



Multifamily Guidance on Environmental Review Record in HEROS

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Introduction and Policy

The intent of this User's Guide is to assist Kentucky Housing Corporation's (KHC) funding applicants and subrecipients in completing the Environmental Review Record (ERR) as federally required for the HOME Investment Partnerships Program (HOME) and the National Housing Trust Fund (NHTF). Some of the requirements for NHTF may differ from HOME. Applicants for HOME, NHTF, and/or Risk-Sharing funds must contract with a KHC- approved person or firm to perform the required environmental review. A [list of approved environmental review preparers](#) is on KHC's website.

This guide provides background information about the federally required processes for ERRs. This includes why the ERR is necessary, how to perform the review, and other resources to help you complete the ERR in the HUD Environmental Review Online System (HEROS) for Multifamily funded initiatives. HEROS is an online system where recipients will answer questions and submit supporting documentation regarding the project review to satisfy the federal requirements. This guide is not to be used in substitute of a consultant or HUD guidance; this is merely an aid for assistance in completing reviews.

Instructions on HEROS usage can be found on the HUD Exchange in the [HEROS "How To" Videos section](#).

The following information will be covered in more detail in this guidance but there are some key points to consider prior to beginning the ERR:

- Projects with any portion of the site in a 100-year flood plain (areas designated as any variation of a Zone A) will not be eligible for funding assistance.
- NHTF funded projects cannot convert unique, prime or significant (state or local) farmland to urban use.
- The completion of the ERR process is mandatory before taking a physical action on a site or making a commitment or expenditure of HUD or non-HUD funds. You must have Authority to Use Grant Funds (AUGF) from HUD and KHC before making any project commitments. Using any portion of federal funds for acquisition, rehabilitation, conversion, leasing, repair, or construction before completing the ERR process requires the denial of any federal funds for that project (24 CFR 58.22).

Environmental Review Guiding Regulations

The National Environmental Policy Act of 1969 (NEPA) and "other federal laws and authorities" require that federally assisted actions (except those specifically exempted under 24 CFR Part

58.34) be reviewed for environmental consequences and potential alternatives before decisions and actions can occur. Therefore, an environmental review is required as part of the due diligence process for any project with HOME, NHTF, or Risk-Sharing funds.

An environmental review focuses on two complementary findings:

1. Whether the proposed undertaking will have an impact on the environment; and
2. Whether the environment will have an impact on the proposed undertaking. For example, does the environment make it an unwise investment of federal funds? In the case of housing, is the environment suitable for human habitation?

Further, the purpose of an ERR (24 CFR Part 58) is to protect, restore, and enhance environmental quality. Thus, a proposed undertaking should not only “not harm” the environment but protect it (by incorporating energy conservation measures) or enhance it (by physical restoration or rehabilitation).

The environmental review should be considered as part of the development’s feasibility analysis and planning process to:

1. Identify the existence of negative impacts on a project;
2. Consider means to mitigate negative impacts;
3. Consider alternatives to the project if needed; and
4. When all other options fail, to realize that rejection of the proposed site may be the most prudent action to take.

If at any time the scope of work must be substantially revised or amended, the environmental review process may need to be repeated to assess the impact of the proposed changes. In these cases, contact KHC for guidance.

Floodplains, Floodways and Wetlands

KHC does not fund projects that are in a floodplain. For new construction, all portions of the project site(s) essential to the use of tenants (i.e. buildings, parking lots, entrance to the development, recreational areas, etc.) must not be in a floodplain. If any portion of the project site is in a floodplain, flood insurance (as described below) will be required on the property. To avoid the flood insurance requirement, the project site may be divided, and a new plat or deed recorded to remove the portion of the property in the floodplain from the project site. KHC should be contacted for consultation any time there is a site located near a floodplain, floodway, or wetland.

For rehabilitation of currently occupied rental housing where any portion of the property is in a floodplain, the property must have federal flood insurance. If a portion of the project that is not essential to the tenants is in the floodplain, then to avoid the flood insurance requirement, the project site may be divided, and a new plat or deed recorded to remove the portion of the property in the floodplain from the project site. **Rehabilitation of vacant structures in a floodplain is not eligible.**

Flood insurance means insurance through the National Flood Insurance Program (NFIP). Projects not located in an NFIP area are ineligible. KHC requires an amount of at least the total KHC funds invested in the project, if KHC is in first lien position. If KHC is not in first lien position, then KHC requires an amount equal to the full replacement value of the property. KHC must be named as an insured on the policy.

If your project involves new construction and has either a mapped wetland or potential wetland on the project site, then contact KHC for guidance regarding the necessary 8-step decision making process unless an exception in 24 CFR Part 55.12 applies.

Radon Policy

Effective April 11, 2024, KHC established policies and procedures for HOME- and NHTF-funded projects to ensure grantees performing environmental reviews comply with HUD's recently released [CPD Notice- 23-103: Departmental Policy for Addressing Radon in the Environmental Review Process](#). Note, if your local community already has requirements regarding radon, contact KHC's Environmental Review Technical Administrator at joberlin@kyhousing.org.

What is Radon?

Radon is a naturally occurring colorless, odorless, and tasteless radioactive gas that comes from the natural decay of uranium. Radon itself then decays into radioactive decay products that can be inhaled and cause damage to the lungs and stomach tissue which could cause cancer.

Which Projects are Subject to Radon Considerations?

KHC developed these strategies to assist grantees with the necessary consideration of radon in the site contamination analysis required under 24 CFR Parts 58.5(i). Not all projects are subject to radon compliance such as those HUD declares as exempt from Environmental Review per 24 CFR 58.34(a) and those categorically excluded not subject to the Federal laws and authorities per 24 CFR 58.35(b).

KHC encourages all entities to explore the [UK College of Nursing's Bridging Research Efforts and Advocacy Toward Healthy Environments \(BREATHE\) Radon](#) information and data for preliminary research and planning. One of the features of the site is Radon Data by County that you can

utilize to familiarize yourself with the potential Radon risk in your service area. This data can assist developers with determining whether the project site is located in an area that has average radon levels at or above 4 pCi/L. After April 11th, 2024, if data (research for new construction) or actual radon testing (in the case of rehabilitation of structures) determines the radon levels are or may be above 4 pCi/L than a radon mitigation plan must be documented and implemented. In instances where radon testing will be conducted but cannot be conducted until after the environmental review record is certified – such as with new construction – then the initial mitigation documentation would not include a radon evaluation but must include a condition for post-construction radon testing followed by mitigation if needed.

Multifamily Rehabilitation and New Construction

The American National Standards Institute/American Association of Radon Scientists and Technologists (ANSI/AARST) MA-MFLB-2023 radon testing standards for multifamily buildings, schools, and large buildings must be utilized. The ANSI/AARST MA-MFLB-2023 standard describes how to conduct testing, interpret test results, and draft a Radon Test Report to document the process for the building owner and to document the ERR. The ANSI/AARST MA-MFLB-2023 standards can be viewed online for free and are intended to be implemented by licensed radon professionals. You can find a list of trained experts in Kentucky [here](#).

Mitigation

When radon testing determines indoor radon levels are at or above 4 pCi/L, then a mitigation plan must be created, that:

- identifies the radon level at initial testing,
- considers the risk to occupants' health,
- describes the radon reduction system that will be installed,
- establishes an ongoing maintenance plan,
- includes a reasonable timeframe for implementation, and
- requires post-installation testing by a licensed radon professional.

Documenting the ERR

In HEROS, document the radon evaluation and if necessary, the radon mitigation plan, if necessary, in the Contamination and Toxic Substances factor Compliance Determination screen and upload all supporting documentation.

If testing demonstrates that radon levels within the building are below 4 pCi/L, mitigation is not required. Environmental review preparers can simply document the test results in the ERR. If testing demonstrates that radon levels are at or above 4 pCi/L, then incorporate more mitigation measures until levels are below 4 pCi/L and document them in the ERR.

Responsibilities of the Recipient Regarding Environmental Review

KHC's Chief Executive Officer is responsible for ensuring that the environmental review process is carried out according to the requirements of Section 102 of NEPA, the related provisions in 40 CFR Parts 1500 through 1508, and 24 CFR Part 58, including the related federal authorities listed in 24 CFR 58.5. KHC will review the recipient's ERR to ensure it was carried out according to the environmental review requirements.

The HOME/Risk-Sharing ERR Process

The ERR process is intended to be a project planning tool and should be started early alongside project planning. If all environmental requirements cannot be met, then the site will not be eligible for federal funding.

Once an application is approved for funding, the ERR process can be input in HEROS. Recipients will not be able to publish their public notice to request Release of Funds (ROF) until they receive communication from KHC authorizing them to do so. Timing from award approval to full ROF will vary depending on the funding source requirements, the funding recipient, project complexity, and staff workload. Please plan your project timeline accordingly.

Define the Project: Identify the Scope of the Project or Undertaking (Aggregation)

Before the recipient can make a finding regarding the proposal in question, the recipient must aggregate all individual activities that are related and evaluate them as a single undertaking. This is known as aggregation; 24 CFR §58.32.

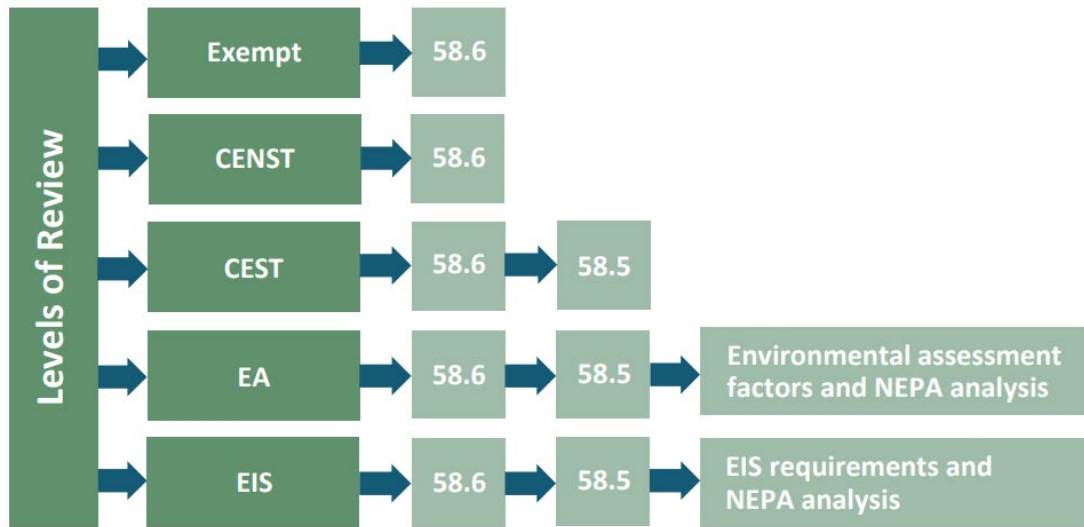
Determining the Classification of the Environmental Review

The recipient must determine whether the various activities of the undertaking fit the classification of:

- Exempt
- Categorically Excluded - Not Subject to 58.5 (CENST)
- Categorically Excluded - Subject to 58.5 (CEST)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

The required process to obtain the ROF will vary depending upon the classification of the undertaking.

Level of Review



Examples of the classification of activities appear below – please reference the statutes for a complete list of activities.

SAMPLE: Exempt Activities – 24 CFR 58.34(a):

- Environmental, planning & design costs
- Information & financial services
- Administrative/management

SAMPLE: Categorically Excluded Not subject to – 24 CFR 58.34(b) – (CENST):

- Supportive Services
- Operating Costs (utilities/supplies/maintenance)
- Pre-development costs (legal, consulting fees)

SAMPLE: Categorically Excluded subject to – 24 CFR 58.35(a) – (CEST):

- Rehab of multifamily residential unit:
 - Unit density not changed by more than 20%
 - No change in land use

- Cost is less than 75% of replacement after rehab
- Rehab of single-family (SF) when density is not increased beyond 4 units and no change in land use
- Removal of architectural barriers

SAMPLE: Environmental Assessment – 24 CFR Part 58.36 – (EA) -*This will be applicable to most multifamily initiatives.*

- Involve change in land use
- Major rehab of multifamily
- New Construction/Demolition if greater than 4 SF units

In HEROS, you will need to complete the necessary components of the environmental related laws and authorities based on your classification determination.

Guide for Developing Supporting Documentation for HEROS

Environmental Review: Related Law and Authorities

Follow this guidance for developing supporting documentation to submit with the Environmental Review Related Laws and Authority section in HEROS. Please note that this guide was originally developed for use with KHC's single-family developers, but the same laws and authorities are applicable to multifamily efforts as well.

The [HEROS Environmental Review Completion Guide](#) is located on KHC's Housing Contract Administration Partner Agency Portal.

Environmental Review: Environmental Assessment Factors

An Environmental Assessment (EA) is typically required when a proposed project has activities such as new construction or a change in land use. An EA ensures that partners thoroughly investigate the impacts of (i.) the project on the surrounding environment, community, and population, and (ii.) the surrounding conditions on the project.

HUD's [Environmental Assessment Factors and Categories eGuide](#) is updated with the latest requirements, resources, and best practices for conducting an environmental assessment.

Environmental Review: Completing the ERR Process

Once the ERR is completed in HEROS, the recipient should assign it to KHC's Environmental Review Technical Administrator for their review and approval. During this process, if there are corrections to be made, then KHC staff will contact you via email with the necessary corrections and will assign the review back to your consultant in HEROS to be updated.

The environmental review process is not complete until an ROF is requested and received from HUD, which entails publishing a proscribed public notice to receive public comments. When necessary, KHC staff will work with the consultant to publish the required notices and address any public comments if they are received.

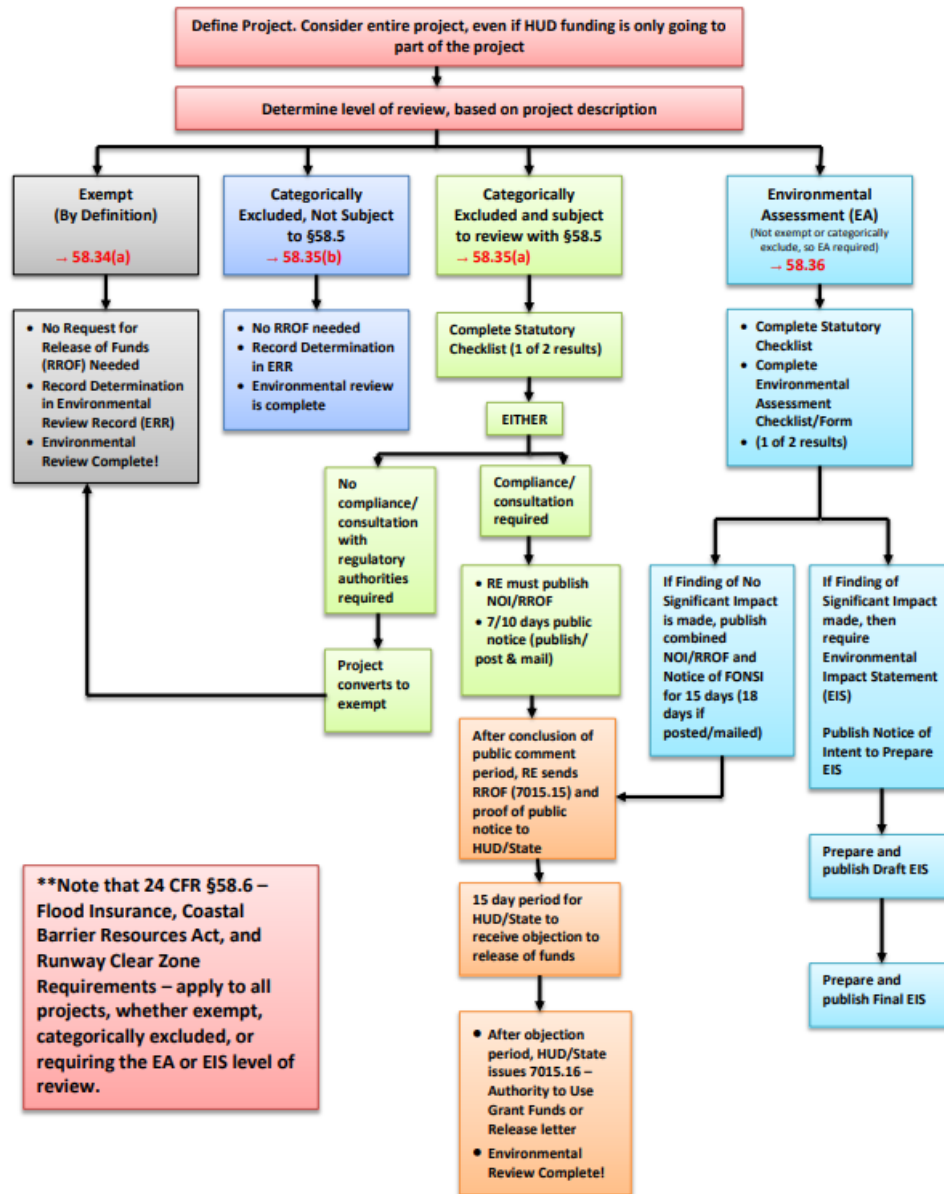
KHC staff will send proof of publication along with an official Request for Release of Funds (RROF) to HUD and will notify the development team once HUD has issued the Authority to Use Grant Funds (AUGF).

Environmental Review: Public Notice Process

Different notices and public comment periods are required based on the classification of the project. Do not publish a public notice until you work with KHC staff to ensure the information and relevant dates are confirmed. If all project information in the notice is not correct, the recipient may be required to republish.

HUD has created a flowchart that outlines the levels of environmental reviews and highlights the public notices and public comment timeframes necessary according to the level of review.

Environmental Review Process (To Be Conducted by Responsible Entity)



HUD has provided [samples](#) of both of the required notices that may be required, in both English and Spanish.

- Sample Notice of Intent to Request Release of Funds (NOI-RROF)
- Sample Notice of Finding of No Significant Impact (FONSI) and Request Release of Funds

Be specific and correct in describing your project for the public notice and include a detailed project description, a complete address, and the type and amount of funds for the project. Failure to publish a notice without current and correct information will require republication

and will delay the project. KHC staff require two items to show for proof of publication: a publisher's affidavit and a copy of the published notice.

All required minimum time periods are counted as calendar days and exclude holidays. The first day of a time period begins on the day following the publication date of any notice (24 CFR 58.21).

A copy of the text for the public notice(s) must be submitted to all interested parties as well, such as local, state, and federal agencies. Contact KHC staff for more details.

Interested Parties:

- Manager
NEPA Programs Office
US EPA Region IV
- State Historic Preservation Officer
Kentucky Heritage Commission
- County Judge Executive in the County in which the funded activity is occurring.
- Mayor in the City in which the funded activity is occurring.
- Director, Louisville Field Office
U.S. Dept. of Housing and Urban Development

Release of Funds

The completion of the ERR process is mandatory before taking a physical action on a site or making a commitment or expenditure of HUD or non-HUD funds.

Using any portion of federal funds for acquisition, rehabilitation, conversion, leasing, repair, or construction before completing the ERR process requires the denial of any federal funds for that project (24 CFR 58.22). Therefore, before committing or expending funds on a project (i.e. closing on a piece of property, signing a construction contract, etc.) it is imperative for the recipient to receive Environmental Clearance and a Release of Funds (ROF) from KHC. If this does not happen, KHC will be unable to provide funding for the project.

Environmental Review: Summary of RROF Process - Categorical Exclusion (CEST) Projects

1. NOI-RROF published in the newspaper of largest circulation in the community in which the funded activity is occurring.
2. Ten (10) day public comment period is observed.
3. If a public comment is received, then KHC works with the recipient to respond.
4. KHC completes the official RROF HUD Form-7015.15 and submits it to HUD via HEROS, including the affidavit and proof of publication.
5. HUD observes a 15-day objection and public comment period.
6. HUD then issues AUGF HUD Form-7016.16 to KHC and KHC notifies the recipient.
7. Development team implements project including any environmental conditions that apply.

Note: There are provisions for when publishing a public notice is not feasible and it must be posted in the local community. Contact KHC for instructions should this be necessary.

Environmental Review: Summary of RROF Process – Environmental Assessment (EA) Projects

1. FONSI/NOI-RROF – (Combined Notice) published in paper of largest circulation in community in which the funded activity is occurring.
2. Fifteen (15) day public comment period is observed.
3. If public comments are received, then KHC works with the recipient to respond.
4. KHC completes the official RROF HUD Form -7015.15 and submits it to HUD via HEROS including the affidavit and proof of publication.
5. HUD observes 15-day objection and public comment period.
6. HUD issues the AUGF HUD Form-7016.16 to KHC and KHC notifies the recipient.
7. Developer implements project including any environmental conditions that apply.

Note: There are provisions for when publishing a public notice is not feasible and it must be posted in the local community. Contact KHC for instructions should this be necessary.

Environmental Review Process: National Housing Trust Fund

The Environmental Review process for NHTF differs from the process used for HOME. The NHTF Environmental Provisions for new construction and rehabilitation under the Property Standards

at 24 CFR 93.301(f)(1) and (2) are similar to HUD's Environmental Regulations at 24 CFR Parts 50 and 58. NHTF projects are subject to the same environmental concerns that HUD-assisted projects are subject to. The main difference is that the NHTF Environmental Provisions are outcome-based and exclude consultation procedures that would be applicable if NHTF selection was a federal action. Parts 50 and 58 are process based and include consultation procedures for several laws and authorities where there may be environmental impacts.

Due to the outcome-based nature of the NHTF Environmental Provisions and lack of a federal action, compliance with some environmental property standards is streamlined because consultation is not required. For example, tribal consultation is only required if human remains are discovered on the project site during construction.

If the project is **only** utilizing NHTF and not HOME or another HUD funding source which would require full compliance with Parts 58, the NHTF process should be used. If the project is utilizing other HUD funding (either from KHC or another entity), a full Part 50 or Part 58 environmental review must be done.

The following NHTF Environmental Provisions are the **same** as the Part 58 process:

- Coastal Barrier Resources System
- Coastal Zone Management
- Explosives and Hazards
- Endangered Species (informal consultation)
- Wild and Scenic Rivers
- Sole Source Aquifers

The following NHTF Environmental Provisions are **not the same** as the Part 58 process:

- Historic Preservation
- Farmlands
- Airport Zones
- Floodplains
- Wetlands
- Contamination
- Noise
- Safe Drinking Water

When a project is only using NHTF funds, there are three primary differences in the review process.

1. First, no level of review is required (CEST/EA) like with HOME funding. With NHTF only funding, there are two environmental formats:

- [24 CFR 93.301\(f\)\(1\) New Construction – HTF Funds Only](#)
 - [24 CFR 93.301\(f\)\(2\) Rehabilitation – HTF Funds Only](#)
2. Second, the public comment period is not required by either the recipient or HUD.
 3. Lastly, there is no request for ROF and Certification, and thus, no authority to use grant funds. When the ERR is completed and approved by KHC, KHC will notify the recipient that the project meets the requirements under Part 93 and the recipient may move forward.

When a project is combining NHTF, and other HUD funds, Part 58 compliance procedures must be used when they meet the NHTF Environmental Provisions under 24 CFR 93.301(f)(1). When Part 58 compliance procedures are not sufficient then the NHTF Environmental Provisions must be met. Below are the NHTF suggested formats to utilize in these situations:

- [24 CFR 93.301\(f\)\(1\) New Construction – HTF and Other HUD Funds](#)
- [24 CFR 93.301\(f\)\(2\) Rehabilitation – HTF and Other HUD Funds](#)

HUD issued [CPD Notice-16-14: Requirements for Housing Trust Fund Environmental Provisions](#) that provides further guidance.