

# **Vermont Community Development Program (VCDP)**

## **U.S. Department of Housing and Urban Development**

### **24 CFR Part 58 Environmental Review Process Memo**

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This memo provides general guidance intended to assist the applicant in preparing an Environmental Review (ER) so that it can be submitted for pre-approval. However, projects and their impacts are evaluated on a case-by-case basis. For all ER questions or concerns, please contact the [Environmental Officer](#) at (802) 622-4236.

### **Background Information**

Under 24 CFR Part 58, every U.S. Department of Housing and Urban Development (HUD) assisted project must complete an Environmental Review (ER). The purpose of the ER is to assess the impacts of the project on the environment and the impacts of the environment on the project; involve the public in the decision-making process; and make better-informed decisions. The ER indicates compliance with the National Environmental Policy Act (NEPA), and all other local, state, and federal associated laws and authorities triggered by the HUD Part 58 ER.

### **The Environmental Review and the VCDP Application Process**

The Environmental Review can be completed before, during, or after the application process. However, if the ER is not completed prior to receiving an award, the ER will be listed as an Award Condition. Please note that if there are any potential environmental concerns and the ER has not been progressing or completed, it is possible that the Board may table the project until the ER has moved far enough along to rule out any possible problems.

The VCDP Grant Agreement will not be issued until the Environmental Review has been completed and an Environmental Review Release letter has been issued. The ER Release Letter signifies approval and completion of the ER. This letter may also identify ER Conditions that will need to be satisfied as the project moves forward. Please note that if you completed an ER and a significant amount of time has passed before an award has been made, you should contact the Environmental Officer to discuss if the ER is still valid. In addition, if the project activities or the scope of work have significantly changed, a new ER may be required.

## Choice Limiting Actions



**WARNING: Certain activities are prohibited until the completion of the ER (24 CFR 58.22).** These activities are called choice limiting actions. Engaging in these activities prior to the approval of the ER compromises the unbiased consideration of alternatives and is therefore disallowed.

### Planning Activities

For planning grants, where the grant is being used to fund planning activities, it is prohibited to perform any planning activities for which the applicant will request funding for or count as match until the ER is completed. For example, if the planning grant is for a feasibility study for a senior housing development and includes an engineering report, a Phase I Environmental Site Assessment (ESA), and an archaeological investigation, none of those activities can begin or go out to bid until the ER Release Letter has been issued.

For all other grants, where the grant is being used to implement the actual project, it is acceptable and necessary to conduct planning activities prior to or during the ER because these studies are needed in order to complete a higher-level ER (e.g. Categorical Excluded or Environmental Assessment, described in the next section). For example, a Phase I ESA, an engineering study, archaeological investigation, etc., are all appropriate activities that can take place prior to the Environmental Review Release, as long as the grant is not a planning grant.

### Non-planning Activities

Choice limiting activities for non-planning grants include actions such as the following: going out to bid for construction-related activities; signing a Purchase and Sales Agreement; signing an Option Agreement that does not allow the purchaser to elect to terminate the Option Agreement if the subject property is not desirable; acquisition of a property, leasing a property, or entering into a commitment or undertaking for repair, rehabilitation, construction, or demolition. A commitment is a legally binding contract or agreement. Therefore, signing contracts for these types of activities is prohibited until the ER is completed and approved. Even going out to bid is considered by HUD to be a choice limiting action and must wait until after the ER is approved. Conducting a choice limiting activity, especially buying a property, prior to the completion of the ER means that the action itself is choice limiting and an unbiased consideration of alternatives has been compromised.

A party may begin a project in **good faith** as a private project and is not precluded from later deciding to apply for federal assistance. However, once a project applies for federal assistance, it will need to cease choice-limiting actions on the project until the Environmental Review process is complete. Please note, if a project is in this position, additional complications may arise with respect to procurement requirements if a construction contract has already been signed. Good faith means, as soon as the project is considering applying for HUD funding, the project ceases with moving forward with Choice Limiting Activities. Additionally, any Choice Limiting Activities that took place prior to the consideration of HUD funding cannot be counted as part of the project's budget provided in a VCDP application. If a project utilizes this "good faith" provision, the specific situation needs to be fully and clearly documented as part of the ER Record.



**WARNING: If a project intends to use HUD funding, the ER has not been approved, and a Purchase and Sales Agreement is signed, the project is ineligible to use HUD funding (unless the Purchase and Sale Agreement can be revised into an Option Agreement).**

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## Levels of Environmental Review

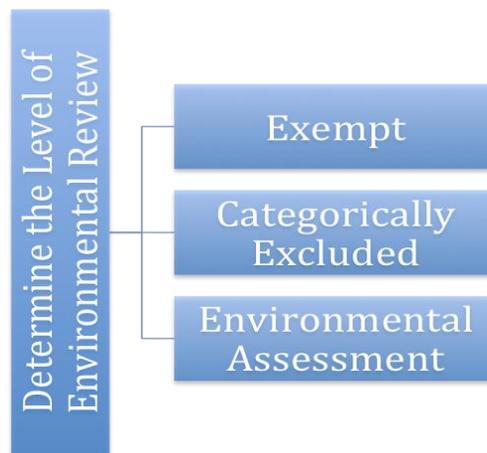


Figure 1. Determine the level of Environmental Review.

There are three levels of Environmental Review: **Exempt** (this section also includes Categorically Excluded Not Subject To 58.5); **Categorically Excluded** Subject To 58.5 (Categorically Excluded); and **Environmental Assessment** (EA).

## **Exempt**

Most planning grants fall into the Exempt level of ER. Exempt activities include those that have no physical impact, such as providing financial assistance, purchasing tools, working capital, feasibility studies, and operating costs (when NO expansion of the business or construction is involved). Exempt ERs are very simple to complete. They involve a few forms (completed in the State's online grants management system, [GEARS](#)) and can be completed in an hour. If the proposed planning project involves potential future implementation activities that may involve historic resources the [Preliminary Historic Preservation Review Form](#) will need to be submitted and signed off by the Division for Historic Preservation. This review period can take up to one month before the signed form is sent back to the applicant. Once the ER documentation is complete, the ER approval process can move forward because there are no public comment or objection periods required.

## **Categorically Excluded**

Categorically Excluded projects include those with a moderate amount of physical impact. The specifics of whether a project is Categorically Excluded vary depending on the project type, such as public facilities, single-family residences, multi-family buildings, or commercial properties. Depending upon project type, a higher level of review (EA) may be required if the footprint or capacity increases greater than 20%, the cost exceeds a certain threshold, or the existing land use changes. For greater detail concerning the level of ER, please see [Determining the Level of Environmental Review](#).

Certain Categorically Excluded projects that, after review, have no need for mitigation or further compliance, may "convert" to Exempt. This does not mean that the project could have started as Exempt, but rather it can be treated as Exempt because no further compliance is needed. The project remains in GEARS as a Categorically Excluded project in order to maintain all of the related supporting documentation but does not require a public notice, comment or objection period, or Request for Release of Funds. It still requires waiting to receive the ER Release Letter before initiating project activities.

## **Assessment**

If a project is not exempt or categorically excluded under Sections [58.34 and 58.35](#), an Assessment level Environmental Review will need to be completed.

## All Levels of Environmental Review

All ERs are completed using the State's online grants management system, GEARS. The process begins with the Municipality opening up a new ER in GEARS. Typically, ER preparers are assigned a "writer" role in GEARS. The Municipality must add an ER preparer to the ER Record in GEARS directly or provide written approval (generally via e-mail) that the individual may be added to the ER Record to the Environmental Officer.

The ER has several pages that need to be completed before being submitted for review, which is accomplished by changing the status of the ER from "Env Review in Process" to "Env Review Pre-Approval Submitted." On every page, there is written guidance to assist you in completing the Environmental Review. In addition, all forms needed are linked within GEARS. **Please download these linked forms each time, as they are the most recent versions.**

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## Supporting Documentation

The entire ER, including all supporting documentation, is saved in GEARS. This file demonstrates compliance with NEPA, and all other associated local, state, and federal laws and authorities triggered by the HUD ER. The entire record is made available to the public for their review, comments and/or objections and is referred to as the Environmental Review Record (ERR).

The Agency's [Environmental Review Webpage](#) has a set of step-by-step guidance documents that are excellent tools that can assist the ER preparer in providing appropriate supporting documentation. Additionally, the ER Webpage has a variety of other guidance documents and resources.

 **Please note:** It is generally unacceptable to provide primary source documentation from State resources (e.g. Vermont Agency of Natural Resources (ANR) - Natural Resources Atlas). If needed, State primary source documents may be used for the purpose of providing supplementary information in addition to Federal source documentation (e.g. Indiana bat habitat).

**The following two sections discuss two Environmental Review areas (Floodplain Management & Toxic Sites) that, if triggered, often require a substantial amount of Supporting Documentation.**

## Floodplain Management

In general, if the project is in a floodplain, the 8-Step Decision-Making Process (8-Step) must be completed (see [8-Step Guidance](#)). Building in the floodplain is strongly discouraged by HUD. In addition, all local floodplain regulations must be complied with and these may be more restrictive than HUD requirements. If the 8-Step is triggered, a thorough understanding of the impacts of the project to the floodplain is needed (typically through an engineering report). If the project involves expanding into the floodplain or building new in the floodplain, the area of new disturbance will need to be known and justification for doing so must be provided. An alternatives analysis is also a key component of the 8-Step. In addition, mitigation such as elevating the building above the floodplain base elevation will likely be required.

An evacuation plan may also be required (see [Evacuation Plan Model](#)). Therefore, it is critical that the 8-Step be finalized after the project is designed and the impacts are known. The 8-Step involves two public notices. The first notice, the Early Notice, should be published as early on in the planning process as possible. The second notice, the Late Notice, should not be published until you have a thorough understanding of the impacts to the floodplain. There are two sample notices available within GEARS. These notices are examples from HUD and the format should not be modified except where requested. Notices must be reviewed by the Environmental Officer prior to publication.



**WARNING: If the project is located in the floodway, and the activity is not a functionally dependent use (such as a bridge, marina, or culvert), the project is ineligible for HUD funding.**

## Site Contamination Studies

All projects that involve multi-family residences (5+ units), non-residential properties (such as commercial properties, a municipal property, or vacant land), or acquisition require completion of a Phase I Environmental Site Assessment (ESA), which is different than the Environmental Assessment (EA) mentioned earlier. The Phase I ESA must be prepared by a Qualified Environmental Professional. This report must adhere to the most recent American Society for Testing and Materials (ASTM) standards, currently ASTM E-1527-13. The newest standards include a vapor encroachment requirement - you must discuss this with the consultant to make sure that they include a Tier I Vapor Intrusion Screening.

For specific HUD guidance on toxic contamination requirements, (this is generally used by environmental consultants), please refer to the most updated version of Chapter 9 of the [Multifamily Accelerated Processing \(MAP\) Guide](#) (currently January 29, 2016).

 **Please note:** A Phase I ESA has a shelf life beginning from the site visit. If the Phase I ESA is older than six months but less than 12 months prior to the certification of the ER, the Phase I will need to be updated. If the Phase I ESA is older than 12 months prior to the completion of the ER, an entirely new Phase I ESA will be required.

It is recommended that you review the following document prior to hiring an environmental professional for completing a Phase I ESA: [Using a Phase I Environmental Site Assessment to Document Compliance with HUD Environmental Standards at 24 CFR 58.5\(i\)\(2\) or 50.3\(i\)](#). See a List of [Environmental Consultants](#) that have previously completed toxic site investigations for VCDP projects. If the Phase I ESA identifies a Recognized Environmental Condition (REC), a Phase II ESA is required. This report must also be prepared using the most up to date ASTM standards.

Depending upon the results of the Phase II ESA, a remediation plan, soil management plan, Phase III, or Corrective Action Plan (CAP) may be required prior to the completion of the ER. If a CAP is required, it must be approved, after a public notice period, by the Vermont Department of Environmental Conservation, before the ER can be approved.

 **Please note:** The Department of Environmental Conservation (DEC) accepts a similar report called an Initial Site Investigation that is informally referenced as a Phase II. This report does not follow the most recent ASTM standards and is not accepted by HUD.

### **Tiered Reviews**

In some cases, the project may include unidentified locations. In this instance, a tiered ER is appropriate. The Tier I ER will be completed using GEARS and with the guidance of the Environmental Officer. The Tier I ER sets the stage and creates a roadmap for the Tier II ERs which are completed by the applicant. The completion of the Tier I ER results in a Tier I ER Release Letter. A condition of the release letter will be the requirement to complete Tier II ERs prior to committing funding to a site-specific project. Additional Tier I/II resources are available on the Agency's [Environmental Review Webpage](#).

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## Review Process

Throughout the review process, the ER will be moved through various stages of review. As each stage is completed, the status of the ER is changed in GEARS.

The preparer and the Environmental Officer change these statuses to initiate request for review or conversely request for modifications by the Environmental Officer. When the ER is first opened, it will default to the status “Env Review In Process.” In this status, the applicant is able to make edits and uploads freely.

 **Please note:** The project description for an ER is extremely important. If an activity or project component is being added after the ER Release and that component was not included in the project description for the ER, a new ER may be required - even if it seems as if the new activity has no environmental impact. This includes Section 8 Project Based Vouchers (PBVs). If there is any potential for applying for PBVs as part of a project, it is very important to include this information in the project description and notice. **The project description is entered in GEARS.**

 **Please note:** Permits will be required prior to the completion of the ER whenever a permit is needed for mitigation purposes. This may or may not involve an impact but may be required as prevention of an impact. In some instances, one permit may be inextricably linked to another permit. In those cases, all associated permits will be required prior to the completion and approval of the ER.

When all required information is uploaded and completed, the applicant/writer changes the status to “Env Review Pre-Approval Submitted.” At this stage, the ER will be reviewed by the Environmental Officer. Any required revisions, additional documentation, and feedback will be provided to the applicant/writer and the status will change to a “Env Review Pre-Approval Modifications Required” loop. Typically, feedback is provided through email. When all revisions have been made, the status should be changed. When the Environmental Review is sufficient, the ER will proceed to the next status, “Env Review Public Notice Required.”

### **Environmental Review Public Notice Required**

At this stage, the applicant/writer will prepare the public notice (see next section for requirements). A public notice is required for Categorically Excluded and Environmental Assessment reviews. The draft public notice should be submitted to the Environmental

Officer for review and edits prior to publication. If the public notice is not reviewed prior to publication and there are deficiencies, the public notice may need to be reissued. All public notices are posted for one day in a newspaper that serve the project area. The dates in the notice must coincide with the required public comment period. If the dates are incorrect, the notice may need to be republished. If comments or objections are received, the Municipality (in collaboration with VCDP and other project partners) must prepare written responses to each commenter and include the comments and responses in the ERR.

Public engagement is an important component of the NEPA process. This is also the step in GEARS where the applicant/writer will be asked to provide a summary of all public outreach that has been completed for the project up to this point (this includes minutes and lists of attendees of any applicable public hearings or meetings).

**Public Notice for Categorically Excluded Projects**

If the Categorically Excluded project does not trigger compliance issues, there is the possibility that the project may “convert” to exempt. In this case, a public notice is not required. This does not mean that the project could have started as Exempt, but rather it can be treated as Exempt because no further compliance is needed. The project remains in GEARS as a Categorically Excluded project in order to maintain all of the related supporting documentation.

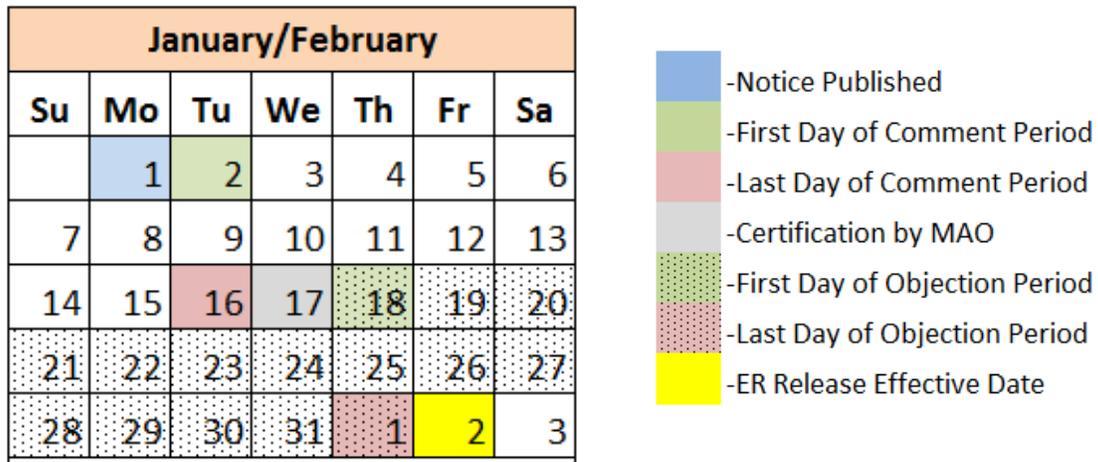
For all other Categorically Excluded projects, there is a seven-day public comment period starting the day after the publication date. After the public comment period ends, the Municipal Authorizing Official (MAO; also known as the Certifying Officer, Responsible Entity, which is typically the Mayor, Town Manager, or Selectboard Chair/Member) will certify and officially submit the ER by changing the status to “Env Review Submitted” in GEARS. Upon receipt of the ER submission, the Environmental Officer will change the status to “Env Review Approval Pending” which starts the 15-day public objection period, starting the day after the status is changed. See the color-coded calendar below for an example public comment/objection period for a Categorically Excluded ER:

January						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

-  -Notice Published
-  -First Day of Comment Period
-  -Last Day of Comment Period
-  -Certification by MAO
-  -First Day of Objection Period
-  -Last Day of Objection Period
-  -ER Release Effective Date

**Public Notice for Environmental Assessment Projects**

For EA projects, there is a 15-day public comment period starting the day after the publication date. After this public comment period, the Municipal Authorizing Official (MAO; also known as the Certifying Officer, Responsible Entity, which is typically the Mayor, Town Manager, or Selectboard Chair/Member) will certify and officially submit the ER to “Env Review Submitted” in GEARS. Upon receipt of the ER, the Environmental Officer will change the status to “Env Review Approval Pending” which starts the 15-day public objection period, starting the day after the status is changed. See the color-coded calendar below for an example public comment/objection period for an Assessment ER:



**ER Release Letter**

If no public comments or objections are made, the ER Release Letter will be issued by the Environmental Officer. If conditions are required, they will be identified in the letter. Steps to satisfy the conditions will also be presented in the letter. Upon receipt of the ER Release Letter, the ER is considered complete and you may move forward with expending funds, signing contracts, and other choice limiting activities.

**⚠ Please note:** Any such activities are at the applicant’s risk until there is an executed Grant Agreement. Questions regarding the procurement process should be directed to Joe LeClair at [Joseph.LeClair@vermont.gov](mailto:Joseph.LeClair@vermont.gov) or (802) 828-5226.

Should you have any questions regarding any of this information or any other aspect of the ER process, please contact the Environmental Officer at [Quin.Mann@vermont.gov](mailto:Quin.Mann@vermont.gov) or (802) 828-1357.