

Expediting the Federal Environmental Review Process in Indian Country

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Overview

- Coordinating Environmental Reviews for Housing Projects in Indian Country
- Disaster Recovery – Interagency Coordination through the Unified Federal Review
- Using NEPA Tools to Facilitate Efficient Environmental Reviews
- Questions



Coordinating Environmental Reviews for Housing and Housing-Related Infrastructure Projects in Indian Country

Background

- Government Accountability Office (GAO)
March 2014 report 14-255
- Senate Appropriations Committee
direction

Federal Collaboration

- ▶ Council on Environmental Quality (CEQ)
- ▶ Department of the Interior – Bureau of Indian Affairs (BIA)
- ▶ Department of Agriculture – Rural Utilities Service and Rural Housing Service (RUS and RHS)
- ▶ Department of Commerce – Economic Development Administration (EDA)
- ▶ Department of Energy (DOE)
- ▶ Department of Health and Human Services – Indian Health Service (IHS)
- ▶ Environmental Protection Agency (EPA)
- ▶ **Department of Housing and Urban Development (HUD)**
- ▶ Federal Highway Administration (added to effort in June 2015)

Environmental Review Requirements

- National Environmental Policy Act (NEPA)
- Other related, applicable Federal laws and authorities

Information Gathering & Outreach

- Document review
- Interviews
- Consultation
- Listening Sessions
- Briefings

**Coordinated Environmental Review Process
Interim Report**

Prepared by:

U.S. Department of Housing and Urban Development

In collaboration with:

The Coordinated Environmental Review Process Workgroup

Consisting of Representatives from:

Council on Environmental Quality

U.S. Department of Agriculture

U.S. Department of Commerce

U.S. Department of Energy

U.S. Environmental Protection Agency

U.S. Department of Health and Human Services

U.S. Department of Interior

May 6, 2015

Interim Report – Available on the HUD website:

[http://portal.hud.gov/hudportal/documents/huddoc?id=Env Interim Report_050615.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=Env_Interim_Report_050615.pdf)

**Coordinated Environmental Review Process
Final Report**

Prepared by:
U.S. Department of Housing and Urban Development

In collaboration with:
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Council on Environmental Quality
U.S. Department of Agriculture
U.S. Department of Commerce
U.S. Department of Energy
U.S. Environmental Protection Agency
U.S. Department of Health and Human Services
U.S. Department of Interior
U.S. Department of Transportation

December 15, 2015

Final Report - Available on the HUD website:

<http://portal.hud.gov/hudportal/documents/huddoc?id=CoorEnvirReview.pdf>

Appendices:

http://portal.hud.gov/hudportal/documents/huddoc?id=appen_coorderprocess.pdf

Final Report Recommendations

- Incorporate environmental review documents by reference
- Develop common categorical exclusions
- Address resource deficiencies at BIA
- Provide training for agency staff
- Provide training for tribes
- Continue review of related laws and authorities to identify opportunities for greater efficiencies
- Create regional consortiums between tribes and agencies

Final Report Recommendations

- Explore the development of an interagency environmental review automated tool
- Explore HUD-specific regulatory and policy improvements
- Create more predictable funding mechanisms
- Establish an ongoing environmental review interagency workgroup
- Explore expanding the scope of the effort

Incorporate by Reference

- Existing tool set forth in NEPA
- Environmental reviews are prepared by Tribes under HUD Part 58 regulations
- Agencies can incorporate documents from the Tribe's review
- Workgroup is drafting an MOU to encourage use of this, and other, NEPA tools

Develop Common Categorical Exclusions

- Each agency has tailored categorical exclusions
- The scope of categorical exclusions can vary, leading to different levels of review for the same project
- Workgroup will explore whether developing common categorical exclusions is a viable solution

Automated Environmental Review Tool

- Electronic tool to prepare environmental review documents

Agency Staff Training

- Consistency needed
- Need to be kept updated on changes to laws, regulations, policies

Tribal Training

- Keep informed of requirements that result from workgroup efforts
- Regular training on environmental review
- Need to be kept updated on changes to laws, regulations, policies

Continue Review of Related Laws and Authorities

- Authorities prioritized for coordination:
 - National Historic Preservation Act
 - Endangered Species Act
 - Floodplain Management
 - Clean Water Act
 - Wetlands

Regional Consortia

- Avenue for tribes and agencies to discuss and assist each other with issues related to environmental review
- Workgroup is exploring piggy-backing onto the existing EPA Regional Tribal Operations Committee

More Predictable Funding Mechanisms

- Competitive funding makes early coordination difficult
- Formula-based funding is predictable
- Workgroup will explore whether formula funding can be used more often

Other Works in Progress

- Create centralized environmental review resource website
- Capture existing tools on CDs for remote tribes
- Create a presentation on NEPA tools for staff and tribe trainings
- Explore creating a pilot program on incorporation by reference

Please feel free to contact Hilary Atkin with feedback

Hilary Atkin

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Unified Federal Review

Introduction to the Federal Unified Review (UFR) Process

- New approach for disaster recovery projects, authorized by the Sandy Recovery Improvement Act of 2013, that provides enhanced coordination for **environmental and historic preservation (EHP) reviews**.
- Federal agencies and staff increase consistency in EHP reviews by leveraging existing resources and creating process efficiencies.
- Federal agency EHP Practitioners and stakeholders use the UFR Process, through Tools and Mechanisms, to improve the way EHP reviews are conducted for proposed disaster recovery projects.

The UFR Process does not change the EHP requirements under existing federal law.

It does accelerate processes and dispute resolution

Memorandum of Understanding (MOU) Establishing the UFR Process: July, 2014



Tools and Mechanisms of the UFR Process

Tools and Mechanisms of the UFR Process	
Data Sharing Agreement Content	Memorandum of Understanding Establishing the Unified Federal EHP Review Process
Data Standards List	Template Environmental Checklist for FEMA and HUD
Disaster-Specific Memorandum of Understanding Template	Training for Recovery Leadership and UFR Advisors
EHP Agency Point of Contact List	FEMA Prototype Programmatic Agreement for Section 106 of the NHPA (PPA)
EHP Guidance for Federal Disaster Recovery Assistance Applicants	
IT Resources List	UFR Webpage

How can the UFR Process Assist You?

UFR Process can assist you to:	UFR Process is not intended to:
Create opportunities for greater coordination across agencies to expedite EHP requirements.	Circumvent or supersede any existing federal, tribal, state or local EHP requirements.
Strive to reduce duplication of information provided by applicants working with multiple agencies.	Eliminate requirements for consultations between agencies and between agencies and applicants.
Leverage existing and develop new interagency agreements, such as MOUs and programmatic agreements.	Change existing interagency agreements.
Align review processes and prepare joint reviews with other agencies to satisfy one or more EHP requirements.	Establish a single review process for agencies funding a single project.



Using NEPA Tools to Facilitate Efficient Environmental Reviews

Coordinating with Federal Agencies

Intergovernmental Collaboration

- Collaboration between Federal and Tribal, State, and local governments to reduce duplication
- Integrate environmental impact analysis and documentation requirements



Anza, CA, May 10, 2011 – (R) FEMA Federal Coordinating Officer Sandy Coachman facilitates the signing of the FEMA – Tribal Agreement with the (L) Cahuilla Band of Indians' Tribal Chairman Luther Salgado, Sr.

Environmental Law or Authority ¹	Citation	HUD	DOI-BIA	DOC-EDA	DOE	HHS-IHS	USDA-RHS	USDA-RUS	DOT-FHWA	EPA
National Environmental Policy Act	42 USC 4321 et seq.	Y	Y	Y	Y	Y	Y	Y	Y	N ²
National Historic Preservation Act- Section 106	36 CFR 800	Y	Y	Y	Y	Y	Y	Y	Y	Y
E.O. 12898 Environmental Justice	59 FR 7629	Y	Y	Y	Y	Y	Y	Y	Y	Y
Section 7 Endangered Species Act	50 CFR 402	Y	Y	Y	Y	Y	Y	Y	Y	Y
E.O. 11988 Floodplains ³	42 FR 26951	Y	Y	Y	Y	Y	Y	Y	Y	Y
Farmland Protection Act	7 CFR Part 658	Y	Y	Y	Y	Y	Y	Y	Y	Y
E.O. 11990 Wetlands	42 FR 26951	Y	Y	Y	Y	Y	Y	Y	Y	Y
Wild and Scenic Rivers Act	16 USC 1271 et seq.	Y	Y	Y	Y	Y	Y	Y	Y	Y
Coastal Zone Management Act	16 USC 1456.	Y	Y	Y	Y	Y	Y	Y	Y	Y
Clean Air Act	40 CFR 6,51,90 & 93	Y	Y	Y	Y	Y	Y	Y	Y	Y
Water Quality and Aquifers	40 CFR 149	Y	Y	Y	Y	Y	Y	Y	Y	Y
Clean Water Act, Section 404 Permit	33 USC 1251 et seq.; 33 USC 1344	N	Y	Y	Y	Y	Y	Y	Y	Y
Coastal Barrier Resources Act	16 USC 3501	Y	N	Y	Y	Y	Y	Y	Y	Y
Consultation to Protect Essential Fish Habitat	16 USC 1801 et seq.	N	Y	Y	Y	N	Y	Y	Y	Y

Hazardous Materials/Toxic Waste/ Resource Conservation and Recovery Act	42 USC 6901 et seq.	Y	Y	Y	Y	Y	Y	N	Y	N
Fish and Wildlife Coordination Act	16 USC 661-666c	N	N	Y	Y	Y	Y	N	Y	N
Rivers and Harbors Act - Section 9/10	33 USC 401	N	N	Y	Y	Y	Y	N	Y	N
Migratory Bird Treaty Act	16 USC 703	N	N	Y	Y	N	Y	Y	Y	N
Marine Mammals Protection Act	16 USC 1361-1423	N	N	Y	Y	N	Y	Y	Y	N
Bald and Golden Eagle Protection Act	50 CFR 22	N	N	Y	Y	N	Y	Y	Y	N
Right of Way Authorization - BIA	43 USC 1763	N	Y	N	N	Y	N	Y	Y	N
Safe Drinking Water Act	42 USC 300f	N	N	Y	Y	Y	Y	N	N	N
Flood Disaster Protection Act	42 USC 4001 et. seq	Y	N	Y	N	N	Y	N	N	N

Incorporating by Reference

- Clearly identify the incorporated material
- Briefly describe the content
- Inform the reader of the purpose and value of those materials
- Synopsise the basis provided in those materials that support any conclusions being incorporated
- Ensure the material is reasonably available

Adoption of Reviews

- When an existing document (analysis) addresses the proposed action and meets the your standards for an adequate analysis
- If the actions covered by the original Final EA or EIS and the proposed action are substantially the same – then no need to recirculate it as a draft
- If adopting agency is also a cooperating agency – then no recirculation at all

Lead / Cooperating Agencies

- Invite affected agencies (Federal, Tribal, State, and local)
- Plan collaboration and assign responsibilities
- Early and collaborative scoping process to determine the significant environmental issues and level of review
- Establish clear timelines for the review process with all agencies, applicant, and other interested parties

Spectrum of Engagement

INCREASING DEGREE OF COLLABORATION 

Inform	Consult	Involve	Collaborate
<p>Agency(s) provide parties with comprehensive, accurate and timely information about the NEPA decision-making (e.g.. Help in their understanding the problem being addressed and the alternatives considered).</p>	<p>Agency(s) inform and consider parties concerns and suggestions (e.g., seeks their feedback on analysis, alternatives, and proposed decision). Provide documentation of how input was considered.</p>	<p>Agency(s) communicate with parties to ensure their suggestions and concerns are addressed and reflected when assessing environmental effects. Feedback is provided on how their input was considered at various steps during the NEPA process.</p>	<p>Agency(s) work directly with parties at one or more stages of the NEPA process, seeking their advice and agreement on : the purpose and need, alternatives, collection and use of data, impact analysis, development of the preferred alternative, and/or recommendations regarding mitigation.</p>

Please feel free to contact Michael with feedback

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Questions?