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Environmental Review

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3 Environmental Review

3.1 Introduction

The purpose of the environmental review process is to analyze the effect that a project funded by a Community Development Block Grant Disaster Recovery (CDBG-DR) grant may have on human health and the environment.

This chapter will cover the environmental regulations and requirements that must be followed on all projects funded by CDBG-DR. A basic overview and instructions are provided.

The U.S. Department of Housing and Urban Development (HUD) is the federal agency allocating CDBG-DR funding to Oregon Housing and Community Services (OHCS) for ReOregon program activities. Environmental reviews are required when there is a federal nexus, such as when a project or activity receives federal funding, requires a federal permit, or includes a federal land decision.

HUD uses the term **Responsible Entity** (RE) to describe the local entity that is responsible for conducting and certifying the environmental review. OHCS is the RE for the CDBG-DR ReOregon programs but may identify another local entity (such as a county government) to assume the role of RE.

The RE is responsible for conducting the environmental reviews for each project and completing and maintaining the appropriate environmental review record (ERR) for each selected project in accordance with 24 Code of Federal Regulations (CFR) part 58. The RE will also certify the results of the review and submit the ERR to HUD (or OHCS) for review. The RE will need to receive the Authority to Use Grant Funds (AUGF) form prior to obligating any project funds and informing subrecipients and grantees that the project can begin.

All activities funded by CDBG-DR are subject to an environmental review. Subrecipients will provide the project work descriptions and other information as requested for the environmental review of the project to be completed.

If subrecipients would like to undertake the environmental review themselves, they will provide advance notice to OHCS. Subrecipients must inform OHCS of their plan for which entity will assume the role of RE. In those cases, OHCS will assist the subrecipients to make sure they understand requirements and conduct the environmental review process correctly. The Subrecipient Agreement will include requirements for the environmental review process.

Once a subrecipient or a project partner applies to the selection committee for CDBG-DR funds, the project is considered federalized and the subrecipient or project partner must refrain from starting or continuing work and must stop work on the project until receipt of the notice of environmental clearance from OHCS. Subrecipients should be aware that not all activities are prohibited, but any choice-limiting decisions taken after a stop work notice is provided would endanger federal funding for the project.

Please see Appendix A for a visual aid of the different steps and requirements.

3.2 Basic Federal Requirement

The policies of the National Environmental Policy Act of 1969 (NEPA) are implemented in connection with the expenditure of funds under the Housing and Community Development Act, including any CDBG-DR funds. Implementing regulations issued pursuant to section 104(g) of the Housing and Community Development Act are contained in 24 CFR part 58.

There are several reasons that HUD requires recipients to conduct environmental reviews of federally assisted projects. These reasons include:

- Avoiding or mitigating environmental effects that may cause harm to humans
- Avoiding or mitigating any harm to the surrounding environment
- Reducing the chances of legal action halting projects on environmental grounds
- Securing the value of public investment

3.3 Environmental Clearance Prior to Commencing Work

No project funds, either federal or local, may be committed until the environmental review process is complete.

Failure to properly complete the required environmental review before the commitment of project funds will result in severe consequences, such as the RE being federally prohibited from providing grant funds for part of or the entire project.

According to NEPA (40 CFR 1500-1508) and 24 CFR 58.22, the RE, subrecipient, and project partners are required to ensure that environmental information is available before decisions are made and before actions are taken. To achieve this objective, 24 CFR 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and an AUGF has been issued by HUD.

The RE, subrecipient, and project partners may not spend either public or private (non-federal or other federal) funds or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until the environmental clearance has been achieved.

The RE, subrecipient, and project partners must avoid any and all actions that would preclude the selection of alternative choices before environmental clearance is provided. Avoiding choice-limiting actions ensures that decisions are based upon an understanding of the environmental consequences and the identification of any required project actions to avoid, minimize, or mitigate such impacts.

Activities that have physical impacts or limit the choice of alternatives cannot be undertaken, even with the RE's or other project participants' own funds, prior to obtaining environmental clearance.

For purposes of the environmental review process, "commitment of funds" includes:

- Execution of a legally binding agreement
- Expenditure of CDBG-DR funds
- Use of CDBG-DR or non-CDBG-DR funds on actions that would have an adverse impact (e.g., demolition, dredging, filling, excavating, ground-disturbing activities)
- Use of CDBG-DR or non-CDBG-DR funds on actions that would be "choice limiting" (e.g., bidding the project, acquisition of real property, leasing property, rehabilitation, demolition, construction of buildings or structures, relocating buildings or structures, conversion of land or buildings/structures)

3.4 The Environmental Review Record

The RE is required to establish and maintain an ERR for each project, according to 24 CFR 58.38. The purpose of the ERR is to document the environmental review decision-making process and all actions taken during the course of the environmental review. At a minimum, the ERR must include the following:

- Description of the project and all related activities
- All environmental review documents
- Documentation of public involvement or notices, as applicable
- Public comments and responses to them, as applicable
- Written determinations and findings
- Verifiable source documentation and relevant data

- Request for release of funds and certification[1]
- Release of funds issued by the RE

The ERR must contain copies of all paperwork associated with the environmental review, including a well-organized written record of the process and determinations.

Documents produced supporting the environmental review must be available to the public upon request. The ERR is a legal document that may be subpoenaed. It serves as the RE's proof of compliance with the procedural provisions of federal environmental law and as defense against such challenges to the project based on environmental grounds.

3.5 Applicability of Environmental Review Procedures

HUD environmental review procedures and requirements apply to all activities related to a project with a federal nexus, including those activities that are paid for with local or other funds.

3.6 Levels of Environmental Review

Different project activities require different levels of environmental review and compliance. The level of environmental review that must be completed depends on the overall nature of the project. A first step in the environmental review process will be the RE's determination of the level of review needed. The five levels of review are:

- Exempt
- Categorical exclusion not subject to 24 CFR 58.5 (CENST)
- Categorical exclusion subject to 24 CFR 58.5 (CEST)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

Exempt and CENST project reviews must comply with 24 CFR 58.6; CEST, EA, and EIS project reviews must comply with 24 CFR 58.5 and 58.6.

3.6.1 Related Federal Laws and Authorities (24 CFR 58.5)

A main component of the environmental review process is to determine project compliance with the related federal laws and authorities. The RE must consider the criteria,

[1] As applicable, projects requiring a CEST, EA, or EIS should have a request for release of funds in the project files in addition to the release of funds issued by the RE.

standards, policies, and regulations of these laws and authorities. The related federal laws and authorities are listed in 24 CFR 58.5 of the regulation:

Historic properties

- The National Historic Preservation Act of 1966 (16 United States Code [U.S.C.] 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h–2)
- Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 Federal Register [FR] 8921), 3 CFR 1971–1975 Comp., p. 559, particularly section 2(c)
- Federal historic preservation regulations as follows:
    - 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG)
    - 36 CFR part 801, but only as it relates to UDAG
- The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C. 469a-1)

Floodplain management and wetland protection

- Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see 55.10 of this subtitle A.)
- Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order

Coastal zone management

- The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d))

Sole source aquifers

- The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended, particularly section 1424(e)(42 U.S.C. 300h–3(e))
- Sole Source Aquifers (Environmental Protection Agency — 40 CFR part 149)

Endangered species

- The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536)

Wild and scenic rivers

- The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c))

Air quality

- The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended, particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d))
- Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency — 40 CFR parts 6, 51, and 93)

Farmland protection

- Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202)
- Farmland Protection Policy (Department of Agriculture — 7 CFR part 658)

HUD environmental standards+

- Applicable criteria and standards specified in 24 CFR part 51, other than the runway clear zone notification requirement in 51.303(a)(3)
- Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property
- The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended use of the property
- Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous waste
- The RE shall use current techniques by qualified professionals to undertake investigations determined necessary

Environmental justice

- Executive Order 12898 — Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859

3.6.2 Other Requirements (24 CFR 58.6)

The RE remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of the level of review. The RE must comply with the following requirements of 24 CFR 58.6.

1. Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
    - The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards.
    - Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
2. Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes, including rehabilitation, for property located in an area identified by FEMA as having special flood hazards, the RE is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.
3. Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.
4. Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for flood damage to any personal, residential, or commercial property if:
    - The person had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance.
    - The person failed to obtain and maintain flood insurance.
5. Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.[2]

[2] Oregon does not have Coastal Barrier Resources System units.

6. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the RE shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

3.6.3 Environmental Assessment Process (24 CFR 58.40)

If the project does not meet the requirements to be classified as exempt, CENST, or CEST, then an EA must be completed. The RE must:

1. Determine existing conditions and describe the character, features, and resources of the project area and its surroundings and identify the trends that are likely to continue in the absence of the project.
2. Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
3. Identify, analyze, and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in 24 CFR 58.5 and 58.6.
4. Examine and recommend feasible ways in which the project or external factors relating to the project could be modified to eliminate or minimize adverse environmental impacts.
5. Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.
6. Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in 24 CFR 58.5 and 58.6.

3.7 Levels of Environmental Review: Definition and Process

3.7.1 Exempt Activities

Certain activities are, by their nature, highly unlikely to have any direct impact on the environment. Accordingly, these activities are exempt from the environmental requirements of NEPA and related laws and authorities. Exempt activities as listed in 24 CFR 58.34(a) include:

- Environmental studies, plans, and strategies
- Information and financial services
- Administrative and management expenses, including subgranting funds
- Public services without any physical changes
- Inspections and testing of properties for hazards or defects
    - Purchase of insurance
    - Purchase of tools
- Engineering or design costs
- Technical assistance and training
- Payment of principal and interest on HUD loans

Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair, or arrest the effects of disasters or imminent threats to public safety, including those resulting from physical deterioration.

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description.
- OHCS will request additional project information to assist in complying with the required certifications of the other requirements as listed in 24 CFR 58.6.
- OHCS will complete its review and upload the ERR in the system of record.
- OHCS will notify the subrecipient that the project is exempt and document the results of the 24 CFR 58.6 other requirements evaluation.
- Project can begin.

3.7.2 Categorically Excluded Activities Not Subject to 24 CFR 58.5

“Categorical exclusion” refers to activities that normally would not alter any conditions that would require an EA or EIS except in extraordinary circumstances. While these activities may not be subject to all NEPA procedural requirements, the RE must present evidence that the project activities meet the environmental requirements contained in other related laws, regulations, or Executive Orders.

Activities determined to be categorically excluded not subject to section 58.5 require compliance with regulations in 58.6 only. Activities considered categorically excluded not subject to the related laws and authorities in 58.5 are listed in 58.35(b). Such activities include:

- Tenant-based rental assistance
- Supportive services, including, but not limited to, health care; housing services; permanent housing placement; day care; nutritional services; short-term payments for rent/mortgage/utility costs; and assistance in gaining access to local, state, and federal government benefits and services
- Operating costs, including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs
- Economic development activities, including, but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations (For Economic Development Revolving Loan Fund projects, please see Chapter 4 of this subrecipient manual for more guidance.)
- Activities that assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buy-downs, and similar activities that result in the transfer of title
- Affordable housing pre-development costs, including legal, consulting, developer, and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities that do not have a physical impact
- Approval of supplemental assistance, including insurance or guarantee to a project previously approved under 58.5(b) of this part, if the approval is made by the same RE that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 58.47

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description.
- OHCS will request additional project information to assist in complying with the required certifications of the other requirements as listed in 24 CFR 58.6.
- OHCS will complete its review and upload the ERR in the system of record.
- OHCS will notify the subrecipient that the project is categorically excluded not subject to 58.5 and document the results of the 24 CFR 58.6 other requirements evaluation.
- Project can begin.

3.7.3 Categorically Excluded Activities Subject to 58.5

Activities determined to be categorically excluded subject to section 58.5 require compliance with regulations in 58.5 in addition to 58.6. These activities are categorically excluded from NEPA review because they would not individually or collectively have a significant impact on the environment. Activities considered categorically excluded subject to the related laws and authorities in 58.5 are listed in 58.35(a). Such activities include:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities are in place and will be retained for the same use without change in size or capacity of more than 20% (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets)
- Special projects for the removal of material and architectural barriers that restrict the mobility of and accessibility for the elderly and persons with disabilities
- Rehabilitation of buildings and improvements when the following conditions are met:
    - Multifamily residential buildings: (a) unit density is not changed more than 20%, (b) the project does not involve changes in land use from residential to non-residential, and (c) the estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation
    - Non-residential structures, including commercial, industrial, and public buildings: (a) the facilities and improvements are in place and will not be changed in size or capacity by more than 20% and (b) the activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another
- An individual action on one- to four-family dwelling units or an individual action on a project of five or more units on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site
- Acquisition (including leasing) or disposition of, or equity loans on, an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use
- Combinations of the above activities

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description.
- OHCS will notify the subrecipient that the project is categorically excluded subject to 58.5.
- OHCS will request additional project information to assist in complying with the required certifications of the related laws and authorities as listed in 24 CFR 58.5 and other requirements in 24 CFR 58.6.
- OHCS will complete its review, enter the ERR into the system of record,[3] and publish the Notice of Intent to request release of funds from HUD. The public will have seven days to comment to OHCS.
- After public comment has been completed, OHCS will submit to HUD the request for release of funds. HUD will then hold a 15-day public objection period.
- After the 15-day objection period has ended and if there is no follow-up action needed, HUD will send the AUGF to OHCS.
- OHCS will notify subrecipient that the project can begin.

3.7.4 Environmental Assessment

An EA must be prepared for projects with activities that are neither exempt nor categorically excluded unless the RE immediately identifies an EIS is required. The EA is the basis for a determination by the RE as to whether or not the proposed project is “a federal action [that] has the potential to cause significant environmental effects.”[4] This is called a “level of clearance” finding.

The EA includes both a review of the related laws and authorities as listed in 24 CFR 58.5 and the other requirements as listed in 24 CFR 58.6, and preparing the EA as listed in 58.40. The assessment also includes examining and recommending feasible ways to eliminate or minimize adverse environmental impacts and examining alternatives to the project itself, if appropriate. The EA will result in either a Finding of No Significant Impact or a Finding of Significant Impact. If the EA results in a Finding of Significant Impact, the RE must proceed with an EIS.

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[3] If the RE is not OHCS, the system of record would be the HUD Environmental Review Online System (HEROS). Information on how to use HEROS and gain access is available here: hudexchange.info/programs/environmental-review/heros/

[4] Review the EA explanation provided by the EPA here: epa.gov/nepa/national-environmental-policy-act-review-process#ea

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description.
- OHCS will notify the subrecipient that the project needs an EA.
- OHCS will request additional project information to assist in complying with the certifications of the related laws and authorities as listed in 24 CFR 58.5 and the other requirements as listed in 58.6, and preparing the EA as listed in 58.40.
  For construction projects, 30% design plans may be requested to show the general construction plans, scope, and elevation.
- OHCS will complete its review, enter the ERR into the system of record, and publish the Finding of No Significant Impact/Notice of Intent to request release of funds from HUD. The public will have 15 days to comment to OHCS.
- After public comment has been completed, OHCS will submit to HUD the Finding of No Significant Impact/Request for Release of Funds. HUD will then hold a 15-day public objection period.
- After the 15-day public objection period has ended and if there is no follow-up action needed, HUD will send the AUGF to OHCS.
- OHCS will notify subrecipient that the project can begin.

3.7.5 Environmental Impact Statement

An EIS is required when the project is determined to have a potentially significant impact on the human environment. It is not anticipated that any CDBG-DR projects will reach this level of review. Any required EIS would begin with a scoping exercise to identify the essential components of that individual EIS.

3.8 Sample Project Information Requested

Once the RE completes their determination for the level of review required, they will provide a checklist to the subrecipient for additional project information to assist with the preparation and completion of the ERR. Information to be requested may include the following, in addition to other needs identified by the RE:

Description of the Proposed Project [24 CFR 50.12 and 58.32; 40 CFR 1508.25]: A project description to include any land ownership transfers/purchases, land-use changes, address, assessor parcel number(s), as well as a description of any planned excavation, construction, and demolition activities; existing and proposed use(s); site development features such as setbacks, height and general design, and number of parking spaces;

project sustainability features; and planned best management practices for construction and/or operations.

Construction details should include period of construction, types of activity involved, as well as foundation type, excavation depth, and cut/fills estimates. Depending on noise and air quality conditions identified during review, there may be additional construction details requested, such as construction haul truck trips. A proposed development site plan may also be requested.

Statement of Purpose and Need for the Proposal [40 CFR 1508.9(b)]: Basic statement of the purpose and need of the project, which may require follow-up.

Existing Conditions and Trends [24 CFR 58.40(a)]: Summary of existing uses on site, including building age and utility connections (e.g., septic vs. sewer), current occupancy status, and any completed reports (e.g., geotechnical, arborist).

Funding Information [24 CFR 58.32(d)]: Grant number, HUD program title, and funding amount. Estimated total HUD-funded amount, as well as total project cost (HUD and non-HUD funds).

Clean Air: Additional construction details may be requested if the project is located in an air basin or district that is in a nonattainment area[5] for criteria pollutants.

Contamination and Toxic Substances [24 CFR Part 50.3(i) and 58.5(i)(2)]: Dependent on the nature of the proposed project, including site acquisition, a Phase 1 Environmental Site Assessment may be needed. *NOTE: A Phase 1 Environmental Site Assessment is different from a NEPA environmental assessment.*

Explosive and Flammable Hazards [24 CFR Part 51 Subpart C]: If the project involves new aboveground storage tanks (e.g., fuel oil, gasoline, propane), additional details may be requested.

Noise: For residential projects where an existing community noise level exceeds the day-night average sound level of 65 decibels (dB), noise attenuation measures may be required in building and site design. Additional information may be requested to assure a maximum interior level of 45 dB.

[5] A nonattainment area is a location where the concentration of one or more criteria pollutants is above the National Ambient Air Quality Standards (NAAQS), established by the Environmental Protection Agency. Examples of criteria pollutants include ozone, particulate matter, sulfur dioxide, lead, carbon monoxide, and nitrogen dioxide. Additional information on the NAAQS and criteria pollutants may be found here: epa.gov/green-book

3.9 Starting the Project

Once the subrecipient has received the notice to proceed from the RE, they may begin implementation of the project and may incur expenses.

In cases in which RE has given notice that a project can proceed, but subsequently learns that the subrecipient or project partner violated 58.22 or otherwise failed to comply with the applicable environmental authority, the RE is required to impose appropriate remedies and sanctions in accordance with the law and regulations for the CDBG-DR program, under which the violation was found, in accordance with 58.72(c).

3.10 Compliance Monitoring

Each CDBG-DR subrecipient will be monitored to determine if project information requested was accurately given to the RE to prepare the ERR. The monitoring will involve a review of the documentation provided as well as on-site monitoring.

The RE is responsible for monitoring and ensuring compliance with any mitigation measures identified during the environmental review. Documentation demonstrating that the mitigation measures have been implemented must be included in the ERR and may be requested from the subrecipient.

3.11 Oregon Environmental Laws

Subrecipients must also follow Oregon environmental laws and requirements as issued by the Oregon Department of Environmental Quality (DEQ). A list of Oregon's Revised Statues is maintained on DEQ's website here: oregon.gov/deq/Regulations/Pages/statutes.aspx

Subrecipients executing agreements that exceed $150,000 for work performed under CDBG-DR are required to include contract clauses for the Clean Air Act and Federal Water Pollution Control Act as amended.[6]

Wetlands:

- Oregon Administrative Rules (OAR), 141086-0180 through 0240, and 141-086-0300 through 0350

Oregon State Scenic Waterways:

- Scenic Waterways Act, Oregon Revised Statutes 390.805 to 390.940
- Scenic Waterways Rules, Oregon Administrative Rules, Chapter 736, Division 40

[6] For a complete list of contract clauses please refer to the Subrecipient Manual Chapter 5 – Procurement. Only the required clauses related to environmental regulations are included here.

When a site is within the geographic boundary of an Oregon Scenic Waterway, review by the Oregon Parks and Recreation Department is required. Their initial screening will determine whether a formal Notice of Intent is needed; if so, the applicant must submit a Notice of Intent plan for approval once official site plans are sufficiently developed.

3.12 Appendix A: Environmental Review Process Diagram