

# GRANTS MANAGEMENT GUIDE ENVIRONMENTAL REVIEW (ER)



## Contents

Background Information .....	1
The ER and the VCDP Application Process.....	1
The Laws.....	1
Which Projects Need an ER?.....	2
Choice Limiting Actions.....	2
Consultants .....	2
Planning Grants.....	2
Non-Planning Grants.....	3
Levels of Environmental Review .....	4
Beginning a New Environmental Review .....	5
Supporting Documentation .....	6
Floodplain Management.....	6
Toxic Contamination Studies .....	7
Radon .....	8
Tiered Reviews .....	8
Review Process .....	9
Public Notice for Categorically Excluded Projects .....	11
Public Notice for Environmental Assessment Projects.....	11
Comments/Objections .....	12
ER Release Letter .....	12

**NOTE: This chapter provides general guidance intended to assist the applicant in preparing an Environmental Review (ER) so that it can be submitted for pre-approval in GEARS (formerly IntelliGrants). 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 [quin.mann@vermont.gov](mailto:quin.mann@vermont.gov) or (802) 828-1357.**

## **Background Information**

Under 24 CFR Part 58, every U.S. Department of Housing and Urban Development (HUD) assisted project such as CDBG, HOME, Project-Based Vouchers, etc., must complete an Environmental Review. 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. Completion of the ER indicates compliance with the National Environmental Policy Act (NEPA), and all other local, state, and federal laws and authorities triggered by the HUD Part 58 ER.

## **The ER and the VCDP Application Process**

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

No Grant Agreement will be offered until the Environmental Review has been completed. A completed ER will have an Environmental Review Release Letter. 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:** If you completed an ER and a significant amount of time has passed (e.g. a year) before you've completed your application, you should contact the Environmental Officer to discuss if the ER is still up to date. In addition, if the project activities have changed, a new ER may be required.

## **The Laws**

The HUD ER must comply with the National Environmental Policy Act (NEPA), and all other related federal, state, and local laws. For greater detail, please see the [HUD Exchange – Environmental Reviews Related Federal Laws & Authorities](#).

## Which Projects Need an ER?

Every project applying for HUD funding will need an ER. Even if the project involves actions that have no physical impact such as refinancing or funding operating costs, an ER is still required (see Planning Grants below). If a project is anticipating to receive both CDBG and HOME funds one ER can be done to satisfy the requirements for both individual grants.

 **Please note:** For some projects, it may be known that HUD funding may be pursued a year or two from the start of the project. For example, a developer may need to purchase a site using their own funds but have the intent of applying for HUD funding a year or two down the road for rehabilitation/construction. It is in the best interest to do an ER before the acquisition, or any other choice limiting activity, even if no HUD funding is involved until later. Then once plans are more finalized a second ER can be completed.

## Choice Limiting Actions



**WARNING: Certain activities are prohibited until the completion of the ER.**

For purposes of the ER the terms actions and activities are interchangeable. ER activities are *project* activities, which are not equivalent to those included in the project's Grant Agreement and/or Budget. Activities that are prohibited prior to the Environmental Review Release are called choice limiting activities. Engaging in these activities prior to the approval of the ER compromises the unbiased consideration of alternatives and is therefore disallowed. Examples of choice limiting activities include going out to bid, hiring a contractor, signing contracts, or engaging in any of the project activities, regardless of funding source. **If a choice limiting activity occurred and cannot be undone or voided, VCDP funds will no longer be a funding option.**

## Consultants

There are a few environmental consultants that have experience conducting HUD ERs in Vermont. Hiring such a consultant will be extremely helpful and can help projects that are time-sensitive. Please contact the Environmental Officer for assistance in locating a consultant well-versed in the HUD and VCDP requirements.

## Planning Grants

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 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 archeological investigation, none of those activities can begin until the ER Release Letter for the Planning Grant has been issued.

For all other grants, where the grant is being used to implement an actual project, it is acceptable 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. Categorically Excluded or Environmental Assessment, described in the next section). For example, a Phase I ESA, an engineering study, archeological 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. If the applicant will be seeking reimbursement for planning activities after the funds have been awarded, it is important that the appropriate procurement requirements are followed.

### **Non-Planning Grants**

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. 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 an unbiased consideration of alternatives has been compromised by not allowing for any modifications or outright cancellation of a project based on the result of the ER.

To ensure that the Option Agreement for your project has the appropriate HUD language, please review this sample [Option Agreement](#) (see Environmental Review, Sample Option Agreement). Please send a draft Option Agreement to your Community Development Specialist for approval. It is very important to get approval before signing such document because if it is not worded appropriately, it could put HUD funding opportunities for your project in jeopardy.



**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).

---

## Levels of Environmental Review

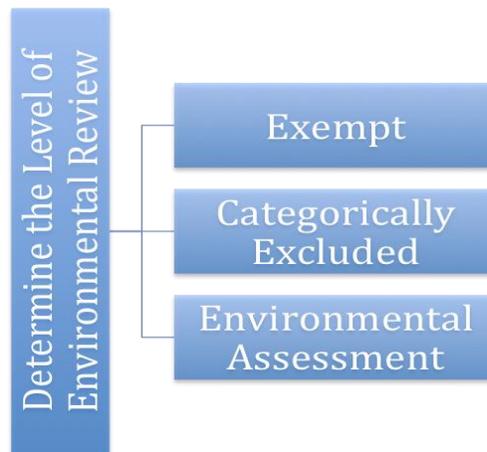


Figure 1. Determine the level of Environmental Review.

For our purposes, 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 projects are those that have no physical impact, such as providing financial assistance for non-implementation activities, purchasing tools, working capital, feasibility studies, and operating costs. Most planning grants fall into the Exempt level of ER. Exempt ERs are very simple to complete. They involve two to three forms (completed in our online database, [GEARS](#)) and can be completed in an hour. If Section 106 of the National Historic Preservation Act is triggered, the [Preliminary Historic Preservation Review Form](#) will need to be submitted and signed off by the Division for Historic Preservation. This process may take up to a month before the signed form is sent back to the applicant, plan accordingly. Once the ER is complete, the approval process can move forward because there are no public comment or objection periods required.

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 may be required if the footprint or capacity increases by more than 20%, if the cost exceeds a certain threshold, or if 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’s Environmental Review 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. Applicants must still wait to receive the ER Release Letter before engaging in choice limiting activities and/or the commencement of any other project work.

Projects that are neither Exempt nor Categorically Excluded must undergo a full Environmental Assessment.

## **Beginning a New Environmental Review**

All ERs are completed using our online database, [GEARS](#). The process begins with the Municipality opening up a new ER in GEARS. A new ER in GEARS can only be opened by an individual who has the role of Municipal Authorizing Official (MAO; also known as the Certifying Officer, Responsible Entity, which is typically the Mayor, Town Manager, or Selectboard Chair). Typically, ER preparers are assigned a role in GEARS as writers. Both MAO’s and Administrators at the Town level are able to give others access to the ER by attaching them in GEARS.

The ER has several forms that need to be completed before being submitted for review. On every GEARS page, there is written guidance to assist you in completing the Environmental Review. In addition, all forms are linked within GEARS. [Please download these linked forms each time you perform an ER to ensure you are using the most recent version.](#)

## 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).

### Floodplain Management

In general, if the project is in a floodplain, the 8-Step Decision-Making Process (8-Step) must be completed after the project design is sufficiently developed (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 process is triggered, a good 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 completed 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 very good 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.**

### **Toxic Contamination Studies**

All multi-family projects, commercial projects (including public structures such as Town Offices), and any project suspected to contain toxic contamination, must complete a Phase I Environmental Site Assessment (ESA). This, and all other required contamination documentation, is likely the most important piece of documentation required for ERs, largely because these reports take time. The Phase I ESA is a report prepared by an environmental consultant. This report must adhere to the most recent American Society for Testing and Materials (ASTM) standards, currently ASTM E-1527-13. The newest standard does include a vapor encroachment requirement but 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, a 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. Since a CAP can take a long time to produce, it is acceptable to complete the ER with a Vermont Department of Environmental Conservation (DEC) approved Draft CAP, with the conditions that the Final CAP will be added to the Environmental Review Record when available and implementation of the CAP will be completed as part of project activities.

 **Please note:** The Department of Environmental Conservation (DEC) uses 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.

### **Radon**

Radon is a colorless, odorless gas that can enter the indoor air environment. Elevated concentrations of indoor radon pose health risks to occupants of the building. The Office of Energy and Environment's [Radon Fact Sheet](#) addresses HUD regulations at 24 CFR 50.3(i) and 58.5(i)(2), which require all property to be free of contamination where a hazard could affect the health and safety of occupants or conflict with the intended use of the property. For projects that include any structures, a radon test is required, unless the activity only involves minor rehabilitation. Locations with elevated radon levels require a radon mitigation system to be installed. Additionally, radon resistant construction is required for all new construction.

### **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](#).

---

## 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 will 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. **Project description is entered in GEARS.**

Project Description	<p><b>Please provide a very detailed description of all activities to be undertaken.</b> This project description should not be the same one used in a grant application. Please include activity type such as acquisition, new construction, major rehab, minor rehab, demolition, repair, etc. For projects that will change the existing footprint, please include current and proposed square footage. Please identify property use (commercial, public facility, critical facility, single or multi family, etc) and property use changes (such as single family to open space or single family to multi family). If unit size changes, please indicate the change in the number of units. Please include details about number of units, number of buildings, projected cost, repair type, and rehab activities, such as new roof, window replacement, exterior modification, interior demolition.</p>
	

 **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 the applicant has taken the ER as far as they can and all required information is uploaded and completed, the applicant/writer changes the status to “Env Review Pre-Approval Submitted,” in this status the applicant/writer is unable to edit the ER. At this stage, the ER will be reviewed by the Environmental Officer.

### VCDP Environmental Review Menu - Status Options

Select a button below to execute the appropriate status push.

---

Document Information: [ENV-2015-ACCD-00014](#)

 [Details](#)

---

**Possible Statuses**

**ENV REVIEW PRE-APPROVAL SUBMITTED**

Any required revisions, additional documentation, and feedback will be provided to the applicant/writer and the status will change to a “Env Pre-Approval Modifications Required” loop. Typically, feedback is provided through email. It is always recommended to respond to this email and identify beside each comment whether a change has been made in GEARS. This helps expedite the next review period. When all revisions have been made, the status should be changed. When the Environmental Review is sufficient, the Environmental Officer will change the ER 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 not required for Exempt reviews; it is only required for Categorically Excluded or Environmental Assessment reviews. The draft public notice should be submitted to the Environmental Officer for review and comments 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, thus delaying the completion of the ER. All public notices are posted for one day in newspapers 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.

### Public Notice for Categorically Excluded Projects

If a Categorically Excluded project does not trigger compliance issues, the project may “convert” to exempt. In this case, a public notice is not required, and a check box on the notice form will need to be checked (see below).

 N/A'."/>

The screenshot shows the Vermont Grants & Incentive Management System interface. The header includes the Vermont logo and the text "Grants & Incentive Management System Agency of Commerce & Community Development". Navigation tabs include Home, Grants/Incentives/ERs, Monitoring/Reporting, Requisitions/Claims/Invoices, and Archive. A secondary navigation bar contains Reports, Administration, Training Materials, Organization(s), Profile, and Logout. Below this are buttons for SAVE, CHECK GLOBAL ERRORS, and SHOW HELP. The main content area shows a "Back" link, document information for ENV-2015-ACCD-00058, and a breadcrumb trail: You are here: > VCDP Environmental Review Menu > Forms Menu. The title of the form is "NOTICE OF INTENT TO RELEASE FUNDS". Under "Instructions:", there are three numbered steps. A yellow oval highlights a note at the bottom of the form: "NOTE: If your project can be converted from Categorically Excluded to Exempt a public notice is not required. Please select N/A if your project has been determined to be exempt.  N/A".

For all other Categorically Excluded projects, there is a seven-day public comment period that begins the day after the publication date. After the public comment period ends, the MAO will certify and officially submit the ER by changing the status to “Environmental Review Submitted” in GEARS. Upon receipt of the ER, the Environmental Officer will change the status to “Env Review Approval Pending” which starts the next part of the process and a 15-day public objection period, which begins the day after the status is changed.

### 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 MAO 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 next part of the process and a 15-day public objection period, which begins the day after the status is changed.

### **Comments/Objections**

If comments or objections are received, the Grantee and/or the State must prepare written responses to all comments/objections individually to each respective commenter/objector and include all comments/objections and responses in the ERR. Please contact the Environmental Officer for guidance to develop the responses.

The Responsible Entity (the Town) must consider any comments received and make project modifications, if appropriate, before completing the environmental certification and before submitting the request for release of funds.

Objections are accepted only if they are made on permissible bases (which are outlined in the public notice). If an objection is received, HUD (or the State) can refuse the Request for Release of Funds and the Municipal Authorizing Official's certification.

### **ER Release Letter**

If no public comments or objections are made during the comment period or the 15-day objection period, respectively, 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.