

REPORT TO CONGRESS

Coordinated Environmental Review Process Progress

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Coordinated Environmental Review Process Congressional Report

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Appendix 1: Coordinated Environmental Review Process Workgroup Members

Introduction

In Senate Report 116-109, accompanying the *Further Consolidated Appropriations Act, 2020* (P.L. 116-94), the Senate Appropriations Committee directed 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.” This Congressional Report provides a brief background and update on the efforts of Tribal Housing and Related Infrastructure Interagency Task Force (THRITF) to develop a coordinated environmental review process with the goal to simplify tribal housing development and its related infrastructure needs.

Background

In a March 2014 report to the Congressional committees entitled “Native American Housing: Additional Actions Needed to Better Support Tribal Efforts,” the U.S. Government Accountability Office (GAO) made several recommendations, including the establishment of a, “coordinated environmental review process for all agencies overseeing tribal housing development.”¹ Relying in part on the GAO report, in December 2014, the Senate Report accompanying the Fiscal Year (FY) 2015 Department of Transportation and Department of Housing and Urban Development (HUD), and Related Agencies Appropriations Bill directed HUD to “collaborate with the Council on Environmental Quality and affected Federal agencies . . . to develop a coordinated review process to simplify tribal housing development and its related infrastructure needs.”²

An interagency workgroup was formed, comprised of representatives from HUD (lead agency), the U.S. Department of Agriculture, U.S. Department of Commerce, U.S. Department of Energy, U.S. Department of Health and Human Services, U.S. Department of the Interior, U.S. Department of Transportation, U.S. Environmental Protection Agency (EPA), and Council on Environmental Quality (CEQ). The workgroup reviewed environmental review requirements and examined information collected from Tribes and Federal agencies. It became clear that no single effort or legislative change would ensure a coordinated and simplified environmental review process for tribal housing and housing-related infrastructure projects; rather, an on-going effort among agencies to discover commonalities and foster collaborative relationships was required. The workgroup focused on identifying measures that could be taken to coordinate agencies’ environmental review processes within the existing framework. Those measures are

¹ GAO REP. NO. 14-255, at 34, *Native American Housing: Additional Actions Needed to Better Support Tribal Efforts* (March 2014), available at <http://www.gao.gov/assets/670/662063.pdf>.

² S. REP. NO. 113-182, at 121 (2014), accompanying S.2438, available at <https://www.congress.gov/113/crpt/srpt182/CRPT-113srpt182.pdf>.

presented as recommendations in the Coordinated Environmental Review Process: Final Report, published on December 15, 2015.³

The Final Report made the following recommendations:

1. Incorporate Environmental Review Documents by Reference
2. Develop Common Categorical Exclusions
3. Address Resource Deficiencies at the Bureau of Indian Affairs
4. Provide Training for Agency Staff
5. Provide Training for Tribes
6. Continue Review of Related Environmental Laws and Authorities to Identify Opportunities for Greater Efficiencies
7. Create Regional Consortia
8. Explore the Development of an Interagency Environmental Review Automated Tool
9. Explore HUD-Specific Regulatory and Policy Improvements
10. Create More Predictable Funding Mechanisms
11. Establish an On-going Environmental Review Interagency Workgroup
12. Explore Expanding the Scope of this Effort

The workgroup developed a draft Memorandum of Understanding (MOU) in 2016 and an implementation plan in 2017, consulting with Tribes throughout the process, in accordance with the HUD Government-to-Government Tribal Consultation Policy.⁴ The draft MOU was made available to tribal leaders for review and comment in December 2016, and a consultation webinar was held to take comments and answer questions.⁵ In February 2017, the workgroup solicited input from tribal leaders on the status report to implement the remaining Final Report recommendations through a formal tribal consultation request. The workgroup held two consultation sessions and requested written comments from attendees.⁶ Once the comment period on the status report expired, the workgroup developed a draft implementation plan to

³ Coordinated Environmental Review Process Workgroup, Coordinated Environmental Review Process: Final Report, available at <https://portal.hud.gov/hudportal/documents/huddoc?id=CoorEnvirReview.pdf>.

⁴ For more information on HUD's Government-to-Government Tribal Consultation Policy, please visit https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/consult.

⁵ HUD sent a formal tribal consultation request on behalf of the workgroup on December 14, 2016 soliciting comment on a draft Memorandum of Understanding (MOU) and draft Statement of Intent on NEPA (National Environmental Policy Act) efficiency tools. The letter is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=DTL-CoorEnvirReview.pdf>. The draft MOU is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=MOU-CoorEnvirReview.pdf>. The draft Statement of Intent is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=StatementIntent.pdf>. HUD hosted a consultation webinar on behalf of the workgroup to answer questions and gather feedback on the draft Memorandum of Understanding and draft Statement of Intent.

⁶ HUD sent a formal tribal consultation request on behalf of the workgroup on February 7, 2017, requesting comments on the status report and announcing two consultation sessions. The letter is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=dtlcoordinatedenv.pdf>. The status report is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=finalreadaheadenv-rev.pdf>. Consultation sessions were held on February 14, 2017, at the National Congress of American Indians Executive Council Winter Session in Washington, D.C. and on March 7, 2017, at the National American Indian Housing Council Legislative Conference in Washington, D.C.

implement the recommendations of the 2015 Final Report. The draft implementation plan was made available to tribal leaders for review and comment in September 2017.⁷

THRIITF will build upon the progress the workgroup made over the last several years. As discussed above, the workgroup finalized and circulated for signature an interagency MOU to encourage the use of the National Environmental Policy Act (NEPA) efficiency tools, such as incorporation by reference, adoption, and cooperating agency agreements. The MOU was not signed by all agencies before CEQ initiated rulemaking to update NEPA regulations on January 10, 2020. CEQ published a final rule updating NEPA regulations on July 16, 2020. These new regulations were the first update to CEQ's NEPA regulations in forty years and made substantial changes to the NEPA process, including the adoption and lead agency designation concepts identified in the MOU. Specifically, the new regulation expanded adoption, allowing agencies to adopt categorical exclusion determinations if the action covered by the original categorical exclusion determination and the adopting agency's proposed action are substantially the same.⁸ The new rule also allows agencies to establish a process to use categorical exclusions listed in another agency's NEPA procedures after consulting with that agency to ensure the use of categorical exclusion is appropriate.⁹ In addition, the new rule required the use of lead agencies for Environmental Impact Statements (EIS) and complex Environmental Assessments (EAs) for projects that involved joint actions by multiple Federal agencies.¹⁰

THRIITF began meeting in June 2020 and drafting a new MOU that encourages the use of NEPA tools and is aligned to CEQ's 2020 NEPA regulations. THRIITF will also work to update and revise the draft 2017 implementation plan¹¹ with action items and timelines.

Status of Final Report Recommendations

Incorporate Environmental Review Documents by Reference

The Final Report recommends encouraging the 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 materials, in its environmental reviews. In summer 2020, THRIITF began drafting a new MOU that expands beyond incorporation by reference to include encouraging the use of the other NEPA efficiency tools of cooperating agency agreements and adoption. The new MOU will be aligned with CEQ's 2020 NEPA regulations that require a lead agency for projects with an EIS or EA that involve joint actions by multiple Federal agencies. It also will align with the new allowances for adoption to enable agencies to adopt an EIS, EA, or portion thereof, or categorical exclusion determinations if the actions are substantially the same. CEQ's 2020 NEPA regulations require agencies to update their NEPA regulations and procedures to align with the 2020 regulations. This process may impact the finalization of the MOU.

⁷ HUD sent a formal tribal consultation request on behalf of the workgroup on September 22, 2017 requesting comments on the draft implementation plan. The letter is available at https://www.hud.gov/sites/dfiles/PIH/documents/CER_Initiative.pdf. The draft implementation plan is available at <https://www.hud.gov/sites/dfiles/PIH/documents/ImplementationPlan92217.pdf>.

⁸ 40 CFR 1506.3(d).

⁹ 40 CFR 1507.3(f)(5).

¹⁰ 40 CFR 1501.7.

¹¹ <https://www.hud.gov/sites/dfiles/PIH/documents/ImplementationPlan92217.pdf>.

Develop Common Categorical Exclusions

CEQ's 2020 NEPA regulations give agencies the flexibility to establish a process to use another agency's categorical exclusion. THRIITF will share information as agencies develop processes to implement this provision.

Address Resource Deficiencies at BIA

THRIITF has no ability to address this recommendation.

Provide Training for Agency Staff and Provide Training for Tribes

THRIITF will work collaboratively to identify training needs and opportunities for agencies and Tribes to support a coordinated environmental review process.

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

The workgroup started its analysis of opportunities for efficiencies in the related environmental laws and authorities while preparing the Final Report by asking for input from agencies and tribal leaders on which laws and authorities caused the greatest concern, and by holding a meeting specifically on the National Historic Preservation Act (NHPA). Many opportunities for efficiencies were found, and the Final Report recommended that the workgroup continue its review of related environmental laws and authorities to identify further opportunities.

THRIITF will review and consider the proposals in the Final Report, such as encouraging sharing completed Section 106 of the National Historic Preservation Act documentation among agencies and developing an interagency agreement on acceptable alternatives to the use of Federal Emergency Management Agency floodplain maps in unmapped areas. In addition, THRIITF will explore further opportunities for greater efficiencies. For example, THRIITF will explore stand-alone implementing regulations and/or policies, including for the NHPA, the Endangered Species Act, and Section 404 of Clean Water Act.

Create Regional Consortia

THRIITF will explore how to coordinate with existing regional consortia such as EPA's Regional Tribal Operations Committee to discuss issues in the environmental review process.

Explore the Development of an Interagency Environmental Review Automated Tool

THRIITF 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.

Explore HUD-Specific Regulatory and Policy Improvements

The Final Report contained two 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, 2020.¹² The final rule allows HUD-assisted projects near stationary aboveground propane storage tanks with a capacity of 1,000 gallons or less if the

¹² See 85 FR 4225.

storage tanks comply with the National Fire Protection Association's NFPA 58 Liquefied Petroleum Gas Code (2017). 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 workgroup agencies cannot change whether funding for housing and housing-related infrastructure in Indian Country is competitive. Successful NEPA coordination requires early coordination. THRIITF will explore ways to improve project planning and coordination.

Establish an On-going Environmental Review Interagency Workgroup

THRIITF has addressed this recommendation to establish an on-going environmental review interagency workgroup by continuing to meet.

Explore Expanding the Scope of this Effort

THRIITF has no immediate plans to address this recommendation.

Additional Action Items

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, THRIITF will aim to develop the process for establishing a required, multi-agency form for environmental reviews.

Conclusion

Since publication of the Final Report in December 2015, the CEQ's 2020 NEPA regulations provide expanded opportunities for THRIITF to develop a coordinated environmental review process. THRIITF will develop a new MOU and revise the 2017 implementation plan with tribal input, identifying action items and timeframes to implement the Final Report recommendations. The recommendations of the Final Report and their implementation are highly dependent on agency resources and priorities, especially as the effort is without funding for contractor support. The continued implementation of the Final Report will require each agency to continue to prioritize this initiative.

Appendix 1: Coordinated Environmental Review Process Workgroup Members

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

Elizabeth Zepeda, Director (Acting)

Kathy McNulty, Environmental Specialist

Office of General Counsel

Christopher Hartenau, Senior Attorney Advisor

Carolyn Mozden, Attorney Advisor

Alyce Thompson, Attorney Advisor

U.S. Department of Agriculture

USDA Rural Development

Tedd Buelow, National Native American Coordinator

Barbara Britton, Director, Environmental and Engineering (Rural Utilities Service)

Kristen Bastis, Environmental Protection Specialist (Rural Utilities Service)

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

USDA Tribal Relations

Diane Cullo, Director, Office of Tribal Relations

Linda Cronin, Acting Director, Office of Tribal Relations

Dennis Kennedy, Outreach Specialist, Office of Tribal Relations

U.S. Department of Commerce

Economic Development Administration

Frances Sakaguchi, Regional Economic Development Integrator

Jim Jacobsen, 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

Carol Breagelmann

Bureau of Indian Affairs

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

U.S. Department of Transportation

Office of Secretary

Sean Poole

Ron Jackson

Milo Booth

Federal Highway Administration

Terry Schumann, Senior Environmental Protection Specialist, Tribal Transportation Program

Office of General Counsel

Lisa Swaford-Brooks, Deputy Assistant General Counsel for Operations

Paul Geier, Acting Assistant General Counsel for Operations

Krystyna Bednarczyk

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