

SECTION 6 – ENVIRONMENTAL REVIEW REQUIREMENTS

TABLE OF CONTENTS	PAGE
Introduction	6-1
Allowable Costs	6-2
Assumption of Authority/Responsible Entity	6-2
Environmental Reviews Prepared By/For Other Agencies	6-2
The Environmental Review Process: A Step-by-Step Guide	6-3
Step 1: Designate an Environmental Review Officer	6-3
Step 2: Set-Up an Environmental Review Record	6-3
Step 3: Complete the SEPA Review	6-4
Step 4: Complete the NEPA Review	6-4
NEPA Resources	6-5
Exempt (24 CFR 58.34)	6-6
Categorically Excluded (24 CFR 58.35(a) and (b))	6-6
• Categorically Excluded – NOT Subject to 58.5	6-6
• Categorically Excluded – Subject To 58.5	6-7
• Categorically Excluded – Subject to 58.5 With NO Laws Impacted	6-7
• Categorically Excluded - Subject to 58.5 With Laws Impacted	6-7
Environmental Assessment (24 CFR 58.36)	6-9
Environmental Impact Statement (EIS)	6-11
Step 5: Environmental Review Compliance Monitoring	6-11
Level 1: Release of Funds Monitoring	6-11
Level 2: Monitoring	6-11
Conducting a Tiered Review (24 CFR 58.15)	6-12
Guidance for Historical Preservation/Section 106 (36 CFR Part 800)	6-12
Re-Evaluation of Environmental Assessment and Other Environmental Findings	6-14
Objections to Environmental Review Determinations	6-15
Procedures for Submitting Objections	6-15
Department of Commerce Actions	6-15
NEPA Environmental Review Process Table	6-16
List of Reference Materials	6-18

INTRODUCTION

Before a grantee can commit funds to a project financed completely or in part with CDBG funds, including advertising for construction bids, the grantee must review the effects the project may have on the environment.

The purpose of the environmental review is to identify any significantly detrimental results, whether there are alternatives that would eliminate them or whether mitigating actions can be taken. If after thorough study, the effects are found to be unavoidable, the grantee must weigh the costs to the environment against the public benefits gained by the project.

CDBG environmental review requires examination of a project relative to the:

- **State Environmental Policy Act (SEPA)** (described under Step 3 on the following pages).
- **National Environmental Policy Act (NEPA)** (24 CFR Part 58) and HUD-specific environmental regulations (described under Step 4 on the following pages).

The following three basic actions ensure a properly completed environmental review:

- **Project Aggregation:** Evaluate the entire project scope, including other funding sources being used in the project. The entire project area must be reviewed, regardless of what resources (CDBG or non-CDBG) are funding the project.
- **Level of review:** Determine the level of review appropriate for the project and follow the appropriate procedures and documentation requirements.
- **Documentation:** Create the Environmental Review Record (ERR) and fully document the review. The above actions determine the appropriate ERR documentation.

When the grantee determines that SEPA and NEPA requirements have been satisfied, the grantee documents its decision and follows the required procedure to receive environmental clearance from Commerce and proceed with the release of funds.

The environmental review process and release of fund procedures are discussed in more detail later in this Section. Templates, links to referenced documents and other resources are provided throughout this Section and in Attachments 6-C through 6-W.

Funding Sources in Addition to CDBG:

Projects that include other funding sources are also subject to 24 CFR 58.22 which states:

“(a) Neither a recipient nor any participant in the development process, including public or private nonprofit 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 the state has approved the recipient’s Request for Release of Funds (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 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*.”

The complete CFR is available in Attachment 6-R.

The law set forth in 58.22 becomes applicable to a CDBG grant activity or project on the date the CDBG Program receives the grant application. Acquisition, ground disturbance and

advertising for construction bids, cannot occur prior to completion of CDBG environmental review.



As grantees move forward with projects, be aware that going to bid prior to completion of the CDBG environmental review could jeopardize grant funds.

ALLOWABLE COSTS

Costs may be incurred for the following activities prior to completing the environmental review, as outlined in the award letter.

- Administrative activities
- Preliminary environmental studies
- Preliminary engineering feasibility studies that are needed in order to complete the environmental review
- Professional service contracts for any of the above activities

For Planning-Only grants costs may be incurred **only** **after** the grant contract is fully

ASSUMPTION OF AUTHORITY/RESPONSIBLE ENTITY

The CDBG environmental review regulations require grantees to assume the responsibility for meeting the requirements and complying with environmental laws. The grantee is the Responsible Entity (RE) and assumes the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of Federal law (24 CFR Part 58).

ENVIRONMENTAL REVIEWS PREPARED BY/FOR OTHER AGENCIES

Grantees may use environmental reviews by or for other state and federal funding partners provided the environmental review record and associated public notifications meet or exceed CDBG requirements. It is the responsibility of the grantee to ensure that the environmental review is complete and incorporated into the environmental record and referenced in the appropriate checklists.

There are additional environmental laws and authorities that may not be required in other funder's environmental review requirements, but are required to fully comply with CDBG/HUD Regulations at 24 CFR 58.5. These laws and authorities must be considered when completing an environmental report for other federal funders if CDBG is also funding the project and the report will be used to satisfy CDBG's regulations.

Coordinate early with funding partners when an environmental review needs to satisfy requirements for multiple agencies.

They include:

1. Noise Abatement and Control (24 CFR 51B)
2. Explosive and Flammable Operations (24 CFR 51C)
3. Toxics Chemicals and Radioactive Materials [24 CFR 58.5(i)(2)]
4. Airport Clear Zones and Accident Potential Zones (24 CFR 51D)

Publication requirements may vary between agencies and require "republishing" of the Notice to the Public of Finding of No Significant Impact, Notice of Intent to Request Release of Funds, or the Concurrent Notice. This can affect project timing. For example, the USDA-RD

Environmental Report has a publication process that is different from the CDBG publication process. CDBG does accept the USDA-RD NEPA Environmental Report, but the CDBG documentation and publication requirements must still be met. Contact your CDBG Project Manager for guidance.

THE ENVIRONMENTAL REVIEW PROCESS -- A STEP-BY-STEP GUIDE

STEP 1: Designate the Environmental Review Preparer and Chief Administrative Officer

The Environmental Review Preparer may be city, town or county staff, an elected official or may be a consultant under contract with the grantee. If the grantee does not have such an officer it must appoint one. The Preparer is responsible for conducting the environmental review process, establishing an Environmental Review Record, and responding to concerns regarding the project's assessed effects on the environment. The Environmental Review Preparer presents the results of the review process to the Chief Administrative Officer (CAO) for final signature and certification.

The CAO is typically an elected official of the grantee such as the Mayor or Chair of the Board of County Commissioners. An individual other than the CAO can sign and certify the environmental record if they have the authority to consent on behalf of the CAO to federal court jurisdiction and bind the grantee to satisfy any judgment about the environmental record. If the authority is delegated to someone other than the CAO, a delegation letter must be included as part of the environmental review documentation sent to Commerce.

Official correspondence required to complete a formal consultation process, such as those required for consultation under Section 106 of the National Historic Preservation Act, should originate from the CAO or delegated official.

STEP 2: Set-Up an Environmental Review Record (24 CFR 58.38)

The Grantee, as the Responsible Entity, must maintain a written record of the environmental review for the project. This document will be designated the "Environmental Review Record" (ERR) and must be available for public review. The Responsible Entity must use the current HUD-recommended formats or develop equivalent formats.

The ERR contains all the environmental review documents, public notices and written determinations or environmental findings required as evidence of review, decision making and actions pertaining to a particular project of a grantee. The record should include:

- Description of the project and activities determined to be part of the project.
- Evaluation of the effects of the project or the activities on the human environment.
- Documentation of compliance with applicable statutes and authorities, in particular those cited in Sec. 58.5 and 58.6.
- Documentation/certification of the written determinations and other review findings (e.g., Exempt and Categorically Excluded projects determinations, Findings of No Significant Impact (FONSI)).
- Verifiable source documents and relevant data used or cited in project review documents.

- Public comment notices, Request for Release of Funds, Commerce’s Release of Funds notification, as applicable.

Note: Source 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 is not otherwise generally available for public review cannot be incorporated by reference, but must be included in the ERR.

STEP 3: Complete the SEPA Review

Determine if the project is Categorically Exempt under SEPA WAC 197.11.800. If the project is Categorically Exempt, complete the Finding of Categorical Exemption (SEPA) form for the ERR (resources provided below) and proceed with the NEPA review.

If the proposal is not categorically exempt, a SEPA Environmental Checklist must be completed. In addition, either a Determination of Nonsignificance or a Determination of Significance must be completed. If a Determination of Significance is made, an Environmental Impact Statement (EIS) is required. For EIS guidance contact the CDBG project manager or see page 6-10.

SEPA RESOURCES	
<ul style="list-style-type: none"> • SEPA Homepage • SEPA Form Templates • SEPA Finding of Categorical Exemption (Attachment 6-H) Note: The NEPA Determination of Exemption (Att. 6-G), if used, includes a SEPA certification and does not require Att. 6-H. 	<ul style="list-style-type: none"> • SEPA WAC 197.11.800 – Categorical exemptions • SEPA WAC 197.11.880 – Emergencies • SEPA WAC 197-11-610 - Use of NEPA documents

STEP 4: Complete the NEPA Review

The basic building block of an environmental review begins with an accurate description of all the activities proposed to be undertaken as part of the CDBG-assisted project, as well as a well-defined area of potential effect. All elements of the project must be considered during the environmental review process, even if the elements will occur over a long period or are funded from different sources.

Next, determine what level of environmental review is appropriate for the project -- to comply with requirements and correctly complete necessary documentation. Requirements for each level are described in detail in the following pages. A high-level flowchart is available in Attachment 6-A.

Levels of review include:

- Exempt (24 CFR 58.34) - Activities described in Attachment 6-C

- Categorically Excluded (24 CFR 58.35) -- Activities described in Attachment 6-D
 - Categorically Excluded - Not Subject to 58.5 (24 CFR 58.35[b])
 - Categorically Excluded – Subject to 58.5 (24 CFR 58.35[a])
- Environmental Assessment (24 CFR 58.36)

NOTE – Activities that are Categorically Excluded - Subject to 24 CFR 58.5, or that require an Environmental Assessment, are subject to 14 additional laws and authorities.

The laws and authorities listed below can take additional time to complete.

- **Endangered species** -- A listed species requires compliance with the Endangered Species Act (ESA) and may require consultation.
- **Historical or cultural resources** -- Sites, buildings and objects with national, state or local historic or cultural significance require compliance with Section 106 of the National Historic Preservation Act requiring consultation with the Department of Archeology and Historic Preservation and interested tribes
- **Floodplains/wetlands** – Activities located in designated floodplains (100 or 500 year) or wetlands require compliance with Executive Order 11988 & 11990. Additional steps and public notices must be conducted to ensure the project will not have unacceptable adverse impacts. See Attachment 6-Q.

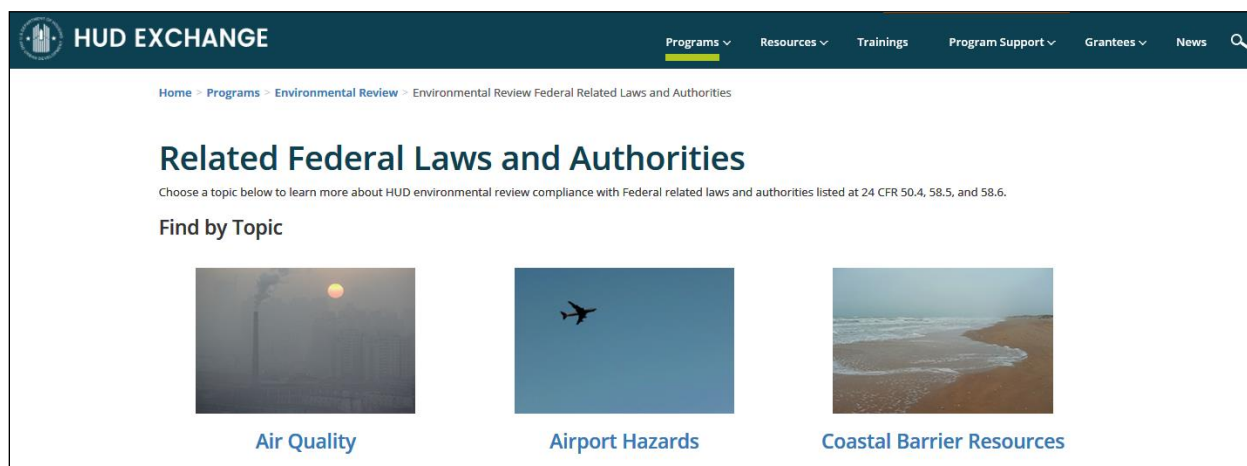
Note: Projects in a designated floodway are not eligible for CDBG funding. For guidance, contact the CDBG Project Manager.

NEPA RESOURCES

CDBG recommends grantees use the checklists, tools and contact information available at HUD's websites to determine compliance and complete their environmental review.

HUD's **Related Federal Laws and Authorities** found at:

<https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>



Use the following Region X website for Washington State specific guidance:


<https://www.hud.gov/states/shared/working/r10/environment/>

Additional resources are also available in:

- Attachment 6-M -- contains additional environmental resources and contact information.
- Attachment 6-O -- summarizes procedures and requirements of applicable federal laws and authorities. This table can be used to determine which requirements apply to the project, which actions need to be taken, and which agencies are involved in the regulated activities.

EXEMPT (24 CFR 58.34)

If the project is determined to be exempt according to the list of exempt activities (Attachment 6-C), complete a Determination of Exemption and Determination of Categorical Exclusion - Not Subject to 58.5 form (Attachment 6-G). Place form in the ERR and forward copies of form, delegation letter and SEPA documentation, as applicable, to Commerce. The environmental review process will be considered finished and the grantee may begin to draw CDBG funds for eligible costs associated with the project.

The non-construction activities below are often determined
 exempt under NEPA.

- Planning-Only (24 CFR 58.34 (a)(1))
- Public Service Grants (24 CFR 58.34 (a)(4))

NOTE: The environment review for Public Service Grants is submitted with the grant application.

The NEPA Determination of Exemption and Categorical Excluded - Not Subject to 58.5 (Att. 6-G) includes a SEPA certification and does not require Attachment 6-H.

Some planning activities may include elements that would not be exempt. For example ground disturbance (defined as more than one cubic foot of disturbed soil) would require further review under Section 106 of the Historic Preservation Act (see page 6-12). If not determined exempt, contact your CDBG Project Manager to determine additional steps.

CATEGORICALLY EXCLUDED (24 CFR 58.35(a) and (b))

Some projects may be Categorical Excluded under NEPA per 24 CFR 58.35(a) and (b). These activities are detailed in Attachment 6-D and are categorically excluded from the NEPA environmental requirements. Activities should be checked carefully to verify they meet all the conditions of exclusion. If the activity you wish to undertake is **not** listed in Attachment 6-D (24 CFR 58.35 (a) and (b)), proceed to the Environmental Assessment on page 6-9.

- **Categorically Excluded - NOT Subject to 58.5 (24 CFR 58.35(b))**

The activities listed at 24 CFR 58.35(b) would typically not alter any conditions that would require a review or compliance determination under the federal laws and authorities cited in Section 58.5. When 58.35(b) activities are undertaken, the Responsible Entity (RE) does not have to publish a Notice of Intent to Request Release of Funds or execute a Certification. Nor does the RE have to submit a Request for Release of Funds to Commerce unless, according to 58.35(c), an activity, because of extraordinary circumstances, may have a significant environmental effect, in which case a full NEPA review would be required.

Steps for completing and documenting the review:

- If the activities are determined to be Categorically Excluded – Not Subject to 58.5, complete the Determination of Exemption and Categorically Excluded - Not Subject to 58.5 form (Attachments 6-G). Place form in the ERR and forward copies of form, delegation letter and SEPA documentation, as applicable, to Commerce.

The environmental review process will be considered finished and the grantee may begin to draw CDBG funds for eligible costs associated with the project.

- **Categorically Excluded – Subject to 58.5 (24 CFR 58.35(a))**

Activities listed under 24 CFR 58.35(a) are subject to the regulatory considerations and compliances outlined in 24 CFR 58.5. There are 14 laws and authorities listed in the Statutory Worksheet (Attachment 6-E) that will require evaluation for issues and impacts to determine the need for coordination, consultation, permits and approvals required by agencies in order to comply with regulated activities.

The grantee must seek comments from those agencies involved in the regulated activities by sending a letter and copy of the completed Statutory Worksheet to those agencies, for example:

- Department of Health for projects related to drinking water;
- Department of Ecology, SEPA Unit, for projects related to wastewater;
- DAHP and Tribes with a historic interest in the project site for Section 106 consultation.

Agencies may also include:

- Federal Emergency Management Agency;
- U.S. Department of Interior/Fish and Wildlife Services; and
- National Marine Fisheries Service.

We recommend grantees use the NEPA resources described on page 6-5 to determine compliance and complete their environmental review.

Steps for completing and documenting the review:

- **Categorically Excluded - Subject to 58.5 with NO Laws Impacted (24 CFR 58.35[a])**

If after careful review, there are no circumstances which require any mitigation or compliance with other Federal laws and authorities cited in 24 CFR 58.5, nor require any formal permit or licenses, the project may convert to Exempt per 24 CFR 58.34(a)(12).

Complete the Determination of Categorical Exclusion - Subject to 58.5 form (Attachment 6-E) and place all original supporting documents in the ERR. Forward copies of this Determination, the delegation letter, if applicable, the supporting documentation for compliance with Section 106 of the National Historic Preservation Act and Floodplain Management/Wetlands Protection, and SEPA documentation to Commerce. The environmental review process is considered finished and the grantee may begin to draw CDBG funds for eligible costs associated with the project.

A quick reference for submission requirements is also outlined in the NEPA Environmental Review Process Table (page 6-16) under *Categorically Excluded activities, NO 58.5 Laws Impacted*.

➤ **Categorically Excluded - Subject to 58.5 WITH Laws Impacted (24 CFR 58.35(a))**

If completion of the HUD environmental review checklists and Statutory Worksheet identifies one or more statutes/authorities that require consultation or mitigation under procedures of the appropriate government agencies with jurisdictional responsibility, the project CANNOT convert to exempt.

Complete the required compliance actions (coordination, permitting or consultation) and the Determination of Categorical Exclusion - Subject to 58.5 (Attachment 6-E) and place all supporting documents in the ERR.

The grantee may now begin the release of funds process. First, the grantee must publish a "Notice to the Public of Intent to Request Release of Funds" (Attachment 6-K), in a local newspaper of general circulation. The grantee must wait 7 days after the notice is published to allow for comments. On the day after the 7-day local comment period, the grantee may request Commerce release funds for the project.

To request release of funds, the grantees must submit:

- Copy of the Determination of Categorical Exclusion (Subject to 58.5) (Attachment 6-E).
- Copy of the Notice of Intent to Request the Release of Funds (Attachment 6-K), and the Affidavit of Publication OR a copy of the actual published notice from the newspaper.
- Request for Release of Funds and Certification (Attachment 6-L) with original signature.
- Copies of Section 106 review forms (EZ forms) sent to the DAHP and their response letter(s), as well as evidence of tribal consultation.
- 8-Step Floodplain & Wetlands Decision Making Process and notices, if applicable (Attachment 6-Q (1-7)).
- SEPA documentation

YES, 58.5 Laws Impacted	
Project cannot convert to exempt due to required mitigation/consultation as determined by the "Other Requirements Checklist and Statutory Worksheet (Att. 6-E (2-6)). Contact agencies involved in the regulated activities to complete consultation/ mitigation requirements and obtain clearance.	
1.	Grantee documents determination in ERR.
2.	Grantee publishes "Notice of Intent to Request Release of Funds" (Att. 6-K) in local newspaper and waits 7 calendar days for comments.
3.	Grantee submits to Commerce: <ul style="list-style-type: none"> • Request for Release of Funds and Certification (Att. 6-L) and Delegation Letter, if applicable. • Determination of Categorical Exclusion (Att. 6-E) and supporting documentation for Section 106, Floodplain Management/Wetland Protection. • Affidavit of publication OR a copy of the actual published notice, and Att. 6-K • SEPA documentation
4.	Upon receipt, Commerce conducts 15 days comment period. If no objections, Commerce notifies grantee of environmental clearance and releases of fund on 17 th day.

A quick reference of submission requirements is also outlined in the NEPA Environmental Review Process Table (page 6-16) under *Categorically Excluded activities, Subject to 58.5 WITH Laws Impacted (24 CFR 58.35(a))*.

When Commerce receives the Request for Release of Funds (RROF), there is a 15-day comment period beginning the day after receipt by Commerce. When the comment period is complete and if no objections were received, the grantee will be notified by letter that as of the 17th day, it may begin to draw funds to pay for eligible costs already incurred on the project. The 15-day review period is intended to permit public comment on the grantee's certification, particularly the areas of the review process and/or findings. If any such objections are found to be legitimate, Commerce will not proceed to release funds to the affected grantee until the objection(s) are resolved.

ENVIRONMENTAL ASSESSMENT (24 CFR 58.36)

Projects that are not exempt or categorically excluded under NEPA, but are classified under 24 CFR 58.36 require the completion of an Environmental Assessment (EA). The grantee must complete the EA (Attachment 6-F) and make a finding whether the project does or does not significantly impact the environment.

The EA consists of:

- Project information and a Finding (No Significant Impact or Significant Impact)
- Statutory Checklist (24 CFR 58.5)
- Environmental Assessment Checklist
- Summary of Findings and Conclusions

The assessment will require grantees to contact, seek comment or consult with those agencies involved in the regulated activities. The NEPA resources described on page 6-5 include procedures and requirements applicable to federal NEPA laws and authorities. Use these resources to determine which requirements apply to the project, which actions need to be taken, and which agencies are involved in the regulated activity.

The grantee must seek comments from those agencies involved in the regulated activities by sending a letter and copy of the completed EA to those agencies, such as:

- Department of Health for projects related to drinking water;
- Department of Ecology, SEPA Unit, for projects related to wastewater;
- DAHP and Tribes with a historic interest in the project site for Section 106 consultation (Further instructions follow on page 6-12).

Agencies may also include:

- Federal Emergency Management Agency;
- U.S. Department of Interior/Fish and Wildlife Services; and
- National Marine Fisheries Service.

Steps for completing and documenting the EA review:**➤ If the project Does Not Significantly Impact (FONSI) –**

If after careful consideration of the responses on the EA, the grantee finds there will be no significant environmental impacts or no anticipated adverse environmental effects caused as a result of the project, the grantee must:

- Complete a “Finding of No Significant Impact” (FONSI). The Finding document is included within the Environmental Assessment, Attachment 6-F;
- Publish the Concurrent Notice (Attachment 6-J) in a local newspaper of general circulation. The notice includes the FONSI and Notice to the Public of Intent to Request Release of Funds, and
- Place environmental review documents, public notices and written determinations or environmental findings in the ERR.

Grantees must wait a minimum of 15 days after the date of publication of the Concurrent Notice to allow notified agencies and the public to review and to comment on the project and its environmental impact. If any legitimate issues about the project are raised during this review period, the grantee must respond to them and document this in the ERR. Comments may make it necessary to revise the assessment or to complete an entirely new Environmental Assessment. In that case, the grantee must start over. If no issues are raised, the grantee may request Commerce release fund for the project.

On the day after the 15-day local comment period, the grantee should submit the following documents to Commerce:

- Copy of completed NEPA Environmental Assessment and Finding (Attachment 6-F).
- Affidavit of Publication of the Concurrent Notice OR a copy of the actual published notice from the newspaper, and a copy of the Concurrent Notice (Attachment 6-J).
- Original Request for Release of Funds and Certification (Attachment 6-L); and copy of the Delegation Letter, if applicable.
- 8-Step Floodplain/Wetlands Decision Making Process and published notices, if applicable (Attachment 6-Q).
- Copies of Section 106 review forms (EZ forms) sent to the DAHP and their response letter(s), as well as evidence of tribal consultation.
- SEPA documentation

When Commerce receives the request, there is a 15-day Commerce review period beginning the day after receipt by Commerce. When this review period is complete and if no objections were raised, the grantee will be notified of the release of funds. This 15-day review period is intended to permit public comment on the grantee’s review process, findings and certification. If any such objections are found to be legitimate, Commerce will not proceed to release funds until the objection(s) are resolved.

A quick reference of submission requirements is also outlined in the NEPA Environmental Review Process Table (page 6-17) under Environmental Assessment.

➤ **If the project Significantly Impacts --**

If the grantee finds that there may be some detrimental effect on the environment that cannot be avoided or mitigated; the grantee must make a formal “Finding of Significant Impact and Determination of Significance.”

ENVIRONMENTAL IMPACT STATEMENT (EIS)

If there is a Finding of Significant Impact under NEPA or a Determination of Significance under SEPA that cannot be avoided or mitigated, an Environmental Impact Statement (EIS) is required. An EIS is usually associated with large-scale developments.

Due to the complexity and high cost of an EIS and because an EIS is not often required in a CDBG project, Commerce prefers to approach an EIS on a case-by-case basis. If it appears that an EIS will be required on a particular project, the grantee is asked to contact Commerce for information. Please note that CDBG funds will not be permitted to pay for the preparation of an EIS.

Step 5: Environmental Review Compliance Monitoring

Each CDBG grantee will be monitored by CDBG project manager to determine if the SEPA and NEPA environmental review requirements have been met. In addition, the grantee will be monitored for compliance with the laws and authorities of 24 CFR Part 58.5 and Part 58.6. The monitoring will occur in two phases to ensure full coverage of requirements and conditions placed on environmental reviews.

Level 1: Release of funds monitoring will include review of requested documentation to ensure a complete packet has been submitted. Refer to the Environmental Review Process Table on pages 6-16 and 6-17 for a detailed list of submission requirements. Documentation will be reviewed to ensure:

- Materials include a clear project scope/description;
- Dates on checklists, publications and certifications align; and,
- Compliance determination on checklists is well documented for each law and authority.

Level 1 will include a review of documentation supporting determinations for Section 106 and Floodplain Management/Wetland Protection, as applicable.

Level 2: Monitoring will include review of the grantee’s Environmental Review Record to determine that the review process met standards of thoroughness and adequacy. This monitoring will include review of:

- Supporting compliance determinations and documentation for each law and authority not reviewed in the Level 1 monitoring;
- Records to show no grant funds were obligated or spent prior to release of funds;
- Objections received during public comment period, as applicable; and,
- Actions taken as required by mitigation measure/conditions placed on the project.

Monitoring results may require follow-up or technical assistance. The environmental review monitoring checklist is available in Attachments 15-A and 15-F.

CONDUCTING A TIERED REVIEW (24 CFR 58.15)

Grantees may tier their environmental reviews 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 narrower or focused analysis is better done at a later date (*example: Housing Rehabilitation Projects.*) The site specific review need only reference or summarize the issues addressed in the broader review. A sample site specific review form is available in Attachment 6-S (Compliance Record).

The broader review (Tier 1 review) should identify and evaluate those issues ready for a decision. The broader review should establish the process to be followed in the site-specific review (Tier 2 review). The Finding of No Significant Impact (FONSI) with respect to the broader review shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. The grantee must publish a Notice of Intent to Request Release of Funds (RROF) for the Tier 1. Subsequent site specific reviews will not require notices or RROF unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review.

GUIDANCE FOR HISTORIC PRESERVATION/SECTION 106 (36 CFR Part 800)

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies, or CDBG grantees, to take into account the effects their federally funded activities and programs have on significant historic properties. The NHPA’s purpose is to balance historic preservation concerns with the needs of federal undertakings. This review process ensures that grantees identify any potential conflicts between their undertakings and historic preservation and resolve any conflicts in the public interest.

The Section 106 process consists of four basic steps:

- Initiation of Consultation
- Identification and Evaluation of Historic Properties
- Assessment of the Affects
- Resolution of the Adverse Effects

If your project involves a structure that is less than 45 years old, is not in a historic district and has no ground disturbing activities then the Section 106 review is complete. The ERR must include documentation supporting your determination.

You must consult with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), and any tribes or groups that may have an interest in the project if your project includes:

- Repair, rehabilitation or conversion of existing properties;
- New construction;
- Acquisition of undeveloped land; or
- Any activity that requires ground disturbance (defined by HUD as more than one cubic foot of disturbed soil).

As outlined in *HUD's checklist Historic Preservation for Washington State*, the consultation process includes the following steps:

- Define and consider the Area of Potential Effect (APE). The APE is the geographic area within which an activity may directly or indirectly cause changes in the character or use of historic properties. The APE is influenced by the scale and nature of an undertaking.
- With any ground disturbing activity, determine what tribes or groups have an interest in the historic aspects of the project and you must invite them to participate in the consultation. A Tribal Directory for Washington is available at the following link: <http://www.goia.wa.gov/>.
- Consult the SHPO, or if the project is on tribal lands, the THPO, with details of the project, project site and your determination if it is eligible for the National Historic Register. The SHPO and THPO have 30 days from receipt of letter to review a well-documented request for review of your determination. Send this notification letter and materials by certified mail to Tribal Chair to document the contact and receipt date.
 - Department of Archaeology and Historic Preservation review forms and instructions are available at: <https://dahp.wa.gov/project-review/ez-forms>.
 - THPO contact information is available at: <http://www.nathpo.org>.
 - Attachment 6-W is a sample tribal consultation letter specific to CDBG funded projects with an explanation of HUD's assumption of authority.

If they do not respond within the timeframe or provide a description of additional information needed, you may proceed with the next step of the process based on your finding or consult with the Advisory Council on Historic Preservation (ACHP).

The SHPO or THPO issue a determination of eligibility, and then a determination of potential effect. Grantees may proceed, as appropriate, based on the following findings:

- **No Historic Property Affected:** The Section 106 Historic Preservation review is complete. Include the SHPO/THPO concurrence, copies of letters to and from other interested parties and the tribes, and your response to the ERR. If the SHPO/THPO did not respond within 30 days, your dated letter documents compliance. Record your determination of no historic properties affected on the Statutory Worksheet or Environmental Assessment.
- **No Adverse Effect on Historic Property:** The Section 106 Historic Preservation review is complete. Categorically Excluded projects (24 CFR Part 58.35(a)) **CANNOT** convert to Exempt with this determination. Include the SHPO/THPO concurrence, copies of letters to and from other interested parties and the tribes, and your response to the ERR. Record your determination of no adverse affect on historic properties on the Statutory Worksheet or Environmental Assessment.
- **Adverse Effect on Historic Property:** Resolve Adverse Effects per 36 CFR Part 800.6 in consultation with SHPO/THPO, the ACHP if participating, and any consulting parties. Grant funds will not be released until adverse effects are resolved according to 36 CFR Part 800.6 or you have complied with 36 CFR PART 800. Categorically Excluded projects (24 CFR Part 58.35(a)) **CANNOT** convert to exempt with this determination. Make sure the resolution is fully documented in the ERR with all SHPO/THPO correspondence, copies of letters to and from other interested parties and the tribes, surveys, memorandums of understanding, etc.

Suggestions to expedite the review

- Provide detailed information and submit the appropriate documentation early
- Provide all the information requested on the DAHP project review forms (EZ forms)
- Provide clear/quality pictures of structures or affected resources
- Submit forms electronically when required
- Identify project funders. A review for state funding (Executive Order 05-05) will not suffice for a project that is federally funded.

Related Legislation and Regulations

- National Historic Preservation Act, 16 U.S.C. 470(f), Section 106
- 36 CFR Part 800
- 24 CFR Part 58.5(a)

Housing Rehabilitation Projects

Single-family housing rehabilitation projects will require a determination of eligibility for the National Register by DAHP. Access DAHP's new online GIS mapping tool, called WISAARD, to locate designated historic sites listed on the state and national register. The system is accessible at <https://dahp.wa.gov/project-review/ez-forms>.

WISAARD requires grantees to request service through the DAHP Secure Access Washington site at: <https://dahp.wa.gov/project-review/wisaard-system/the-secure-side-of-wisaard>.

RE-EVALUATION OF ENVIRONMENTAL ASSESSMENTS AND OTHER ENVIRONMENTAL FINDINGS (24 CFR 58.47)

If project plans change after completion of the environmental review, the grantee must re-evaluate its environmental findings to determine if the original findings are still valid. For example if:

- 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 (includes contract amended to include additional activities);
- 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
- The recipient proposes the selection of an alternative not in the original finding.

If the original findings are still valid but the data or conditions upon which they were based have changed, the grantee must affirm the original findings and update its ERR by including the re-evaluation and its determination based on its findings. Under these circumstances, if a Finding of No Significant Impact (FONSI) notice has already been published, no further publication of a FONSI notice is required. If the responsible entity determines that the original findings are no longer valid, it must prepare an environmental assessment or an environmental impact statement if its evaluation indicates potentially significant impacts. Contact the CDBG Project Manager if there are any changes that might impact the original finding or you are considering a re-evaluation.

OBJECTIONS TO ENVIRONMENTAL REVIEW DETERMINATIONS

Permissible Basis for Objections to Commerce's Release of Funds:

- The grantee's certification was not in fact executed by the grantee's Authorized Chief Administrative Official or designee.
- The grantee failed to make either a Finding of No Significant Impact or a Finding of Significant Impact.
- The grantee omitted one or more procedural steps required for the conduct, preparation and completion of an Environmental Assessment or an Environmental Impact Statement.
- The grantee, 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.
- Another federal agency submitted a written finding that the project was unsatisfactory from the viewpoint of environmental quality.

Objections should be made to the grantee, with a copy to Commerce, and responded to by the grantee.

PROCEDURES FOR SUBMITTING OBJECTIONS

Objections submitted to Commerce regarding a grantee's environmental review process must:

- Be submitted in writing to the Local Government Division, Community Development Block Grant Program Manager.
- Include the name, address and telephone number of the objecting party or organization, dated, and signed by the person or authorized official of the agency objecting.
- Describe the basis for objection and the facts or legal authority supporting the objection.
- State when a copy of the objection(s) was sent to the grantee's Chief Administrative Officer.
- Received by Commerce within the prescribed 15 day comment period.

DEPARTMENT OF COMMERCE ACTIONS

When Commerce receives an objection that includes the information described above, it must withhold the release of CDBG funds to the grantee until a satisfactory resolution is achieved.

The following describes the process for achieving resolution:

- The department will notify the grantee of the objection(s) and require that the grantee respond to that objection in writing to Commerce within 10 days.
- If the grantee cannot adequately document that the objection is not legitimate, Commerce will require that the grantee properly satisfy the regulation or procedure in question, and then recertify to Commerce that all review procedures have been met. Another 15-day comment period will be required before Commerce can release CDBG funds.
- If the grantee can document that the objection is not legitimate, Commerce will then notify the objecting party of this fact and proceed to release CDBG funds to the grantee.

NEPA ENVIRONMENTAL REVIEW PROCESS TABLE			
EXEMPT (24 CFR 58.34)	CATEGORICALLY EXCLUDED 24 CFR 58.35 (b) (Not Subject to 24 CFR 58.5)	CATEGORICALLY EXCLUDED 24 CFR 58.35 (a) (Subject to 24 CFR 58.5)	
Project is determined exempt based on review of Att. 6-C criteria (Sec. 58.34). If not, go to next column. ➡	Project is determined categorically excluded from NEPA (Not Subject to 58.5) based on review of Att. 6-D criteria (Sec. 58.35(b)). If not, go to next column. ➡	Project is determined to be categorically excluded from NEPA environmental review AND subject to 58.5 based on review of Att. 6-D criteria (Sec. 58.35(a)) If not, proceed to Environmental Assessment column (Page 6-17). ➡	
		NO, 58.5 Laws Impacted	YES, 58.5 Laws Impacted
<ol style="list-style-type: none"> 1. Complete and submit NEPA Determination of Exemption (Att. 6-G), Delegation Letter, if applicable, and SEPA documentation. 2. Commerce notifies grantee of completion. 3. Grantee begins project and may draw down funds. <p>There are no publication requirements.</p>	<ol style="list-style-type: none"> 1. Complete and submit Att. 6-G for NEPA, Delegation Letter, if applicable, and SEPA documentation. 2. Commerce notifies grantee of completion. 3. Grantee begins project and may draw down funds. <p>There are no publication requirements.</p> <p>NOTE: If the activity has a significant environmental effect, a full NEPA review would be required. <u>Most likely</u>, with 58.35(b) activities, it will not be necessary to publish a NOI/RROF or submit a RROF to Commerce.</p>	<p>Complete Determination of Categorical Exclusion, "Other Requirements" Checklist; and Statutory Worksheet contained in Att. 6-E*. Contact appropriate local, state or federal agencies and document determination.</p> <p>If activities impact related laws, authorities, or requirements go to next column. ➡</p> <ol style="list-style-type: none"> 1. If NO impact to related laws and authorities, project can convert to exempt. 2. Grantee documents determination in environmental review record. 3. Grantee submits to Commerce: <ol style="list-style-type: none"> a. Determination of Categorical Exclusion (Attachment 6-E), Delegation Letter, if applicable, and supporting documentation for Sec. 106, Floodplain Management/Wetlands Protection. b. SEPA documentation 4. Commerce notifies grantee of completion and project can begin and funds may be drawn. There are no publication requirements. <p><small>*Instructions for compliance with applicable statute are listed in the Statutory Worksheet Instructions (6-E (5-6)).</small></p>	<p>Project cannot convert to exempt due to required mitigation/consultation as determined by the "Other Requirements Checklist and Statutory Worksheet (Att. 6-E (2-6)). Contact agencies involved in the regulated activities to complete consultation/ mitigation requirements and obtain clearance.</p> <ol style="list-style-type: none"> 1. Grantee documents determination in ERR. 2. Grantee publishes "Notice of Intent to Request Release of Funds" (Att. 6-K) in local newspaper and waits 7 calendar days for comments. 3. Grantee submits to Commerce: <ul style="list-style-type: none"> ▪ Request for Release of Funds and Certification (Att. 6-L) and Delegation Letter, if applicable. ▪ Determination of Categorical Exclusion (Att. 6-E) and supporting documentation for Section 106, Floodplain Management/Wetland Protection. ▪ Affidavit of publication OR a copy of the actual published notice, and Att. 6-K ▪ SEPA documentation 4. Upon receipt, Commerce conducts 15 days comment period. If no objections, Commerce notifies grantee of environmental clearance and releases of fund on 17th day.

ENVIRONMENTAL ASSESSMENT (24 CFR 58.36)	
Environmental Assessment Finding	
Finding of No Significant Impact (FONSI)	Finding of Significant Impact.
<ol style="list-style-type: none"> For projects determined to need an environmental assessment, complete the Environmental Assessment (Attachment 6-F). Explanations must be provided for all determination made (See NEPA resources on page 6-5 and Attachments 6-M through 6-P). Determinations must be well documented. For all related laws and authorities impacted by the activity, contact the appropriate local, state or federal agency to complete consultation/mitigation requirements and obtain clearance. Document determination in environmental review record. Finding of No Significant Impact (FONSI). (The Finding is within Att. 6-F) Publish and distribute Concurrent Notice in local newspaper, see Att. 6-J (A) “Notice of Finding of No Significant Impact” and (B) “Notice of Intent to Request Release of Funds.” Grantee waits 15 calendar days for comments. Grantee sends the “Request for Release of Funds and Certification” (Att. 6-L) and Delegation Letter, if applicable, to Commerce along with documentation for: <ul style="list-style-type: none"> Section 106 review and Floodplain Management/Wetland protection Attachments 6-F, 6-J, and Affidavit of publication OR a copy of the actual published notice; and, SEPA documentation. Upon receipt of the packet, Commerce conducts the 15-calendar days comment period. If no objections, Commerce sends a letter notifying grantee of environmental clearance and release of funds on the 17th day. 	<ol style="list-style-type: none"> Prepare Environmental Impact Statement (EIS). Contact Commerce for assistance.

LIST OF REFERENCE MATERIALS

- Attachment 6-A ----- Level of Environmental Review Flowchart
- Attachment 6-B ----- *No Attachment*
- Attachment 6-C ----- NEPA List of Exempt Activities
- Attachment 6-D ----- NEPA List of Categorically Excluded Activities
- Attachment 6-E ----- NEPA Determination of Categorical Exclusion (Subject to 58.5), “Other Requirements” Checklist & Statutory Worksheet
- Attachment 6-F ----- NEPA Environmental Assessment & “Other Requirements” Checklist (58.6) (Includes the Finding of No Significant Impact (FONSI) and Finding of Significant Impact)
- Attachment 6-G ----- NEPA Determination of Exemption, Categorical Exclusion (NOT Subject to 58.5) & “Other Requirements” Checklist
- Attachment 6-H ----- SEPA Finding of Categorical Exemption
- Attachment 6-I ----- *No Attachment*
- Attachment 6-J ----- Concurrent Notice Form
- Attachment 6-K ----- Notice to Public of Intent to Request Release of Funds Form
- Attachment 6-L ----- Request for Release of Funds and Certification Form
- Attachment 6-M ----- Addresses of Agencies and Regional Clearinghouses
- Attachment 6-N ----- *No Attachment*
- Attachment 6-O ----- Summary of Procedures/Requirements of Applicable Federal Laws & Regulations
- Attachment 6-P ----- Sources, Documentation & Preparation of a Base Data File/Matrix
- Attachment 6-Q ----- Requirements and Procedures for Floodplain Management – 8-Step Decision Making Process (Also used for Wetland Management)
- Attachment 6-R ----- Environmental Review Procedures: 24 CFR PART 58
- Attachment 6-S ----- HUD Compliance Record for 1-4 Residential Units (24 CFR 58.35)
- Attachment 6-T ----- A Guide to Biological Assessment
- Attachment 6-U ----- “Take” Guidance under the Endangered Species Act
- Attachment 6-V ----- *No Attachment*
- Attachment 6-W ----- Tribal Consultation – Sample Letter