

CHAPTER B:
ENVIRONMENTAL
REVIEW

B.1 GLOSSARY

Categorically Excluded Not Subject To Federal Environmental Regulations (CENST)

Categorically Excluded Not Subject To Federal Environmental Regulations projects are activities that the Department of Housing and Urban Development has determined will not alter any conditions that would require a review or compliance under the environmental Federal laws and authorities. These projects are still required to comply with other Federal requirements.

Categorically Excluded Subject To Federal Environmental Regulations (CEST)

Categorically Excluded Subject To Federal Environmental Regulations projects are excluded from NEPA reviews but are still subject to other Federal environmental laws and authorities.

Certifying Officer (CO)

The *Certifying Officer* refers to the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities listed at 24 C.F.R. § 58.13. This is typically the mayor.

Concurrent Notice

The *Concurrent Notice* includes the Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF). This combined notice is required for Environmental Assessment (EA) level ERRs.

Consultation

Consultation means the process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Program as pursuant to the National Historic Preservation Act" provide further guidance on consultation.

Department of Economic and Community Development (TNECD)

The *Department of Economic and Community Development* is the Tennessee authority that administers the Department of Housing and Urban Development (HUD) grants for the Community Development Block Grant (CDBG) program.

Environmental Assessment (EA)

The *Environmental Assessment* is an environmental review which requires a more detailed analysis than the review required for projects that are exempt or categorically excluded.

Environmental Impact Statement (EIS)

The *Environmental Impact Statement* is the most detailed level of analysis.

Early Notice and Public Review (ENPR)

The *Early Notice and Public Review of a Proposed Activity in a 100-Year Floodplain* is the first notice required for all projects located in a floodplain and is published prior to any other notice. This notice must be sent to all interested parties identified on the distribution list.

Environmental Review Record (ERR)

The *Environmental Review Record* contains all documents, public notices, and written determinations issued during the environmental review process.

Finding of No Significant Impact (FONSI)

The *Finding of No Significant Impact* is published and sent to all interested parties on projects that require an environmental assessment. It is included in the Concurrent Notice.

Final Notice and Public Explanation (FNPE)

The *Final Notice and Public Explanation of a Proposed Activity in a 100-Year Floodplain* is the second notice required for all projects located in a floodplain. It can be published concurrently with other publications 15 days after the Early Notice is published. This notice must also be sent to all interested parties on the distribution list.

Final Notice of Removal of Contract Conditions (FNORCC)

The *Final Notice of Removal of Contract Conditions* is issued after environmental conditions and contract conditions have been satisfied.

Historic Property

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

Letter of Removal of Environmental Condition (LOREC)

The *Letter of Removal of Environmental Condition* is issued after the environmental conditions have been satisfied.

National Environmental Policy Act (NEPA)

The *National Environmental Policy Act* establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within the federal agencies.

Notice of Intent to Request a Release of Funds (NOI/RROF)

The *Notice of Intent to Request a Release of Funds* is published and sent to all interested parties on projects that are Categorically Excluded. It is also included in the Concurrent Notice, which is published for Environmental Assessment-level ERRs.

Request for Release of Funds and Certification (RROF)

The *Request for Release of Funds and Certification* certifies that all environmental activities have been covered or adhered to. The Request for Release of Funds and Certification, along with the full ERR including proof of publication of all required notice(s), must be sent to TNECD.

Responsible Entity (RE)

The *Responsible Entity* means: (i) with respect to environmental responsibilities under programs listed in 24 C.F.R. § 58.1(b)(1), (2), (3), (4), and (5), a recipient under the program. The grantee (usually a local government entity) is the Responsible Entity under CDBG programs.

State Historic Preservation Officer (SHPO)

The *State Historic Preservation Officer* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

Tribal Historic Preservation Office (THPO)

The *Tribal Historic Preservation Office or Officer* means the tribal office/official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of compliance with Section 106 of the National Historic Preservation Act of 1966 on tribal lands in accordance with section 101(d)(2) of the act.

B.2 ENVIRONMENTAL OVERVIEW

To proceed with a CDBG award, the project must comply with the National Environmental Policy Act (NEPA) and the environmental requirements of other Federal laws covering historic properties, floodplains, wetlands, coastal zones, sole source aquifers, endangered species, wild and scenic rivers, air quality, farmland protection, explosive and flammable hazards, noise, airport hazards, contamination and toxic substances, and environmental justice.

Environmental responsibilities have both legal and financial ramifications. As part of the grantee assurances, the mayor or county mayor/executive must assume the role of the responsible Certifying Officer (CO) under the provisions of NEPA. This person is the environmental CO and must sign all environmental-related material. This means that if someone sues a project in Federal court on environmental grounds, the mayor or county mayor/executive acting as the environmental CO will be named as the responsible party.

All public comments must be considered before the Request for Release of Funds and Certification (RROF) is signed and submitted to TNECD with the full ERR. All public comments should be submitted to the State with the responses that were given to the concerned citizen(s).

Communities cannot obligate or expend CDBG funds until the environmental requirements have been completed and all contract conditions satisfied. After the environmental requirements have been completed, the community will receive a Letter of Removal of Environmental Condition (LOREC). Even after receipt of this letter stating environmental requirements have been completed, funds cannot be obligated or expended until all contract conditions have been satisfied and the community receives a Final Notice of Removal of Contract Conditions (FNORCC) (refer to Chapter A.3).

To remain in compliance with all the requirements, rules, regulations, etc., a final, complete Environmental Review Record (ERR) must be maintained. The ERR describes the project activities and their environmental impact(s) and contains all original documents, public notices, and written determinations issued during the environmental review process. A copy of the ERR must be available at the grantee (city or county) office for public review, and a copy of the ERR will be kept on file with TNECD.

Allowable Activities Prior to Receipt of the Letter of Removal of Environmental Condition (LOREC):

- Eligible administrative costs
- Preliminary Engineering design
- Environmental review

Timeframe for submittal of Environmental Review Records to TNECD by ERR level:

- Exempt: due 15 days after award announcement.
- Categorically Excluded Not Subject To: due 15 days after award announcement.
- Categorically Excluded converting to Exempt: due 60 days after award announcement.
- Categorically Excluded Subject To: due 90 days after award announcement.
- Environmental Assessment: due 120 days after award announcement.

If an incomplete ERR is received, the State's 15-day objection period will not begin until all required information is received.

B.3 ENVIRONMENTAL REVIEW PROCESS

The environmental review process can be divided into four basic steps.

Step 1: Determine which of the five environmental review levels your project requires based on the project activities and definition of each level in the following sections. The environmental review level should be based on the aggregate project scope. This means that even if a different funding source is being utilized in addition to HUD CDBG funds, the environmental review level selected must be reflective of the entire project/all project activities. Projects may be categorized into one of the following HUD levels of environmental review:

1. Environmental Impact Statement (EIS)
2. Environmental Assessment (EA)
3. Categorically Excluded Subject to Federal Environmental Laws (CEST)
Categorically Excluded Converting to Exempt is determined after completing the Statutory Worksheet
4. Categorically Excluded Not Subject to Federal Environmental Laws (CENST)
5. Exempt

Step 2: Use the corresponding ERR level worksheets and guidance documents included as Exhibits to this chapter to complete all environmental consultations and requirements based on the category selected in the first step. The grantee must maintain a written record of the environmental review undertaken for each project. This document shall be designated the Environmental Review Record (ERR) and shall contain all original documents, public notices, and written determinations from consulting agencies issued during the environmental review process. The ERR must be available for public review at the grantee office.

Step 3: Submit the entire complete ERR to TNECD. At that time, TNECD will review the ERR for completeness and compliance and initiate a 15-day objection period so that interested parties may respond or object to the project. (Note: If an incomplete ERR is received, the state's 15-day objection period will not begin until all required documentation is received by TNECD.)

Step 4: Upon clearance of the 15-day objection period, TNECD will issue a Letter of Removal of Environmental Condition (LOREC). However, no obligation or spending of money to implement the project can occur until the grant contract is executed and the Final Notice of Removal of Contract Conditions (FNORCC) has been issued.

B.4 ENVIRONMENTAL IMPACT STATEMENTS

An Environmental Impact Statement (EIS) is required under any of the following circumstances:

1. The project is determined to have a potentially significant impact on the human environment;
2. The project would provide a site(s) for hospitals and nursing homes containing a total of 2,500 or more beds;
3. The project would remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units; or
4. The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units.

Contact TNECD for assistance if any of the above conditions are met.

B.5 ENVIRONMENTAL ASSESSMENT

NOTE: *Due to ECD 120 days after award announcement*

Projects that involve new construction or substantial improvements to existing facilities will require an Environmental Assessment (EA). Examples of these projects include:

1. New Construction
 - New building on vacant site
 - Building addition (increase of building footprint)
 - Water/sewer line construction to an area not serviced
 - New water storage tank
 - In general, any “new moving of dirt”
2. Substantial Improvements
 - Doubling the size of an existing building
 - Increasing employment by more than 20%
 - Changing the land use
 - Increasing the capacity of public facilities by more than 20%
 - Major rehabilitation

Projects that require an Environmental Assessment will complete the Environmental Assessment Worksheets (Exhibit B-2). The following is required ERR documentation:

1. ERR Checklist
2. Project Area Map
3. Environmental Assessment narrative information
4. Complete Statutory Worksheet including all required documentation for each category
5. Early and Final floodplain notices with proof of publication and 8-Step or 5-Step Decision Making Process documentation (*if applicable – work in a floodplain or wetland*)
6. Complete NEPA Environmental Assessment Checklist including all required consultation responses
7. Concurrent Notice (FONSI + NOI-RROF) with proof of publication
8. Distribution List and copies of letters/memos sent with each publication to all applicable agencies
9. Request for Release of Funds and Certification (RROF) – signed and dated after ERR is complete and all public comment periods have ended

B.5.a Environmental Assessment Requirements

Early in the environmental assessment of a project, the grantee must coordinate and consult with concerned Federal Agencies and designated State Agencies responsible for administering State programs. The grantee must also complete all procedures and take other actions required under the provisions of applicable laws. Any such actions shall be integrated into the EA as compliance documentation.

B.5.b Environmental Assessment Narrative

The primary purpose of the Narrative is to discuss in detail any adverse impacts and mitigating measures that were identified in the Environmental Review Record Checklist (Exhibit B-1). The following areas are included on the form:

1. Grant Data including items such as project identification, preparer, project name/location, cost, administrating agency, contact person, etc.
2. Description of the Proposed Project – must be as detailed as possible regarding all proposed activities (remember to consider the aggregate project scope). Alternatives to the project **MUST** be listed, including a ‘no action’ alternative. Positive and negative potential impacts and outcomes should be listed with each alternative.
3. Statement of Need for Proposal
4. Existing Conditions and Trends – describe the existing conditions of the project site (current and past land use, soil information, etc.)
5. Mitigation Measures and Conditions – summarize all mitigation measures recommended by agencies during the ERR consultation process.
6. Conditions for Approval and Finding of No Significant Impact

B.5.c Project Area Map(s)

A project map(s), delineating the location of the project site(s), must be included in the ERR. Federal Emergency Management Agency (FEMA) FIRM panel maps must also be included in the ERR. The project site must be marked/outlined on the FIRM map(s). New water and/or sewer line extensions must be demonstrated precisely on map(s). Building-related projects must outline the property parcel on the FIRM map or provide a parcel map with FEMA flood zones delineated.

B.5.d Statutory Worksheet

The Statutory Worksheet documents compliance with Federal laws, regulations, and Executive Orders. It includes applicable statutes and regulations for fourteen categories of compliance. A specific source must be documented for each category. Exhibit [B-8 Directions for Statutory Worksheet](#) gives direction on who to consult and how to complete the Statutory Worksheet, as well as the HUD thresholds for each category. All documentation should be included in the ERR.

B.5.e Historic Preservation Office Letters (SHPOs & THPOs)

All EA and CEST-level ERRs require consultation with the State Historic Preservation Officer (SHPO) to ensure that the proposed activities will not damage sites of significant historical importance. If SHPO is consulted, tribes/Tribal Historic Preservation Officers (THPO) relevant to the project location must be consulted, unless it is determined that the project does not include any activities that require tribal consultation (refer to page 10 of [Exhibit B-7](#)). A SHPO response and proof of attempts to consult the appropriate tribes (along with any responses received) are the only acceptable documentation.

SHPO consultation requests must be submitted through the e106 online portal:

<https://www.tn.gov/historicalcommission/federal-programs/section-106-review.html>

Exhibits [B-6](#) and [B-7](#) give instructions, requirements, and contact information for tribes/Tribal Historic Preservation Officers relevant to projects in the state of Tennessee.

REVIEW THESE EXHIBITS AND ABIDE BY ALL DIRECTIONS CONCERNING TRIBAL CONSULTATION, OR THE GRANTEE COULD BE LIABLE.

B.5.f NEPA Environmental Assessment Checklist

The NEPA Environmental Assessment Checklist contains environmental assessment factors within five impact categories. The five impact categories contain factors intended to investigate the impacts of the project on the surrounding environment, community, and population and the impacts of the surrounding conditions on the project.

A project may comply with the federal laws, regulations and Executive Orders stipulated on the Statutory Worksheet yet still have an impact on the environment related to the factors listed on the NEPA Checklist. State and Local requirements/regulations are considered in these consultations. The consultant(s) for each factor should provide an Impact Code based on their assessment of the project (Impact Codes and their definitions are listed on the NEPA Checklist in the B-2 EA Worksheets). Supporting documentation for each Impact Code should be included in the ERR. Information to include in the “Source of Documentation” column includes: the name, title, and agency of the expert consulted, the date of their response, and any comments they provided beyond the Impact Code.

NOTE: A list of experts to consult for each factor is included in Exhibit [B-9 NEPA Checklist Directions](#). Use only the suggested experts listed for each factor. Contact TNECD for approval of any consultants not listed.

NOTE: If code 4 is listed, please call ECD’s CDBG environmental coordinator to discuss before submitting the ERR.

In the Summary of Findings and Conclusions section 1. Alternatives to the Proposed Action - **ALTERNATIVES TO THE PROJECT MUST BE LISTED**. Positive and negative potential impacts and outcomes (short and long- term, concentrated and dispersed), such as increased cost, potential loss of life, property, income, vital services, etc. should be listed with each alternative.

B.5.g Publications

EA-level ERRs require publication of a notice(s) in the grantee’s local newspaper to inform the public of the environmental requirements for the proposed project. Required notices must be published a minimum of one time. The number of notices and the amount of time required for the local comment periods depend on whether the project is located in a floodplain. **Exhibit B-10 Comment Period Calendar Calculator** can assist with determining the correct notice publication date(s) and comment period end date(s).

When copies of publications rather than original publications are included in the ERR, an original publisher’s affidavit must be submitted in order to verify the actual date of publication.

Publications for EA Projects not located in a Floodplain

For projects not located in a floodplain, the grantee must publish the Concurrent Notice, which is followed by a fifteen-day public comment period. Publication dates must succeed the dates of completion of (and signatures on) the Statutory Worksheet, NEPA Environmental Assessment Checklist, and EA Narrative.

Publications for EA Projects located in a Floodplain

If the project is located in a floodplain or includes work in a wetland area, the grantee must document completion of the HUD 8-Step (or 5-Step) Decision Making Process, as applicable. Notification to HUD/FEMA occurs when the ERR preparer publishes the Early Notice and Public Review and sends a copy to the FEMA contact on the Distribution List. The 8-Step Decision Making Process Documentation worksheets are included as part of the B-2 EA Worksheets and B-3 CEST Worksheets. The 8-Step Process is as follows:

1. Determine if the action is located in a 100-year floodplain (500-year floodplain for critical actions).
2. Notify the public for early review of the proposal and involve the affected and interested public in

the decision-making process - publish the Early Notice and Public Review and allow fifteen days for public comment.

3. Identify and evaluate practicable alternatives.
4. Identify potential direct and indirect impacts associated with floodplain development.
5. Design or modify the proposed action to minimize the potential adverse impacts to lives, property, and natural values within the floodplain and to restore, and preserve the values of the floodplain.
6. Re-evaluate the alternatives.
7. Determine no practicable alternative - the Final Notice and Public Explanation may be published and run concurrently with the Concurrent Notice. A 7-day comment period is required for the FN&PE, while a 15-day comment period is required for the Concurrent Notice.
8. Implement the proposed action.

NOTE: For some projects, an abbreviated 5-Step Process is applicable. See 24 CFR 55.12(a).

B.5.h Postings

For projects that are not in a floodplain, the Concurrent Notice may be posted instead of published in a newspaper. Below are the guidelines for posted notices:

- Grantees may post the notices in public places and mail to interested parties. If posting, the Concurrent Notice must be posted in a minimum of five (5) public places and made available for 18 days.
- A memo on letterhead must be placed in the ERR providing the following details: date of posting, list of places posted with addresses, pictures of each posting and copy of the posting.
- Grantees may NOT post for floodplain projects. Floodplain project notices must be published.

B.5.i Distribution List

Whenever a notice is published in the paper, a copy with a cover memo must be sent to all interested parties on or immediately before the date of publication. These parties include, but are not limited to, those agencies listed on the Distribution List. The Distribution List and copies of all memos sent must also be included in the ERR as proof that the required notices were sent to all agencies on the Distribution List. **These notices must be sent as hardcopies via postal mail; email is not acceptable.**

B.5.j Flood Insurance

If the project is located in a floodplain and involves construction of or improvements to a structure, the grantee must have flood insurance. Documentation to prove this must be included in the ERR.

B.5.k Request for Release of Funds and Certification (RROF)

The Request for Release of Funds and Certification must be completed and signed by the grantee's Certifying Officer (CO). This form certifies that the Responsible Entity has complied with all Federal/State regulations in the environmental review process. The grantee must consider any comments from the public or agencies in response to the published notices prior to completing this form. The original copy must be included in the ERR.

After all the above activities have been completed, the ERR should be submitted to TNECD. The Environmental Review Record Checklist (Exhibit B-1 or first pages of B-2 EA Worksheets) should be completed by the grantee to ensure that all necessary forms have been included in the ERR.

Upon receipt of a complete Environmental Review Record containing all the required information at TNECD, the state's fifteen-day objection period will begin. After the completion of this period, TNECD will issue the LOREC to the grantee.

NOTE: *The LOREC will list notations with details of conditions and/or mitigation measures required by various agencies during project implementation. If the LOREC has notations, this completed form must accompany any plans and specifications (P&S) submitted to TNECD before P&S can be approved.*

B.6 CATEGORICALLY EXCLUDED SUBJECT TO FEDERAL ENVIRONMENTAL LAWS

NOTE: *Due to ECD 90 days after award announcement*

Categorical exclusion refers to a category of activities for which no Environmental Impact Statement (EIS) or Environmental Assessment (EA) and finding of no significant impact under the National Environmental Policy Act (NEPA) are required. Three types of categorically excluded projects exist – those subject to federal environmental laws (CEST), those subject to federal environmental laws that convert to Exempt status, and those not subject to federal environmental laws (CENST).

Projects that are Categorical Excluded Subject To Federal Environmental Laws will complete the Categorical Excluded Subject To (CEST) Worksheets (Exhibit B-3). Conversion to Exempt status will not be confirmed until the Statutory Worksheet has been completed.

B.6.a Categorical Excluded Projects Subject to Federal Environmental Laws

Projects not subject to NEPA requirements but bound by other regulatory considerations and compliances are termed Categorical Excluded Subject to Federal Environmental Regulations (CEST) and include:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements 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 (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons.
3. Rehabilitation of buildings and improvements
 - a. Residential, (single or multi-family) buildings, only when
 - i. Unit density is not increased by more than 20 percent;
 - ii. The project does not involve changes in land use from residential to non-residential or from one class of residential to another (e.g. from single family attached dwellings to high-rise multiple dwelling units); and
 - iii. The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - b. Commercial and industrial (non-residential) rehabilitation activities
 - i. The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
 - ii. 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.

4. An individual action on up to four dwelling units where a maximum of four units are on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between. A project of five or more units when the units are more than 2,000 feet apart and developed on scattered sites.
5. Acquisition/disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired/disposed of will be retained for the same use.
6. Combinations of the above activities.

B.6.b Rehabilitation work is considered CEST unless

1. There is an increase in the building ‘footprint’
2. There is any new construction/new ground disturbance
3. Capacity is increased by over 20% (i.e. utilities changing from 6” to 10” pipe *or* building capacity)
4. Land or facility use is changing

If any of the above conditions exist, the project will need an Environmental Assessment-level ERR.

B.6.c Categorically Excluded Project Requirements

If the project is determined to be CEST and compliance activities are required by the Statutory Worksheet, the following is required ERR documentation (included in Exhibit B-3 CEST Worksheets):

1. ERR Checklist
2. Project Area Map
3. Categorically Excluded project narrative information
4. Complete Statutory Worksheet including all required documentation for each category
5. Early and Final floodplain notices with proof of publication and 8-Step or 5-Step Decision Making Process documentation (*if applicable – work in a floodplain or wetland*)
6. Notice of Intent to Request Release of Funds (NOI-RROF) with proof of publication
7. Distribution List and copies of letters/memos sent with each publication to all agencies listed
8. Request for Release of Funds and Certification (RROF) – signed and dated after all public comment periods have ended

B.6.d Publications for CEST Projects not located in a Floodplain

For projects not located in a floodplain, the grantee must publish the Notice of Intent to Request Release of Funds (NOI-RROF), which is followed by a seven-day local comment period. Publication dates must succeed the date of completion of the Statutory Worksheet (including all documentation).

- Grantees may post the notices in public places and mail to interested parties instead of publishing. If posting, the NOI-RROF must be posted at a minimum of five (5) public places and made available for 10 days.
- A memo on letterhead must be placed in the ERR providing the following details: date of posting, list of places posted with addresses, pictures of each posting and copy of the posting.
- Grantees may NOT post for floodplain projects. Floodplain project notices must be published.

B.6.e Publications for CEST Projects located in a Floodplain

If the project is located within a floodplain, the grantee must document completion of the HUD 8- Step or 5-Step Decision Making Process, as applicable. For directions concerning this process, the distribution list to be used for consultation, and requirements regarding flood insurance, refer to sub- sections B.5.g Publications for EA Projects located in a Floodplain, B.5.i Distribution List, and B.5.j Flood Insurance.

B.7 CATEGORICALLY EXCLUDED PROJECTS CONVERTED TO EXEMPT

NOTE: *Due to ECD 60 days after award announcement*

Activities that are listed in section B.6.a above and in 24 C.F.R. § 58.35(a) (1)-(6) as categorically excluded may be converted into exempt activities under the following conditions:

- a. The Grantee completes a compliance determination under the Federal laws and authorities cited in 24 C.F.R. § 58.5 for the proposed activity (completion of the Statutory Worksheet).
- b. The Grantee concludes that no circumstances exist which require compliance with any other Federal laws and authorities cited in 24 C.F.R. § 58.5. (no further review procedures or mitigation measures are required during the project). All documentation is included in the ERR, including a Certification of Exemption. The complete ERR is submitted to TNECD for review and approval.

If the CEST project is not in a floodplain and no compliance is triggered on the Statutory Worksheet (status A for all categories), the project may convert to Exempt status. Publication of the NOI-RROF is not required, and submission of the Request for Release of Funds and Certification is not required. The following is required ERR documentation (included in Exhibit B-3 CEST Worksheets):

1. ERR Checklist
2. Project Area Map
3. Categorically Excluded project narrative information
4. Completed Statutory Worksheet, including all required documentation for each category
5. Completed Certification of Exemption for HUD Funded Projects with box #12 checked

B.8 CATEGORICALLY EXCLUDED NOT SUBJECT TO FEDERAL ENVIRONMENTAL LAWS (CENST)

NOTE: *Due to ECD 15 days after award announcement*

Projects utilizing the CENST level of review will complete the CENST Worksheets (Exhibit B-13), which will be submitted to TNECD for review and approval.

Categorically Excluded Projects Not Subject to Federal Environmental Laws (CENST) include projects that consist of only those activities listed in 24 C.F.R. § 58.35(b) (1)-(7). HUD has determined that the those listed activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When categorically excluded activities not subject to federal environmental laws are undertaken, the responsible entity does not have to publish a NOI-RROF or submit a RROF. The recipient remains responsible for carrying out any applicable requirements under 24 C.F.R. § 58.6.

Please consult with TNECD's CDBG ERR specialist to determine whether a project should be classified as CENST or Exempt.

B.9 EXEMPT PROJECTS

NOTE: *Due to ECD 15 days after award announcement*

Projects that are Exempt from federal environmental laws will complete the Exempt Worksheets (Exhibit B-4), which will be submitted to TNECD for review and approval.

Exempt projects include only those activities listed in 24 C.F.R. § 58.34(a)(1)-(12). HUD has determined that the those listed activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When exempt activities are undertaken, the responsible entity does not have to publish a NOI-RROF or submit a RROF. The recipient remains responsible for carrying out any applicable requirements under 24 C.F.R. § 58.6.

NOTE: Purchase of equipment or vehicles falls under the ‘purchase of tools or equipment’ section (#7 should be checked on page 1 of the B-4 Exempt Worksheets).

B.10 ADOPTION OF ANOTHER AGENCY’S ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT

If an Environmental Impact Statement (EIS) or Environmental Assessment (EA) has been prepared for the project for another agency, the grantee may adopt this document as part of the environmental review requirements under the Community Development Block Grant (CDBG) program. However, the following must also be included:

1. A copy of the other agency’s EIS/EA
2. Environmental Review Record Checklist
3. Map(s)
4. EA Worksheets
5. State Historic Preservation Office (SHPO) consult and response letter
6. Tribal Historic Preservation Office (THPO) consult and response letters
7. 8-Step Decision Making Process Documentation (if applicable)
8. Distribution List and accompanying letters
9. Addendum of Validity – Responsible Entity’s Certifying Officer (CO) must complete this form
10. Documentation of flood insurance (if applicable)
11. Request for Release of Funds and Certification

NOTE: *The Concurrent Notice and the floodplain notices (if applicable) must be published even if a previous notice was published as part of the adopted EIS/EA. The timeframe for public comment is the same as for EAs.*

NOTE: *If the project is not in a floodplain, grantees may post the Concurrent Notice in public places and mail it to parties on the Distribution List. Refer to section B.5.h. above for posting requirements.*

B.11 PROJECT SCOPE CHANGE and ERR ADDENDUM

Re-evaluation of Environmental Review Record requiring an Addendum

If size, location, or scope of a project changes, environmental impact must be reassessed and the ERR updated.

If the original scope of a project is changed, an ERR addendum must be completed. Situations that would require reassessment are:

1. Adding new activities not covered in original project scope (e.g., cost savings result in the ability to extend water line beyond the locations originally planned)
2. New circumstances and environmental conditions that may affect the project
3. Choosing an alternative approach or site not considered in the original assessments

If a change in the scope of the project occurs, the grantee must first request approval from TNECD. Once the scope change is approved, TNECD and the grantee will re-evaluate the original ERR based on the new information to determine whether the ERR is still applicable. If the original ERR is still valid, the grantee will submit an Addendum to the original ERR.

ERR Addendum Requirements

If the project is determined to need an addendum, the following is required ERR documentation:

1. Environmental Review Record Checklist (“Addendum” column)
2. Detailed description and map of the new project area
3. Completed Statutory Worksheet, including updated SHPO/THPO consultations and responses related to the new project area
4. Addendum of Validity (Exhibit B-5) – Responsible Entity’s CO must complete this form.

If the original ERR is determined to no longer be applicable, the grantee must prepare a new ERR based on the new/additional project activities. Consult with TNECD to determine whether an Addendum or new full ERR is need after a scope change.

B.12 AGGREGATE

Grantees may reuse an ERR if it is under 5 years old, covers the same project area, and has the same scope. However, a charge cannot be made to the grant for completion of an ERR in this situation.

ERR Aggregate Requirements

1. Addendum of Validity must be signed and dated by the Certifying Officer (CO).
2. Project map delineating the project area/location
3. RROF must also be submitted

ENVIRONMENTAL REVIEW RECORDS ARE VALID FOR FIVE (5) YEARS FROM THE ORIGINAL CLEARANCE DATE

B.13 ENVIRONMENTAL EXHIBIT LIST

- B-1 ENVIRONMENTAL REVIEW RECORD CHECKLIST
- B-2 ENVIRONMENTAL ASSESSMENT (EA) WORKSHEETS
- B-3 CATEGORICALLY EXCLUDED SUBJECT TO (CEST) WORKSHEETS
- B-4 EXEMPT WORKSHEETS
- B-5 ADDENDUM OF VALIDITY
- B-6 REQUIRED TRIBAL CONSULTATION BY COUNTY
- B-7 TRIBAL CONSULTATION PROCESS & CONTACTS
- B-8 STATUTORY WORKSHEET DIRECTIONS
- B-9 NEPA CHECKLIST DIRECTIONS
- B-10 COMMENT PERIOD CALENDAR CALCULATOR
- B-11 TRIBAL CONSULTATION LETTER TEMPLATE
- B-12 ENVIRONMENTAL REVIEW RECORD USEFUL WEB LINKS
- B-13 CATEGORICALLY EXCLUDED NOT SUBJECT TO (CENST) WORKSHEETS
- B-14 24 C.F.R. § 55.12 – INAPPLICABILITY OF 24 CFR PART 55 TO CERTAIN CATEGORIES OF PROPOSED ACTIONS