



*The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.*

# CHAPTER 6—ENVIRONMENTAL

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## **CHAPTER 6—ENVIRONMENTAL**

### **6.1 Introduction**

HUD regulations use the term Responsible Entity (RE) to refer to the unit of general government (city or county), a state, or federally recognized tribe responsible for meeting environmental review requirements. A subrecipient that is a city or county may assume the role of RE for the GLO-administered CDBG-DR and/or CDBG-MIT funds. The RE/subrecipient is responsible for completing the environmental review, with or without assistance from a third party.

The RE must designate a Certifying Officer under the terms of the certification required by Sec. 58.71, a REs certifying officer is the “responsible Federal official” as that term is used in section 102 of NEPA and in statutory provisions cited in Sec. 58.1(b). This person is the chief elected official (e.g., County judge or City mayor), chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all federal, state, and local environmental requirements have been followed. This function may not be assumed by administering agencies or consultants. The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in Sec. 58.5. The Certifying Officer must also: (a) represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and (b) ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient’s program.

This chapter provides highlighted components of the HUD Environmental review process; however, it is not inclusive and the RE is responsible for understanding and adhering to all environmental requirements provided in 24 CFR 58 (see [Resources—Resource 6.1](#)). Periodic updates may be provided by HUD environmental compliance staff. CDBG-DR and/or CDBG-MIT subrecipients, and personnel completing the environmental review, should be familiar with all federal and state environmental requirements along with the resources and forms found on the HUD Exchange—Environmental Review website (see [Resources—Resource 6.2](#)) and should contact the GLO-CDR Regulatory Oversight staff to request technical assistance by emailing [env.reviews@recovery.texas.gov](mailto:env.reviews@recovery.texas.gov).

Effective 12/27/2021, the GLO-CDR Regulatory Oversight team will continue to provide technical assistance, guidance, and training to all subrecipients; however, submitted environmental documents will not be reviewed for compliance. Subrecipients are required to upload completed and certified Environmental Review Records (ERR) to the Texas Integrated Grant Reporting (TIGR) system. GLO will process HUD 7015.15 Request for Release of Funds (RROFs) in accordance with federal regulation 24 CFR 58.72. The RE must ensure all ERRs are maintained and current in TIGR as the project progresses.

the GLO-CDR Regulatory Oversight team will conduct in-depth environmental monitoring of ERRs to determine compliance in accordance with HUD’s Community Planning and Development (CPD) Monitoring Handbook (see [Resources—Resource 6.3](#)). Failure to comply with these requirements will jeopardize the project and could lead to disallowed costs, repayment of funds, and debarment from the program for the subrecipient and administrators involved with the environmental review



process. If the subrecipient is unsure how to proceed, contact your GLO-CDR Regulatory Oversight staff by emailing [env.reviews@recovery.texas.gov](mailto:env.reviews@recovery.texas.gov).

Visit HUD's environmental review webpage for comprehensive information on the environmental review process and regulations (see [Resources—Resource 6.4](#)).

### **6.2 Basics of Environmental Review**

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental review (e.g., every project's environmental impact must be examined, but the extent of this examination varies by action), but every project must be in compliance with the 24 CFR 58, National Environmental Policy Act (NEPA) (see [Resources—Resource 6.5](#)), and other related Federal and state environmental laws.

### **6.3 Timing of the Environmental Review & Choice Limiting Actions**

An important concept under environmental regulation is the timing of the environmental review. An environmental review must be performed before any funds, regardless of source, are committed on an activity or a project. No activity or project may be undertaken if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives (24 CFR 58.22(a)). HUD's restrictions on choice limiting actions apply only after receipt of an application for HUD assistance (including insurance) associated with a specific project or activity. At that point, the project is considered a Federalized project, and NEPA applies.

This prohibition on committing funds to "choice-limiting actions" prohibits physical activity including acquisition, rehabilitation, and construction, as well as contracting for any of these actions considered and followed prior to any work being initiated or funded.

It is imperative to discuss choice limiting actions as they relate to project re-evaluations (24 CFR 58.47). If a RE fails to comply with 24 CFR 58.47, a choice limiting action as described in 24 CFR 58.22(a) may have occurred. For brevity, a re-evaluation is required when the project footprint or area of potential effect (APE) changes regardless of the amount of linear feet/area, project activities are added/removed, unexpected conditions arise, or changes are made to the nature, magnitude, or extent of the project. If the original finding is assessed as still valid, the environmental review record (ERR) would be updated with a memo to the file, which is commonly referred to as a Letter of Re-evaluation or LRE. If the original finding is assessed as no longer valid, the RE may have to prepare a new environmental review record and proceed with the approval process, which includes but is not limited to a new environmental review record, public notices, public comment and objection periods, and a new Request for Release of Funds (RROF) and Authority to Use Grant Funds.

According to 24 CFR 58.72, in cases where the GLO is exercising HUD's responsibilities outlined in 24 CFR 58.18 and has approved an environmental certification and RROF but subsequently learns that the RE violated 58.22(a), or otherwise failed to comply with any applicable environmental authority, the GLO can impose appropriate remedies and sanctions in accordance with the law and



regulations for the program under which the violation was found. This may include repayment of federal funds. Refer to the GLO-CDR [Environmental](#) webpage for the revised (dated January 7, 2022) Policy Memos on Choice Limiting Activities and Project Re-evaluations (see [Resources—Resource 6.6](#)).

### **6.3.1 Option Contracts for Purchase of Property**

A contract to purchase property for a CDBG-DR project before the environmental review is completed is considered a “choice limiting action” and must be avoided until after the environmental review process is completed. However, an option contract is one action that may be taken beforehand that might conclude in acquisition once the environmental review process is complete. An option contract is a useful tool for subrecipient to obtain site control while allowing time to complete the environmental review.

Option contracts may be used to gain site control of any type of property, including commercial, industrial, residential for any proposed activity or reuse, including demolition, new construction, and conversion of use, so long as it specifically is contingent of environmental clearance.

A real estate option contract or agreement is a legal agreement between the potential buyer of real property and the owner of that property. The real estate option agreement gives the potential buyer the exclusive right to buy the property at a specific price within a specific time period. The option agreement does not impose any obligation upon the potential buyer to purchase the property. The option agreement does obligate the seller to sell at the specified price if the potential buyer exercises the option to buy in the manner described in the contract.

HUD’s regulations at 24 CFR 58.22(d) allow for an option agreement for any project prior to the completion of the environmental review when the following requirements are met:

- (1) the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- (2) the cost of the option is a nominal portion of the purchase price.

The provision allows flexibility regarding the term “nominal” and any reasonable interpretation is acceptable. For instance, it is reasonable to conclude that the nominal amount for option contracts will vary depending upon the local real estate market and the purchase price. Refer to the HUD website for the August 26, 2011 guidance memo titled “Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58” for additional information (see [Resources—Resource 6.7](#)).

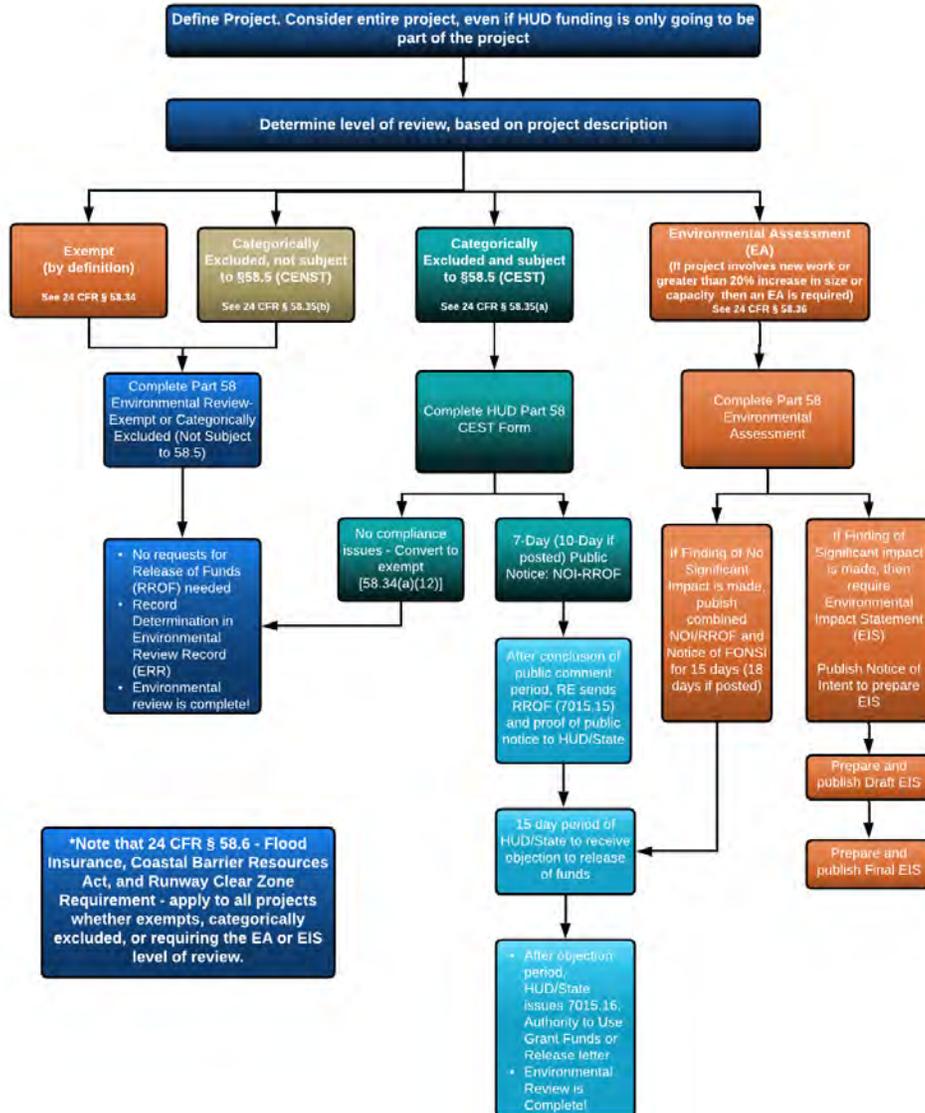
### **6.4 Environmental Review Process**

The following illustration provides a basic overview of the environmental review process:



## Environmental Review Process

(To Be Conducted by Responsible Entity)



### 6.4.1 Levels of Review

The RE should take adequate time to clearly establish the scope of work and project description prior to initiating the environmental review. Once the scope of the project is known you can determine the appropriate level of environmental review. Accurate scoping, project description and project aggregation are critical success factors.

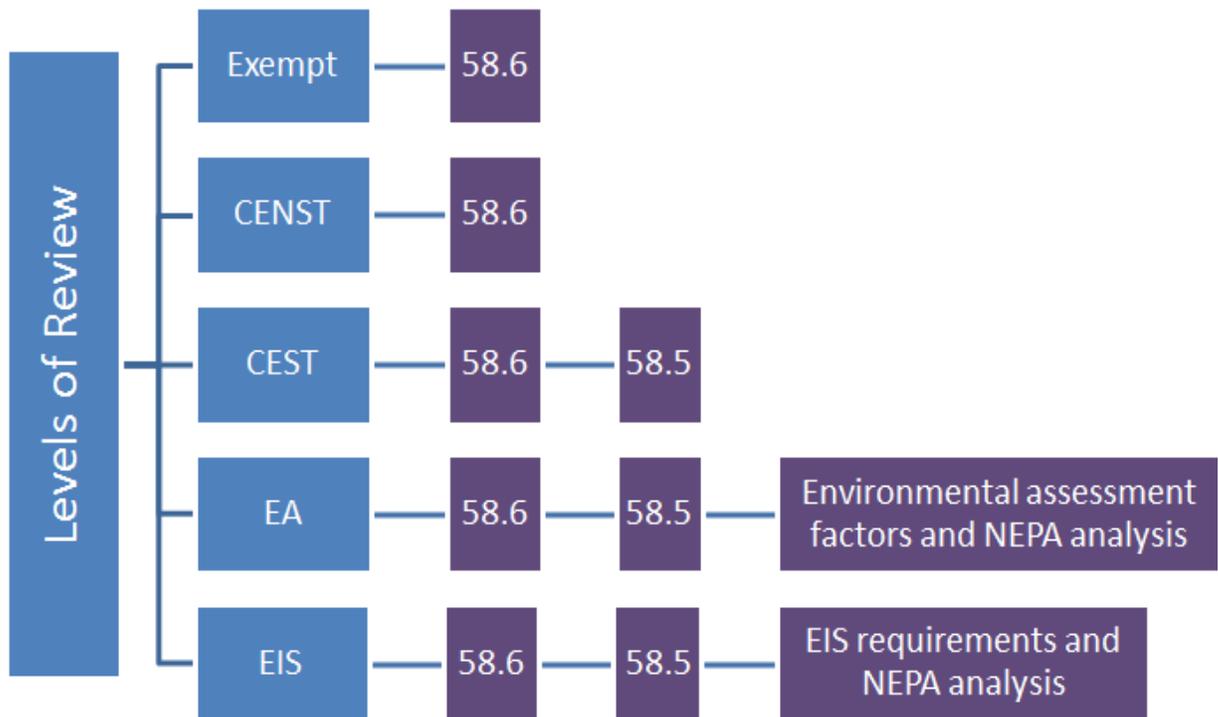
Project Aggregation, as defined in 24 CFR 58.32, requires the RE to group together, and evaluate as a single project, all individual activities which are related either on a geographical or functional basis or are logical parts of a composite of contemplated



actions. The purpose of project aggregation is to adequately analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions (see [40 CFR 1508.25\(a\)](#)). The RE may choose:

- functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions;
- geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities);
- or a combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

There are five levels of environmental review as depicted below and discussed in the following pages:



### ***24 CFR 58.34 Exempt Activities***

Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. Listed below are examples which may be exempt from environmental review:

- Environmental and other studies;
- Information and financial services—Administrative and management activities; Engineering and design costs;



- Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training—Payment of principal and interest on loans made or guaranteed by HUD;
- Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other federal laws and authorities listed at Part 58.5 of the regulations.

### ***24 CFR 58.35(b) Categorically Excluded, Not Subject To §58.5 (CENST)***

The following activities, listed at 24 CFR Part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to 24 CFR 58.5 compliance determinations.

- Tenant based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local state and federal government services and services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, 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;
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs with NO physical impact such as 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 which do not have a physical impact.

### ***24 CFR 58.35(a) Categorically Excluded, Subject To §58.5 (CEST)***

The list of categorically excluded activities is found at 24 CFR Part 58.35. While the activities listed in 58.35(a) are categorically excluded from NEPA requirements, the RE must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in 24 CFR 58.5.

The following are categorically excluded activities subject to 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) 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;
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons;
  - Rehabilitation of buildings and improvements when the following conditions are met:
    - For residential properties with one to four units:
      - The density is not increased beyond four units;
      - The land use is not changed; and
      - If the building is located in a floodplain or in a wetland, the footprint of the building is not increased.
    - For multifamily residential buildings (with more than four units):
      - Unit density is not changed more than 20 percent;
      - The project does not involve changes in land use from residential to non-residential; and
      - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.
    - For non-residential structures including commercial, industrial, and public buildings:
      - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
      - The activity does not involve a change in land use, e.g., from commercial to industrial, from non-residential to residential, or from one industrial use to another.
  - An individual action on up to four-family dwelling where there is a maximum of four units on any one site. “Individual action” refers to new construction, development, demolition, acquisition, disposition, or refinancing (does not include rehabilitation which is covered previously). The units can be four one-unit buildings or one four-unit building or any combination in between;
  - An individual action on a project of five or more housing units developed 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; and
  - 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.

### ***Environmental Assessment***

Activities which are neither exempt nor categorically excluded (under each category) will require an environmental assessment (EA) documenting compliance with NEPA, HUD, and with the environmental requirements of other applicable federal laws. Comprehensive guidance for completing this level of review can be found on the [HUD EA website](#) (see [Resources—Resource 6.8](#)).

### ***Environmental Impact Statement***

An Environmental Impact Statement (EIS) is required when the Subrecipient’s Environmental Assessment results in a Finding of Significant Impact, indicating that its proposed project or activity will significantly impact the human environment. It is unlikely that a funded activity



will trigger an EIS. In the event a subrecipient finds itself involved with this level of review, the subrecipient should contact the Regulatory Oversight team via [env.reviews@recovery.texas.gov](mailto:env.reviews@recovery.texas.gov) immediately for further instructions.

### **6.4.2 Other Types of Environmental Review and Reports**

#### ***Categorical Exclusion Converted to Exempt 24 CFR 58.34(a)(12) & 58.35(a):***

Under rare circumstances the subrecipient could find their Categorically Excluded project falls under Exempt status per section 58.34(a)(12) and that none of the statutory requirements under section 58.5 apply to the project. Using the Categorical Exclusion Subject to §58.5, the subrecipient will determine if the project it is preparing to undertake can be converted to Exempt under section 58.34(a)(12).

#### ***Project Re-evaluations (24 CFR 58.47)***

Reevaluation of a project is necessary under the following circumstances:

- The recipient proposes substantial changes in the nature, magnitude, or extent of the project, including adding new activities not anticipated in the original scope of the project;
- There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
- The recipient proposes the selection of an alternative not in the original finding.

The environmental review record should be updated, and the responsible entity should confirm whether the original findings are still valid. If the original findings are no longer valid, a new environmental assessment must be prepared. Please refer to the Revised Regulatory Oversight Policy Memo on Project Re-evaluations (dated January 7, 2022) for additional information (see [Resources—Resource 6.6](#)).

#### ***Tiered Reviews***

For projects with multiple, non-contiguous locations, such as a housing rehabilitation project with work sites that are scattered throughout a county or city, a tiered environmental review may be appropriate. It should be noted, tiering is not appropriate for projects where specific locations have been identified, and for which the development of site-specific reviews is feasible.

For the project as a whole, complete a Broad-Level Tiered Environmental Review using the format provided on the HUD website. This review will identify which review requirements must be addressed site-by-site. For each specific site, document compliance with the review requirements identified in the Broad-Level Tiered Environmental Review. The subrecipient may request a RROF based on the Broad-Level review; however, the Site-Specific review must be completed prior to obligating funds for each site. Refer to the HUD website on [Tiered Reviews](#) for additional information (see [Resources—Resource 6.9](#)).

#### ***ASTM Phase I and II Environmental Site Assessment***

Some projects may require additional environmental review of the current and historical uses of a property when there is potential contamination to the soil or groundwater at the project site. Typically, these assessments are incorporated in the Environmental Review



Record and may result in specific mitigation actions that must take place prior to the purchase of the property or the construction of an improvement. A Phase II ESA may be required depending on the findings of the Phase I report.



## 6.6 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see [www.recovery.texas.gov](http://www.recovery.texas.gov) for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	URL
Resource 6.1	<a href="#">HUD Exchange: Environmental Regulation Process (24 CFR Part 58)</a>	<a href="https://www.hudexchange.info/resource/167/environmental-review-procedures-24-cfr-58/">https://www.hudexchange.info/resource/167/environmental-review-procedures-24-cfr-58/</a>
Resource 6.2	<a href="#">HUD Exchange: Environmental Review</a>	<a href="https://www.hudexchange.info/programs/environmental-review/">https://www.hudexchange.info/programs/environmental-review/</a>
Resource 6.3	<a href="#">HUD Exchange: Community Planning and Development (CPD) Monitoring Handbook</a>	<a href="https://www.hudexchange.info/resource/290/hud-community-planning-and-development-monitoring-handbook-65092-rev7/">https://www.hudexchange.info/resource/290/hud-community-planning-and-development-monitoring-handbook-65092-rev7/</a>
Resource 6.4	<a href="#">HUD Exchange: HUD Environmental Regulations</a>	<a href="https://www.hudexchange.info/programs/environmental-review/hud-environmental-regulations/#hud-environmental-regulations">https://www.hudexchange.info/programs/environmental-review/hud-environmental-regulations/#hud-environmental-regulations</a>
Resource 6.5	<a href="#">National Environmental Policy Act (NEPA)</a>	<a href="https://ceq.doe.gov/">https://ceq.doe.gov/</a>
Resource 6.6	<a href="#">GLO-CDR Environmental webpage:</a> <ul style="list-style-type: none"><li>• <a href="#">Revised Policy Memo on Choice Limiting Activities</a> (January 7, 2022)</li><li>• <a href="#">Revised Policy Memo on Project Re-evaluations</a> (January 7, 2022)</li></ul>	<a href="https://recovery.texas.gov/grant-administration/environmental/index.html">https://recovery.texas.gov/grant-administration/environmental/index.html</a> <ul style="list-style-type: none"><li>• <a href="https://recovery.texas.gov/documents/grant-administration/environmental/revised-choice-limiting-policy-memo.pdf">https://recovery.texas.gov/documents/grant-administration/environmental/revised-choice-limiting-policy-memo.pdf</a></li><li>• <a href="https://recovery.texas.gov/documents/grant-administration/environmental/revised-project-reevaluation-policy-memo.pdf">https://recovery.texas.gov/documents/grant-administration/environmental/revised-project-reevaluation-policy-memo.pdf</a></li></ul>



Resource 6.7	<a href="#">HUD Memo: Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58</a> (August 26, 2011)	<a href="https://www.hudexchange.info/resource/5032/hud-memo-guidance-on-options-and-conditional-contracts-for-purchase-of-real-property-for-environmental-reviews-conducted-by-a-responsible-entity-under-24-cfr-58/e">https://www.hudexchange.info/resource/5032/hud-memo-guidance-on-options-and-conditional-contracts-for-purchase-of-real-property-for-environmental-reviews-conducted-by-a-responsible-entity-under-24-cfr-58/e</a>
Resource 6.8	<a href="#">HUD Exchange: Environmental Assessment (EA)</a>	<a href="https://www.hudexchange.info/programs/environmental-review/environmental-assessment/">https://www.hudexchange.info/programs/environmental-review/environmental-assessment/</a>
Resource 6.9	<a href="#">HUD Exchange: Tiered Environmental Reviews</a>	<a href="https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/">https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/</a>

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