



## **Environmental Review Policy & Procedures**

### **Introduction**

The purpose of the environmental review process is to analyze the effect a CDBG-funded project may have on the individuals in, and the natural environmental features of, a project area. Through the environmental review (ER) process, the City of Appleton maintains compliance with 24CFR Part 58, HUD regulations implementing the National Environmental Policy Act of 1969 (NEPA), as well as other related federal authorities.

### **Legal Responsibilities**

#### ***The Responsible Entity***

Under 24CFR Part 58, the term “responsible entity” (RE) means the grantee under the federal CDBG Program. Therefore, these terms are used interchangeably with the City of Appleton. The RE must be the entity completing the environmental review process.

Environmental review responsibilities have both legal and financial ramifications. As part of the assurances and agreements signed by the RE, the Chief Executive Officer (CEO) of the RE agrees to assume the role of “responsible federal official” under the provisions of the National Environmental Policy Act (NEPA). The City of Appleton’s CEO is the current Mayor of the City of Appleton. The CEO is responsible for authorizing all Notice of Intent/Request for the Release of Funds, required under Categorically Exempt but Subject to 58.5 findings, Environmental Assessments, and Environmental Impact Statements.

#### ***Environmental Certifying Officer***

Under Part 58, the local chief elected or appointed official must assume the role of the Environmental Certifying Officer (ECO) or formally designate another person to do so. The City of Appleton’s Economic and Community Development Director was designated as the CO in 2012 and authorizes all environmental reviews.

The ECO accepts full responsibility for the completeness and accuracy of the review and compliance with applicable laws and regulations. The ECO does not need to be a technical expert, but should be credible if it becomes necessary to defend whether or not the required procedures were followed and completed. The ECO is not the individual who actually conducts the review and completes the applicable documentation in the ERR.

#### ***Environmental Review Coordinator***

It is the responsibility of the CDBG Environmental Review Coordinator (ERC) to perform the environmental reviews. It is also the responsibility of the ERC to pose/publish public notices associated with projects and complete the necessary documentation and submit them to HUD for approval. The City of Appleton’s Community Development Specialist serves as the ERC.

### **Environmental Review Record (ERR)**

The City of Appleton must prepare and maintain a written record of the environmental review undertaken for each project. This written record or file is called the Environmental Review Record (ERR), and it must be available for public review.

The ERR shall contain all the environmental review documents, public notices, and written determinations or environmental findings required by 24CFR Part 58 as evidence of review, decision making, and actions pertaining to a particular project. The document shall:

- ✓ Describe the project and each of the related activities comprising the project, regardless of individual activity funding source;
- ✓ Evaluate the effects of the project or the activities on human environment;
- ✓ Document compliance with applicable statutes and authorities; and
- ✓ Record the written determinations and other review findings required by 24CFR Part 58.

The ERR will vary in length and content depending upon the level of review required for the categories of proposed activities.

### **Actions Triggering Environmental Review & Limitations Pending Clearance**

All HUD-assisted activities must have some level of environmental compliance review completed for them.

According to the NEPA and Part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and, if required, the City of Appleton receives a release of funds notice from HUD. This means that subrecipients may not spend either public or private funds, or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until environmental clearance has been achieved.

### **Classifying Activities & Conducting the Review**

To begin the environmental review process, the RE must first determine the environmental classification of each activity in the project.

- ✓ Exempt activities;
- ✓ Categorically excluded not subject to Part 58.5;
- ✓ Categorically excluded subject to Part 58.5;
- ✓ Environmental Assessment (EA); or
- ✓ Environmental Impact Statement (EIS)

The environmental regulations at 24CFR Part 58.32 require the RE entity to "...group together and evaluate as a single project all individual activities which are related geographically or functionally," whether or not HUD-assistance will be used to fund all of the project activities or just some of the project activities. The level of environmental review will be dictated by whichever project activity requiring the higher level of review.

### **Exempt Activities**

Certain activities are, by their nature, highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. List below are examples which may be considered exempt from environmental review. For complete details, refer to the ER regulations at 24CFR Part 58.34(a)(1) through (12).

- ✓ Environmental and other studies;
- ✓ Information and financial services;
- ✓ Administrative and management activities;
- ✓ Engineering and design costs;

- ✓ Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters, or imminent threats to public safety, or those resulting from physical deterioration;
- ✓ Public service activities that will not have a physical impact or result in any physical changes;
- ✓ Inspections and testing of properties for hazards or defects;
- ✓ Purchase of tools or insurance;
- ✓ Technical assistance or training;
- ✓ Payment of principal and interest on loans made or guaranteed by HUD; and
- ✓ Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are not circumstances which require compliance with any other federal laws and authorities listed at Part 58.5 of the regulations.

If a project is determined to be exempt, the RE is required to document in writing that the project is exempt and meets the conditions for exemption. The RE must complete the HUD form titled *Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5*. These activities do not require completion of a Request for the Release of Funds (RROF) and subsequent HUD approval.

#### **Categorically Excluded Not Subject to Part 58.5 Activities**

The following activities, listed at 24CFR Part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to Section 58.5 compliance determinations.

- ✓ Tenant-based rental assistance;
- ✓ Supportive services including but not limited to: health care, housing services, permanent housing placement, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government services;
- ✓ Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- ✓ 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;
- ✓ Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- ✓ Affordable housing predevelopment costs with NO physical impact such as 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.

To complete environmental requirements for Categorically Excluded projects Not Subject to 24CFR Part 58.5, the responsible entity must make a finding of Categorical Exclusion Not Subject to 58.5 for activities that qualify under that category and put in the ERR. The RE must also carry out any applicable requirements of 24CFR part 58.6 and document the ERR. The project may proceed without public notice or Request for the Release of Funds (RROF) and subsequently HUD approval.

#### **Categorically Excluded Subject to Part 58.5 Activities**

The list of categorically excluded activities are found at 24CFR Part 58.35 of the environmental regulations. While the activities listed in 58.35(a) are categorically excluded from the NEPA requirements, the City of Appleton must nevertheless demonstrate compliance with the laws, authorities, and executive orders listed in 58.5.

- ✓ 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;
- ✓ Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons;
- ✓ Rehabilitation of buildings and improvements when the following conditions are met:
  - For residential properties with one to four units:
    - The density is not increased beyond four units, and
    - The land use is not changed
  - For multi-family residential buildings (with more than four units):
    - Unit density is not changed more than 20 percent;
    - The project does not involve changes in land use from residential to non-residential; and
    - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation
  - For non-residential structures including commercial, industrial, and public buildings:
    - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
    - The activity does not involve a change in land use from commercial to industrial, non-residential to residential, or from one industrial use to another
- ✓ An individual action on up to four-family dwelling 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;
- ✓ 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;
- ✓ 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;
- ✓ Combinations of the above activities

To complete environmental requirements for Categorically Excluded projects Subject To 24CFR Part 58.5, the RE must take the following steps:

- 1) Determine whether or not the project is located in or will have an impact on floodplains and/or wetlands.
  - ✓ It is highly desirable to avoid floodplains and wetlands when undertaking project activities. When this cannot be avoided, specific review procedures contained in 24CFR Part 55 must be completed.
  - ✓ If the project is located in the floodplain or proposes construction in a wetland, the RE must provide written documentation of the decision process in the ERR.
- 2) Complete the Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5.
- 3) For those projects that cannot convert to exempt, publish and distribute the Notice of Intent to Request a Release of Funds (NOI/RROF). The Notice informs the public that the City of Appleton will accept written comments on the findings of its ERR and of the City's intention to request release of funds from HUD. At least seven calendar days after the date of publication must be allowed for public comment.
- 4) The NOI/RROF must be published in a newspaper of general circulation or must be posted in prominent public locations.

- 5) The City of Appleton must also send a copy of the notice to interested parties
- 6) After the seven-day comment period has elapsed, the RE must prepare and submit the actual RROF, along with verification of the notice to HUD. HUD observes a 15-day public comment period, following that HUD approves the RROF for the project or activities.

Until an Authorization to Use Grant Funds (AUGF) is received by the City of Appleton, no portion of the project shall begin.

### ***Projects in Floodplains and Wetlands (24CFR Part 55)***

There are two decision-making processes identified in Part 55 concerning floodplains. They are the 8-step process (sec.55.20) and the 5-step process (sec. 55.129a)(3)). The 8-step process will apply unless a project falls under the allowed criteria for using the 5-step decision-making process, which are:

- Disposition of multifamily and single family (1-4 unit) properties [Sec. 55.12(a)(1)]
- Repair, rehabilitation, modernization, weatherization, or improvement of existing residential properties (multifamily, single family, assisted living, etc.) [Sec. 55.12(a)(3)]
  - Number of units is not increased more than 20 percent;
  - Does not involve conversion from non-residential to residential; and
  - Does not meet definition of “substantial improvement” [Sec. 55.2(b)(10)(i)(A)(2)]
- Repair, rehabilitation, modernization, weatherization, or improvement of nonresidential properties [Sec. 55.12(a)(4)]
  - Does not meet the threshold of “substantial improvement”
  - The structure footprint and paved area is not increased more than 10 percent
- Repair, rehabilitation, modernization, weatherization, or improvement of a structure listed on the National Register of Historic Places or on the State of Wisconsin inventory of Historic Places.

The City of Appleton must document, in writing, which process is applicable and each step of the applicable process.

### **Circumstances Requiring NEPA Review**

If the City of Appleton determines that an activity or project identified under the above sections about categorical exclusions (both subject to and not subject to Part 58.5) 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 24CFR Part 58.35(c).

The City of Appleton is responsible for determining that a given activity qualifies under the definitions for exclusion and/or expedited procedures. 24CFR Part 58.2(a)(3) states an activities clearance level may be elevated if it exhibits extraordinary circumstances that affects its impact on the environment.

Such circumstances are defined as actions that are unique and without precedent; are substantially similar to those which would require an Environmental Assessment (EA) or Environmental Impact Statement (EIS); are unlikely to alter HUD policy or HUD mandates; or due to unusual physical conditions on the site or in the vicinity, have a potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

The ERR must contain a well-organized written record of the process and determinations made per 24CFR 58.38.

### **Environmental Assessment Activities**

Activities which are neither exempt nor categorically excluded (under either category) will require an Environmental Assessment (EA) documenting compliance with NEPA and with the environmental requirements of other federal laws.

The City of Appleton must take the following steps to complete environmental requirements for projects requiring an EA:

- 1) Follow the instructions for Categorically Excluded projects Subject to 24CFR 58.5 to complete the statutory checklist, including historic preservation and floodplain requirements
  - ✓ The floodplain requirements do not apply if the project is not located within a floodplain
- 2) Complete the Environmental Assessment form. The RE must ensure that reliable documentation sources are cited for every item on the checklist
- 3) Make a determination as to whether the project will or will not have a significant impact on the environment. The RE must select one of the following two findings/determinations:
  - ✓ The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an environmental impact statement (EIS); or
  - ✓ The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an environmental impact statement (EIS)

#### ***No Environmental Impact Statement (EIS) Required***

In most instances, the EA will result in a finding that the project is not an action that significantly affects the quality of the human environment and, therefore, does not require an EIS. If this is the case, the City of Appleton must complete the following:

- ✓ Provide public notice, “Finding of No Significant Impact” (FONSI) and Notice of Intent for the Request of Release of Funds (NOI/RROF)
  - The FONSI and NOI/RROF must be published in a newspaper of general circulation or posted within the community and the 15-day public comment period for both the FONSI and the NOI/RROF run in conjunction with one another
  - Any written comments received in response to these notices must be addressed and filed in the ERR.
  - The environmental certification, a copy of the NOI, FONSI, and RROF must be submitted to HUD at least 16 days after publishing/posting the combined/concurrent notices.
- ✓ The FONSI requires two separate 15-day review periods. A 15-day period for comment to the city/county and, after that period, a 15-day comment period commences when HUD receives the RROF notice.

#### ***Environmental Impact Statement (EIS)***

An Environmental Impact Statement is required when a project is determined to have a potentially significant impact on the environment. Contact HUD if an EIS is anticipated.

#### **Re-Evaluation of Previously Cleared Projects**

Sometimes, projects are revised, delayed, or otherwise changed such that a re-evaluation of the ER is necessary. The purpose of the RE’s re-evaluation is to determine if the original findings are still valid. If the original findings are still valid, but data and conditions upon which they were based have changed, the RE must amend the original findings and update their ERR by including this re-evaluation. The new determination must document:

- ✓ Reference to the previous ERR;
- ✓ Description of both old and new project activities;

- ✓ Determination of FONSI, if still valid;
- ✓ Signature of CO and date

If the RE determines that the original findings are no longer valid, it must prepare an EA or an EIS if the evaluation indicates potentially significant impacts.

**Requests to Act as Responsible Entity (RE) for Non-Profit Agencies**

Some non-profit agencies, specifically the Appleton Housing Authority, are direct grant recipients of HUD funding. Such agencies often request the City of Appleton to act as the RE for the purposes of performing environmental reviews.

In such cases, the Housing Authority (or other non-profit agency), should provide the City of Appleton with a formal request and full project information, including the following:

- ✓ Project location;
- ✓ Description of existing site or building conditions;
- ✓ Detailed description of proposed project (aggregate);
- ✓ Budget (sources & uses of funds);
- ✓ HUD funding source and grant number;

Although not required, a Memorandum of Understanding (MOU) is suggested when the City of Appleton serves as the responsible entity for another agency. This MOU will detail the understanding and expectation of both parties involved throughout the environmental review process.