

**Memorandum of Understanding**  
between the  
**U.S. Department of Housing and Urban Development,**  
**Council on Environmental Quality,**  
**U.S. Department of Agriculture,**  
**U.S. Department of Commerce,**  
**U.S. Department of Energy,**  
**U.S. Environmental Protection Agency,**  
**U.S. Department of Health and Human Services,**  
**U.S. Department of the Interior, and**  
**U.S. Department of Transportation**  
regarding  
**Environmental Review Coordination for Certain Native American Housing and Housing-Related**  
**Infrastructure Projects**

I. Purpose

This Memorandum of Understanding (MOU) is entered into between the U.S. Department of Housing and Urban Development (HUD), Council on Environmental Quality (CEQ), U.S. Department of Agriculture (USDA), U.S. Department of Commerce (Commerce), U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), U.S. Department of Health and Human Services (HHS), U.S. Department of the Interior (DOI), and U.S. Department of Transportation (DOT), referred to collectively as the "parties" to this MOU.

The purpose of this MOU is to further the shared goals of the parties to ensure comprehensive NEPA environmental reviews<sup>1</sup> while facilitating access to federal assistance for housing and housing-related infrastructure projects in Indian country involving multiple agencies by avoiding duplication of analyses and ensuring efficient environmental review processes for both tribes and agencies. This MOU seeks to further these goals by encouraging the use of three existing National Environmental Policy Act (NEPA) efficiency tools, as already set forth in CEQ NEPA regulations, and described throughout this MOU. On December 15, 2015 the parties published the *Coordinated Environmental Review Process: Final Report* (Final Report).<sup>2</sup> One of the recommendations of the Final Report was to encourage use of (1) incorporation by reference as a best practice.<sup>3</sup> CEQ NEPA regulations allow a federal agency to incorporate by reference a prior NEPA document prepared by the agency or by another agency, as well as any other publicly available studies or material, in their NEPA review.<sup>4</sup> CEQ NEPA regulations also allow (2) cooperating agency agreements, which can facilitate the preparation of a single NEPA review.<sup>5</sup> Another tool available under CEQ NEPA regulations is (3) adoption, whereby one agency can adopt the completed Environmental Assessment (EA) or Environmental Impact Statement (EIS) of another agency if the original review satisfies the adopting agency's NEPA requirements.<sup>6</sup> This MOU seeks to promote

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<sup>1</sup> The term "environment review" encompasses review processes related to the National Environmental Policy Act (NEPA) and its implementing regulations and all of the related laws and authorities.

<sup>2</sup> Coordinated Environmental Review Process: Final Report. The Final Report was issued on December 15, 2015.

<sup>3</sup> See pg. 24 of the Final Report.

<sup>4</sup> 40 CFR 1502.21.

<sup>5</sup> 40 CFR 1501.6, 1508.5.

<sup>6</sup> 40 CFR 1506.3.

the use of these three efficiency tools, incorporation by reference, cooperating agency agreements and adoption, among the parties and tribal partners when federal assistance from more than one agency is sought for a housing or housing-related infrastructure project in Indian country.

This MOU seeks to further prevent duplicative and time-intensive processes for tribes by encouraging the use of these three efficiency tools when a tribe is conducting a NEPA review as a responsible entity under HUD's 24 CFR Part 58 (Part 58) NEPA implementing regulations. Part 58 has a unique environmental review process, allowing tribes to assume authority and responsibility for the environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and the related environmental laws and authorities.<sup>7</sup> The HUD Office of Native American Programs funding programs that are authorized under Part 58 and subject to this MOU are listed at Section III.A of this MOU. The use of the cooperating agency agreement tool with the tribe as the lead agency, or tribal NEPA documents that are adequate for agencies to incorporate by reference or adopt, can allow the tribe to only prepare one NEPA review.

This MOU also seeks to facilitate an agency's efficient use of these three NEPA efficiency tools. The scope of this MOU is limited to certain programs, but the MOU in no way precludes the use of NEPA efficiency tools in other scenarios.<sup>8</sup>

## II. Background

In a 2014 report, the Government Accountability Office (GAO) recommended the establishment of a coordinated environmental review process for all agencies overseeing tribal housing development, and related infrastructure, to increase consistency and reduce time and predevelopment cost for Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) grant recipients. Subsequently, the Senate Report accompanying the FY 2015 Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill directed HUD "to collaborate with the Council on Environmental Quality and affected Federal agencies . . . to develop a coordinated environmental review process to simplify tribal housing development and its related infrastructure needs."<sup>9</sup> As a result, HUD collaborated in a workgroup with the parties to this MOU to produce the Final Report which included recommendations to expedite the environmental review process.<sup>10</sup> The parties to this MOU continue to meet as a workgroup to implement the recommendations of the Final Report.<sup>11</sup>

The environmental review process is driven by NEPA. NEPA requires agencies to undertake an assessment of the potential environmental effects of their proposed actions, consider reasonable alternatives to proposed actions, and allow for public participation prior to taking actions and making

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<sup>7</sup> 24 CFR Part 58 applies when legislation for a program allows states, local governments or tribes to assume authority. 24 CFR 58.1(b) lists programs authorized under Part 58. See the related laws and authorities listed in Attachment A.

<sup>8</sup> See Section III, Mutual Interests of the Parties. This MOU discusses HUD NAHASDA programs as they apply to tribes, in accordance with the language in the GAO report and the Senate Report that led to the coordinated environmental review effort. The significance of that approach is that the HUD ICDBG program and the HUD Native Hawaiian programs are not mentioned. Although these programs are not mentioned, the MOU in no way precludes the use of NEPA efficiency tools for projects under these programs.

<sup>9</sup> S. Rep. No. 113-182, at 121 (2014).

<sup>10</sup> The parties to this MOU also issued the Coordinated Environmental Review: Interim Report that discussed the progress of their efforts on May 6, 2015.

<sup>11</sup> See Attachment C for a commitment of the parties to implementing the Final Report recommendations.

decisions. Projects entirely or partly financed, assisted, conducted or approved by federal agencies must comply with NEPA and other applicable, related federal laws and authorities. Duplication of effort in meeting NEPA requirements can occur when more than one federal agency provides federal assistance to a project. Each agency is responsible for environmental compliance for its action, and multiple environmental reviews can result. In addition, multiple agencies may require compliance with many of the same applicable federal laws and authorities, including statutes, executive orders, regulations, and agency policies and procedures.<sup>12</sup>

The parties recognize previous MOUs that have facilitated tribal access to housing, which includes the MOU between the USDA, HUD and DOI to increase home ownership in Indian country; the MOU between the USDA, HUD and the US Department of Veterans Affairs to develop common procedures for the review of applications for loan programs; and the MOU between USDA, HHS, HUD, DOI and EPA to coordinate the provision of safe drinking water and basic sanitation in Indian country. These MOUs are not superseded by this MOU.

### III. Mutual Interests of the Parties

The parties to this MOU may provide assistance to tribes for housing and housing-related infrastructure projects through various programs. The application of this MOU is limited to the following programs. The scope of this MOU is limited to certain programs listed in this Section, but the MOU in no way precludes the use of NEPA efficiency tools in other scenarios.<sup>13</sup>

#### A. U.S. Department of Housing and Urban Development:

Through the Office of Native American Programs, HUD offers programs aimed at improving housing and fostering economic and community development for tribes. HUD funds may be used for both housing development and infrastructure development.

The principal source of HUD funding for tribal housing projects is the Indian Housing Block Grant (IHBG). Eligible IHBG recipients are federally recognized tribes or their Tribally Designated Housing Entities (TDHE). IHBG funds may be used for improvements and the development of single-family and multifamily dwelling units, as well as infrastructure improvements and development related to housing.

The Title VI Loan Guarantee program provides financing guarantees to private-market lenders for loans made to IHBG recipients to develop affordable housing and other activities. Eligible borrowers under the Title VI program include tribes or TDHEs that receive IHBG funds. Funds may be used for any activity eligible under IHBG, including housing construction, rehabilitation, acquisition of land for housing, and development of housing infrastructure.

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<sup>12</sup> See Attachment B, or Appendix 6 of the Final Report, for a list of all the environmental laws and authorities that are typically documented in environmental reviews for housing and housing-related infrastructure products.

<sup>13</sup>This MOU discusses HUD NAHASDA programs as they apply to tribes, in accordance with the language in the GAO report and the Senate Report that led to the coordinated environmental review effort. The significance of that approach is that the HUD ICDBG program and the HUD Native Hawaiian programs are not mentioned. Although these programs are not mentioned, the MOU in no way precludes the use of NEPA efficiency tools for projects under these programs.

B. U.S. Department of Agriculture:

Rural Development is a mission area within USDA consisting of three agencies: the Rural Housing Service, the Rural Utilities Service and the Rural Business-Cooperative Service. Rural Development's programs are authorized through a number of statutes. Most Housing programs are authorized by the Housing Act of 1949 as amended. Most Business, Community Facilities and Water and Environmental programs are authorized by the Consolidated Farm and Rural Development Act, as amended. A number of the RUS Electric and Telecommunications programs are authorized by the Rural Electrification Act of 1936, as amended. Specific program authorities can be found on USDA's website or by contacting Rural Development Staff.

USDA's Rural Housing Service (RHS) offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS provides loans, grants and loan guarantees for single- and multi-family housing, child care centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and federal government agencies, and local communities.

USDA's Rural Utilities Service (RUS) administers programs that provide much-needed infrastructure or infrastructure improvements to rural communities. These include water and waste treatment, electric generation and transmission and telecommunications services. RUS programs and services play a critical role in helping to expand economic opportunities and improve the quality of life for rural residents.

USDA's Rural Business-Cooperative Service (RBCS) offers programs to support business development and job training opportunities for rural residents. RBCS programs help provide the capital, technical support, educational opportunities and entrepreneurial skills that can help rural residents start and grow businesses or access jobs in agricultural markets and in the bio-based economy.

C. U.S. Department of Commerce:

The Department of Commerce's Economic Development Administration (EDA) was established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq.) (PWEDA), to lead the Federal economic development agenda. EDA makes investments in economically distressed communities – including Tribal communities – in order to promote American innovation and accelerate long-term sustainable economic growth. The agency works to foster regional collaboration, to spur the strong public/private partnerships needed to attract private capital investment and create higher-skill, higher-wage jobs. EDA has partnered with Tribal communities through financial assistance in the form of grants that help remove economic barriers and attract capital to Indian country, addressing a broad array of needs including infrastructure construction (non-housing), strategic planning, technical assistance, and revolving loan fund projects. Specific EDA programs that support non-housing related infrastructure are Public Works, which supports the construction, expansion, or upgrade of essential public infrastructure and facilities, and Economic Adjustment Assistance, which provides a wide range of technical, planning, and public works and infrastructure assistance in regions experiencing adverse economic changes that may occur suddenly or over time.

D. U.S. Department of Energy:

The DOE Office of Indian Energy Policy and Programs is authorized by the Indian Tribal Energy Development and Self Determination Act of 2005 (Energy Policy Act of 2005 (Public Law 109-58, Title V)) to provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the DOE that promote Indian tribal energy development,

efficiency, and use; reduce or stabilize energy costs; or bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds. (42 USC § 7144e)

DOE's Office of Indian Energy Policy and Programs also is authorized under the Indian Tribal Energy Development and Self Determination Act of 2005 to provide grants on a competitive basis to an Indian tribe or tribal energy resource development organization for energy related programs and to provide technical assistance to tribes. (25 USC 3502(b))

DOE's Weatherization Assistance Program (WAP) is a state formula grant program specifically for weatherization of buildings that enables low-income families to permanently reduce their energy bills by making their homes more energy efficient. Through the WAP, tribes can apply to the state for weatherization services or receive funds directly from DOE. (42 USC §§ 6861 et seq.)

E. U.S. Environmental Protection Agency:

The U.S. Environmental Protection Agency is authorized to make grants to American Indians and Alaska Natives that address the most significant public health threats associated with drinking water and wastewater systems that serve tribes. The grants may be used for the planning, design, and construction of public water systems and wastewater treatment systems to serve tribes. EPA has authority to assist tribes by providing technical assistance to managers and operators of public water systems and conducting sanitary surveys of public water systems. EPA is also authorized to make grants to federally recognized tribes and tribal consortia for developing and implementing solid waste programs. EPA cooperates with IHS in their responsibility to study and inventory open dumps. EPA's primary solid waste focus is to assist the tribes with development of integrated waste management plans to address open dumps, rank the relative risk of open dumpsites, and prioritize them for closure. Authorities include:

- Safe Drinking Water Act of 1974, (42 U.S.C. 300f et seq.), specifically Sections 1443(a) and 1452(i)
- Clean Water Act of 1977, (33 U.S.C. 1251 et seq.), specifically Section 518
- Resource Conservation and Recovery Act of 1976, (42 U.S.C. 321 et seq.), specifically Section 8001
- Indian General Assistance Program Act of 1992, Public Law 102-497, (42 U.S.C. 4368b)
- Indian Lands Open Dump Cleanup Act of 1994, Public Law 103-399, (25 U.S.C. 3901 et seq.)

F. U.S. Department of Health and Human Services:

The Indian Health Service (IHS) is the principal HHS agency that provides primary health care and disease prevention services to American Indians and Alaska Natives. IHS is required to identify and maintain an inventory of water and waste disposal sanitation deficiencies for eligible new and existing American Indian and Alaska Native homes and communities and to prioritize projects to address those deficiencies.

G. U.S. Department of the Interior:

The Assistant Secretary of Indian Affairs and its Bureaus, Bureau of Indian Education and Bureau of Indian Affairs (BIA), are the principle Department of the Interior agencies that provide education systems, social services, natural resources management on trust lands, economic development programs, law enforcement and detention services, administration of tribal courts, implementation of land and water claim settlements, housing improvement, disaster relief, replacement and repair of schools, repair and maintenance of roads and bridges, repair of structural deficiencies on high hazard dams, irrigation systems, providing electricity to rural parts of Arizona, tribal government infrastructure, community

infrastructure, education, job training, and employment opportunities to American Indians. BIA provides funding for Indian housing and house repairs through its Housing Improvement Program (HIP) on both Indian trust and fee simple land. Additionally, the BIA approves Federal actions on trust land relating to home site leases, service line agreements and rights-of-way. Authorities for environmental management of these responsibilities includes:

- Omnibus Appropriations Act, 2009. Title VII General Provisions-Government-Wide Sec. 748. P.L. 111-8, Mar. 11, 2009.
- Federal Facilities Compliance Act of 1992, 42 U.S.C. §§6901-6992.
- Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.*
- Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, October 5, 2009.
- Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, January 26, 2007.
- Executive Order 12088, Federal Compliance with Pollution Control Standards, October 13, 1978

#### H. U.S. Department of Transportation

The Federal Highway Administration provides funding to Tribal governments for transportation activities, including transportation infrastructure associated with tribal housing projects through the Tribal Transportation Program (TTP), including TTP Bridge Funds, and TTP Safety Funds. Another potential source of funding available for tribal housing transportation infrastructure is the Transportation Investment Generating Economic Recovery (TIGER) Discretionary Funds.

#### IV. Authorities

- A. General Authorities. The Senate Report accompanying the FY 2015 Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill directed HUD “to collaborate with the Council on Environmental Quality and affected Federal agencies . . . to develop a coordinated environmental review process to simplify tribal housing development and its related infrastructure needs.”<sup>14</sup>
- B. Effect of MOU on Authorities of Parties. Nothing in this MOU alters the statutory authorities or any other authorities of the parties. This MOU is intended to facilitate cooperative efforts.

#### V. Responsibilities

- A. Each party commits at the highest appropriate level to help successfully meet the purposes of this MOU to the extent practicable and permitted by its authorities.
- B. Each party will comply with its own tribal consultation policy for federal program changes that may result from MOU related discussions and decisions.
- C. The parties will convene on a regular basis within the structure of the coordinated environmental review process work group to discuss issues within the scope of and related to

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<sup>14</sup> S. Rep. No. 113-182, at 121 (2014).

the purposes of this MOU. Any concerns related to this MOU should be brought to the parties for further discussion.<sup>15</sup>

- D. The parties will work to ensure that tribal leadership is informed of this MOU, and any corresponding documents and initiatives, as resources allow.
- E. The parties agree to convene on a regular basis within the structure of the coordinated environmental review process work group to discuss and develop resources to facilitate NEPA efficiency tools.
- F. The parties note that the NEPA efficiency tools discussed below should be utilized when effective and beneficial.
- G. Incorporation by Reference
  - i. The parties recognize that incorporation by reference is a useful and currently available NEPA efficiency tool that is already being used in some areas and has served to simplify the NEPA review process, as was highlighted in the Final Report. This tool allows agencies to incorporate by reference a NEPA document prepared by it or by another agency, as well as any other publicly available studies or materials, in their NEPA reviews. The provisions of this MOU seek to encourage and facilitate the use of incorporation by reference.
  - ii. The parties agree to evaluate and incorporate by reference NEPA documents prepared and submitted to them by other federal agencies and tribes acting as responsible entities under HUD's 24 CFR Part 58 regulations where applicable and appropriate.<sup>16</sup> The parties recognize that material can only be considered for incorporation by reference if it is reasonably publicly available for inspection by potentially interested persons within the time allowed for comment.<sup>17</sup>
  - iii. The parties agree that NEPA documents submitted to them do not have to follow a particular format, but recognize that documents submitted by tribes acting as responsible entities will typically be in one of HUD's formats, which differ based on level of environmental review.<sup>18</sup>
  - iv. The parties agree that if the information contained in a NEPA document fails to meet the reviewing parties' requirements, the party may determine not to incorporate by reference some or all of the information, and/or may request additional information, as needed.
  - v. The parties agree that a NEPA document is not a substitute for agency specific requirements; but rather, can be incorporated by reference to meet the agency's

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<sup>15</sup> See Attachment C for a discussion of the commitment of the parties to implementing the report recommendations.

<sup>16</sup> See Attachment A for a list of the laws and authorities that are included in a HUD environmental review.

<sup>17</sup> See 40 CFR 1502.21.

<sup>18</sup> See the HUD format for Environmental Assessments; HUD format for Categorical Exclusions Subject To Related Laws and Authorities in 24 CFR 58.5; and HUD format for Exempt or Categorical Exclusions Not Subject To Related Laws and Authorities in 24 CFR 58.5.

information requirements. Each party has a responsibility to ensure that its NEPA review meets agency specific requirements and nothing in the MOU should be interpreted to change or abrogate that responsibility.

- vi. The parties agree to provide training to their staff on incorporation by reference as resources allow. The parties agree that any such training will include instruction on the contents of this MOU.
- vii. The parties agree to provide training to tribes on incorporation by reference as resources allow. The parties agree that any such training will include instruction on this MOU.

#### H. Cooperating Agency Agreement

- i. A cooperating agency agreement is a formalized agreement used to facilitate Federal and non-federal government coordination of environmental analysis for a project in compliance with NEPA by bringing parties together to collaborate on scoping, assign responsibilities, and establish timelines.
- ii. The parties recognize that a cooperating agency agreement can be a useful tool to reduce duplication of effort for NEPA reviews, whether an EA or EIS. Cooperating agency status facilitates collaboration among agencies to produce one NEPA review for a project.
- iii. The parties agree to consider utilizing cooperating agency agreements among agencies that are considering providing assistance to a project. The use of cooperating agency agreements is often best facilitated by coordination from the earliest planning stages, but an agency may become involved as a cooperating agency after scoping, but before the environmental review is finalized. The parties recognize that the benefits of cooperating agency agreements may be limited in circumstances such as when funding sources are not identified at the same point in the planning process, or when the scale of the contemplated project is relatively small.
- iv. The parties recognize that early coordination is important. The parties understand that a cooperating agency agreement will designate a lead agency and cooperating agencies, then define the scope of the NEPA review and applicable statutory and regulatory requirements. The lead agency will take the lead in preparing the NEPA review, and the cooperating agencies will participate as set forth in the cooperating agency agreement.
- v. The parties agree to consider the tribe as the lead agency or cooperating agency when a tribe is preparing a NEPA review as a responsible entity under HUD's regulations at 24 CFR Part 58.
- vi. The parties agree to provide training to their staff on cooperating agency agreements as resources allow. The parties agree that any such training will include instruction on the contents of this MOU.
- vii. The parties agree to provide training to tribes on cooperating agency agreements as resources allow. The parties agree that any such training will include instruction on the contents of this MOU.



## I. Adoption

- i. The parties recognize that adoption of an EA or EIS, or portion thereof, can be a useful tool to reduce duplication of effort for environmental reviews. One agency can adopt an EIS or EA completed by another agency if the original review satisfies the adopting agency's NEPA requirements.
- ii. The parties agree to consider adoption of an EA or EIS, or portion thereof, prepared by a tribe as a responsible entity under HUD's regulations at 24 CFR Part 58 when the review satisfies their agency's NEPA requirements.<sup>19</sup> The parties understand that adoption may not be a viable option if one agency's NEPA requirements do not meet a second agency's requirements.<sup>20</sup>
- iii. The parties agree to provide training to their staff on adoption of an EA or EIS as resources allow. The parties agree that any such training will include instruction on the contents of this MOU.
- iv. The parties agree to provide training to tribes on adoption of an EA or EIS as resources allow. The parties agree that any such training will include instruction on the contents of this MOU.

## VI. No Binding Obligation or Financial Commitment

This MOU imposes no binding obligations or financial commitments on any of the parties.

## VII. Expenses of the Parties.

Each party to the MOU will bear its own expenses in connection with the preparation, negotiation and execution of this MOU.

## VIII. Limitations

- A. All commitments made pursuant to this MOU are subject to the availability of appropriated funds and each party's budget authorities and priorities. Nothing in this MOU, in and of itself, requires the parties to commit, obligate, or expend their appropriations.
- B. Any endeavor involving the transfer of funds between the parties to this MOU will be executed in separate agreements between or among the participating parties.
- C. This MOU does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity against any of the parties, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the named parties.

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<sup>19</sup> See Attachment A for the related laws and authorities that apply to HUD environmental reviews.

<sup>20</sup> See Attachment B, or Appendix 6 of the Final Report. The table shows where agencies have corresponding review requirements.

IX. Duration and Ability to Extend.

This MOU becomes effective on the date of final signature. Every five years this MOU will be reviewed by the parties and amended if appropriate. Any party upon 90-day notice to the other parties may suggest amending this MOU. The MOU, however, can only be amended through a written agreement signed by all parties.

X. Termination

Any party upon 90-day written notice to the other parties may terminate its participation as a part to this agreement, at any time and for any reason it deems appropriate.

XI. Publicity

The parties will coordinate all public statements about the MOU or any deliverables that are developed under the MOU. The parties should consult in advance on the form, timing and contents of any press release, media response, publicly available description, or other similar communication relating to the MOU or any related deliverables.

XI. Compliance with Applicable Laws

It is understood and agreed to by the parties that changes in rules, laws or regulations applicable hereto may occur during the term of this MOU and that any such changes are automatically incorporated as of the effective date of that rule, law or regulation into this MOU without amendment.

**ATTACHMENT A: *Related laws and authorities under 24 CFR Part 58***

**Airport Hazards** - 24 CFR Part 51 Subpart D

**Coastal Barrier Resources** - Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]

**Flood Insurance** - Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]

**Clean Air** - Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93

**Coastal Zone Management** - Coastal Zone Management Act, sections 307(c) & (d)

**Contamination and Toxic Substances** - 24 CFR 58.5(i)(2)

**Endangered Species** - Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402

**Environmental Justice** - Executive Order 12898

**Explosive and Flammable Hazards** - 24 CFR Part 51 Subpart C

**Farmlands Protection** - Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658

**Floodplain Management** - Executive Order 11988, particularly section 2(a), as amended by EO 13690; 24 CFR Part 55

**Historic Preservation** - National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800

**Noise Abatement and Control** - 24 CFR Part 51 Subpart B

**Sole Source Aquifers** - Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149

**Wetlands Protection** - Executive Order 11990, particularly sections 2 and 5; 24 CFR Part 55

**Wild and Scenic Rivers** - Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)

**ATTACHMENT B: Environmental Laws and Authorities that are Typically Documented in Environmental Reviews for Tribal Housing and Housing-Related Infrastructure Projects, by Federal Agency**

Environmental Law or Authority <sup>1</sup>	Citation	HUD	DOI-BIA	DOC-EDA	DOE	HHS-IHS	USDA-RHS	USDA-RUS	DOT-FHWA	EPA
National Environmental Policy Act	42 USC 4321 et seq.	Y	Y	Y	Y	Y	Y	Y	Y	N <sup>2</sup>
National Historic Preservation Act- Section 106	36 CFR 800	Y	Y	Y	Y	Y	Y	Y	Y	Y
E.O. 12898 Environmental Justice	59 FR 7629	Y	Y	Y	Y	Y	Y	Y	Y	Y
Section 7 Endangered Species Act	50 CFR 402	Y	Y	Y	Y	Y	Y	Y	Y	Y
E.O. 11988 Floodplains <sup>3</sup>	42 FR 26951	Y	Y	Y	Y	Y	Y	Y	Y	Y
Farmland Protection Act	7 CFR Part 658	Y	Y	Y	Y	Y	Y	Y	Y	Y
E.O. 11990 Wetlands	42 FR 26951	Y	Y	Y	Y	Y	Y	Y	Y	Y
Wild and Scenic Rivers Act	16 USC 1271 et seq.	Y	Y	Y	Y	Y	Y	Y	Y	Y
Coastal Zone Management Act	16 USC 1456.	Y	Y	Y	Y	Y	Y	Y	Y	Y
Clean Air Act	40 CFR 6,51,90 & 93	Y	Y	Y	Y	Y	Y	Y	Y	Y
Water Quality and Aquifers	40 CFR 149	Y	Y	Y	Y	Y	Y	Y	Y	Y
Clean Water Act, Section 404 Permit	33 USC 1251 et seq.; 33 USC 1344	N	Y	Y	Y	Y	Y	Y	Y	Y
Coastal Barrier Resources Act	16 USC 3501	Y	N	Y	Y	Y	Y	Y	Y	Y
Consultation to Protect Essential Fish Habitat	16 USC 1801 et seq.	N	Y	Y	Y	N	Y	Y	Y	Y
Hazardous Materials/Toxic Waste/ Resource Conservation and Recovery Act	42 USC 6901 et seq.	Y	Y	Y	Y	Y	Y	N	Y	N

Environmental Law or Authority <sup>1</sup>	Citation	HUD	DOI-BIA	DOC-EDA	DOE	HHS-IHS	USDA-RHS	USDA-RUS	DOT-FHWA	EPA
Fish and Wildlife Coordination Act	16 USC 661-666c	N	N	Y	Y	Y	Y	N	Y	N
Rivers and Harbors Act - Section 9/10	33 USC 401	N	N	Y	Y	Y	Y	N	Y	N
Migratory Bird Treaty Act	16 USC 703	N	N	Y	Y	N	Y	Y	Y	N
Marine Mammals Protection Act	16 USC 1361-1423	N	N	Y	Y	N	Y	Y	Y	N
Bald and Golden Eagle Protection Act	50 CFR 22	N	N	Y	Y	N	Y	Y	Y	N
Right of Way Authorization - BIA	43 USC 1763	N	Y	N	N	Y	N	Y	Y	N
Safe Drinking Water Act	42 USC 300f	N	N	Y	Y	Y	Y	N	N	N
Flood Disaster Protection Act	42 USC 4001 et. seq	Y	N	Y	N	N	Y	N	N	N
Noise Abatement and Control - HUD Regulations*	24 CFR Part 51, Subpart B	Y	N	N	N	N	N	N	N	N
Explosive and Flammable Facilities - HUD Regulations*	24 CFR Part 51, Subpart C	Y	N	N	N	N	N	N	N	N
Airport Runway Clear Zones - HUD Regulations*	24 CFR Part 51, Subpart D	Y	N	N	N	N	N	N	N	N
Consolidated Farm and Rural Development Act, Section 363 (ConAct)*	PL 87-128; 75 Stat. 294, as amended	N	N	N	N	N	Y	Y	N	N
Business Resource Lease - BIA*	25 CFR 162	N	Y	N	N	N	N	N	N	N
Service Line Agreement - BIA*	25 USC 47, 323-328, 450	N	N	N	N	Y	N	N	N	N
Section 4(f) of the Department of Transportation Act*	23 CFR 774	N	N	N	N	N	N	N	Y	N

<sup>1</sup> Note that the list of environmental laws and authorities included here does not necessarily include all environmental statutes, regulations, and executive orders that may be documented in an environmental review record. Some additional laws and authorities may be missing from this chart.

<sup>2</sup> Generally, EPA's activities applicable to tribal housing and housing infrastructure do not require a NEPA review. These actions are either statutorily exempted from NEPA or are functionally equivalent with NEPA. Many of the water and wastewater infrastructure projects funded through the EPA are managed through Interagency Agreements with the Indian Health Service (IHS), and IHS is responsible for complying with any applicable Federal requirements, including NEPA. However, outside of a NEPA review there must be a determination whether the other cross-cutting authorities require documentation.

<sup>3</sup> EO 13690 issued January, 2015 amends EO 11988; however, the requirements are not effective until agencies revise their regulations or procedures.

\* Gray-shaded laws and authorities are agency specific. For example, HUD's regulations on Noise Abatement and Control regulate noise-sensitive uses, such as housing. Other agencies may also document compliance with similar authorities, including the Noise Control Act, in their environmental review records, although that Act is not included in this chart.

**ATTACHMENT C: *Continuing commitment to implement the recommendations of the Final Report***

The parties to this MOU reaffirm their commitment to implementing the recommendations of the Coordinated Environmental Review Process: Final Report. One of the long-term recommendations of the Final Report is to establish an on-going coordinated environmental review process workgroup. The parties intend to continue to meet as a workgroup to collaborate, implement many of the recommendations, and further develop measures to ensure efficient, coordinated environmental review for Indian housing and related infrastructure. The parties agree to designate one or more appropriate point(s) of contact to participate in the working group and to coordinate implementation of the Final Report recommendations.