



City of Detroit Federal Allocation Environmental Compliance Requirements

September 19, 2019

Introductions

City of Detroit HRD Environmental Review Team

Penny Dwoinen

Environmental Review Officer

dwoinenp@detroitmi.gov

Ryan Schumaker

Lead Preservation Specialist

rschumak@detroitmi.gov

Tiffany Rakotz

Preservation Specialist

rakotzt@detroitmi.gov

Introductions

Partners to the Environmental Review Process

► City of Detroit - HRD Team Members

- ❖ Leadership – Mayor's Office
- ❖ Program Staff
- ❖ Project Managers

► Developers

- ❖ Consultants/Attorneys
- ❖ Environmental Consultants/Cultural Resource Managers
- ❖ Michigan Department of Environment Great Lakes and Energy

Today's Agenda

- AM: HUD Environmental Compliance Requirements and the City of Detroit Process (Developers)
- Morning Break
- Networking
- Lunch
- PM: Environmental Review Record Requirements (Consultants)
- Afternoon Break
- Networking

Environmental Review Process

- Project Begins with City of Detroit
 - ❖ Application to NOFA for Federal Funding
 - ❖ Application to the DHC for PBVs
 - ❖ Pre-Application work (P3 team)
- HUD Federal Funding Award
- Environmental Review Process begins
- HUD Environmental Approval
- Construction/Loan Obligations



HUD Environmental Compliance Requirements

24 CFR Part 58

Who is required to comply?

- All Federal Agencies (NEPA)
- All HUD Entitlement Communities (HUD)
- All Projects using a City of Detroit HUD allocation
 - ❖ CDBG
 - ❖ HOME
 - ❖ ESG
 - ❖ HOPWA
 - ❖ CDBG - DDR
 - ❖ EDI
 - ❖ NSP
 - ❖ CoCs
 - ❖ PBVs (DHC)
 - ❖ MSHDA HOME
 - ❖ MSHDA PBVs
 - ❖ HUD Loans

What laws do we comply with?

- ▶ National Environmental Policy Act (NEPA)
 - ❖ Understand environmental consequences **BEFORE** federal funding commitments are made
 - ❖ Ensure environmental information is made available to public officials and citizens **BEFORE** decisions are made and **BEFORE** actions are taken
 - ❖ Consider reasonable alternatives
 - ❖ Avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.
 - ❖ Integrate NEPA requirements with other planning and environmental review
 - ❖ Take actions that protect, restore, and enhance the environment.

What laws do we comply with?

- ▶ HUD Environmental Requirements for Responsible Entities (24 CFR Part 58)
 - ❖ Responsible Entities (REs) assume HUD's NEPA responsibilities (**City of Detroit - vs - MSHDA, others**)
 - ❖ Serve as the Federal Agency on behalf of HUD
 - ❖ RE assumes responsibility for:
 - Environmental **Review**
 - Environmental **Decision-making**
 - Environmental **Action** that would apply to HUD under NEPA and related laws
 - ❖ Responsibility to ensure mitigation is incorporated into project plans and implemented

What laws do we comply with?

- ▶ Clean Air Act
- ▶ Coastal Zone Management Act
- ▶ Contamination and Toxic Substances (HUD reg) – **This is where environmental due diligence (Phase I ESA through an approved Response Activity Plan) are required.**
- ▶ Endangered Species Act
- ▶ Explosive & Flammable Hazards (HUD reg)
- ▶ Farmlands Protection Policy Act
- ▶ Floodplain Management (E.O. 11988)
- ▶ National Historic Preservation Act
- ▶ Noise Control Act
- ▶ Safe Drinking Water Act (Sole Source Aquifers)
- ▶ Wetlands Protection (E.O. 11990)
- ▶ Wild & Scenic Rivers Act
- ▶ Environmental Justice (E.O. 12898)

When do we comply?

- ▶ Any contemplated use of the HUD Federal Allocation
 - ❖ Not just when we award money
 - ❖ Also includes projects once we know of the intent to use/apply for federal money
- ▶ Anytime a federalized project has a change in scope of work or additional money added
- ▶ Any project that gets reprogrammed money

Why do we comply?

- ▶ HUD's Mission: *Create strong, sustainable, inclusive communities and quality affordable homes for all*
- ▶ To make sure the environment is not harmed by a development
- ▶ To make sure the residents of the development are not harmed by the environment
- ▶ To maintain good standing with HUD
 - ❖ Don't break the laws!
 - ❖ Findings
 - ❖ Violations
 - ❖ Payback of the HUD Allocation

HOW do we comply?

The Environmental Review Process





Step 1: Develop a Meaningful Project Description

Why is the project description important?

- ▶ Basis for determining the level of environmental review required
- ▶ Basis for informing the public about the action
- ▶ Basis for monitoring compliance
 - If funds are used for something not included in the project description, it could be in violation of §58.22

Defining the Project

- Who, what, when, where, why of the project
- **Project Aggregation (§58.32)**
 - *Evaluate as a single project* all individual activities that are related either on a geographical or functional basis, or are logical parts of a composite or contemplated actions
 - Must include **both** HUD and non-HUD funds



Acquisition



Demolition



Construction



Aggregate
Project

Multi-year Project Aggregation §58.32(d)

- Estimate the range of aggregated activities
- Must consider all components of the multi-year project regardless of funding sources
- Evaluate cumulative environmental effects
- Estimate the cost of total project in the environmental review and the RROF
- Must re-evaluate under §58.47 with a change in scope, magnitude, or conditions

Meaningful Project Descriptions Include:

- ▶ **Location:** describe so the public can locate (i.e. street address, cross streets)
- ▶ **Purpose and Need:** describe what is being done and why it is necessary, trends likely in the absence of the project
- ▶ **Type of environmental review:** individual (geographically-aggregated) versus tiered (functionally aggregated)
- ▶ **Tiering, if applied:** describe the environmental requirements to be addressed in the Tier 1 review and environmental requirements to be addressed in the Tier 2 review
- ▶ **Project Beneficiaries:** ex: affordable housing project, mixed use housing project, etc.
- ▶ **Description:** provide complete details about the project and what will be done
 - ❖ Type of project (i.e. new construction of single family home, roof replacement of community center, etc.)
 - ❖ Capture the maximum anticipated scope of the proposal, even if it isn't solidified yet
 - ❖ Physical description of existing and/or proposed new buildings
 - ❖ Timeframe for implementation
 - ❖ Size of the project (area coverage, number of units, population served, etc.)
- ▶ **All funding sources**
- ▶ **All development partners**

Developer/Entity Request for Federal Funding

- ▶ Detroit Housing Commission Project Based Voucher Application
- ▶ City of Detroit Federal Funding Request (CDBG, HOPWA, ESG, etc.)
- ▶ City of Detroit NOFA Application (HOME or mixed funding)
 - ❖ Applications submitted, vetted, scored
 - ❖ Environmental documentation is reviewed
 - Review of existing conditions based on Phase I ESA
 - Identify Project Description
 - Determine next requirements for environmental review

Environmental Review Request Form

- HRD Project Manager completes and sends to ER Team for Review with the NOFA Application Project Description and Phase I ESA Documentation
- EA Team completes review of Phase I ESA and scores project for NOFA and continues with Step 2: Determine Level of Review Required



CITY OF DETROIT AS RESPONSIBLE ENTITY HOUSING AND REVITALIZATION DEPARTMENT ENVIRONMENTAL REVIEW REQUEST FORM

Submit one form for each project. This form is required and must be complete before any review can begin. Incomplete forms will be sent back to the applicant.

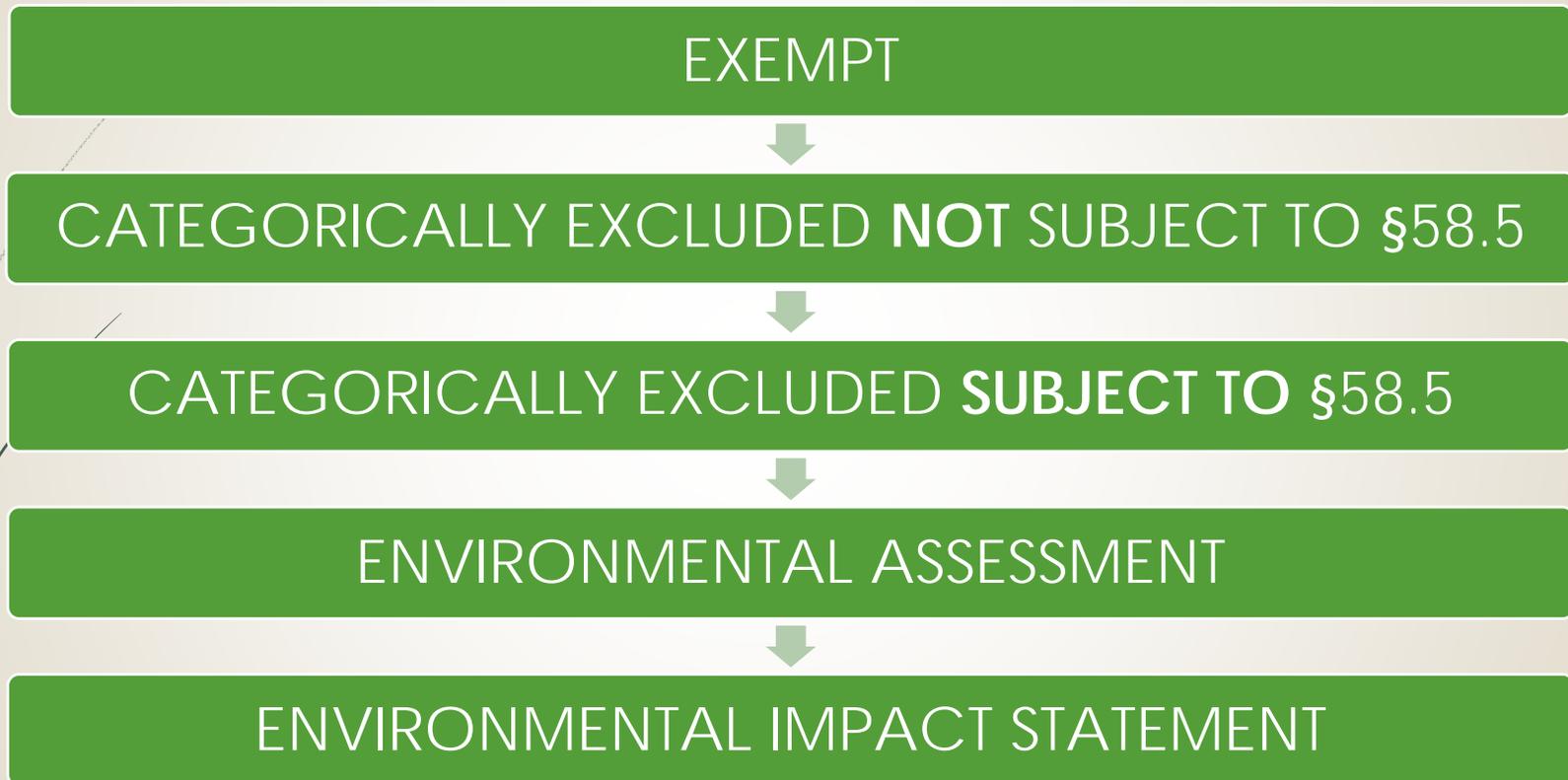
<i>GENERAL PROJECT INFORMATION</i>		
Project Name (if applicable):	Date Requested:	
Project Address(es) or Parcel ID #: (include a map if available)		
HUD Funding Program (HOME, CDBG, ETC.):	Funding Year:	Funding Amount:
Project Contact Name:	Title:	Department/Agency:
Phone:	Email:	
<i>PROJECT DESCRIPTION</i>		
Provide a DETAILED written description of the project: Include type of project (new construction, rehabilitation, etc.); maximum anticipated scope of the proposal (even if isn't solidified yet); size of the project (area coverage, number of units, population served, etc.); physical description of existing and/or proposed new buildings; timeframe for implementation		
<i>PURPOSE AND NEED</i>		
Describe what is being done and why it is necessary, trends that may happen in the absence of the project:		
List the project beneficiaries (ex: affordable housing, public service, mixed use housing):		
<i>FUNDING SOURCES AND AMOUNTS</i>		
List all funding sources and development partners (private, federal, state, local, etc.):		
<i>TIMING REQUIREMENTS</i>		
Provide proposed project timelines (ex: closing/construction start/contract):		
<p>Please submit this completed form and required documentation to: Penny Dwoinen, Environmental Review Officer dwoinenp@detroitmi.gov (313) 224-2933</p>		

Environmental Review



Step 2: Determine the Level of Environmental Review

Levels of Review



Typical Timelines for Review

EIS – one to two years

EA – 45 to 100 days to complete *depending on consultations required*

CEST – 30 to 75 days *depending on consultations required*

CENST – less than a day

Exempt – less than a day



Exempt Activities [§58.34] Include:

1. Environmental and other studies / engineering or design costs
2. Development of plans and strategies
3. Information and financial services
4. Administrative and management activities
5. Public services (employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, welfare, recreational needs – **no physical action**)
6. Inspections and testing for hazards or defects
7. Purchase of insurance and tools
8. Technical assistance and training
9. Payments of principal and interest on loans or obligations guaranteed by HUD
10. Temporary assistance for disaster or imminent threats***

Cat Ex NOT Subject to §58.5

➤ §58.35(b)

1. Tenant-based rental assistance
2. Supportive services (health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent, mortgage or utilities, assistance in gaining access to government benefits)
3. Operating costs including maintenance*, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs
4. Economic development activities not associated with construction or expansion of existing operations

Cat Ex NOT Subject to §58.5

➔ §58.35(b)

5. Activities to assist homeownership of existing dwelling units or units under construction (closing costs and down payment assistance to homebuyers, interest buy downs or other actions resulting in transfer of title)
6. Affordable housing pre-development costs (legal consulting, developer and other site-option costs, project financing, admin costs for loan commitments, zoning approvals and other activities which don't have a physical impact)
7. Supplemental assistance to previously approved project provided approval is by the same RE and re-evaluation is not required per §58.47

Cat Ex SUBJECT to §58.5

➤ §58.35(a)

1. Acquisition, repair, improvement, reconstruction or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are:

- ❖ Already in place
- ❖ Retained for the same use
- ❖ Without change in size or capacity by more than 20%

For example: Replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets (NOT maintenance)

2. Removal of architectural barriers that restrict mobility of, and accessibility to, the elderly and handicapped

Cat Ex SUBJECT to §58.5

➔ §58.35(a)

3. (i) Single family housing rehabilitation

- ❖ Unit density not increased beyond **4 units**
- ❖ Project doesn't involve changes in land use from residential to non-residential
- ❖ The footprint of the building is not increased in a floodplain or wetland

(ii) Multifamily rehabilitation

- ❖ Unit density change is not more than **20%**
- ❖ Project doesn't involve change in land use from residential to non-residential
- ❖ Cost of rehabilitation is less than **75%** of the estimated cost of replacement after rehab

Cat Ex SUBJECT to §58.5

➤ §58.35(a)

3. (iii) Non-residential structures

- ❖ Facilities and improvements were in place and will not be changed in size or capacity by more than **20%**
- ❖ Project doesn't involve changes in land use from non-residential to residential, commercial to industrial, or one industrial use to another

4. Individual action (disposition, new construction, demolition, acquisition) on a **1 to 4 unit** dwelling; or individual action on **5 or more units** scattered on sites more than **2000 ft.** apart and no more than **4 units** per site

Cat Ex SUBJECT to §58.5

➤ §58.35(a)

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 or disposed of will be retained for the same use
6. Combinations of the above activities

Environmental Assessment [§58.36]

- ▶ Any project not Exempt, Categorically Excluded, and does not meet EIS thresholds
 - ❖ New construction or substantial rehabilitation of clustered (5+) homes
 - ❖ Conversion from one type of land use to another

- ▶ The purpose is to *evaluate the project as a whole*
 - ❖ Determine existing conditions and trends
 - ❖ Identify all impacts (direct, indirect, cumulative)
 - ❖ Examine and recommend feasible ways to eliminate or minimize adverse environmental impacts
 - ❖ Examine alternatives to project itself, if applicable

Environmental Assessment [§58.36]

Two major reviews of the Site

- ▶ How does the project affect the environment
 - ❖ Work in the floodplain
 - ❖ Work in wetlands
 - ❖ Endangered species
- ▶ How does the environment affect the project (and future residents)
 - ❖ Contamination
 - ❖ Noise Assessments
 - ❖ Environmental Justice

Environmental Impact Statement [§58.37]

- Required when the project is determined to have a potentially significant impact on the human environment (can't declare a FONSI). For example:
 - ❖ Resulting in the construction of hospitals or nursing homes with 2500+ beds
 - ❖ Remove, demolish, convert / sub-rehab 2500+ existing housing units
 - ❖ Construction of 2500+ new housing units – or provide the site for said units
 - ❖ Provide enough additional water and sewer capacity to support 2500+ additional housing units

Process - Communication

- ▶ DHC Voucher Award
- ▶ City of Detroit Federal Funding Award (CDBG, HOPWA, ESG, etc.)
- ▶ City of Detroit NOFA Award (HOME or mixed funding)
 - ❖ Award Letter comes from HRD to Developer - Congratulations!!!
 - ❖ Attached to the Award Letter is the Environmental Review Memo:
 - Outlines existing conditions based on documents submitted with the NOFA application
 - Identifies next requirements for environmental review
 - Establishes the need for a post-award environmental planning meeting (including HRD, Developer, and Developer chosen environmental consultant)



Step 3: Conduct the Environmental Review

An Early Start is Important!

- Ensures planning and decisions reflect environmental values
- Avoids project delays
- Heads off potential conflicts
- Procedural reasons:
 - ❖ Recipient may not commit HUD funds on an activity prior to RROF approval
 - ❖ Recipient may not commit non-HUD funds prior to RROF approval if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives
 - ❖ For projects not requiring an RROF, environmental review must be completed prior to start of activity or project

Choice Limiting Actions

Prior to environmental approval / clearance, the RE may not:

- ▶ Commit HUD funds
- ▶ Commit non-HUD funds where the activity would
 - ❖ Have an adverse environmental impact or
 - ❖ Limit the choice of reasonable alternatives
- ▶ Extends to third parties including:
 - ❖ Recipients, and
 - ❖ Participants in the development process
 - Public or private nonprofit
 - For-profit entities
 - **Contractors**

Do not take action before environmental clearance!!

Overview of NEPA-Related Laws and Authorities

- ▶ RE's must certify that it has complied with - and will continue to comply with - the laws and authorities of §58.5 and §58.6
- ▶ Must consider the criteria, standards, policies, and regulations of these laws and authorities
- ▶ Must provide written documentation of compliance or no circumstance requiring compliance with each law or authority

§58.5 Requirements

- ❖ Clean Air Act
- ❖ Coastal Zone Management Act
- ❖ Contamination and Toxic Substances (HUD reg) – This is where environmental due diligence (Phase I ESA through an approved Response Activity Plan) are required.
- ❖ Endangered Species Act
- ❖ Explosive & Flammable Hazards (HUD reg)
- ❖ Farmlands Protection Policy Act
- ❖ Floodplain Management (E.O. 11988)
- ❖ National Historic Preservation Act
- ❖ Noise Control Act
- ❖ Safe Drinking Water Act (Sole Source Aquifers)
- ❖ Wetlands Protection (E.O. 11990)
- ❖ Wild & Scenic Rivers Act
- ❖ Environmental Justice (E.O. 12898)

§58.6 Requirements

- §58.6 Compliance checklist is required for **all HUD-assisted projects**
- §58.6 alone does NOT trigger certification and release of funds procedure
- Includes:
 - ❖ §58.6 (a) and (b) – Flood insurance
 - ❖ §58.6 (c) – Coastal Barrier Resources Act
 - ❖ §58.6 (d) – Buyer notification requirements for Runway Clear Zones and Clear Zones of 24 C.F.R. Part 51.303(a)(3)

Environmental Review Hurdles

► Floodplain

- ❖ No new construction in Floodplain
- ❖ Rehabilitation and other projects in the floodplain will need further consultation and assessment
- ❖ Work with ER TEAM early in the development process if you are in or near a floodplain

Environmental Review Hurdles

► Contamination

- ❖ Most multi-family projects will encounter contamination
- ❖ Developer Team will conduct ER and work with ER TEAM to work through the approval process
 - Identify contamination levels and types
 - Response Activity Plan approval from EGLE
 - Follow up of Response Activities through construction
 - Documentation of Due Care Compliance approval from EGLE is closeout

Environmental Review Hurdles

➤ Section 106 Review

- ❖ National Historic Preservation Act (NHPA) mandates that Federal agencies (for HUD, that includes Responsible Entities) undergo a review process for any Federally-funded or permitted projects which might impact important historic/cultural resources
- ❖ Specifically, Section 106 of the NHPA requires that impacts on historic/cultural resources be taken into account during the planning and execution of Federally-funded projects/undertakings.
- ❖ Section 106 of the NHPA also requires consultation with the State Historic Preservation Office (SHPO) for all Federally-funded undertakings that may impact historic/cultural resources.

Environmental Review Hurdles

➤ Section 106 Review

- ❖ Section 106 and the Programmatic Agreement
- ❖ The regulations which outline the process/steps to implement Section 106 of the NHPA are published in the Code of Federal Regulations at 36 CFR Part 800 (per 24 CFR 58.5(a)). These regulations are essentially a “cookbook” for the Section 106 process.
- ❖ One subsection of the implementing regulations, 36 CFR §800.14(b), allows for the development of a Programmatic Agreement (PA).
- ❖ A PA is a legally-binding agreement which outlines an alternative, custom-designed process through which a Federal agency may meet their compliance responsibilities with Section 106 of the NHPA.

Multi-Family Redevelopment Section 106 Application Form



**CITY OF DETROIT
HOUSING & REVITALIZATION DEPARTMENT
SECTION 106 REVIEW REQUEST FORM
MULTI-FAMILY & REDEVELOPMENT PROJECTS**

I. GENERAL PROJECT INFORMATION

This form MUST be completed by someone meeting the National Park Service Professional Qualification Standards.
Please attach proof of qualifications with this application (unless already on file)

PROJECT NAME (if applicable): _____ DATE: _____

PROJECT ADDRESS(ES): _____

HUD FUNDED PROGRAM (HOME, CDBG, ETC.): _____ FUNDING YEAR: _____

DEVELOPER CONTACT INFORMATION (Name, Address, Phone and E-Mail Address): _____

CONSULTANT CONTACT INFORMATION: _____

II. GROUND DISTURBING ACTIVITIES

A. DOES THIS PROJECT INVOLVE GROUND-DISTURBING ACTIVITIES? YES NO (Proceed to Section III)

B. USGS 7.5' QUADRANGLE MAP NAME:(Project location must be submitted on a USGS Quad map)

C. TOTAL ACAGE: _____ D. TOWNSHIP: _____ RANGE: _____ SECTION: _____

E. PREVIOUS LAND USE AND DISTURBANCES:

F. CURRENT LAND USE AND CONDITIONS:

G. DESCRIPTION OF THE WIDTH, LENGTH AND DEPTH OF PROPOSED GROUND DISTURBING ACTIVITIES:

III. PROJECT DESCRIPTION

A. PROVIDE A DETAILED WRITTEN DESCRIPTION OF THE PROJECT:

PAGE 1 of 3



**CITY OF DETROIT
HOUSING & REVITALIZATION DEPARTMENT
SECTION 106 REVIEW REQUEST FORM
MULTI-FAMILY & REDEVELOPMENT PROJECTS**

III. PROJECT DESCRIPTION (Continued)

A. PROVIDE A LOCALIZED MAP INDICATING THE LOCATION OF THE PROJECT AND THE PROPOSED APE.

IV. IDENTIFICATION OF HISTORIC PROPERTIES

A. PROVIDE A WRITTEN DESCRIPTION OF THE APE (physical, visible, auditory), THE STEPS TAKEN TO IDENTIFY THE APE, AND THE JUSTIFICATION OF THE PROPOSED BOUNDARIES:

B. ARE HISTORIC PROPERTIES PRESENT WITHIN THE APE? YES NO (PROCEED TO SECTION V)

C. DESCRIBE EFFORTS TAKEN TO IDENTIFY THE EXISTENCE OF HISTORIC PROPERTIES WITHIN THE APE, INCLUDING REFERENCES:

D. LIST ALL PROPERTIES 45+ YEARS OF AGE LOCATED WITHIN THE APE ON THE ATTACHED SPREADSHEET

PROVIDE:
THE ADDRESS
DATE OF CONSTRUCTION/ALTERATIONS/ADDITIONS
ARCHITECT
BUILDING STYLE
MATERIALS
WINDOW TYPES
CURRENT CONDITION
HISTORIC INTEGRITY (Location, Design, Setting, Materials, Workmanship, Feeling, Association)
NRHP CRITERIA
AREA OF SIGNIFICANCE (history, architecture, archeology, engineering, or culture)
PERIOD OF SIGNIFICANCE
AND A STATEMENT OF SIGNIFICANCE

E. PROVIDE A MAP WHICH INCLUDES THE LOCATION OF ALL IDENTIFIED HISTORIC PROPERTIES AND DISTRICTS LOCATED WITHIN THE APE.

PAGE 2 of 3

Environmental Review Hurdles

➤ Section 106 Hurdles

- ❖ Timing
- ❖ Confusion over funding source/lack of information (City vs. DHC vs. private funds)
- ❖ Incomplete Information
- ❖ Lack of well-defined project description
- ❖ Archeology
- ❖ Project segmentation
- ❖ Foreclosure

Request for Additional Information

- ER TEAM may need additional information to complete the review
 - ❖ Confusion over funding source/lack of information (City vs. DHC vs. MSHDA vs. private funds)
 - ❖ Incomplete Information
 - ❖ Lack of well-defined project description
 - ❖ Project segmentation
 - ❖ This is not to complicate your project, it is needed to create a complete ERR

Process

This step can take substantial time and require many consultations/emails/memos between the EA Team the environmental consultant and State Agencies (EGLE and SHPO). Usually the Developer and HRD PM are copied on emails, but not active participants until the Environmental Review is complete.

ER Team will also ask for a budget for any remedial activities outlined in the final ERR.

Once the Environmental Review is complete, the EA Team will begin to finalize the process.

Step 4: Finalize the Environmental Review



ER Team Finalizes the ER

- ER TEAM reviews Environmental Review Record
 - ❖ Environmental Review Officer (ERO) reviews all documentation
 - ❖ ERO provides documentation to Certifying Officer for review and signature
 - ❖ Exempt, CENST, CEST-exempt are complete with CO signature and can begin spending
 - ❖ CEST and EA get published, RROF – AUGF process begins

ER Team Finalizes the ER

► Publication – RROF – AUGF

- ❖ Publication takes 2 weeks to prepare and put in the newspaper for advertisement
- ❖ Publication in the newspaper for one day
- ❖ Publication requires up to a 15-day public notice
- ❖ After 15 day public notice, EA Team prepares the RROF and submits to HUD
- ❖ RROF requires a 15-day HUD Comment period
- ❖ Authority to Use Grant Funds comes when HUD creates it.

Should be after the 15 day HUD Comment period. But this is NOT usually the case. Be patient!!!

Process – Choice Limiting Actions

Prior to receipt of the AUGF, the RE may not:

- Commit HUD funds
- Commit non-HUD funds where the activity would
 - ❖ Have an adverse environmental impact or
 - ❖ Limit the choice of reasonable alternatives
- Extends to third parties including:
 - ❖ Recipients, and
 - ❖ Participants in the development process
 - Public or private nonprofit
 - For-profit entities
 - Contractors

Do not take action before environmental clearance!!

Process – AUGF to Expenditures

Once the AUGF is received, you may begin to finalize your closing for funding.

An Environmental Continuing Obligations memo will be produced and added as a closing requirement and as an additional reporting requirement in the HOME Loan Agreement.

Step 5: Commit and Spend Funds





Step 6: Scope Changes After Release

Adding funds or Changing Scope? Updating the ERR [§58.47]

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

- ▶ If original environmental finding is **still valid**:
 - ❖ Update the ERR with new project description / funding amount and CENST documentation [§58.35(b)(7)]
 - ❖ New RROF with changes to HUD, no publication or waiting period for AUGF (this is a Chicago office policy)
- ▶ If original environmental finding is **no longer valid** or project significantly changed:
 - ❖ RE must prepare new review and proceed with approval process (RROF → publication/posting → AUGF)



Step 7: Project Requirements Through Project Duration

Implementing Actions [§58.77c]

- ▶ RE/Recipient must assure environmental review decisions are carried out during project development and implementation
- ▶ Establish binding commitments **and** enforce them
 - ❖ i.e. development agreements and contracts
- ▶ Correspondence with applicant/sponsor
- ▶ Track and monitor implementation and update the ERR

Section 106 Conditional Approvals

- Procedure – Historic Properties & Conditional Approvals
- Conditional Approvals are issued on projects which involve Historic Properties or ongoing archaeological obligations.
- For any project involving Historic Properties, three letters will be issued during the course of the entire project:
 - ❖ Conditional Approval Letter – This letter notifies the project manager that Historic Properties are located within the Area of Potential Effects (APE). It also requests additional information related to the project, include scope of work documents, architectural drawings, and/or Phase I ESAs.
 - ❖ Conditional No Adverse Effect (CNAE) Letter – This letter provides the required approval of the specifications for the project.
 - ❖ Work Completed No Adverse Effect Letter (NAE) – This letter provides the required approval of the completed work (photographic evidence) and closes Section 106 review for the project.

Contamination Follow-Ups

- Response Activities through Construction
- Operations and Maintenance Plans
- Documentation of Due Care Compliance
- Rehabilitation Requirements
 - ❖ Lead
 - ❖ Asbestos
 - ❖ Mold
 - ❖ etc

For Problems Identified After Approval of RROF

- ▶ If program monitoring identifies compliance concerns, in-depth monitoring can be required
- ▶ HUD sponsored training can be required
- ▶ Acceptance of future certifications of environmental compliance can be refused
- ▶ The RE's assumption of environmental review responsibilities can be suspended or terminated
- ▶ Sanctions, corrective actions, or other remedial actions specific in program regulations can be applied

In cases where HUD has approved a RROF and later finds that the RE violated §58.22 or did not comply with a clearly applicable environmental authority, appropriate remedies and sanctions are applied in accordance with the law and regulations for the program under which the violation was found.

Example Project Discussion

- NOFA award of HOME funding
- New construction of a multi-family mixed-use building
- MSHDA 9% tax credits and project based vouchers
- Environmental Assessment required by COD and MSHDA
 - ❖ Contamination Issues
 - ❖ Archeology Issues
 - ❖ Project Scope/Site Plan Changes
 - ❖ Approved Response Activity Plan re-review

In Conclusion...

Correct application of 24 C.F.R. Part 58 is essential for avoiding sanctions, litigation, and unexpected mitigation or remediation costs!

- ▶ Follow all required steps in the environmental review and decision-making process
- ▶ Carefully document compliance with NEPA and its related authorities
- ▶ Exercise due diligence in investigations
- ▶ Use reasonable approaches that are neither arbitrary nor capricious
- ▶ Carefully maintain the Environmental Review Record!

In Conclusion...

We are a Team for Environmental Compliance

- ▶ HUD
- ▶ HRD Management
- ▶ HRD Project Managers
- ▶ Developers
- ▶ Developer's Environmental Consultant
- ▶ ER Team

The ER Team is not trying to "Kill" a deal. We are charged with ensuring environmental compliance with the HUD Rules. We will always try to provide options to make your deal work within the environmental review requirements.

