

## STATEMENT OF INTENT

### PURPOSE

This Statement of Intent expresses the intent of the signatory tribes to utilize, encourage and facilitate the use of the three National Environmental Policy Act (NEPA) efficiency tools when appropriate when preparing NEPA environmental review<sup>1</sup> documents, whether as responsible entities under the Department of Housing and Urban Development's (HUD) 24 CFR Part 58 (Part 58) regulations, or when working with federal agencies when not acting as a responsible entity, for housing and housing-related infrastructure projects involving multiple agencies. The NEPA efficiency tools are (1) incorporation by reference, (2) cooperating agency agreements and (3) adoption. Use of these NEPA efficiency tools avoids duplicative and time-intensive processes. This Statement of Intent is a companion to the Memorandum of Understanding regarding Environmental Review Coordination for Certain Native American Housing and Housing-Related Infrastructure Projects ("Environmental Coordination MOU"), which encourages the use of these NEPA efficiency tools amongst federal agencies that provide assistance to housing and housing-related infrastructure projects in furtherance of the Coordinated Environmental Review Process: Final Report<sup>2</sup>.

### BACKGROUND

NEPA requires federal 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 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. Each federal agency is responsible for environmental compliance for its action, and agencies often require compliance with many of the same applicable federal laws and authorities, including statutes, executive orders, regulations, and agency policies and procedures.<sup>3</sup> As such, duplication of effort in meeting NEPA requirements can occur when more than one federal agency provides assistance to a project.

Certain federal agencies<sup>4</sup> may provide assistance to tribal housing and housing-related infrastructure projects, and such assistance is subject to NEPA requirements. These agencies signed on to the Environmental Coordination MOU, which identifies the three NEPA efficiency tools and encourages their use in order to prevent duplicative and time intensive processes. CEQ NEPA regulations allow an agency to (1) incorporate by reference a NEPA document prepared by it or by another agency, as well as any

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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> See the Coordinated Environmental Review Process: Final Report. The Final Report was issued on December 15, 2015.

<sup>3</sup> See Attachment A for a list of all the environmental laws and authorities that are typically documented in environmental reviews for housing and housing-related infrastructure products. The table shows where agencies have corresponding review requirements.

<sup>4</sup> Agencies that participate in housing and housing-related infrastructure project assistance include 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).

other publicly available studies or material, in their environmental reviews.<sup>5</sup> CEQ NEPA regulations also allow (2) cooperating agency agreements, whereby federal and non-federal agencies can coordinate to prepare a single environmental review.<sup>6</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, or portion thereof, if the original review satisfies the adopting agency's NEPA requirements.<sup>7</sup>

HUD's Part 58 NEPA implementing regulations have a unique environmental review process, allowing tribes, as responsible entities, 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>8</sup> Under Part 58, the tribe becomes the responsible entity and is considered an agency for environmental review purposes. Thus, a tribe acting as a responsible entity can be a lead agency for the cooperating agency agreement tool, or a cooperating agency. A tribe acting as a responsible entity can also prepare environmental review documents that a federal agency can adopt or incorporate by reference, or can choose to adopt an EA or EIS prepared by a federal agency, or incorporate by reference any publicly available studies or material.

There are particular instances when the use of the NEPA efficiency tools will be effective and helpful. Examples of such instances are highlighted in the Commitment section below. It is important to keep in mind that federal agencies are responsible for ensuring that a compliant NEPA review has been prepared. As such, it is completely within the discretion of a federal agency, and a tribe acting as responsible entity, to determine whether any of the NEPA tools can be utilized for a project's environmental review.

HUD has many resources available on the HUD Exchange Environmental Review website to help responsible entities prepare NEPA reviews that comply with HUD requirements. Tribes are strongly encouraged to utilize the available HUD formats<sup>9</sup> and worksheets<sup>10</sup>. Use of these resources will facilitate the use of NEPA efficiency tools. Federal agencies reviewing these resources will be able to readily assess whether compliance with a certain law or authority has been properly achieved and documented for their NEPA requirement purposes.

## COMMITMENT

The signatories to this Statement of Intent acknowledge and agree to the following:

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<sup>5</sup> 40 CFR 1502.21.

<sup>6</sup> 40 CFR 1501.6, 1508.5.

<sup>7</sup> 40 CFR 1506.3.

<sup>8</sup> 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 Attachment B for the related laws and authorities that apply to HUD environmental reviews.

<sup>9</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](#).

<sup>10</sup> See the [Environmental Review Record Related Laws and Authorities Worksheets](#). HUD also has [Worksheets for Partners](#) in the environmental review process, such as consultants and/or TDHEs.

1. The signatories agree to work with federal agencies that are considering providing assistance to a proposed housing or housing-related infrastructure project to utilize NEPA efficiency tools when feasible and appropriate.
2. The signatories agree to contact potential federal funding agencies to discuss the possibility of utilizing NEPA efficiency tools early in the planning process, and to submit NEPA review information as early as possible in the planning process.
3. The signatories agree to prepare NEPA environmental reviews utilizing the HUD formats<sup>11</sup> and worksheets<sup>12</sup> when acting as a responsible entity.
4. The signatories understand that any agreements or commitments entered into as a responsible entity under HUD's Part 58 regulations require the signature of the Certifying Officer.
5. The signatories agree to participate in training opportunities on NEPA efficiency tools when available, as resources allow, and to make information on NEPA efficiency tools available to the staff that prepare NEPA environmental reviews. The federal agency parties to the Environmental Coordination MOU have agreed to provide training as resources allow, and will provide notice of any available training opportunities.
6. Incorporation by Reference
  - a. The incorporation by reference NEPA efficiency tool allows federal agencies to incorporate by reference a NEPA document prepared by another federal agency, as well as any other publicly available studies or material, in their NEPA reviews.
  - b. The signatories agree to provide the NEPA documents prepared by tribes acting as responsible entities for housing and housing related infrastructure projects to any federal agencies that are considering providing assistance to those projects. The signatories agree to consider NEPA documents prepared by a federal agency, or any other applicable publicly available studies or material, for incorporation in the NEPA reviews they have prepared as responsible entities.
  - c. The signatories understand that federal agencies, as well as tribes acting as responsible entities, may consider whether to incorporate by reference the analyses and information in NEPA documents, but that federal agencies and responsible entities are not obligated to do so.
  - d. The signatories agree to clearly identify any incorporated material within the environmental review record when acting as responsible entity, and to briefly summarize the content, purpose and value of the materials, as well as the basis that supports any conclusions being incorporated. The signatories understand that any incorporated materials must be reasonably publicly available.

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<sup>11</sup> The HUD formats differ based on level of review. 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](#).

<sup>12</sup> See the [Environmental Review Record Related Laws and Authorities Worksheets](#).

## 7. Cooperating Agency Agreement

- a. Cooperating agency agreements are formalized agreements used to facilitate federal and non-federal government coordination of environmental analysis by bringing parties together to collaborate on scoping, assign responsibilities, and establish timelines. The cooperating agency agreement tool can be useful to reduce duplication of effort for NEPA reviews. Cooperating agency status facilitates collaboration among agencies to produce one NEPA review for a project.
- b. The signatories agree to contact federal agencies that are considering providing assistance to housing and housing related infrastructure projects in order to determine whether utilizing a cooperating agency agreement would be appropriate. The use of cooperating agency agreements is often best facilitated by coordination from the earliest planning stages, but an agency or responsible entity may become involved as a cooperating agency between the planning stages and finalization of the NEPA review. The benefit 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.
- c. The signatories understand that a cooperating agency agreement will designate a lead agency and cooperating agencies, then define the scope of the NEPA review including all applicable statutory and regulatory requirements. Early coordination among the agencies is important. The lead agency will take the lead in preparing the NEPA review, and the cooperating agencies will participate as set forth in a cooperating agency agreement.

## 8. Adoption

- a. Adoption of an EA or EIS, or portion thereof, can be a useful tool to reduce duplication of effort for NEPA reviews. A federal agency and a tribe acting as a responsible entity can adopt an EA or EIS completed by a federal agency if the original review satisfied the adopting agency's NEPA requirements.
- b. The signatories agree to provide the EA or EIS prepared by a tribe acting as a responsible entity for housing and housing-related infrastructure projects to federal agencies that are considering providing assistance to the project when the review may satisfy the federal agency's NEPA requirements. The signatories understand that adoption may not be a viable option if the EA or EIS would not meet a federal agency's requirements.<sup>13</sup>
- c. The signatories agree to consider adoption of an EA or EIS when acting as a responsible entity if the review addresses the proposed project and meets HUD's environmental review requirements.

### NO BINDING OBLIGATION OR FINANCIAL COMMITMENT

This Statement of Intent imposes no binding obligations or financial commitment on any of the parties.

### LIMITATIONS

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<sup>13</sup> See Attachment A. The table shows where agencies have corresponding review requirements.

1. This Statement of Intent is voluntary and non-binding. Any commitments made are subject to the availability of funds and the priorities of the parties.
2. This Statement of Intent 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 Statement of Intent does not direct or apply to any entity or person outside of the named parties.

#### DURATION, AMENDMENT AND TERMINATION

This Statement of Intent becomes effective on the date of final signature. Any party, upon 90-day notice to the other parties, may suggest amending this Statement of Intent. The Statement of Intent, however, can only be amended through a written agreement signed by all parties. Any party, upon 90-day written notice to the other parties, may terminate its participation as a part to this Statement of Intent, at any time and for any reason it deems appropriate.

This Statement of Intent is signed for:

**ATTACHMENT A: 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



<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 B: *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)