

# **City Planning and Development**

## **Environmental Review of Department of Housing and Urban Development Funds**

### **Overview**

Federal funding from the Department of Housing and Urban Development (HUD) that requires Kansas City, Missouri to review activities for compliance with the National Environmental Policy Act (NEPA) include the following programs: Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), Supportive Housing Program (SHP), Emergency Shelter Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), the Self-Help Homeownership Opportunity Program (SHOP), funding to Public Housing Authorities (HOPE VI, some Section 8, Capital Fund Program, etc.), and Special Project Grants, as well as local funds to be repaid with these Federal funds). In addition, the City is responsible for the review of HUD grants provided to non-City recipients within the City's jurisdiction through the SHOP program, PHA programs, and Congressional appropriation in the Economic Development Initiative – Special Projects (EDI) grant program and Neighborhood Initiative (NI) grant programs. These funds cannot be obligated or expended before an environmental determination has been made and written authorization to use grants funds provided by HUD.

Environmental determinations range from notation of a project's activities and funding in a file, to the requirement that HUD's approval of environmental compliance be granted and confirmed via the Request for Release of Funds (RROF) process. Determinations are most often made by local governments acting as official agents of HUD, known as a "Responsible Entities" (RE). Most often, that role is assumed by the City in which the recipient resides or intends to undertake the activity. In this capacity, the City takes-on legal obligations on behalf of HUD and oversees the on-going implementation and monitoring of grant funded activities.

Through the environmental review process, City Planning and Development (CPD) maintains compliance with 24 CFR Part 58, HUD regulations implementing the National Environmental Policy Act of 1969, as amended (NEPA), as well as other related federal authorities, such as the National Historic Preservation Act of 1966 (36 CFR Part 800).

### **Funding Sources**

As the RE, the City is statutorily required to perform environmental review on the following programs for which it is a direct grant recipient:

- CDBG
- HOME
- HOPWA
- ESG
- SHP
- Special Project Grants

### **Environmental Review Coordinator**

It is the responsibility of the CPD Environmental Review Coordinator (ERC) to perform environmental reviews with assistance from individuals with expertise in relevant fields of work (Planners, Engineers, Architects, Landscape Architects, Wildlife experts, etc.). It is also

the responsibility of the ERC to post/publish Public Notices associated with projects, complete the RROF packages, and submit them to HUD for approval.

The ERC is expected to stay abreast of all relevant federal, state and local authorities for which compliance is necessary. Regular education on related topics and on-going review of procedures implementing HUD's environmental regulations is necessary to ensure that the City remains in compliance.

### **Process**

To begin the process, the City must receive all necessary documentation associated with a project proposed for HUD funding. A Consolidated Plan application should include a detailed description of the project as well as a budget. Subsequent documentation would include photographs, forms such as CPD forms 0601 "Site Specific Environmental Checklist," or 0602 "Site Specific Hazards Checklist" (see attached examples), any completed Environmental Site Assessments (the current standard for ESAs is ASTM Standard 1527-05).

In the case of Special Project grants, a formal request for review assistance should be accompanied by the same documentation as above as well as a copy of the letter inviting application, a copy of the completed grant application and a copy of the grant agreement once finalized. The review process will commence if the documentation received is sufficient to aggregate activities and determine the level of review.

The ERC determines the level of environmental review needed for the project and fills-out CPD form #0504 "Environmental Review Record Determination of Level of Review." This can only be done if the project is defined well enough and its activities appropriately aggregated (24 CFR 58.32). This is a critical factor that assures that all relevant actions are considered, and that no funding is spent inappropriately. The next step is the full review for compliance with 24 CFR Part 58, including the environmental determinations and procedures that follow.

## ***I. Activities Exempt from Environmental Review***

Certain activities are not subject to environmental review provided the activities meet criteria that identify them as exempt [24 CFR 58.34]. Examples include: planning activities, architectural & engineering services, legal services or the repayment of loans.

As noted at 24 CFR 58.34(a)(12) other activities can be considered exempt if they are a "Categorical Exclusion" that does not trigger any of the Part 58.5 Statutory Authorities. These activities include those listed at 58.35(a). Such activities must first be reviewed for compliance with all statutory authorities listed at 24 CFR 58.5 but, may convert to Exempt if found to be in compliance with all statutes. Additionally, all projects must comply with Requirements set forth at 24 CFR 58.6.

These activities are documented in the CPD environmental files but, do not require the completion of a Request for Release of Funds (RROF) and subsequent approval by HUD.

## ***II. Activities Requiring Additional Environmental Review***

An environmental review must be performed for projects or activities which are neither exempt nor treated as exempt. The environmental review determines, in turn, whether a project/activity is Categorically Excluded or whether it requires an Environmental Assessment.

### ***A. Categorical Exclusion***

If a project is Categorically Excluded (58.35), an in-depth Environmental Assessment is not performed. However, a certain level of review is to be conducted based on the type of activity.

If the activity is Categorically Excluded Not Subject to Part 58.5, only a Part 58.6 Checklist is used (flood insurance, airport clear zones, coastal barriers). If found to be in compliance with the authorities and regulates noted on that checklist, the project may proceed without a public notice or Request for Release of Funds (RROF).

If the activity is Categorically Excluded Subject to Part 58.5, then a Statutory Checklist and Part 58.6 Checklist are used in the review process. This process is much more involved and will require that the site be examined to determine its integrity and appropriateness for the project.

Compliance with Federal environmental statutes and regulations listed at Part 58.5 include compliance with Section 106 of the National Historic Preservation Act (i.e., 36 CFR Part 800), HUD noise regulations set-out in 24 CFR Part 51B, floodplain regulations set-out in 24 CFR Part 55, the Endangered Species Act, Clean Air Act, Clean Water Act, as well as other requirements. [for specific citation refer to 24 CFR 58.5 and 58.6]

Once the project has been reviewed and a determination has been made that a project can proceed, the City must publish a notice for the project/activity, and a RROF must be completed, with subsequent approval by HUD.

## *Categorical Exclusion Approval Process*

### 1. Public Notice & Comment Period

A Categorical Exclusion requires the publication of this finding in the local paper of general circulation. Normally, the publication is run in the public notice section of the Sunday edition of the Kansas City Star. This notice informs the public of the City's intent to request the release of funds from HUD and normally requires a comment period of 7 days.

### 2. Request for Release of Funds (RROF)

After the expiration of the above comment period, a "Request for Release of Funds and Environmental Certification" is sent to HUD for approval. The RROF is signed by the City's Certifying Official.

### 3. Submittal of RROF to HUD, Comment Period & HUD Approval of RROF

HUD observes a 15-day public comment period, following that HUD approves the "RROF and Environmental Certification" for the project or activities. HUD transmits to the City a notice of the "Authority to Use Grant Funds."

### 4. Ongoing Compliance with Related Federal Authorities

*see below*

## ***B. Environmental Assessment***

If a project is not Categorically Excluded, an Environmental Assessment (EA) is required to be made. The EA, in turn, forms the basis for determining whether the project/activity will have a significant impact on the environment. This finding results in either (1) the requirement to perform an environmental impact statement (EIS), or, (2) a finding that the project/ activity will have no significant impact on the environment (FONSI).

### *(1) EIS Approval Process*

Since the inception of HUD funding to the City, no project or activity has required the performance of an Environmental Impact Statement.

### *(2) FONSI Approval Process*

#### 1. Public Notice & Comment Period

A "Finding of No Significant Impact" (FONSI) requires the publication of this finding in the local paper of general circulation. Normally, this publication is run in the public notice section of the Sunday edition of the Kansas City Star. The notice is published in conjunction with a NOI (Notice of Intent to request the release of funds from HUD), and requires a public comment period of 15 days (or 30 days under exceptional circumstances). Public comments, if any, should be satisfactorily addressed before requesting HUD's release of funds.

#### 2. Request for Release of Funds (RROF)

(same as with Categorical Exclusions)

### 3. Submittal of RROF to HUD, Comment Period & HUD Approval of RROF

(same as with Categorical Exclusions)

### 4. Ongoing Compliance with Related Federal Authorities

*see below - "Site-Specific Environmental Review"*

## **OTHER PROCEDURAL MATTERS**

### A. Certifying Officer for RROF

The Certifying Officer is the City's representative who signs the RROF for HUD. The Chief Environmental Officer was officially designated as the City's Certifying Official in 2006. (The signatory to Section 106 agreement documents, i.e., a Memorandum of Agreement or Programmatic Agreement, is the Director of CPD).

### B. Release of Funds (Authority to Use Grant Funds)

No program/project funds should be obligated (e.g., contracted) until CPD has received from HUD the "Authority to Use Grant Funds". This notice - HUD's approval of the RROF - fixes a date showing that environmental compliance has been met.

The date upon which the funds are released is, in theory, the end of HUD's 15-day comment period. The date is theoretical because the start of the clock for HUD's comment period does not begin until HUD receives the RROF. The RROF is logged in and the comment period begins. If time is of the essence, the RROF can be faxed to HUD, with the original RROF to follow in the mail. Likewise, contacts at HUD should be notified to process the Authority to Use Grant Funds as quickly as possible. The notice is normally signed by the field office's head of CPD (currently signed by Acting Director Anthony J. Remke) and is transmitted a few days following the end of the comment period.

### C. Dissemination of Notices (24 CFR 58.43)

While most grantees publish FONSI, NOI/RROFs, etc, in the local paper of general circulation, the revised environmental regulations (April 1996) allow the grantee to disseminate notice in other means, such as posting notice(s) within the community, and no longer require that newspaper publishing be made.

### D. Site-Specific Environmental Review (SSER)

Program-based activities may receive NEPA environmental clearance (ER) as either a Categorical Exclusion or, as a FONSI following an Environmental Assessment, yet still require site-specific review to determine compliance with federal laws and regulations for which compliance could not be established earlier. In other words, the activity itself has received environmental compliance with NEPA, but specific project sites have yet to be identified at the time of environmental clearance. Such project sites must undergo review to ensure compliance with NEPA and its related environmental authorities. This approach is referred to as Tiering (24 CFR 58.15).

Tiering may be used on large-scale projects that are to be undertaken in phases such as the Beacon Hill Redevelopment and 18<sup>th</sup> & Vine Redevelopment. Provided that the area involved has already been identified and significant aspects of the project can be reviewed for NEPA compliance at the time of initial review. Then, SSERs would be conducted on subsequent phases provided that they are aligned with the initial plans. If the plans have been

substantially altered, re-evaluation of the initial findings will be required per 58.47, to determine if the findings are still appropriate.

Examples of program-based activities that require such on-going review and compliance for site-specific projects include the following:

### **Programs**

- New Housing Construction
- Housing Rehabilitation
- Commercial Rehabilitation
- Demolition

Examples of compliance issues may include the following:

### **Compliance Requirements (24 CFR Part 58)**

#### **Compliance Issues**

- Property Acquisition
- Floodplain regulations
- Historic preservation regulations (i.e., Section 106)
- Noise regulations
- Explosive hazard regulations
- Hazardous substances regulations

A Community Development Corporation (CDC) is contractually required to obtain environmental clearance for its program-based activities that fall within the scope of the related federal environmental authorities. This should be accomplished through a request of the ERC as early in the application process as possible (once sites have been identified for potential inclusion, steps can be taken to begin the review process).

#### **Procedures:**

- 1) CDC program manager completes the CPD form #0601 SSEC "Site Specific Environmental Checklist," providing all locational information and any background information regarding the possible presence of environmental concerns.
- 2) CPD Environmental Review Coordinator logs the request and begins to track the project or program through the review process. The ERC creates a site map for the location, and performs a field inspection. In the field, the ERC takes notes and photographs, identifying issues of concern that may require further investigation (e.g. signs of contamination, noise sources, historic properties in the vicinity, etc.).
- 3) CPD Environmental Review Coordinator performs analysis of site in accordance with CPD form #SS-0501 "Site-Specific Environmental Review for Housing and Development Activities." On the second page of this form is a checklist of statutory compliance issues that must be addressed due to the nature of the project. The project will either be in compliance with, or not in compliance with each statutory issue. For each checklist item, space is provided for the rationale as to why a particular factor does or does not need to be considered. as follows:

- (a) "Yes" - Indicates that a concern (1) does not exist at the project site, or, (2) may be relevant but the thresholds that require action are not exceeded.
  - (b) "No" - Indicates that the proposed activity triggers a concern that must be addressed or is prohibited. If a concern exists which must be addressed in order for the project to be in compliance with NEPA and its related authorities, "Approval With Comment" may be granted but the stipulations of that approval must be outlined in the "Comments, Conditions for Approval or Reasons for Rejection." If a concern exists which is prohibited, then the site will be "Rejected" and the reasons for that rejection noted in the "Comments, Conditions for Approval or Reasons for Rejection."
- 4) CPD Environmental Review Coordinator sends the determination to the CDC program manager and retains a file copy. If the determination was that of "Approval With Comment," the CDC has responsibility to complete the required action and inform the ERC or to otherwise consult with the ERC in fulfillment of the required action. A good example of an action worth discussing is noise attenuation, which can be accomplished in a variety of ways; the goal should be finding the best solution for those who will ultimately benefit from the project or program.

#### E. Expedited Review under combination 24 CFR Part 50 regulations

The following can apply in some particular cases of a non-CDBG or HOME-funded project (e.g., Special Project Grant, SHOP grant, Neighborhood Initiative Grant) where an expedited review is necessary. The expedited aspect is the elimination of the publication of public notice and HUD waiting period. However, this can only be done in accordance with the Part 50 regulations and after consultation with the HUD Environmental Officer.

Under this procedure, the City, in its capacity as responsible entity, can perform the environmental assessment in accordance with Part 50 and forwards the information to HUD. Assuming that HUD accepts the review of environmental concerns, it can make a FONSI determination and release funds under its authority (Part 50). A public notice of the FONSI (i.e., publication) is not required, nor is the 15 day HUD comment period, thus 30 days are eliminated from the environmental review process.

#### F. Requests for City to act as Responsible Entity for non-city HUD grantees

Non-profits on occasion become direct grant recipients of HUD funds. Funding sources may include Special Project Grants, Supportive Housing Program grants, and SHOP grants. Such grantees often request the City to act as Responsible Entity for the purposes of performing environmental review.

In such cases, the grantee should, after consultation with their HUD representative and a thorough review of their grant agreement, provide the CPD Environmental Review Coordinator with a formal request to act as Responsible Entity and full project information, including the following:

- Project location (e.g., map that shows project boundaries);
- Description of existing site or building conditions;
- Detailed description of proposed project, e.g., participants; site plan; budget or pro-forma (sources & uses of funds); scope of work, timeline, number & type of housing units, etc.;

- Plans – **Proposed:** two sets of schematic line drawings showing the basic layout of the proposed site as it would be following new construction, acquisition, or rehabilitation. Show total floor and room areas, designation of all spaces and size of all areas and rooms. It is not necessary to show mechanical systems detail in the schematic drawings. **Existing:** If the project involves new construction, acquisition, or rehabilitation, submit two sets of schematic line drawings showing the current as-built layout of the site. Show total floor and room areas, designation of all spaces and size of all areas and rooms. Include a description of the building’s current use and type of construction.
- Budget (sources & uses of funds)
- HUD funding source and grant number;
- HUD application forms that reference which environmental regulations apply, i.e., either Part 50 or Part 58 regulations;
- Input or contact with neighborhood associations.
- ASTM Phase I and/or Phase II Environmental Site Assessments. Current standard for Phase I Environmental Site Assessment is ASTM Protocol 1527-05, which incorporates the EPA’s “All Appropriate Inquiry” stipulations.