

**NORTH DAKOTA DIVISION OF COMMUNITY SERVICES
ENVIRONMENTAL REVIEW RECORD FOR THE ND HOME PROGRAM**

Project Name: Affordable Housing

Purpose: The overall goal is to assist low income families to live in decent, safe and affordable housing by providing financial assistance for activities which include acquisition, rehabilitation, certain new construction, and payment of rental security deposits and rental assistance.

Name of Grantee: State of North Dakota

Lead Agency: Division of Community Services, State of North Dakota, 1600 East Century Ave., Suite 2, Bismarck, ND 58502-2057.

Name and Title of Certifying Officer: Paul T. Govig, Director of the Division of Community Services

Project Area: All activities will be implemented on a statewide basis.

Federal Grant Information: This is a multi-year environmental review which includes funding from FY 2013 through FY 2017 of the HOME Investment Partnerships Program (Title II of the National Affordable Housing Act as amended) and will be made available for the following project activities.

Timetable: April 2013 through March 2017

Status of the Project: On-going project

Project Description: The project will include the following activities: (1) rehabilitation of existing housing for low income homeowners; (2) acquisition and/or rehabilitation of existing rental housing; (3) acquisition and rehabilitation of housing for low income homeowners; (4) new construction of housing units not requiring an Environmental Assessment per the National Environmental Policy Act of 1969 (NEPA) and related authorities listed in HUD's implementing regulations at 24 CFR 58 and (5) tenant-based rental assistance and tenant-based security and utility deposit assistance for low-income renters. The first activity will assist low income households by providing financial assistance for rehabilitation of existing housing. Only existing, single-family dwelling units will be eligible for assistance. The second activity will include acquisition and/or rehabilitation of rental units to provide decent and affordable housing for low income tenants. Both permanent and transitional housing units may be assisted. The third activity will assist eligible low income households to become homeowners. The fourth activity will involve the construction of single family homes or multi-family properties of two to four units which will be sold or rented to low income households. The fifth activity will assist low income households in danger of becoming homeless or to assist low income households to secure a more affordable or safe rental unit.

Rehabilitated housing must meet a minimum of Section 8 Housing Quality Standards. Rehabilitation work will include items such as heating, electrical, plumbing, painting, and carpentry repairs. New construction housing must meet all applicable building codes. Weatherization will improve energy efficiency and reduce costs for low income households. HOME funds may also be used to make the housing accessible for households with elderly or

disabled occupants. The projects will be administered through contracts with subrecipients (non-profits) and Community Housing Development Organizations (CHDOs) on a multi-regional basis, the North Dakota Housing Finance Agency and the cities of Grand Forks and Bismarck. It is estimated that less than 100 housing units will be rehabilitated or newly constructed, and approximately 100 homebuyers and 500 tenants will be assisted each year.

Existing Conditions and Trends: Deterioration of older housing owned by low income households due to lack of funds for rehabilitation; decreasing percentage of low-income homeownership due to escalating housing costs; and an increasing lack of affordable rental housing for low-income households.

Contact Person for this ERR: Corey Burgum, HOME Program Administrator (701) 328-2458

1. Environmental Review Process

The State of North Dakota (State) was designated as a Participating Jurisdiction (PJ) for the HOME Program. As a PJ, the State assumes the responsibility of carrying out this environmental review, certifying the process, requesting and approving the release of funds. The Division of Community Services (DCS) was selected as the lead agency for the North Dakota HOME Program. Project activities will be administered through contracts with State Recipients (units of local government), Subrecipients (non-profit organizations) and CHDOs. These entities will assist the State in the environmental review process by conducting the site specific review for each affected structure.

The environmental effects of every activity carried out in the North Dakota HOME Program must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and related authorities listed in HUD's implementing regulations at 24 CFR Part 58. HOME Program funds cannot be committed and a project (usually defined as one structure or site) cannot be set up in the Integrated Disbursement and Information System (IDIS) until the environmental review process has been completed.

At this time the actual structures to be rehabilitated or constructed, and households to be assisted have not been identified. This initial part of the environmental review addresses those factors which can be considered without knowing the individual properties to be assisted and it will serve as a basis for procedures to be followed during the second stage - the site specific review. Evidence of compliance with the site specific review must be submitted to and approved by DCS before funds may be committed or spent on any unit. Each year the State will review its activities funded under these programs to determine if they continue to be relevant under NEPA.

2. Project Aggregation

Since all of the activities in the project involve existing, or new construction of residential structures, DCS will aggregate this similar group of activities into one project for environmental review purposes. This means that the project will have one Environmental Review Record (ERR) for the state. If a project triggers an Environmental Assessment, a new ERR will be created for that specific project and the local government will be requested to complete the environmental process and Request Release of Funds from the DCS.

3. Levels of Review

a. Exempt Activities

DCS has determined that administration, operating costs, and planning and environmental study costs are Exempt per 58.34 (a)(1) and (3) since they will not have a physical impact.

Other project activities will be considered exempt if no other environmental requirements or other actions under NEPA are needed. DCS will certify the activity/project is Exempt at which point the unit may be set up in the IDIS system and funds may be committed.

b. Categorically Excluded Activities Not Subject to 58.5 Requirements

Per 58.35 (b), the following activities are Categorically Excluded from NEPA and are not subject to compliance with 24 CFR 58.5 requirements since they do not alter any conditions that would require a review or have a physical impact on any structure or property): tenant-based rental assistance, and homeownership assistance for an existing dwelling unit which results only in transfer of property title. However, these activities must comply with requirements of 24 CFR 58.6 (Coastal Barriers, Runway Clear Zone and Flood Disaster Protection Act of 1973 as applicable to federal formula grants to states). Applicability of these requirements does not trigger the certification and release of funds procedures or preclude exemption of an activity under 24 CFR Part 58.34 (a)(10) and (b). Homeownership assistance limited to a title transfer, and projects involving only down payment and closing costs must undergo a site specific review of 24 CFR Part 58.6 requirements.

c. Categorically Excluded Activities Subject to 58.5 Requirements

Per 58.35 (a), the following activities are normally Categorically Excluded from the full NEPA requirements:

1) Housing Rehabilitation when the project activities will not involve changes in land use or residential class, and unit density will not be increased by more than 20 percent. In addition, an individual action on a one-to-four unit family dwelling, or an individual action on a project of five or more units under certain conditions defined in 24 CFR 58.35(a)(3) are also considered to be categorically excluded.

2) New Construction of up to four dwelling units where there is a maximum of four units on any one site or an individual action on a project of five or more housing units under certain conditions defined in 24 CFR 58.35 (a)(4).

Even though these activities are Categorically Excluded from the full NEPA requirements, compliance with related laws and authorities in 24 CFR 58.5 is still required. This compliance will be documented in the ERR with the Site Specific Checklist for each rehabilitation or new construction activity. This Checklist will need to be completed by the grantee and submitted with documentation to DCS for review before funds may be committed or spent on a dwelling. If other environmental laws do apply, the grantee must comply with applicable requirements and submit documentation to DCS

for completion of the environmental review process. DCS will then review the Site Specific Checklist and determine if a release of funds should be issued.

d. Environmental Assessment Activities

For projects that are not exempt or categorically excluded under Part 58.34 and 58.35, local governmental jurisdictions must assume the responsibility of the environmental certification. Both the Site Specific Checklist and the Environmental Assessment Checklist must be completed and submitted to the DCS. A review of this information will result in either a finding of no significant impact (FONSI) and the publishing of required notices or a decision on whether or not to proceed with an environmental impact statement (EIS).

4. Notices and Certifications

DCS will publish the following required public notices in the major daily newspaper located in its state capital (Bismarck Tribune) prior to implementing the project.

Notice of Intent to Request Release of Funds

DCS will publish the legal ad (NOI/RROF) to comply with the requirements for multi-year Categorically Excluded activities. The ad will not contain specific addresses since these are unknown, but it will indicate that the affected units will be residential structures which will undergo the applicable site specific review. DCS will allow seven (7) calendar days for public comment and will disseminate the Notice to the State recipients and Subrecipients and the following state or federal agencies:

ND State Historical Preservation Office
ND State Water Commission
ND State Game & Fish Department
US Fish and Wildlife Service
ND State Health Department (Environmental Health Section)
USDA Natural Resources Conservation Service
Department of Housing & Urban Development (Environmental Division)
HUD-Denver, Environmental Office, David Rigirosso
Cheyenne River Sioux Tribe of the Cheyenne River Reservation
Flandreau Santee Sioux Tribe of South Dakota
Lower Sioux Indian Community in the State of Minnesota
Santee Sioux Nation
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
Spirit Lake Tribe
Upper Sioux Community
Leech Lake Band of the Minnesota Chippewa Tribe
Minnesota Chippewa Tribe
Red Lake Band of Chippewa Indians
White Earth Band of the Minnesota Chippewa Tribe
Turtle Mountain Band of Chippewa Indians of North Dakota
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
Crow Creek Sioux Tribe of the Crow Creek Reservation
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana

Lower Brule Sioux Tribe
Oglala Sioux Tribe of the Pine Ridge Reservation
Rosebud Sioux Tribe of the Rosebud Indian Reservation
Standing Rock Sioux Tribe of North and South Dakota
Three Affiliated Tribes of the Fort Berthold Reservation

Request for Release of Funds and Certification

DCS will complete the Request for Release of Funds and Certification one time for the units which will be assisted under the ERR. This form will specify the notice publication dates and will be a part of the ERR. However, funds may not be committed or spent until the site specific review has been completed.

5. Applicability and Completion of the Site Specific Checklist

a. Section 106 of the National Historic Preservation Act (NHPA)

Section 106 requires that the effects of categorical or assessment activities on properties included in or eligible for the National Register of Historic Places must be taken into account. Consultation with the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) is required on all new construction sites or units to be rehabilitated regardless of the age of the structure. A letter must be sent to the SHPO/THPO to request a review of each property to be rehabilitated. Subrecipients must complete the SHPO/THPO Section 106 form, providing the necessary information for this review. This includes a photo of the property, address, estimated age, work write-up for structures over 50 years old, and a location map.

The SHPO/THPO has 30 days from date of receipt of the letter to respond. If clearance is received (or time allowed has expired), the grantee must attach applicable correspondence (to and from SHPO/THPO) to the site specific checklist when it is completed and sent to DCS. If SHPO/THPO indicates that the structure is not a historic property, no further action is required.

Additional information may be required for houses likely to be historically significant. Grantees will pay particular attention to any structure which (1) is listed or eligible for listing on the National or State Register; (2) is located within or near a historic district; (3) was constructed prior to 1958; or (4) has local significance. Consultation with the SHPO/THPO is essential at this stage. Generally, the recipient must submit a detailed work write-up to SHPO/THPO, indicate that work will conform to the Secretary of the Interior's Standards for Rehabilitation, and provide other information requested by SHPO/THPO. A work write-up which is in compliance with the Standards for Rehabilitation will generally result in a Determination of No Adverse Effect. The *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* can be reviewed (and printed if desired) at www.nps.gov/tps/standards/rehabilitation/rehab/index.htm.

b. Executive Orders 11988 and 11990 Floodplain Management and Protection of Wetlands

Only relocation of property out of the floodplain will be allowed within a 100 year floodplain. The grantee will determine and document if a structure is located in the floodplain.

This will be done by checking the location of the structure with the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA) or by consulting with the State Water Commission. The grantee will document that a structure is not in a floodplain on the Site Specific Checklist including map panel number and date or attaching a copy of applicable correspondence with the State Water Commission.

c. Wetlands

DCS has determined that since the projects involve rehabilitation of and/or acquisition assistance for existing housing in settled areas, compliance with Wetlands requirements is not triggered per 24 CFR 55.20 and Section 2 (b) - Executive Order 11990. New construction activities located outside of city limits will require contact with the proper authorities to determine impact and mitigation measures required.

d. Sole Source Aquifer

The Environmental Protection Agency has not designated any sole source aquifers in North Dakota, nor has it identified any within the state (per letter from the Office of the State Engineer dated 7/24/92).

e. Endangered Species

DCS has determined that the majority of these housing activities will not affect endangered species or critical habitats. New construction activities located outside of city limits will require contact with the proper authorities to determine impact and mitigation measures required.

f. Air Quality and Other Concerns: State Health Department

Consultation with the State Health Department has determined that, in general, these activities will not impact air quality per the State Implementation Plan. However, a Subrecipient must consult with the State Health Department on proper procedures if lead based paint, asbestos, or other hazardous conditions are identified. Another concern is the short-term impact of construction activities (e.g. debris, dust, and noise). Contractors will be required to adhere to standard construction practices in order to lessen the short-term effects of construction and to dispose of debris in an environmentally safe manner. Any work with wells or sewage systems in rural areas will comply with applicable state laws.

g. Wild and Scenic Rivers

No rivers in North Dakota are included in the National Wild and Scenic River System. (See letter dated Sept. 7, 1984 from the US Department of the Interior Fish and Wildlife Service in Bismarck).

h. Coastal Zone Management

Not applicable—no designated Coastal Areas located in North Dakota.

i. Farmlands Protection

Since the project involves rehabilitation of existing structures in settled areas, DCS has determined that the requirements of the Farmland Protection Act do not apply. New construction activities located outside of city limits will require contact with the proper authorities to determine impact and mitigation measures required.

j. Noise Abatement and Control

HUD Noise Abatement and Control regulation 24 CFR 51.10 (a)(5) supports modernization and rehabilitation activities. For houses located in noise exposed areas, DCS shall encourage noise attenuation features in alterations. The Subrecipient must answer the following questions on the Checklist to determine applicability and the need for noise attenuation measures.

- Is the property within 1,000 feet of a major highway or roadway?
- Is the property within 3,000 feet of a railroad?
- Is the property within 5 miles of a civilian airport or within 15 miles of a military airfield?

If the answer to any of these questions is yes, the Subrecipient will be encouraged to initiate noise attenuation measures as part of a structure's rehabilitation. However, noise attenuation measures will be required if it is new construction, or if it is an existing housing unit that is vacant due to code violations, condemnation, or hazardous conditions which make it uninhabitable. Special windows, insulation, and natural noise barriers are examples of attenuation measures.

k. Explosives/Flammable Operations: Above Ground Storage

Subrecipients will be instructed to note on the Site Specific Checklist if a property is located within one mile of an area exposed to thermal/explosive hazards, hazardous liquids (e.g. petroleum, gasoline, kerosene), hazardous gases (e.g. propane, hydrogen), or an area where chemicals of flammable nature (e.g. benzene or hexane) are stored. The homeowner will also sign a letter of acknowledgment, and the Subrecipient will attach a copy of this letter to the Checklist. Rehabilitation without mitigation measures will be allowed if the activity will not result in increased density, convert property usage (non-residential to residential), or make a vacant building habitable. In the event of a new construction activity, or a vacant house (with health/safety violations) in first-time homebuyer activities, the Subrecipient must notify DCS since mitigation measures will be required or the property will be deemed unacceptable for assistance.

l. Toxic Chemicals, Radioactive Materials, etc.

If the property is located within one mile of a dump, landfill or an industry manufacturing, storing, or disposing of chemicals or hazardous wastes as shown on the current EPA CERCLIS list (provided to each Subrecipient), the Subrecipient must notify DCS. DCS will send a letter to the EPA and request a summary evaluation of the site to help determine whether or not the assistance is appropriate under the circumstances.

m. Runway Clear Zones

DCS has determined that rehabilitation of existing structures will significantly prolong their physical life. Therefore, in accordance with 24 CFR Part 51, Subpart D, and 32 CFR Part 256, rehabilitation of a house or homebuyer assistance to buy a house located in a Runway Clear Zone at a civilian airfield or in a Clear Zone at a military airfield will be prohibited under the program. Rehabilitation of structures located in APZ I and II will be allowed in accordance with 32 CFR Part 256, since the density will not be increased. However, new construction, reconstruction, and homebuyer assistance will be prohibited in Accident Potential Zones (APZ) I and II.

To determine if this regulation applies, Subrecipients will be instructed to indicate if the structure to be assisted is located within one-half mile of any of the commercial civilian airports listed or within two and one-half miles of any military airport. Military airfields in North Dakota are the Grand Forks and Minot Air Bases. Civilian airports include Bismarck, Devils Lake, Fargo, Grand Forks, Jamestown, Minot, and Williston. If the structure is located within or near these areas, the Subrecipient must contact the local building official or appropriate airport, in writing, to determine if the property is in the Runway Clear Zone, Clear Zone, or APZ I and II and so note on the Checklist. A copy of this documentation must be included in the project files for the affected property.

n. Environmental Justice

The Executive Order 12898 requires all HUD programs to address the issue of low-income and minority populations being disproportionately and adversely impacted by environmentally unsafe and unsuitable living environments. The Site Specific Checklist already considers the impact of noise, explosives/flammable operations, hazardous materials and activities near civilian or military airports, and new construction projects. Therefore, the DCS has determined that low-income and minority populations will not be disproportionately and adversely impacted by environmentally unsafe and unsuitable environments.

6. State and Local Regulations

Grantees are prohibited from starting any proposed new construction or rehabilitation activity until all applicable permits required by state and local government are obtained and approved.

7. Documentation

HOME Program staff will review each Checklist and required documentation (e.g., correspondence from SHPO/THPO) to ensure that all of the required documentation is present before approving the release of funds and allowing the project to be set up in the IDIS system. HOME staff will review the Checklist indicating the status of the project (e.g. Exempt, Categorically Excluded not subject to 58.5, Categorically Excluded, or Environmental Assessment) and indicate if and when funds may be incurred. If an Environmental Assessment (EA) was required, the EA checklist and required documentation must also be attached.

8. Project Modifications and Alternatives Considered

A project limited to acquisition assistance only would not adequately address the need for safe and decent housing, while rehabilitation for existing owners only would further limit homeownership opportunities for low income households. Another alternative considered would be no project; but this would result in further deterioration of the housing stock, increased housing cost for lower income households, and fewer homeownership opportunities for low income households.

9. Mitigation Measures Needed

The Environmental Review Record will consist of this review and the completed Site Specific Checklist for each unit to be assisted. Each Site Specific Checklist will be filed under the project. Both will be used to assess the environmental impacts for each property. Overall, mitigation is determined to be necessary to lessen the impact of construction noise, debris, and dust. Contractors will be required to adhere to standard construction practices in keeping the site clear of hazardous debris and lessening dust and noise effects; however, these impacts will be short-term and will result in an improvement to the surrounding area. Furthermore, the Checklist and inspections of each unit will be used to identify the mitigation measures which may be necessary on a house by house basis. For instance, consultation with the ND Health Department will help Subrecipients to safely contend with instances of lead based paint or asbestos in structures.

10. Findings and Conclusions

Minor impacts will include the temporary noise, dust, and disruption associated with construction activities; but the projects will not permanently increase existing noise or air pollution levels. Mandatory consultation with the SHPO/THPO will prevent adverse effects or the loss of unique historical structures. Consultation with the ND Department of Health will help subrecipients to safely contend with instances of lead based paint or asbestos in structures. The projects will not promote development on floodplains or hazardous areas or the destruction of wetlands. Noise, water, air quality, and hazards will not change from what presently exists; nor will endangered species, farmlands, and wild and scenic rivers be affected.

Most, if not all, of the activities undertaken will likely be determined Categorical Excluded subject to 58.5, Categorical Excluded not subject to 58.5, or Exempt, except if the estimated cost of rehabilitation is more than 75 percent of the estimated replacement cost (reconstruction), or certain new construction which will require an Environmental Assessment. Unit density will not be increased by more than 20 percent, and no activities will involve changes in land use or the class of residential building. The project is not of sufficient size to meet threshold criteria established for the preparation of an environmental impact statement, nor will the project have a significant impact on the human environment.

Each affected activity will undergo a site specific review in order to meet environmental requirements. This review process should result in a conclusion that project activities will not unduly affect the existing environmental conditions in the area, and safeguards will be instituted as needed to protect the assisted household and the surrounding environment. Overall, no adverse environmental impacts from these activities are expected; instead these

housing activities will make a positive contribution to the well being of the assisted households and to their community and will increase the supply of decent housing for low income families.

*Prepared by: Corey Burgum, HOME Program Administrator
Division of Community Services*

Date: April 5, 2013