

Vermont Community Development Program

Environmental Review Tips & Tricks

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AGENCY OF COMMERCE & COMMUNITY DEVELOPMENT
DEPT. OF HOUSING & COMMUNITY DEVELOPMENT

Learning Objectives

- Understand the purpose of Environmental Review (ER).
- Become familiarized with the steps of ER and what occurs at each step as you move through the process.
- Learn about several regulations that often have compliance issues and how you can prevent this in your project.
- Understand the different levels of ER and how to know which level your project will fall into.
- Become more comfortable with the entirety of ER, so that your grant process is smoother and less daunting.

Purpose & Importance of Environmental Review

Assess the impacts of the project on the environment and the impacts of the environment on the project; involve the public in the decision-making process; and make better-informed decisions.

- **Clients:** Protect health & safety.
- **Environment:** Avoid or mitigate harm.
- **Ensure:** Funds can be used as desired
- **Avoid:** Litigation
- **Required:** National Environmental Policy Act (NEPA)

More on NEPA

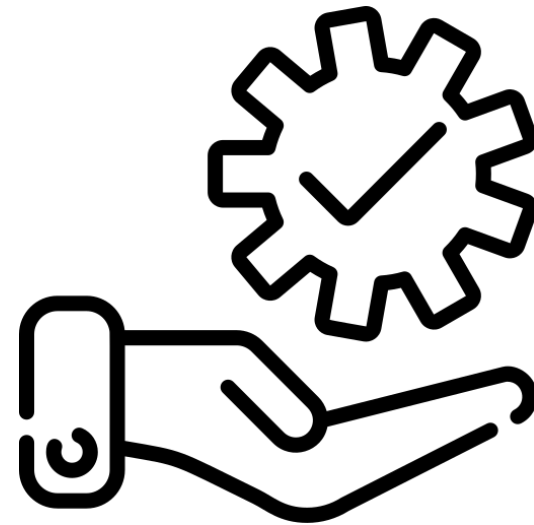
-Umbrella statute that provides framework to comply with environmental laws and regulations.

-Includes: *Endangered Species Act, Historic Preservation Act, Clean Air Act, Floodplain and Wetland Protection, Noise, Environmental Justice, & Toxic Sites.*



When does an Environmental Review Happen?

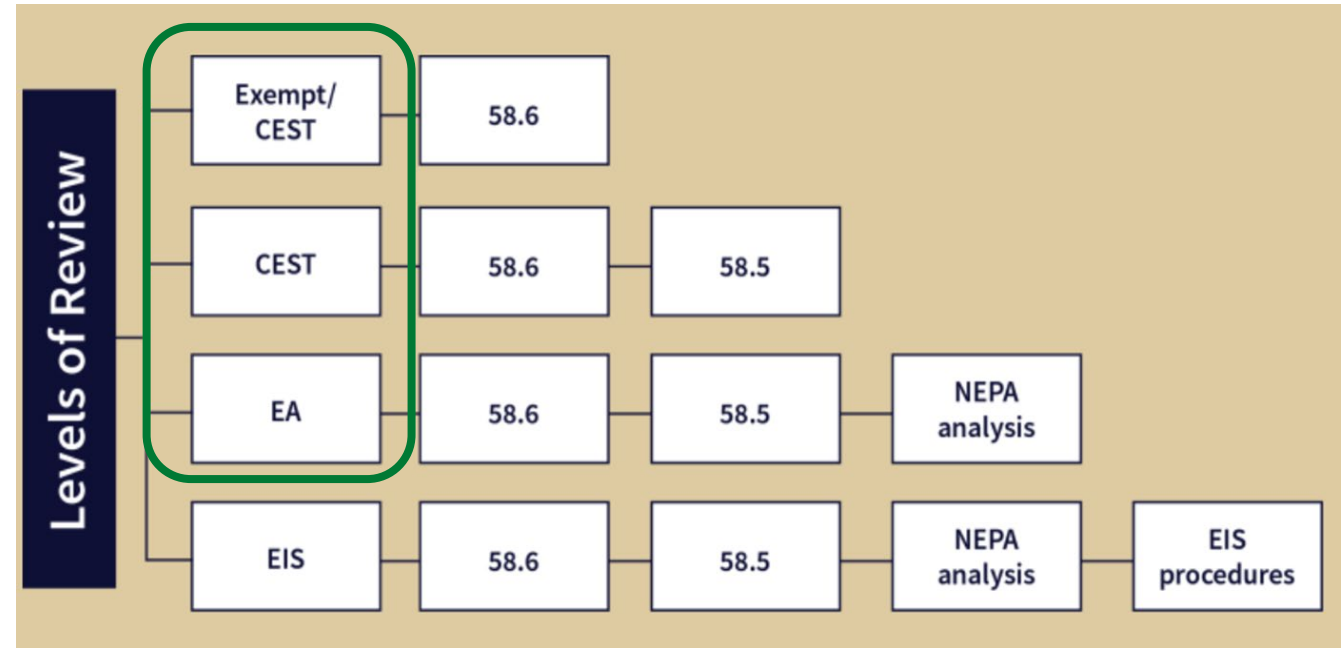
- An Environmental Review should take place as early in the process as possible.
- Open the ER at the same time as the application is opened.
- Most efficient and effective when it is part of the planning process.



What are the Levels of Environmental Review?

- Exempt/CEST-Categorically Excluded NOT Subject to (58.5)
- CEST-Categorically Excluded Subject to (58.5)
- EA-Environmental Assessment
- EIS-Environmental Impact Statement (N/A)

There are only 3 potential levels of review for our purposes.



ER Level: Exempt (58.34 & 58.35 (b))

- Planning Grants
- Urgent Need Grants (Federally Defined)
- No Public Notice period

IMPORTANT NOTE: ERs at the exempt level are not exempt from the ER process, they are being completed at the “exempt level”.

Example of Exempt Project: Almond Blossoms Schoolhouse in Saint Albans- ACCD provided funding for construction documents and to complete their historic and environmental review.



ER Level: Categorically Excluded (58.35)

- Projects will fall into this category if they involve...
 - Minor Rehab
 - Increase in Occupancy or Footprint < 20%
 - No Change in Land Use
- These projects have a 7 day comment period and a 15 day objection period.



ER Level: Environmental Assessment

- Everything else will fall into this assessment level; the highest level of review.
- This level has a 15 day comment period and a 15 day objection period.
- The purpose is to evaluate the project as a whole:
 - Determine existing conditions and trends.
 - Identify all impacts
 - Examine alternatives to the project.



Choice Limiting Actions: What Defines Them?

- Grantees and partners are not allowed to commit or spend HUD or non-HUD funds on physical or choice-limiting actions until the ER process is complete.
- Funds cannot be committed until ER is complete and a Request for Release of Funds has been received.

Choice Limiting Activities

- Acquiring or leasing property
- Entering into a contract
- Leasing, rehabilitation, demolition, new construction, and ground disturbance work.
- Going out to bid.
- Initiating project activities.



What is the Choice Limiting Window?

No funds are committed
or spent...



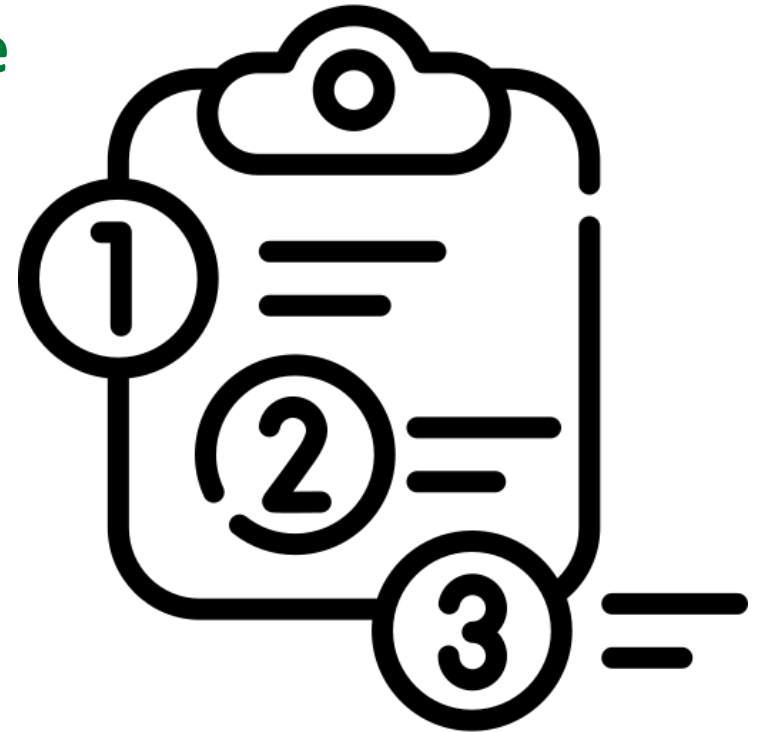
...until the ER is complete
and an approved Request
for Release of Funds has
been approved (when
needed)

- Once you consider and/or determine that you want to apply for federal funds, you should stop any activity on the project site.
- It is important to consider how this decision is documented.
 - Is it in meeting minutes, email, another document etc.



What are the Steps for Environmental Review?

1. Open the Environmental Review (ER) on GEARS
2. Define the Project
3. Determine Level of Review
4. Perform the Environmental Review Analysis and Document Compliance
5. Finalize the ER and Publish Applicable Notice
6. Environmental Review Release is Received
7. Expend Project Funds
8. Upload Conditions if Required/Post-Review



ER Step 1: Open ER in GEARS System

GEARS= Grants Electronic Application and Reporting System

- Vermont Community Development Program's (VCDP) grant process takes place using GEARS, including the Environmental Review aspect.
- The municipality must open up the project on GEARS



GEARS

Grant Electronic Application and Reporting System



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ER Step 2: Defining the Project

Project Description is a key step in the ER process.

- List all potential project activities that may take place.
- Capture maximum scope of the proposal, not just what the HUD funding will cover.

If a project activity
is added after the
ER release and was
not in the project
description...



...A new ER might be
required.

What Should I Include in my Project Description?

Area of proposed ground disturbance



Changes that will be made to structures



Existing conditions/property use



Size of parcel & existing buildings



Funding Sources



Scope of work to be performed



Examples of Project Activities

Roof repair, drainage, window replacement, hazardous waste removal, accessibility modifications, weatherization upgrades, septic system repairs, installation of wells/septic systems etc.

ER Step 3: Determine Level of Review

What Level of Review is my Project?

1. Exempt (24 CFR 58.34)
1. Categorically Excluded (25 CFR 58.35)
1. Environmental Assessment (24 CFR 58.36)



ER Step 4: Analysis & Compliance Documentation

- This step ensures that the project has supporting documentation through using the ER checklist.
- Common Areas with Compliance Issues:

Noise

Toxics Control

Explosives

Historic
Preservation

Historic Preservation Compliance

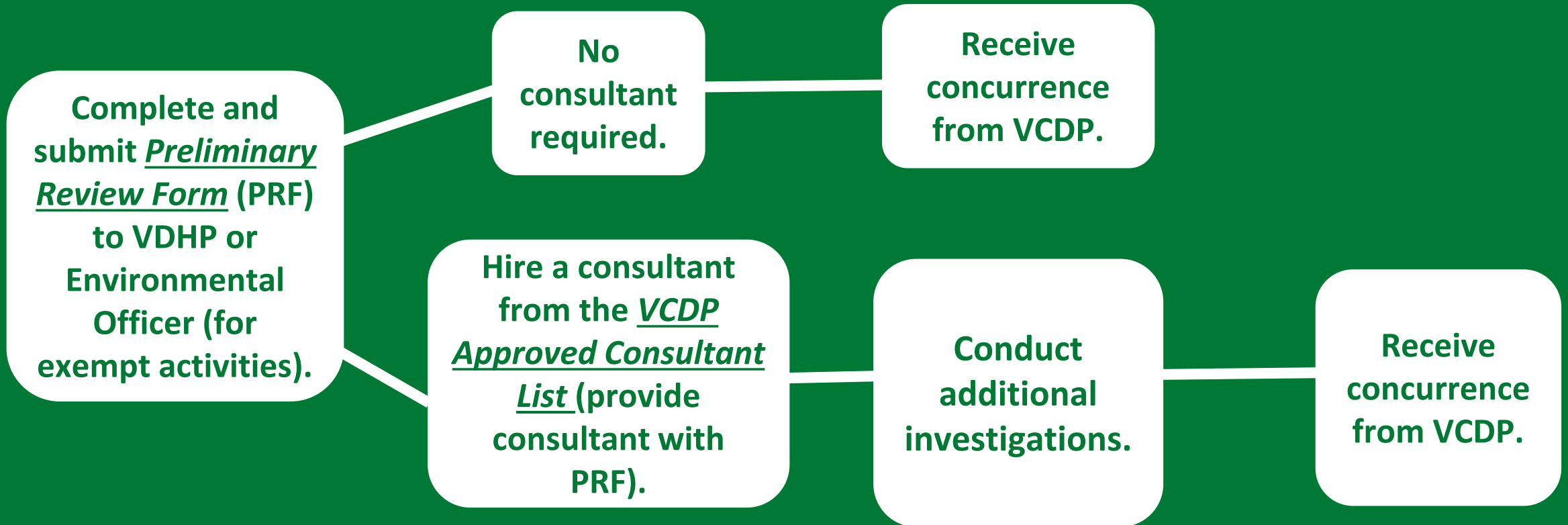
National Historic Preservation Act (NHPA) of 1966 (Section 106 & 110) 36 CFR Part 800

- Must consider the potential effects of actions on historic properties, must reference the National Register of Historic Places.
- A Preliminary Review Form (**PRF**) must be submitted for each project.
- Some properties and activities are exempt from Section 106 compliance:

Exempt Properties	Exempt Activities
<ul style="list-style-type: none">● < 50 Years Old● Not listed on NRHP or in historic district.● No ground disturbance.	<ul style="list-style-type: none">● Appendix A of the VCDP Programmatic Agreement.



Historic Preservation: Section 106



Historic Preservation: Completing your PRF

- Question 5J: Refer to Appendix A of Programmatic Agreement
- Question 5k: Explain how project scope follows ACHP Statement on Affordable Housing & Historic Preservation

5. Project information:

- a. Project involves ground disturbance: Yes No
- b. Building is more than fifty (50) years old: Yes No
- c. Building is listed in the National Register of Historic Places: Yes No Unknown
- d. Property is located in a Historic District: Yes No Unknown
- e. Property is located in a Designated Downtown or Village Center: Yes No Unknown
- f. This project is a scattered sites/revolving loan fund: Yes No
- g. Will the project utilize Rehabilitation Investment Tax Credits (RITC): Yes No
- h. This project qualifies as Affordable Housing under ACHP "Policy Statement on Affordable Housing & Historic Preservation:": Yes No Unknown
- i. Project requires Act 250 or Section 248 review: Yes No Unknown
- If you answered "Yes" to 5(a), (b), (c), or (d):
- j. Does the Project consist solely of exempt activities listed in Appendix A: Yes No
- k. If you answered yes to 5(h) please briefly describe if the project scope of work would be limited to exemptions in the [ACHP Policy Statement on Affordable Housing & Historic Preservation](#):
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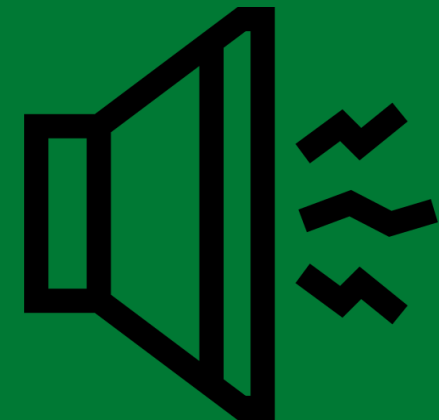
If you answered "Yes" to 5(a), (b), (c), or (d):

- j. Does the Project consist solely of exempt activities listed in Appendix A: Yes No
- k. If you answered yes to 5(h) please briefly describe if the project scope of work would be limited to exemptions in the [ACHP Policy Statement on Affordable Housing & Historic Preservation](#):
[]

Noise

Noise Control Act of 1972 24 CFR Part 51 Subpart B

1. Determine if compliance is triggered.
2. Calculate the Day/Night Noise Level (DNL) for the proposed project location.
3. Determine if noise levels are above 65 decibels (dB).
4. Consider mitigation, if DNL is above 65 dB.



Noise

What noise sources should be considered that will trigger a DNL?

- Major roadways within 1,000 feet of the project location.
- Railroads within 3,000 feet.
- Airports must be considered if within 15 miles.
- Loud Impulsive Sounds (from neighboring land uses).

What are mitigation options?

Sound-Attenuating
Building

Traffic Calming
Measures

Separation

Topography
(Barriers)



Explosives

24 CFR Part 51 Subpart C

1. Determine if compliance is triggered.
2. Consider all Above Ground Storage Tanks (ASTs) near the project & proposed as part of the project
3. Determine the **contents** of all identified tanks
 - Consider tanks greater than 100 gallons if contents are considered common industrial fuels
 - Consider tanks of any capacity containing hazardous liquids or gases that are not common industrial fuels
4. If any identified, calculate the Acceptable Separation Distance (ASD)
5. Consider mitigation, if proposed



SITE VISIT=MOST EFFECTIVE



ANR Atlas= Great resource if site visit is not possible.

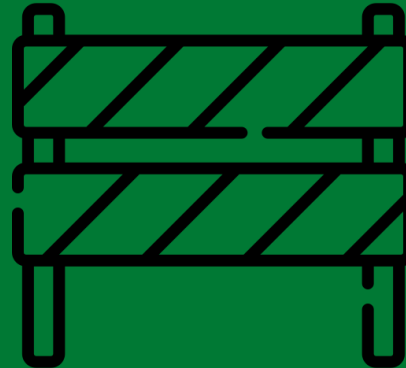
What are Mitigation Options for Explosives?

Consider existing topography that could act as a barrier

Modify the building to compensate for ASD

Selecting another site

Have a licensed professional design a barrier



Burying the hazard

Toxics Compliance

24 CFR Part 58.5 (i) (2)

- All property in HUD projects should be free of hazardous materials, contamination, toxic chemicals, gases, and radioactive substances.

- What is a Phase I Environmental Site Assessment(ESA)?

- Desk review for determining if there are/were hazards present; non-intrusive process
- Identify Recognized Environmental Conditions (RECs)
- Include a Vapor Encroachment Screening (VES).
- All projects require a Phase I ESA except single-family (1-4 unit) properties.

- What Occurs in a Phase II ESA?

- Physical testing to rule out or confirm the presence of RECs.
- A Corrective Action Plan will be developed if RECs are confirmed.



Toxics: What is a Recognized Environmental Conditions (REC)?

- **REC:** Presence or likely presence of hazardous substances or petroleum products on a property that indicate the release or potential release of these substances into the structure or water sources of the property.

What might a REC look like on a property?

- A leaking underground storage tank.
- Prior release of hazardous substances on/adjacent to the property.
- Property nearby is a hazardous waste site (Ex: Old auto garage).
- Lead paint observed in building- could mean lead presence in soil.
- Unknown fill material on site that requires further investigation.



Toxics Compliance: Important Timeline Notes

- Phase I: 180-day/1 year threshold.
 - Clock starts when Phase I was started.
 - You want to plan timing to avoid needing an update, but you also want to ID issues early on.
- Phase II: If more than a year old, it needs to be reviewed.
 - Try to identify potential toxic site issues, to prevent holdups.



Toxics Compliance: Corrective Action Plans (CAP)

- Details proposed cleanup strategies based on the ESA.
- The CAP should reflect the current site conditions.
- **Common Types of Corrective Action:**
 - Removal of contaminated soil
 - Cleaning up groundwater
 - Engineering Controls
 - Institutional Controls
- **Important CAP Reminders:**
 - Draft CAP must be reviewed by the DEC (within 30-day window) and requires its own public notice.
 - Implementation of the CAP happens after the ER Release is received.
 - If you require a CAP, check and plan accordingly if your Phase I will pass the original 180-day threshold.



ER Step 5: Finalize ER & Publish Applicable Notice

- If CatEx convert to exempt(no mitigation is needed)----- no public notice
 - This is **NOT** possible for ER completed at the assessment level.
- Public notice templates are available in the GEARS system as well as from the Environmental Officer.
- Important Information in Public Notice:
 - Mitigation Measures
 - All HUD funding sources
- Public notice of the project must be published in a way that **adequately serves** the public area.
 - It should also be sent directly to any known, interested parties.

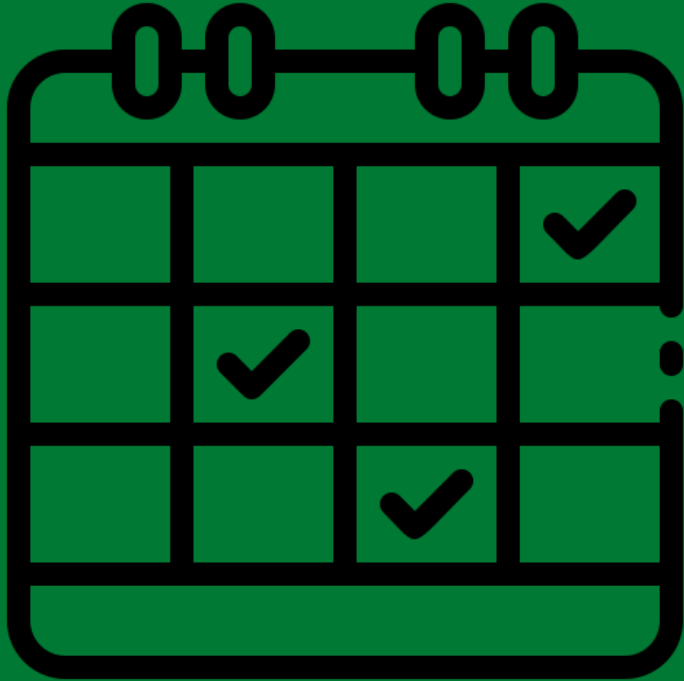


More on Public Notice & Finalization

- All received public comments must be considered and responded to individually– responses must come from office of Responsible Entity.
- Public comments may result in a re-evaluation of ER conclusions, though this is very unlikely.
 - Public process is an important step of ER and NEPA even though receiving comments is rare.
- The certification must be completed by the Municipal Authorizing Official.
 - This is done in GEARS.
 - Should be done in timely manner, as it initiates the 15-day objection period.
 - Raise concerns before certifying.



ER Step 6: ER Release is Received



- This will detail the Environmental Review Conditions
 - Ex: if mitigation is required as part of implementation.
- **Common ER Conditions:**
 - Toxic Sites– *Implementation of a CAP.*
 - Floodplain Management–*8 Step Process.*
 - Lead, Asbestos, Mold– *Abatement.*
- Conditions **must be** specific.
- An anticipated timeline of construction and project completion at the time of ER Release is helpful!
 - A follow-up will occur 6 months after ER Release.

ER Step 7: Expend Project Funds



- Once the Environmental Review has been certified and compliance for the existing conditions has been assured, you are now able to utilize project funds!
- At this point, choice-limiting activities are allowed.

ER Step 8: Post Review Consideration/Upload Conditions



- This is completed to ensure that the required mitigation measures were implemented.
- Were all ER conditions satisfied?
- Documentation is added to the ER Record in GEARS.