



City of Detroit HUD Federal Allocation Environmental Compliance Requirements

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Introductions

City of Detroit HRD Environmental Review Team



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Partners in the Environmental Review Process

➤ **City of Detroit - HRD Team Members**

- ❖ Leadership – Mayor's Office
- ❖ Project Managers and Program Staff
- ❖ HRD Environmental Review Team

➤ **Developers**

- ❖ Consultants/Attorneys
- ❖ Environmental Consultants/Cultural Resource Managers

➤ **Funders/Regulators**

- ❖ Other Federal Funders – HUD/MSHDA/ARPA
- ❖ Michigan Department of Environment, Great Lakes, and Energy (EGLE)
- ❖ State Historic Preservation Office (SHPO)

Today's Agenda

- AM: HUD Environmental Compliance Requirements and the City of Detroit Process (Developers)
- Morning Break
- SHPO Programmatic Agreement and Archaeology
- Lunch (on your own)
- PM: Environmental Review Record Requirements (Consultants)
- Section 106 Application
- Afternoon Break
- HEROS
- Questions and Networking



HUD Environmental Compliance Requirements

24 CFR Part 58

Who is required to comply?

- All Federal Agencies (NEPA)
- All HUD Entitlement Communities (HUD)
- All Projects in the City of Detroit with a HUD allocation
 - ❖ CDBG, CDBG-CV
 - ❖ HOME
 - ❖ HOME ARP
 - ❖ ESG, ESG-CV
 - ❖ HOPWA, HOPWA-CV
 - ❖ CDBG – DR
 - ❖ Choice Neighborhoods
 - ❖ NSP
 - ❖ DHC PBVs
 - ❖ DHC Development
 - ❖ DHC Capital Expenditures
 - ❖ MSHDA HOME
 - ❖ MSHDA PBVs
 - ❖ HUD Direct Grants
 - CoCs
 - 221d4
 - 202
 - Community Project Funds

Who is required to comply?

- What about ARPA???
- The US Treasury (the federal agency that awarded ARPA) declared that ARPA funding does not trigger the NEPA regulations.
- **HOWEVER**, if ARPA funding is co-mingled with other federal funding – ALL funding is required to have environmental review completed.

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 reviews
 - ❖ 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 after the Authority to Use Grant Funds

What laws do we comply with?

24 CFR Part § 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\(e\)](#).
- ❖ HUD – vs – City of Detroit – vs – MSHDA, others
- ❖ This requires project coordination ASAP after federal awards to a project, especially if a Developer intends to apply for HUD loans in the future.

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

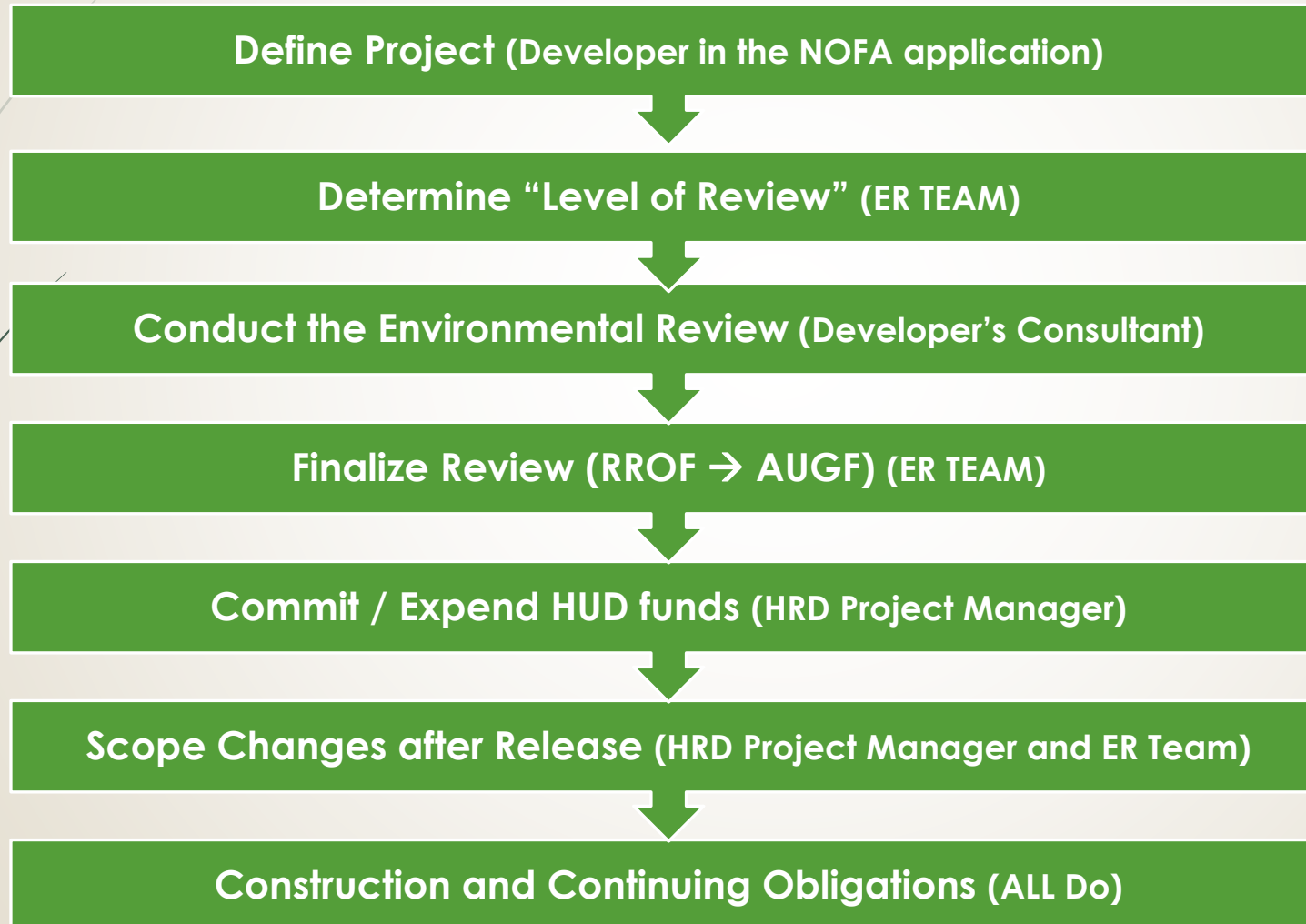
HOW do we comply?

Environmental Review **Process**

- Project Begins with City of Detroit
 - ❖ Application to NOFA for Federal Funding
 - ❖ Application to the DHC for PBVs
 - ❖ Pre-Application work (HRD teams)
- HUD Federal Funding Award
- Environmental Kickoff Meeting
- Environmental Review Process begins
- HUD Environmental Approval
- Construction/NEPA Compliance Commitments

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 and federal expenditure
- ▶ 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

Complete Project Scope Includes:

- **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**
- **Timelines**

Developer/Organization 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

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!!

§ 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 § 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 § 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 § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 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 § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 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.

§ 58.22: Limitation of Action

Choice-Limiting Action

- ▶ Examples: real property acquisition, leasing, bidding, disposition, demolition, rehabilitation, repair, renovation, construction, conversion and site improvements

Affirmative Responsibility

- ▶ If RE is considering an application and is aware a party is about to take action prohibited by § 58.22(a), RE must take “appropriate action” to ensure NEPA is followed
- ▶ Difference of Application for funds –vs- Intent for funds
 - RE must make determination
 - Must be defensible and documented

The City of Detroit has determined that the NOFA application date is the intent for use of HUD funding. No Choice Limiting Action can be taken after your application is submitted.

Choice Limiting Actions

Is a Choice Limiting Action:

- Real property acquisition
- Leasing
- Bidding
- Disposition
- Demolition
- Rehabilitation
- Repair
- Renovation
- Construction
- Conversion
- Site Improvements

Is NOT a Choice Limiting Action:

- ▶ Bidding with NEPA rewind language
- ▶ Development Agreement with NEPA rewind language
- ▶ Option Contract with NEPA rewind language

Responsible Entity Choice Limiting Actions

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

- Commit HUD funds – Close on loans or sign contracts
- 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!!

Consequences of Violating §58.22

➤ Regulatory violation:

- Results from a commitment of Non-HUD funds
Contract, agreement, expenditure of funds
- Can result in loss of all HUD assistance for the project and repayment

➤ Statutory violation:


- Results from a commitment of HUD funds
Contract, agreement, expenditure of funds
- “Taints” the project: HUD funds from the same appropriation can never be used at site where violation occurred. Possible repayment.

Process - Communication

- DHC Voucher Award
- City of Detroit Federal Funding Award (CDBG, HOPWA, ESG, etc.)
- City of Detroit NOFA Conditional Award (HOME or mixed funding)
 - ❖ Award Letter comes from HRD to Developer - Congratulations!!!
 - ❖ Attached to the Award Letter is the Environmental Review Memo
 - Outlines known environmental conditions at the Site
 - Outlines overall environmental requirements to be completed
 - Establishes the need for a post-award Environmental Kickoff Meeting

Process – Environmental Kickoff Meeting

- Meeting to set the expectation of the environmental review
- Includes HRD, Developer, and Developer chosen environmental and historic consultants, and any other funders with environmental requirements
- Defines the Project and Determines the Level of Review required
 - ❖ Each Project and Level of Review requires a different scope of work from the environmental and historic consultants
 - ❖ Outlines potential issues at the Site
 - Contamination coordination with EGLE
 - Section 106 and Archaeology coordination with SHPO
 - Project Timing and budget issues



Step 2: Determine the Level of Environmental Review

Determining the Level of Review

HUD Environmental Requirements for Responsible Entities
(24 CFR Part 58)

- ❖ Responsible Entities (REs) assume HUD's NEPA responsibilities
- ❖ RE assumes responsibility for:
 - Environmental **Review**
 - Environmental **Decision-making – including determining the level of review**
 - Environmental **Action** that would apply to HUD under NEPA and related laws

Levels of Review

EXEMPT



CATEGORICALLY EXCLUDED **NOT** SUBJECT TO §58.5



CATEGORICALLY EXCLUDED **SUBJECT** TO §58.5



ENVIRONMENTAL ASSESSMENT



ENVIRONMENTAL IMPACT STATEMENT

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

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



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

Federal Review Coordination

- The aggregated project description needs to include all funding including all federal allocations to the project
- The federal review coordination needs to be completed early in the environmental review process, especially to coordinate the Section 106 and Tribal Consultation
- If this coordination does not happen early enough, there could be a duplication of effort for the Developer

Typical Timelines for Review

EIS – two to three years

EA – 6 to 18 months to complete depending on consultations required

CEST – 3 to 6 months depending on consultations required

CENST – 7 to 15 days

Exempt – 7 to 15 days



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 require further consultation and assessment
- ❖ Flood Insurance will be required
- ❖ 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 for No Further Action Documentation from EGLE at closeout

Environmental Review Hurdles

➤ Section 106 Historical Review

- ❖ Timing
- ❖ Confusion over funding sources/lack of information (City vs. DHC vs. private funds)
- ❖ Federal funding coordination
- ❖ 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 PMs are copied on emails, but not active participants until the Environmental Review is complete.

ER Team will also ask for a budget for any Mitigation Measures outlined in the Mitigation Plan included in the final ERR.

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



Step 4: Finalize the Environmental Review

ER Team Finalizes the ER

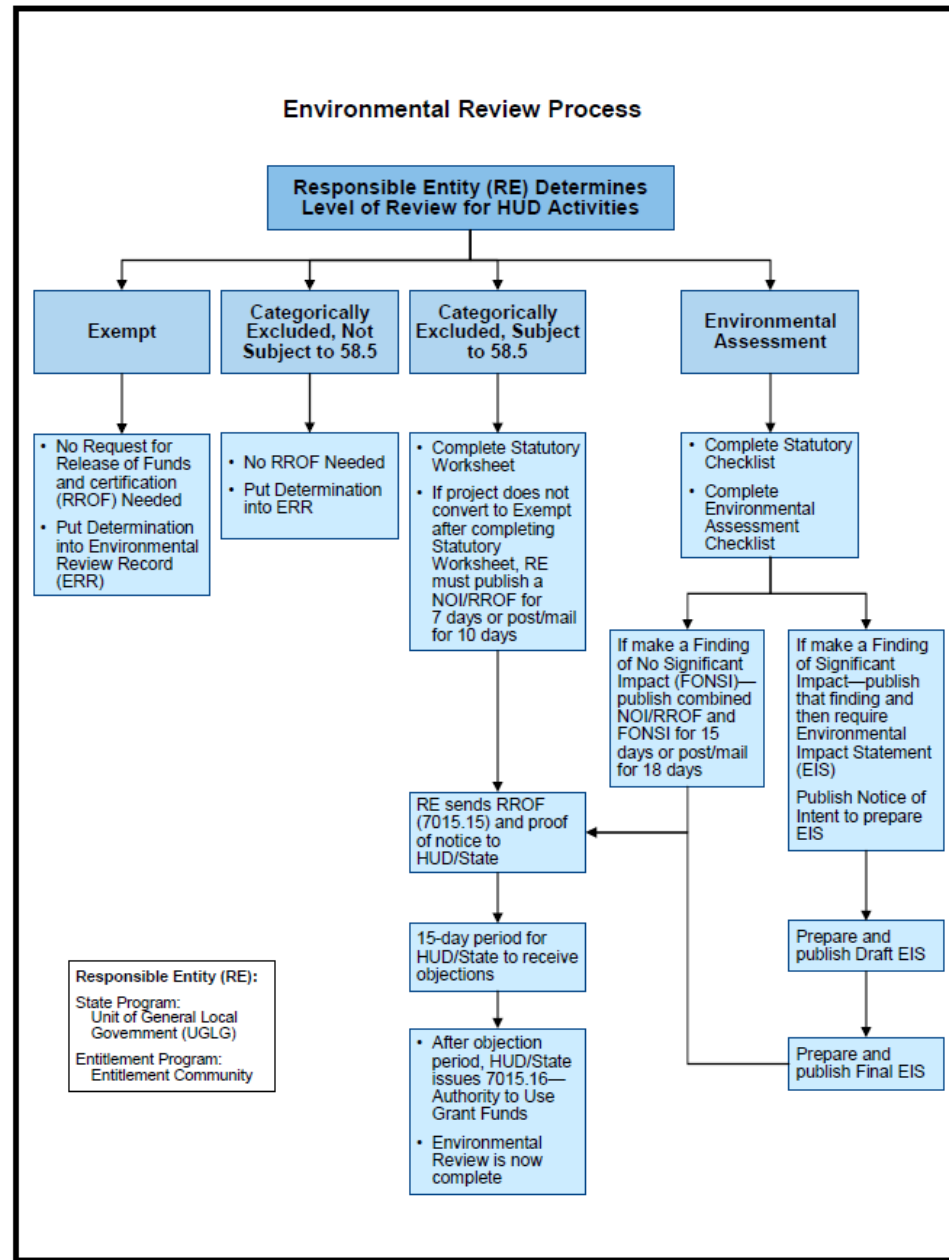
- ➔ ER Team reviews Environmental Review Record
 - ❖ ER Team reviews all documentation
 - ❖ ERO provides documentation to Certifying Officer for review and signature
 - ❖ Exempt, CENST, CEST-exempt are complete with CO signature and can begin spending
 - ❖ CEST and EA get published, RROF – AUGF process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

ER Team Finalizes the ER

➔ Publication – RROF – AUGF

- ❖ Publication takes 2 weeks to prepare and put in the newspaper for advertisement
- ❖ Advertisement in the newspaper for one day
- ❖ Publication requires up to a 15-day public comment period
- ❖ After 15-day public comment period, EA Team prepares the RROF and submits to HUD through the HEROS System
- ❖ 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 – NEPA Compliance Commitment Memo

ER Team will create a NEPA Compliance Commitment memo after receipt of AUGF

- ❖ Created prior to closing the HUD funding and should be included in closing documents
- ❖ Includes the Authority to Use Grant Funds
- ❖ May include:
 - Mitigation Plan and future environmental requirements
 - Response Activity Plan with state approval and budget for activities
 - Section 106 – continuing obligations
 - Final state approvals for other outstanding compliance items

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: Environmental Requirements Through Project Construction

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

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.

Process – Final Closeout Memo

ER Team will create a Final Closeout memo

- ❖ Created after construction is complete and issued to the Asset Management Team for annual follow-up
- ❖ Includes environmental documentation created throughout the construction process
- ❖ May include Continuing Obligations:
 - Outlines the continuing environmental obligations
 - Documentation of Due Care Compliance/No Further Action
 - Operations and Maintenance Plans
 - Lead, Asbestos
 - Vapor Mitigation Systems
 - Exposure Barriers

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 HRD ER Team is 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.



15-Minute Break – Lunch Options

QUICK LUNCH OPTIONS

Food Trucks Campus Martius

Pot Belly

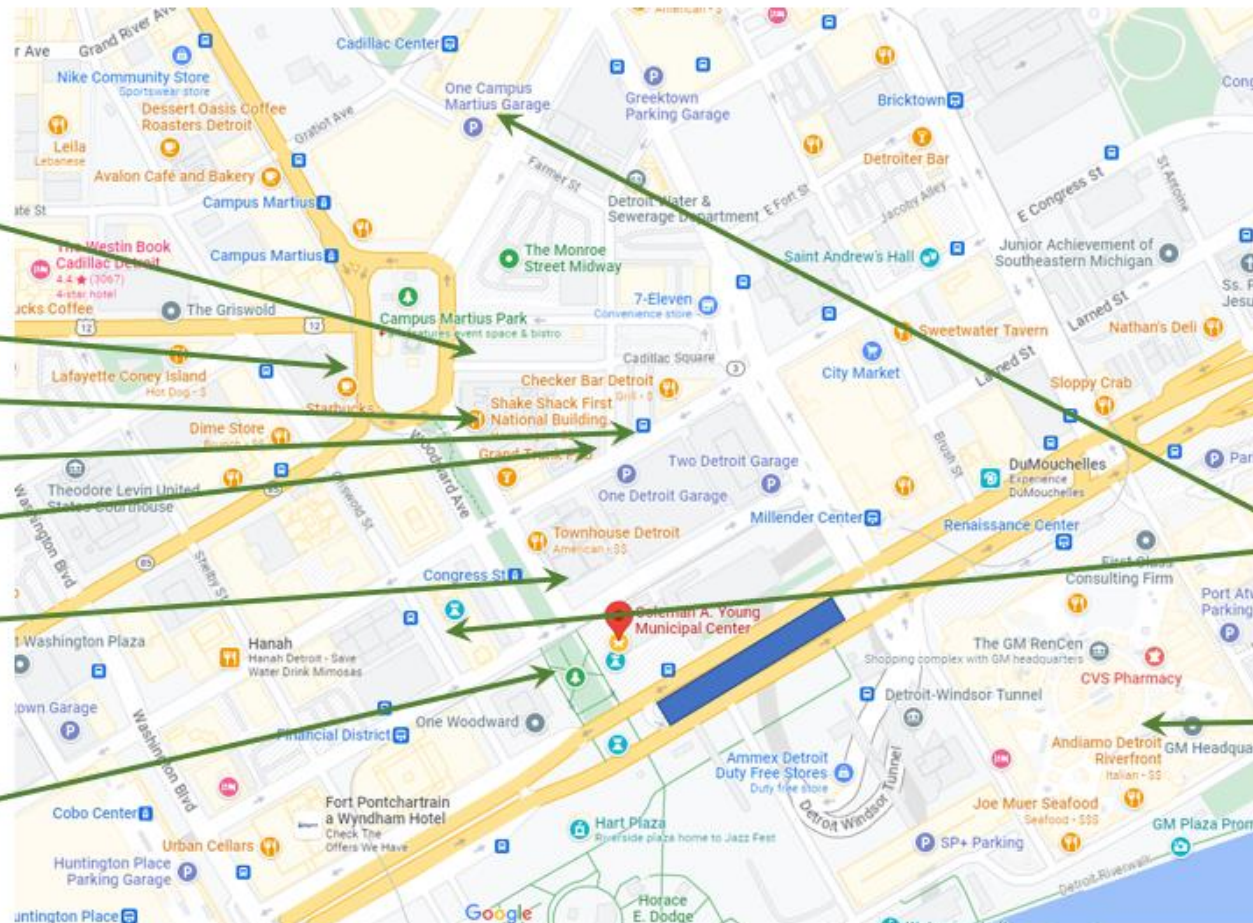
Shake Shack

Lunchtime Global

Subway

Plum Market in Ally Bank Building

Food Trucks in Spirit Plaza



Jimmy John's

Panera (in Ren Cen)

Also see the printouts for additional lunch options

You are welcome to bring your lunch back to eat in the atrium

Plan for training to start again at 1:30pm



Section 106 Review

Tiffany Ciavattone

Principal Preservation Specialist



National Historic Preservation Act

- National Historic Preservation Act (NHPA) mandates that Federal agencies undergo a review process for any Federally-funded or permitted projects which might impact important historic or cultural resources
- NHPA Established: State Historic Preservation Officers (SHPOs)
 - ❖ Advisory Council on Historic Preservation (ACHP)
 - ❖ Tribal Historic Preservation Officers (THPOs)
 - ❖ National Register of Historic Places (NRHP)
 - ❖ Historic Preservation Fund



Section 106 of NHPA

- ▶ Section 106 requires federal agencies to consider the effects of an undertaking on historic properties
 - ▶ Includes properties eligible for or listed in the National Register of Historic Places
- ▶ Federal agencies are directed to withhold grants, licenses, approvals, or other assistance to applicants who intentionally, significantly, and adversely affect historic properties
- ▶ Section 106 is an ongoing consultation process, not a one-time event, and is not one-size-fits-all



Section 106 Review

- 36 CFR Part 800, as amended, outlines the purpose and procedures for conducting Section 106 Review
- 106 requires you to:
 - Identify historic properties
 - Assess potential for impacts to historic sites, including archaeological sites
 - Determine the effect that project will have on historic properties
 - Avoid, minimize, or mitigate any potential adverse effects
- For projects awarded through HRD, this process begins with a City of Detroit Section 106 Application
 - Specifics of the application will be discussed in the afternoon session




Section 106 and Historic Tax Credits

- ▶ Historic Tax Credits (HTC) are reviewed and approved through the SHPO
- ▶ For projects seeking credits, copies of HTC certifications will become a NEPA continuing compliance commitment
- ▶ HTC approval is not required for Section 106, but can affect the scope of work and final design and should be captured in the ERR



Section 106 Vs Historic District Commission

- Detroit's Historic District Commission (HDC) is a separate application and approval process, under a local ordinance, with strict design requirements specific to each individual local district
- HDC approval is not required for Section 106, but can affect a projects scope of work and final design
- HDC applications should be coordinated early so the final approved scope of work is properly captured in the ERR
- HDC application:
https://detroitmi.gov/sites/detroitmi.localhost/files/forms/2021-07/01_HDC%20Project%20Review%20Request.pdf
- Some projects can receive expedited approval by HDC staff, but most development projects will require a review by the full commission during a regular monthly meeting.



Detroit's Programmatic Agreement (PA)

- PA delegates some of the Section 106 review responsibilities normally reserved for the SHPO to HRD's staff Preservation Specialist (PS)
- The agreement defines the Section 106 compliance process for HUD-funded projects to ensure regulatory compliance is met
- It covers all projects where the City is the Responsible Entity (RE)
- Provides agreed upon terms and conditions in order to resolve potential adverse effects for complex undertakings
- It shortens review timelines, especially for our single-family home repair programs (5-14 days internally vs 30 days each time SHPO is consulted)
- [Detroit's Programmatic Agreement](#)



2022-2027 PA Restatement & Renewal

- Expansion to the archaeology stipulations including expanded areas of sensitivity which trigger archaeology review
- Study plans for sites in sensitive areas and sites larger than 2 acres will be sent to SHPO and THPO's for comment prior to fieldwork
 - Sites less than 2 acres outside of sensitive zones will consult with SHPO & THPO's regarding results of field investigations
- Creation of an unanticipated discoveries plan template to be used for all projects
- Tribal Consultation policies and procedures were developed through continued consultation



Tribal Consultation

- This is government to government consultation which will be initiated by HRD according to our Tribal Consultation Policies and Procedures
- Consultation runs concurrent with any required SHPO consultation
 - 30 days
- PS will coordinate comments from identified Tribes and maintain the record of correspondence
- HRD as the RE will upload Tribal Consultation documentation into HEROS
- Objections to project proposals may lead to mitigation measures to meet concerns of Tribes in order to satisfy applicable laws and regulations



Archaeology

- Most project with ground disturbance will require some level of archaeological assessment
 - Desktop analysis
 - Phase I identification
 - Phase II assessment
 - Phase III data recovery/mitigation
- This assessment must be complete by a 36 CFR Part 61 qualified professional
- Archaeology requirements for each project vary, and project specific requirements will be outlined during the environmental kick off meeting once a project has received an award



SHPO Slides

