

# Section 14

## Environmental Review Program Policies & Procedures



City of Modesto  
Community Development Division  
1010 10<sup>th</sup> Street, Suite 3100, Modesto, CA 95354  
(209) 577-5211, TDD 209-  
[housing@modestogov.com](mailto:housing@modestogov.com)

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# Environmental Review Process - City of Modesto

## City of Modesto Environmental Review Process for Activities Utilizing Funding From the U.S. Department of Housing and Urban Development

### 1. *Overview of Environmental Review*

- 1.1. All Federal Agencies must comply with the National Environmental Policy Act of 1969 (NEPA). This means that all activities proposed to receive Federal funding must be reviewed for compliance with applicable Federal laws and authorities (including Executive Orders and Agency regulations) which collectively protect and enhance the environment by removing healthy and safety related concerns and providing citizens with the benefits of a healthy environment. A few of these laws and authorities are: the Endangered Species Act, the National Historic Preservation Act, the Clean Air Act, the Flood Insurance Reform Act, as well as regulations and policies implemented by other federal agencies. These laws and authorities help the Department of Housing and Urban Development (HUD) in its mission to provide "safe, decent and affordable housing."
- 1.2. NEPA provides the basic requirements for the review process. Title II of the Act established the Council on Environmental Quality (CEQ) within the White House. The CEQ regulations that implement NEPA are spelled-out in the Code of Federal Regulations (CFR) at 40 CFR Parts 1500 - 1508.
- 1.3. Each federal agency has their own regulations that implement NEPA and fall in line with those of the CEQ. For HUD, regulations listed at 24 CFR apply to their programs and operations as a whole. Within 24 CFR there are numerous "Parts." Of particular importance to the environmental review process are Parts 35, 51, 55, and 58.
- 1.4. Generally, Federal agencies have their own staff to conduct their environmental reviews; the one notable exception is HUD. Due to the vast number of projects and activities that HUD assists, they delegate many, but not all environmental review responsibilities to states and units of local government. In this capacity each is referred to as a "Responsible Entity" (RE). As an RE, the City of Modesto, California, acts as an official agent of HUD, taking-on legal obligations on behalf of HUD, and overseeing the ongoing implementation and monitoring of grant funded activities. The specific portion of HUD's regulation that outline's the City's obligations and procedures for the environmental review process is 24 CFR Part 58.
- 1.5. As an entitlement community, Modesto, California must review large numbers of activities. These include projects funded through the following programs:
  - 1.5.1. Community Development Block Grant Program (CDBG)
  - 1.5.2. HOME Investment Partnerships Program (HOME)

- 1.5.3. Neighborhood Stabilization Program (NSP)
- 1.5.4. Emergency Solutions Grant Program (ESG)
- 1.5.5. Any local funds that are to be repaid with these Federal funds (Section 108 Loans)
- 1.6. The City's Community & Economic Development Department (CEDD) is tasked with managing the expenditure and oversight of any of these HUD funds and programs that are provided through the City. The City's Environmental Review Specialist (ERS) is responsible for carrying-out the review process and determining whether activities are compliant with NEPA and related laws and authorities. The ERS enlists the assistance of others who have specific knowledge or skills pertinent to the process, such as the City's CEDD staff, the City's Planning Department, Stanislaus County Appraiser's Office, Development Management staff, Plans Review staff, and staff of the City's Parks and Recreation, Water Services and Public Works Departments. Additionally, the U.S. Fish and Wildlife Service and other non-municipal resources are brought into the process.
- 1.7. Frequently, non-profit agencies become direct recipients of other HUD grant funds. In these circumstances, such grantees must request the City to act as Responsible Entity for the purposes of performing environmental review. The grantee must provide the ERS with a formal request to act as RE and provide full project information. The grants typically involved are:
  - 1.7.1. Supportive Housing Program (SHP);
  - 1.7.2. Self-Help Homeownership Opportunity Program (SHOP);
  - 1.7.3. Public Housing Authority (Capital Fund Program, etc.) grants, and
  - 1.7.4. Housing Opportunities for Persons with AIDS Program (HOPWA)
  - 1.7.5. A complete listing of programs that REs review can be found at 24 CFR 58.1(b)

2. *The Environmental Review Process*

2.1. Early Documentation

- 2.1.1. Once applications (proposals) have been received by the City, copies are provided to the ERS by CEDD staff and a cursory review is conducted to determine whether there are items that would require clarification in the environmental review process. If warranted, a follow up to the applicant may be provided to help avoid conflicts with statutory or regulatory requirements, should their proposal be selected for inclusion in the Consolidated Action Plan. However, it is the responsibility of applicants to understand the limitations and requirements that are placed on HUD funds at the time of application. ("Choice-limiting actions," are not allowed per 24 CFR 58.22).
- 2.1.2. The environmental review process starts with good information about

projects or programs being considered for funding. As part of the Consolidated Planning RFP process, applicants must provide detailed descriptions of projects that clearly state all proposed uses for HUD funds as well as Non-HUD funds. Applicants must also provide a budget associated with all related activities and all funding sources. "Activities" include such things as tenant based rental assistance, acquisition, public services, sidewalk replacement (Curb Improvements, Street Improvements, etc.), preparation of vacant lots for new construction, construction of Energy Star for New Homes rated housing, and multi-family housing, etc.

2.1.3. Once a project, program or activity has been identified for inclusion in the Consolidated Action Plan, the ERS will generate an Environment Review Record for such activities. The ERS will contact the sponsors of those activities to ensure that they are aware of the level of review necessary, and to request any further clarification and documentation necessary to begin the review. Additional documentation that may be requested includes maps; photographs with a key which shows, on a project site map, the locations where photos were taken and in which direction they were taken; and existing Environmental Site Assessments.

2.1.4. *Note: An Environmental Site Assessment or ESA is a site investigation conducted to determine the presence of contamination, and should not be confused with an Environmental Assessment which is a NEPA defined level of review (discussed later).*

2.1.5. For all project types, the review process can only progress only once the necessary information has been received by the ERS.

2.1.6. CEDD staff is responsible for communicating to the ERS, all changes in project scope as they happen.

2.1.7. HUD's regulations specify the activities that can be undertaken using particular program funds. Various portions of the regulations define those activities. Part 58 of the regulations tie program definitions to NEPA definitions. This is crucial, as it allows activities to be grouped together in the environmental review process.

2.1.8. Aggregation (24 CFR 58.32) - A responsible entity may group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions. [24 CFR Sec.58.32(a)]. This is done so that we address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions; and consider reasonable alternative courses of action; and schedule the

activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects; and prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities. [24 CFR Sec. 58.32(c)].

- 2.1.9. Once the types of projects have been identified, the ERS determines the level of environmental review needed for those projects and records that determination in the Environmental Review Record (ERR). Again, this can only be done if the project is defined well enough and its activities appropriately aggregated (24 CFR 58.32).

### 3. *Determination of Level of Review*

- 3.1. Environmental reviews can range from very simple documentation for "Exempt" activities, to a Finding of Significant Impact (FOSI) which would require that an Environmental Impact Statement (EIS) be conducted as prescribed by NEPA. [Note: given the range of activities typically associated with HUD funding, an EIS is highly improbable, which is an indication that suitable alternatives have been found for large scale projects during the course of the environmental review.

#### 3.2. Exempt

- 3.2.1. "Exempt" activities (listed at 24 CFR 58.34) require clear notation of a project's activities and funding. They include environmental and other studies, development of plans and strategies; information and financial services; administrative and management activities; public services that will not have a physical impact or result in any physical changes; inspections and testing of properties for hazards or defects; purchase of insurance; purchase of tools; engineering or design costs; technical assistance and training; payment of principal and interest on loans made or obligations guaranteed by HUD, etc. "Exempt" means the activity is not considered capable of having a direct impact on the environment and is therefore exempt from a NEPA proscribed review [the full range of project activities must be considered in making such a determination].

#### 3.3. Categorically Excluded

- 3.3.1. "Categorically Excluded" means that the activity is one of a category of activities that, by their nature, do not have the potential to cause a significant impact to the environment and are therefore excluded from the NEPA Environmental Assessment requirements. Though, because they can have an impact, they must be reviewed for compliance with all applicable laws and authorities to determine what must be done in order for the project or activity to comply with those laws. Within this general group of activities there are two subgroups: CENST and CEST. Their differences are significant.

3.4. *CENST (Categorically Excluded and are Not Subject To)*

3.4.1. This level of determination is associated with activities which are "Categorically Excluded [from an Environmental Assessment] and are Not Subject to" authorities listed at 24 CFR 58.5 (CENST). Over the course of several years, HUD has determined that CENST activities should be treated much like Exempt activities because they do not themselves have a physical impact on the environment. However, because these activities are associated with physical locations, they do require review for compliance with the requirements listed at 58.6. These activities (listed at 24 CFR 58.35(b)) include tenant-based rental assistance; supportive services such as short term payment of utilities or rent; operational support of homeless facilities and daycare facilities; activities to assist homebuyers in purchasing an affordable dwelling that is existing or under construction; etc. Compliance with the Flood Insurance stipulations must be documented for Tenant Based Rental Assistance and Homebuyer Assistance activities. CENST activities are documented in the ERR and do not require any further review or authorization by HUD (discussed later).

3.5. *CEST (Categorically Excluded and are Subject To)*

3.5.1. The next level of determination is associated with activities which are "Categorically Excluded [from an Environmental Assessment] and are Subject To" authorities listed at 24 CFR 58.5 (CEST). These activities (listed at 24 CFR 58.35(a)) include acquisition (including leasing) or disposition of land and improvements; rehabilitation of housing and other property; new construction of single family housing where there are four (4) or fewer units being developed on any one site; a project of five (5) or more new housing units being developed on scattered sites when each of the sites is at least 2,000' from any one of the other sites and, there are not more than four (4) housing units on any one site. Because these activities are of a physical nature or are committing HUD funds to a property that may or may not be suitable, these activities must be reviewed for compliance with the laws listed at 58.5. HUD regulations are very specific about what scale of activity is accepted into this category of review. Housing density, for example, can mean a great deal in determining whether the environment will be suitable for a project or, vice versa.

3.5.2. CEST activities are documented in the ERR and require public notification, completion of a Request for Release of Funds (RROF) (*only if there is a mitigation measure (otherwise, converts to exempt)*), and subsequent authorization by HUD.

3.5.3. As noted at 24 CFR 58.34(a)(12) some CEST activities may "convert" to

Exempt if, after the environmental review process has been completed, they have been found not to trigger any of the 58.5 Statutory Authorities. In these cases, CEST activities are documented in the ERR but do not require the completion of a RROF and subsequent authorization by HUD. Such projects must still comply with Requirements set forth at 24 CFR 58.6.

#### 4. Environmental Assessment

- 4.1. If a project does not fit within one of the above classifications, an Environmental Assessment (EA) is required. The EA, in turn, forms the basis for determining whether the project/activity will have a significant impact on the environment. This determination results in either:
  - 4.1.1. the requirement to perform an EIS as mentioned previously; or
  - 4.1.2. a finding that the project/ activity will have no finding of significant impact on the environment (FONSI).
- 4.2. To get to a FONSI, the EA will take into consideration many more factors than the CEST level review. Included are: review for consistency with area plans; land use and zoning requirements; stated policies of City Council; federal, state and local recommended best practices for such developments; possible infrastructure needs; etc.
- 4.3. Additionally, alternatives including the "No Action" alternative must be considered along with alternative sites. On-going NEPA compliance must be maintained (see "On-going Compliance with Related Federal Authorities" below). Once the level of review has been determined, the next step is a full review for compliance with 24 CFR Part 58.

#### 5. *Review Process Environmental Review Focus*

- 5.1. Compliance with Federal environmental statutes and regulations listed at 58.5 include compliance with Section 106 of the National Historic Preservation Act (Often referred to as the "Section 106 Review," the regulation implementing this compliance process is found at 36 CFR Part 800), floodplain regulations set-out in 24 CFR Part 55, HUD noise regulations set-out in 24 CFR Part 51, Subpart B, Executive Order 11990 Protection of Wetlands, the Endangered Species Act, the Clean Air Act, the Clean Water Act, as well as other requirements. [for specific citations refer to 24 CFR 58.5]
- 5.2. Additionally, projects are reviewed for compliance with State and Local laws that govern the environmental conditions relevant to the project site or activities. All activities undertaken using HUD funds must comply with the authorities listed at 58.6 as well; these include the Flood Disaster protection Act which requires that, for those properties located within the 100 Year Floodplain, flood insurance be obtained and maintained for the life of the property that is receiving HUD assistance. [for specific citations refer to 24 CFR 58.6]
- 5.3. Compliance can be determined through review of on-line resources (as in the case of Wild and Scenic Rivers or Sole Source Aquifers), through consultation with authorities who track data associated with a given subject (e.g. Clean Air Act and the State Implementation Plan), or through appropriate procedures that involve legally proscribed consultation (e.g. Section 106 review or Endangered Species

and Habitat).

- 5.4. The environmental review must be concluded before clearance can be gained and funding provided. To reach conclusion, all compliance issues must be adequately addressed. This does not always mean that the statutory or regulatory issues have been fully resolved prior to release of funds. Indeed, there may be on-going requirements that are needed to insure that outstanding issues are resolved prior to completion of the program or project (e.g. - nesting birds cleared prior to tree removal). This means that, in some cases, the program developer must satisfy compliance steps as properties are identified for inclusion in a program (e.g. is the property located in the floodplain or within proximity to a major roadway). In some cases, full evaluation of potential contamination cannot be undertaken until the site has been further prepared for development. In these cases, Conditions of Approval are made to prescribe specific actions required to ensure that the property is safe for its intended reuse. It is important to note that the type of activity or program drives the determination that no significant impact would result and therefore some issues are weighed more heavily in the decision-making process.
  - 5.5. Most often, issues are resolved prior to release of funds. As part of the review process the ERS and developer work together to find solutions that ensure the protection and enhancement of the environment that will eventually benefit residents or patrons. This process is crucial and always results in a better project (Is bicycle parking being provided? Is the playground protected from highway noise? What steps have been taken to protect the historic integrity of the building? Is there enough street lighting or sidewalks?). In all cases there must be a clear path to compliance for any outstanding issues that may remain at the time of clearance.
  - 5.6. Note: Once an application has been submitted for a project that anticipates the use of Department of Housing & Urban Development (HUD) funding, neither HUD funds or non-HUD funds can be committed to that project until the environmental review has been approved by HUD or the Release of Funds obtained. No choice limiting action can be taken until the environmental review is approved (24 CFR 58.22) and Release of Funds obtained. Choice limiting actions include real property ACQUISITION, DEMOLITION, SITE CLEARANCE, REPAIR, REHABILITATION, CONSTRUCTION and LEASING activities. If you are not certain about where your project stands with regard to this statement, please contact the Environmental Review Specialist.
  - 5.7. 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 and submitted to HUD, with subsequent approval by HUD.
6. *Categorical Exclusion Approval Process*
    - 6.1. Public Notice & Comment Period
    - 6.2. Once the environmental review has been concluded, CEST activities require that the City publish what is called a "Notice of Intent to Request Release of Funds" (NOI-RROF), which is published in the local paper of general circulation. Typically the publication is run in the public notice section of the Modesto Bee and the Vida

en el Valle. This notice provides the public with a 7-day window within which they can comment on the proposed use of funds. Comments received in the specified time will be responded to and any appropriate modifications will be incorporated into the ERR.

6.3. Submittal of Request for Release of Funds to HUD

The day after the expiration of the comment period, a "Request for Release of Funds and Environmental Certification" form is sent to HUD for authorization. This RROF is signed by the City's Certifying Officer, Community and Economic Development Department Director, or a designee.

6.4. Objection Period & HUD Approval of RROF

The day after HUD receives the RROF, they open a 15-day Objection Period, during which time the public can object to the release of funds - if such objections meet criteria specified at 24 CFR 58.75. The day after expiration of the Objection Period, HUD approves the RROF and transmits their "Authority to Use Grant Funds" form (AUGF) to the City. Once received, the City notifies grant sub-recipients that they can commit funds to, and undertake actions authorized via the environmental review. That authorization includes any stipulations identified in the review - these conditions become legal obligations of any contractual agreements associated with the project.

7. Environmental Assessment Approval Process

7.1. The approval process for an EA is nearly the same as the process for CEST activities. The difference is that the City must publish its Finding of No Significant Impact or FONSI, as well as a NOI-RROF. Typically this is accomplished through what is called a "combined notice" which simply publishes the two together. This notice provides the community a 15-day Comment Period rather than a 7-day period. Under exceptional circumstances, a 30 day Period may be necessary. Because there are many more aspects to an EA review, the process may result in several "Conditions of Approval." Those conditions become legal obligations of any contractual agreements associated with the project, and must be adhered to in order for the grantee or sub-recipient to remain in compliance with their grant obligations.

8. On-going Compliance with Related Federal Authorities

8.1. Some CEST or EA reviews are associated with programs involving multiple properties over the course of time. These programs are designed to assist properties not identified at the time of program inception. In these cases, as sites are identified, they must be reviewed to ensure compliance with statutory or regulatory requirements not fully addressed at the time clearance was provided to the program. This "site-specific" review is in line with the NEPA concept of "Tiering." This approach allows compliance issues to be reviewed once they are "ripe," expediting what would otherwise be successive reviews for similar projects that would each require their own release of funds.

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

8.2.1. *Programs*

8.2.1.1. Property Acquisition

- 8.2.1.2. New Housing Construction
  - 8.2.1.3. Housing Rehabilitation
  - 8.2.1.4. Commercial Rehabilitation
  - 8.2.1.5. Demolition
  - 8.2.2. *Compliance Issues*
    - 8.2.2.1. Floodplains
    - 8.2.2.2. Historic preservation (i.e., Noise Impacts)
    - 8.2.2.3. Explosive hazards
    - 8.2.2.4. Hazardous substances
    - 8.2.2.5. Lead-Based Paint
    - 8.2.2.6. Asbestos Containing Materials
9. Grant recipients and sub-recipients must ensure that the Conditions of Approval or other required actions are carried out as part of any executed contracts associated with HUD-funded activities. Documentation of such compliance must be maintained in program / project files.
10. Conducting Environmental Review for all HUD funded activities:
- 10.1. The City of Modesto will complete the environmental review procedures described in this policy, as set forth at 24 CFR part 58, for each activity (or project as defined in 24 CFR part 58), as applicable, prior to contract execution and/or expending funds for any project/activity.
    - 10.1.1. Contracts will not be executed with subrecipients, vendors, or contractors and expenditures for City-managed projects until environmental review is complete.
      - 10.1.1.1. To ensure that funds can be committed to a project/activity, all contracts routed for signatures will include an "Agreement checklist" which includes all required items needed for commitment of funds, including environmental review completion.
    - 10.1.2. All environmental reviews will be completed through the HUD Environmental Review Online System (HEROS).
    - 10.1.3. Environmental review forms and documents must be signed by the appropriate staff preparing the environmental review and the Certifying Officer.
      - 10.1.3.1. An Environmental Review will be deemed complete only upon approval/signature of the City's Certifying Officer.
    - 10.1.4. Upon Environmental Review completion, all documents will be loaded directly into the HUD system for review (and approval by HUD, if applicable).
    - 10.1.5. The City will ensure that all *Finding of No Significant Impact* (FONSI) and *Request for Release of Funds* (RROF) requirements are completed for capital improvement projects and housing rehabilitation projects prior to contract execution, and/or expending funds on any project/activities.
    - 10.1.6. Completed Environmental Reviews will be kept with each project file, saved electronically, and uploaded into the HEROS system.

10.1.7. State (CEQA) environmental regulations requirements will also be complied with.