUD program managers and grant recipients for HUD financial assistance subject to 24 CFR part 58.

(2) In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary assistance, training, publications, and procedural guidance.

(b) Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA) shall:

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain;

(2) Ensure that actions approved by HUD or grant recipients are monitored and that any prescribed mitigation is implemented;

(3) Ensure that the offices under their jurisdiction have the technical resources to implement the requirements of this part; and

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) Recipient Certifying Officer. In accordance with section 9 of Executive Order 11988, Certifying Officers of grant recipients administering activities subject to 24 CFR part 58 shall:

(1) Comply with this part in carrying out HUD-assisted programs, and

(2) Monitor approved actions and ensures that any prescribed mitigation is implemented.

Subpart B—Application of Executive Order on Floodplain Management

§55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA) including a finding of no significant environmental impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17 (a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.36. For types of proposed actions that are categorically excluded from National Environmental Policy Act (NEPA) requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial (SAMA, conditional, etc.) approval (or the conditional commitment or approval by a grant recipient subject to 24 CFR part 58) of proposed actions in a floodplain.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35) does not exclude those actions from compliance with this part.

§55.11 Applicability of subpart C decision making process.

(a) Before reaching the decision points described in §55.10(a), HUD (for Department-administered programs) or the grant recipient (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988 and this part apply to the proposed action.

(b) If Executive Order 11988 applies, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is to “avoid direct or indirect support of floodplain development.”

(c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing Executive Order 11988 under subpart C of this part.

(NOTE: Table format has been redone to fit space provided)

CRITICAL ACTIONS [§ 55.2(b)(2)] NOT ALLOWED IN:

1) Floodways [55.2(b)(4)]

2) Coastal High Hazard Areas [55.2(b)(1)]

AFTER COMPLETION OF THE 8-STEP PROCESS [55.20], CRITICAL ACTIONS MAY BE ALLOWED TO LOCATE IN:

- 1) 100-year floodplain (outside High Hazard Area [55.2(b)(6)])
- 2) Area between 100 and 500 year floodplain

NON-CRITICAL FUNCTIONALLY DEPENDENT USE [55.2(b)(5)] MAY LOCATE IN A Floodway or Coastal High Hazard Area PROVIDED:

- 1) THE 8-STEP PROCESS HAS BEEN COMPLETED or
- 2) REQUIRED PORTIONS OF THE 8-STEP PROCESS HAVE BEEN COMPLETED FOR AN ACTION LISTED IN 55.12(a); and
- 3) THE ACTION IS NOT EXCLUDED UNDER 55.12 (b) or (c)

§55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decision making steps in §55.20 (b), (c) and (g) (steps 2, 3 and 7) shall not apply to the following categories of proposed actions:

(1) HUD actions involving the disposition of HUD-acquired multifamily housing projects or “bulk sales” of HUD-acquired one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(2) HUD's actions under section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)) for the purchase or refinancing of existing multifamily housing projects (including hospitals, nursing homes, board and care facilities, and intermediate care facilities) in communities that are in good standing under the NFIP.

(3) Actions under any HUD program involving the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, that the action does not involve a conversion from nonresidential to residential land use, and that the footprint of the structure and paved areas is not significantly increased. Proposed actions that meet the threshold of “substantial improvement” are subject to the full decision-making process at Sec. 55.20.

(b) The decision making process in §55.20 shall not apply to the following categories of proposed actions:

(1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or coastal high hazard area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for “substantial improvement” under §55.2(b)(8) and are categorically excluded from an environmental assessment under Sec. 50.20(a)(2)(i) and 58.35(a)(3)(i) of this chapter;

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties; and

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance.

- (c) This part shall not apply to the following categories of proposed HUD actions:
- (1) HUD-assisted activities described in 24 CFR 58.34, 24 CFR 58.35(b), and 24 CFR 50.19;
 - (2) Policy level actions described at 24 CFR 50.16 that do not involve site-based decisions;
 - (3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701—1720);
 - (4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;
 - (5) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain;
 - (6) HUD's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, but only if:
 - (i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the 100-year floodplain or the 500-year floodplain (for Critical Actions);
 - (ii) Appropriate provision is made for site drainage; and
 - (iii) A covenant or comparable restriction is placed on the property's continued use to preserve the floodplain;
 - (7) An action for interim assistance, assistance under the section 232(i) Fire Safety Equipment Loan Insurance Program, or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;
 - (8) HUD's approval of financial assistance for a project on any site in a floodplain for which FEMA has issued:
 - (i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location; or
 - (ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;
 - (9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);
 - (10) An action that was, on May 23, 1994, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §§55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Order 11988 before May 23, 1994 shall be completed;
 - (11) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (i.e., do not involve site-specific subsidies); and
 - (12) Secondary mortgage operations of the Government National Mortgage Association (GNMA). [59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994; 62 FR 15802, Apr. 2, 1997]

Subpart C—Procedures for Making Determinations on Floodplain Management

§55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) Step 1. Determine whether the proposed action is located in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) Step 2. Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) Step 3. Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

(1) The consideration of practicable alternatives to the proposed site or method may include:

- (i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);
- (ii) Alternative methods to serve the identical project objective; and
- (iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) Step 4. Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain (or 500-year floodplain for a Critical Action).

(e) Step 5. Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

- (1) Preparation of and participation in an early warning system;
- (2) An emergency evacuation and relocation plan;
- (3) Identification of evacuation route(s) out of the 500-year floodplain; and
- (4) Identification marks of past or estimated flood levels on all structures.

(f) Step 6. Reevaluate the proposed action to determine:

- (1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and
- (2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) Step 7. (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

- (i) The reasons why the proposal must be located in the floodplain;
- (ii) A list of the alternatives considered; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

(2) In addition, the public notice procedures of §55.20(b)(1) shall be followed, and a minimum of seven calendar days for public comment before approval of the proposed action shall be provided.

(h) Step 8. Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

§55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

§55.22 Conveyance restrictions for the disposition of multifamily real property.

(a) In the disposition (including leasing) of multifamily properties acquired by HUD that are located in a floodplain (a 500-year floodplain for a Critical Action), the documents used for the conveyance must: (1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

(b)(1) For disposition of multifamily properties acquired by HUD that are located in a 500-year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant concerning:

(i) The hazards to life and to property for those persons who reside or work in a structure located within the 500-year floodplain, and

(ii) The availability of flood insurance on the contents of their dwelling unit or business.

(2) The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building. [59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994]

§55.23 [Reserved]

§55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain, and are currently under review by the Department (or by a grant recipient subject to 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in §55.20.

§55.25 Areawide compliance.

(a) A HUD-approved areawide compliance process may be substituted for individual compliance or aggregated compliance under §55.24 where a series of individual actions is proposed or contemplated in a pertinent area for HUD's examination of floodplain hazards. In areawide compliances, the area for examination may include a sector of, or the entire, floodplain—as relevant to the proposed or anticipated actions. The areawide compliance process shall be in accord with the decision making process under §55.20.

(b) The areawide compliance process shall address the relevant executive orders and shall consider local land use planning and development controls (e.g., those enforced by the

community for purposes of floodplain management under the National Flood Insurance Program (NFIP)) and applicable state programs for floodplain management. The process shall include the development and publication of a strategy that identifies the range of development and mitigation measures under which the proposed HUD assistance may be approved and that indicates the types of actions that will not be approved in the floodplain.

(c) Individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance do not require further compliance with §55.20 except that a determination by the Department or a grant recipient subject to 24 CFR part 58 shall be made concerning whether the individual action accords with the areawide strategy. Where the individual action does not accord with the areawide strategy, specific development and mitigation measures shall be prescribed as a condition of HUD's approval of the individual action.

(d) Areawide compliance under the procedures of this section is subject to the following provisions: (1) It shall be initiated by HUD through a formal agreement of understanding with affected local governments concerning mutual responsibilities governing the preparation, issuance, implementation, and enforcement of the areawide strategy;

(2) It may be performed jointly with one or more Federal departments or agencies, or grant recipients subject to 24 CFR part 58 that serve as the responsible Federal official;

(3) It shall establish mechanisms to ensure that: (i) The terms of approval of individual actions (e.g., concerning structures and facilities) will be consistent with the areawide strategy;

(ii) The controls set forth in the areawide strategy are implemented and enforced in a timely manner; and

(iii) Where necessary, mitigation for individual actions will be established as a condition of approval.

(4) An open scoping process (in accordance with 40 CFR 1501.7) shall be used for determining the scope of issues to be addressed and for identifying significant issues related to housing and community development for the floodplain;

(5) Federal, state and local agencies with expertise in floodplain management, flood evacuation preparedness, land use planning and building regulation, or soil and natural resource conservation shall be invited to participate in the scoping process and to provide advice and comments; and

(6) Eligibility for participation in and the use of the areawide compliance must be limited to communities that are in the Regular Program of the National Flood Insurance Program and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24), thereby demonstrating a capacity for and commitment to floodplain management standards sufficient to perform responsibilities under this part.

(7) An expiration date (not to exceed ten years from the date of the formal adoption by the local governments) for HUD approval of areawide compliance under this part must be stated in the agreement between the local governments and HUD. In conjunction with the setting of an expiration date, a mechanism for HUD's reevaluation of the appropriateness of areawide compliance must be provided in the agreement.

§55.26 Adoption of another agency's review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under the executive order by another agency, that review may be adopted by HUD or by a grant recipient authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management;

(b) The adopting agency makes a finding that:

- (1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency; and
- (2) There has been no material change in circumstances since the previous review was conducted; and
- (c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

§55.27 Documentation.

- (a) For purposes of compliance with §55.20, the responsible HUD official who would approve the proposed action (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) shall require that the following actions be documented:
 - (1) Under §55.20(c), practicable alternative sites have been considered outside the floodplain, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government (as defined in 24 CFR 570.3), whichever geographic area is more appropriate to the proposed HUD action. Actual sites under review must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described; and
 - (2) Under §55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain as identified in §55.20(d) have been applied to the design for the proposed action.
- (b) For purposes of compliance with §55.24, §55.25, or §55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.
- (c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

PART 200--INTRODUCTION TO FHA PROGRAMS

Subpart S--Minimum Property Standards

Sec. 200.926d Construction requirements.

(4) Drainage and flood hazard exposure--

- (i) Residential structures with basements located in FEMA-designated areas of special flood hazard. The elevation of the lowest floor in structures with basements shall be at or above the base flood level (100-year flood level) required for new construction or substantial improvement of residential structures under regulations for the National Flood Insurance Program (NFIP) (see 44 CFR 60.3 through 60.6), except where variances from this standard are granted by communities under the procedures of the Federal Emergency Management Agency (FEMA) at 44 CFR 60.6(a) or exceptions from this NFIP standard for basements are approved by FEMA in accordance with procedures at 44 CFR 60.6(c).
- (ii) Residential structures without basements located in FEMA-designated areas of special flood hazard. The elevation of the lowest floor in structures without basements shall be at or above the FEMA-designated base flood elevation (100-year flood level).
- (iii) Residential structures located in FEMA-designated ``coastal high hazard areas".
 - (A) Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited.

(B) Where FEMA has determined the base flood level without establishing stillwater elevations, the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports shall be at or above the base flood level.

(iv)(A) In all cases in which a Direct Endorsement (DE) mortgagee or a Lender Insurance (LI) mortgagee seek to insure a mortgage on a newly constructed one-to four-family dwelling (including a newly erected manufactured home) that was processed by the DE or LI mortgagee, the DE or LI mortgagee must determine whether the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) are located in a 100-year floodplain, as designated on maps of the Federal Emergency Management Agency. If so, the DE mortgagee, before submitting the application for insurance to HUD, or the LI mortgagee, before submitting all the required data regarding the mortgage to HUD, must obtain:

(1) A final Letter of Map Amendment (LOMA);

(2) A final Letter of Map Revision (LOMR); or

(3) A signed Elevation Certificate documenting that the lowest floor (including basement) of the property improvements is built at or above the 100-year flood elevation in compliance with National Flood Insurance program criteria 44 CFR 60.3 through 60.6.(B) Under the DE program, these mortgages are not eligible for insurance unless the DE mortgagee submits the LOMA, LOMR, or Elevation Certificate to HUD with the mortgagee's request for endorsement.

(v) Streets. Streets must be usable during runoff equivalent to a 10-year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10-year return frequency from ponding over 6 inches deep, streets must be made passable for commonly used emergency vehicles during runoff equivalent to a 25-year return frequency, except where an alternative access street not subject to such ponding is available.

(vi) Crawl spaces. Crawl spaces must not pond water or be subject to prolonged dampness.

TITLE 24 HOUSING AND URBAN DEVELOPMENT 24 CFR PART 51
[Noise, Hazardous Materials, Airports]

PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

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Authority: 42 U.S.C. 3535(d), unless otherwise noted. Source: 44 FR 40861, July 12, 1979, unless otherwise noted.

Subpart A—General Provisions

§51.1 Purpose.

The Department of Housing and Urban Development is providing program Assistant Secretaries and administrators and field offices with environmental standards, criteria and guidelines for determining project acceptability and necessary mitigating measures to insure that activities assisted by the Department achieve the goal of a suitable living environment.

§51.2 Authority.

This part implements the Department's responsibilities under: The National Housing Act (12 U.S.C. 1701 et seq.); sec. 2 of the Housing Act of 1949 (42 U.S.C. 1441); secs. 2 and 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 and 3535(d)); the National Environmental Policy Act of 1969 (42 U.S.C. 4321); and the other statutes that are referred to in this part. [61 FR 13333, Mar. 26, 1996]

§51.3 Responsibilities.

The Assistant Secretary for Community Planning and Development is responsible for administering HUD's environmental criteria and standards as set forth in this part. The Assistant Secretary for Community Planning and Development may be assisted by HUD officials in implementing the responsibilities established by this part. HUD will identify these HUD officials and their specific responsibilities through Federal Register notice.[61 FR 13333, Mar. 26, 1996]

§51.4 Program coverage.

Environmental standards shall apply to all HUD actions except where special provisions and exemptions are contained in each subpart.

Subpart B—Noise Abatement and Control

§51.100 Purpose and authority.

(a) It is the purpose of this subpart B to:

- (1) Call attention to the threat of noise pollution;
- (2) Encourage the control of noise at its source in cooperation with other Federal departments and agencies;
- (3) Encourage land use patterns for housing and other noise sensitive urban needs that will provide a suitable separation between them and major noise sources;
- (4) Generally prohibit HUD support for new construction of noise sensitive uses on sites having unacceptable noise exposure;
- (5) Provide policy on the use of structural and other noise attenuation measures where needed; and
- (6) Provide policy to guide implementation of various HUD programs.

(b) Authority. Specific authorities for noise abatement and control are contained in the Noise Control Act of 1972, as amended (42 U.S.C. 4901 et seq.); and the General Services Administration, Federal Management Circular 75–2; Compatible Land Uses at Federal Airfields. [44 FR 40861, July 12, 1979, as amended at 61 FR 13333, Mar. 26, 1996]

§51.101 General policy.

(a) It is HUD's general policy to provide minimum national standards applicable to HUD programs to protect citizens against excessive noise in their communities and places of residence.

(1) Planning assistance. HUD requires that grantees give adequate consideration to noise exposures and sources of noise as an integral part of the urban environment when HUD assistance is provided for planning purposes, as follows:

- (i) Particular emphasis shall be placed on the importance of compatible land use planning in relation to airports, highways and other sources of high noise.
- (ii) Applicants shall take into consideration HUD environmental standards impacting the use of land.

(2) Activities subject to 24 CFR part 58.

(i) Responsible entities under 24 CFR part 58 must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise exposed areas. Responsible entities shall address deviations from the standards in their environmental reviews as required in 24 CFR part 58.

(ii) For the environmental review record, responsible entities are encouraged to use for their noise assessment the current HUD recommended procedure or a comparable procedure when considering deviation from noise criteria and standards.

(iii) Where activities are planned in a noisy area, and HUD assistance is contemplated later for housing and/or other noise sensitive activities, the responsible entity risks denial of the HUD assistance unless the HUD standards are met.

(3) HUD support for new construction. HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with unacceptable noise exposures and is discouraged for projects with normally unacceptable noise exposure. (Standards of acceptability are contained in §51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, manufactured home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, redevelopment or any other provision of facilities and services which are directed to making land available for housing or noise sensitive development. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales registration, or any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.

(4) HUD support for existing construction. Noise exposure by itself will not result in the denial of HUD support for the resale and purchase of otherwise acceptable existing buildings. However, environmental noise is a marketability factor which HUD will consider in determining the amount of insurance or other assistance that may be given.

(5) HUD support of modernization and rehabilitation. For modernization projects located in all noise exposed areas, HUD shall encourage noise attenuation features in alterations. For major or substantial rehabilitation projects in the Normally Unacceptable and Unacceptable noise zones, HUD actively shall seek to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level or exterior noise exposure. In Unacceptable noise zones, HUD shall strongly encourage conversion of noise-exposed sites to land uses compatible with the high noise levels.

(6) Research, guidance and publications. HUD shall maintain a continuing program designed to provide new knowledge of noise abatement and control to public and private bodies, to develop improved methods for anticipating noise encroachment, to develop noise abatement measures through land use and building construction practices, and to foster better understanding of the consequences of noise. It shall be HUD's policy to issue guidance documents periodically to assist HUD personnel in assigning an acceptability category to projects in accordance with noise exposure standards, in evaluating noise attenuation measures, and in advising local agencies about noise abatement strategies. The guidance documents shall be updated periodically in accordance with advances in the state-of-the-art.

(7) Construction equipment, building equipment and appliances. HUD shall encourage the use of quieter construction equipment and methods in population centers, the use of quieter equipment and appliances in buildings, and the use of appropriate noise abatement techniques in the design of residential structures with potential noise problems.

(8) Exterior noise goals. It is a HUD goal that exterior noise levels do not exceed a day-night average sound level of 55 decibels. This level is recommended by the Environmental Protection Agency as a goal for outdoors in residential areas. The levels recommended by EPA are not standards and do not take into account cost or feasibility. For the purposes of

this regulation and to meet other program objectives, sites with a day-night average sound level of 65 and below are acceptable and are allowable (see Standards in §51.103(c)).

(9) Interior noise goals. It is a HUD goal that the interior auditory environment shall not exceed a day-night average sound level of 45 decibels. Attenuation measures to meet these interior goals shall be employed where feasible. Emphasis shall be given to noise sensitive interior spaces such as bedrooms. Minimum attenuation requirements are prescribed in §51.104(a).

(10) Acoustical privacy in multifamily buildings. HUD shall require the use of building design and acoustical treatment to afford acoustical privacy in multifamily buildings pursuant to requirements of the Minimum Property Standards. [44 FR 40861, July 12, 1979, as amended at 50 FR 9268, Mar. 7, 1985; 61 FR 13333, Mar. 26, 1996]

§51.102 Responsibilities.

(a) Surveillance of noise problem areas. Appropriate field staff shall maintain surveillance of potential noise problem areas and advise local officials, developers, and planning groups of the unacceptability of sites because of noise exposure at the earliest possible time in the decision process. Every attempt shall be made to insure that applicants' site choices are consistent with the policy and standards contained herein.

(b) Notice to applicants. At the earliest possible stage, HUD program staff shall:

(1) Determine the suitability of the acoustical environment of proposed projects;

(2) Notify applicants of any adverse or questionable situations; and

(3) Assure that prospective applicants are apprised of the standards contained herein so that future site choices will be consistent with these standards.

(c) Interdepartmental coordination. HUD shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Department of Veterans Affairs. HUD staff shall utilize the acceptability standards in commenting on the prospective impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process. [44 FR 40861, July 12, 1979, as amended at 54 FR 39525, Sept. 27, 1989; 61 FR 13333, Mar. 26, 1996]

§51.103 Criteria and standards.

These standards apply to all programs as indicated in §51.101.

(a) Measure of external noise environments. The magnitude of the external noise environment at a site is determined by the value of the day-night average sound level produced as the result of the accumulation of noise from all sources contributing to the external noise environment at the site. Day-night average sound level, abbreviated as DNL and symbolized as L_{dn} , is the 24-hour average sound level, in decibels, obtained after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m. Mathematical expressions for average sound level and day-night average sound level are stated in the Appendix I to this subpart.

(b) Loud impulsive sounds. On an interim basis, when loud impulsive sounds, such as explosions or sonic booms, are experienced at a site, the day-night average sound level produced by the loud impulsive sounds alone shall have 8 decibels added to it in assessing the acceptability of the site (see Appendix I to this subpart). Alternatively, the C-weighted day-night average sound level (LC_{dn}) may be used without the 8 decibel addition, as indicated in §51.106(a)(3). Methods for assessing the contribution of loud impulsive sounds to day-night average sound level at a site and mathematical expressions for determining whether a sound is classed as "loud impulsive" are provided in the Appendix I to this subpart.

(c) Exterior standards.

(1) The degree of acceptability of the noise environment at a site is determined by the sound levels external to buildings or other facilities containing noise sensitive uses. The standards shall usually apply at a location 2 meters (6.5 feet) from the building housing noise sensitive activities in the direction of the predominant noise source. Where the building location is undetermined, the standards shall apply 2 meters (6.5 feet) from the building setback line nearest to the predominant noise source. The standards shall also apply at other locations where it is determined that quiet outdoor space is required in an area ancillary to the principal use on the site.

(2) The noise environment inside a building is considered acceptable if:

- (i) The noise environment external to the building complies with these standards, and
- (ii) the building is constructed in a manner common to the area or, if of uncommon construction, has at least the equivalent noise attenuation characteristics.

Site Acceptability Standards

	Day-night average sound level (in decibels)	Special approvals and requirements
Acceptable	Not exceeding 65 dB ⁽¹⁾	None.
Normally Unacceptable	Above 65 dB but not exceeding 75 dB.	Special Approvals ⁽²⁾ Environmental Review ⁽³⁾ . Attenuation ⁽⁴⁾ .
Unacceptable	Above 75 dB	Special Approvals ⁽²⁾ . Environmental Review ⁽³⁾ . Attenuation ⁽⁵⁾ .

Notes: ⁽¹⁾ Acceptable threshold may be shifted to 70 dB in special circumstances pursuant to § 51.105(a). ⁽²⁾ See § 51.104(b) for requirements. ⁽³⁾ See § 51.104(b) for requirements. ⁽⁴⁾ 5 dB additional attenuation required for sites above 65 dB but not exceeding 70 dB and 10 dB additional attenuation required for sites above 70 dB but not exceeding 75 dB. (See § 51.104(a).)

⁽⁵⁾ Attenuation measures to be submitted to the Assistant Secretary for CPD for approval on a case-by-case basis. [44 FR 40861, July 12, 1979, as amended at 49 FR 12214, Mar. 29, 1984]

§51.104 Special requirements.

(a)(1) Noise attenuation. Noise attenuation measures are those required in addition to attenuation provided by buildings as commonly constructed in the area, and requiring open windows for ventilation. Measures that reduce external noise at a site shall be used wherever practicable in preference to the incorporation of additional noise attenuation in buildings. Building designs and construction techniques that provide more noise attenuation than typical construction may be employed also to meet the noise attenuation requirements.

(2) Normally unacceptable noise zones and unacceptable noise zones. Approvals in Normally Unacceptable Noise Zones require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels. Noise attenuation measures in Unacceptable Noise Zones require the

approval of the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58. (See §51.104(b)(2).)

(b) Environmental review requirements. Environmental reviews shall be conducted pursuant to the requirements of 24 CFR parts 50 and 58, as applicable, or other environmental regulations issued by the Department. These requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) Normally unacceptable noise zone.

(i) All projects located in the Normally Unacceptable Noise Zone require an environmental assessment (EA), except that EIS is required for a proposed project located in a largely undeveloped area, or where the HUD action is likely to encourage the establishment of incompatible land use in this noise zone.

(ii) When an EIS is required, the concurrence of the Program Assistant Secretary is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

(iii) All other projects in the Normally Unacceptable zone require an environmental assessment (EA), except where an EIS is required for other reasons pursuant to HUD environmental policies.

(2) Unacceptable noise zone. An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects in or partially in an Unacceptable Noise Zone shall be submitted to the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58, for approval. The Assistant Secretary or the Certifying Officer may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor noise sensitive activity will take place on the site. In such cases, an environmental review shall be made pursuant to the requirements of 24 CFR parts 50 or 58, as appropriate. [44 FR 40861, July 12, 1979, as amended at 61 FR 13333, Mar. 26, 1996]

§51.105 Exceptions.

(a) Flexibility for non-acoustic benefits. Where it is determined that program objectives cannot be achieved on sites meeting the acceptability standard of 65 decibels, the Acceptable Zone may be shifted to Ldn 70 on a case-by-case basis if all the following conditions are satisfied:

(1) The project does not require an Environmental Impact Statement under provisions of §51.104(b)(1) and noise is the only environmental issue.

(2) The project has undergone an environmental assessment (EA) and has received the concurrence of the Environmental Clearance Officer.

(3) The project meets other program goals to provide housing in proximity to employment, public facilities and transportation.

(4) The project is in conformance with local goals and maintains the character of the neighborhood.

(5) The project sponsor has set forth reasons, acceptable to HUD, as to why the noise attenuation measures that would normally be required for new construction in the Ldn 65 to Ldn 70 zone cannot be met.

(6) Other sites which are not exposed to noise above Ldn 65 and which meet program objectives are generally not available. The above factors shall be documented and made part of the project file.

[44 FR 40861, July 12, 1979, as amended at 61 FR 13334, Mar. 26, 1996]

§51.106 Implementation.

(a) Use of available data. HUD field staff shall make maximum use of noise data prepared by others when such data are determined to be current and adequately projected into the future and are in terms of the following:

(1) Sites in the vicinity of airports. The noise environment around airports is described sometimes in terms of Noise Exposure Forecasts, abbreviated as NEF or, in the State of California, as Community Noise Equivalent Level, abbreviated as CNEL. The noise environment for sites in the vicinity of airports for which day-night average sound level data are not available may be evaluated from NEF or CNEL analyses using the following conversions to DNL: $DNL \approx NEF + 35$ $DNL \approx CNEL$

(2) Sites in the vicinity of highways. Highway projects receiving Federal aid are subject to noise analyses under the procedures of the Federal Highway Administration. Where such analyses are available they may be used to assess sites subject to the requirements of this standard. The Federal Highway Administration employs two alternate sound level descriptors:

(i) The A-weighted sound level not exceeded more than 10 percent of the time for the highway design hour traffic flow, symbolized as L10; or (ii) the equivalent sound level for the design hour, symbolized as Leq. The day-night average sound level may be estimated from the design hour L10 or Leq values by the following relationships, provided heavy trucks do not exceed 10 percent of the total traffic flow in vehicles per 24 hours and the traffic flow between 10 p.m. and 7 a.m. does not exceed 15 percent of the average daily traffic flow in vehicles per 24 hours: $DNL \approx L10$ (design hour)—3 decibels $DNL \approx Leq$ (design hour) decibels Where the auto/truck mix and time of day relationships as stated in this section do not exist, the HUD Noise Assessment Guidelines or other noise analysis shall be used.

(3) Sites in the vicinity of installations producing loud impulsive sounds. Certain Department of Defense installations produce loud impulsive sounds from artillery firing and bombing practice ranges. Noise analyses for these facilities sometimes encompass sites that may be subject to the requirements of this standard. Where such analyses are available they may be used on an interim basis to establish the acceptability of sites under this standard. The Department of Defense uses day-night average sound level based on C-weighted sound level, symbolized LCdn, for the analysis of loud impulsive sounds. Where such analyses are provided, the 8 decibel addition specified in §51.103(b), is not required, and the same numerical values of day-night average sound level used on an interim basis to determine site suitability for non-impulsive sounds to the LCdn.

(4) Use of areawide acoustical data. HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised contours become available for airports (civil or military) and military installations they shall first be referred to the HUD State Office (Environmental Officer) for review, evaluation and decision on appropriateness for use by HUD. The HUD State Office shall submit revised contours to the Assistant Secretary for Community Planning and Development for review, evaluation and decision whenever the area affected is changed by 20 percent or more, or whenever it is determined that the new contours will have a significant effect on HUD programs, or whenever the contours are not provided in a methodology acceptable under §51.106(a)(1) or in other cases where the HUD State Office determines that Headquarters review is warranted. For other areawide acoustical data, review is required only where existing areawide data are being utilized and where such data have been changed to reflect changes in the measurement methodology or underlying noise source assumptions. Requests for determination on usage of new or revised areawide data shall include the following:

(i) Maps showing old, if applicable, and new noise contours, along with brief description of data source and methodology.

- (ii) Impact on existing and prospective urbanized areas and on development activity.
- (iii) Impact on HUD-assisted projects currently in processing.
- (iv) Impact on future HUD program activity. Where a field office has determined that immediate approval of new areawide data is necessary and warranted in limited geographic areas, the request for approval should state the circumstances warranting such approval. Actions on proposed projects shall not be undertaken while new areawide noise data are being considered for HUD use except where the proposed location is affected in the same manner under both the old and new noise data.
- (b) Site assessments. Compliance with the standards contained in §51.103(c) shall, where necessary, be determined using noise assessment guidelines, handbooks, technical documents and procedures issued by the Department.
- (c) Variations in site noise levels. In many instances the noise environment will vary across a site, with portions of the site being in an Acceptable noise environment and other portions in a Normally Unacceptable noise environment. The standards in §51.103(c) shall apply to the portions of a building or buildings used for residential purposes and for ancillary noise sensitive open spaces.
- (d) Noise measurements. Where noise assessments result in a finding that the site is borderline or questionable, or is controversial, noise measurements may be performed. Where it is determined that noise measurements are required, such measurements will be conducted in accordance with methods and measurement criteria established by the Department. Locations for noise measurements will depend on the location of noise sensitive uses that are nearest to the predominant noise source (see §51.103(c)).
- (e) Projections of noise exposure. In addition to assessing existing exposure, future conditions should be projected. To the extent possible, noise exposure shall be projected to be representative of conditions that are expected to exist at a time at least 10 years beyond the date of the project or action under review.
- (f) Reduction of site noise by use of berms and/or barriers. If it is determined by adequate analysis that a berm and/or barrier will reduce noise at a housing site, and if the barrier is existing or there are assurances that it will be in place prior to occupancy, the environmental noise analysis for the site may reflect the benefits afforded by the berm and/or barrier. In the environmental review process under §51.104(b), the location height and design of the berm and/or barrier shall be evaluated to determine its effectiveness, and impact on design and aesthetic quality, circulation and other environmental factors. [44 FR 40861, July 12, 1979, as amended at 61 FR 13334, Mar. 26, 1996]

Appendix I to Subpart B of Part 51—Definition of Acoustical Quantities

1. Sound Level. The quantity in decibels measured with an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4–1971. Fast time-averaging and A-frequency weighting are to be used, unless others are specified. The sound level meter with the A-weighting is progressively less sensitive to sounds of frequency below 1,000 hertz (cycles per second), somewhat as is the ear. With fast time averaging the sound level meter responds particularly to recent sounds almost as quickly as does the ear in judging the loudness of a sound.
2. Average Sound Level. Average sound level, in decibels, is the level of the mean-square A-weighted sound pressure during the stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals. Day-night average sound level, abbreviated as DNL, and symbolized mathematically as L_{dn} is defined as: Time t is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. $LA(t)$ is the time varying value of A-weighted sound level, the quantity in decibels measured by an

instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4–1971.

3. Loud Impulsive Sounds. When loud impulsive sounds such as sonic booms or explosions are anticipated contributors to the noise environment at a site, the contribution to day-night average sound level produced by the loud impulsive sounds shall have 8 decibels added to it in assessing the acceptability of a site. A loud impulsive sound is defined for the purpose of this regulation as one for which:

- (i) The sound is definable as a discrete event wherein the sound level increases to a maximum and then decreases in a total time interval of approximately one second or less to the ambient background level that exists without the sound; and
- (ii) The maximum sound level (obtained with slow averaging time and A-weighting of a Type 1 sound level meter whose characteristics comply with ANSI S1.4–1971) exceeds the sound level prior to the onset of the event by at least 6 decibels; and
- (iii) The maximum sound level obtained with fast averaging time of a sound level meter exceeds the maximum value obtained with slow averaging time by at least 4 decibels. [44 FR 40861, July 12, 1979; 49 FR 10253, Mar. 20, 1984; 49 FR 12214, Mar. 29, 1984]

**Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations
Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature**

Authority: 42 U.S.C. 3535(d). Source: 49 FR 5103, Feb. 10, 1984, unless otherwise noted.
§51.200 Purpose.

The purpose of this subpart C is to:

- (a) Establish safety standards which can be used as a basis for calculating acceptable separation distances (ASD) for HUD-assisted projects from specific, stationary, hazardous operations which store, handle, or process hazardous substances;
- (b) Alert those responsible for the siting of HUD-assisted projects to the inherent potential dangers when such projects are located in the vicinity of such hazardous operations;
- (c) Provide guidance for identifying those hazardous operations which are most prevalent;
- (d) Provide the technical guidance required to evaluate the degree of danger anticipated from explosion and thermal radiation (fire); and
- (e) Provide technical guidance required to determine acceptable separation distances from such hazards. [49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§51.201 Definitions.

The terms Department and Secretary are defined in 24 CFR part 5.

Acceptable separation distance (ASD)—means the distance beyond which the explosion or combustion of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal radiation flux levels in excess of the safety standards in §51.203.

The ASD is determined by applying the safety standards established by this subpart C to the guidance set forth in HUD Guidebook, “Siting of HUD-Assisted Projects Near Hazardous Facilities.”

Blast overpressure—means the pressure, in pounds per square inch, in excess of normal atmospheric pressure on the surrounding medium caused by an explosion.

Danger zone—means the land area circumscribed by the radius which delineates the ASD of a given hazard.

Hazard—means any stationary container which stores, handles or processes hazardous substances of an explosive or fire prone nature. The term “hazard” does not include pipelines for the transmission of hazardous substances, if such pipelines are located underground or comply with applicable Federal, State and local safety standards. Also excepted are: (1) Containers with a capacity of 100 gallons or less when they contain common liquid industrial fuels, such as gasoline, fuel oil, kerosene and crude oil since they generally would pose no

danger in terms of thermal radiation of blast overpressure to a project; and (2) facilities which are shielded from a proposed HUD-assisted project by the topography, because these topographic features effectively provide a mitigating measure already in place.

Hazardous substances—means petroleum products (petrochemicals) and chemicals that can produce blast overpressure or thermal radiation levels in excess of the standards set forth in §51.203. A specific list of hazardous substance is found in appendix I to this subpart.

HUD-assisted project—the development, construction, rehabilitation, modernization or conversion with HUD subsidy, grant assistance, loan, loan guarantee, or mortgage insurance, of any project which is intended for residential, institutional, recreational, commercial or industrial use. For purposes of this subpart the terms “rehabilitation” and “modernization” refer only to such repairs and renovation of a building or buildings as will result in an increased number of people being exposed to hazardous operations by increasing residential densities, converting the type of use of a building to habitation, or making a vacant building habitable.

Thermal radiation level—means the emission and propagation of heat energy through space or a material medium, expressed in BTU per square foot per hour (BTU/ft.² hr.).

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 5204, Feb. 9, 1996; 61 FR 13334, Mar. 26, 1996]

§51.202 Approval of HUD-assisted projects.

(a) The Department will not approve an application for assistance for a proposed project located at less than the acceptable separation distance from a hazard, as defined in §51.201, unless appropriate mitigating measures, as defined in §51.205, are implemented, or unless mitigating measures are already in place.

(b) In the case of all applications for proposed HUD-assisted projects, the Department shall evaluate projected development plans in the vicinity of these projects to determine whether there are plans to install a hazardous operation in close proximity to the proposed project. If the evaluation shows that such a plan exists, the Department shall not approve assistance for the project unless the Department obtains satisfactory assurances that adequate mitigating measures will be taken when the hazardous operation is installed. [49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§51.203 Safety standards.

The following standards shall be used in determining the acceptable separation distance of a proposed HUD-assisted project from a hazard:

(a) Thermal Radiation Safety Standard. Projects shall be located so that:

(1) The allowable thermal radiation flux level at the building shall not exceed 10,000 BTU/sq. ft. per hr.

(2) The allowable thermal radiation flux level for outdoor, unprotected facilities or areas of congregation shall not exceed 450 BTU/sq. ft. per hour.

(b) Blast Overpressure Safety Standard. Projects shall be located so that the maximum allowable blast overpressure at both buildings and outdoor, unprotected facilities or areas shall not exceed 0.5 psi.

(c) If a hazardous substance constitutes both a thermal radiation and blast overpressure hazard, the ASD for each hazard shall be calculated, and the larger of the two ASDs shall be used to determine compliance with this subpart.

(d) Background information on the standards and the logarithmic thermal radiation and blast overpressure charts that provide assistance in determining acceptable separation distances are contained in appendix II to this subpart C. [49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§51.204 HUD-assisted hazardous facilities.

In reviewing applications for proposed HUD-assisted projects involving the installation of hazardous facilities, the Department shall ensure that such hazardous facilities are located at an acceptable separation distance from residences and from any other facility or area where people may congregate or be present. The mitigating measures listed in §51.205 may be taken into account in determining compliance with this section.

§51.205 Mitigating measures.

Application of the standards for determining an Acceptable Separation Distance (ASD) for a HUD-assisted project from a potential hazard of an explosion or fire prone nature is predicated on level topography with no intervening object(s) between the hazard and the project. Application of the standards can be eliminated or modified if:

- (a) The nature of the topography shields the proposed project from the hazard.
- (b) An existing permanent fire resistant structure of adequate size and strength will shield the proposed project from the hazard.
- (c) A barrier is constructed surrounding the hazard, at the site of the project, or in between the potential hazard and the proposed project.
- (d) The structure and outdoor areas used by people are designed to withstand blast overpressure and thermal radiation anticipated from the potential hazard (e.g., the project is of masonry and steel or reinforced concrete and steel construction).

§51.206 Implementation.

This subpart C shall be implemented for each proposed HUD-assisted project by the HUD approving official or responsible entity responsible for review of the project. The implementation procedure will be part of the environmental review process in accordance with the procedures set forth in 24 CFR parts 50 and 58. [61 FR 13334, Mar. 26, 1996]

§51.207 Special circumstances.

The Secretary or the Secretary's designee may, on a case-by-case basis, when circumstances warrant, require the application of this subpart C with respect to a substance not listed in appendix I to this subpart C that would create thermal or overpressure effect in excess of that listed in §51.203. [61 FR 13334, Mar. 26, 1996]

§51.208 Reservation of administrative and legal rights.

Publication of these standards does not constitute a waiver of any right: (a) Of HUD to disapprove a project proposal if the siting is too close to a potential hazard not covered by this subpart, and (b) of HUD or any person or other entity to seek to abate or to collect damages occasioned by a nuisance, whether or not covered by the subpart.

Appendix I to Subpart C of Part 51—Specific Hazardous Substances. The following is a list of specific petroleum products and chemicals defined to be hazardous substances under §51.201.

HAZARDOUS LIQUIDS: Acetic Acid, Acetic Anhydride, Acetone, Acrylonitrile, Amyl Acetate, Amyl Alcohol, Benzene, Butyl Acetate, Butyl Acrylate, Butyl Alcohol, Carbon Bisulfide, Carbon Disulfide, Cellosolve, Cresols, Crude Oil (Petroleum), Cumene, Cyclohexane, No. 2 Diesel Fuel, Ethyl Acetate, Ethyl Acrylate, Ethyl Alcohol, Ethyl Benzene, Ethyl Dichloride, Ethyl Ether, Gasoline, Heptane, Hexane, Isobutyl Acetate, Isobutyl Alcohol, Isopropyl Acetate, Isopropyl Alcohol, Jet Fuel and Kerosene, Methyl Alcohol, Methyl Amyl Alcohol, Methyl Cellosolve, Methyl Ethyl Ketone, Naptha, Pentane, Propylene Oxide, Toluene, Vinyl Acetate, Xylene

HAZARDOUS GASES: Acetaldehyde, Butadiene, Butane, Ethene, Ethylene, Ethylene Oxide, Hydrogen, Liquefied Natural Gas (LNG), Liquefied Petroleum Gas (LPG), Propane, Propylene, Vinyl Chloride. (Primary Source: "Urban Development Siting with respect to Hazardous Commercial/Industrial Facilities," by Rolf Jensen and Associates, Inc., April 1982) [49 FR 5105, Feb. 10, 1984; 49 FR 12214, Mar. 29, 1984]

Appendix II to Subpart C of Part 51—Development of Standards; Calculation Methods

I. Background Information Concerning the Standards

(a) Thermal Radiation:

(1) Introduction. Flammable products stored in above ground containers represent a definite, potential threat to human life and structures in the event of fire. The resulting fireball emits thermal radiation which is absorbed by the surroundings. Combustible structures, such as wooden houses, may be ignited by the thermal radiation being emitted. The radiation can cause severe burn, injuries and even death to exposed persons some distance away from the site of the fire.

(2) Criteria for Acceptable Separation Distance (ASD). Wooden buildings, window drapes and trees generally ignite spontaneously when exposed for a relatively long period of time to thermal radiation levels of approximately 10,000 Btu/hr. sq. ft. It will take 15 to 20 minutes for a building to ignite at that degree of thermal intensity. Since the reasonable response time for fire fighting units in urbanized areas is approximately five to ten minutes, a standard of 10,000 BTU/hr. sq. ft. is considered an acceptable level of thermal radiation for buildings. People in outdoor areas exposed to a thermal radiation flux level of approximately 1,500 Btu/ft² hr will suffer intolerable pain after 15 seconds. Longer exposure causes blistering, permanent skin damage, and even death. Since it is assumed that children and the elderly could not take refuge behind walls or run away from the thermal effect of the fire within the 15 seconds before skin blistering occurs, unprotected (outdoor) areas, such as playgrounds, parks, yards, school grounds, etc., must be placed at such a distance from potential fire locations so that the radiation flux level is well below 1500 Btu/ft² hr. An acceptable flux level, particularly for elderly people and children, is 450 Btu/ft² hr. The skin can be exposed to this degree of thermal radiation for 3 minutes or longer with no serious detrimental effect. The result would be the same as bad sunburn. Therefore, the standard for areas in which there will be exposed people, e.g. outdoor recreation areas such as playgrounds and parks, is set 450 Btu/hr. sq. ft. Areas covered also include open space ancillary to residential structures, such as yard areas and vehicle parking areas.

(3) Acceptable Separation Distance From a Potential Fire Hazard. This is the actual setback required for the safety of occupied buildings and their inhabitants, and people in open spaces (exposed areas) from a potential fire hazard. The specific distance required for safety from such a hazard depends upon the nature and the volume of the substance. The Technical Guidebook entitled "Urban Development Siting With Respect to Hazardous/Commercial Industrial Facilities," which supplements this regulation, contains the technical guidance required to compute Acceptable Separation Distances (ASD) for those flammable substances most often encountered.

(b) Blast Overpressure: The Acceptable Separation Distance (ASD) for people and structures from materials prone to explosion is dependent upon the resultant blast measured in pounds per square inch (psi) overpressure. It has been determined by the military and corroborated by two independent studies conducted for the Department of Housing and Urban Development that 0.5 psi is the acceptable level of blast overpressure for both buildings and occupants, because a frame structure can normally withstand that level of external exertion with no serious structural damage, and it is unlikely that human beings inside the building would normally suffer any serious injury. Using this as the safety standard for blast overpressure, nomographs have been developed from which an ASD can be determined for a given quantify of hazardous substance. These nomographs are contained in the handbook with detailed instructions on their use.

(c) Hazard evaluation: The Acceptable Separation Distances for buildings, which are determined for thermal radiation and blast overpressure, delineate separate identifiable

danger zones for each potential accident source. For some materials the fire danger zone will have the greatest radius and cover the largest area, while for others the explosion danger zone will be the greatest. For example, conventional petroleum fuel products stored in unpressurized tanks do not emit blast overpressure of dangerous levels when ignited. In most cases, hazardous substances will be stored in pressurized containers. The resulting blast overpressure will be experienced at a greater distance than the resulting thermal radiation for the standards set in Section 51.203. In any event the hazard requiring the greatest separation distance will prevail in determining the location of HUD-assisted projects. The standards developed for the protection of people and property are given in the following table.

	Blast
	Thermal radiation overpressure
Amount of acceptable exposure allowed for building structures.	10,000 BTU/ft ² / 0.5 psi. SU] hr.
Amount of acceptable exposure allowed for people in open areas.	450 BTU/ft ² / 0.5 psi. SU] hr.

Problem/Example: The following example is given as a guide to assist in understanding how the procedures are used to determine an acceptable separation distance. The technical data are found in the HUD Guidebook. Liquid propane is used in the example since it is both an explosion and a fire hazard. In this hypothetical case a proposed housing project is to be located 850 feet from a 30,000 gallon liquid propane (LPG) tank. The objective is to determine the acceptable separation distance from the LPG tank. Since propane is both explosive and fire prone it will be necessary to determine the ASD for both explosion and for fire. The greatest of the two will govern. There is no dike around the tank in this example. Nomographs from the technical Guidebook have been reproduced to facilitate the solving of the problem.

ASD FOR EXPLOSION

Use Figure 1 to determine the acceptable separation distance for explosion. The graph depicted on Figure 1 is predicated on a blast overpressure of 0.5 psi. The ASD in feet can be determined by applying the quantity of the hazard (in gallons) to the graph. In this case locate the 30,000 gallon point on the horizontal axis and draw a vertical line from that point to the intersection with the straight line curve. Then draw a horizontal line from the point where the lines cross to the left vertical axis where the ACCEPTABLE SEPARATION DISTANCE of 660 feet is found. Therefore the ASD for explosion is 660 feet.

Since the proposed project site is located 850 feet from the tank it is located at a safe distance with regards to blast overpressure.

ASD FOR FIRE

To determine the ASD for fire it will be necessary to first find the fire width (diameter of the fireball) on Figure 2. Then apply this to Figure 3 to determine the ASD. Since there are two safety standards for fire: (a) 10,000 BTU/ft² hr. for buildings; and (b) 450 BTU/ft² hr. for people in exposed areas, it will be necessary to determine an ASD for each. To determine the fire width locate the 30,000 gallon point on the horizontal axis on Figure 2 and draw a vertical line to the straight line curve. Then draw a horizontal line from the point where the lines cross to the left vertical axis where the FIRE WIDTH is found to be 350 feet. Now locate the 350 ft. point on the horizontal axis of Figure 3 and draw a vertical line from that point to curves 1 and 2. Then draw horizontal lines from the points where the lines cross to the left vertical axis where the ACCEPTABLE SEPARATION DISTANCES of 240 feet for buildings

and 1,150 feet for exposure to people is found. Based on this the proposed project site is located at a safe distance from a potential fireball. However, exposed playgrounds or other exposed areas of congregation must be at least 1,150 feet from the tank, or be appropriately shielded from a potential fireball.

(Source: HUD Handbook, "Urban Development Siting With Respect to Hazardous Commercial/Industrial Facilities.") [49 FR 5105, Feb. 10, 1984; 49 FR 12214, Mar. 29, 1984]

Subpart D—Siting of HUD Assisted Projects in Runway Protection Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields Authority: Sec. 2, Housing Act of 1949, as amended, 42 U.S.C. 1441, affirmed by sec. 2, HUD Act of 1969, Pub. L. 90-448; sec. 7(d), HUD Act of 1965, 42 U.S.C. 3535(d); OMB, Fed'l Mgmt. Cir. 75-2: Compatible Land Uses At Federal Airfields. Source: 49 FR 880, Jan. 6, 1984, unless otherwise noted.

§51.300 Purpose.

It is the purpose of this subpart to promote compatible land uses around civil airports and military airfields by identifying suitable land uses for Runway Protection Zones at civil airports and Clear Zones and Accident Potential Zones at military airfields and by establishing them as standards for providing HUD assistance, subsidy or insurance. [49 FR 880, Jan. 6, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§51.301 Definitions.

For the purposes of this regulation, the following definitions apply:

(a) Accident Potential Zone. An area at military airfields which is beyond the Clear Zone. The standards for the Accident Potential Zones are set out in Department of Defense Instruction 4165.57, "Air Installations Compatible Use Zones," November 8, 1977, 32 CFR part 256.

There are no Accident Potential Zones at civil airports.

(b) Airport Operator. The civilian or military agency, group or individual which exercises control over the operations of the civil airport or military airfield.

(c) Civil Airport. An existing commercial service airport as designated in the National Plan of Integrated Airport Systems prepared by the Federal Aviation Administration in accordance with section 504 of the Airport and Airway Improvement Act of 1982.

(d) Clear Zone. The area immediately beyond the end of a runway, which possesses a high potential for accidents, and has traditionally been acquired by the Government in fee and kept clear of obstructions to flight. The standards for Clear Zones for military airfields are established by DOD Instruction 4165.57, 32 CFR part 256.

(e) Runway Protection Zones and Clear Zones. Areas immediately beyond the ends of a runway. The standards for Runway Protection Zones for civil airports are established by FAA regulation 14 CFR part 152. The standards for Clear Zones for military airfields are established by DOD Instruction 4165.57, 32 CFR part 256.

§51.302 Coverage.

(a) These policies apply to HUD programs which provide assistance, subsidy or insurance for construction, land development, community development or redevelopment or any other provision of facilities and services which are designed to make land available for construction. When the HUD assistance, subsidy or insurance is used to make land available for construction rather than for the actual construction, the provision of the HUD assistance, subsidy or insurance shall be dependent upon whether the facility to be built is itself acceptable in accordance with the standards in §51.303.

(b) These policies apply not only to new construction but also to substantial or major modernization and rehabilitation and to any other program which significantly prolongs the physical or economic life of existing facilities or which, in the case of Accident Potential Zones:

- (1) Changes the use of the facility so that it becomes one which is no longer acceptable in accordance with the standards contained in §51.303(b);
 - (2) Significantly increases the density or number of people at the site; or
 - (3) Introduces explosive, flammable or toxic materials to the area.
- (c) Except as noted in §51.303(a)(3), these policies do not apply to HUD programs where the action only involves the purchase, sale or rental of an existing property without significantly prolonging the physical or economic life of the property.
- (d) The policies do not apply to research or demonstration projects which do not result in new construction or reconstruction, to interstate land sales registration, or to any action or emergency assistance which is provided to save lives, protect property, protect public health and safety, or remove debris and wreckage. [49 FR 880, Jan. 6, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§51.303 General policy.

It is HUD's general policy to apply standards to prevent incompatible development around civil airports and military airfields.

(a) HUD policy for actions in Runway Protection Zones and Clear Zones.

(1) HUD policy is not to provide any assistance, subsidy or insurance for projects and actions covered by this part except as stated in §51.303(a)(2) below.

(2) If a project proposed for HUD assistance, subsidy or insurance is one which will not be frequently used or occupied by people, HUD policy is to provide assistance, subsidy or insurance only when written assurances are provided to HUD by the airport operator to the effect that there are no plans to purchase the land involved with such facilities as part of a Runway Protection Zone or Clear Zone acquisition program.

(3) Special notification requirements for Runway Protection Zones and Clear Zones. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Protection Zone or Clear Zone, HUD (or the responsible entity or recipient under 24 CFR part 58) shall advise the buyer that the property is in a Runway Protection Zone or Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

(b) HUD policy for actions in Accident Potential Zones at Military Airfields. HUD policy is to discourage the provision of any assistance, subsidy or insurance for projects and actions in the Accident Potential Zones. To be approved, projects must be generally consistent with the recommendations in the Land Use Compatibility Guidelines for Accident Potential Zones chart contained in DOD Instruction 4165.57, 32 CFR part 256. [49 FR 880, Jan. 6, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§51.304 Responsibilities.

(a) The following persons have the authority to approve actions in Accident Potential Zones:

(1) For programs subject to environmental review under 24 CFR part 58: the Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: the HUD approving official having approval authority for the project.

(b) The following persons have the authority to approve actions in Runway Protection Zones and Clear Zones:

(1) For programs subject to environmental review under 24 CFR part 58: The Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: the Program Assistant Secretary. [61 FR 13335, Mar. 26, 1996]

§51.305 Implementation.

- (a) Projects already approved for assistance. This regulation does not apply to any project approved for assistance prior to the effective date of the regulation whether the project was actually under construction at that date or not.
- (b) Acceptable data on Runway Protection Zones, Clear Zones and Accident Potential Zones. The only Runway Protection Zones, Clear Zones and Accident Potential Zones which will be recognized in applying this part are those provided by the airport operators and which for civil airports are defined in accordance with FAA regulations 14 CFR part 152 or for military airfields, DOD Instruction 4165.57, 32 CFR part 256. All data, including changes, related to the dimensions of Runway Protection Zones for civil airports shall be verified with the nearest FAA Airports District Office before use by HUD.
- (c) Changes in Runway Protection Zones, Clear Zones, and Accident Potential Zones. If changes in the Runway Protection Zones, Clear Zones or Accident Potential Zones are made, the field offices shall immediately adopt these revised zones for use in reviewing proposed projects.
- (d) The decision to approve projects in the Runway Protection Zones, Clear Zones and Accident Potential Zones must be documented as part of the environmental assessment or, when no assessment is required, as part of the project file.