

DRAFT Implementation Plan

Introduction

In Senate Report 116-109, the Senate Appropriations Committee directed the Department of Housing and Urban Development (HUD) to establish and lead a Tribal Housing and Related Infrastructure Interagency Task Force (THRIITF or Task Force), which includes the 2015 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 implementation plan identifies actions and timelines to execute the recommendations in the 2015 Coordinated Environmental Review: Final Report.

Background

In a March 2014 report to the Congressional committees entitled “Native American Housing: Additional Actions Needed to Better Support Tribal Efforts,” the Government Accountability Office (GAO) made several recommendations, including the establishment of a “coordinated federal environmental review process for 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 agencies . . . to develop a coordinated review process to simplify tribal housing development and its related infrastructure needs.”²

An interagency work group was formed, comprised of representatives from HUD (lead agency), the Council on Environmental Quality, the U.S. Environmental Protection Agency and the U.S. Departments of Health and Human Services, Interior, Transportation, Agriculture, Commerce, and Energy. The work group 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 work group focused on identifying measures that could be taken to coordinate agencies’ environmental review processes within the existing framework. Those measures are 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

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>.

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

2. Develop Common Categorical Exclusions
3. Address Resource Deficiencies at the Bureau of Indian Affairs (BIA, DOI)
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 Consortiums
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 Task Force
12. Explore Expanding the Scope of this Effort

The work group developed a draft 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 work group solicited input from tribal leaders on the status report to implement the remaining Final Report recommendations through a formal tribal consultation request. The work group held two consultation sessions and requested written comments from attendees.⁶ Once the comment period on the status report expired, the work group developed a draft implementation plan to implement the recommendations of the 2015 Final Report. The draft implementation plan was made available to tribal leaders for review and comment in September of 2017.⁷ Due to staffing deficiencies, the implementation plan was not finalized and the work group met infrequently in 2018 and 2019. As directed by Senate Report 116-109, the work group has reformed under the name of the Tribal Housing and Related Infrastructure Interagency Task Force (THRIITF) and began meeting in summer of 2020. This

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 Task Force 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 Task Force 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 Task Force 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, DC and on March 7, 2017 at the National American Indian Housing Council Legislative Conference in Washington, DC.

⁷ HUD sent a formal tribal consultation request on behalf of the Task Force 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>.

document is the updated implementation plan. The Task Force will conduct tribal consultation to solicit feedback and input on this updated implementation plan.

Draft Implementation Plan for the Recommendations of the Final Report

The following action items are proposed to implement the recommendations of the Final Report. Many of the action items relate to more than one recommendation. One of the action items, Action Item (1), is not tied to a recommendation, because it was presented during the listening sessions and comment period for the status report. The Task Force will develop communication and training plans for all implementation actions. Following the action items is a table with the Task Force's goals for the timing of the action items. It is important to keep in mind that implementation of the action items is dependent on Federal agency resources and prioritization. In addition, actions and timing will likely change as the Task Force continues its consultation with tribes and continues to work on implementation.

Action item (1): Develop a coordinated approach for tribes and agencies to collect and share environmental information to reduce duplication of effort for environmental reviews for housing and housing-related infrastructure projects.

Recommendation(s) addressed: This action item stems from the listening sessions and comments on the status report. It is not discussed as a recommendation in the Final Report.

Status: Commenters expressed a preference for a single, simple process for an environmental review that anticipates the use of the review by multiple federal agencies and meets all individual agency requirements. The Task Force will utilize a consultant to interview tribes to gain further information to understand the scope, need and objectives of this single process. After interviewing tribes and federal agencies, the consultant will present recommendations to the Task Force on the substance and format of a single approach. The Task Force will consult with all tribes on the recommendation(s).

Action item (2): Ensure tribal input

Recommendation(s) addressed: Create Regional Consortia; Establish an On-going Environmental Review Interagency Task Force

Status: The report proposed utilizing regional consortia to maintain a robust dialogue with tribes during implementation of the Final Report. Several commenters recommended taking this a step further and having tribal members in the work group. On March 4, 2021 HUD issued a Dear Tribal Leader letter seeking nominations for tribal members to join the THRIITF⁸. Moving forward the Task Force anticipates a monthly meeting of the entire Task Force and a separate federal agency work group meeting, as needed.

In addition, the Task Force plans to develop a list of regional consortia and hold regular meetings or listening sessions on implementation work at regional consortia to ensure that tribes have opportunities to provide input and to facilitate information-sharing between tribes.

⁸ HUD sent a formal letter requesting nominations on March 4, 2021. The letter is available at [https://www.hud.gov/sites/dfiles/PIH/documents/DTL%203-4-21%20Tribal%20Housing%20and%20Related%20Infrastructure%20Interagency%20Task%20Force%20\(THRIITF\).pdf](https://www.hud.gov/sites/dfiles/PIH/documents/DTL%203-4-21%20Tribal%20Housing%20and%20Related%20Infrastructure%20Interagency%20Task%20Force%20(THRIITF).pdf)

Action item (3): Develop common categorical exclusions

Recommendation(s) addressed: Develop Common Categorical Exclusions

Status: Every federal agency has categorical exclusions for certain activities that the agency has determined do not individually or cumulatively have a significant effect on the human environment. Guidance from CEQ encourages the joint development of categorical exclusions among various agencies. A few agencies have taken advantage of this practice such as the Gulf Coast Restoration Council. The Task Force will continue to explore the potential for common categorical exclusions by identifying the most common housing and housing-related infrastructure activities and seeking ways to work with agencies to develop common or substantially similar categorical exclusions that can be incorporated into agencies' NEPA procedures.

Any work on updating or revising categorical exclusions involves public review and comment in the Federal Register. Changes to agency categorical exclusions also involve review by the Council on Environmental Quality (CEQ) to ensure conformity with the CEQ NEPA Implementing Regulations. Many agencies update and revise categorical exclusions through rulemaking and therefore must consider the agencies' willingness or ability to change their regulations. Revising and updating categorical exclusions involve a significant amount of time, effort, and coordination.

Action item (4): Create a planning playbook

Recommendation(s) addressed: Create More Predictable Funding Mechanisms; Provide Training for Tribes

Status: The report discussed approaching the issue of predictability of funding mechanisms as a planning issue. During listening sessions, several commenters identified that planning on a broad level is needed and identified where better planning would be helpful. Commenters also shared best practices, such as pre-screening during initial site planning.

The Task Force aims to develop a planning playbook, with accompanying resources to facilitate the planning process.

The following could be addressed:

- Pre-screening based on contemplated use and funding. For example, if the intended use of the land is housing, establishing a pre-screen process to determine if the property is suitable for development based on HUD environmental review factors.
- Planning for multiple sources of funding. Exploring connections and ways to align BIA trust resource plans, HUD required Indian Housing Plans and IHS required Preliminary Engineering Reports.

The Task Force will initiate work on the playbook by soliciting ideas from tribes. As a playbook is drafted and finalized, tribal input will be essential.

Action item (5): Develop resources to encourage wider use of NEPA efficiency tools

Recommendation(s) addressed: Incorporate Environmental Review Documents by Reference; Provide Training for Agency Staff; Provide Training for Tribes

Status: The Task Force will develop a guidance document to encourage agencies and tribes to use incorporation by reference as well as adoption and lead agencies to promote a coordinated environmental review.

The Task Force will begin drafting a guidance document after agencies receive further direction on these tools from CEQ.

Action item (6): Ensure that review requirements are being applied consistently

Recommendation(s) addressed: Provide Training for Agency Staff; Provide Training for Tribes

Status: Status report commenters identified that there is a need for consistent interpretation and application of environmental review requirements by both federal agencies and by tribes. Tribal feedback made it clear that continued emphasis on consistency is needed for HUD programs⁹, as well as for all federal funding sources. The Task Force plans to work with agencies and tribes to identify how to provide appropriate training. This may include seeking additional funding and/or utilizing more cost-effective training methods such as webinars, recorded training sessions, internal training, peer to peer exchanges, developmental assignments, etc. It may also include leveraging training, for example by bringing multiple agencies to tribal training events. Training or guidance will be provided for any changes that come out of the coordinated environmental review process effort. In addition, the Task Force will work with agencies and tribes to assess whether policy and/or regulatory changes are needed to facilitate consistency, and whether there are any other pathways to consistent interpretation and application of review requirements. Finally, the Task Force plans to identify ways to assess whether consistency is being accomplished.

Action item (7): Identify opportunities for greater efficiencies within the Related Environmental Laws and Authorities

Recommendation(s) addressed: Continue Review of Related Environmental Laws and Authorities to Identify Opportunities for Greater Efficiencies

Status: The Final Report highlighted Tribal Historic Preservation Officer (THPO) resource shortages as a critical issue that contributes to National Historic Preservation Act inefficiencies. Other sources of inefficiency include agencies and tribes differing opinions as to when archaeological surveys should be required. The Task Force will explore developing a more consistent approach. The Task Force also plans to develop guidance on sharing completed Section 106 documents to avoid the time and expense associated with duplicative consultation. The Final Report highlighted inefficiencies with floodplain mapping, specifically that many tribal areas are not mapped and that agencies differ in their acceptance of alternatives to Federal Emergency Management Agency (FEMA) maps. The Task Force will propose an interagency agreement on acceptable alternatives to FEMA maps.

⁹ 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/>.

The Task Force will also explore opportunities for efficiencies such as programmatic agreement for Endangered Species Act and aligning processes in other related laws and authorities such as the Section 404 of Clean Water Act, Executive Order (EO) 11988 (floodplains) and EO 11990 (wetlands). The Task Force will work to identify and include relevant outside groups and agencies in these efforts.

Action item (8): Develop a coordinated environmental review process website

Recommendation(s) addressed: Incorporate Environmental Review Documents by Reference; Provide training for agency staff; Provide training for tribes; Create More Predictable Funding Mechanisms

Status: The Task Force has created a website on the coordinated environmental review process initiative and will continue to build this website with tools, guidance, and training materials as they are developed.

Action item (9): Expand effort to include actions that are not housing-related

Recommendation(s) addressed: Explore Expanding the Scope of this Effort

Status: Tribes engage in infrastructure projects and other actions such as broadband, transportation and transmission projects that are not related to housing. As the efforts of the coordinated environmental review progress, commenters felt that it would be beneficial for other actions to have the same environmental review. Commenters felt the Task Force should keep the possibility of expanding the scope of the effort in mind as implementation of the Final Report progresses until a logical opportunity presents itself. The Task Force will keep possible expansion in mind and begin to assemble information about the other agencies and funding programs that will be involved.

Action item (10): Develop an interagency environmental review automated tool

Recommendation(s) addressed: Explore the Development of an Interagency Environmental Review Automated Tool

Status: An environmental review automated tool already exists for HUD environmental reviews.¹⁰ Tribes are not required to use this tool. Commenters identified interest in having an automated tool that covers all funding sources. The tool will need to accommodate the requirements of all federal agencies, including any simplified process that is developed by the Task Force. Since developing a simplified process has been identified as the primary priority for the Task Force and will greatly influence such a tool, the Task Force plans to wait to develop an automated tool until a process is determined. Developing an automated tool will also involve contract support and decisions and agreements amongst the Task Force agencies on resources.

Action item (11): Ease paperwork burdens for administrative activities (HUD)

Recommendation(s) addressed: Explore HUD-Specific Regulatory and Policy Improvements

Status: 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

¹⁰ HUD has developed HUD Environmental Review Online System (HEROS) to complete a HUD environmental review.

January 24, 2020.¹¹ 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 will continue to explore ways to ease paperwork burdens for administration activities at HUD.

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¹¹ See 24 CFR 51, Subpart C.

Action Item	Action Item Detail
BLUE= very heavy lift RED=heavy lift ORANGE= medium lift GREEN=light lift No color=not a workgroup item (HUD item)	
FY 2021 goals	
Ensure tribal input (2)	Solicit nominations for tribal Task Force members
	Begin participation in regional consortiums
Coordinated environmental review process website (8)	Launch environmental review process website
Develop a coordinated approach (1)	Determine needs and objective
	Develop recommendations
Identify opportunities for greater efficiencies (7)	Identify laws and authorities to develop efficiencies
Develop common categorical exclusions (3)	Determine opportunities for common categorical exclusions
FY 2022 goals	
Ensure tribal input (2)	Continue participating in regional consortiums
Identify opportunities for greater efficiencies (7)	Establish sub-team to develop archeological survey guidance
	Establish sub-team to develop guidance on sharing completed Section 106 documents
	Establish sub-team to develop interagency agreement on acceptable alternatives to FEMA maps
	Develop plan to implement efficiencies in other laws and authorities
Develop a coordinated approach (1)	Draft form/formats
Ease paperwork burdens for administrative activities (HUD) (11)	Prepare guidance for yearly reviews of administrative activities
	Develop MOU to encourage use of NEPA efficiency tools: incorporation by reference, adoption, lead agency
Develop resources to encourage the use of NEPA efficiency tools (5)	Develop NEPA tool resources
Ensure consistency (6)	Develop plan to improve consistency through training
Develop common categorical exclusions (3)	Negotiate common categorical exclusions
Create a planning playbook (4)	Draft planning playbook
FY 2023 goals	
Ensure tribal input (2)	Continue participating in regional consortiums
Identify opportunities for greater efficiencies (7)	Draft archeological survey guidance
	Draft guidance on sharing completed Section 106 documents
	Draft interagency agreement on acceptable alternatives to FEMA maps
	Implement plan for efficiencies for laws and authorities
Ensure consistency (6)	Implement agency staff training
Develop an interagency environmental review automated tool (10)	Begin to develop business case and needs of system to begin scoping costs and securing funding
FY 2024 goals	
Identify opportunities for greater efficiencies (7)	Negotiate archeological survey guidance
	Negotiate guidance on sharing completed Section 106 documents
	Negotiate interagency agreement on acceptable alternatives to FEMA maps
	Secure funding for automated tool