

HUD Environmental Review and Choice Limiting Action Requirements Projects Receiving OHCS HOME Funds

Projects receiving federal HOME funds from OHCS must undergo an environmental review in accordance with HUD 24 CFR Part 58. This document covers these requirements and the related restrictions that apply to projects receiving HOME funding from OHCS.

Note: Projects receiving Housing Trust Fund (HTF) resources from OHCS require review under separate HTF Environmental Provisions that are similar to the HOME Part 58 requirements but are specific to HTF. If the project receives a reservation of HTF funding, OHCS staff will contact the applicant regarding HTF Environmental Provisions.

I. Choice Limiting Actions

Beginning on the date a project team accepts an offer from OHCS to use federal funds in a project through the completion of the environmental review, all participants in the development process for a project, including but not limited to the developer, sponsor, and contractors are prohibited from taking choice limiting actions including commitment or expenditure of both HUD and non-HUD funds. Completion of an environmental review requires a public comment period and receipt of HUD approval of the release of federal funds for the project unless otherwise instructed by OHCS.

Commitment or expenditure of both HUD and non-HUD funds and/or engaging in any choice limiting actions before completion of the environmental review process could cause federal funds to be withdrawn from the project.

II. Prohibited Choice Limiting Actions

The following actions may not be taken until completion of the environmental review process. This is not an exhaustive list. Please reach out to OHCS with any questions.

- Acquisition of land
- Leasing of structures on project site
- Binding bids for any work relating to the project
- Rehabilitation
- Demolition of buildings or other structures on the project site
- New construction
- Ground disturbance work such as clearing, grading, grubbing
- Environmental remediation activities
- Utility or infrastructure construction or installation
- Construction of buildings or other structures
- Moving, renovation or alteration of existing buildings
- Any other activity that has a physical effect on the land or buildings on the project site

III. Exempt Activities

The following activities are exempt from review, consultation, or other action under the provisions of laws or authorities cited in § 58.5 and therefore are not considered choice limiting actions. This is not an exhaustive list. These activities still require documentation in the environmental review. Please reach out to OHCS with any questions.

- Environmental, geotechnical, and other studies
- Information and financial services
- Administrative and management activities
- Non-binding bids
- Public services that will not have a physical impact or result in 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
- Most types of assistance for improvements to control or stop the effects from disasters or imminent threats
- Payment of principal and interest on loans made or obligations guaranteed by HUD
- 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 which do not have a physical impact

IV. Option Agreements and Conditional Contracts

There are only two situations related to acquisition that are permitted by HUD to occur before the environmental review process has been completed. These may be used to obtain site control while allowing OHCS to complete the environmental review. If a non-complying agreement exists, OHCS will require that the non-complying agreement be either rescinded and replaced with an agreement meeting HUD's requirement or amended to bring it into compliance with HUD's requirements.

1. Option Agreements. 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. The Option Agreement obligates only the seller after the following conditions are met:
 - a. Project is new construction, rehabilitation and/or demolition of single family or multifamily residential or non-residential structure
 - b. Cost of option must be reasonable
 - c. Project does not otherwise meet the requirements for using a conditional contract
2. Conditional Contract. The Conditional Contract is limited to the acquisition of existing single and multifamily residential buildings. This document only outlines requirements for multifamily (5 or more units) residential buildings. The Conditional Contract obligates both buyer and seller after the following conditions are met:
 - a. The structure may not be located within a Special Flood Hazard Area
 - b. Unit density is not changed more than 20%
 - c. The project does not involve changes in land use from residential to non-residential

- d. The estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation
- e. The purchase contract includes the appropriate language for a conditional contract (see below)
- f. No transfer of title to the purchaser or removal of environmental conditions in the purchase contract occurs unless and until OHCS as RE determines, on the basis of the environmental review, that the transfer to the buyer should go forward, and OHCS has obtained approval of a Request for Release of Funds and environmental certification where applicable
- g. Deposit using HUD funds or other funds is a reasonable amount and is refundable if the conditions are not met, or if non-refundable, is nominal (3% of purchase price or less).
- h. The sponsor may not close on the purchase of the project site or otherwise acquire the title during the period when choice limiting actions are prohibited

The following language must be included in the purchase contract:

“Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until Oregon Housing and Community Services (OHCS) has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. OHCS shall use its best efforts to conclude the environmental review of the property expeditiously.”

V. The Role of OHCS as Responsible Entity

The following section outlines different federal funding scenarios and the role of OHCS as Responsible Entity (RE) for the Part 58 review.

1. For Projects containing OHCS HOME as the only source of federal funds, OHCS will act as RE and will work with the sponsor on the following:
 - a. Determine the level of review required
 - b. Evaluate environmental information the sponsor and/or consultant provide and review the completed Part 58 checklist
 - c. Initiate consultation with any federal agency (Fish & Wildlife, NOAA, SHPO, DOT, EPA) and tribal entities as necessary
 - d. Enter all information into HUD HEROS Environmental Review Online System
 - e. Provide sponsor with instructions for publishing the required public notice for Finding of No Significant Impact/Notice of Intent to Request Release of Funds
 - f. Facilitate submission of HUD Forms 7015.15 (Request for Release of Funds and Certification) and 7015.16 (Authority to Use Grant Funds)

2. For projects containing OHCS HOME and federal funds from other jurisdictions that trigger a Part 58 review:
 - a. One ER can be done to satisfy the requirements for multiple sources of funding. OHCS is the RE for OHCS HOME funds; alternatively, the applicable municipality is the RE for other federal funding. If an environmental review is being completed to satisfy the requirements of multiple sources of funds, the applicable municipality must be involved in the ER process from the beginning.

3. For projects that do not include any federal funds from OHCS but require a Part 58 review:
 - a. If project contains vouchers from a Public Housing Agency, the unit of local government that exercises land use responsibility will act as RE. If HUD determines that is not feasible, then the county will serve as RE. If HUD determines that is not feasible, then HUD will approach OHCS to act as RE. See 24 CFR 58.2(a)(7)(ii)(B)
 - b. If the project contains other federal funds, and if capacity or expertise is not available locally, the sponsor should reach out to OHCS and to HUD to determine role of RE
 - c. If it is determined that OHCS will be acting as RE, the sponsor is required to contract with an environmental consultant to assist with completing the review


VI. Using an Environmental Consultant

Project teams may wish to hire an environmental consultant to assist with completing an Environmental Assessment level review. OHCS will work with the consultant and as RE retains all decision-making authority. OHCS will request the name and contact information of the environmental consultant to ensure the following qualifications can be satisfactorily met. The consultant should:

- Be familiar with the requirements of NEPA and 24 CFR Part 58
- Be in good standing with the Oregon Secretary of State
- Provide examples of previously completed environmental reviews
- Provide resumes and educational qualifications, licenses, and certifications
- Be familiar with HEROS, the HUD online environmental review platform

VII. Levels of Environmental Review and Estimated Timelines

Most projects awarded OHCS HOME funds will require an Environmental Assessment level of review. A timeframe of 3-6 months is a rough estimate only, and can change depending on several factors including the need for a Phase II ESA, consultations with federal agencies, noise assessments, archeological surveys, etc.

Least Complex	Exempt/Categorically Excluded Not Subject to §58.5 (CENST)	One day
	Categorically Excluded Subject to §58.5 (CEST)	30-75 days
	Environmental Assessment	3-6 months
	Most Complex	Environmental Impact Statement*
*OHCS HOME funds will not be allocated to projects requiring an Environmental Impact Statement.		

VIII. Acknowledgement

I certify my understanding that my project is subject to an environmental review in accordance with HUD regulations at 24 CFR Part 58. I understand what constitutes a choice limiting action and what activities can and cannot occur prior to the completion of the environmental review.

X _____
Sponsor Signature

Printed Name

Date

Sponsor Title

Sponsor Company