

Guide to Applicants for Preparing Environmental Reports for Categorical
Exclusions
Under § 1970.54

Overview

USDA Rural Development (Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS) each referred to individually as the "Agency") is required to assess and consider the impacts of proposed federal actions, such as the provision of financial assistance through each of the Agency's programs, to the human environment in accordance with the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA), Section 7 of the Endangered Species Act (ESA), and other applicable federal, state, and local environmental laws. If applicant's proposed actions are classified under § 1970.54, "Categorical Exclusions Involving Small-scale Development," they must provide an Environmental Report (ER) with their application. The ER provides project-specific information including an evaluation of the proposal's potential to impact specific environmental resources and historic properties so that the Agency can either complete the required environmental review process or determine if additional impact analysis may be needed. The ER also assists the Agency in verifying that the proposal is consistent with § 1970.54, and that there are no extraordinary circumstances, listed in § 1970.52, that would preclude the proposal from being categorically excluded. An extraordinary circumstance may warrant a higher level of review (environmental assessment or environmental impact statement). The Agency will notify applicants if additional information or analyses are necessary beyond what was submitted in the ER.

The following sections provide specific guidance to applicants and their environmental consultants in preparing ERs. ERs must be submitted to the Agency along with applications for financial assistance and the Agency must complete the environmental review process prior to approving those applications. In addition to agency or resource-specific references, a useful screening tool is EPA's "NEPAssist" (nepassisttool.epa.gov/nepassist/entry)

No construction activities may begin until the Agency completes its environmental review process. In accordance with § 1970.12, applicants are prohibited from taking actions "that may potentially have an environmental impact or would otherwise limit or affect the Agency's decision until the Agency's environmental review process is concluded." If the proposed project involves construction activities, the applicant is generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property or facilities, or committing or expending federal or non-federal funds that are subject to reimbursement by the Agency until after the Agency completes its environmental review process.

If the applicant moves forward with any such activities prior to the Agency's completion of the environmental review, and those activities affect the Agency's ability to conclude the NEPA analysis, the Agency may deny the request for financial assistance.

An applicant may use an environmental document that has been prepared in connection with obtaining permits, approvals, or other financing for the proposed project from state, local or other federal agencies. Such material, to the extent determined to be relevant, may be incorporated by reference into the Agency's environmental review. However the Agency retains the right to request additional information or analyses as necessary.

Applicants shall not reference items provided in other parts of the application package in the ER; all materials relevant to the ER must be integrated herein to facilitate timely review.

Information to be included in the Environmental Report

(a) **Project Description and Location:** Provide a complete project description including a description of all project-related activities such as land purchase, easements/rights-of-way procurement, acreage/area, and proposed clearing, grading, excavation, paving, new construction, utility installations, fencing, etc. that will be involved with the project. Complete descriptions, locations, and maps must be provided for each site affected by project-related activities. Maps must be equivalent to a Geological Survey 7.5-minute quadrangle map at a map scale of 1:24,000; larger scale maps may be provided for site-specific proposals. USGS maps may be obtained and purchased at <http://www.usgs.gov/pubprod/maps.html>. All project elements, if known at the time of the application, must be clearly shown on any map provided. If appropriate, photographs or aerial photographs of site-specific conditions may also be provided.

(b) **Land Ownership and Land Use:** The ER must describe the amount of property to be affected or disturbed by each project site(s) including the site's current land use and, if applicable, zoning.

(1) The ER must document the land ownership (federal, state, or private) of each project site or rights-of-way (ROWs), including any formally classified lands such as parks, wilderness areas, state or national forests, etc. Land ownership will dictate with whom the Agency must consult with to determine whether there will be an adverse effect to such land areas or resources, or if any permits are needed. Further detail is found in 1970 Subpart L - "Land Use and Formally Classified Lands." For information related to federal lands see <http://www.geocommunicator.gov/GeoComm/>.

This website provides cadastral survey and land management information and data from the National Integrated Land System specifically the distribution of the Public Land Survey System (PLSS), other survey-based data, and federal land boundaries. Please note that all roads and associated ROWs traversing federal lands are controlled by the appropriate federal agency.

(2) For all proposals except single family housing, the applicant must consider low income or minority populations that may be located within the vicinity of the proposal so that the Agency can document if they would be adversely affected by the proposal in accordance with 1970 Subpart E - Environmental Justice.

(3) For all proposals except for single family housing, non-construction proposals, and for those programs for which Intergovernmental Review is not required, the applicant is authorized to initiate consultation with State and local governments to afford them the opportunity to review program activities located in areas subject to their legal jurisdiction in accordance with Subpart I - Intergovernmental Review.

(4) The ER must indicate whether a Phase I Environmental Site Assessment (ESA) or a Transaction Screen Questionnaire (TSQ) (or other environmental due diligence procedures) has been completed on the proposal site within the past 6 months. Any ESA or TSQ should be part of the ER.

(c) **Historic Preservation:** The ER must describe all steps taken to identify historic properties as required under Section 106 of the National Historic Preservation Act (NHPA) and related legislation. Implementation guidelines are located at 1970 Subpart H - "Historic Preservation." Any correspondence with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs) or Tribes should be part of the Environmental Report. In accordance with S.106 of the NHPA, federal agencies are required to take into account the effect of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on those effects. Pursuant to 36 CFR §800.16(y), an "undertaking" is defined as a "project, activity or program funded in whole or part under the direct or indirect jurisdiction of a federal agency". The Agency has determined that the provision of Federal financial assistance to program applicants is an undertaking subject to S. 106 and its implementing regulations, "Protection of Historic Properties" (36 CFR part 800).

In accordance with 36 CFR § 800.2(d)(4), and by letters dated July 16, 2009 and August 14, 2012, RUS issued a blanket delegation authorizing all of its applicants to "initiate consultation." This blanket delegation allows RUS applicants to proceed through S.106 review as long as the applicant and consulting parties agree on the recommended finding of effect and any determinations of eligibility. RUS, which retains responsibility to document findings and determinations as required by 54 U.S.C. part 306114 [formerly Section 110(1) of NHPA], is likely to conclude S.106 review on the basis of the agreed upon recommendations. Federally recognized Indian tribes are legally considered sovereign nations entitled to a special government-to-government relationship with the federal government. Accordingly, RUS may not delegate to an applicant the authority "to consult" with Indian tribes. However, an applicant may "work with", "engage" or "involve" a federally recognized Indian tribe in S.106 review under delegated authority as long as the tribe is willing to participate. An applicant must involve RUS in S.106 review whenever a federally recognized Indian tribe requests the participation of the federal agency. RUS encourages federally recognized Indian tribes to work with its applicants under delegated authority in order to become involved as early as possible in S.106 review. Applicants authorized under this blanket delegation are required to involve RUS whenever there is an adverse effect, a disagreement between the applicant and consulting parties, an objection from a consulting party or the public, or a failure to adhere to regulatory requirements. The direct participation of RUS is required because all decision making authority in S.106 review rests with the federal agency. Accordingly, only RUS can successfully resolve these issues in the public interest.

(d) **Threatened and Endangered Species/Biological Resources:** The applicant is to assist the Agency in making determinations of effect under S. 7 of the Endangered Species Act, and thus the ER must document whether any project sites and activities will directly or indirectly affect any threatened, endangered, proposed or candidate species, or would adversely affect designated critical habitat. Applicants must obtain and provide species lists and appropriate species accounts (i.e. requisite habitat) from the Fish and Wildlife Service's website, <http://ecos.fws.gov/ipac/>, and, if applicable, National Marine Fisheries Service's website, <http://www.nmfs.noaa.gov/pr/species/index.htm>, for each county affected by construction. Information about potential critical habitat areas is found on the Fish and Wildlife Service's website, <http://ecos.fws.gov/ecp/report/table/critical-habitat.html>. It is the responsibility of the applicant to comply with any requirements of the Migratory Bird Treaty Act and/or the Bald and Golden Eagle Protection Act. Refer to the Agency's guidance for further information at 1970 Subpart N - "Biological Resources". The applicant is to notify the Agency immediately should it appear that formal consultation with the Services will be required.

(e) **Wetlands:** The ER must document whether wetlands are present on or near project sites. Without having a hired wetlands professional visit the site, mapped hydric soils are the best indicator of the presence of wetlands on a site. A map of hydric soils may be obtained from the Natural Resources Conservation Service website. Wetland maps are also available from the Fish and Wildlife Service's National Wetland Inventory (<http://www.fws.gov/wetlands/>) and state data (<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>). Agency implementation guidelines for wetland protection are located at 1970 Subpart G - "Wetland Protection." If the presence of wetlands is suspected and they are potentially impacted, applicants may be asked to provide a wetland delineation to establish locations, proximity, and diagnostic environmental characteristics (U.S. Army Corps of Engineers (December 1987), Wetland Delineation Manual.) with respect to proposed project sites and obtain Section 404 of the Clean Water Act authorization through the issuance of a permits from the U.S. Army Corps of Engineers.

(1) **Nationwide General Permits (NWP):** NWPs are issued for minor temporary wetland impacts including buried and/or aerial utility lines/cables, outfalls, discharges, and maintenance activities etc. Typically no additional wetland information is necessary other than the NWP and verification that such actions are within the general conditions of the NWP. A wetland delineation and a search for alternatives to wetland impacts is not required for NWPs as long as the general conditions of the NWP are followed.

(2) **Regional General Permits:** Wetland impacts authorized through a Regional General Permit (excluding NWPs) are not considered extraordinary circumstances, however proposals with general permits typically require a wetland delineation, and require consideration and documentation of alternatives completed either by ACE or by RD if desired to avoid adverse effects.

(3) **Individual Permits:** Wetland impacts authorized through an individual permit are considered an extraordinary circumstance under 1970.52 and an Environmental Assessment must be completed rather than an ER. Public noticing will also be required.

(4) **ConAct Programs:** Agency programs authorized under Section 363 of the Consolidated Farm and Rural Development Act may not utilize Agency funds to fill, alter or manipulate a wetland. Check with the Agency to ensure that the program you are applying for does not need to separate funds for wetland impacts, if proposed.

(f) **Floodplains:** The ER must document whether any project activities or facilities are located within a floodplain. This does not apply to buried and/or aerial utilities lines. If any project-related construction activities are within floodplains, a copy of a Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) that shows the location of construction activities must be included. Information related to floodplains and National Flood Insurance Maps may be obtained from the Federal Emergency Management Agency's (FEMA) website, <http://msc.fema.gov/portal>. Applicants or guaranteed lenders must complete and submit with their applications a copy of FEMA Form 086-0-32, <https://www.fema.gov/media-library/assets/documents/225>. Actions that do not adversely affect the hydrologic character of a floodplain, such as installation of buried utility lines, telecommunication cables, subsurface pump stations, electric transmission lines, or purchase of existing structures within the floodplain, would not create an extraordinary circumstance, and would not require an EA, but may still require consideration of alternatives when determined appropriate by the Agency. If the proposal will convert, occupy, place fill, or modify the 100-yr floodplain, or 500-yr floodplain for critical actions, or substantially improve structures within them, as defined in 1970 Subpart F - Floodplain Management, an extraordinary circumstance exists and the proposal is not eligible for a categorical exclusion. Critical actions include any activity for which even a slight chance of flooding would be too great. Examples include: An action a structure or facility producing and/or storing highly volatile, toxic, radioactive, or water-reactive materials; structures such as hospitals, nursing homes, prisons, and schools, where occupants may not be sufficiently mobile and have available transport capability to avoid loss of life and injury given the flood warning lead times available; essential or irreplaceable resources, utilities, or other functions that could be damaged beyond repair, destroyed, or otherwise made unavailable.

(g) **Coastal Areas:** The ER must document whether any project sites are within the boundaries of a coastal zone management area (CZMA) and/or Coastal Barrier Resource Area (CBRA). For information related to CZMA, see National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management's website, <https://coast.noaa.gov/czm/>. Development on Coastal Barrier Resources is prohibited except for a few narrow exceptions. More detailed instructions related to coastal areas can be found in 1970 Subpart O - Coastal Zones and Coastal Barriers.

(h) **Important Farmland:** The ER must document whether any project sites (except utility line construction) will convert agriculture lands defined as important farmland by the USDA Natural Resources Conservation Service (NRCS) to non-agricultural uses. For specific information related to effects to farmland see NRCS's website, <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/>. NRCS uses a land evaluation and site assessment (LESA) system to

establish a "farmland conversion impact rating" score on proposed project sites. This score is used as an indicator for applicants and

RD Instruction 1970-B

Exhibit C

Page 7

the Agency to consider alternative sites if the potential adverse impacts on farmland exceed the recommended allowable level (if total points are equal or exceed 160, alternative sites must be considered). The assessment is completed on a NRCS form, [AD-1006](#), Farmland Conversion Impact Rating. The portions on the form that are indicated to be completed by a federal agency can be inputted by applicants in coordination with the Agency. The Agency, however, will coordinate the submittal of Form AD-1006 to the NRCS for processing. Implementation guidelines are located at 1970 Subpart L - "Land Use and Formally Classified Lands."

(i) **Environmental Risk Management:** The ER must document the affect hazardous materials, substances or wastes that may be released at, generated by, or required for the operation of a proposed facility may have in the context of a real estate transaction. In addition, the environmental condition of a property and any proposal's management and operation activities that use or create these materials or wastes need to be evaluated to determine and manage risks to the environment and people. These risks include the presence of lead-based paints, asbestos, or mold. In order to determine the environmental condition of a parcel of real estate, the applicant may be responsible for completing the ASTM E1528-14, Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process; ASTM E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process; or ASTM E2247-08, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessments for Forestland or Rural Property. If the proposal includes an existing facility, the applicant may be responsible for completing the ASTM E2107, Standard Practice for Environmental Regulatory Compliance Audits. Implementation of these processes, as well as those described in 1970 Subpart J, "Environmental Due Diligence", is defined by each RD program, so consult the Agency environmental staff for further guidance.

(j) **Other Resources:** The ER must document whether any project sites are located within key water resource areas such as sole source aquifers or wellhead protection areas. The ER must also identify, as appropriate, if the proposal will affect coral reef ecosystems of American Samoa, Florida, Guam, Hawaii, Northern Marianna Islands, Puerto Rico, and the U.S. Virgin Islands. Implementation guidelines are located at 1970 Subpart O - "Other Protected Resources."