Coordinated Environmental Review Process
Final Report

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In collaboration with:

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Council on Environmental Quality
U.S. Department of Agriculture
U.S. Department of Commerce
U.S. Department of Energy
U.S. Environmental Protection Agency
U.S. Department of Health and Human Services
U.S. Department of Interior
U.S. Department of Transportation

December 15, 2015

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Acronyms Used in Environmental Review

No.	Term	Acronym
1	Acceptable separation distance	ASD
2	Advisory Council on Historic Preservation	ACHP
3	Alaska Office of Native American Programs	AKONAP
4	Alaska Rural and Native Villages Program	ANV
5	Alaska State Department of Environmental Conservation	DEC
6	American Society of Mechanical Engineers	ASME
7	Association of Alaska Housing Authorities	AAHA
8	Association of Village Council Presidents	AVCP
9	Bureau of Indian Affairs	BIA
10	Clean Water Indian Set-Aside Program	CWISA
11	Council on Environmental Quality	CEQ
12	Drinking Water Infrastructure Grant Tribal Set-Aside Program	DWIG-TSA
13	Eastern Woodlands Office of Native American Programs	EWONAP
14	Economic Development Administration	EDA
15	Environmental Assessment	EA
16	Environmental Impact Statement	EIS
17	Environmental Review Record	ERR
18	Executive Order	EO
19	Federal Emergency Management Agency	FEMA
20	Federal Highway Administration	FHWA
21	Government Accountability Office	GAO
22	Great Lakes Inter-Tribal Council	GLITC
23	Historic Preservation Fund	HPF
24	The Housing and Community Development Act	HCDA
25	Housing Improvement Program	HIP
26	Indian Community Development Block Grant	ICDBG
27	Indian Health Service	IHS
28	Indian Housing Block Grant	IHBG
29	Indian Housing Plan	IHP
30	Indian Reservation Roads Program	IRR
31	Midwest Alliance of Sovereign Tribes	MAST
32	National American Indian Housing Council	NAIHC
33	National Association of Tribal Historic Preservation Officers	NATHPO
34	National Conference of State Historic Preservation Officers	NCSHPO
35	National Congress of American Indians	NCAI
36	The National Environmental Policy Act	NEPA
37	National Fire Protection Association	NFPA
38	National Flood Insurance Program	NFIP
39	National Marine Fisheries Service	NMFS

No.	Term	Acronym
40	National Tribal Transportation Facilities Inventory	NTTFI
41	Native American Housing and Self Determination Act	NAHASDA
42	Northern Plains Office of Native American Programs	NPONAP
43	Northwest Indian Housing Association	NWIHA
44	Northwest Office of Native American Programs	NWONAP
45	Office of Native American Programs	ONAP
46	Programmatic Agreement	PA
47	Regional Tribal Operations Committee	RTOC
48	Responsible Entity	RE
49	Rights-of-way	ROW
50	Rural Alaska Village Grant Program	RAVG
51	Rural Development	RD
52	Rural Housing Service	RHS
53	Rural Utilities Service	RUS
54	The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users	SAFETEA-LU
55	Sanitation Deficiency System	SDS
56	Southern Plains Indian Housing Association	SPIHA
57	Southern Plains Office of Native American Programs	SPONAP
58	Southwest Office of Native American Programs	SWONAP
59	Southwest Tribal Housing Alliance	SWTA
60	State Historic Preservation Officer	SHPO
61	Transportation Investment Generating Economic Recovery	TIGER
62	Tribal Historic Preservation Officer	THPO
63	Tribally Designated Housing Entity	TDHE
64	Tribal Transportation Allocation Methodology	TTAM
65	Tribal Transportation Improvement Plan	TTIP
66	Tribal Transportation Program	TTP
67	United Native American Housing Association	UNAHA
68	United South and Eastern Tribes	USET
69	US Department of Agriculture	USDA
70	US Department of Commerce	DOC
71	US Department of Energy	DOE
72	US Department of Health and Human Services	HHS
73	US Department of Housing and Urban Development	HUD
74	US Department of Interior	DOI
75	US Department of Transportation	DOT
76	US Environmental Protection Agency	EPA
77	US Fish and Wildlife Service	USFWS
78	Weatherization Assistance Program	WAP

I. Executive Summary

In a 2014 report[1], the Government Accountability Office (GAO) recommended the establishment of a "coordinated environmental review process for all agencies overseeing tribal housing development."[2] This recommendation was made to "increase consistency and reduce time and predevelopment cost for [Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) grant recipients."[3] Relying in part on the GAO report, the Senate Report accompanying the FY 2015 Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill directed the U.S. Department of Housing and Urban Development (HUD) "to collaborate with the Council on Environmental Quality and affected agencies[4] . . . to develop a coordinated review process to simplify tribal housing development and its related infrastructure needs."[5]

In accordance with that mandate, HUD formed a workgroup comprised of all affected agencies. The workgroup met weekly from March, 2015 through the delivery of this report. During meetings, the workgroup gathered information and discussed barriers and solutions to completing environmental reviews for Indian housing and housing-related infrastructure.

Concurrently, information was collected from a variety of sources. Documents were reviewed. All agencies participating in the interagency workgroup were interviewed about their regulations, policies, procedures, and agency-specific laws. Nineteen tribes and tribally designated housing entities (TDHEs) were interviewed about their existing environmental review processes. Tribes and TDHEs participated in a series of briefings and listening sessions around the country to explain this effort and discuss their concerns and suggestions. Two formal tribal consultations were held to discuss findings, seek feedback, and garner additional information regarding processes and barriers.

Environmental Review Requirements

The National Environmental Policy Act (NEPA) of 1969 requires agencies to undertake an assessment of the environmental effects of their proposed actions, consider reasonable alternatives to proposed actions, and allow for public participation prior to taking actions and making decisions.[6] All projects entirely or partly financed, assisted, conducted or approved by Federal agencies must comply with NEPA and other applicable, related Federal laws and authorities.[7] The NEPA environmental review[8] is the

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[1] GAO REP. NO. 14-255, *Native American Housing: Additional Actions Needed to Better Support Tribal Efforts* (March 2014) [hereinafter *GAO report*], *available at* http://www.gao.gov/assets/670/662063.pdf.
[2] *Id.* at page 34.
[3] *Id.*
[4] The report language defined the affected agencies as "including the Department of the Interior, Agriculture, Commerce, Energy, Health and Human Services, Treasury and the Environmental Protection Agency." S. REP. NO. 113-182, at 121 (2014), accompanying S.2438, *available at* https://www.congress.gov/113/crpt/srpt182/CRPT-113srpt182.pdf. Subsequently, the Appropriations Committee staff released the Department of Treasury. A list of the workgroup members from each agency can be found at Appendix 1.
[5] *Id*. at 121.
[6] 42 U.S.C. § 4331 (2000).
[7] Council on Environmental Quality, 40 C.F.R. § 1502.25(a) (2011).
[8] 40 C.F.R. § 1500.1. 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.

vehicle by which agencies make an informed decision about the environmental effects of their proposed actions.[9]

Agencies may also be required to document compliance with a number of Federal environmental laws, statutes, executive orders, regulations, and agency policies and procedures in their environmental review records. Although many of these laws and authorities apply across agencies, the way they are implemented agency-to-agency may vary. In addition, agency-specific laws and authorities may apply to a project. Compliance with these laws and authorities may require consultation with local, state, or Federal agencies.[10]

The various laws and authorities that govern the environmental review process were discussed at length during the collaborative process. Workgroup members as well as listening session[11] and consultation participants were asked about the related environmental laws and authorities other than NEPA that they believed caused the greatest concern. Participants identified Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, Executive Order (EO) 11988[12] on Floodplain Management, Section 404 of the Clean Water Act, and the Executive Order 11990 on Protection of Wetlands. Accordingly, the workgroup focused on identifying opportunities around these concerns.

Conclusions

Focused on the directive in the 2015 appropriation bills, the interagency workgroup discussed and examined the information collected from the tribes and agencies and reviewed environmental review requirements. It became clear that no single effort or legislative change would ensure a coordinated and simplified environmental review process for tribal housing projects; but rather, an on-going effort between agencies to discover commonalities and foster collaborative relationships was required. The interagency workgroup focused on identifying measures that could be taken to coordinate agencies' environmental review processes within the existing framework and presents herein short- and long-term recommendations.

Recommendations

A number of laws and authorities govern important aspects of the environmental review process. Multiple agency involvement in a project adds additional complexity due to varied implementation approaches toward environmental statutes, regulations and policy requirements. The interagency workgroup is recommending a series of improvements to assist in expediting the environmental review process. These recommendations are grouped by timeframe.

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[9] 40 C.F.R. § 1500.1(c) (2011).

[10] Examples of consulting agencies include the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act and State or Tribal Historic Preservation Officers under Section 106 of the National Historic Preservation Act.

[11] This question was posed in some, but not all of the listening sessions.

[12] EO 13690 issued January, 2015 amends EO 11988. Revised Guidelines were published October 22, 2015, at 80 FR 64008, "Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input."

Short-Term Recommendations

1. **Incorporate environmental review documents by reference:** In accordance with NEPA regulations, an agency can incorporate by reference a NEPA document prepared by it or by another agency, as well as any other publicly available studies or material, in their environmental reviews.[13] The interagency workgroup found that this is a useful tool that is already being used in some areas and has served to simplify the environmental review process. The workgroup is exploring effective means of encouraging this as a best practice for all agencies, including establishing a memorandum of understanding and working with tribes to ensure that their environmental reviews satisfy the needs of all agencies.
2. **Develop common categorical exclusions:** Each agency has defined its own categorical exclusions tailored to its programs, which can result in inconsistencies in the level of environmental review conducted for some projects involving multiple agencies. The workgroup intends to explore whether environmental reviews could be expedited if agencies which fund similar types of projects developed aligned categorical exclusions.
3. **Address resource deficiencies at the Bureau of Indian Affairs (BIA):** A number of tribes spoke about challenges they had experienced when working with BIA, including long response times and inconsistent interpretations, which appear to be derived from staffing and/or other resource deficiencies. The interagency workgroup recommends further examination of this issue to determine appropriate strategies and solutions available to address this issue.
4. **Provide training for agency staff:** Issues with regard to consistent application of the environmental review processes within agencies was identified as a problem by the tribes. The interagency workgroup recommends agency specific training for staff on environmental review processes and any changes that come out of this effort. This may require additional funding.
5. **Provide training for tribes:** Based upon requests during the consultation process and workgroup discussions, the workgroup recommends training be provided for tribes on all new policies and requirements to come out of this effort, as well as basic training on environmental review procedures. This may require additional funding.
6. **Continue review of related environmental laws and authorities to identify opportunities for greater efficiencies:** The interagency workgroup intends to continue its review of related laws and authorities to identify opportunities for greater efficiencies. The workgroup identified funding shortages to Tribal Historic Preservation Offices as a critical problem in addressing National Historic Preservation Act Section 106 issues.
7. **Create regional consortiums:** Participants at a formal consultation session recommended the use of regional environmental consortiums, following the model of Environmental Protection Agency's (EPA) Regional Tribal Operations Committee (RTOC). The RTOC facilitates discussion and sharing of information between tribes and agencies. The workgroup supports the concept, which highlights peer-to-peer technical assistance.

Long-Term Recommendations

1. **Explore the development of an interagency environmental review automated tool:** The interagency workgroup is exploring the efficacy of the creation of an automated tool that tribes

[13] 40 C.F.R. § 1502.21 (2011).

could use to determine environmental requirements, prepare environmental documents, and/or submit documents to funding agencies.

2. **Explore HUD-specific regulatory and policy improvements**: Tribes have requested changes that are specific to HUD's programs and regulations. HUD intends to work internally to address these concerns, including HUD's explosive hazards regulations and paperwork burdens for administrative activities.
3. **Create more predictable funding mechanisms:** The workgroup is exploring how to give tribes the tools to engage in effective project planning, which may include more predictable formula funding. While the workgroup does not endorse formula funding for all programs, most funding sources[14] are awarded competitively, making long-term planning difficult. Tribes are often unable to identify all funding agencies from the outset of a project, in part because many funding sources are not predictable.
4. **Establish an on-going environmental review interagency workgroup:** The workgroup recommends continued collaboration, implementing many of the recommendations, and further developing measures to ensure efficient, coordinated environmental reviews for Indian housing and related infrastructure.
5. **Explore expanding the scope of this effort:** The focus of the workgroup's effort was limited to housing and housing-related infrastructure. However, tribes have suggested an expansion of this process to other types of projects, such as economic development, to avoid the creation of a two-system environmental review process.[15] The workgroup recommends exploration of expanding the scope of this project.

II. Introduction

It is well documented that Native Americans face some of the most challenging housing conditions in the country. According to the GAO study, those challenges are largely attributable to remote locations and the lack of adequate infrastructure to support the development of affordable housing. In its report to the Congressional committees, GAO made several recommendations, including the establishment of a coordinated environmental review process for all agencies overseeing tribal housing development.[16] This recommendation was made to "increase consistency and reduce time and predevelopment cost for NAHASDA grant recipients."[17]

A. Mandate for the Project

Relying in part on the GAO report, in December 2014, the Senate Report accompanying the FY 2015 Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill directed

[14] The exceptions are HUD's NAHASDA funding and FHWA's Tribal Transportation Program (TTP), which are awarded by formula.
[15] If the scope of this project is expanded, the other considered areas may not require the same workgroup team members.
[16] *GAO Report, supra* note 1, at 34.
[17] *Id.*

HUD "to collaborate with the Council on Environmental Quality and affected agencies[18] . . . to develop a coordinated review process to simplify tribal housing development and its related infrastructure needs."[19] Further, the Committee directed the Secretary of Agriculture "to work with HUD . . . and other agencies to investigate opportunities to design a coordinated environmental review process for tribal housing and related infrastructure."[20] In addition, the Senate Report "encourage[d] EDA [the U.S. Department of Commerce, Economic Development Administration] to work with [HUD] to reduce duplication in the environmental review process."[21] Subsequently, the FY 2015 Joint Explanatory Statement directed HUD "to collaborate with the Council on Environmental Quality and affected Federal agencies specified in the Senate Report 113-182 to develop a coordinated environmental review process to simplify tribal housing development and related infrastructure needs."[22]

B. Methodology

To address the committee's requirements, HUD designed a project approach that included forming a workgroup of all affected agencies and gathering the pertinent information needed to formulate findings and recommendations. The first week of May 2015, following collaboration with the Council on Environmental Quality (CEQ) and other agencies, HUD delivered an interim report detailing the progress of this collaborative process and projecting timelines for the final completion of the report.

1. Workgroup[23]

To ensure compliance with the mandate to collaborate with affected agencies, HUD formed a workgroup comprised of the agencies identified by the committee. After further information gathering, it was determined that the Department of Transportation, Federal Highway Administration (FHWA) should also be included because it provides funding for roads and infrastructure in Indian country. The workgroup met weekly from March 2015 through the delivery of this report. During meetings, the workgroup considered information obtained from a concurrent information gathering process and discussed issues relating to barriers to completing environmental reviews for tribal housing and housing-related infrastructure.

As a result of the workgroup efforts, possible recommendations were explored at length, with a focus on short- and long-term solutions. The agencies examined the efficacy and practicality of each potential recommendation, and finally, identified collaborative interagency recommendations and agency-specific solutions that would begin to expedite and coordinate the existing environmental review process for tribes.

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[18] The report language defined the affected agencies as "including the Department of the Interior, Agriculture, Commerce, Energy, Health and Human Services, Treasury, and the Environmental Protection Agency." S. REP. NO. 113-182, *supra* note 4, at 121.
[19] *Id.* at 121.
[20] S. REP. NO. 113-164 (2014), at 54, *available at* https://www.congress.gov/113/crpt/srpt164/CRPT-113srpt164.pdf.
[21] S. REP. NO. 113-181 (2014), at 17, accompanying S.2437, *available at* http://www.gpo.gov/fdsys/pkg/CRPT-113srpt181/pdf/CRPT-113srpt181.pdf.
[22] 160 CONG. REC. H9982 (2014), *available at* https://www.congress.gov/crec/2014/12/11/CREC-2014-12-11-bk2.pdf.
[23] *See* Appendix 1.

2. Information Gathering

Data was collected from a variety of sources. Initially, HUD [24] reviewed the following documents:

- Agency Requirements for Complying with the National Environmental Policy Act (NEPA) for Tribes and Alaskan Native Villages;[25]
- Native American Housing: Additional Actions Needed to Better Support Tribal Efforts;[26] and
- Overview of Tribal Water Infrastructure Funding Application Processes and Recommended Paperwork Streamlining Opportunities.[27]

HUD then surveyed[28] agencies regarding existing laws and procedures, interviewed tribes and TDHEs, held briefings and listening sessions with tribes,[29] and conducted formal tribal consultations. From the information collected, a general "as is" process for the development of housing and supporting infrastructure in Indian country was developed and validated.[30]

a. Briefings, Listening Sessions, and Formal Tribal Consultations

A variety of methods were used to obtain the input of the tribes. Briefings were held with the tribes to inform them about this project. In addition, listening sessions were used to seek the tribes' perspectives on agency environmental review requirements when developing housing projects, as well as their recommendations on how the environmental review process could be more effective, efficient, and timely. Listening sessions began in February 2015 and were punctuated at two strategic points – mid-way through the scheduled listening sessions and after all listening sessions were completed – by formal tribal consultations.[31] Using the information gathered in the listening sessions and interviews, HUD and its partner agencies used the tribal consultation forum to discuss findings, seek feedback, and garner additional information regarding processes and barriers.

b. Interviews – NAHASDA Grantees

To ensure a thorough understanding of the specific challenges faced by NAHASDA grantees in developing housing and administering housing activities, the briefings, listening sessions and tribal consultations were augmented by targeted interviews. Interviewees were identified and selected to ensure diversity based on geographic location, tribal size, and the type of housing being developed with

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[24] Documents specific to each agency including policies, regulations and statutes and information relating to tribes/TDHEs were reviewed as the project progressed.

[25] Review of Infrastructure Task Force Agency Requirements for NEPA, August 4, 2011, *available at*: http://www.epa.gov/tribal/trprograms/nepa-summary-matrix-and-appendices-08AUG11.pdf.

[26] *GAO Report, supra* note 1.

[27] This document was prepared by the Streamlining Preconstruction Paperwork Workgroup as requested by the Infrastructure Task Force on Access in February 2011.

[28] Agency interview questions can be found at Appendix 2.

[29] A list of all listening sessions, briefings and tribal consultations are at Appendix 3.

[30] The resulting "as is" process chart is at Appendix 4. This process chart was validated by tribal consultation attendees during the National Congress of American Indians (NCAI) Mid-Year Conference in St. Paul, Minnesota on June 28, 2015.

[31] The tribal consultations were held at the AMERIND Risk/ National American Indian Housing Council Annual Convention (May 12-14, 2015) and the NCAI conference (June 28, 2015).

the input of HUD staff and tribal housing organizations. Specific interview questions[32] were developed for tribal representatives in each of four categories:

- Tribes that have developed housing on fee simple land[33] without infrastructure in place;
- Tribes that have developed housing on fee simple land with infrastructure in place;
- Tribes that have developed housing on trust land[34] without infrastructure in place; and
- Tribes that have developed housing on trust land with infrastructure in place.

c. Interviews – Partner Agencies

All agency workgroup members were interviewed to determine the agencies' environmental review processes and to understand the challenges faced by each agency. The agencies provided information on the related environmental laws and authorities included in their environmental review processes and their agency-specific requirements.

III. Background

A. The National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 requires agencies to undertake an assessment of the environmental effects of their proposed actions, consider reasonable alternatives to proposed actions, and allow for public participation prior to taking actions and making decisions.[35] In general, projects entirely or partly financed, assisted, conducted or approved by Federal agencies must comply with NEPA, as well as the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and other environmental laws and authorities. The NEPA environmental review is the vehicle by which agencies inform their decisions about the environmental effects of their proposed actions.[36] Agencies can utilize the NEPA process to facilitate compliance with the other related environmental laws and authorities.

Depending on whether there is the potential for significant environmental effects from a proposed project, the NEPA process (as implemented by CEQ regulations at 40 CFR Part 1500) provides different levels of review. The chart below details the levels of review, the environmental requirements for that level, and the corresponding levels of impact.

[32] The tribal interview questions are at Appendix 5.
[33] Fee simple land is a land ownership status in which the owner holds title to and control of the property. The owner may make decisions about land use or sell the land without government oversight.
[34] Trust Land is land to which the Federal government holds legal title but the beneficial interest remains with the tribe or the individual. OFFICE OF INDIAN ENERGY AND ECONOMIC DEVELOPMENT, DEPARTMENT OF INTERIOR, TRIBAL AND INDIAN LAND (2014), http://teeic.indianaffairs.gov/triballand/.
[35] 42 U.S.C. § 4332 (2000).
[36] 40 C.F.R. § 1500.1 (2011).

Level of Review	Level of Impact	Applicable Environmental Requirements[37]
Categorical Exclusion[38]	Actions do not individually or cumulatively have a significant effect on the human environment.[39] Actions having minimal physical impact and/or alteration of site conditions.	Excluded from further analysis under NEPA, but analysis of the related environmental laws and authorities is required according to applicable regulations and agency procedures and policy.
Environmental Assessment (EA)	Actions that are not categorical exclusions and do not normally require an EIS. A determination is made on whether there is potential for significant impact on the human environment.	NEPA and the related environmental laws and authorities are applicable.
Environmental Impact Statement (EIS)	Actions that may have a significant environmental impact, including when an EA was completed but did not result in a finding of no significant impact.	NEPA and the related environmental laws and authorities are applicable. EISs involve additional procedural requirements and opportunities for public involvement that differ from those required for EAs.

CEQ has promulgated regulations for implementing NEPA, and each agency is directed to develop its own NEPA implementing procedures.[40] Federal agencies must include the kinds of actions that are categorically excluded or that normally require an EA or EIS in those procedures. Agency procedures can be more specific than the CEQ regulations, but cannot contradict the CEQ requirements.[41] Consequently, there can be some variation among Federal agencies concerning the kinds of actions that are categorically excluded or that require an EA or EIS, which can result in differences in the level of effort and time required to complete the review.

In addition to NEPA, agencies may document compliance with a number of related environmental laws and authorities in environmental review records for all levels of review. In order to complete the environmental review, agencies must comply with all required Federal environmental laws, including statutes, executive orders, regulations, and agency policies and procedures. While many of the required related environmental laws and authorities are common to all agencies, the way they are implemented agency-to-agency may vary. In addition, agency-specific laws and authorities may apply to a project. Consultation with local, state, or Federal agencies is sometimes necessary to comply with related laws and authorities,[42] and may also require surveys or studies. Appendix 6 contains a Laws and Authorities

[37] Items contained in this column relate to all environmental review requirements.
[38] 40 C.F.R. § 1508.4 (2011).
[39] "Human environment" means the natural, physical, and the relationship of people with that environment, as well as economic and social effects. 40 C.F.R. § 1508.14 (2011).
[40] 42 U.S.C. § 4332 (2000); 40 C.F.R. § 1507.3 (2011).
[41] *See* 40 C.F.R. § 1507.3 (2011).
[42] Examples of consulting agencies include the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act and State or Tribal Historic Preservation Officers under Section 106 of the National Historic Preservation Act.

Matrix that lists the related laws and authorities that each of the agencies in the workgroup typically addresses in environmental review records for tribal housing and infrastructure projects.

When more than one Federal agency provides Federal assistance to a project, each agency is responsible for environmental compliance for its action, and multiple environmental reviews can result. The CEQ regulations implementing NEPA provide several approaches to minimize duplication:

- Lead[43] and cooperating agencies:[44] A lead agency can be designated to supervise the preparation of the environmental review with other agencies involved in the action participating as cooperating agencies. The determination of the lead and cooperating agencies would be formalized in writing through a letter or memorandum known as a lead or cooperating agency agreement (hereinafter "cooperating agency agreement").[45]
- Adoption of a review: One agency can adopt the EIS of another agency provided the EIS satisfies the adopters' NEPA requirements.[46] CEQ guidance provides a comparable process for the adoption of an EA.
- Incorporation by reference: An agency can incorporate by reference material (for example, studies, analyses, and NEPA document(s)) prepared by itself or by another agency.[47]

HUD's NEPA implementing regulations have a unique environmental review process, allowing tribes and other HUD recipients to take responsibility for completing the environmental review for HUD-funded projects. Under legislative authority[48], HUD regulations[49] allow states, units of general local government, Indian tribes, Alaska Native Villages, and the Department of Hawaiian Home Lands to assume the role of "Federal official," conduct the environmental review as the "Responsible Entity," and certify the environmental review for projects assisted by certain HUD programs.[50] Pursuant to these regulations, the Responsible Entity assumes the 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.[51]

[43] 40 C.F.R. § 1501.5 (2011).
[44] 40 C.F.R. § 1501.6 (2011).
[45] 40 C.F.R. § 1501.5 (2011).
[46] 40 C.F.R. § 1506.3 (2011).
[47] 40 C.F.R. § 1502.21 (2011).
[48] It should be noted that other agencies do not have this legislative authority with regard to the assumption of the role of "Federal official" in conducting environmental reviews.
[49] 24 C.F.R. Part 58 (2015).
[50] 24 C.F.R. § 58.13 (2015); *see also* 42 U.S.C. § 5304(g) (2015).
[51] Under legislative authority and codified in 24 CFR § 58.4(c), tribes may, but are not required to, assume the role of Responsible Entity for programs authorized by NAHASDA or section 184 of the Housing and Community Development Act of 1992, but they must assume this role of Responsible Entity for the grant program authorized by the Housing and Community Development Act (HCDA) of 1974 (HCDA). *See* Section 105 of NAHASDA, 25 U.S.C. § 4115(d) (2010); *see also* Section 104(g) of Title I of HCDA, 42 U.S.C. § 5304(g) (2010); *see also* 24 CFR § 58.1(b)(1) (2015).

B. Tribal Perspective on Housing and Infrastructure Development

Obtaining tribal perspectives and developing a general understanding of the development process was critical to this project. In addition to numerous communication sessions, the following five tribes and 14 TDHEs (TDHEs are indicated with an asterisk below) were interviewed:[52]

- Aleutian Housing Authority*, Anchorage, AK
- Association of Village Council Presidents (AVCP) Regional Housing Authority* , Bethel, AK
- Blackfeet Housing*, Browning, MT
- Housing Authority of the Cherokee Nation*, Tahlequah, OK
- Cheyenne River Housing Authority*, Eagle Butte, SD
- Chickasaw Nation Department of Community Services, Ada, OK
- Housing Authority of the Choctaw Nation of Oklahoma* , Hugo, OK
- Colville Indian Housing Authority*, Nespelem, WA
- Siletz Tribal Housing Department , Siletz, OR
- Galena Village Louden Tribal Council, Galena, AK
- Makah Tribal Housing Department, Neah Bay, WA
- Navajo Housing Authority*, Window Rock, AZ
- Northern Arapaho Tribal Housing, Ethete, WY
- Northern Circle Indian Housing Authority*, Ukiah, CA
- Qualla Housing Authority Eastern Band of Cherokee Indians*, Cherokee, NC
- Red Lake Reservation Housing Authority*, Red Lake, MN
- Sault Tribe of Chippewa Indians Housing Authority*, Kincheloe, MI
- Seneca Nation Housing Authority*, Irving, NY
- Tohono O'odham Ki:Ki Association*, Sells, AZ

1. Housing and Infrastructure Development Projects

Tribes undertake a variety of housing activities with Federal funds. Some develop new housing units on land that is prepared and ready for housing construction, while others develop new housing units on land that requires additional investment in the infrastructure for housing. Still others invest in homeownership down payment assistance and mortgage buy-downs, or the rehabilitation of existing homeowner or rental units. All of these activities require some level of environmental review when funded with Federal monies.

Tribes develop housing projects through tribal housing departments or TDHEs. HUD's Indian Housing Block Grant (IHBG) is the primary Federal funding source for affordable housing assistance in Indian

[52] Throughout this section, tribes' and TDHEs' specific comments will be identified by their corresponding region as assigned by HUD's Office of Native American Programs (ONAP). These regions are: Alaska Region (AKONAP), Northwest Region (NWONAP), Southwest Region (SWONAP), Northern Plains (NPONAP), Southern Plans (SPONAP), and Eastern/Woodlands Region (EWONAP). For a breakdown of ONAP regions by state, see http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/onap/map/nationalmap/.

Country. Six of the 19 tribes and TDHEs interviewed[53] use only HUD funding IHBG and Indian Community Development Block Grant (ICDBG) for housing projects. For projects with multiple sources of Federal funding,[54] only two to three agencies are generally involved.[55] Other Federal funds are available for housing activities, but a typical project involves no more than one source of funding. Tribes and TDHEs stated that the reasons for this include the timing of funding availability and the difficulty of addressing the requirements associated with multiple Federal agencies in a project.

Infrastructure development often involves more than one agency, which requires coordination with those agencies on additional environmental review requirements. Additional funds that support necessary infrastructure development may be obtained from the tribe. Projects involving both housing and infrastructure on undeveloped land are often completed in phases. Usually, infrastructure is constructed first (especially water and sewer systems), or housing and infrastructure are developed at the same time.

All tribes using IHBG funds must submit an annual Indian Housing Plan (IHP) to HUD that describes the tribe's intended activities and funding sources proposed for the grant year. Tribes are also required to develop a 20-year long-range transportation plan and a 4-year Tribal Transportation Improvement Plan (TTIP) to expend formula grant funds from FHWA's Tribal Transportation Program (TTP).

2. Development on Trust Land versus Fee Simple Land

BIA is involved in projects whenever a lease of trust land must be verified or approved, or a right-of-way for utilities or roads on trust land must be approved. Therefore, new construction projects and infrastructure projects on trust land will typically involve BIA. Among the tribes and TDHEs that were interviewed, larger projects, projects involving infrastructure development and community-oriented housing projects (such as housing for elders) are typically undertaken on trust land rather than on fee simple land. Several tribes also reported converting fee simple land to trust land prior to new construction.[56] Converting fee simple property to trust land requires a BIA environmental review. This process can take years to complete.

3. Key Aspects of the Environmental Review Process

The tribes and TDHEs that were interviewed typically begin the environmental review process by following the HUD regulations (either Part 50[57] or Part 58[58]). Under Part 58, the tribe is the Responsible

[53] One of the six was a tribe located in the SPONAP region. The remaining five were TDHEs in the following ONAP regions: AKONAP, EWONAP, SPONAP and SWONAP.

[54] These include the BIA Housing Improvement Program, USDA-Rural Housing Services' Single Family Loans/Loan Guarantees and Housing Preservation Grant Program and DOE's weatherization program. They are not typically used in conjunction with each other.

[55] A tribe in NWONAP region and a tribe in AKONAP region noted the average number of agencies involved as two, and a TDHE in AKONAP region and a tribe in NPONAP region noted the maximum number of agencies involved as three.

[56] Of the tribes and TDHEs interviewed, a tribe in NPONAP, a tribe in NWONAP and a TDHE in SPONAP regions have converted fee simple land to trust land prior to development.

[57] HUD's regulations at 24 CFR Part 50 establish the procedures to be followed when HUD performs the environmental review.

[58] Tribes are authorized by Section 105 of NAHASDA, Section 184(k) of the Housing and Community Development Act of 1992, and Section 104(g) of the Housing and Community Development Act of 1974 to assume the

Entity and has authority to complete the environmental review. TDHEs cannot act as the Responsible Entity, but the TDHE, along with other tribal departments[59], may be involved in preparing the documentation for the environmental review.

Tribes then typically provide the HUD environmental review, along with any additional information required, to any other agencies that are providing Federal assistance. In their interviews, a TDHE in Alaska, a tribe in Northwest Office of Native American Programs (NWONAP) region, and a TDHE in Southwest Office of Native American Programs (SWONAP) region noted that other agencies request the HUD environmental review to use as the basis for their environmental review. However, some agencies[60] request that tribes submit environmental documents using their agency-specific formats. Once tribes receive written notification that the other agencies' requirements have been met, their project can move forward.

Overall, the environmental review processes for the various agencies follow the same procedures when infrastructure is developed. However, when housing is also developed, differences in procedure emerge. Anticipating those differences should be a part of the early project planning, feasibility studies and environmental review to minimize the resources invested in non-viable sites.

- A site with new infrastructure will typically trigger a higher level of environmental review, compared with most projects that involve only housing.
- Housing projects requiring infrastructure sometimes can be connected to existing infrastructure in the area. A right-of-way agreement or some form of permitting with the utility service may be necessary to extend a line to connect to existing infrastructure.

4. Tribes' Major Concerns with the Environmental Review Process

During interviews, briefings, listening sessions, and formal consultations, tribes discussed a variety of challenges associated with the environmental review process, as well as their recommendations for improvement. Some of these challenges occur regardless of funding sources, while others are specific to the use of multiple Federal funding sources.

Of primary concern to tribes is that their sovereignty is recognized during the environmental review. More rigid environmental requirements are viewed as inconsistent with NAHASDA's principles of self-determination, and tribes believe that the environmental review process must account for a tribe's specialized knowledge of its cultural and natural resources. Tribes broadly support their ability to

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responsibilities of "Federal official" that would otherwise apply to HUD. These procedures and responsibilities are codified in 24 CFR Part 58. Part 58 defines the tribe as the "Responsible Entity." *See* 24 C.F.R. § 58.2(a)(7) (2015). For NAHASDA programs, tribes may choose to have HUD retain the environmental review responsibilities, in which case the tribe must "supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by this part." 24 C.F.R. § 50.3(h)(1) (2001). Refer to the NEPA Background portion of this report for more information on Part 58 and Responsible Entities.

[59] These might include a Department of Natural Resources, Tribal Engineering Department, Department of Community Planning and Development, and so forth. The name of the tribal department will vary by tribe.

[60] This may vary from office to office within agencies.

assume Federal environmental decision-making responsibility for HUD projects, and expressed interest in expanding this role to include environmental review processes in other agencies.[61]

Tribes also expressed frustration with the varied definitions of the scope of a project and the appropriate level of review. Agencies may differ in how they define a project. This difference affects the level of review determination, as categorical exclusions are determined based on the types of activities included in a project.

Tribes were divided in their suggestions for how the interagency workgroup should resolve these issues. Some tribes see the need for a single environmental review format that would be adopted by all Federal agencies to expedite the process. Tribes report that a single format, especially one based on HUD's Part 58 process, would be much easier for them to understand and follow.[62] Others see the need for a lead agency to oversee the environmental review process.[63] However, two of the 19 tribes and TDHEs interviewed (one tribe and one TDHE in EWONAP region) have worked with lead agencies with mixed results. One idea was to assign lead agency responsibility based on the primary activity being undertaken (e.g., housing development, roads).[64]

Tribes reported that compliance with the related laws and authorities is often more difficult on tribal lands than in other areas. Certain environmental concerns, such as the presence of endangered species or wetlands, are more likely to be a concern in rural areas, meaning that tribes are more likely to have to engage in consultation or mitigation to resolve potential issues. In addition, these areas are less likely to have digital maps or records available, which make data gathering more difficult. Both of these issues can contribute to the amount of time that must be devoted to completing environmental reviews. Tribes specifically requested help from HUD and the other agencies in establishing programmatic agreements with consulting agencies such as the US Fish and Wildlife Service (USFWS) to enable better coordination.

Tribes are also concerned about the need for training, both for themselves and the agency staff who work with them. Tribes cited several examples of receiving different responses to the same question from different agencies, offering these as evidence that agency staff require further training. At the

[61] Two participants in the SPONAP Listening Session on May 20, 2015 agreed that, as sovereign nations, the tribes should have the option to take full responsibility for their environmental review process across all funding sources. Similar comments were made by participants at the NAIHC Consultation, May 14, 2015 and the Affiliated Tribes of the Northwest Listening Session, May 18, 2015.

[62] This view was expressed by one participant at the UNAHA Listening Session, April 1, 2015; 2 participants in the AAHA Listening Session, April 10, 2015; three participants in the NAIHC Consultation, May 14, 2015; and two participants in the SPONAP Listening Session, May 20, 2015.

[63] This position was supported by one participant in the Nevada/California Indian Housing Association Listening Session, March 19, 2015; two participants in the NAIHC Consultation, May 14, 2015; two participants at Affiliated Tribes of the Northwest Listening Session, May 18, 2015; and one TDHE from EWONAP in its interview.

[64] Commenter, SPONAP Listening Session, May 20, 2015; but note, criteria for selecting a "lead agency" is provided in 40 C.F.R. § 1501.5.

same time, tribes assert that they must also have access to consistent training to ensure an understanding of the applicable environmental review requirements across all funding agencies.[65]

C. Agencies' Roles in Tribal Housing and Infrastructure Programs

Agencies provide funds for housing and related infrastructure in a number of different ways. For example, grants can be provided through a formula[66] or through a competition,[67] and agencies can make direct loans, or guarantee loans made by private lenders.[68] Other agencies provide funding according to their nationally prioritized inventory of projects.[69] Some of these programs are available to individual tribal members and families,[70] while others are available to tribal governments.

Tribes typically initiate planning for development projects and submit applications for the necessary infrastructure to support housing development.[71] Some agencies, including HUD[72] and FHWA, require specialized planning processes to expend agency resources; however, some tribes align these plans through comprehensive planning.

Generally, the program applicant is responsible for providing the funding agency with the information needed to allow agencies to complete the environmental review. Federal agencies request the information in different formats to reflect the eligible activities and program design, thereby often requiring tribes to submit duplicative information in different formats to different agencies.

Summarized below are the types of activities and funding available for tribal housing and infrastructure development through the agencies in the interagency workgroup. Appendix 6 lists the environmental laws and executive orders that at least one agency typically tracks in its environmental review records for tribal housing projects.

Agency	Activities Funded	Funding Mechanism: Formula, Competitive, Other
USDA Rural Development, Rural Housing Service	Housing: Homeownership	Direct loans and loan guarantees
	Housing: Buy, repair and/or develop rental housing	Direct loans, loan guarantees, grants, and rental subsidies
	Housing: Repair and Rehabilitation for homeowners	Direct loans and grants

[65] Seventeen of the 19 tribes and TDHEs interviewed have sent staff to HUD-sponsored training on the Part 58 environmental review process. Due to the unique statutory authorization that permits tribes to assume Federal environmental responsibilities, HUD offers the most frequent environmental training for tribes.
[66] HUD, DOE and FHWA have formula-driven grant programs. DOE provides Weatherization Assistance Program (WAP) formula grants to states and a few tribes. Individual tribal members may apply for state WAP funds as well.
[67] DOE, EDA, HUD, DOT, and RUS provide competitive based funding. In addition, RUS provides grants to municipalities, counties, and nonprofit organizations for water, sewer, solid waste and storm drainage projects, some of which may be owned and operated by tribes.
[68] HUD and RHS administer guarantee loan programs. RUS provides loans and loan guarantees to rural electric cooperatives or companies, or municipalities and counties for electric and telecommunications projects, some of which may be owned and operated by tribes.
[69] EPA and IHS provide funding by national priority inventory.
[70] HUD, BIA and RHS have programs that provide funds to individuals.
[71] TDHEs are also eligible recipients of HUD Indian Community Development Block Grant (ICDBG) funds.
[72] HUD requires tribes (TDHEs) to develop an Indian Housing Plan (IHP). See 24 CFR 1000, Subpart C. FHWA requires similar planning documents under its LRTP and TTIP. See 25 CFR 170.402 and 25 CFR 170.410.

Agency	Activities Funded	Funding Mechanism: Formula, Competitive, Other
USDA Rural Development, Rural Utilities Service	Infrastructure: Water and wastewater	Grants, direct loans and loan guarantees
	Infrastructure: Electric	Direct loan, loan guarantee and competitive grants
	Infrastructure: Telecommunications and Broadband	Direct loan and competitive grant
DOC Economic Development Administration	Infrastructure: Related to job creation and workforce development	Competitive grant
DOE	Housing: Weatherization	Formula grant
	Infrastructure: Develop energy facilities	Competitive grant
EPA	Infrastructure: Water, wastewater systems	Priority list of proposed projects funded in priority order depending on appropriation
HHS Indian Health Service	Infrastructure: Sanitation facilities including safe water and sanitary waste disposal system	Priority list of proposed projects funded in priority order depending appropriation
HUD	Housing: Buy, repair and/or develop housing	Formula and Competitive grant
	Housing: Buy, repair and/or develop housing	Loan guarantee
	Infrastructure: Plan, develop and maintain roads, utilities, water, wastewater, etc.	Loan guarantee
DOI Bureau of Indian Affairs	Housing: Buy, repair and/or develop housing	Competitive grants , direct loans, loan guarantees
DOT Federal Highway Administration	Infrastructure: Develop and maintain road systems	Formula grant
	Infrastructure: Transportation Investment Generating Economic Recovery (TIGER Discretionary Funds), Bridge Funds, and Safety Funds	Competitive grant

1. U.S. Department of Agriculture

a. Rural Development, Rural Housing Service

RHS is an agency within the USDA Rural Development (RD) mission area. RD's mission is to help improve the economy and quality of life in rural America. RHS contributes to that mission by providing loans, loan guarantees, and grants to build or improve housing and essential community facilities in rural areas. RHS programs are oriented to housing and community facility projects. RHS's Single-Family Housing Programs provide direct loans or loan guarantees to help low- and moderate-income rural residents buy safe, affordable housing, and offers loans and grants to help rural residents make health and safety repairs to homes. The Multi-Family Housing Programs offer loans to provide affordable rental housing for very low-, low- and moderate-income residents, the elderly, and persons with disabilities. Funds may also be used to buy and improve land and to provide necessary facilities such as water and waste disposal systems.

Alaska Specific Funding Programs for Sanitation

EPA and USDA both provide funding for sanitation systems in Alaska to serve the unique needs of Alaska.

RUS's Rural Alaska Village Grant (RAVG) program is a water and waste program that provides grant funds to rural Alaska Villages and the Alaska State Department of Environmental Conservation (DEC).

EPA's Alaska Rural and Native Villages grant funds are provided either to DEC for its Village Safe Water (VSW) Program or to the IHS..

b. Rural Development, Rural Utilities Service

RUS is another agency within USDA RD. RUS oversees three infrastructure development programs that are of importance to federally recognized tribes – the Water and Waste Disposal Loan and Grant, Electric Infrastructure Loan and Loan Guarantee, and the Telecommunications Loan and Grant programs.[73] Eligible projects include construction and improvement of electric generation and transmission, drinking water, waste and wastewater systems, and telecommunications infrastructure, as well as energy efficiency and renewable energy systems.

The Water and Waste Disposal Loan and Grant Program provides funding through long-term, low-interest loans. If funds are available, grants may be combined with a loan if necessary to keep user costs reasonable. The Electric Infrastructure Loan & Loan Guarantee Program provides investment capital in the form of loans and loan guarantees. Finally, the Telecommunications Program provides loan and grant funds for wired and wireless communications as well as distance learning and telemedicine.

2. U.S. Department of Commerce, Economic Development Administration

EDA's mission is, "[t]o lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy."

EDA's grants are intended to help communities and regions – including tribes – build the capacity to support economic development, helping to create or retain jobs and generate private investment. As part of its economic development grant programs, EDA provides grants for infrastructure development. In accordance with EDA's mission, EDA grants cannot be used for infrastructure development for housing projects. Nevertheless, tribal housing projects may indirectly benefit from EDA-funded infrastructure projects that are targeted for job creation.

3. U.S. Department of Energy

DOE's overall mission is to "ensure America's security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions." As this mission is applied to tribes, DOE's Office of Indian Energy Policy and Programs (Office of Indian Energy) is charged by Congress to "direct, foster, coordinate, and implement energy planning, education, management, and programs that assist tribes with energy development, capacity building, energy infrastructure, energy costs, and electrification of Indian lands and homes."[74]

DOE's Office of Indian Energy provides technical assistance to tribes in developing energy efficiency and renewable resource plans.[75] The Tribal Energy Program solicits applications each year from tribes or

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[73] *See* U.S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, WATER & WASTE DISPOSAL LOAN & GRANT PROGRAM (2015), http://www.rd.usda.gov/programs-services/water-waste-disposal-loan-grant-program; *See also* U.S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, ELECTRIC INFRASTRUCTURE LOAN & LOAN GUARANTEE PROGRAM (2015), http://www.rd.usda.gov/programs-services/electric-infrastructure-loan-loan-guarantee-program; *see also* U.S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, TELECOMMUNICATIONS INFRASTRUCTURE LOANS AND LOAN GUARANTEES (2015), http://www.rd.usda.gov/programs-services/telecommunications-infrastructure-loans-loan-guarantees.

[74] DEPARTMENT OF ENERGY, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS, MISSION (2015), http://energy.gov/indianenergy/mission.

[75] DEPARTMENT OF ENERGY, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS, TECHNICAL ASSISTANCE (2015), http://energy.gov/indianenergy/resources/technical-assistance.

tribal entities for grant funding opportunities for tribal energy and energy infrastructure projects. The funds are awarded through a competitive process.[76]

DOE's Weatherization Assistance Program (WAP) is a state formula grant program specifically for weatherization of buildings that enables low-income families to permanently reduce their energy bills by making their homes more energy efficient. Under WAP, tribes can apply to the state for weatherization services or receive funds directly from DOE.

4. U.S. Environmental Protection Agency

EPA's mission is to "protect human health and the environment." EPA has three grant programs specifically for tribes that improve drinking water and sanitation: Drinking Water Infrastructure Grant Tribal Set-Aside Program (DWIG-TSA), Clean Water Indian Set-Aside Program (CWISA), and Alaska Rural and Native Villages Program (ANV). The CWISA and ANV programs prioritize projects using the IHS Sanitation Deficiency System (SDS) database.[77] The DWIG-TSA program prioritizes projects using a combination of the IHS SDS database and/or solicitations at the regional level (for select regions). The ANV Program provides funding for rehabilitation and new development of public drinking water and waste water systems that serve tribes."[78] The DWIG-TSA program provides funding for rehabilitation and new development of public water systems that serve tribes. [79] The CWISA program provides funding for wastewater infrastructure that serves tribes. A report extracted from SDS is submitted to Congress each year that identifies community deficiencies and prioritizes projects that address those deficiencies.[80] Congress includes an amount in the IHS Budget to fund a portion of the reported sanitation deficiencies listed in the SDS database.

Existing Interagency Collaboration

Some agencies and programs allow tribes to select which agency administers its program and takes responsibility for the environmental review.

For EPA's DWIG-TSA and CWISA programs, once tribes are awarded project funds, they must make a request to either administer the project funds themselves through a direct grant, or have IHS administer the project funds for them. If IHS administers the grant, IHS will enter into an interagency agreement with EPA and undertake the environmental review according to IHS regulations. However, if the tribe chooses to receive a CWISA or DWIG-TSA direct grant from EPA, then a grant agreement is signed between the tribe and EPA, and the tribe is responsible for working with EPA to meet all applicable environmental requirements.

Under the TTP, a tribe enters into an agreement with either FHWA or BIA to administer its transportation program using TTP funds. The agency with which the tribe has an agreement is the lead agency for purposes of the project environmental review. The tribe is responsible for assembling all necessary environmental review information and submitting it to FHWA or BIA for review and approval.

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[76] DEPARTMENT OF ENERGY, ENERGY EFFICIENCY AND RENEWABLE ENERGY, TRIBAL ENERGY PROGRAM, PROJECTS FUNDING HISTORY (2015), http://apps1.eere.energy.gov/tribalenergy/projects_history.cfm.

[77] The database tracks deficiencies in tribal water, wastewater, and solid waste systems

[78] Environmental Protection Agency, Drinking Water Infrastructure Grants Tribal Set-Aside Program (DWIG-TSA), Revised Guidelines (December 2013), at 2, *available at* http://water.epa.gov/grants_funding/dwsrf/allotments/upload/epa816B13015.pdf.

[79] *Id*

[80] Indian Health Service, Criteria for the Sanitation Facilities Construction Program (June 1999), at 2-7, *available at* http://www.ihs.gov/dsfc/includes/themes/newihstheme/display_objects/documents/Criteria_March_2003.pdf.

5. U.S. Department of Health and Human Services, Indian Health Service

IHS is the principal Federal agency charged with the mission of raising the "physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level."

IHS's principal function is to provide primary health care and disease prevention services to American Indians and Alaska Natives. IHS may fund projects that provide water supply, treatment, storage, and distribution, as well as sewage collection, treatment, and disposal facilities.

IHS is required to maintain an inventory of sanitation deficiencies[81] for new and existing tribal homes[82] and communities. The IHS Sanitation Deficiency System (SDS) is the database used to identify sanitation deficiencies and prioritize those deficiencies.[83] Tribes submit their proposed projects to the IHS Area Office each year for ranking and prioritizing.[84]

6. U.S. Department of Housing and Urban Development

HUD's mission is "to create strong, sustainable, inclusive communities and quality affordable homes for all." Through the Office of Native American Programs, HUD offers programs aimed at improving housing and fostering economic and community development for tribes. HUD funds may be used for both housing development and infrastructure development.

The principal source of HUD funding for tribal housing projects is the Indian Housing Block Grant (IHBG), a formula-based program. Eligible IHBG recipients are federally recognized tribes or their TDHEs. IHBG funds may be used for improvements and the development of single-family and multifamily dwelling units,[85] as well as infrastructure improvements and development related to housing.

The Title VI Loan Guarantee program provides financing guarantees to private-market lenders for loans made to IHBG recipients to develop affordable housing and other activities. Eligible borrowers under the Title VI program include tribes or TDHEs that receive IHBG funds. Funds may be used for any activity eligible under IHBG, including housing construction, rehabilitation, acquisition of land for housing, and development of housing infrastructure.

The Section 184 Indian Home Loan Guarantee program guarantees loans obtained by Indian families, TDHEs, or tribes to buy, construct, rehabilitate, or refinance one- to four-unit homes located in approved Indian areas, including reservations and tribally designated areas. [86]

Although infrastructure may be funded through IHBG, the principal source of HUD funds available for infrastructure development is the Indian Community Development Block Grant (ICDBG) program. Funds

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[81] Sanitation deficiencies means inadequate water supplies and unsanitary waste disposal for Indian homes and communities contributing to high rates of enteric, respiratory, and skin diseases. *Id*. at 2-7, 10-1 and 3-1.
[82] Projects that serve HUD homes "can be prioritized but cannot be funded with IHS appropriations."
[83] "The data are updated annually to account for inflation, changing state and Federal regulations, to add new deficiencies, and to delete the deficiencies addressed by projects funded by IHS and others." *Id*. at 2-7 and 10-1.
[84] *Id*. at 10-2.
[85] HUD defines single family housing as 1-4 dwelling units in a building, and multifamily housing as 5 or more dwelling units in a building. *See* 24 C.F.R. § 50.20(a)(2) and (3) (2001), and 24 C.F.R. § 58.35(a)(3) and (4) (2015) for treatment of dwelling units under environment review.
[86] *Section 184 Indian Loan Guarantee Program Processing Guidelines*, PIH-2014-22, September 16, 2014.

are allocated at the regional level and applicants compete at that level for an award. Eligible infrastructure activities include acquisition, construction, rehabilitation and installation of public facilities and privately owned utilities.

7. U.S. Department of Interior, Bureau of Indian Affairs

The mission of BIA is "to enhance the quality of life, to promote economic opportunity, and to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives." With regard to housing and infrastructure development, BIA's objective is to improve living conditions for the lowest income tribal members, as well as to protect tribal assets through the authorization of proposed uses of trust land. BIA provides funding for housing through its Housing Improvement Program (HIP) on both Indian trust and fee simple land. Additionally, the BIA approves Federal actions on trust land relating to home site leases, service line agreements and rights-of-way.[87]

HIP is a grant program that provides funds to repair, replace, and develop single-family housing. Individuals compete for these grants through an application process.

8. U.S. Department of Transportation, Federal Highway Administration

FHWA's mission is, "to improve mobility on our Nation's highways through national leadership, innovation, and program delivery." Among its programs is the Tribal Transportation Program (TTP), which addresses the transportation needs of tribal governments throughout the United States.[88]

The TTP is the largest program in the Office of Federal Lands Highway, providing funding for the safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and Alaska Native Village communities. The TTP is a formula-driven program funded through the Highway Trust Fund. It is jointly administered by FHWA and BIA. Funds for transportation-related activities are transferred to tribes or BIA up front.[89] All TPP-funded activities must be on a 4-year Tribal Transportation Improvement Program (TTIP) which identifies proposed projects during the 4-year period.[90] The projects must be financially constrained, and the facilities identified for improvement listed on the National Tribal Transportation Facilities Inventory (NTTFI). Activities eligible for TTP funding include transportation administration, planning, preliminary engineering construction, construction engineering, transit, and maintenance.[91]

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[87] *See* 25 C.F.R. § 162 (2012) (Leases and Permits); *see also* 25 C.F.R. § 169 (2014) (Rights-of-Way Over Indian Lands, including Service Line Agreements).

[88] US DEPARTMENT OF TRANSPORTATION, OFFICE OF FEDERAL LANDS HIGHWAY, TRIBAL TRANSPORTATION PROGRAM (2015), http://flh.fhwa.dot.gov/programs/ttp/. FHWA also implements some competitive grant programs available to tribes. Examples include the Transportation Investment Generating Economic Recovery (TIGER Discretionary Funds), Bridge Funds, Safety Funds, and Federal Lands Access Program.

[89] US Department of Transportation, Office of Federal Lands Highway, Tribal Transportation Program Delivery Guide (2013), *available at* http://flh.fhwa.dot.gov/programs/ttp/guide/; *see also* 25 C.F.R. § 170, Subpart C, Indian Reservation Roads Program Funding.

[90] US Department of Transportation, Office of Federal Lands Highway, Tribal Transportation Program Delivery Guide (2013), at Chapter VII, page 24, *available at* http://flh.fhwa.dot.gov/programs/ttp/guide/.

[91] *Id.* at 19 and 20.

BIA Approvals for Federal Actions

In addition to funding projects, one of BIA's primary responsibilities is to protect and improve trust assets, and it is responsible for approving Federal actions relating to leases (residential and business), service line agreements, and rights-of-way.

- Residential and Business Leases may be used to authorize construction or use of a facility for housing.
- Service Line Agreements allow parties to connect to existing telephone, electrical power, gas, or other utilities.
- Rights-of-way (ROW) permit certain activities, including pipelines, highways, and communication lines, over and across tribal land, individually owned land, and government-owned land.

BIA must also approve land acquisitions for the purpose of converting fee simple land to trust land. Tribes or landowners may submit an application to BIA requesting a land area be taken into trust status. The process includes many legal and administrative steps and requires documents to be completed, including an environmental review by BIA. In general, this conversion can take 2 years or more.

IV. Conclusions

A. Interagency Workgroup's Findings Concerning Large-Scale Legislative Change

The Senate Report directed HUD to develop a "coordinated environmental review process to simplify tribal housing development and its related infrastructure needs."[92] Further, the committee asked that the agencies "report their conclusions, recommendations, and any statutory changes that may be necessary to facilitate this process."[93] Focused on this charge, the interagency workgroup began its discussions and examination of the information collected from the tribes and each agency. Increasingly, it became clear that no one effort or legislative change would ensure a coordinated and simplified environmental review process for tribal housing projects; but rather, it would require an on-going effort between agencies to discover commonalities and foster collaborative relationships.

NEPA is a decision-making process that requires agencies to undertake an assessment of the environmental effects of their proposed actions, consider reasonable alternatives to the proposed action, and allow for public participation prior to taking actions and making decisions.[94] The Act is not intended to be a paperwork exercise, but to help agencies make decisions that are based on a full understanding of their environmental consequences.[95] As intended by NEPA, each agency promulgated policies, rules and regulations, and implementing procedures tailored to its mission and the types of projects that it reviews. Therefore, given that various agencies play different roles in tribal housing and infrastructure projects, one agency's environmental review will rarely meet all the requirements and needs of other agencies.

The workgroup determined that statutory changes would not be the best way to achieve a simplified process at this time; however, opportunities for better interagency coordination exist by aligning current environmental review processes. This conclusion is reflected in the workgroup recommendations, which

[92] S. REP. NO. 113-182, at 121 (2014), accompanying S.2438, *available at* https://www.congress.gov/113/crpt/srpt182/CRPT-113srpt182.pdf.
[93] *Id.*
[94] 42 U.S.C. § 4331; 40 C.F.R. §1508.18(a).
[95] 40 C.F.R. § 1500.1.

focus on opportunities for expediting the process through existing statutes and regulations with minor changes. The workgroup will take care to ensure that measures to promote agency cooperation in the preparation of project level environmental reviews do not further complicate the housing development process.

B. Tools Available Within Existing NEPA Framework

NEPA was designed to encourage cooperation between agencies to minimize duplication in projects involving multiple agencies when conducting environmental reviews. Therefore, the interagency workgroup focused on measures that could be taken to coordinate agencies' environmental review processes within the existing framework. This section discusses the tools available within NEPA and corresponding interagency workgroup findings.

1. Cooperating Agency Agreements

Early conversations about improving interagency coordination on tribal housing projects were based on the assumption that tribes and agencies would collaborate under a cooperating agency agreement (or similar concept) which would require only one environmental review for each housing project. Under the formal cooperating agency model, all agencies that are considering providing funds for a project collaborate from the earliest planning stages. Agencies work together to draft and sign a cooperating agency agreement, designating a lead agency and cooperating agencies, then define the scope of the environmental review and all applicable statutory and regulatory requirements. The lead agency takes the lead in preparing the environmental review record, but all cooperating agencies participate in the planning and scoping process and give any assistance, including taking responsibility for their areas of expertise and providing staffing resources, as requested by the lead agency.[96] Widespread use of cooperating agency agreements for tribal housing and infrastructure projects could greatly decrease the need for duplicative reviews.

While many tribes indicated a willingness to enter into a cooperating agency agreement, tribes and agencies rarely reported participation in a cooperating agency agreement for tribal housing projects.[97] As discussed below, the workgroup concluded that encouraging formal interagency coordination agreements at the project-specific level for housing and infrastructure development would not be practical in most cases. This conclusion is based on two primary barriers: (1) funding sources are not identified at the same point in the planning process, and (2) the scale of housing and housing-related infrastructure projects is not conducive to formal interagency agreements. If the timing barriers were overcome through more predictable funding mechanisms, then the cooperating agency approach could improve the process for at least some projects.

[96] 40 C.F.R. §§ 1501.6, 1508.5 (2011).

[97] IHS and EPA's water programs have an interagency agreement in place. This agreement works because the EPA chose to use the IHS SDS priority system to select projects to fund, and the program is limited to wastewater and some water infrastructure. This interagency agreement is annually drafted at the EPA and IHS headquarters level, and the agencies' regional offices execute project specific interagency "agency agreements" based on the headquarters' document and collaborate on individual projects.

a. Timing

The first barrier to formal interagency coordination on individual projects is timing. In most cases, the tribes do not identify the funding agencies at the same point in the planning process. One funding agency will often have already started – or may have even completed – its environmental review before the second funding agency is identified. At this point it is too late to develop one coordinated environmental review.

b. Scale

The second barrier is scale. Due to the relatively small scale of tribal housing projects (even when allowing for the associated infrastructure), projects are not large enough to make the time invested in developing a cooperating agency agreement cost effective. In its 2015 Report on Cooperating Agencies, CEQ reports that cooperating agency agreements are used rarely for projects on the scale of tribal housing and housing-related infrastructure. Although cooperating agency agreements are used in nearly half of Environmental Impact Statements (EISs), they are seen in only about 7 percent of Environmental Assessments (EAs).[98] Because most of the projects addressed within the scope of this effort require only EAs or qualify for a categorical exclusion under NEPA,[99] cooperating agency agreements would be atypical.

CEQ cites several reasons that cooperating agency agreements are not established, but the two that are most relevant are a lack of capacity or resources and the popularity of informal agreements.[100] The report notes that lead agencies frequently engage tribal governments as well as other agencies without formal cooperating agency status, especially when preparing EAs.[101] Project timing and scope were common reasons that agencies chose to engage informally rather than formally.[102]

2. Adoption of a NEPA Review

Another tool available under NEPA is adoption. One agency can adopt the EIS or EA completed by another agency if the original review satisfies the adopting agency's NEPA requirements.[103] The interagency workgroup found that given the varying roles of agencies in tribal housing infrastructure projects adoption would rarely be a viable option because it is unlikely that one agency's environmental review would meet a second agency's requirements[104]. As discussed above, NEPA requirements are

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[98] CEQ Memorandum on Third Report on Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (June 10, 2015), at 3, *available at* https://ceq.doe.gov/nepa/reports/Final-Cooperating-Agency-Report-10June2015.pdf. CEQ notes that these results are consistent with those gathered between 2002 and 2011.

[99] Both of these categories require a lower level of environmental review than an Environmental Impact Statement (EIS). For an explanation of levels of environmental review, refer to the Background section of this report.

[100] CEQ Memorandum, *supra* note 94, at 3.

[101] *Id.* at 3.

[102] *Id.* at 2.

[103] An agency is allowed to adopt the EIS of another agency provided the EIS satisfies the adopters' NEPA requirements. 40 C.F.R. § 1506.3 (2011). CEQ guidance makes clear that this provision is also available for the adoption of an EA. CEQ Memorandum on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act (March 6, 2012), at 1 and 12, *available at* https://www.whitehouse.gov/sites/default/files/microsites/ceq/improving_nepa_efficiencies_06mar2012.pdf.

[104] The requirements in this context are not just the laws and authorities; but also, the scope of the environmental review.

tailored to each agency and there are substantial differences between agency-specific requirements. Further, agencies fund different aspects of a project: one agency's environmental review may not cover the activities funded by another agency. Therefore, the scope of the environmental review and its analysis may not be the same for the actions of different agencies associated with one project. Finally, the environmental review must document all required related environmental laws and authorities, which may differ between agencies depending on the associated actions.

In addition to NEPA requirements, environmental review records may document compliance with a variety of related environmental laws and authorities including the National Historic Preservation Act, the Endangered Species Act, Executive Order 11988 on Floodplain Management, and many more. As illustrated in Appendix 6, even when agencies are documenting compliance with the same authorities, agencies vary in how these related Federal environmental laws and authorities are managed in their environmental review records, making coordination more difficult.[105] Appendix 6 lists 30 environmental laws and executive orders that at least one agency typically tracks in its environmental review records for tribal housing projects. Of those, 10 are included in a typical environmental review record by all participating agencies, another 10 are included by a majority of agencies, and 7 are agency-specific. Differing approaches to these requirements, due to various agency roles and responsibilities in projects, complicate attempts to coordinate environmental reviews. Agencies must ensure that all applicable requirements are addressed. With the addition of each new source of funding, more requirements may apply.

3. Incorporation by Reference

In accordance with NEPA regulations, an agency can incorporate by reference a NEPA document prepared by it or by another agency, as well as any other publicly available studies or material, in their environmental reviews.[106] The interagency workgroup found that this is a useful tool that is already being used in some areas and has served to simplify the environmental review process. Many of the problems with timing, scope, and related laws and authorities that are associated with cooperating agency agreements and adoption are avoided, as each agency can complete its environmental review using the documents that have already been prepared during an earlier environmental review.

V. Recommendations

A number of laws and authorities govern important aspects of the environmental review process. The involvement of multiple agencies in a project adds complexity due to varied implementation of

[105] To prepare Appendix 6, agency representatives were asked to indicate if their agency typically documents this law or authority in their environmental review records. Where the answer was not immediately clear, responders were asked (1) if there is a space for it on agency checklists or formats (if applicable), (2) if it was generally addressed in other documentation, (3) if their agency were a party to a cooperating agency agreement and were acting as a cooperating agency, whether they would insist that the lead agency include it in the environmental review record. It was noted that this may be a slightly different question than whether this law or authority would be analyzed or triggered in a typical review. A 'no' response does not mean that a law or authority would not be addressed in an ERR if it were triggered for a particular project, but merely that it is not addressed as a general rule.

[106] 40 C.F.R. § 1502.21 (2011).

environmental statutes, regulations and policies. The interagency workgroup is recommending a series of improvements to assist in expediting the environmental review process.

Due to the short timeframe for this effort, the interagency workgroup was limited in their ability to explore the issues identified. Therefore, the workgroup will continue working together towards resolution of identified issues, and implementation of the following recommendations. This section outlines the interagency workgroup's short-term and long-term recommendations.

A. Short-Term Recommendations

1. Incorporate Environmental Review Documents by Reference

Many tribes and TDHEs receiving Federal funds from multiple agencies for aspects of the same project start by conducting their environmental review pursuant to 24 CFR 58, as HUD programs usually are the first source of Federal funds to be identified.[107] After completing the Part 58 environmental review, the tribes send the environmental review record to all other funding agencies in lieu of completing an agency-specific format.[108] The funding agency then uses the Part 58 review to complete its own environmental review, incorporating HUD review documents by reference. Although NEPA requires each agency to conduct its own environmental review, many of the elements making up that review can be shared.

There are three major advantages to this approach. First, the tribe prepares only one environmental review document: the Part 58 review. Second, consistent with CEQ regulations requiring the agency make an independent determination that the documentation adequately describes the agency's project and sufficiently evaluates the environmental issues, other agencies can build upon the completed Part 58 environmental documents without duplicating efforts. Third, tribes and agencies may follow this practice right away. No statutory or regulatory changes are required, as this is currently permitted under NEPA.

Some agencies reported that this is not a difficult process, and they are comfortable building upon the Part 58 review. In some cases, this requires following up with tribes to request additional information needed. Other agencies reported that some Part 58 reviews are not sufficient to use as a basis for their environmental reviews, either because the tribes do not prepare their documents to the agencies' standards or because the elements of the project funded by each agency are too dissimilar. However, training, as discussed in Recommendations 4 and 5, would help address this issue by, for example, increasing the familiarity of tribal representatives with the information needs of multiple agencies. The workgroup recommends that agencies consider this a best practice and intends to explore methods of encouraging it, including an interagency agreement or pilot projects to identify successful practices.

[107] HUD is unique in that it grants tribes the authority to act as a Federal agency and take responsibility for completing the environmental review for HUD-funded projects. Regulations governing this procedure are found in 24 CFR Part 58, and environmental reviews completed under this section are commonly referred to as "Part 58 reviews." For more information on this process, refer to the Background section of this report.

[108] Many agencies have their own formats that they ask tribes to use to submit environmental information to facilitate the Federal environmental review. These are more tailored to each agency's needs, but will generally request information very similar to what is included in a Part 58 environmental review.

2. Develop Common Categorical Exclusions

As required by NEPA, each agency tailors categorical exclusions to programs within its regulations, which potentially result in varied levels of NEPA reviews for projects involving multiple agencies. Categorical exclusions designate groups of actions that an agency has determined normally do not require an EA or EIS, unless the action triggers extraordinary circumstances or other situations defined by the agency.[109]

Developing categorical exclusions that can be included in the NEPA implementing procedures of every agency that funds tribal housing and related infrastructure projects may either reduce the effect of or eliminate the problem of varying levels of review.[110] The workgroup recommends exploring the use of common categorical exclusions. If determined to be a viable solution to reduce the level of effort required in the environmental review process, some agencies may have to revise their implementing procedures to include any potential agreed-upon categorical exclusions.

3. Address Resource Deficiencies at BIA

At listening sessions and consultations, a number of tribes spoke about process and timeliness challenges at BIA, most of which seemed to derive from staffing and/or other resource deficiencies within the Bureau. Tribes identified long delays, short-staffed offices and inexperienced staff as impediments to the environmental review process during several listening sessions, consultations, and interviews. The interagency workgroup recommends further examination of this issue to determine appropriate strategies and other solutions for addressing this issue.

4. Provide Training for Agency Staff

One of the most frequent issues raised by tribes at listening sessions and consultations was the need to have policies applied consistently by agency staff. Tribes reported that staff within an agency often has different interpretations of that agency's policies. The interagency workgroup recommends that agencies ensure appropriate employees are properly trained and kept up to date on applicable environmental laws, executive orders, regulations, policies and procedures. While agencies have training plans and budgets, they may need to be adjusted to ensure the appropriate level of training is provided. This may include seeking additional funding and/or utilizing more cost effective training methods such as webinars, recorded training sessions, internal training, peer to peer exchanges, developmental assignments, etc.

The interagency workgroup also recommends training be provided for Federal agency staff on any changes that come out of the interagency coordinated environmental review process. However, implementation may require additional funding.

5. Provide Training for Tribes

The interagency workgroup recommends training tribes on all new policies and requirements that result from the interagency coordinated environmental review process, as well as regular training on environmental laws, executive orders, and regulations to ensure a thorough understanding of each agency's processes and requirements and how to incorporate those requirements into existing tribal

[109] 40 C.F.R. § 1508.4 (2011).

[110] This improvement is already in progress; USDA is currently working towards harmonizing its categorical exclusions with HUD's. Publication of an updated environmental final rule for USDA Rural Development is expected in fiscal year 2016.

procedures. Several comments from listening sessions, consultations, and interviews revealed misunderstandings and misapplications of agencies' policies and regulations that were leading tribes to inefficient and unnecessary work. Further, tribes expressed a desire for the training[111] cited above.

Funding availability is a significant barrier to developing and presenting training. When this topic was discussed at an interagency workgroup meeting, several agencies cited a lack of funding as the primary reason they do not provide more training, especially in-person training. While webinars can be a great alternative to in-person training, tribes may not have access to internet at speeds necessary to participate in web-based training. Therefore, in-person training continues to be an important part of training for tribes. While the agencies will leverage training resources available to them, implementation may require additional funding.

6. Continue Review of Related Environmental Laws and Authorities to Identify Opportunities for Greater Efficiencies

Members of the workgroup and participants at some listening sessions and consultations were asked about the related environmental laws and authorities they believed caused the greatest concern. The following were identified: Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act,[112] Executive Order 11988 on Floodplain Management, Section 404 of the Clean Water Act, and Executive Order 11990 on Protection of Wetlands. During this effort, the workgroup held discussions about Section 106 of the National Historic Preservation Act and floodplain mapping.

a. National Historic Preservation Act Compliance

Section 106 requires Federal agencies to consider the effects of projects on historic properties, and to engage a number of parties in the decision making process. Depending on the situation, agencies may be required to engage in consultation with the appropriate State or Tribal Historic Preservation Officer (SHPO or THPO), any Indian tribe or Native Hawaiian organization that may attach religious or cultural importance to a site, the Advisory Council on Historic Preservation (ACHP), and other interested groups. Due to the complexities of the required decision making and the many parties involved in the process, Section 106 was frequently mentioned by agencies and tribes as a source of delays within the environmental review process.

An interagency meeting was held June 25, 2015, which included participating agencies' Federal Preservation Officers and designees, a representative from the ACHP, and a representative from the National Conference of State Historic Preservation Officers.[113] Participants discussed concerns and proposed solutions related to Section 106 compliance for projects on tribal land. Most of the suggestions resulting from this meeting will require continued discussion and collaboration between the

[111] *Id.*

[112] Several tribes reported long wait times and challenging requirements from the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service, which administer the Endangered Species Act. This is especially common and challenging on tribal lands, as endangered species are more likely to be present in rural or undeveloped areas. The interagency workgroup will work with USFWS and NMFS to determine if there are any options to minimize delays without compromising compliance.

[113] The National Association of Tribal Historic Preservation Officers was invited but unable to attend this meeting.

agencies in attendance as well SHPOs and THPOs. The interagency workgroup will continue to explore ways of eliminating duplicative consultation and avoiding unnecessary expense. [114]

The workgroup recommends providing more funding for THPOs. THPOs are severely underfunded, causing delays in response to tribes and agencies during the Section 106 consultation process. SHPOs and THPOs are partially supported through the Historic Preservation Fund (HPF), but Congress has appropriated a limited amount of the available funding that could be granted through the HPF. HPF is funded by outer continental shelf oil leases and has billions of dollars in unspent balances that could be appropriated to SHPOs and THPOs without additional cost to the American taxpayer.[115] Due to the design of the HPF, which divides funding between all federally recognized THPOs, the THPOs receive less funding every time a new THPO is recognized.[116] In the last few years many new THPOs have been designated and correspondingly, each THPO's budget has decreased.[117] As a result, their capacity to respond quickly to requests for consultation becomes more and more limited. The workgroup supports the FY16 Budget proposal to increase funding to THPOs to adjust for their increased numbers.

b. Floodplain Mapping

Executive Order 11988 on Floodplain Management was also identified as another related environmental authority to be addressed, primarily due to the lack of flood mapping available on tribal lands. Because the Federal Emergency Management Agency (FEMA) does not have the resources to map more remote areas, tribes are frequently forced to find other means of determining whether a project is within a floodplain, and agencies differ in their acceptance of alternatives to FEMA maps. In a 2013 report, Participation of Indian Tribes in Federal and Private Programs,[118] GAO found that only 7 percent of federally recognized tribes participated in the National Flood Insurance Program (NFIP), in part because most tribal lands remain unmapped. GAO recommended "that the FEMA Administrator examine ways to make mapping of tribal lands in flood-prone areas a higher priority," and FEMA agreed. The interagency workgroup makes the same recommendation.

The interagency workgroup intends to continue its review of related laws and authorities to identify opportunities for greater efficiencies. Any relevant outside groups and agencies identified will be included in this effort.

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[114] For example, agencies and tribes differ as to when archaeological surveys should be required. Surveys can increase the costs associated with a review to the extent that projects become unfeasible, so a reasonable and consistent approach is crucial. Another goal would be to increase the frequency of agencies sharing completed Section 106 documents to avoid the time and expense associated with duplicative consultation.

[115] NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS, HISTORIC PRESERVATION FUND – BRIEF OVERVIEW (2015), http://www.ncshpo.org/historicpreservationfund.shtml.

[116] Of the funds from the HPF appropriated to THPOs, about 81 percent is divided equally among all THPOs. The remaining 19 percent is awarded based on the area of tribal lands. National Park Service, Tribal Historic Preservation Office Historic Preservation Fund Grant Quick Guide (2015), at 5, *available at* http://www.nps.gov/thpo/downloads/2015_THPO_HPF_QuickGuide.pdf.

[117] In less than 20 years, the number of THPOs has grown from 12 in 1996 to 154 in 2015. National Association of Tribal Historic Preservation Officers, Tribal Historic Preservation Officers (2015), *available at* http://nathpo.org/wp/wp-content/uploads/2015/03/NATHPO-One-Pager-20151.pdf.

[118] GAO REP. NO. 13-226, *Flood Insurance: Participation of Indian Tribes in Federal and Private Programs* (January 2013), *available at* http://www.gao.gov/products/GAO-13-226.

7. Create Regional Consortiums

The interagency workgroup recommends the creation or expansion of regional consortiums for tribes and agencies to discuss and assist each other with issues related to environmental review for tribal housing and infrastructure projects. The idea for a regional consortium system is based on EPA's Regional Tribal Operations Committee (RTOC), which brings together representatives from the EPA and tribes to encourage communication and information exchange. During tribal consultation at the NCAI Mid-Year Conference, tribes recommended the RTOC as a model for this effort. With minimal funding support, a system of regional consortiums could be an invaluable resource to maintain continuous interaction between tribes and the members of the interagency workgroup. These could either be designed as a new system of consortiums specific to tribal housing and infrastructure, or it could be "piggy backed" onto the existing RTOC system for less cost and greater efficiency.

The workgroup emphasizes that the structure of these consortiums should be focused on and in line with tribal expectations. The goal is to ease the burden on tribes, not to add new requirements. The agencies would offer their support, but allow tribes to take the lead on implementing consortiums.

B. Long-Term Recommendations

1. Explore the Development of an Interagency Environmental Review Automated Tool

The workgroup recommends further exploration of the creation of an electronic tool to promote the efficient sharing of environmental documents. Tribes could use this automated tool to assemble and/or submit environmental documents to the funding agencies. The automated tool could serve as the "single format" requested by tribes, some of whom have asked that the interagency workgroup provide a standardized format that would be used by all funding agencies to prepare their environmental reviews.

Creating such a tool would require effort and funding, including collaboration with tribes to determine the scope and structure of the tool. Then more intensive collaboration would be required to design the system, with the assistance of programming experts, which may require contractor support. Another challenge would be ensuring that any tool designed could be used by the tribes. Slow, dial-up access or intermittent access to internet service could make the use of any tool tedious and frustrating for tribal users. Creative approaches, such as making the tool available on a disc or in hard copy, are necessary to guarantee that the final product would work for the intended users.

2. Explore HUD-Specific Regulatory and Policy Improvements

During the course of this project, tribes have requested changes that are specific to HUD's programs and regulations. HUD intends to work internally to address the following concerns.

a. Updating HUD's Acceptable Separation Distance (ASD) Regulations

To facilitate projects near small propane tanks, HUD intends to review its regulations in 24 CFR 51 Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature and determine whether a change is required to resolve impediments to the development of housing in Indian country.

24 CFR §51.202(a) prohibits use of HUD funding for a proposed project located less than the acceptable separation distance from a hazard (as defined in§ 51.201) unless appropriate mitigation measures (defined in §51.205) are implemented or in place. A hazard is defined in §51.201 as "any stationary

container which stores, handles or processes hazardous substances of an explosive or fire prone nature." Propane is included in the definition of a "hazardous gas." An acceptable separation distance (ASD) assessment is required for both blast overpressure (explosion) and thermal radiation (fire) for propane tanks near HUD-assisted projects. Where projects are less than the ASD from a propane tank, mitigation measures are required to protect buildings and their inhabitants from potential explosions.[119]

The tribes report that this regulation causes frequent problems in Indian Country, especially in Alaska, where the existence of large residential propane tanks is common. Before tribes can use HUD funding for projects, they are frequently required to construct barriers or otherwise mitigate for neighbors' propane tanks, which is costly. Since this regulation was last updated in 1984, National Fire Protection Association (NFPA) codes have been updated, leading to a significant decrease in liquefied petroleum gas home fires. As a result, the danger of residential propane tanks to HUD projects is now minimal.[120]

b. Easing Paperwork Burdens for Administrative Activities

Under HUD's regulations, tribes are required to maintain environmental review records for all HUD funds received, including those used for purely administrative activities. HUD is exploring options to alleviate the administrative burden on tribes, which may require regulatory changes.

3. Create More Predictable Funding Mechanisms

As discussed above, problems associated with timing create the first barrier to interagency coordination on individual projects. Tribes are often unable to identify all funding agencies from the outset of a project, in part because funding sources are not predictable. Select funding sources, including NAHASDA and TTP, were designed to be distributed on a formula basis in order to provide recipients with reliable, predictable funding.[121] Although funding amounts may vary from year to year, tribes are nonetheless able to anticipate their approximate funding levels from formula programs years into the future, allowing them to have a high degree of confidence in their abilities to fund future needs. In contrast, most other funding sources are allocated competitively, which means that tribes cannot be sure how much funding they will receive until later in the planning process.

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[119] 24 C.F.R. § 51.202(a) (2001).

[120] The National Fire Protection Association (NFPA), through its development of codes and standards, is an authoritative source on public safety regarding fire and other hazards. NFPA developed NFPA Code 58 that establishes codes and standards used by the propane industry and operators regarding storage and handling of liquefied petroleum gas. All states have adopted and integrated NFPA Code 58 into their state and local codes and regulations. A study by NFPA confirms that one of the reasons why liquefied petroleum gas home structure fires have fallen 83% nationally is due to increased awareness from following NFPA Code 58. Jennifer D. Flynn, *Natural Gas and LP-Gas Home Structure Fires,* FIRE ANALYSIS AND RESEARCH DIVISION, NATIONAL FIRE PROTECTION ASSOCIATION (August 2007), at 10-29.

[121] Prior to NAHASDA, development funding was provided on a competitive basis and tended to reward those organizations that had expertise in writing grant applications. One of the principal concepts behind the development of NAHASDA was to provide the tribes with a predictable stream of funding for the provision of low-income housing for tribal members. This predictability allows tribes to conduct long range planning to develop future housing. Similarly, the Indian Reservation Roads Program (IRR), predecessor to TTP, established a funding formula for the program known as the Tribal Transportation Allocation Methodology (TTAM), providing a more reliable and foreseeable multi-year funding estimation. This concept continued under TTP with a new statutory formula based on tribal population, road mileage and average tribal shares of the former TTAM formula.

In addition, tribes receive housing and transportation facilities funding on a formula basis,[122] but most infrastructure is usually not funded by formula. As a result, there is a fractured planning process – some tribes have constructed housing but have not been able to secure the required infrastructure to support it.

Providing more funding on a formula basis would allow tribes to anticipate funding years in advance, promote stability, and facilitate comprehensive, reliable long-term financial plans that could cover housing and all required infrastructure. However, there are several challenges associated with making such a change. Formula funding is not appropriate for all programs or agencies. Some programs provide loans rather than grants, which would not be conducive to formula funding. Other programs are not sufficiently funded for a formula format to be practical or effective. Some housing-related infrastructure programs are driven by human health and other priority systems, and a formula format would not be appropriate. While the workgroup does not support formula funding for all programs, there is agreement that tribes should be given the tools to engage in effective project planning. The interagency workgroup recommends exploring whether more predictable formula funding can be utilized more often.

4. Establish an On-going Environmental Review Interagency Workgroup

The group recommends continuing to meet and collaborate to implement many of the recommendations and to further develop measures to ensure efficient, coordinated environmental reviews for Indian housing and related infrastructure. Only through an on-going collaboration can many of the identified challenges be addressed. There needs to be an established forum for the examination of environmental review issues and to ensure implementation of recommended solutions.

5. Explore Expanding the Scope of this Effort

The scope of this effort was limited to housing and housing-related infrastructure. However, tribes have suggested an expansion of this process to other projects.

If the workgroup's recommendations apply only to housing projects, this could lead to a fractured process. Tribes may have one environmental review process for housing projects and a completely separate and different process for all other federally funded activities. Several tribes have expressed concern that this would further confuse and complicate this already difficult process. The workgroup recommends exploration of expanding the scope of an expedited review to consider other types of projects, such as schools and economic development activities. Such an expanded scope should be led by the responsible agencies.

[122] The USDOT Federal Transit Administration's Tribal Transit Program provides funding both on a formula basis as well as with a discretionary program. This permits both predictable funding as well as a source of funding for unpredictable needs or for new services.