

Frequently Asked Questions

Using Existing Review/Re-evaluation

1. How long is a completed environmental review valid?

Generally, HUD advises that an RE can rely upon a completed environmental review for 5 years with re-evaluation required when there is a substantial change in the nature, magnitude or extent of the project; there are new circumstances and environmental conditions which may affect the project or have a bearing on the impact; or the recipient proposes the selection of an alternative not in the original finding.

2. Are there any circumstances where the Tribe can rely upon and use an environmental review that is more than 5 years old? If so, how does re-evaluation factor in?

Yes, there may be instances where it is appropriate and efficient to use an older review such as when the timeline for the project is longer than five years or the project duration has changed due to unforeseen circumstances. The Tribe may consider and use an environmental review that was completed more than 5 years ago, but less than 10 years ago, when: (1) the project has begun but is not complete, (2) the description for the original ERR is finite, clear and does not establish a duration for the project¹ and (3) the Tribe re-evaluates the environmental review pursuant to 58.47 and determines that the environmental finding has not changed. Additionally, to support the National Environmental Policy's Act (NEPA) purpose to keep the public informed, HUD encourages the Tribe to keep Tribal members and the public informed of the project process throughout its development. For example, a Tribe completed an Environmental Assessment (EA) and made a Finding of No Significant Impact (FONSI) for the development a subdivision of 15 homes in 2015. Five years after completing the EA, the Tribe has only been able to fund and build 12 homes. The Tribe intends to build the remaining 3 homes in 2022. The Tribe does not need to initiate a new environmental review for the project; however, the Tribe does need to re-evaluate the project pursuant to 58.47. If the re-evaluation does not change the environmental finding from a finding of no significant impact (FONSI) to finding of significant impact (FOSI), then the Tribe does not need to re-publish or post a FONSI/NOI RROF because the project itself and its impacts have not changed from the original publication. To ensure the principles of NEPA are met to inform the public of the project and its impact, the Tribe should continue to keep the public informed of the subdivision project through regular meetings or other processes that the Tribe uses to keep Tribal members and public informed of projects.

¹ Programmatic and Tiered environmental reviews must establish a time duration for the review (typically five years). In such cases, the RE cannot reevaluate and rely upon a review that is more than five years old.

3. What factors should a Tribe consider when determining whether to re-evaluate a project or when to initiate a new environmental review and publish environmental review?

While the regulations offer guidance for when re-evaluation is required, the decision of whether to re-evaluate an existing environmental review or begin a new environmental review can be challenging. When deciding between re-evaluation/updating an existing review or undertaking a new environmental review, HUD advises the Tribe to consider the purposes of the National Environmental Policy Act (NEPA) --- informing the public of the impact of the project on the environment and the impact of the environment on the project.

Factors that a Tribe should consider include:

- scope of the project-- has the project changed so much that the public should be informed through a new environmental review?
- length of time – how has the public been informed of the project? How much time has passed from publication of NOI/RROF to initiation of project?
- Environmental impacts – has the analysis of the environmental impact revealed new and substantial impacts that public should be informed about?

4. The Tribe completed an EA and made a FONSI for a project to build 6 new houses in a subdivision. Subsequently, the Tribe received more federal funding and wants to change the project to include a park in the subdivision. Can the Tribe re-evaluate the EA for the 6 houses and include park?

As the Responsible Entity, the Tribe will need to consider whether the change in activities has changed the project into a different project than the original project described in the Notice of Intent to Request Release of Funds and Finding of No Significant Impact, requiring a new environmental assessment and public notice. Here, the Tribe may decide that re-evaluation is appropriate because it is a substantial change in the magnitude of the project, adding an activity that does not change the original project in a substantial way that requires public outreach. If the Tribe re-evaluates then the Tribe does not need to complete a new Environmental Assessment for the park.

5. The Tribe completed a CEST level of review to build 4 single family houses. The Tribe now wants to fund 2 more houses in the same development. Can the Tribe re-evaluate the CEST review and include two more houses?

Tribe will need to complete a new and separate review for the two houses since the reevaluation would change the environmental finding from CEST to EA.

6. The Tribe completed an EA and made a FONSI for a project to build a gas station and cultural center. However, before the project began the Tribe decided to build 10 houses instead of the gas station and cultural center. Can the Tribe re-evaluate the EA for the gas station and cultural center?

No, the Tribe cannot rely upon and re-evaluate the original EA. The project has not begun, and it has transformed into an entirely different project. The Tribe needs to complete a new environmental review for the housing project.

7. How does a Tribe document re-evaluation?

Tribes should document re-evaluation by drafting a memo to the ERR that provides the reason(s) re-evaluation is needed, identifying the changes to the project or the environmental conditions. The memo should also summarize the results of re-evaluation and statement that the environmental finding (CEST, EA) has not changed as a result of re-evaluation. The memo should be dated and signed by the Preparer. The memo needs to include supporting documentation. HUD recommends NEPA Assist to review for environmental changes. NEPA Assist allows users to print a report that may be used to support Tribe's analysis. Tribes should also consider the age of buildings in the project area to help determine if Section 106 consultation is needed to determine if any buildings are eligible for the National registry. Particular attention should be made to buildings that have become 45-50 years old.

Coastal Zone Management

1. Is Tribal land held in federal trust subject to the Coastal Zone Management Act?

No, the boundary of a State's coastal zone must exclude lands held in trust. See 15 CFR 923.33. More information about Coastal Zone Management Act compliance can be found on [HUD's Web-based Instructional System for Environmental Reviews \(WISER\)](#).

Prime Farmlands

1. For HUD projects subject to Farmland Protection Policy Act of 1981 (FFPA), if the is on Tribal land held in federal trust and the land is "farmland of state importance", does FFPA apply?

Yes, "farmland of state importance" does apply on Tribal lands through FFPA. FFPA does not prohibit projects from proceeding; however, the Tribe will need to fill out parts I and III this [form](#) and send to USDA along with a map of the project. More information about FFPA compliance can be found on [HUD's Web-based Instructional System for Environmental Reviews \(WISER\)](#)