**HUD ERR Guidance Summary for CDBG PI & ED ERR’s July 2024**

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Hello all:

Congratulations again on getting a PY’23 or 24 CDBG PI Grant application funded. I know from few dozen questions already received that most or all of you are hard at work preparing and documenting your awarded State CDBG communities’ NEPA-compliant ERR’s.

Complicating your task this PI round is that HUD’s Office of Energy and Environment (OEE), following through on recent Presidential Executive Orders (EO’s) and other statutes and Federal regulations, is continuing to roll out new environmental review documentation requirements, usually with immediate or near-immediate effect, even though the officially-changed HUD forms won’t be rolled out until a few weeks or months later. Due to that last bit, Wendy has given me a little leeway in writing this guidance for compliance in your pending CDBG PI ERR’s, which includes a few ERR’s from the prior Round not yet submitted due to formal research and documentation mitigations already underway.

**The first of the three topics addressed today is the new HUD Radon Rule** announced by HUD on 1/11/24, effective 4/11/24. All required information for it was posted to the DCEO OCD Environmental Materials website <https://dceo.illinois.gov/communitydevelopment/environmentalmaterials.html> in mid-June, and I addressed it during a recent *Hot Topics Tuesday*. In general, for CDBG PI ERR’s, under “Contamination and Toxic Substances” on the CEST-ER or EA-ER, after you cite the project location’s US EPA Envirofacts search results and the impact (or lack of impact) of any nearby listed polluters or reporters, you can generally then state some variation of: “No anticipated impact under the HUD Radon Rule, as this project does not involve a structure intended for, or occupied by, humans four or more hours daily.” Of course, if the project involves a larger water or sewer treatment plant where staff will be present four or more hours daily on a regular basis (e.g., lab technicians or plant operators), then you’d have to document radon mitigation compliance by following the rest of the HUD Radon Rule’s posted materials.

**The second of the three topics addressed today is the new HUD FFRMS (Federal Flood Risk Management Standard)** <https://www.hud.gov/program_offices/comm_planning/environment_energy/ffrms> announced by HUD on 4/23/24, effective 6/24/24, in response to Presidential Executive Order 14030, which significantly expands the definition of a FEMA flood hazard beyond what is currently mapped by FEMA due to future anticipated flood heights and widths; includes mitigations for various types of HUD assistance committed in a flood hazard; and increases the requirements for Wetlands impacts for HUD assistance.

The FFRMS implementation discretion DCEO OCD is giving to not fully implement FFRMS requirements in in-process ERR’s for DCEO’s State CDBG PI PY’23/24 Round and the prior Round is due to the fact that the Governor’s announcement of these Rounds’ awardees occurred about a week earlier than HUD began providing the training to its Grantees (for your communities, that is us at DCEO) on FFRMS, and HUD is continuing its education efforts on FFRMS and won’t be rolling out revised forms for it (specifically, the HUD Floodplain Management and Wetlands Preservation Worksheets) until later this Summer and Fall. I’ll only be posting the HUD FFRMS materials to the DCEO OCD Environmental Materials website once I’m able to read through and study all of them and can decide which will best serve all of you in the field moving forward.

**So, here are the basics of FFRMS for you to use on your communities’ PY’23/24 CDBG PI (and earlier Round) ERR’s (no matter what Program Year Wendy has assigned for its Grant # <i.e., includes earlier PY’s such as 2020 or 2021>):**

* An 8-step Flood Plain review (incl. both required publications) must be done if any project location is located in or crosses (a) a 100-year Flood Plain; (b) a 500-year Flood Plain, and/or (c) an FFRMS Flood Plain (i.e., a scientifically-assumed future Flood Plain, either a CISA (Climate Informed Science Approach) or FVA (Freeboard Value Approach)). You can already check for the presence of (a) or (b) on a FEMA FIRMette available at <https://msc.fema.gov/portal/home>. The exact project location(s) must be drawn on the FIRMette available for those locations by FEMA. In addition, you must do (c) below, and that is whether or not your Grantee community has been FEMA mapped or not.

For (c), HUD points us to <https://floodstandard.climate.gov> to obtain a CISA map of project locations. When mapping using the drawn polygon tool, you’ll need to assume and include the estimated lifetime of the project being funded with CDBG funds (e.g., 70 years for water or sewer mains, less than that for water towers, new WTP’s, WWTP’s, or lift/pump stations, and even less for partial improvements to existing such infrastructure). There are instructions on that site for using the CISA mapping tool. It’s relatively easily used if the site has been mapped by the Federal agencies maintaining that CISA tool. I’ve already mapped out my home’s address 40 years into the future, and it calculated a moderately nearby FP won’t expand more than a few feet in that time period.

For FVA and all else related to implementation of FFRMS under HUD Floodplain Management, please visit

<https://hudexchange.info/programs/environmental-review/floodplain-management/>

* Under FFRMS, HUD adopts different future FP mapping, impact and mitigation approaches based on whether a proposed use of HUD CDBG funds is for (a) a non-critical action (for us in Illinois’ CDBG PI, water or sewer mains, or storm drainage improvements, generally) or (b) a critical action (for us in Illinois’ CDBG PI, WTP’s, WWTP’s, water towers or tanks, sewer lift stations and/or water pump stations). If you have a question about the difference, please ask.

For (a), you’ll follow the “non-critical actions” methods of Identifying and Defining the FFRMS Floodplain under “2” on <https://hudexchange.info/programs/environmental-review/floodplain-management/>, while for (b) you’ll follow the “critical actions” methods of Identifying and Defining the FFRMS Floodplain under “2” on <https://hudexchange.info/programs/environmental-review/floodplain-management/>, which involves Base Flood Elevation Plus 3 Feet (BFE+3), i.e., adding 3 feet to the base flood height for the project area as calculated by FEMA to potentially show an even wider and deeper expanded Future Flood Plain.

The links to the recordings of the two HUD OEE FFRMS presentations nationwide are:

<https://youtu.be/h4kHzMPnRU0>

and

<https://youtu.be/W3nxSSWnLMo>

That is what has changed for your Floodplain Management research and documentation for this PY23/24 round of CDBG PI ERR’s and the few still open from the prior PI Round, which is basically only the method for calculating and evaluating current and future Flood Plains.

**Coming for the next (i.e., PY2025) round of CDBG PI grant awards ERR’s will be the new mitigations required under FFRMS (most specifically for the “critical actions” outlined above, and principally elevation of the project’s infrastructure to be above the FFRMS Flood Plain) and impacts to Wetlands Preservation. I agree with Wendy that it would be unfair to the existing Grantees who documented their PY’23/24 grant applications in calendar year 2023, and turned them into DCEO OCD in mid-January 2024, to suddenly have to re-engineer their critical action infrastructure to be above a scientifically-calculated future flood height 30 to 70 years into the future. However, for those of you anticipating submitting CDBG PI grant applications for the coming PY’2025 round of funding, and the project would involve a “critical action” as designated by HUD and/or DCEO OCD above (i.e., WTP’s, WWTP’s, water towers or tanks, sewer lift stations and/or water pump stations), then you’d better make sure before the engineer’s cost estimate is finalized for placement in the grant application that the engineer has mapped out all project location(s) to account for FFRMS Flood Plains, and has included the cost of elevating the project above that FFRMS future Flood Plain, because if not, it would become either (a) a costly mitigation that will be imposed as part of that round’s ERR review process before we would issue a Grant Agreement, or (b) the grant award would be cancelled by DCEO during ERR review if the Grantee community could not or would not be able to provide a firm commitment of the other funds required for FFRMS mitigation to elevate the critical infrastructure out of the FFRMS flood plain. Nobody on either end of our mutual equation wants either scenario to happen.**

**The third of the three topics addressed today is increased HUD enforcement of Federal Endangered Species Act and Critical Habitat Review under “Endangered Species”.**

On 7/11/2024, HUD OEE Region 5 in Chicago provided its training to its Grantees’ ERO’s on the ERR documentation requirements under the Federal Endangered Species Act (ESA) of 1973 (i.e., 16 USC 1531 et. seq.) and related Federal laws and authorities at 24 CFR 58.5(e) and 24 CFR 50.4 (e).

Before we begin, please remember that State CDBG funding issued by DCEO’s Office of Community Development (OCD) is Federal funding issued by the United States Department of Housing and Urban Development (HUD) through an agency of the State of Illinois (SOI), so both Federal and State environmental law requirements apply to our “subgrants” made to uniform units of local government in our mostly Downstate territory in Illinois.

All (non-CDBG HR) CEST-ER and EA-ER level ERR’s provided for our review for a State CDBG Grant issued by DCEO OCD must document State of Illinois Species requirements through a complete IDNR EcoCAT Part 1075 Endangered Species Protection Act and Natural Areas Preservation review

(<https://dnr.illinois.gov/programs/ecocat.html>) and document Federal Endangered Species and Critical Habitat Compliance under the Federal Endangered Species Act (ESA) of 1973

<https://www.hudexchange.info/programs/environmental-review/endangered-species/>.

As a follow-up to its training of me and other Grantee (and not Subgrantee, such as yourself) ERO’s, HUD has provided me a link to their TEAMS recording of the 7/11/2024 presentation

<https://events.gcc.teams.microsoft.com/event/9bb9a18b-cce6-453a-82e8-4eea06ac6485@615524c5-22e9-4bcd-a893-1180a53fc7b2/attendee/f03d94de-fb08-4927-be0c-abd37244bd17> that may or may not function by copying from this document to a web browser, but also a PDF of the non-verbal training slides that should be posted to the DCEO OCD Environmental Materials webpage

<https://dceo.illinois.gov/communitydevelopment/environmentalmaterials.html> within a couple weeks.

**The key highlights under the Federal Species Consultation you must perform for any non-HR CEST-ER or EA-ER level ERR’s for State CDBG Grant funding are**:

* The Section 7 Glossary of Terms to familiarize;
* The Roles & Responsibilities of our Grantee Community (i.e., the “Responsible Entity” RE); me at DCEO in place of HUD; and you as the “3rd Party/Consultant” ERR preparer for the RE;
* The need for the current CDBG PI Round (and for CDBG ED) ERR’s from now moving onwards to **obtain the exact project location(s)’ Federal Species list through the United States Fish and Wildlife Services (USF&WS) Information for Planning and Consultation (IPaC) online system, and**  **not Federal Species lists by County from the main USF&WS web site or from any other source**;
* While HUD doesn’t require complete preparation of the entire Federal Species Consultation to be done through IPaC, HUD highly encourages it. Basically, in addition to what you document through IDNR EcoCAT for State species, you must also perform a Federal Species Consultation, and through the IPaC process as documented at the link above, IPaC will make it easier for you as the ERR preparer to complete and document that Federal Species Consultation. Whether or not you complete the entire Federal Species Consultation through IPaC, you still may have to conduct a Formal Consultation with the local USF&WS Field Office <https://www.fws.gov/office/illinois-iowa-ecological-services/contact-us> covering your CDBG project’s county;
* Be aware of and use under “Endangered Species” on the CEST-ER or EA-ER the appropriate “Determinations” terms for the various Federal species and Critical Habitat that have been reviewed and documented by you (e.g., “No Effect”; “May Effect”; “Not Likely to Adversely Affect”; “Likely to Adversely Affect”; and “Adverse Effect”); and
* Be aware of, research and implement mitigations for Critical Habitats vs. Suitable Habitats for Federally-listed species at your project’s site(s). Easiest definitions are: Critical Habitats are USF&WS listed and mapped (on HUD slide 33) habitats that are fewer and scattered around each State, while Suitable Habitats are USF&WS designated (and often man-made) locations which provide good locations where Federally-listed species may reside (think abandoned barns or garages, or wooded lots in an urban environment).

HUD OEE Region 5’s staff located throughout the Region’s five Midwestern States, and USF&WS staff they linked in for IPaC, did an excellent job of explaining the Federal Endangered Species Review and Consultation processes, so I’ll leave it up to you to review their 07/11/2024 online training recording I linked above, and its non-verbal slide show that will soon be on our website.