CHAPTER 2
ENVIRONMENTAL AND HISTORIC REVIEW

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CHAPTER 2
ENVIRONMENTAL AND HISTORIC REVIEW

Recipients of the New York State Community Development Block Grant (NYS CDBG) must comply with all State, Federal, and local environmental and historic regulations and laws. It is the sole responsibility of the Recipient to determine which regulations and laws are applicable to their project and to ensure compliance with those regulations and laws. At a minimum, all Recipients must conduct assessments to determine the degree to which the National Environmental Policy Act of 1969 (NEPA), the State Environmental Quality Review Act (SEQRA) and the State Historic Preservation Office (SHPO) and Tribal Historic Preservation Office (THPO) requirements impact their project. The following information has been provided to assist Recipients in making those determinations. This Chapter, in addition to guidance from the governing Federal and State agencies, will assist Recipients in ensuring they comply with all the applicable regulations. Exhibit 2-7 in this Chapter outlines the documents that must be submitted to the Office of Community Renewal (OCR) to request a release of CDBG funds.

I. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)

The National Environmental Policy Act of 1969 (42 USC Section 4321, et seq.) establishes national policies, goals, and procedures for protecting, restoring, and enhancing environmental quality. NEPA requires environmental reviews to be conducted before proceeding with actions that may affect the environment. In addition to NEPA regulations, other applicable Federal and State environmental and historic regulations may impact activities funded with NYS CDBG funds. Recipients are required to fully comply with all federal and state environmental and historic regulations. The goals of these regulations are to assure that development is compatible and does not adversely impact environmental and historic conditions, and that the users of the project will be given a safe, healthy, and enjoyable environment. Recipients are required to determine the impact of the project on the environment and the historic nature of the community as well as the impact of the environment on the project.

To the extent that NEPA requirements are applicable, the NEPA review process must be completed, and the release of funds approved before committing any funds to any non-exempt activity or project as outlined in *Section E. Determine the NEPA Classification of Project Activities*. Additionally, until the release of funds has been approved by OCR, neither other Federal nor non-Federal funds may be committed to the activity or project if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the Recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58.22 and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no

responsibility for the environmental review and have no say in the approval or disapproval of the project. NYS CDBG funds may be committed for relocation assistance before the approval of the release of funds and related certifications for the project provided that the relocation assistance is required by 24 CFR Part 42.

Recipients may incur costs for exempt activities, as outlined in *Section E. Determine the NEPA Classification of a Project Activities*, prior to the release of funds or submittal of the environmental review documentation to OCR provided that the Recipient has fully documented that the activities are exempt from environmental review requirements. However, it is not the practice of OCR to provide reimbursement of such costs until a release of funds or concurrence letter is issued by OCR. Recipients incur costs for exempt activities at their own risk. If upon review of the Recipient's Environmental Review documentation, OCR determines that the activities are non-exempt, OCR will not reimburse any costs to the Recipient for expenditures associated with the non-exempt activities**.**

HUD's environmental review regulations at 24 CFR Part 58 require the Responsible Entity (the State or unit of local government that administers NYS CDBG funds) to assume HUD's environmental review responsibilities under NEPA. Pursuant to the terms of the NYS CDBG grant agreement, the Recipient has consented to assume the status of Responsible Entity. As Responsible Entity, the Recipient has two basic obligations: 1) to classify the project and prepare an Environmental Review Record and 2) to certify that the procedural requirements of 24 CFR Part 58 have been met.

II. NEPA ENVIRONMENTAL REVIEW PROCESS

A. Designate a Certifying Officer and Environmental Responsibility Certification

All Recipients must designate a Certifying Officer and certify to their responsibility for acting as the Responsible Entity for conducting environmental reviews. The Certifying Officer may be the chief elected official or a designated representative who has the authority and is designated by formal resolution of the governing body. They must be capable of assuring compliance with all environmental requirements and representing the Recipient in any challenge to such compliance. In some instances, a local government employee with technical expertise to conduct the review may receive this designation, such as the local planning or community development director. In other cases where a consultant will conduct the research for the environmental review, OCR recommends that the Recipient designate a local official as the Certifying Officer. That official would then be responsible for monitoring the technical work performed by the consultant and signing off on the appropriate certifications.

The Certifying Officer shall certify the environmental review to NYS OCR and also certify environmental compliance for any individual site-specific projects identified subsequent to the initial release of funds by NYS OCR and maintain a record of

such certifications. In the case where the Certifying Officer identifies subsequent activities which:

(1) would result in substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project.
(2) 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
(3) The recipient proposes the selection of an alternative not in the original finding.

A re-evaluation of the environmental assessments must be undertaken and referred to NYS OCR for a new or supplementary Release of Funds.

All Recipients must complete Exhibit 2-1 Designation of Certifying Officer and submit it to their OCR Community/Economic Developer as part of their environmental review package.

B. Establish the Environmental Review Record

As Recipients complete the environmental review process, they are required to prepare and maintain a complete written record of the environmental review undertaken for NYS CDBG activities, according to criteria found at 24 CFR 58.38. This written record of the review process is called the Environmental Review Record and must be available for public review in the general offices of the Recipient and organized according to the following format:

- Program activities.
- Program classification (exempt, categorically excluded, other).
- Regulatory compliance documentation.
- Environmental assessment and determination of significance, if required; and
- Public notices, as applicable.

Public comments and concerns, as well as their appropriate resolution by the Recipient, are extremely important and must be addressed and fully documented in the Environmental Review Record. The Environmental Review Record should contain all the environmental review documents, public notices, and written determinations or environmental findings required as evidence of review, decision-making, and actions pertaining to the Recipient's project. The Environmental Review Record must document all review activities and demonstrate that consideration was given to all applicable environmental statutes and regulations. **The Environmental Review Record must be kept on file as evidence that the environmental review was completed and that project tasks were conducted in compliance with its conclusions.**

OCR has prepared an Environmental Review Record Checklist (Exhibit 2- 2) for the Recipient's use in preparing the Environmental Review Record. The Checklist identifies the minimum information required to be maintained in the file, including the required determinations listed at 24 CFR 58.38. This Checklist is to be used as a guide only and does not necessarily identify all information that may need to be maintained.

C. Determine NEPA Review Format

Recipients must identify whether a site-specific or programmatic environmental review is appropriate for their project.

Site-specific reviews are conducted for projects where the specific site has already been identified at the time the environmental review is conducted. Compliance requirements related to the specific site are determined, and any conditions or mitigation actions required are identified in the review and incorporated into the program's scope of work. It is then the responsibility of the Recipient to conduct the activity in accordance with the conditions or mitigation actions, and document compliance in individual project files for monitoring by OCR.

Programmatic reviews are conducted for projects where the specific site has not been identified at the time the environmental review was conducted. Programmatic reviews require the Recipient to identify environmental compliance factors for a group of projects of similar size, scope, or general location, in a target area where specific project sites have not yet been selected. Under this process, compliance requirements are established that may affect one or more potential project sites are identified, and procedures to be used, once the site is identified. It is then the responsibility of the Recipient to carry out the compliance procedures it has identified and document compliance in individual project files for monitoring by OCR.

It is possible for a program to include both identified and yet-to-be identified sites. In this case, the environmental review is prepared to include both site-specific and programmatic review formats.

D. Determine the Relationship of Activities (Project Aggregation)

When performing an environmental review, it is essential to include all project activities in the review, regardless of who is funding the activities (24 CFR 58.32). A project is defined as, "an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective" [24 CFR 58.2(a)(4)]. The purpose of project aggregation is to group together related activities so that the Recipient can:

1. 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. Refer to 40 CFR 1508.25(a).

2. Consider reasonable, alternative courses of action.

3. Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

4. Prescribe mitigation measures and safeguards including project alternative modifications to individual activities.

In determining the most appropriate basis for aggregation when evaluating activities, the responsible entity may choose: functional aggregation when a specific type of activity (i.e. water improvements) is to take place in several separate locales or jurisdictions; **geographic aggregation** when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (i.e. a combination of water, sewer, and street improvements, and economic development activities); or a **combination of aggregation approaches**, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

For example, if you are replacing water pipes in several areas in your community and they are part of the same system, the activities are functionally related because all are water system related. If the project consists of replacing water lines and completing other street improvements in a neighborhood, all activities are aggregated into one environmental review because the activities are geographically related. In some cases, projects may have a series of activities that are neither functionally nor geographically related but have a common outcome or goal or some other relationship. This falls under “combination of aggregation approaches” or “logical parts of a composite of contemplated actions.”

Multi-year Project Aggregation

When a Recipient’s planning and program development provide for activities to be implemented over two or more years, the Recipient’s environmental review should consider the relationship among all component activities of the multi-year project, regardless of the source of funds, and address and evaluate their cumulative environmental effects. Refer to 24 CFR 58.32.

E. Determine the NEPA Classification of Project Activities

It is vital that Recipients properly categorize their NYS CDBG funded activities. The classification of an activity will determine the specific review, documentation, and public notice required. The nature and extent of activities funded with NYS

CDBG funds will determine the level of review required for compliance with NEPA regulations. There are three environmental classifications: (1) Exempt (58.34); (2) Categorically Excluded (58.35 (a) or (b)); and (3) activities that are neither Exempt nor Categorically Excluded (58.36). All NYS CDBG projects will fall under one of the three classifications. Each classification has different requirements and procedures.

Recipients must look at each activity to determine the correct classification for the activity and satisfy the requirements of that classification. For example, housing rehabilitation activities are most likely Categorically Excluded. Also, if the grant includes an upgrade to existing water mains that do not serve or relate to the houses being rehabilitated, the waterline project may require a separate environmental assessment.

Recipients should begin to determine the classification of their project by looking first at the Exempt classification, and then progressing to Categorically Excluded. If the activity is not Exempt or Categorically Excluded, the preparation of an Environmental Assessment (EA) is required. If it is evident at the outset that a project may potentially have a significant impact on the environment, the Recipient should proceed directly to an Environmental Impact Statement (EIS).

The Three NEPA Environmental Classifications

For each classification, Recipients must compare each program activity against the lists below to determine the NEPA classification. Each Recipient must complete Certifications of Classification for both NEPA and SEQRA (Forms 2-3 and 2-3A) and a NEPA Classification Checklist(s) (Form 2-4).

1. Project activities classified as Exempt under 24 CFR 58.34 (requires compliance with regulations at 24 CFR 58.6):

   Activities that are determined to be exempt by the Certifying Officer under 24 CFR Part 58.34, are not required to undergo an environmental assessment, public notice, or comment period. However, Environmental Review documentation must be submitted to OCR and a concurrence letter issued by OCR prior to the first request for funds.

   - Environmental and other studies, resource identification, and development of plans and strategies [(a)(1)].
   - Information and financial services [(a)(2)].
   - Administration and management activities [(a)(3)].
   - Public services that will not have a physical impact or result in physical changes, such as services concerned with employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation and welfare, or recreational needs [(a)(4)].
   - Inspections and testing of properties for hazards or defects [(a)(5)].

- Purchase of insurance [(a)(6)].
- Purchase of tools [(a)(7)].
- Engineering or design costs [(a)(8)].
- Technical assistance and training [(a)(9)].
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from physical disasters, imminent threats, or physical deterioration [(a)(10)].
- Payment of principal and interest on loans made or obligations guaranteed by HUD [(a)(11)].
- Any of the categorical exclusions listed in 58.35(a), provided that there are no circumstances which require compliance with any other federal laws and authorities cited in 58.6[(a)(12)].

2. Project activities that are **Categorically Excluded** under 24 CFR 58.35 (a) or (b):

Project activities classified as Categorically Excluded Activities under 24 CFR 58.35(b): Activities in this section require compliance with related laws and authorities at 24 CFR 58.6 only.

Activities determined to be Categorically Excluded under 24 CFR 58.35 (b) (requires compliance with regulations at 24 CFR 58.6 only) by the Certifying Officer are considered exempt from the requirements of NEPA. Under this classification, the activities are not required to undergo an environmental assessment, public notice, or comment period because they do not typically trigger compliance with any of the related laws and regulations. However, Environmental Review documentation must be submitted to OCR and a concurrence letter issued by OCR prior to the first request for funds**.**

- Tenant-based rental assistance [(b)(1)].

- Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government benefits and services [(b)(2)].

- Operating costs including maintenance, equipment, supplies, staff training and recruitment, and other incidental costs, security, operations, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs [(b)(3)].

- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations [(b)(4)].

- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title [(b)(5)].

- Affordable housing pre-development costs including legal, consulting, developer, and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact [(b)(6)].

- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 58.47 [58.35(b)(7)].

Project activities classified as Categorically Excluded Activities under 24 CFR 58.35(a): (Activities in this section require compliance with related laws and authorities at 24 CFR 58.5 and 58.6.).

Activities classified as Categorically Excluded under 24 CFR 58.35 (a) require compliance with regulations at 24 CFR 58.5 and 58.6. Certifying Officers must determine if the project is subject to other related laws and regulations by completing the Statutory Checklists (Form 2-5). **If the activities trigger compliance with any of the related laws and regulations, Recipients must comply with their environmental review requirements and publish a Notice of Intent / Request for Release of Funds (NOI/RROF).** If the activity does not trigger compliance with any of the related laws and regulations listed on the Statutory Checklists, the activity is classified as exempt under 24 CFR 34(a)(12).

- Acquisition, repair, improvement, reconstruction, rehabilitation or installation of public facilities, and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent; examples include replacement of water and sewer lines, reconstruction of curbs and sidewalks, and street repaving [58.35(a)(1)].

- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons [58.35(a)(2)].

- Rehabilitation of buildings and improvements for residential use (with one to four units), where the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland [58.35(a)(3)(i)].

- Rehabilitation of multifamily residential buildings (with five or more units), when the following conditions are met: a) unit density is not changed more than 20 percent; b) the project does not involve changes in land use from residential to non-residential; and c) the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation [58.35(a)(3)(ii)].

- Rehabilitation of non-residential structures, including commercial, industrial, and public buildings when the following conditions are met a) the facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent, and b) the activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another [58.35(a)(3)(iii)].

- An individual action on up to four dwelling units, not including rehabilitation, (see 58.35(a)(3)(i) above) where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between [58.35(a)(4)(i)].

- An individual action on a project of five or more housing units, not including rehabilitation, (see 58.35(a)(3)(i) above) developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site [58.35(a)(4)(ii)].

- Acquisition (including leasing) or disposition of an existing structure, equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use [58.35(a)(5)].

- Any combination of the above activities [(a)(6)].

3. <u>Project activities that are neither Exempt nor Categorically Excluded</u>

   Activities that are neither Exempt nor Categorically Excluded require an Environmental Assessment (24 CFR 58.36). An Environmental Assessment (EA) enables Recipients to determine the degree of impact that an activity (by itself or in combination with other activities) may have on the environment and whether an Environmental Impact Statement (EIS) is required. In some cases, Recipients may want to omit the EA and proceed directly to the preparation of an EIS. An EIS is required for activities that may have a significant impact on the environment.

   All projects where an EA is required must comply with other relevant Federal, State and local laws and authorities listed at 24 CFR 58.5 and 58.6. The EA permits all interested public agencies, community groups, and individuals to examine the environmental data developed, and to comment on the environmental impact

findings and course of action determined by the Recipient. Written clearance needs to be obtained from the agencies that may have comments or questions regarding each activity.

Recipients must prepare an EA as discussed in 24 CFR 58.40. This document is used to evaluate the environmental ramifications of proposed NYS CDBG funded activities.

F. Environmental Assessment

In preparing an EA, the Certifying Officer must comply with (24 CFR 58.40):

1. Determine the existing conditions and identify the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project [(a)].

2. Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project [(b)].

3. Identify, analyze, and evaluate all impacts to determine significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in 24 CFR 58.5 and 58.6 [(c)].

4. Examine and recommend feasible ways in which the project could be modified in order to eliminate or minimize adverse environmental impacts [(d)].

5. Examine alternatives to the project itself, if appropriate, including the alternative of no action [(e)].

6. Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in 24 CFR 58.5 and 58.6 [(f)].

The EA should result in one of the following findings:

1. A Finding of No Significant Impact (FONSI), in which the Certifying Officer determines that the project is not an action that will result in a significant impact on the quality of the human environment

   OR

2. A Finding of Significant Impact (FOSI), in which the project is deemed to be an action which may significantly affect the quality of the environment ((preparation of an EIS is required).

The preparation of an EA that leads to a FONSI will be typical for projects that are not exempt or categorically excluded. Projects funded under the NYS CDBG program rarely require an EIS because they generally will not pose a significant impact on the environment.

Re-Evaluation of Environmental Review and Assessment Findings (24 CFR 58.47)

A Recipient must re-evaluate its environmental review and/or environmental assessment findings when:

1. Substantial changes have been proposed in the nature of the project that includes adding new activities not anticipated in the original scope of the project and its cost estimate [(a)(1)].

   OR

2. There are new circumstances and environmental conditions that may affect the project, such as concealed or unexpected conditions discovered during the implementation of the project or activity that is proposed to be continued [(a)(2)]

   OR

3. The Recipient selects an alternative (generally a site or location change) not considered in the original EA [(a)(3)]. The purpose of a re-evaluation of the Environmental Assessment is to determine if the FONSI is still valid. If the FONSI is still valid, but the data or conditions upon which it was based have changed, the Recipient must amend the original assessment and update its Environmental Review Record with this re-evaluation and its new findings. If the Recipient determines the FONSI is no longer valid, it must prepare a new EA or EIS, if its evaluation indicates potentially significant impact(s).

Tiered Environmental Review (24 CFR 58.15)

A Tiered Environmental Review Record (ERR) is defined at 24 CFR Part 58.15. It contains a broad review, a written strategy, and a site-specific review. All parts of the Tiered Environmental Review must be complete before committing funds on any one site (24 CFR Part 58.22).

HUD encourages tiered environmental review for non-site-specific activities aggregated under a single evaluation with two stages. ***This is typical for many housing programs and economic development programs (particularly microenterprise), where specific project sites are not determined at the time of the initial environmental review.*** The stage one (the "umbrella" or original) environmental review should address how the selection of sites will be treated if the sites for the proposed activity impact on environmental hazards and resources,

if the recipient is unable to avoid the environmental hazards and resources. Generally, there would not be any need for subsequent site-specific environmental reviews, unless the recipient selects a site that triggers any of the environmental factors discussed above. At stage two - as specific sites and locations are selected, environmental review is required, if the recipient's site is unable to avoid the environmental hazards and resources identified in the original review and that such impacts and their satisfactory mitigation were not addressed in the stage one environmental review. It is the responsibility of the recipient to bring this information, including information on any adverse environmental impacts, to the attention of NYS OCR.

For detailed information, reference the HUD website on environmental compliance, http://portal.hud.gov/portal/page/portal/HUD/topics/environment.

G. Environmental Impact Statement

Activities that have been determined to have a potentially significant impact on the environment require an EIS (24 CFR 58.37). Recipients may determine early on in the environmental process that an EIS is required, in which case, preparing an EA is unnecessary. Factors determining whether a project requires an EIS are as follows:

1. The project is determined to have a potentially significant impact on the environment [(a)];

2. The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds [(b)(1)];

3. The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under 24 CFR 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units [(b)(2)];

4. The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity that is intended to serve new development should be counted [(b)(3)].

If your project meets these thresholds or will result in other significant effects, consult with your OCR Community/Economic Developer regarding the preparation of an EIS.

Adoption/Coordination of Another Agency's EIS

Recipients must coordinate reviews with other federal agencies if funded activities are required to comply with regulations of more than one agency. Recipients may enter into a cooperation agreement with other federal agencies to prepare an EIS for NYS CDBG-funded projects or use a prior EIS prepared by a federal agency for a specific project as the basis for an environmental determination of significance. Recipients are responsible for reviewing the EIS and determining if it meets the minimum requirements of 24 CFR 58, especially those requirements that may not be addressed in the other federal agency's procedures, i.e., HUD standards for noise, thermal/explosive hazards, and airport clear zones in 24 CFR Part 51. In all cases, Recipients are fully responsible for compliance with all applicable regulations.

H. The Statutory Checklist

The Certifying Officer must present evidence that NYS CDBG project activities meet the environmental requirements contained in applicable federal laws other than NEPA. This is achieved through completion of the Statutory Checklists 58.5 and 58.6 as applicable (Form 2- 5). By completing the checklists, the Certifying Officer considers the effect of the NYS CDBG project on a variety of potential environmental concerns as well as the effect of the environment on the project (such as noise or air traffic hazards). For each compliance factor the Certifying Officer must determine whether the factor is applicable to the project, and whether consultation, permit and/or mitigation are required.

The Certifying Officer should be certain to retain all of the documentation (letters, test results, maps, and notes on comments of authorities contacted) gathered to support the documentation. Situations that require additional consultation are those in which contact with the appropriate Federal or federally authorized agency is necessary. The consultation can result in 1.) no need to further address the requirements, 2.) the placement of conditions on the Recipient prior to the release of funds, or 3.) in some cases, may halt the project until mitigating measures are identified, and steps taken to achieve compliance.

If permits are required, a listing of the specific permits needed and the procedures by which they will be obtained should be attached to the Statutory Checklist. If mitigating actions are required, the Certifying Officer should fully describe the actions the Recipient will take to assure compliance.

Compliance with Related Laws at 24 CFR 58.6

The following two regulations must be reviewed for applicability, regardless of the program classification of the environmental review. Determination of applicability and source documentation should be shown on the appropriate sections of the Statutory Checklist (58.6).

1. Floodplain Management

Regulations at 24 CFR 58.6 prohibit the use of HUD funds for purchase or rehabilitation assistance in Federal Emergency Management Agency (FEMA) designated Special Flood Hazard Areas (SFHAs) in communities that do not participate in the National Flood Insurance Program (NFIP). These regulations also require that for any purchase assistance or rehabilitation in a SFHA, flood insurance must be obtained and maintained. However, 58.6(a)(3) excludes these requirements for, "Federal formula grants made to a State" [see also 24 CFR 55.2(b)]. Therefore, under the NYS CDBG program, there is no prohibition on the use of NYS CDBG funds in communities that do not participate in the NFIP. If the proposed purchase or rehabilitation of sites involves locations in a SFHA, OCR encourages Recipients to consider other sites outside the 100-year floodplain. If a site within a SFHA is chosen, flood insurance must be purchased and retained in an amount equal to the full (100%) of the home replacement value. The cost of flood insurance is not an eligible project expense under the NYS CDBG program. In most cases, complying with climate-informed planning will consist of addition of elevation, as determined by projected sea-level rise, enhanced storm surge, or future flooding, to the base flood elevation, and then adding the standard freeboard requirement of two feet (three feet for critical facilities).

If the program includes activities in a SFHA as identified above, check "Consultation, Permit and/or Mitigation Required" on the Statutory Checklist, and indicate the procedures that will be implemented to review individual project sites to address the above considerations and substantiate compliance with the applicable regulation. Briefly describe the review procedures and retain the description in the ERR. If under no circumstances will any project activities affect the SFHA, check "Not Applicable" on the Statutory Checklist (58.6) (Form 2-5) and attach documentation to verify this determination. This should not be confused with compliance with the Executive orders 11988 and 11990 on Floodplain and Wetlands (see below).

2. Coastal Barriers

Coastal barriers are sensitive areas along the coasts of the Atlantic Ocean or Great Lakes which are subject to severe damage by extreme weather conditions. These areas have been mapped by the U.S. Department of Interior. HUD assistance may not be used for most activities in the Coastal Barrier Resources System, including tenant-based rental assistance and first-time homebuyer assistance. If there are coastal barrier resources within the program area, check "Consultation, Permit and/or Mitigation Required" to indicate that no NYS CDBG funds will be used for properties located in the Coastal Barrier Resources System, and briefly describe procedures to identify such properties and retain the description in the ERR. If there are no coastal

barrier resources in the program area, check “Not Applicable” on the Statutory Checklist (58.6) (Form 2-5).

Compliance With Related Laws At 24CFR58.5

In addition to compliance under 24 CFR 58.6 with regulatory requirements identified above, programs classified as Categorically Excluded under 58.35(a) and those that require an Environmental Assessment must also consider related laws and authorities under this section.

1. The National Historic Preservation Act of 1966, (16 USC 470 et seq.)

For all federally funded new construction, rehabilitation, public facility, public infrastructure projects, and economic development projects, consultation with State Historic Preservation Office (SHPO) and Tribal Historic Preservation Office (THPO) is required for an effect determination.

The SHPO review should be submitted electronically through the Cultural Resource Information System (CRIS).

For information on completing the THPO consultation review.

For projects where ground disturbance is proposed, NYSHPO and the applicable THPO must be consulted to determine if the property is sensitive for archaeological resources. For properties so identified, an archaeological survey must be completed and submitted to SHPO for an effect determination prior to any ground disturbing activity. Upon receipt of sufficient information to make an effect determination, SHPO will respond to the Recipient in writing with one of the following determinations for the proposed project: *No Effect, No Adverse Effect, or Adverse Effect.* SHPO and THPO both must have a 30-day response time.

A “No Effect” determination allows the project to proceed as proposed. A “No Adverse Effect” determination allows the project to proceed, but generally with conditions attached, which must be incorporated into the scope of work. An “Adverse Effect” determination requires further negotiation among the responsible entity, SHPO, THPO and other involved parties, to identify potential mitigation measures, which may allow the project to proceed. These stipulations are incorporated into a Memorandum of Agreement (MOA) among the parties.

On the Statutory Checklist (58.5) (Form 2-5), check “Consultation, Permit and/or Mitigation Required” and indicate that procedures will be implemented to review individual project sites to address the above requirements. Briefly describe the review procedures and retain it in the ERR. For THPO, if there is no ground disturbance, check “No” under the heading “*Are formal compliance*

steps or mitigation required" and state "*no ground disturbance*" under the Compliance Determinations.

2. Floodplain Management, Executive Order 11988, 24 CFR Part 55

Please note that HUD has adopted new rules regarding 24 CFR Part 55 per Federal Register Notice 78 FR 68730, November 15, 2013, and 78 FR74009, December 10, 2013. Exhibit 2-8 reflects these changes.

The purpose of Executive Order 11988, Floodplain Management, is "to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative."

For projects using Federal funds, Executive Order 11988 requires an eight-step process for agency review, public notification, identification of alternatives, assessment and mitigation of impacts, including special construction methods, **before** commencement of any action which involves new construction, substantial improvement of 1- 4 family structures, or rehabilitation of structures with more than four units. Please refer to Exhibit 2-8 Floodplain Management and Protection of Wetlands Compliance (Executive Order 11988 and Executive Order 11990) for further guidance**.**

New construction and substantial improvement projects in the SFHA must be built according to design requirements established by FEMA and state regulations at 6 NYCRR Part 502, Floodplain Management Criteria for State Projects. Most Recipient programs will not involve new construction or substantial rehabilitation within the SFHA. If the project involves new construction or substantial rehabilitation (more than 50% of the home value), please contact the OCR for further guidance.

If the program includes or may potentially include rehabilitation or new construction activities in a SFHA, check the box labeled "Consultation, Permit and/or Mitigation Required" on the Statutory Checklist (Form 2-5). Describe procedures for individual site review, including the need for Floodplain Management Analysis for new construction and substantial rehabilitation, and retain in the ERR. If the program will include no sites within a SFHA, check "Not Applicable", cite the number and effective dates of the Flood Insurance Rate Map (FIRM) used to make this determination, and communication with the local Code Enforcement Officer.

<u>Community Risk and Resiliency Act of 2014</u>
New York State enacted the Community Risk and Resiliency Act in 2014. The purpose of the law is to ensure that certain state funding, facility-siting regulations, and permits include consideration of the effects of climate risk and extreme weather events. Public infrastructure projects that involve new

construction or groundbreaking may be subject to these new regulations. New public infrastructure projects must demonstrate how their project will mitigate or adapt to the flooding risks. These new guidelines may affect how you answer questions within the Smart Growth Form, notably Criterion 11, required as part of NYS CDBG funding applications. The Smart Growth Criteria form can be found on HCR's website here.

The CRRA includes five major provisions: adoption of science-based sea-level rise projections, consideration of sea-level rise, storm surge, and flooding (coastal and inland) in facility siting, permitting, and funding, inclusion of mitigation of sea-level rise, storm surge, and flooding in the list of Smart Growth Public Infrastructure Policy Act criteria, development of model local laws to enhance community resiliency and, development of guidance on the use of natural resources and natural processes to reduce risks.

FEMA's National Flood Hazard Layer Viewer here.

3. Protection of Wetlands, Executive Order 11990, 6 NYCRR Part 663

As of January 1, 2025, NYSDEC amended 6 NYCRR Part 664 to increase the regulatory jurisdiction and classification of wetland sin New York State. State wetlands indicated on the NYSDEC Environmental Resource Mapper (ERM) are now informational only.

If the project includes ground disturbing activities limited to in-kind replacement of a deck, porch, footers, or stairs (repairs typical to a housing rehabilitation project) then no further State compliance is necessary. That information should be included in the Tier 2 Checklist

If a project involves ground disturbing activities other than those listed above, a Parcel Jurisdictional Determination (JD) must be submitted for NYSDEC review at https://dec.ny.gov/nature/waterbodies/wetlands/freshwater-wetlands-program/freshwater-wetland-jurisdictional-determination.

- If a Negative JD is received from NYSDEC, no further State wetland compliance is necessary
- If a Positive JD is received from NYSDEC, the project sponsor must take all appropriate steps to demonstrate compliance with 6 NYCRR Part 664 and 24 CFR Part 55

The purpose of Executive Order 11990, Protection of Wetlands, is "to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative."

For any new construction activity, or a rehabilitation activity which involves site excavation, fill or grading, U.S. Fish and Wildlife Service (FWS) wetland maps must be reviewed according to the eight-step process prescribed in 24 CFR Part 55, as required by Executive Order 11990. Disturbance of smaller wetland areas not mapped by FWS or the New York State Department of Environmental Conservation (DEC) may require delineation and permitting by the U.S. Army Corps of Engineers (ACOE) under Section 404 of the Clean Water Act. (See sections on Water Quality and Fish and Wildlife below.)

Under New York State regulations, a permit must be obtained from DEC prior to conducting regulated activities in or within 100 feet of state-protected freshwater wetland areas mapped by the agency. Maps of state-protected wetlands are available at DEC regional offices (www.dec.ny.gov/about/558.html), as well as municipal and county offices. A DEC permit is also required for disturbance of unmapped wetland areas contiguous to free-flowing streams. Regulated activities are described in DEC permit regulations at 6 NYCRR Part 663. Within the boundaries of the Adirondack Park, state wetland regulations are administered by the Adirondack Park Agency (APA).

If any project in the proposed program may impact a wetland area mark "Consultation, Permit and/or Mitigation Required" to indicate compliance with Executive Order 11990, and "Consultation, Permit and/or Mitigation Required" if a project may be located in or within 100 feet of a DEC or APA regulated wetland. Briefly describe the review procedures and retain it the ERR.

An individual wetland permit can be used to satisfy the requirements at 24 CFR 55.20; however, a nationwide permit cannot be used to satisfy these requirements.

4. Noise Abatement and Control, 24 CFR Part 51 Subpart B

It is HUD's general policy to provide minimum national standards applicable to HUD programs to protect citizens against excessive noise in their communities and places of residence. Noise attenuation (through the construction of barriers or architectural features) should be encouraged in all projects where it is apparent that excessive noise levels exist.

Projects that include only moderate rehabilitation (under $25,000 per unit) do not need to document compliance with 24 CFR Part 51. Check "Not Applicable"

on the checklist and note in the compliance documentation section that the project is Moderate Rehabilitation.
For substantial rehabilitation projects, a noise assessment worksheet must be prepared according to procedures described in The Noise Guidebook, HUD-953-CPD, March 1985, and current as of March 16, 2009, if the site is located within 1,000 feet of a major highway, 3,000 feet of an active railroad line, or 15 miles from a designated airport. HUD regulations state that noise attenuation shall be "strongly encouraged" in substantial rehabilitation projects where the average ambient day-night noise level (DNL) exceeds 65 dB. The Noise Guidebook can be reviewed at: https://www.hudexchange.info/resource/313/hud-noise-guidebook/.

For new residential construction projects, a noise assessment must be prepared if the site is in close proximity to transportation noise sources as described above. Part 51 establishes the following thresholds for acceptability of new construction in a noise sensitive area:

DNL	Required Action
65 dB or less	Acceptable - No further action required.
65-70 dB	Normally Unacceptable - minimum 25 dB window wall noise attenuation or other mitigation action required.
70-75 dB	Normally Unacceptable - minimum 30 dB window wall noise attenuation or other mitigation required.
Greater than 75 dB	Unacceptable - action allowed with adequate noise attenuation, or other mitigation, but only if an environmental impact statement (EIS) is prepared, or a waiver of the EIS requirement is issued.

For programs which may include substantial rehabilitation ($25,000 or more per unit), or new construction of residential structures, including locations which may be impacted by noise sources, check "Consultation, Permit and/or Mitigation Required" on the Statutory Checklist. Briefly describe the review procedures and retain in the ERR.

5. Manmade Hazards

HUD has placed prohibitions on certain types of development in close proximity to potential thermal/explosive hazards and airport clear zones.

a. Thermal/Explosive Hazards - 24 CFR Part 51 Subpart C

This regulation is applicable to HUD-assisted projects intended for residential, institutional, recreational, commercial, or industrial use, conversion of non-residential buildings to residential use, and rehabilitation of vacant structures or rehabilitation, which increases the number of residential units. For these activities, the acceptable separation distance (ASD) of the site from flammable or explosive materials stored above ground must be calculated. Federal financial assistance is prohibited when an unprotected site is less than the ASD from a thermal/explosive hazard. Modification of the proposed layout, design, or citing should be considered when a proposed project is less than the ASD from a hazardous facility. This regulation does not provide any waiver provision. Additional HUD guidance for purposes of site analysis, calculation of the ASD, and acceptable mitigation is presented in the publication citing of HUD-Assisted Projects near Hazardous Facilities, HUD-1060-CPD, April 1987. An electronic assessment tool for determining ASD is now available on the HUD Environmental Website https://www.hudexchange.info/environmental-review/asd-calculator/.

For programs that do not include activities requiring compliance with Part 51 Subpart C requirements, select "No" on the Statutory Checklist.
When completing the programmatic ERR, preparers should consider including a narrative similar to the following statement:

> "The project will not allow for installation of any new outdoor above ground storage tanks (ASTs) on the project sites. It does not involve new construction, conversion of non-residential to residential use, an increase in unit density, a new footprint, or an increase in the size of a mobile home by 122% or more, so a thermal explosive survey is not required."

If project activities include new construction, conversion of non-residential to residential use, an increase in unit density, a new footprint, rehabilitation of vacant structures. an increase in the size of a mobile home by 122% or more, or new above ground storage tank(s), check "Consultation, Permit and/or Mitigation Required" on the Statutory Checklist to indicate that for these activities, the ASD from existing above-ground storage facilities which contain flammable or explosive materials, as defined in 24 CFR Part 1 Subpart C, will be determined, and appropriate decisions made according to regulatory requirements. Briefly describe the review procedures and retain in the ERR. Note that in the above conditions a thermal explosive survey would be required. Requirements of the survey are described below.

- An independent field survey must be conducted, and report prepared that identifies whether there are off-site ASTs that could affect the project site. The survey must include a visual survey and a study of the following:
  - any above-ground (outdoor) tanks which store flammable or explosive gasses within 1,000-foot radius of the site;

- any above-ground (outdoor) tanks exceeding 100 gallons which store flammable or explosive liquids within 1,000-foot radius of the site; or
- any above-ground (outdoor) tanks that exceed 20,000 gallons and are within one (1) mile of the site. o Once this survey is submitted with the Tier 2, EU will review and calculate the acceptable separation distance (ASD) appropriate for tanks indicated within the survey. Mitigation may be required if the ASD is not acceptable.

Should project activities include new above ground storage tank(s) under 1,000 gallons, the new tanks must comply with EITHER the acceptable separation distance (ASD), or the tanks must be in compliance with the National Fire Prevention Association regulations at the NFPA 58 with compliance documented by the company servicing the tank(s).

6. Clean Air Act (42 USC 7401 et seq.)

Asbestos

Projects conducted by Recipients are not on a scale that requires consideration of most provisions of the Clean Air Act (CAA), with the exception of asbestos, an airborne contaminant known to be hazardous to human health, or "hazardous air pollutant." Section 112 of the CAA establishes the National Emissions Standards for Hazardous Air Pollutants (NESHAP). The asbestos NESHAP classifies asbestos-containing materials (ACM) according to the following categories:

Friable ACM is any material containing more than one percent asbestos (determined by Polarized Light Microscopy as specified by EPA), that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

Category I non-friable ACM is asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos, as determined by the above-prescribed method.

Category II non-friable ACM is any material (other than Category I non-friable ACM), containing more than one percent asbestos, as determined by the above prescribed method, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure. Examples of this category include asbestos-cement products (such as transite) commonly used for duct insulation, pipes, and siding.

Regulated asbestos-containing material (RACM) is a) Friable ACM; b) Category I non-friable ACM that has become friable due to deterioration; c) Category I non-friable ACM, which has or will be subjected to sanding, grinding, cutting or abrading; and d) Category II non-friable ACM, which has a high probability of becoming or has become crumbled, pulverized or reduced to powder by forces expected to act on the material in the course of demolition or renovation. Further guidance on ACM classification and identification can be found at epa.gov/asbestos.

In New York State, any project which involves removal, encapsulation, enclosure or disturbance of RACM (except for work in an owner-occupied, single-family dwelling performed by the owner of the dwelling) is subject to NYS Department of Labor (DOL) regulations at 12 NYCRR Part 56. Any contractor involved in these activities must have a valid asbestos handling license, displayed at the work site, and must perform all asbestos work in accordance with provisions of Part 56. Where all asbestos work on a project is subcontracted to a contractor with an asbestos handling license, only that part of the work involving asbestos is considered an asbestos project; other contractors not involved in the asbestos project are not required to have an asbestos handling license. A list of licensed asbestos contractors is available by calling the NYS DOL at (518) 485-9263 or through the NYS DOL website, https://labor.ny.gov/workerprotection/safetyhealth/DOSH_ASBESTOS.shtm. In addition to the above activities, disposal of RACM is governed by federal and state waste disposal regulations (see Solid and Hazardous Waste, below).

The NYS DOL instructs that an asbestos survey must be completed by a certified Asbestos Inspector whenever all or part of a building or structure will be demolished, renovated, remodeled, or repaired. The survey will determine if the planned work disturbs asbestos material.

ERR compliance language might be:

“Asbestos Containing Materials (ACM) that will be disturbed as part of program activities will be handled and disposed of according to NYS Department of Labor requirements at 12 NYCRR Part 56 and local regulations.”

OR

“An Asbestos survey was conducted, and it was determined that ACM will not be disturbed as documented in the attached.”

OR

“Asbestos Abatement has been completed and the report is included.”

The responsible entity may provide written documentation, as applicable, that the site or sites have been reviewed by an environmental professional and determined not to be located on or near any hazardous materials or contamination and that the site complies with HUD environmental standards as specified at 24 CFR 58.5(i). This site visit report will include a signed certification statement, that: "I, (Name, Title), certify that I am a qualified environmental professional as per ASTM 1527." The American Society for Testing and Materials Standard (ASTM) defines “Environmental Professional” as:

- A person who holds a Baccalaureate or higher degree in a relevant science or engineering field plus the equivalent of five years relevant work experience OR
- A person who holds a current engineer’s or professional geologist license or registration from a state, tribe or U.S. territory OR
- An official of the site locality’s Building Department with expertise in assessing environmental conditions OR
- A person who has the equivalent of ten years relevant work and field experience in performing environmental site assessments.

Radon

Radon is a colorless, odorless gas classified as a Group A carcinogen by the United States Environmental Protection Agency (EPA). Radon typically moves up through the ground to the air above and into a building through cracks and other holes in the foundation. The building traps radon inside, where it can build up. Any building may have a radon problem. This includes new and old buildings, well-sealed and drafty buildings, and buildings with or without basements.

According to HUD’s environmental regulations at 24 CFR 58.5(i)(2)(i) and (ii)4, “All properties that are being proposed for use in HUD programs [must] be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.”

As of January 11, 2024 (Notice CPD-23-103), HUD requires radon to be considered as part of the contamination analysis for projects which:

- Require an environmental review at the level of Categorically Excluded Subject to 50.4 or 58.5 (“CEST”), Environmental Assessment, or Environmental Impact Statement; and
- Involve structures that are occupied or are intended to be occupied at least four (4) hours a day.

Note: HUD’s contamination policy does not apply to projects that are Exempt or Categorically Excluded Not Subject to 50.4 or 58.5 (“CENST”)

The following project types are exempt from considering radon in the contamination analysis:

- Buildings with no enclosed areas having ground contact.
    - Buildings containing crawlspaces, utility tunnels, or parking garages would not be exempt, however buildings built on piers would be exempt, provided that there is open air between the lowest floor of the building and the ground.
- Buildings that are not residential and will not be occupied for more than 4 hours per day.
- Buildings with existing radon mitigation systems – grantees must document that radon levels are below 4 pCi/L8 with test results dated within two years of submitting the application for HUD assistance and that the system includes an ongoing maintenance plan which includes periodic testing to ensure the system continues to meet the current EPA recommended levels.
- Buildings tested within five years of the submission of application for HUD assistance - test results must document that indoor radon levels are below current the EPA's recommended action levels of 4.0 pCi/L. For buildings with test data older than five years, any new environmental review must include plans for radon testing.

ERR Preparation - When completing the initial ERR, which the Office of Community Renewal typically requires before environmental testing has occurred, preparers should consider including a narrative similar to the following statement:

"The project includes assistance to residential units that will be inhabited for four or more hours every day. Radon testing will be conducted pre-rehabilitation and, if elevated levels are found, a radon mitigation system will be installed in accordance with EPA Radon Mitigation Standards. Documentation of test results or installation of a mitigation system will be provided at project completion."

Testing - Radon testing must be conducted on all properties receiving assistance before rehabilitation occurs.

Environmental review preparers may not use the EPA Map of Radon Zones nor EPA State Maps of Radon Zones for considering radon levels at a project site for compliance with 24 CFR 50.3(i) or 24 CFR 58.5(i) because it is not appropriate for a site-specific analysis of radon risk, which is required for a HUD environmental review.

Radon testing instructions generally dictate that testing should be conducted in the lowest livable floor of a building that is used on a regular basis. If the basement is not used on a regular basis or the building does not have a basement, testing should be conducted in the next lowest livable floor. In addition, closed building conditions must be maintained for the duration of the

test. For one-for-one unit replacements, radon testing must be conducted upon completion of the new unit installation.

If testing demonstrates that radon levels within the building are below 4 pCi/L, mitigation would not be required; environmental review preparers can simply document the test results in their Tier II review and no further action is required for radon compliance.

If radon testing determines indoor air radon levels are at or above 4 pCi/L, CDBG grantees must document these test results and create and follow a mitigation plan included in the program's Tier II Environmental Review Record (ERR). The mitigation plan must:

- identify the radon level;
- consider the risk to occupants' health;
- describe the radon reduction system that will be installed;
- whenever possible, establish an ongoing maintenance plan to ensure the system is operating as intended;
- establish a reasonable timeframe for implementation (i.e., integrate radon mitigation activities into an annual plan or a 5-year plan that is already completed for HUD funded activities) and;
- require post-installation testing.

Where feasible, post-installation testing should be conducted by a licensed radon professional. In an area where there are no licensed radon professionals, there may be other personnel, such as trained staff, other professionals (i.e., engineers, geologists, scientists, public health staff) who have experience conducting radon testing or have the relevant skills and knowledge to follow the device instructions or ANSI/AARST test protocols and mitigation standards. For assistance, contact the EPA's local radon program office, state/Tribal radon program office, the National Radon Program Services, or refer to the applicable ANSI/AARST standard for guidance. If using the ANSI/AARST mitigation standard to install the radon reduction system, follow the guidance in the standard to draft the mitigation and the operation, maintenance, and monitoring plans.

Additional information on testing can be found in HUD CPD Notice 23-103.

Mitigation - An elevated radon level occurs if the results of one long-term test or the average of two short-term tests show radon levels of 4pCi/L or higher. If elevated levels are encountered, a radon mitigation system must be installed in accordance with EPA Radon Mitigation Standards. However, it should be noted that the EPA recommends that Americans consider fixing their home if test results reveal radon levels between 2 pCi/L and 4 pCi/L.

7. Water Quality - Sole Source Aquifers

Section 1424(e) of the Safe Drinking Water Act of 1974 (42 USC 201) allows for aquifer areas to be designated by EPA as Sole Source Aquifer (SSA) areas. Once an area is designated, the Environmental Protection Agency (EPA) must review proposals for federal assistance which may adversely affect the SSA according to criteria at 40 CFR Part 149. Several SSA areas have been designated in New York State. Under terms of a Memorandum of Understanding (MOU) between EPA and HUD, a Project/Activity Initial Screen Criteria form (Appendix H) must be completed and submitted to EPA for construction projects within a designated SSA, except for the following excluded activities: 1) New construction of 1-4 residential units at any one site; 2) Funding of planning grants; 3) Rehabilitation of residential units; 4) Funding of all other grants for non-construction projects/activities; and 5) Projects identified as exempt in 24 CFR 58.34.

If the program area contains a SSA designated by EPA, and the program may include construction activities not listed as excluded above, check "Consultation, Permit and/or Mitigation Required" on the Statutory Checklist, to indicate that projects in the SSA area will be reviewed by EPA according to the terms of the HUD/EPA MOU. Briefly describe the review procedures and retain the description in the ERR. If there is not a designated SSA area in the program area, or if all activities in the program are excluded according to the list above, check "Not Applicable" on the Statutory Checklist.

8. Coastal Zone Management Act of 1972 (16 USC 1451 et seq.)

The coastal zone includes the coastal salt waters and adjacent shore lands, including inter-tidal areas, barriers and other islands, estuaries and land whose use would have a significant impact on coastal waters. The Great Lakes and their connecting waters, harbors, and estuaries are also included. In New York State, these areas include Lakes Erie and Ontario, the St. Lawrence, East, Harlem and Niagara Rivers, the Hudson River south of the Federal Dam at Troy, the Kill van Kull and Arthur Kill, Long Island Sound, the Atlantic Ocean, and their connecting water bodies, bays, harbors, shallows, and marshes.

If the program includes areas within the designated coastal zone, the municipality should be contacted to determine if project sites may be in the designated coastal zone, or within the boundaries of a Local Waterfront Revitalization Program (LWRP). For all projects in the coastal zone, the responsible entity must submit a completed Federal Coastal Assessment Form to the New York State Department of State Coastal Zone Management Program for review and comment. It is available on the web at http://www.dos.ny.gov/opd/programs/pdfs/Consistency/CAF_11_3_08.pdf.

If the program includes projects within a designated coastal zone, check "Consultation, Permit and/or Mitigation Required" on the Statutory Checklist to

indicate that the required interagency review will be conducted. Briefly describe the review procedures and retain the description in the ERR.

9. Endangered Species Act of 1973 (16 USC 1531 et seq.)

The responsible entity must consult with the U.S. Fish and Wildlife Service (FWS) and the regional DEC office to determine if the target area is known to contain state or federal listed rare, threatened, or endangered species. If none are identified, check "Not applicable: no endangered species in target area" on the Statutory Checklist. Documentation of FWS and DEC must be included in the ERR. Consultation with FWS occurs through the online IPaC site (https://ecos.fws.gov/ipac/). Documentation from that site must be submitted to satisfy the consultation requirement for FWS. Where rare, threatened, or endangered species may be present in the target area, check "Consultation, Permit and/or Mitigation Required". Retain in the ERR a description of the procedures for individual site review which state that prior to commencement of any project where ground disturbance will occur, FWS and DEC will be notified to determine the potential for impacts of the proposed action on any rare, threatened, or endangered species, and that documentation of the consultation will be maintained in the project file.

10. Farmland Protection Policy Act of 1981(7 USC 4201 et seq.)

When a proposed project converts farmlands, as defined by this statute, to nonagricultural uses, criteria found at 7 CFR 658 (a) and (b) must be used to evaluate the potential impact of the proposed action on farmlands. This procedure utilizes the Farmland Conversion Impact Rating Form AD-1006 of the U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS). The responsible entity must complete Parts 1, 3, and 6 of the form and then submit the form with relevant information to the NRCS office which serves the project area. Where it is determined that a project site is suitable for protection under this statute, the responsible entity must consider alternative sites or other project modifications according to requirements at 7 CFR 658.4(c)(4). New York State Agriculture and Markets Law requires site review if the project is conversion of farmland to nonagricultural use in a state Agricultural District certified pursuant to Agriculture and Markets Law, Article 25-AA, sections 303 and 304. This review consists of an Agricultural Impact Statement and a Notice of Intent submitted to the NYS Department of Agriculture and Markets for their review and consideration.

If the program includes proposed actions, which may convert farmland to nonagricultural use, check "Consultation, Permit and/or Mitigation Required" on the Statutory Checklist, to indicate that Form AD-1006 will be submitted to the appropriate NRCS office to determine the potential impact of the proposed action on farmlands, and if the site is subject to protection, that appropriate alternative sites and/or other project modifications will be considered, and if

the site is within a NYS agricultural district, procedures to evaluate the action according to Part 371 of Agriculture and Markets Law will be implemented. Briefly describe the review procedures and retain the description in the ERR. If the program does not involve any activities with potential to convert farmland to nonagricultural use, check "Not applicable" on the Statutory Checklist.

11. The Wild and Scenic Rivers Act of 1968 (16 USC 1271 et seq.)

The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) provides federal protection for certain free-flowing, wild, scenic, and recreational rivers designated as components or potential components of the National Wild and Scenic Rivers System (NWSRS). The National Wild and Scenic Rivers System (NWSRS) was created by Congress in 1968 (Public Law 90-542; 16 U.S.C. 1271 et seq., as amended) to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations. The Act is notable for safeguarding the special character of these rivers, while also recognizing the potential for their appropriate use and development. It encourages river management that crosses political boundaries and promotes public participation in developing goals for river protection.

Each river or river segment in the National Wild and Scenic Rivers System is administered with the goal of protecting and enhancing the values that caused it to be eligible for inclusion in the system. Designated rivers need not include the entire river and may include tributaries.

Four primary federal agencies are charged with protection and managing our wild and scenic rivers: the National Park Service, Bureau of Land Management, U.S. Forest Service and U.S. Fish and Wildlife Service. Each river segment is administered by generally one of these federal agencies and/or a state agency and, in some cases, a tribe or in coordination with local government. Boundaries for protected rivers generally extend one-quarter mile from either bank in the lower 48 states and one-half mile on rivers outside national parks in Alaska to protect river-related values.

HUD-assisted activities are subject to the requirements of the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). The environmental review must evaluate the potential to impact any listed Wild and Scenic River when the assisted project is within proximity to a listed natural resource (24 CFR 58.5(f).

HUD Guidance: **Is your project within proximity of a NWSRS river as defined below?**

- Wild and Scenic Rivers. These rivers or river segments have been designated by Congress or by states (with the concurrence of the Secretary of the Interior) as wild, scenic or recreational.

- Study Rivers. These rivers or river segments are being studied as a potential component of the Wild & Scenic River system.

- Nationwide Rivers Inventory (NRI). The National Park Service has compiled and maintains the NRI, a register of river segments that potentially qualify as national wild, scenic, or recreational river areas.

If so, is your project a water resources project? A water resources project is a federally assisted project that could affect the free-flowing condition of a wild and scenic river. Examples include dams, water diversion projects, bridges, roadway construction or reconstruction, boat ramps, and activities that require a Section 404 permit from the Army Corps of Engineers.

If so, could the project do any of the following?

- Have a direct and adverse effect within wild and scenic river boundaries.
- Invade the area or unreasonably diminish the river outside wild and scenic river boundaries.
- Have an adverse effect on the natural, cultural, and/or recreational values of an NRI segment.

Consultation with the appropriate federal, state, local, and/or tribal Managing Agency is required, pursuant to Section 7 of the Act, to determine if the proposed project may have an adverse effect on a wild and scenic river or a study river and, if so, to determine the appropriate avoidance or mitigation measures. The Managing Agency for a particular river segment generally is the National Park Service, the Bureau of Land Management, U.S. Forest Service, or U.S. Fish and Wildlife Service; for some river segments, a state agency, tribe, or a local government may also be a Managing Agency. For rivers listed in the NRI, the National Park Service (NPS) is the point of contact. Under Section 5 of the Act, the NPS can provide recommendations that the Responsible Entity must consider in protecting the listed river segment.

Documentation and Compliance

The environmental review record should contain **one** of the following:

- Evidence the proposed action is not within proximity to a designated Wild, Scenic, or Recreational River
- Documentation that contacts was made with the Federal (or state) agency that has administrative responsibility for management of the river and that the proposed action will not affect river designation or is not inconsistent with the management and land use plan for the designated river area.

12. Environmental Justice, Executive Order 12898

Executive Order 12898 requires each federal agency to include environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high, and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Among options for implementation of this executive order by HUD, several key initiatives or projects that can be undertaken immediately to address environmental justice issues have been outlined, including the President's Empowerment Zone program, the prevention of childhood lead poisoning, the "greening" of urban brownfields, and the revitalization of distressed rural communities along the U.S. - Mexico border.

Although HUD has not provided specific guidance at this time for responsible entities to demonstrate compliance with this executive order under 24 CFR Part 58 review, the ERR should include a statement that the program will be consistent, as far as practicable, with the principles of the executive order, and the HUD initiatives identified above.

13. Water Quality

A variety of federal and state regulations to protect water quality may potentially affect projects funded under the NYS CDBG program, primarily related to the federal Clean Water Act of 1977 (CWA). The two most common types of regulated activities are those which result in discharge of pollutants from a "point source" and discharge of dredged or fill material, into waters of the United States, as defined by the CWA and subsequent court interpretations. Certain projects may require a State Pollution Discharge Elimination System (SPDES) permit or, if a construction project will affect five or more acres, compliance with terms of the SPDES Storm water General Permit for Construction Activities. Projects which include on-site water supply or sewage disposal systems must also conform to specifications of NYS Department of Health regulations at 10 NYCRR Part 75.

Section 404 of the Clean Water Act requires authorization from the U.S. Army Corps of Engineers (ACOE) to discharge dredged or fill material into waters of the United States, including wetlands adjacent to streams and isolated wetland areas. Discharges of fill material generally include, without limitation: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for intake and outfall pipes and subaqueous utility lines; fill associated with the creation of ponds; and any other work involving the discharge of fill or dredged material. An ACOE permit is required whether the work is permanent or temporary. Examples of temporary discharges include dewatering of dredged material

prior to final disposal, and temporary fills for access roadways, cofferdams, and storage and work areas. Additionally, construction activity within or near a river or stream may require a stream disturbance permit from DEC.

If any proposed activities may require a discharge permit, check "Consultation, Permit and/or Mitigation Required" to indicate that appropriate agencies will be consulted to determine the applicability of specific water quality regulations to the project, required permits and/or approvals will be obtained prior to commencement of the project, and documentation will be included in the project file. Briefly describe the review procedures and retain the description in the ERR.

14. Solid and Hazardous Waste

The Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) (RCRA) regulates the generation, transportation, treatment, storage, and disposal of hazardous waste, and also sets forth a framework for the management of non-hazardous wastes. Hazardous waste is defined by RCRA as materials which are toxic, corrosive, ignitable or reactive. Materials suspected to be hazardous, such as stored chemicals, soil or building materials contaminated by chemicals, asbestos-containing materials (ACM's) and lead-based paints (LBP), must be tested to determine if they meet criteria for classification as hazardous waste. Materials determined to be hazardous waste must be handled, transported, and disposed according to RCRA requirements. In addition, contractors hired to remove asbestos from a building must be licensed and certified in asbestos removal by the New York State Department of Labor. Amendments to RCRA address environmental problems that could result from underground tanks storing petroleum and other hazardous substances. State regulations at 6 NYCRR Part 613 establish requirements for registration, installation, removal, and disposal of underground tanks.

Disposal of construction and demolition (C&D) waste is regulated by 6 NYCRR Part 360, Solid Waste Management Facilities. Such waste includes, but is not limited to, bricks, concrete, and other masonry materials, soil, rock, wood (including painted, treated, and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles and other roof coverings, glass, plastic (not concealing other wastes), empty buckets with no more than one inch of residue, electrical wiring and components containing no hazardous liquids, and incidental metals. Excluded from the definition of C&D waste are asbestos waste, garbage, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, fluorescent lights, carpeting, furniture, appliances, tires, drums, or containers more than ten gallons in size, or with more than one inch of residue.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC 9601 et seq.) (CERCLA), commonly known as Superfund, establishes prohibitions and requirements concerning closed and abandoned hazardous waste sites and provides for liability of persons responsible for releases of hazardous waste at these sites. Under this law, purchasers of property may be included as potentially responsible parties (PRPs), liable to contribute to the cost remediation, with certain exceptions, one of which is if the purchaser can demonstrate that, based upon a due diligence environmental investigation, the buyer had no knowledge of site contamination at the time of purchase. This provision has led to the common practice of performing Phase I Environmental Site Assessments (ESA) for commercial property prior to property transfer. The American Society for Testing and Materials (ASTM), a private organization which develops various technical standards, has developed a standard protocol for conducting Phase I ESAs. For activities which may involve purchase of commercial or industrial property, a Phase I ESA is encouraged. Concerns raised in the Phase I report should be properly resolved prior to property transfer. The EPA has issued rules governing the preparation of CERCLA compliance documents. More information is available on the EPA website, www.epa.gov.

If any program activities may potentially encounter hazardous materials, demolition of buildings or building components, or purchase of commercial or industrial property, check “Consultation, Permit and/or Mitigation Required” on the Statutory Checklist to indicate the project will comply with applicable procedures described above, and documentation of compliance will be maintained in the project file. Briefly describe the review procedures and retain the description in the ERR. If no program activities will result in the handling or disposal of hazardous or C&D waste, check “Not Applicable” on the Statutory Checklist (58.5).

15. The Fish and Wildlife Coordination Act (16 USC 661 et seq.)

The Fish and Wildlife Coordination Act (FWCA) requires federal agencies to consider the effects that projects which result in the control or modification of a body of water would have on fish and wildlife resources, take action to prevent loss or damage to these resources, and provide for the development and improvement of these resources. Typical actions include those which require a Section 404 permit from the ACOE (see Wetlands and Water Quality above), including discharges of pollutants such as industrial, mining, and municipal wastes or dredged and fill material into a body of water or wetlands, and projects involving construction of dams, levees, impoundments, stream relocation, and water-diversion structures. Where a Section 404 permit is involved, the ACOE consults with the Fish and Wildlife Service to satisfy this requirement.

If any program activity will potentially involve a Section 404 permit from the ACOE, check “Consultation, Permit and/or Mitigation Required” to indicate that the permit process will include this required coordination. Briefly describe this process and retain the description in the ERR. If no program activities will require review for a Section 404 permit, check “Not Applicable” on the Statutory Checklist (58.5).

16. HUD Environmental Standards

It is HUD policy that all properties that are proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

The environmental review of multi-family housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in the paragraph above.

Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes. Recipients should use current techniques by qualified professionals to undertake investigations determined necessary.

In the section of the Statutory Checklist labeled HUD Environmental Standards, the Recipient should document that the site is not on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

III. NEW YORK STATE ENVIRONMENTAL AND HISTORIC REGULATIONS

A. State Environmental Quality Review Act (SEQRA)

The State Environmental Quality Review (SEQR) Act (Article 8 of the New York State Environmental Conservation Law) and the implementing regulations at 6 NYCRR Part 617 require state agencies to consider environmental factors prior to any decision to undertake, approve, or fund an action. SEQR requirements are distinct from federal NEPA review, and compliance with SEQR is required in addition to the federal environmental review.

Compliance with SEQR requires Recipients to assess the environmental significance of all proposed activities. Recipients must classify the proposed activities according to criteria at 6 NYCRR Part 617.4 and 617.5 to determine if they are Type I, Type II, or Unlisted actions. Type II actions require no SEQR action other than documentation of the classification. Unlisted actions require a

short Environmental Assessment Form (EAF) (full EAF is optional) resulting in a determination of significance, either a Positive Declaration or a Negative Declaration. Type I activities must use the full EAF in determining the significance of the action. Fillable versions of both EAF's as well as additional information on SEQR are available from the DEC website.

Microenterprise activities and activities which include rehabilitation of existing residential properties or assistance to home buyers for purchase of existing for-sale properties have been determined to be Type II actions, which do not require further SEQR review.

As part of the SEQR review, a determination of lead agency must be made. When a single agency is involved, that agency will be the lead agency. When more than one agency is involved, a lead agency must be established prior to a determination of significance. The lead agency is the party that conducts the SEQR review. OCR requires Recipients of NYS CDBG funding to assume the role of lead agency unless another involved agency elects to assume such status.

If more than one agency is involved in the project, a coordinated review may be required which involves all the involved agencies in the SEQR review process. Type I actions require coordinated SEQR review among all involved agencies, including OCR, before deciding of significance.

A Positive Declaration for either an Unlisted or Type I action requires the preparation of an Environmental Impact Statement (EIS). The SEQR process uses the EIS to examine ways to avoid or reduce adverse environmental impacts related to a proposed action. This includes an analysis of all reasonable alternatives to the action.

It is the responsibility of the Recipient to ensure that individual actions are properly classified and reviewed according to SEQR procedures. All Recipients must complete a Certification of SEQR Classification (Form 2-3A) as part of the environmental review process. Documentation of compliance with SEQR must be maintained in the ERR file.

B. State Historic Preservation Office (SHPO)

Recipients must consult with the State Historic Preservation Office (SHPO) on whether there are any historic properties on the project site or whether the project will influence historic properties. SHPO is required to review all Federally funded new construction, rehabilitation, or public facilities projects. This process was designed to determine whether the proposed project is of historic, architectural, or archaeological value or would adversely affect any district, site, building or other structure which is listed, or eligible to be listed, in the National Register of Historic Places. SHPO is also required to make recommendations on issues of design or construction that best protect the historic quality of a building, site, or district. Once

a site has been listed or is eligible for listing in the Register, or is within an existing or eligible historic district, no action affecting historic resources can proceed once application is made, or is anticipated to be made for federal funding, without consultation of SHPO.

For all federally funded new construction, rehabilitation, public facility, public infrastructure projects, and economic development projects, consultation with State Historic Preservation Office (SHPO) and Tribal Historic Preservation Office (THPO) is required for an effect determination. This is required for every project that may include an action that may have an adverse impact on properties that may be of historic significance. SHPO and THPO may ask the applicant for further information regarding the existing site or proposed project design to make its determination. Recipients should consult with SHPO and THPO as soon as possible to prevent delays in the progress of their project.

The SHPO review should be submitted electronically through the Cultural Resource Information System (CRIS).

For information on completing the THPO consultation review, click here.

For projects where ground disturbance is proposed, SHPO and THPO must be consulted to determine if the property is sensitive for archaeological resources. For properties so identified, an archaeological survey must be completed and submitted to SHPO for an effect determination prior to any ground disturbing activity. Upon receipt of sufficient information to make an effect determination, SHPO will respond to the Recipient in writing with one of the following determinations for the proposed project: *No Effect, No Adverse Effect, or Adverse Effect.* SHPO and THPO both must have a 30-day response time.

For additional contact information for SHPO offices, click here.

IV. ONLINE PUBLICATION OF NOTICE

A. New Option for Online Publication (As of May 23, 2024)

The updated 24 CFR Part 58 regulation allows online publication of Notices of Intent to Request Release of Funds (NOI-RROF) and Findings of No Significant Impact (FONSI). This means that in addition to the traditional options of physical posting or newspaper publications, Responsible Entities may now post the same notices on their own government websites. Examples of appropriate government websites include pre-existing sites related to HUD programs and plans, including Consolidated Plans, as well as any sites where the Responsible Entity as a unit of government displays notices on a regular basis. The online publication can be combined with existing publication and posting practices. Ideally, the notices should be published through all means necessary to create a reasonable opportunity for public involvement. In furtherance of supplying a reasonable opportunity for public involvement, the government website must be accessible to individuals with disabilities and provide meaningful access to individuals with

Limited English Proficiency. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

The timeframes for each means of providing notices are listed in 24 CFR 58.45.

The Responsible Entity is required to maintain proof of publication and notice to the public. For online publications, required documentation may include:

- a print to PDF of the web hosting that includes the website address and date of printing.
- certification from the Certifying Officer or other official to include the dates of publication and website address along with a copy of the publication made.
- or other like affidavit of publication that includes the notice, date of the notice, and website address where it was published.

This proof of publication will need to be provided with the Requests for Release of Funds form submitted with the environmental.

EXHIBITS

2-1 Designation of Certifying Officer

2-2 Environmental Review Record Checklist

2-3 Sample Notice of Intent to Request Release of Funds (NOI/RROF)

2-4 Sample Combination Notice: Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI/NOI/RROF)

2-5 Required NOI/RROF and FONSI/NOI/RROF Distribution List

2-6 Environmental Review Process Flow chart

2-7 Request for Release of Funds Requirements

2-8 Floodplain Management and Protection of Wetlands Compliance

2-9 Sample Early Notice and Public Review of Proposed Activity Located in a 100-Year Floodplain

2-10 Sample Final Notice and Public Explanation of a Proposed Activity in the 100-Year Floodplain and Wetland

2-11 Noise Abatement (CEST Level Reviews)

2-12 Noise Abatement (EA Level Reviews)

2-13 Links to Outside Agency Forms

EXHIBIT 2-1
DESIGNATION OF CERTIFYING OFFICER AND ENVIRONMENTAL RESPONSIBILITY CERTIFICATION (BY RESOLUTION)

(Date)

(Name of the OCR Community/Economic Developer)
Office of Community Renewal
Hampton Plaza
38-40 State Street, 4th Floor
Albany, New York 12207

Dear *(Name of OCR Community/Economic Developer):*

I, _____, the authorized signatory for _____ do attest that:

- I understand that any projects that include CDBG funds must be assessed in accordance with the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed at 24 CFR Part 58.

- I understand that, except for actions involving activities determined to be Exempt (per 24 CFR 58.34 and NYS Office of Community Renewal procedures), ***no physical alteration to individual sites can occur nor can funds for those activities be committed or expended until receipt of an environmental clearance letter*** from the Housing Trust Fund Corporation and, for any subsequently identified specific sites, site-specific reviews are completed for which the Certifying Officer determines that there are no unanticipated impacts nor impacts not adequately addressed in the program review related to the environmental clearance letter and said Officer certifies such determination.

- I understand that should any part of a project site be physically altered, funds be committed, or funds be expended prior to receiving the appropriate environmental clearances, that the site will not be eligible for CDBG funding and the (*Name of Responsible Entity*) may be responsible for any costs incurred except under the following circumstance: in the case of Exempt activities, concurrence from the NYS Office of Community Renewal that the particular action is Exempt prior to any physical alterations unless that action is taken to address an emergency situation in which case concurrence must be obtained no later than the first regular business day following such an event,

- I also notify you that *(Name of Certifying Officer)*, *(Title)*, is designated as the ***Certifying Officer*** responsible for all activities associated with the environmental review process to be completed in conjunction with NYS CDBG project number *(OCR-assigned project number)* awarded to *(Name of Recipient)*

Sincerely,

_____
Signature of Chief Elected Official

_____
Typed Name and Title

EXHIBIT 2-2

ENVIRONMENTAL REVIEW RECORD CHECKLIST

FOR RECIPIENT USE ONLY
DO NOT SUBMIT THIS TO OCR

Recipients may use this checklist as a guide to assist in creating and maintaining the Environmental Review Record (ERR). **This checklist and the Environmental Review Record are not to be submitted to the Office of Community Renewal (OCR)**. **Only the documents requested should be submitted to OCR unless other documentation has been specifically requested**. At a minimum, the items below must be maintained in the ERR:

	LIST OF DOCUMENTS NEEDED	COMMENTS
1. _____	Project Description including location	_____
2. _____	Program Activities	_____
3. _____	Alternatives or changes to proposed action	_____
4. _____	NEPA Classification Determination and Supporting Documentation	_____
5. _____	SEQR Classification Determination and Supporting Documentation	_____
6. _____	SHPO/THPO and Other Applicable environmental regulations (Determination and Supporting Documentation)	_____
7. _____	Statutory Checklist and Applicable Documentation	_____
8. _____	EA and Applicable Documentation	_____
9. _____	EIS and Applicable Documentation	_____
10. _____	Public Notices, as published	_____
11. _____	Distribution list for FONSI	_____
12. _____	Comments Received and Recipient Responses	_____
13. _____	Regulatory Compliance Documentation	_____
14. _____	Floodplain Management Compliance Documentation	_____
15. _____	Coastal Zone Assessment (CAR) Form	_____

EXHIBIT 2-3

Sample Notice of Intent to Request a Release of Funds

The language below is HUD's recommended wording of the Notice of Intent to Request a Release of Funds. This Notice is used for projects **NOT** requiring an Environmental Assessment (24 CFR Part 58, Section 58.36]. Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS (NOIRROF)

Date of Notice

Name of Responsible Entity [RE]

Address (e.g., Street No. or P.O. Box)

City, State, Zip Code

Telephone Number of RE

On or about *<at least one day after the end of the comment period, or Day 9>* **the** *<name of Responsible Entity>* **will** (*if the Responsible Entity is not also the grant recipient, insert the following language here: "authorize the [name of grant recipient] to"* **submit a request to the Office of Community Renewal for the release of CDBG funds under Title 1 of the Housing and Community Development Act of 1974, as amended, to undertake a project known as** *<project title>* **for the purpose of <***nature/scope of project, estimated funding (include all non-HUD funding sources if applicable) and project location if applicable.>*

The activities proposed *[ALTERNATIVE #1: ARE CATEGORICALLY EXCLUDED UNDER HUD REGULATIONS AT 24 CFR PART 58 FROM NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS--ALTERNATIVE #2: COMPRISE A PROJECT FOR WHICH A FINDING OF NO SIGNIFICANT IMPACT ON THE ENVIRONMENT WAS (PUBLISHED/POSTED)* ***on*** *(DATE OF FINDING PUBLICATION/POSTING)].* **An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at** *<name and address of Responsible Entity office where Environmental Review Record can be examined and name and address of other locations where the record is available for review>* and may be examined or copied weekday's __A.M to __P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the <*RE designated office responsible for receiving and responding to comments*>. All comments received by <*if notice is published: publication date plus seven days; if notice is mailed and posted: mailing and posting date plus ten days*> will be considered by the <*name of Responsible Entity*> prior to submission of a request for release of funds.

RELEASE OF FUNDS

The <*name of Responsible Entity*> certifies to the Office of Community Renewal that <*name of Certifying Officer*> in *his/her* capacity as <*Official Title*> consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. The Office of Community Renewal's acceptance of the certification satisfies its responsibilities under NEPA and allows the <*name of grant recipient*> to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

The Office of Community Renewal will accept objections to its release of fund and the <*Responsible Entity's*> certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the <*name of Responsible Entity*>; (b) the <*Responsible Entity*> has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR part 58; (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by the Office of Community Renewal; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to Crystal Loffler, President, at Office of Community Renewal, Hampton Plaza, 38-40 State Street, 4th Floor, Albany, NY 12207. Potential objectors should contact the Office of Community Renewal to verify the actual last day of the objection period.

Name and Title of RE Certifying Officer

Note: The seven (7) or ten (10) day public comment periods are the minimum time periods required by regulation prior to submission of a Request for Release of Funds and Certification (OCR Form 1-3) to the OCR. The Responsible Entity may choose to allow a longer comment period. The fifteen (15) day objection period is a statutory requirement. The objection period follows the submission date specified in the Notice or the actual date of receipt by the OCR, whichever is later.

Following completion of the comment period recipients must email the Form 1-3 to the OCR together with a copy of the public notice and a cover letter stating whether comments were received and, if so, how the recipient responded to the comment. The Request for Release of Funds and Certification should not be submitted before the recipient has responded. The date of receipt by email will be counted as the submission date.

Form 1-3 cannot be authorized or dated by the Certifying Officer until the end of the comment period

TIMELINE FOR PUBLISHED REQUEST FOR RELEASE OF FUNDS AND ENVIRONMENTAL CERTIFICATION

CALENDAR DAY	EVENT
1	PUBLICATION OF NOI/RROF
2	BEGIN COMMENT PERIOD ON ERR
3	(COMMENTS TO RESPONSIBLE ENTITY)
4	
5	
6	
7	
8**	END COMMENT PERIOD ON ERR*
9**	RESPONSIBILE ENTITY SUBMITS RROF AND CERTIFICATION TO THE OCR
10	BEGINNING OF OCR DECISION PERIOD
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24**	END OF OCR DECISION PERIOD

* Substantive comments received during the ERR comment period must be satisfactorily addressed prior to submission of RROF and Certification form to the Office of Community Renewal.

** These action days must not occur on a weekend or holiday. Weekend and holidays may occur on the days in between the action days.

EXHIBIT 2-4

Sample Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds

The language below is HUD's recommended wording of the combined Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds. This Notice is used for projects requiring an Environmental Assessment (24 CFR Part 58, Section 58.36]. Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

NOTICE OF FINDING OF NO SIGNFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Date of Notice

Name of Responsible Entity [RE]

Address (e.g., Street No. or P.O. Box)

City, State, Zip Code

Telephone Number of RE

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the <*name of RE or grant recipient***>.**

REQUEST FOR RELEASE OF FUNDS

On or about *<at least one day after the end of the comment period, or Day 17>* **the** *<name of Responsible Entity>* **will** *(if the Responsible Entity is not also the grant recipient, insert the following language here: "authorize the [name of grant recipient] to"* **submit a request to the Office of Community Renewal for the release of CDBG funds under Title 1 of the Housing and Community Development Act of 1974, as amended, to undertake a project known as** *<project title>* **for the purpose of <***nature/scope of project, estimated funding (include all non-HUD funding sources if applicable) and project location if applicable.>*

FINDING OF NO SIGNIFICANT IMPACT

The ***<name of Responsible Entity>*** has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at ***<name and address of Responsible Entity office where Environmental Review Record can be examined and name and address of other locations where the record is available for review>*** and may be examined or copied weekday's __A.M to __P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the <*RE designated office responsible for receiving and responding to comments*>. All comments received by <*if notice is published: publication date plus fifteen days (Day 15); if notice is mailed and posted: mailing and posting date plus eighteen days (Day 18)*> will be considered by the <*name of Responsible Entity*> prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

ENVIRONMENTAL CERTIFICATION

The <*name of Responsible Entity*> certifies to the Office of Community Renewal that <*name of Certifying Officer*> in *his/her* capacity as <*Official Title*> consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. The Office of Community Renewal's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the <*name of grant recipient*> to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

The Office of Community Renewal will accept objections to its release of fund and the *<Responsible Entity's>* certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the *<name of Responsible Entity>*; (b) the *<Responsible Entity>* has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR part 58; (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by the Office of Community Renewal; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to Crystal Loffler, President, at Office of Community Renewal, Hampton Plaza, 38-40 State Street, 4th Floor, Albany, NY 12207. Potential objectors should contact the Office of Community Renewal to verify the actual last day of the objection period.

Name and Title of RE Certifying Officer

Note: The fifteen (15) or eighteen (18) day public comment periods are the minimum time periods required by regulation prior to submission of a Request for Release of Funds and Certification (OCR Form 1-3) to the OCR. The Responsible Entity may choose to allow a longer comment period. 24 CFR Part 58 requires, at Section 58.46, "Time delays for exceptional circumstances," a 30-day comment period for controversial or unique projects or those similar to projects normally requiring preparation of an Environmental Impact Statement. The fifteen (15) day objection period is a statutory requirement. The objection period follows the submission date specified in the Notice or the actual date of receipt by the OCR, whichever is later.

Following completion of the comment period recipients must email the Form 1-3 to the OCR together with a copy of the public notice and a cover letter stating whether comments were received and, if so, how the recipient responded to the comment. The Request for Release of Funds and Certification should not be submitted before the recipient has responded. The date of receipt by email will be counted as the submission date.

Form 1-3 cannot be authorized or dated by the Certifying Officer until the end of the comment period

TIMELINE FOR COMBINED FONSI/NOIRROF NOTICE AND REQUEST FOR RELEASE OF FUNDS

CALENDAR DAY	EVENT
1	PUBLICATION OF COMBINED FONSI AND NOIRROF
2	BEGIN COMMENT PERIOD ON FONSI
3	(COMMENTS TO RESPONSIBLE ENTITY)
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16 **	END COMMENT PERIOD ON FONSI*
17 **	RESPONSIBLE ENTITY SUBMITS RROF AND CERTIFICATION TO THE OCR
18	BEGIN THE OCR DECISION PERIOD
19	
20	
21	
22	
23	
24	
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26	
27	
28	
29	
30	
31	
32**	END THE OCR DECISION PERIOD

* Substantive comments received during the ERR comment period must be satisfactorily addressed prior to submission of RROF and Certification Form to OCR.

** These action days must not occur on a weekend or holiday. Weekend and holidays may occur on the days in between the action days.

EXHIBIT 2-5

REQUIRED NOI/RROF AND FONSI/NOI/RROF DISTRIBUTION LIST

NYS Department of Environmental Conservation
Division of Environmental Permits
625 Broadway, 4th Floor
Albany, NY 12207
(518) 402-9182

U.S. Department of Environmental Protection Agency
Region II
290 Broadway, 26th Floor
New York, NY 10007-1866
(212) 637-3737

U.S. Department of Environmental Protection Agency
Office of Federal Activities
Ariel Rios Building
1200 Pennsylvania Avenue NW
Mail Code: 2251A
Washington, DC 20460
(202) 564-7127

Housing Trust Fund Corporation
Office of Community Renewal
Hampton Plaza
38-40 State Street, 4th Floor
Albany, NY 12207
Attn: OCR Community/Economic Developer

The NOI/RROF and FONSI/NOI/RROF should also be distributed to the Regional Department of Environmental Conservation Office and any other agencies, groups or individuals known to be interested in the program.

EXHIBIT 2-6
ENVIRONMENTAL REVIEW PROCESS FLOW CHART

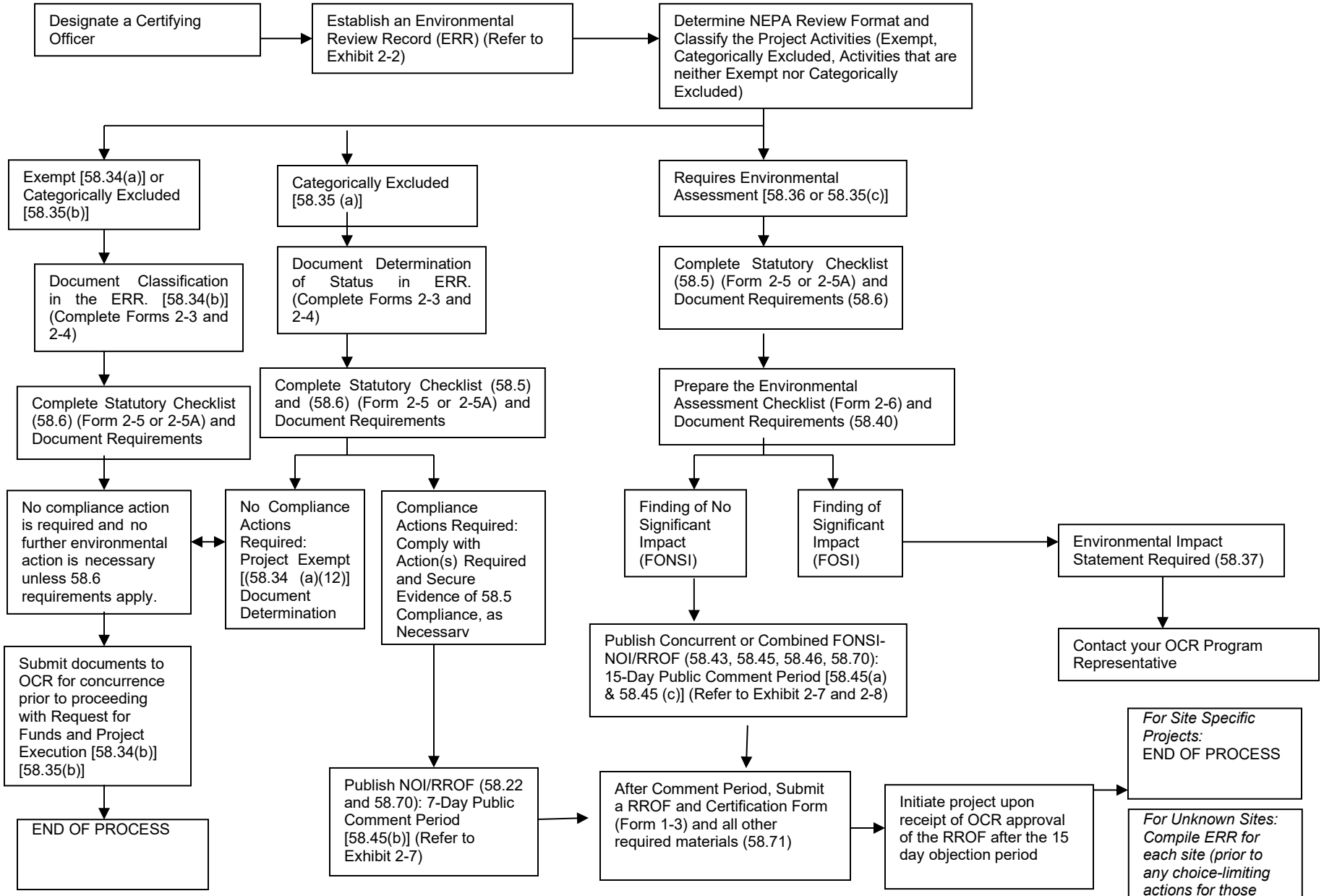

EXHIBIT 2-7

REQUEST FOR RELEASE OF FUNDS REQUIREMENTS

The following documentation must be submitted to the Recipient's Office of Community Renewal (OCR) Community/Economic Developer as part of a Request for Release of Funds package or in the case of NEPA exempt activities, the documentation must be submitted prior to requesting funds for those activities. Only the environmental review documents required to comply with the NEPA requirements for the activities being undertaken will be accepted by OCR. Submittal of forms and documents not required may delay the processing of your request for release of funds and/or the processing of a request for funds.

All Recipients, regardless of the activities being undertaken, must create an Environment Review Record (ERR) and retain all documentation related to the environmental review in the ERR file.

Exempt Activities

After determining the proposed program activities are exempt under 24 CFR 58.34 by comparing the program activities against the NEPA Classification Checklist (and the criteria found at 24 CFR 58.34 and Form 2-4), Recipients must complete the following documents:

1. The Designation of Certifying Officer Form (Exhibit 2-1).
2. The NEPA Classification Checklist (Form 2-4).
3. The Certification of NEPA Classification Form (Form 2-3).
4. The Statutory Checklist (58.6) (Form 2-5 or 2-5A).
5. The Certification of SEQRA Classification Form (Form 2-3A).
6. SEQRA Short or Full Environmental Assessment Form, for Type I or Unlisted Actions.
7. SEQR Environmental Impact Statement, if applicable.
8. Coastal Zone Assessment Form, if applicable.

Activities determined to be exempt by the Certifying Officer under 24 CFR Part 58.34, are not required to undergo an environmental assessment, public notice, or comment period and only the documents listed above should be submitted to your OCR Community/ Economic Developer. Costs for exempt activities may be incurred prior to the submittal of the above documents. However, requests for funds for those activities cannot be submitted until all required environmental forms are received and a concurrence letter issued by OCR.

OCR will review the documentation submitted. If the OCR staff disagrees with the exempt determination, Recipients will be notified. **Please note that Recipients may incur costs for exempt activities at their own risk. If it is determined that the activities are not exempt, any costs incurred for those activities will not be reimbursed by OCR.**

Categorically Excluded Activity Under 24 CFR 58.35(b)

After determining the proposed program activities are Categorically Excluded under 24 CFR 58.35(b) by comparing the program activities against the NEPA Classification Checklist (Form 2-4 and the criteria found at 24 CFR 58.35(b) and), Recipients must complete the following documents:

1. The Designation of Certifying Officer Form (Exhibit 2-1).
2. The NEPA Classification Checklist (Form 2-4).
3. The Certification of NEPA Classification Form (Form 2-3).
4. The Statutory Checklist (58.6) (Form 2-5 or 2-5A).
5. The Certification of SEQRA Classification Form (Form 2-3A).
6. SEQRA Short or Full Environmental Assessment Form, for Type I or Unlisted Action.
7. SEQR Environmental Impact Statement, if applicable.
8. Coastal Zone Assessment Form, if applicable.

Activities determined to be Categorically Excluded under 24 CFR 58.35 (b) are exempt from the requirements of NEPA. Under this classification, the activities are not required to undergo an environmental assessment, public notice, or comment period and only the documents listed above should be submitted to your OCR Community/Economic Developer.

OCR will review the documentation submitted. If the OCR staff disagrees with this determination, Recipients will be notified. **Please note that Recipients may incur costs for activities that are Categorically Excluded under 24 CFR 58.35 (b) at their own risk. If it is determined that the activities are not Categorically Excluded under 24 CFR 58.35 (b), any costs incurred for those activities will not be reimbursed by OCR**

Categorically Excluded Activities Under 24 CFR 58.35(a)

After determining the proposed program activities are Categorically Excluded under 24 CFR 58.35(a) by comparing the program activities against the NEPA Classification Checklist (and Form 2-4 and the criteria found at 24 CFR 58.35(a)), Recipients must complete the following documents:

1. The Designation of Certifying Officer Form (Exhibit 2-1).
2. The NEPA Classification Checklist (Form 2-4).
3. The Certification of NEPA Classification Form (Form 2-3).
4. The Statutory Checklist (58.5) and (58.6) (Form 2-5 or 2-5A) including documentation for requirements for consultation or review with the appropriate agencies; the procedures followed, actions taken and the permits or other forms of approval obtained completion of the Statutory Checklists will determine if any of the activities are subject to other related laws and regulations.
5. The Certification of SEQRA Classification Form (Form 2-3A).
6. SEQRA Short or Full Environmental Assessment Form, for Type I or Unlisted Actions
7. SEQR Environmental Impact Statement, if applicable.

8. Floodplains/Wetland Notice, if applicable (Exhibits 2-9 and 2-10), if applicable).
9. Evidence of floodplain/wetland publication and public hearing(s), if applicable.
10. Coastal Zone Assessment Form, if applicable.

If the activities do not trigger compliance with any of the related laws and regulations listed in the Statutory Checklists, the proposed activities are not required to undergo an environmental assessment, public notice, or comment period and the only the documents listed above should be submitted to your OCR Community/Economic Developer. Until such time as the Recipient receives a Release of Funds from OCR, the Recipient should not incur any costs for the above activities. Costs incurred for the above activities prior to the Release of Funds will be deemed ineligible and will not be reimbursed by OCR.

If compliance with any related laws or regulations is required:

1. Contact the local, state, or federal officials responsible for enforcement of the laws and regulations impacting the activities to identify all applicable requirements for compliance. Secure evidence of compliance in the ERR.

2. Publish a Notice of Intent (NOI) / Request for Release of Funds (RROF). After the 7-day comment period, prepare and submit the RROF Certification Form (Form 1-3) the documents listed above and evidence of the publication of the Notice of Intent to your OCR Community/Economic Developer. Please note that Form 1-3 cannot be authorized or dated by the Certifying Officer until the end of the comment period.

3. The 15-day Objection Period will begin on the date identified in the NOI or on the date OCR receives the RROF and ERR, whichever is later. After the 15-day Objection Period, OCR will review the documentation submitted for projects where public notifications are required for compliance with the Floodplain Management and Wetlands requirement the Floodplain Management and Wetlands comment period must be taken into consideration.

If the OCR staff disagrees with the determination or has questions with the materials submitted, Recipients will be notified immediately. Until such time as the Recipient receives a Release of Funds from OCR, the Recipient should not incur any costs for the above activities. Costs incurred for the above activities prior to the Release of Funds will be deemed ineligible and will not be reimbursed by OCR.

<u>Activities that are neither exempt nor categorically excluded</u>:
If the activities do not fall under the exempt or categorically excluded classification, an Environmental Assessment must be conducted.

<u>Steps to Follow to conduct an Environmental Assessment and Request a Release of Funds</u>

Step 1: Complete the following documents:
a. The Designation of Certifying Officer Form (Exhibit 2-1).

b. The Certification of NEPA Classification Form 2-3).
c. The Statutory Checklist (58.5) and (58.6) (Form 2-5) including documentation for requirements for consultation or review with the appropriate agencies; the procedures followed, actions taken, and the permits or other forms of approval obtained. Completion of the Statutory Checklists will determine if any of the activities are subject to other related laws and regulations.
d. The Certification of SEQRA Classification Checklist (Form 2-3A).
e. SEQRA Short or Full Environmental Assessment Form, for Type I or Unlisted Actions.
f. SEQRA Environmental Impact Statement, if applicable.
g. The Environmental Assessment Checklist Form 2-6) including required documentation.
h. Floodplain/wetland public notice (Refer to Exhibit 2-18), if applicable.
i. Evidence of floodplain/wetland publication.
j. Coastal Zone Assessment Form, if applicable.

Step 2: Perform detailed environmental analysis of the potentially significant issues identified in both checklists, followed by the recommendations for safeguards or mitigation measures by the authorizing entity.

Step 3: Make and document a determination of finding (FONSI or FOSI) based on the environmental review.

Step 4: If the EA indicates that the project will have a significant impact on the quality of the environment, Recipients must conduct an Environmental Impact Statement according to 24 CFR 58.37 and contact their OCR Community/Economic Developer.

Step 5: If the EA indicates that the project will have no significant impact on the quality of the environment, Recipients must publish a Notice of Finding of No Significant Impact/ Notice of Intent/Request for Release of Funds (FONSI/NOI/RROF). Send copies of the combined notice, on or before the date it is published, to the contacts for the applicable environmental laws. After the 15-day comment period, submit the RROF Certification Form (Form 1-3), evidence of publication of the FOSI/FONSI/NOI and the documents listed in Step 1 to your OCR Community/ Economic Developer. **Please note that Form 1-3 cannot be authorized or dated by the Certifying Officer until the end of the local comment period.**

Step 6: The 15-day Objection Period will begin on the date identified in the FONSI/NOI/RROF or on the date it is received by OCR, whichever is later. After the 15-day Objection Period, OCR will review the documentation submitted. If the OCR staff disagrees with the determination or has questions regarding the materials submitted, Recipients will be notified immediately.

Otherwise, Recipients can begin incurring project costs and requesting funds upon receipt of a Request for Release of Funds Approval letter.

For projects where, public notifications are required for compliance with the Floodplain Management and Wetlands requirement the Floodplain Management and Wetlands comment period must be taken into consideration.

EXHIBIT 2-8

FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS COMPLIANCE (EXECUTIVE ORDERS 11988 AND 11990)

Per the Federal Register at 78 FR 68728, HUD has finalized new rules effective November 15, 2013 in regard to Executive Orders 11988 and 11990 as it applies to 24 CFR 55.1, as follows.

§55.1 Purpose and basic responsibility

(a)(1) The purpose of Executive Order 11988, Floodplain Management, is "to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative."

(2) The purpose of Executive Order 11990, Protection of Wetlands, is "to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative."

(3) This part implements the requirements of Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. These regulations apply to all HUD (or responsible entity) actions that are subject to potential harm by location in floodplains or wetlands. Covered actions include the proposed acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in floodplains or wetlands for which approval is required either from HUD, under any applicable HUD program, or from a responsible entity authorized by 24 CFR part 58.

(4) This part does not prohibit approval of such actions (except for certain actions in Coastal High Hazard Areas) but provides a consistent means for implementing the Department's interpretation of the Executive Orders in the project approval decision making processes of HUD and of responsible entities subject to 24 CFR part 58. The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD for Department-administered programs subject to environmental review under 24 CFR part 50 and by authorized responsible entities that are responsible for environmental review under 24 CFR part 58.

(5) Nonstructural alternatives to floodplain development and the destruction of wetlands are both favored and encouraged to reduce the loss of life and property caused by floods, and to restore the natural resources and functions of floodplains and wetlands. Nonstructural alternatives should be discussed in the decision-making process where practicable.

(b)(2) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any "area having special flood hazards" (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) and the State-administered Rental Rehabilitation Program (24 CFR 511.51), Emergency Shelter Grant amounts allocated to States (24 CFR parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701-12839).

(2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property if:

(i) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(ii) The person failed to obtain and maintain the flood insurance.

(c) Except with respect to actions listed in §55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to:

(1) Any action other than a functionally dependent use or floodplain function restoration activity, located in a floodway;

(2) Any critical action located in a coastal high hazard area; or

(3) Any noncritical action located in a Coastal High Hazard Area, unless the action is a functionally dependent use, existing construction (including improvements), or reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area. An action will be considered designed for a Coastal High Hazard Area if:

(i) In the case of reconstruction following destruction caused by a disaster or substantial improvement, the work meets the current

standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements):

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed; or

(B) If the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

Projects located within a floodplain or a designated wetland are subject to Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). These executive orders protect against adverse impacts on wetlands and floodplains; minimize destruction, loss or degradation of wetlands; preserve and enhance the natural and beneficial values of wetlands; reduce risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and to the extent possible, avoid the direct or indirect support of floodplain development, wherever there is a practicable alternative.

8 Step Decision Making Process

Please note, that if another Federal Agency has undertaken the 8 Step Decision Making Process, HUD has determined that this can be adopted. Consultation with the OCR is required before proceeding with this adoption.

1. Determine if the Project is in a Floodplain or Wetland. The Recipient must determine whether the proposed project is located in or will impact on a 100-year floodplain/wetland or in a 500-year floodplain (if it is a critical action). This can be done by reviewing a detailed Flood Insurance Rate Map (FIRM) or a Flood Hazard Boundary Map (FHBM), both of which are available from the National Flood Insurance Program (administered by the Federal Insurance Administration of HUD) or a wetland map available from the U.S. Fish and Wildlife Service. If the project is located in a floodplain or if not located in a floodplain/wetland but could impact on such directly or indirectly (e.g., supporting floodplain development), then the Recipient must proceed with the remaining seven steps in this process. If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

2. Notices to the Public. A notice must be published in a newspaper of general circulation (Reference Exhibits 2-9 and 2-10) and copies posted in public places (town hall, post

office, and library). Copies must also be sent to federal, state and local organizations and individuals known to be interested in the project. **Note that this notice should be one of the first steps in the environmental review process as it is required before any other notices are published.** This notification is for early public review of a proposal to support an activity in a floodplain or wetland and requires a 15-day comment period.

3. Identify and Evaluate Practicable Alternatives. During the 15-day comment period required, all alternatives of the proposed project must be identified and evaluated. At least three alternatives should be evaluated:
   - Alternative sites (if the floodplain/wetlands site is the only alternative, this must be fully documented).
   - Alternative actions (new solutions or approaches which would serve the same function but have less potential for harm).
   - No action (proceed with the project as planned).

4. Identify Potential Impacts. Potential impacts should be identified and include both direct impacts (the location of the structure in the floodplain/wetlands) and indirect impacts (infrastructure outside the floodplain/wetlands which would encourage development within it). Positive and negative impacts should be reviewed as well as short- and long-term consequences.

5. Minimize, Restore and Preserve. Again, this process should be documented as part of the development of the ERR to show that the Recipient reviewed ways to minimize harm to lives and property, natural and beneficial floodplain or wetlands values, and ways to restore and preserve the floodplain or wetlands.
   - Preparation of and participation in an early warning system.
   - An emergency evacuation and relocation plan.
   - Identification of evacuation route(s) out of the 500-year floodplain; and
   - Identification marks of past or estimated flood levels on all structures.

All critical actions in the 500-year floodplain shall be designed and built at or above the100-year floodplain (in the case of new construction) and modified to include:

6. Re-evaluate the Proposed Project. Once the impact of the proposed project and the methods to minimize, restore and preserve floodplain or wetlands values have been identified, the proposed action must be re-evaluated. If the originally proposed location is the only practicable alternative, the importance of the proposed project must outweigh the requirements of the Executive Orders.

7. Public Notice of the Decision. If the Recipient decides that the only practicable alternative for the proposed project is within the floodplain or wetlands or it will impact on such, it must publish a second public notice (Reference Exhibit 2-10). The comment period is for seven days.

8. Implementation. The project can be implemented after the public comment period and receipt of a Release of Funds from the Office of Community Renewal (OCR).

§55.12 Inapplicability of 24 CFR Part 55 to certain categories of proposed actions.

(a) The decision-making steps in §55.20(b), (c), and (g) (steps 2, 3, and 7) do not apply to the following categories of proposed actions:

(1) HUD's or the recipient's actions involving the disposition of acquired multifamily housing projects or “bulk sales” of HUD-acquired (or under part 58 of recipients') one- to four-family properties in communities that are in the Regular Program of National Flood Insurance Program and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24). For programs subject to part 58, this paragraph applies only to recipients' disposition activities that are subject to review under part 58.

(2) HUD's actions under the National Housing Act (12 U.S.C. 1701) for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, and intermediate care facilities, in communities that are in good standing under the NFIP.

(3) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, intermediate care facilities, and one- to four-family properties, in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, the action does not meet the thresholds for “substantial improvement” under §55.2(b)(10), and the footprint of the structure and paved areas is not significantly increased.

(4) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the action does not meet the thresholds for “substantial improvement” under §55.2(b)(10) and that the footprint of the structure and paved areas is not significantly increased.

(b) The decision-making process in §55.20 shall not apply to the following categories of proposed actions:

(1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or Coastal High Hazard Area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for “substantial improvement” under §55.2(b)(10).

(3) HUD or a recipient's actions involving the disposition of individual HUD-acquired, one- to four-family properties.

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; and

(5) The approval of financial assistance to lease an existing structure located within the floodplain, but only if.

(i) The structure is located outside the floodway or Coastal High Hazard Area and is in a community that is in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(ii) The project is not a critical action; and

(iii) The entire structure is or will be fully insured or insured to the maximum under the NFIP for at least the term of the lease.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b).

(2) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in §50.19.

(3) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, but only if:

(i) The property is cleared of all existing structures and related improvements.

(ii) The property is dedicated for permanent use for flood control, wetland protection, park land, or open space; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance.

(5) Policy-level actions described at 24 CFR 50.16 that do not involve site-based decisions.

(6) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland.

(7) HUD's or the responsible entity's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, including the floodway or Coastal High Hazard Area, or wetland, but only if:

(i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, or other similar activities) do not occupy or modify the 100-year floodplain (or the 500-year floodplain for critical actions) or the wetland.

(ii) Appropriate provision is made for site drainage that would not have an adverse effect on the wetland; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland.

(8) HUD's or the responsible entity's approval of financial assistance for a project on any non-wetland site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA), final Letter of Map Revision (LOMR), or final Letter of Map Revision Based on Fill (LOMR-F) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA, conditional LOMR, or conditional LOMR-F if HUD or the responsible entity's approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR.

(9) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (i.e., do not involve site-specific subsidies).

(10) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities.

(11) The approval of financial assistance for acquisition, leasing, construction, rehabilitation, repair, maintenance, or operation of ships and other waterborne vessels that will be used for transportation or cruises and will not be permanently moored.

Floodplain Definitions

100-Year Floodplain: The floodplain of concern is the area subject to one percent or greater chance of flooding in any given year.

500-Year Floodplain: The minimum floodplain of concern for Critical Actions which is the area subject to inundation from a flood having 20 percent chance of occurring in any given year.

Base Floodplain: 100-year floodplain

Critical Action: Any activities for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:

- Produce, use, or store highly volatile, flammable, explosive, toxic or water-reactive materials.
- Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or
- Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers.

Floodway: That portion of the floodplain, which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term “floodway” as used here is consistent with “regulatory floodways” as identified by FEMA.

High Hazard Area: A floodway or a coastal high hazard area.

Wetlands: An area that meets the following three characteristics:

- It is flooded permanently or periodically
- It has predominately submerged vegetation
- It has water saturated soil

EXHIBIT 2-9

SAMPLE

(MUST BE PUBLISHED AND COMMENT PERIOD MUST END PRIOR TO PUBLISHING FINAL NOTICE)

EARLY NOTICE AND PUBLIC REVIEW OF PROPOSED ACTIVITY LOCATED IN A 100-YEAR FLOODPLAIN

To: All interested Agencies **[include all Federal, State, and Local]**, Groups and Individuals

This is to give notice that **[Name of Entity]** has conducted an evaluation as required by **Executive Order 11988 and/or 11990**, in accordance with HUD regulations at 24 CFR 55.20 Subpart C Procedures for Making Determinations on Floodplain Management, to determine the potential affect that its activity in the floodplain and wetland will have on the human environment for **[Program Name]** under **[CDBG Project Number]**.

[Describe the activity, e.g. purpose, type of assistance, the size of the site, proposed number of units, size of footprint, type of floodplain, natural values]. [State the total number of acres of floodplains]. The proposed project(s) is located **[provide address or location description]** in **[Name of City/Village/Town]**, **[Name of County].**

There are three primary purposes for this notice. First, people who may be affected by activities in floodplains and those who have an interest in the protection of the natural environment should be given an opportunity to express their concerns and provide information about these areas. Second, an adequate public notice program can be an important public educational tool. The dissemination of information about floodplains can facilitate and enhance Federal efforts to reduce the risks associated with the occupancy and modification of these special areas. Third, as a matter of fairness, when the Federal government determines it will participate in actions taking place in floodplains, it must inform those who may be put at greater or continued risk.

Written comments must be received by **[Name of Entity]** at the following address on or before **[month, day, year] [a minimum 15 calendar day comment period will begin the day after the publication and end on the 16th day after the publication]**: **[Name of Entity], [Address]** and **[phone number]**, [**optional e-mail address of Certifying Officer**] Attention: **[Name of Certifying Officer], [Title],** during normal business hours. Comments may also be submitted via email at **[email address]**.

Date:

TIMELINE FOR PUBLISHED

EARLY NOTICE AND PUBLIC REVIEW OF A PROPOSED ACTIVITY IN THE 100-YEAR FLOODPLAIN

CALENDAR DAY	EVENT
1	PUBLICATION OF EARLY FLOODPLAIN NOTICE
2**	BEGIN COMMENT PERIOD ON EARLY FLOODPLAIN NOTICE
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16**	END COMMENT PERIOD ON FINAL FLOODPLAIN NOTICE

* Substantive comments received during the Early Notice and Public Review of a Proposed Activity in the 100 Year floodplain comment period must be satisfactorily addressed prior to the publication of a FINAL NOTICE AND PUBLIC EXPLANATION OF A PROPOSED ACTIVITY IN THE 100 YEAR FLOODPLAIN.

** These action days must not occur on a weekend or holiday. Weekend and holidays may occur on the days in between the action days.

EXHIBIT 2-10

SAMPLE
(MUST BE PUBLISHED AND COMMENT PERIOD MUST END PRIOR TO PUBLISHING NOI/RROF OR FONSI/NOI/RROF)

FINAL NOTICE AND PUBLIC EXPLANATION OF A PROPOSED ACTIVITY IN THE 100-YEAR FLOODPLAIN

To: All interested Agencies **[include all Federal, State, and Local]**, Groups and Individuals

This is to give notice that the **[Name of Entity]** has conducted an evaluation as required by **Executive Order 11988 and/or 11990**, in accordance with HUD regulations at 24 CFR 55.20 Subpart C Procedures for Making Determinations on Floodplain Management, to determine the potential affect that its activity in the floodplain and wetland will have on the human environment for **[Program Name]** under **[CDBG Project number**]. The proposed project(s) is located **[provide address location description]** in **[Name of City/Village/Town], [Name of County].**

[Describe the activity, e.g. purpose, type of assistance, the size of the site, proposed number of units, size of footprint, type of floodplain, natural values]. [State the total number of acres of floodplains involved].

[Name of Entity] has considered the following alternatives and mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values: **[and reasons (quantitatively based if possible) for non-selection, (iii) all mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values] [Cite the date of any final or conditional LOMRs or LOMAs from FEMA where applicable] [Acknowledge compliance with state and local floodplain protection procedures]**

[Name of Entity] has reevaluated the alternatives to building in the floodplain and has determined that it has no practicable alternative. Environmental files that document compliance with steps 3 through 6 of **[Executive Order 11988 and/or 11990]**, are available for public inspection, review and copying upon request at the times and location delineated in the last paragraph of this notice for receipt of comments. This activity will have no significant impact on the environment for the following reasons:

[Give reasons why there is no significant impact]

There are three primary purposes for this notice. First, people who may be affected by activities in floodplains and those who have an interest in the protection of the natural environment should be given an opportunity to express their concerns and provide information about these areas. Second, an adequate public notice program can be an important public educational tool. The dissemination of information about floodplains can

facilitate and enhance Federal efforts to reduce the risks associated with the occupancy and modification of these special areas. Third, as a matter of fairness, when the Federal government determines it will participate in actions taking place in floodplains, it must inform those who may be put at greater or continued risk.

Written comments must be received by the **[Name of Entity]** at the following address on or before **[month, day, year] [a minimum 7 calendar day comment period will begin the day after the publication and end on the 8th day after the publication]**: **[Name of Entity], [Address]** and **[phone number]**, [**optional e-mail address of Certifying Officer**] Attention: **[Name of Certifying Officer], [Title],** during normal business hours. Comments may also be submitted via email at **[email address]**.

Date:

TIMELINE FOR PUBLISHED

FINAL NOTICE AND PUBLIC EXPLANATION OF A PROPOSED ACTIVITY IN THE 100-YEAR FLOODPLAIN

CALENDAR DAY	EVENT
1	PUBLICATION OF FINAL FLOODPLAIN NOTICE
2**	BEGIN COMMENT PERIOD ON FINAL FLOODPLAIN NOTICE
3	(COMMENTS TO RESPONSIBLE ENTITY)
4	
5	
6	
7	
8	
9**	END COMMENT PERIOD ON FINAL FLOODPLAIN NOTICE

* Substantive comments received during the Final Notice and Public Explanation of a Proposed Activity in the 100 Year floodplain comment period must be satisfactorily addressed prior to the publication of a NOIRROF or FONSI/NOIRROF and the submission of RROF and Certification form to the Office of Community Renewal.

** These action days must not occur on a weekend or holiday. Weekend and holidays may occur on the days in between the action days.

EXHIBIT 2-11

Noise Abatement (CEST Level Reviews)

General requirements	Legislation	Regulation
HUD's noise regulations protect residential properties from excessive noise exposure. HUD encourages mitigation as appropriate.	Noise Control Act of 1972 General Services Administration Federal Management Circular 75-2: "Compatible Land Uses at Federal Airfields"	Title 24 CFR 51 Subpart B
References		
https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control		

1. **What activities does your project involve? Check all that apply:**

   ☐ New construction for residential use
   NOTE: HUD assistance to new construction projects is generally prohibited if they are located in an Unacceptable zone, and HUD discourages assistance for new construction projects in Normally Unacceptable zones. See 24 CFR 51.101(a)(3) for further details.
   → *Continue to Question 4.*

   ☐ Rehabilitation of an existing residential property
   NOTE: For modernization projects in all noise zones, HUD encourages mitigation to reduce levels to acceptable compliance standards. See 24 CFR 51 Subpart B for further details.
   → *Continue to Question 2.*

   ☐ A research demonstration project which does not result in new construction or reconstruction, interstate, land sales registration, or any timely emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster
   → *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below.*

   ☐ None of the above
   → *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below.*

2. **Do you have standardized noise attenuation measures that apply to all modernization and/or minor rehabilitation projects, such as the use of double glazed windows or extra insulation?**

   ☐ Yes
   Indicate the type of measures that will apply (check all that apply):

☐ Improved building envelope components (better windows and doors, strengthened sheathing, insulation, sealed gaps, etc.)

☐ Redesigned building envelope (more durable or substantial materials, increased air gap, resilient channels, staggered wall studs, etc.)

☐ Other

Explain:

→ *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below and provide any supporting documentation.*

☐ No

→ *Continue to Question 3.*

3. **Complete the Preliminary Screening to identify potential noise generators in the vicinity (1000' from a major road, 3000' from a railroad, or 15 miles from an airport). Describe findings of the Preliminary Screening:**

→ *Continue to Question 4.*

4. **Complete the Preliminary Screening to identify potential noise generators in the vicinity (1000' from a major road, 3000' from a railroad, or 15 miles from an airport). Indicate the findings of the Preliminary Screening below:**

☐ There are no noise generators found within the threshold distances above.

→ *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide a map showing the location of the project relative to any noise generators.*

☐ Noise generators were found within the threshold distances.

→ *Continue to Question 5.*

5. **Complete the Noise Assessment Guidelines to quantify the noise exposure. Indicate the findings of the Noise Assessment below:**

☐ Acceptable: (65 decibels or less; the ceiling may be shifted to 70 decibels in circumstances described in §24 CFR 51.105(a))

Indicate noise level here: ☐

→ *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide noise analysis, including noise level and data used to complete the analysis.*

☐ Normally Unacceptable: (Above 65 decibels but not exceeding 75 decibels; the floor may be shifted to 70 decibels in circumstances described in 24 CFR 51.105(a))

Indicate noise level here: ☐

Is the project in a largely undeveloped area[1]?

☐ No

→*Your project requires completion of an Environmental Assessment (EA) pursuant to 51.104(b)(1)(i). Elevate this review to an EA-level review.*
Provide noise analysis, including noise level and data used to complete the analysis.
Continue to Question 6.

☐ Yes

→*Your project requires completion of an Environmental Impact Statement (EIS) pursuant to 51.104(b)(1)(i). Elevate this review to an EIS-level review.*
Provide noise analysis, including noise level and data used to complete the analysis.
Continue to Question 6.

☐ Unacceptable: (Above 75 decibels)

Indicate noise level here: ☐

Your project requires completion of an Environmental Impact Statement (EIS) pursuant to 51.104(b)(1)(i). You may either complete an EIS or provide a waiver signed by the appropriate authority. Indicate your choice:

☐ Convert to an EIS
→ *Provide noise analysis, including noise level and data used to complete the analysis. Continue to Question 6.*
☐ Provide waiver

[1] A largely undeveloped area means the area within 2 miles of the project site is less than 50 percent developed with urban uses and does not have water and sewer capacity to serve the project.

 Provide an Environmental Impact Statement waiver from the Certifying Officer or the Assistant Secretary for Community Planning and Development per 24 CFR 51.104(b)(2) and noise analysis, including noise level and data used to complete the analysis.

Continue to Question 6.

6. **HUD strongly encourages mitigation be used to eliminate adverse noise impacts. Explain in detail the exact measures that must be implemented to mitigate for the impact or effect, including the timeline for implementation. This information will be automatically included in the Mitigation summary for the environmental review.**

☐ Mitigation as follows will be implemented:

 Provide drawings, specifications, and other materials as needed to describe the project's noise mitigation measures.
Continue to the Worksheet Summary.

☐ No mitigation is necessary.

Explain why mitigation will not be made here:

→ *Continue to the Worksheet Summary.*

Worksheet Summary

Compliance Determination

Provide a clear description of your determination and a synopsis of the information that it was based on, such as:

- Map panel numbers and dates
- Names of all consulted parties and relevant consultation dates
- Names of plans or reports and relevant page numbers
- Any additional requirements specific to your region

Are formal compliance steps or mitigation required?

☐ Yes

☐ No

Exhibit 2-12
Noise Abatement (EA Level Reviews)

General requirements	Legislation	Regulation
HUD's noise regulations protect residential properties from excessive noise exposure. HUD encourages mitigation as appropriate.	Noise Control Act of 1972 General Services Administration Federal Management Circular 75-2: "Compatible Land Uses at Federal Airfields"	Title 24 CFR 51 Subpart B
References		
https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control		

1. **What activities does your project involve? Check all that apply:**
   ☐ New construction for residential use
   NOTE: HUD assistance to new construction projects is generally prohibited if they are located in an Unacceptable zone, and HUD discourages assistance for new construction projects in Normally Unacceptable zones. See 24 CFR 51.101(a)(3) for further details.
   → *Continue to Question 2.*

   ☐ Rehabilitation of an existing residential property
   NOTE: For major or substantial rehabilitation in Normally Unacceptable zones, HUD encourages mitigation to reduce levels to acceptable compliance standards. For major rehabilitation in Unacceptable zones, HUD strongly encourages mitigation to reduce levels to acceptable compliance standards. See 24 CFR 51 Subpart B for further details.
   → *Continue to Question 2.*

   ☐ A research demonstration project which does not result in new construction or reconstruction, interstate, land sales registration, or any timely emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster
   → *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below.*

   ☐ None of the above
   → *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below.*

2. **Complete the Preliminary Screening to identify potential noise generators in the vicinity (1000' from a major road, 3000' from a railroad, or 15 miles from an airport). Indicate the findings of the Preliminary Screening below:**
   ☐ There are no noise generators found within the threshold distances above.

→ *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide a map showing the location of the project relative to any noise generators.*

☐ Noise generators were found within the threshold distances.

→ *Continue to Question 3.*

3. **Complete the Noise Assessment Guidelines to quantify the noise exposure. Indicate the findings of the Noise Assessment below:**

☐ Acceptable: (65 decibels or less; the ceiling may be shifted to 70 decibels in circumstances described in §24 CFR 51.105(a))

Indicate noise level here: ☐

→ *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide noise analysis, including noise level and data used to complete the analysis.*

☐ Normally Unacceptable: (Above 65 decibels but not exceeding 75 decibels; the floor may be shifted to 70 decibels in circumstances described in 24 CFR 51.105(a))

Indicate noise level here: ☐

If project is rehabilitation:

→ *Continue to Question 4. Provide noise analysis, including noise level and data used to complete the analysis.*

If project is new construction:

Is the project in a largely undeveloped area[2]?

☐ No

→ *Continue to Question 4. Provide noise analysis, including noise level and data used to complete the analysis, and any other relevant information.*

☐ Yes

→*Your project requires completion of an Environmental Impact Statement (EIS) pursuant to 51.104(b)(1)(i). Elevate this review to an EIS-level review.*

☐ Unacceptable: (Above 75 decibels)

Indicate noise level here: ☐

If project is rehabilitation:

[2] A largely undeveloped area means the area within 2 miles of the project site is less than 50 percent developed with urban uses and does not have water and sewer capacity to serve the project.

HUD strongly encourages conversion of noise-exposed sites to land uses compatible with high noise levels. Consider converting this property to a non-residential use compatible with high noise levels.

→ Continue to Question 4. Provide noise analysis, including noise level and data used to complete the analysis, and any other relevant information.

If project is new construction:

Your project requires completion of an Environmental Impact Statement (EIS) pursuant to 51.104(b)(1)(i). You may either complete an EIS or provide a waiver signed by the appropriate authority. Indicate your choice:

☐ Convert to an EIS

→ Provide noise analysis, including noise level and data used to complete the analysis.

Continue to Question 4.

☐ Provide waiver

→ Provide an Environmental Impact Statement waiver from the Certifying Officer or the Assistant Secretary for Community Planning and Development per 24 CFR 51.104(b)(2) and noise analysis, including noise level and data used to complete the analysis.
Continue to Question 4.

4. **HUD strongly encourages mitigation be used to eliminate adverse noise impacts. Explain in detail the exact measures that must be implemented to mitigate for the impact or effect, including the timeline for implementation. This information will be automatically included in the Mitigation summary for the environmental review.**

☐ Mitigation as follows will be implemented:

→ Provide drawings, specifications, and other materials as needed to describe the project's noise mitigation measures. Continue to the Worksheet Summary.

☐ No mitigation is necessary.

Explain why mitigation will not be made here:

→ Continue to the Worksheet Summary.

Worksheet Summary

Compliance Determination

Provide a clear description of your determination and a synopsis of the information that it was based on, such as:

- Map panel numbers and dates
- Names of all consulted parties and relevant consultation dates
- Names of plans or reports and relevant page numbers
- Any additional requirements specific to your region

Are formal compliance steps or mitigation required?

☐ Yes

☐ No

Exhibit 2-13
LINKS TO OUTSIDE AGENCY FORMS

SEQR Short Environmental Assessment Form Part 1

SEQR Short Environmental Assessment Form Part 2

SEQR Full Environmental Assessment Form

NYS DOS Coastal Assessment Form

Acceptable Separation Distance Guidebook:

FEMA's National Flood Hazard Layer Viewer

Exhibit 2-14
LINKS TO ADDITIONAL RESOURCES

Identifying and Reducing Flood Risk

Flooding remains the country's number one disaster and can potentially affect everyone and every property. A new FEMA webpage provides a comprehensive guide about how to protect yourself and your property from flooding. The webpage includes free resources to learn about the flood risk in your community and ways to reduce that risk. Resources linked on the webpage include the Flood Map Service Center, National Risk Index for Natural Hazards and the Flood Risk and Endangered Species Habitat Mapping Tool.