

## Draft Implementation Plan for the Recommendations of the Final Report

### Coordinated Environmental Review Process for Tribal Housing and Housing-Related Infrastructure

#### Actions to Date

In a March 2014 report to 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.”<sup>1</sup> Relying in part on the GAO report, in December 2014, the Senate Report accompanying the FY 2015 Transportation and 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.”<sup>2</sup>

An interagency workgroup was formed.<sup>3</sup> The interagency workgroup discussed and examined information collected from tribes and agencies and reviewed environmental review requirements. 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; but rather, an on-going effort between agencies to discover commonalities and foster collaborative relationships was required. The interagency workgroup 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.<sup>4</sup>

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 (BIA)
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 Workgroup
12. Explore Expanding the Scope of this Effort

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

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

<sup>3</sup> See the *Coordinated Environmental Review Process: Final Report*, Appendix 1, for a list of workgroup members.

<sup>4</sup> The *Coordinated Environmental Review Process: Final Report* is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=CoorEnvirReview.pdf>.

Since the Final Report was published, the interagency workgroup has continued to meet. The Final Report recommends an interagency Memorandum of Understanding (MOU) to encourage the use of the National Environmental Policy Act (NEPA) efficiency tool of incorporation by reference. The workgroup drafted an interagency MOU and a companion Statement of Intent document for stakeholders which expands beyond incorporation by reference to include encouraging the use of other NEPA efficiency tools of cooperating agency agreements and adoption. The draft documents were made available to tribal leaders for review and comment in December 2016, and a subsequent webinar was held to take comments and answer questions. The workgroup is in the process of finalizing these documents, and plans to develop resources to support their implementation.<sup>5</sup>

In February 2017, the workgroup solicited input from tribal leaders on ideas to implement the remaining Final Report recommendations. The workgroup prepared a status report with ideas, which was shared with tribal leaders for review and comment. Two tribal listening sessions were held.<sup>6</sup>

Since the expiration of the comment period on the status report, the workgroup has been developing a draft plan to implement the recommendations of the 2015 Final Report. In accordance with the HUD Government-to-Government Tribal Consultation Policy,<sup>7</sup> the workgroup is requesting feedback from tribal leaders on the draft plan. Input from tribal leaders on the status report was instrumental to the draft plan and tribal input on this draft implementation plan is essential. As a final implementation plan is developed and implementation efforts move forward, the workgroup will continue to seek tribal input.

### **Draft Implementation Plan for the Recommendations of the Final Report**

The following action items are proposed to implement the recommendations of the Final Report.<sup>8</sup> 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. Following the action items is a table with the workgroup's goals for the timing of the action items. It is important to keep in mind that implementation of the action items is

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<sup>5</sup> HUD sent a Dear Tribal Leader letter on behalf of the workgroup on December 14, 2016 soliciting comment on 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 webinar on behalf of the workgroup to answer questions and gather feedback on the draft Memorandum of Understanding and draft Statement of Intent

<sup>6</sup> HUD sent a Dear Tribal Leader letter on behalf of the workgroup on February 7, 2017 requesting comments on the status report and announcing two listening 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>. Listening 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.

<sup>7</sup> 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](https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/consult).

<sup>8</sup> The *Coordinated Environmental Review Process: Final Report* is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=CoorEnvirReview.pdf>.

dependent on Federal agency resources and prioritization. In addition, actions and timing will likely change as the workgroup continues its consultation with tribes and continues to work on implementation.

**Action item (1):** Develop a single form or format, or a system of formats, 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, and simple, process for environmental review that anticipates the use of the review by multiple federal agencies and meets all individual agency requirements. The workgroup will aim to determine the process for establishing a required, multi-agency form. The workgroup will then work with agencies and tribes to explore the best approach, whether a required form or series of forms, or a format or series of formats. A single form or format will likely necessitate accommodating a more exhaustive review for both the applicant and the reviewing federal agency, potentially expending unnecessary efforts on environmental requirements not applicable to every project. It may be more efficient to have multiple forms or formats based on the type of activity being proposed, or based on the level of review. For example, there could be a format for a subdivision project, a format for infrastructure-only work, or a format for environmental assessments. Another approach would be to develop a form or format that builds on review requirements based on the federal funding source. In any case, the ability to use any completed form or format for multiple funding sources would be highly reliant on the project description. As a form or formats are developed, tribal input will be very important. Development of such forms or formats will likely involve a significant amount of time. For a single form, it may be necessary to build consensus amongst workgroup agencies on how to capture the requirements for common laws and authorities. Efforts will at least involve accurately capturing all agency requirements. Another idea proposed by commenters was to defer to tribal regulations for all federal agency environmental reviews, and utilize a common process if tribal regulations for environmental review do not exist. Federal agencies are required to comply with various environmental laws and authorities. At this time, the necessary legal basis for agencies to defer to tribes in place of NEPA environmental review requirements does not appear to exist. Certain environmental laws do have a process to defer to tribal regulations. Under the 1992 amendments to the National Historic Preservation Act (NHPA), the Advisory Council on Historic Preservation (ACHP) can enter into an agreement with a tribe to substitute the tribe's historic preservation procedure for the ACHP's regulations implementing Section 106 of the NHPA regarding undertakings on tribal lands.<sup>9</sup>

**Action item (2):** Ensure tribal input

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

**Status:** The status 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 workgroup. As such, the workgroup plans to seek active participants to join the workgroup. The workgroup would request nominations for tribal members.

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<sup>9</sup> See Section 105(d)(5) of the NHPA. See also the ACHP's *Section 105(d)(5) Guidance for Indian Tribes*, available at [http://www.achp.gov/docs/Section%20105\(d\)\(5\)%20guidance%202017.pdf](http://www.achp.gov/docs/Section%20105(d)(5)%20guidance%202017.pdf).

Each member would be asked to commit to no more than 2 years, attend meetings via conference call, and review and comment on documents developed by the workgroup.

The workgroup would like feedback on how to incorporate tribal members into the workgroup. Please consider the following options, and please feel free to suggest additional options.

1. Option A: The full workgroup would include tribal members and would meet quarterly. A federal family sub-group would meet more often, preparing documents and other items for the full workgroup's consideration.
2. Option B: The full workgroup would include tribal members and would meet regularly, likely once a month. The federal agency workgroup members would meet separately as needed.

In addition, the workgroup plans to hold regular meetings or listening sessions on implementation work at regional consortiums to ensure that tribes have opportunities to provide input and to facilitate information-sharing between tribes. The workgroup would develop a list of consortiums for each fiscal year.

**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. Currently, one federal agency cannot utilize another agency's categorical exclusions. This has been consistently identified as a source of environmental review inefficiency. The workgroup will investigate the potential for common categorical exclusions by identifying the most common housing and housing-related infrastructure activities. The workgroup will then aim to identify the agencies that typically engage in the subject actions and the categorical exclusions associated with those actions. The workgroup will then work with agencies to develop common or substantially similar categorical exclusions that can be incorporated into the NEPA procedures. Any work on common categorical exclusions would involve regulatory changes and therefore must consider the agencies' willingness or ability to change their regulations. Changes to agency categorical exclusions would also involve review by the Council on Environmental Quality (CEQ) to ensure conformity with the CEQ NEPA Implementing Regulations. Regulatory changes will 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 status 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 workgroup aims to develop a planning playbook, with accompanying resources to facilitate the planning process. The following would be addressed:

- Pre-screening based on contemplated use and funding. For example, if the intended use of the land is housing, set up a pre-screen process to determine if the property is suitable for development based on HUD environmental review factors. Include site suitability factors that support an area with housing, such as being close to schools and utility infrastructure. Include program eligibility restrictions, such as HUD low-income requirements.
- Encourage training of tribal staff in land use issues. Provide information on how to develop and/or obtain training.

- Encourage use of NEPA efficiency tools for projects involving assistance from multiple federal agencies. Provide information on where to find resources to facilitate the use of NEPA efficiency tools, and how to use them.
- Capture all agency planning requirements
- Analyze funding paths. Consider options for utilizing combinations of formula funding and competitive funding.
- Discuss leveraging and tools that pull together multiple sources of funding.
- Discuss planning to address state requirements.
- Discuss ensuring that adequate infrastructure is in place for contemplated housing projects.

As part of putting together the playbook, the workgroup aims to review the planning that is required by agencies to determine whether planning processes and documentation can be aligned. For example, BIA requires trust resource plans, HUD requires Indian Housing Plans, and Indian Health Service (IHS) requires Preliminary Engineering Reports.

The workgroup will initiate work on the playbook by soliciting ideas from tribes. As a playbook is drafted and finalized, tribal input will be essential. Playbook development will include developing a plan to raise awareness of the playbook once it is completed to ensure that it reaches the intended audience.

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

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

**Status:** An MOU and companion Statement of Intent were drafted by the workgroup and tribal feedback solicited. The drafts are being finalized through agency review. The documents encourage the use of NEPA efficiency tools. The workgroup plans to develop resources to facilitate the use of these tools. Resources may include, but are not limited to:

- Training materials to raise awareness of the availability of NEPA efficiency tools amongst agency staff and tribal staff.
- Cover letter to accompany the MOU to raise awareness of the availability and applicability of NEPA efficiency tools and provide direction to agency staff.
- Guidance on how to use Incorporation by Reference for all levels of review.
- A Model Cooperating Agency Agreement that will include guidance on its use, including level of review, appropriate projects types, and addressing the issue of timing of funding.
- Guidance on Adoption. Workgroup will determine what agencies have the same environmental review requirements, which would facilitate use of the tool.

**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 programs<sup>10</sup>, as well as for all federal funding sources. The workgroup 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-

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<sup>10</sup> 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/>.

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 workgroup 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 workgroup 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 NHPA inefficiencies. THPO funding requires Congressional action. The workgroup intends to recommend, on a yearly basis, that more funding be provided to THPOs. Other sources of inefficiency include agencies and tribes differing opinions as to when archaeological surveys should be required. Surveys can increase the costs associated with an environmental review to the extent that projects become infeasible, so a reasonable and consistent approach is crucial. The workgroup plans to develop a consistent approach to requiring archaeological surveys. The workgroup 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 workgroup will propose an interagency agreement on acceptable alternatives to FEMA maps. The workgroup will also explore opportunities for efficiencies in other related laws and authorities. The workgroup will start by identifying which authorities have stand-alone implementing regulations and/or policies, such as the NHPA, the Endangered Species Act, and Section 404 of Clean Water Act. The workgroup will identify potential efficiencies, and work with the relevant agencies to make the changes needed to implement the efficiencies. The workgroup will then aim to identify which authorities have agency-specific implementing regulations or policies, such as Executive Order (EO) 11988 as amended by EO 13690 (floodplains) and EO 11990 (wetlands), seek to identify efficiencies, and align these regulations and policies. The workgroup 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 workgroup plans to create a website that can be utilized to look up the funding programs and related environmental review requirements for housing and housing-related infrastructure projects. The website will also include information on the coordinated environmental review process initiative. The workgroup intends for the website to be available through the HUD Office of Native American Programs website, with updates to site content provided by workgroup members as needed.

**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 that aren't related to housing. As the efforts of the coordinated environmental review process workgroup lead to changes in the environmental review process for housing and housing-related infrastructure projects, commenters felt that it would be beneficial for other actions to have the same environmental review. Commenters felt the workgroup 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 workgroup will keep possible expansion in mind, and begin to assemble information about the other agencies and funding programs that would 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, although it has yet to be rolled out to tribes. Commenters identified interest in having an automated tool that would cover all funding sources. The tool would need to accommodate the requirements of all federal agencies, including any simplified process that is developed by the workgroup. As developing a simplified process has been identified as the primary priority for the workgroup and would greatly influence such a tool, the workgroup plans to wait to develop an automated tool until a process is determined. Developing an automated tool would also involve contract support and decisions and agreements amongst the workgroup agencies on resources.

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

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

**Status:** HUD continues to explore options, including regulatory changes, to alleviate the paperwork burden of documenting environmental reviews for administrative activities. In the meantime, HUD is exploring guidance on how to prepare recurring annual environmental reviews for administrative activities, as well as the use of a programmatic exclusion from environmental review. The Final Report also recommends updating HUD's Acceptable Separation Distance (ASD) Regulations. HUD is considering revisions to the ASD regulations to allow residential propane tanks, likely up to 250 gallons, without a required separation distance. In the meantime, HUD continues to consider waiver requests.

## Implementation Plan Timeline

Action Item	Action Item Detail
<i>BLUE = very heavy lift    RED = heavy lift    ORANGE = medium lift</i>	<i>GREEN = light lift    No Color: Not a workgroup item (HUD item)</i>
<b>FY 2018 goals</b>	
Ensure tribal input (2)	Solicit Nominations for tribal workgroup members
	Begin participating in regional consortiums
Coordinated environmental review process website (8)	Launch coordinated environmental review process website
Identify opportunities for greater efficiencies (7)	Publish a workgroup statement on THPO resources
	Identify stand-alone implementing regulations
	Identify agency-specific implementing regulations or policies
Develop a single form or format (1)	Determine approach
Develop common categorical exclusions (3)	Determine opportunities for common categorical exclusions
Develop resources to encourage the use of NEPA efficiency tools (5)	Develop NEPA tool resources
Ease paperwork burdens for administrative activities (HUD) (11)	Prepare guidance on yearly reviews for administrative activities
	Programmatic exclusion from environmental review for certain administrative activities
<b>FY 2019 goals</b>	
Ensure tribal input (2)	Continue participating in regional consortiums
Identify opportunities for greater efficiencies (7)	Statement on THPO 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
<b>FY 2020 goals</b>	
Ensure tribal input (2)	Continue participating in regional consortiums
Identify opportunities for greater efficiencies (7)	Statement on THPO resources
	Archaeological survey guidance
	Sharing completed Section 106 documents guidance
	Interagency agreement on acceptable alternatives to FEMA maps
Develop a single form or format (1)	Draft form / formats
<b>FY 2021 goals</b>	



Identify opportunities for greater efficiencies (7)	Potential efficiencies for stand-alone implementing regulations
	Potential efficiencies for agency-specific implementing regulations or policies
Ensure consistency (6)	Implement agency staff training
Ensure tribal input (2)	Continue participating in regional consortiums
Identify opportunities for greater efficiencies (7)	Statement on THPO resources
<b>FY 2022 goals</b>	
Develop an interagency environmental review automated tool (10)	Begin development of an automated tool
Identify opportunities for greater efficiencies (7)	Negotiate changes to stand-alone implementing regulations
	Negotiate changes to agency-specific implementing regulations or policies
Ensure tribal input (2)	Continue participating in regional consortiums
Identify opportunities for greater efficiencies (7)	Statement on THPO resources

## Crosswalk of Final Report Recommendations and Implementation Plan Action Items

Final Report Recommendation	Associated Action Item(s)
1. Incorporate Environmental Review Documents by Reference	<b>Action item (5):</b> Develop resources to encourage the use of NEPA efficiency tools <b>Action item (8):</b> Develop a coordinated environmental review process website
2. Develop Common Categorical Exclusions	<b>Action item (3):</b> Develop common categorical exclusions
3. Address Resource Deficiencies at BIA	No action items
4. Provide Training for Agency Staff	<b>Action item (5):</b> Develop resources to encourage the use of NEPA efficiency tools <b>Action item (6):</b> Ensure that review requirements are being applied consistently <b>Action item (8):</b> Develop a coordinated environmental review process website
5. Provide Training for Tribes	<b>Action item (4):</b> Create a planning playbook <b>Action item (5):</b> Develop resources to encourage the use of NEPA efficiency tools <b>Action item (6):</b> Ensure that review requirements are being applied consistently <b>Action item (8):</b> Develop a coordinated environmental review process website
6. Continue Review of Related Environmental Laws and Authorities to Identify Opportunities for Greater Efficiencies	<b>Action item (7):</b> Identify opportunities for greater efficiencies within the Related Environmental Laws and Authorities
7. Create Regional Consortia	<b>Action item (2):</b> Ensure tribal input
8. Explore the Development of an Interagency Environmental Review Automated Tool	<b>Action item (10):</b> Develop an interagency environmental review automated tool
9. Explore HUD-Specific Regulatory and Policy Improvements	<b>Action item (11):</b> Ease paperwork burdens for administrative activities (HUD)
10. Create More Predictable Funding Mechanisms	<b>Action item (4):</b> Create a planning playbook <b>Action item (8):</b> Develop a coordinated environmental review process website
11. Establish an On-going Environmental Review Interagency Workgroup	<b>Action item (2):</b> Ensure tribal input

12. Explore Expanding the Scope of this Effort	<b>Action item (9):</b> Expand effort to include actions that are not housing-related
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\*\* **Action item (1)**, Develop a single form or format, or a system of formats, for environmental reviews for housing and housing-related infrastructure projects, does not address a Final Report recommendation. 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.