

REPORT TO CONGRESS
Coordinated Environmental Review Process Progress



February 6, 2023

U. S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Native American Programs

Introduction

In Senate Report 116-109, accompanying the *Further Consolidated Appropriations Act, 2020* (P.L. 116-94), the Senate Appropriations Committee directs the U.S. Department of Housing and Urban Development (HUD) to

“establish and lead a Tribal Housing and Related Infrastructure Interagency Task Force within the calendar year, which includes the previous participating working group agency partners. The task force shall address and implement the working group recommendations to continue the review of related environmental laws and authorities to identify opportunities for greater efficiencies; explore whether environmental reviews could be expedited if agencies which fund similar types of projects developed aligned categorical exclusions; and identify specific regulatory and policy improvements.”

The working group recommendations that the Senate Appropriations Committee directed HUD to address and implement are contained in a Coordinated Environmental Review Process: Final Report published on December 15, 2015 (Final Report).¹ The Final Report identifies measures that could be taken to coordinate agencies’ environmental review processes within the existing framework.

On June 25, 2021, HUD submitted a congressional update on the Task Force’s efforts to develop a coordinated environmental review process with the goal of simplifying Tribal housing development and its related infrastructure needs.

Over the past year, the Task Force has completed Tribal consultation on the draft Implementation Plan. On behalf of the Task Force, HUD held three consultation sessions to receive feedback and input from Tribal leaders on the draft Implementation Plan. The consultation webinars were held on June 21, 2021,² September 13, 2021,³ and October 7, 2021.⁴ The Task Force incorporated the feedback and finalized Implementation Plan⁵ on April 14, 2022 (See Appendix 2). The finalized Implementation Plan describes specific action items and goals for completion dates to implement the recommendations in the Final Report.

This Congressional Report provides an update on the Task Force’s efforts to accomplish the Short-Term and Long-Term Recommendations contained in the Final Report.

Status of Final Report Recommendations

Incorporate Environmental Review Documents by Reference

The Final Report recommends encouraging the National Environmental Policy Act (NEPA) efficiency tool of incorporation by reference, which allows an agency to incorporate a NEPA document prepared by it or by another agency, as well as any other publicly available studies or

¹ See <https://www.hud.gov/sites/documents/COORENVIRREVIEW.PDF>.

² HUD sent a formal consultation request on behalf of the Task Force on May 27, 2021. The letter is available at https://www.hud.gov/sites/dfiles/PIH/documents/DTL_Coordinated_Environmental_%20Review_Process_Implementation_Plan_05.27.21.pdf.

³ HUD sent a formal consultation request on behalf of the Task Force on September 1, 2021. The letter is available at https://www.hud.gov/sites/dfiles/PIH/documents/DTL_Tribal_Consultation_on_Coordinated_Environmental_Implementation_Plan.pdf.

⁴ Id.

⁵ See https://www.hud.gov/sites/dfiles/PIH/documents/Implementation_Plan_Coordinated_Review.pdf.

materials, in its environmental reviews. The Task Force is developing guidance on incorporation by reference and use of lead agencies to promote a coordinated environmental review. This guidance will be included on an online tool. The online tool is called Tribal/Interagency Environmental Streamlining (TIES). TIES is the only environmental coordination tool specific to Tribes. It will be the one place for Tribes to find information, best practices, and guidance to enable a coordinated environmental review. It includes an interactive tool that enables Tribes to input the funding/permitting agencies involved in a housing project and identify each agency's environmental requirements, guidance, and forms. TIES will undergo formal Tribal in early 2023 and launched onto HUD's website after Tribal feedback is incorporated.

Develop Common Categorical Exclusions

CEQ's 2020 NEPA regulations give agencies the flexibility to establish a process to use another agency's categorical exclusion. The Task Force held five meetings throughout the summer of 2022 to identify and map out over 133 categorical exclusions that are used for Tribal housing, roads, water, and broadband activities. The Task Force is preparing written recommendations for agencies to consider as agencies update their categorical exclusions and develop procedures to allow for use of another agency's categorical exclusions. It is anticipated that the Task Force's written recommendations will be shared with agencies in January 2023.

Address Resource Deficiencies at the Bureau of Indian Affairs (BIA)

The Task Force has no ability to address this recommendation, so it will defer to BIA to address their own staffing and budget deficiencies.

Provide Training for Agency Staff and Provide Training for Tribes

Tribal consultation sessions identified a need for consistent interpretation and application of environmental review requirements by both Federal agencies and Tribes. Tribal feedback made it clear that continued emphasis on consistency is needed for HUD programs,⁶ as well as for all Federal funding sources.

HUD created a series of training webinars based on feedback provided during Tribal consultation on developing a coordinated environmental review.⁷ All webinars are recorded and will be available on HUD's Codetalk website. Collectively, the webinars were attended by 411 people.

The webinar topics and dates for delivery are as follows:

- Use of HUD Environmental Forms, June 22, 2022
- Aggregation, July 26, 2022
- Emergency Repairs, October 19, 2022
- Re-evaluation, November 17, 2022

In FY 2023, the Task Force will develop a plan to provide training for Federal employees on different agency's environmental requirements. In addition, the Task Force will analyze the

⁶ Over the past few years, HUD has created a robust system of in-person trainings, suggested formats, online training modules, and an online environmental review system and other resources to supplement and explain HUD environmental regulations, notices, guidance, and forms. Please visit the HUD Exchange Environmental Review website for more information, available at: <https://www.hudexchange.info/programs/environmental-review/>.

⁷ HUD announced the webinar series in a Dear Tribal Leader Letter issued May 16, 2022. See https://www.hud.gov/sites/dfiles/PIH/documents/DTL_Environmental_Review_Process_Webinars.pdf

training resources needed to support the Tribal/Interagency Environmental Streamlining toolkit. Finally, HUD will prepare a plan to develop and deliver additional webinars and resources for Tribes on HUD's environmental requirements.

Continue Review of Related Environmental Laws and Authorities to Identify Opportunities for Greater Efficiencies

In 2023, the Task Force will set up subgroups on National Historic Preservation Act to explore opportunities to develop guidance to align agency historic preservation processes. In addition to the Task Force members, the subgroup will also invite representation from the National Association of Tribal Historic Preservation Officers and the Advisory Council on Historic Preservation.

Create Regional Consortia

The Task Force will continue to explore how to coordinate with existing regional consortia such as Environmental Protection Agency's Regional Tribal Operations Committee to discuss issues in the environmental review process.

Explore the Development of an Interagency Environmental Review Automated Tool

The Task Force will continue to explore the development of an interagency environmental automated tool that Tribes could use to determine environmental requirements, prepare environmental documents, and/or submit documents to funding agencies. Development of an automated tool will require complicated interagency coordination and resources. The Task Force intends to begin the work of developing the business case and needs of an automated tool in 2025.

Explore HUD-Specific Regulatory and Policy Improvements

The Final Report contained two regulatory and policy recommendations for HUD: updating HUD's acceptable storage tank separation distance regulations and easing paperwork burdens for administration activities. HUD accomplished one of these recommendations by finalizing HUD's Acceptable Separation Distance rule on January 24, 2020.⁸ The final rule allows HUD-assisted projects near stationary aboveground propane storage tanks with a capacity of 1,000 gallons or less if the storage tanks comply with the National Fire Protection Association's NFPA 58 Liquefied Petroleum Gas Code (2017).

HUD has developed training with approaches for Tribes to streamline and reduce paperwork burdens for administrative activities in the HUD Tribal webinar on Aggregation held on July 26, 2022. HUD will continue to explore ways to ease paperwork burdens for administration activities at HUD.

Create More Predictable Funding Mechanisms

The Final Report discussed that competitive funding generally makes long-term planning difficult, affecting the efficiency of the environmental review process. The Task Force agencies cannot change whether funding for housing and housing-related infrastructure in Indian Country is competitive. Successful NEPA coordination requires early project planning coordination to develop a project timeline with permitting milestones. The Task Force will explore ways to improve project planning and coordination through the development of an online tool. The

⁸ See 85 FR 4225.

online tool and guidance will undergo formal Tribal consultation and will be finalized and available in early 2023

Establish an On-going Environmental Review Interagency Workgroup

The Task Force has addressed this recommendation to establish an on-going environmental review interagency workgroup by continuing to meet monthly.

Explore Expanding the Scope of this Effort

The Task Force has no immediate plans to expand the scope of this effort.

Additional Action Items

Online Tool

Throughout the consultation process, Tribes expressed a strong preference for a single and simple process for environmental review that anticipates the use of the review by multiple Federal agencies and meets all individual agency requirements. In response, the Task Force will develop an online tool that will leverage existing processes and readily available information to identify the environmental requirements for each agency. The tool will enable the user to identify all the environmental requirements for projects with multiple funding sources, enabling the user to develop an environmental review that encompasses all requirements for the agencies involved, allowing the review to be used and/or adopted by other agencies.

In addition, this online tool will include guidance on incorporation by reference, lead agency agreements and other tools to reduce duplication. It will also include information on other processes available to Tribes to streamline and coordinate environmental reviews such as the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, Title V Indian Self Determination and Education and Title 41 of the Fixing America's Surface Transportation Act.

BIA and HUD Coordination

In the last year, BIA and HUD met several times to clarify and coordinate environmental reviews for HUD's Section 184 loan guarantee program. These projects often have both a BIA and HUD environmental review. The BIA environmental review is almost always done before the Tribe completes a HUD review. The Tribe can utilize the information from BIA and supplement it with additional HUD requirements to streamline the HUD review. BIA and HUD will continue to work together to improve communication among agencies, Tribes, and lenders.

Conclusion

The Task Force will use the Implementation Plan to prioritize and guide its work. The Task Force has met all FY 2022 action items.

The deployment of the online tool in early 2023 will mark a major accomplishment, including guidance and training to reduce duplication and streamline environmental reviews. In FY 2023, the Task Force will pivot towards analyzing and exploring ways to align agencies' Section 106 processes and policies for Tribal housing and related infrastructure projects.

Appendix 1: Coordinated Environmental Review Process Workgroup Members

Tribal Representatives

Association Village Council Presidents Regional Housing Authority

Mark Charlie, CEO

Central Council of Tlingit and Haida Indian Tribes of Alaska

Jacqueline Pata, President/CEO

Cherokee Nation

Wayne Isaacs, Senior Director, Cherokee National Environmental Programs

The Choctaw Nation of Oklahoma

Scott Grosfield, Senior Director of Support Services

Huslia Village

Normal Burgett, First Chief

Northern Arapaho Tribe of the Wind River Reservation

Sandra C'Bearing, Deputy Administrator, Northern Arapaho Tribal Housing

Sault Ste. Marie Tribe of Chippewa Indians

Kathy Brosemer, Environmental Program Manager

U.S. Department of Housing and Urban Development (Lead Agency)

Office of Native American Programs

Heidi Frechette, Deputy Assistant Secretary, Office of Native American Programs

Danielle Schopp, Senior Program Analyst and Environmental Clearance Officer

Office of Environment and Energy

Lauren McNamara, Director (Acting)

Kathy McNulty, Environmental Specialist

Office of General Counsel

Christopher Hartenau, Senior Attorney-Advisor

Carolyn Mozden, Attorney-Advisor

Maureen Hartshorn, Attorney Advisor

Matt Santiago, Attorney Advisor

U.S. Department of Agriculture

USDA Rural Development

Tedd Buelow, National Native American Coordinator

Kristen Bastis, Branch Chief, Environmental (Rural Utilities Service)

Peggy Wade, Senior Environmental Protection Specialist (Rural Housing Service)

USDA Tribal Relations

Heather Thompson, Director

U.S. Department of Commerce

Economic Development Administration

Jim Jacobson, Regional Environmental Officer

U.S. Department of Energy

Office of NEPA Policy and Compliance

Bradley Mehaffy, Environmental Protection Specialist

Office of Energy Efficiency and Renewable Energy

Lisa Jorgensen, Environmental Policy Advisor

U.S. Department of Health and Human Services

Indian Health Service

Benjamin Shuman, Senior Engineer, Division of Sanitation Facilities Construction

U.S. Department of the Interior

Office of Environmental Policy and Compliance

Cheryl Kelly, Environmental Protection Specialist

Carol Braegelmann, Team Leader, Environmental Review Team

Bureau of Indian Affairs

Dr. BJ Howerton, Branch Chief, Environmental and Cultural Resources Management

U.S. Department of Transportation

Federal Highway Administration

Terry Schumann, Senior Environmental Protection Specialist, Tribal Transportation Program

Office of General Counsel

Lisa Swafford-Brooks, Deputy Assistant General Counsel for Operations

Paul Geier, Acting Assistant General Counsel for Operations

Olivia Walker-Chaffin, Attorney Advisor

U.S. Environmental Protection Agency

Office of Wastewater Management

Matthew Richardson, Environmental Protection Specialist

Leslie Corcelli, Physical Scientist

Office of Ground Water and Drinking Water

Samuel Russell, P.E., Commander, US Public Health Service

Council on Environmental Quality

Jomar Maldonado, Associate Director for NEPA

Tom Sharpe, Principal Deputy Associate Director for NEPA