

EXHIBIT 2-G.2

INSTRUCTIONS FOR COMPLETING THE “STATUTORY CHECKLIST” Based on HUD Region VIII ERR GUIDE #9 – Version: HUD 03/10

For HUD-funded projects that are categorically excluded pursuant to 24 CFR §58.35(a), the Responsible Entity (RE) must make a determination of whether the proposal achieves compliance with each applicable statute, executive order, or regulation with or without requiring formal consultation, mitigation, permits, or having adverse effects on the resources protected by the federal laws and authorities of 24 CFR §58.5. These instructions are a brief description of essential findings needed to establish compliance and ARE NOT INTENDED TO REPLACE THE APPLICABLE REGULATIONS. Applicable regulations take precedence over these brief instructions. The preparer of the “Statutory Checklist” must always document and attach reliable information/sources used in making these environmental determinations. The preparer must ensure that all attachments are properly identified (i.e., Exhibit A) and referenced in the applicable category areas of the checklist.

- I. Exhibit 2-G.1, Part 1:** Fill in the information, as indicated
- II. Exhibit 2-G.1, Part 2, Classification of Project/Activity,** check the appropriate box(es) to document the type(s) of activity(ies) the Grantee will be undertaking in connection with its HOME project.
- III. Exhibit 2-G.1, Part 3, the Statutory Checklist,** must be completed.

Follow step-by-step instructions listed under each category in order to make a determination status. Be sure you obtain, attach and reference all relevant documents, letters, etc. to the checklist.

Record the finding/determination status on the “Statutory Checklist” for each listed federal statute, executive order, and regulation, as follows:

- *Status “A” applies when compliance with the statute, executive order, and/or regulation is achieved without adverse effects on the Federally-protected resource, without necessary mitigation or attenuation, AND when no formal consultation, permit or agreement is required to establish compliance. In these situations, enter “A” in the “Statutory Checklist” status column.*
- *Status “B” applies when project compliance with the statute, executive order, and/or regulation requires formal consultation, a permit, or an agreement, OR when the proposal may have an adverse effect on the protected resources. Status “B” discussions below summarize what additional steps or formal procedures must be completed prior to submitting a Request for Release of Funds (RROF) to HUD/State government, as applicable. Evidence of completion and implementation of the required procedures or mitigation must be retained in the project Environmental Review Record (ERR).*

For general information regarding the HUD environmental process, go to:

<http://www.hud.gov/offices/cpd/environment/atec.cfm>

HISTORIC PROPERTIES (including archaeology)

The process to determine if a property has any historical issues can take a considerable amount of time (sometimes a few months). Early consultation with the State Historic Preservation Office in Helena is critical.

1. Look up proposed project at Historic Properties to see if property is listed. Print listing.
2. Complete **Exhibit 2-M.1**, letter to the State Historic Preservation Office indicating if property is listed or not listed as a Historic Property. If property is not listed, complete **Exhibit 2-M.2**, Record of Historic HUD Properties. (See **Exhibit 2-M.3** for instructions on completing **Exhibit 2-M.2**.)

Be sure to include photos of the subject property, close up photos of architectural features that would be affected by this undertaking (windows, doors, porches), and photos of adjacent properties.

3. Send letter, form, and all attachments to State Historic Preservation Officer (SHPO) for SHPO's concurrence with determination that the undertaking would have: (a) No effect; (b) No adverse effect; or (c) An adverse effect.
4. If SHPO concurs that the project has no effect or no adverse effect, MARK Status Column with an "A", identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.
3. If proposed project **is** located in a historic area, consult with SHPO, the National Park Service, and any local preservation office to resolve or mitigate adverse effects on historic properties. Maintain complete documentation of this process to attach to the ERR. MARK Status Column with a "B".

FLOODPLAIN MANAGEMENT

1. Look up proposed project address at FEMA maps to determine if the proposed project is within a 100-year floodplain (Zones A, M, N, P, E, or V), and does not involve a "critical action" (i.e., emergency facilities, facility for mobility impaired persons, etc.) within a 500 year floodplain (Zones B, C, & X). If FEMA has not published flood maps, the preparer must make a finding based on the best available data (i.e. from the City/County Engineer or local Flood Control Agency). Print a copy of the map. If not in a floodplain, MARK Status Column with an "A", identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.
2. If property **is** located within a 100-year floodplain, complete the 8-step decision making process, **Exhibit 2-N.1** pursuant to 24 CFR Part 55.20 to document that there are no practicable alternatives to the proposal and to mitigate the effects of the project in a the flood hazard area of concern. See **Exhibits 2-N.2** and **2-N.3** for public notices that will need to be published. MARK Status Column with a "B", identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

WETLANDS PROTECTION

1. Contact the U.S. Army Corps of Engineers (USACE) by sending them **Exhibit 2-O.1** for determination if proposed project is adjacent to wetlands, marshes, wet meadows, mud flats or natural ponds, streams, rivers, ditches, and artificial lakes and ponds that USACE oversees.
2. Go to the U.S. Fish and Wildlife Service (USFWS) Wetlands Mapper. Download map for proposed project site and print. If, from the wetlands map, a determination is made that the property is **NOT** adjacent to wetlands, etc., then the 8-step process is concluded. MARK Status Column with an **"A"**, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.
3. If property **IS** adjacent to wetlands, etc., complete the 8-step decision making process, **Exhibit 2-N.1**, pursuant to 24 CFR Part 55.20 to document that there are no practicable alternatives to the proposal and to mitigate the effects of the project in a the flood hazard area of concern. See Exhibits **2-N.2** and **2-N.3** for public notices that will need to be published. MARK Status Column with a **"B"**, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

SOLE SOURCE AQUIFERS

1. Go to EPA Ground Water Office to determine if the project is located within a U.S. Environmental Protection Agency (EPA) designated sole source aquifer watershed area OR if the project needs to be referred to the EPA for evaluation according to the HUD-EPA (Region IX) Sole Source Aquifer Memorandum of Understanding of 1990. Print copy of the website page.

If the project is **NOT** located within the designated sole source aquifer watershed area, MARK Status Column with an **"A"**, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

2. If the project **IS** located within the designated sole source aquifer watershed area, consult with the Water Management Division of EPA to design mitigation measures to avoid contaminating the aquifer and implement appropriate mitigation measures. MARK Status Column with a **"B"**, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

WILD AND SCENIC RIVERS

1. Determine that the project is not located within one mile of a Wild and Scenic River.
 - Go to Wild and Scenic River.
 - Scroll down to "Montana" and click on Flathead River.
 - Print copy of webpage.
 - Go back to "Montana" and click on Missouri River.
 - Print copy of webpage.
2. Next, determine if the project is located within one mile of and will have any effect on natural, free flowing, and/or scenic qualities of a river segment. Print copy of webpage.

3. If it is determined that the project will not have an impact on Wild and Scenic Rivers or river segments, send **Exhibit 2-Q.1**, Letter to National Park Service. If no response within 30 days, it will be assumed that the agency concurs with the determination.

MARK Status Column with an “**A**”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

4. If it is determined that a project is located near or will impact either the wild and scenic rivers or river segments, then consult with the U.S. Department of Interior, National Park Service. You may also be required to contact NPS/USFS which manages the Flathead River or BLM which manages the Missouri River for impact resolution and mitigation.

MARK Status Column with a “**B**”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

COASTAL ZONE MANAGEMENT

1. All projects located in the States of Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming are considered as NOT having the potential to impact areas protected by the Coastal Zone Management Act of 1972. This section of the statutory checklist has already been completed and requires no further documentation or notations.

ENDANGERED SPECIES

1. To find the federally protected list or proposed list of threatened or endangered species (i.e., plants, animals, fish, or invertebrates) in Montana, go to the Montana Field Office of the U.S. Fish and Wildlife Service. Click here to obtain a list. Print screen.

Determine that the proposed project will not have any effect, is not likely to adversely affect, or will not adversely modify the critical habitats of the species listed. Send **Exhibit 2-R.1**, Letter to U.S. Fish & Wildlife Service, for the agency’s concurrence with the determination.

MARK Status Column with an “**A**”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

2. If a determination is made that the proposed project will have an effect, then consult with the USFWS in accordance with procedural regulations contained in 50 CFR Part 402. Formal consultation with USFWS is always required for federally funded “major construction” activities and anytime a “likely to adversely affect” determination is made. MARK Status Column with a “**B**”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

AIR QUALITY

The Clean Air Act defines an attainment area as a geographic area in which levels of a criteria air pollutant meet the health-based primary standard (National Ambient Air Quality Standard – NAAQS) for the pollutant.

1. Go to either EPA website at: EnviroMapper or EJ View. Key in proposed project address. Select the “air” option on the map provided through EnviroMapper. Select “non-attainment areas” on EJ View. Print the map on a **colored printer** so that the indicators can be seen. If

the map shows that the proposed project site is free from any air pollutants, MARK Status Column with an “A”, identify and reference relevant documents in the Compliance Finding and Documentation column and attach to ERR.

2. If either map shows that the project has any indicators, contact the Region 8 EPA Office for further guidance. Depending on consultation with EPA, MARK Status Column with applicable “A” or “B”, identify and reference relevant documents in the Compliance Finding and Documentation column and attach to ERR
3. If EPA determines that the project may require an individual NESHAP permit or notification, negotiate suitable mitigation measures with them; obtain necessary permits; and issue required notices. (For example, 40 CFR 61.145 requires a 10-day prior notification to the Air Quality District Administrator whenever 260 linear feet, 160 square feet, or 35 cubic feet of asbestos containing material is to be disturbed during rehabilitation/demolition activities in multi-family properties). MARK Status Column with a “B”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

FARMLAND PROTECTION

1. To determine if the project site includes “Important Farmland” or other “Farmland of Statewide or Local Importance” as identified by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), OR the project site includes such farmland, but is located in an area already committed to urban use (i.e. as determined by the NRCS or as determined by local planning and zoning classifications), complete the following instructions:
 - Obtain form AD-1006, *Farmland Conversion Impact Rating*, which can be accessed by clicking on the link or through the NRCS website.
 - Complete Parts I, III, VI and VII of the Farmland Conversion Impact Rating form. (NOTE: the “Federal Agency” as listed on the form is the “grantee.”) Parts II, IV and V should be left blank, to be completed by the NRCS office.
 - Send completed form to: Natural Resources Conservation Service

Attn: State Resource Conservationist
10 East Babcock Street
Federal Building, Room 443
Bozeman, MT 59815-4704
 - If the State office determines project does not include important farmland, etc., then MARK Status Column with an “A”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.
2. If the State NRCS office determines the project site **IS** considered farmland, consideration of the resulting rating needs to be made in deciding whether to modify or approve the proposal, as well as determine appropriate mitigation measures (including measures to prevent adverse effects on adjacent farmlands). MARK Status Column with a “B”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

ENVIRONMENTAL JUSTICE

Environmental Justice (EJ) means ensuring that the environment and human health are fairly protected for all people regardless of race, color, national origin, or income. For instructions on

how to assess if a proposed project/activity is suitable for its proposed location, click here for HUD website. Also, evaluate project site using EPA's website on Environmental Justice at <http://epamap14.epa.gov/ejmap/entry.html>.

1. Determine if the proposed project/activity is suitable for its proposed location and use and will NOT (1) disproportionately be adversely impacted by **or** (2) disproportionately adversely impact low income or minority populations. MARK Status Column with an "**A**", identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.
2. If the suitability of the proposed project/activity for its proposed location and use is a concern because it would likely disproportionately be adversely impacted by or disproportionately adversely impact low income or minority populations, such impacts should be avoided or mitigated to the extent practicable. Address and mitigate **OR** reject the proposal. If mitigation can be accomplished, MARK Status Column with a "**B**", identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

NOISE ABATEMENT AND CONTROL

The environmental review must provide **either**:

- a finding that the property proposed for new construction, major rehabilitation, or conversion **is not** located within:
 - i. 1,000 feet of a major noise source, road, or highway;
 - ii. 3,000 ft of a railroad; or
 - iii. 5 miles of a civil airport or 15 miles of a military airfield;

OR

- a finding that the property is located within a normally unacceptable or unacceptable noise zone, in which case it must:
 - i. state that the plans for the property proposed for new construction, major rehabilitation or conversion activity incorporates noise attenuation features in accord with HUD environmental criteria and standards contained in Subpart B--Noise Abatement and Control of 24 CFR 51; **and**
 - ii. provide the plans as evidence and a statement of the anticipated interior noise levels.

What information is needed to do a noise assessment?

The noise regulation requires that projections be made for noise levels 10 years from the completion date of project under review. This usually means that traffic projections must be incorporated into the Noise Assessment Guidelines to calculate the future noise level for the site.

Acceptable noise levels for a proposed project are:

Exterior noise levels – Proposed HUD-assisted projects with a day-night average sound level of below 65 decibels are acceptable (see Standards in 24 CFR §51.103).

Interior noise levels – Proposed HUD-assisted projects with a day-night average sound level of below 45 decibels are acceptable.

The local planning agency, the State Department of Transportation, and the airport agency are sources of noise hazards information.

HUD's Noise Assessment Guidelines also provides a basic technical assessment resource for determining noise levels at sites exposed to aircraft, highway and railroad noise.

See HUD's DNL calculator to determine day-night noise levels if decibel information is unavailable from above referenced sources. **Be sure to print screen the results.**

If the project is located within an "Acceptable" noise zone (not exceeding 65 decibels), the noise exposure may be of some concern, but common building constructions will make the indoor environment acceptable and the outdoor environment will be reasonably pleasant. MARK Status Column with an "**A**", identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

If the project is located within a "Normally Unacceptable" noise zone (between 65 and 75 decibels), noise attenuation features, in accordance with HUD environmental criteria and standards, must be incorporated. Include the plans and a statement of the anticipated interior noise levels in the Environmental Review Record. MARK Status Column with a "**B**", identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

Also, see HUD's Sound Transmission Classification Assessment Tool (STraCAT) to assess the effectiveness of a material or construction assembly to retard the transmission of airborne sound.

EXPLOSIVE AND FLAMMABLE OPERATIONS

General information regarding explosive and flammable operations can be found at Explosive and Flammable Facilities, on HUD's website.

1. Determine if the proposed project site is located near hazardous operations handling conventional fuels or chemicals of an explosive or flammable nature. Follow the instructions provided in Appendix C of the "Siting of HUD-Assisted Projects Near Hazardous Facilities" guidebook. If the proposed project site is not located near hazardous operations, MARK Status Column with an "**A**", identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.
2. If site is located near a hazardous operation, determine whether the proposed project is at an Acceptable Separation Distance (ASD) from any above-ground explosive or flammable fuels or chemicals containers. Additional guidance is available in the guidebook "Siting of HUD-Assisted Projects Near Hazardous Facilities."

If project is within acceptable separation distance, MARK Status Column with a “B”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

3. If the proposed site is not located at an acceptable distance from above-ground explosive or flammable fuels, see available Mitigation Options for further guidance and contact information.

TOXIC CHEMICALS AND GASES, HAZARDOUS MATERIALS, CONTAMINATION, AND RADIOACTIVE SUBSTANCES

1. Determine if site has any issues; go to EPA’s website and key in proposed project’s address. Using the tools on the right hand side of the webpage, click on the + (plus) buttons on all of the categories to see what the site might contain. Be sure to print the map with the information on a colored printer.

If the site has no identified areas of contamination, etc., MARK Status Column with an “A”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

2. If the proposed site appears to have some issues, contact Region 8 EPA Office for further guidance. Follow all required steps as directed by EPA. If project site can still be used for proposed project, MARK Status Column with a “B”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.

AIRPORT CLEAR ZONES AND ACCIDENT POTENTIAL ZONES

1. Using a site area map, determine if the proposed project is located within 2500 feet of a civilian airport runway or 8,000 feet of the end of a military airfield runway. If project is not located within boundaries described above, MARK Status Column with an “A”, identify and reference relevant documents in the Compliance Finding and Documentation column, and attach to ERR.
2. **If project is located within described boundaries, consider alternative project sites.** It is HUD’s policy *not* to provide any development assistance, subsidy, or insurance to projects located within the prescribed boundaries unless the project will not be frequently used or occupied by people **and** the airport operator provides written assurances that there are no plans to purchase the project site.

NOTES:

Determinations:

- **Project converts to *Exempt*** status (not common for projects funded by the Montana HOME Program) because it *does not require any mitigation for compliance with any listed statutes, executive orders, or regulations, nor requires any formal permit or license* (Status "A" has been determined in the status column for **all** authorities).
Publication is not required. **Funds may be drawn down upon receipt of concurrence letter from Montana Department of Commerce.**
- **This project cannot convert to *Exempt*** status because one or more of the listed statutes, executive orders, or regulations require(s) consultation or mitigation. Environmental consultation/mitigation requirements, pursuant to 24 CFR Part 58 must be completed/determined to the point of reaching closure. A Notice of Intent to Request a Release of Funds (NOI/RROF) must be published with its associated public comment periods pursuant to 24 CFR §58.45 and Subpart H in coordination with MDOC. See **Exhibit 2-H.1** for the Notice of Intent to Request a Release of Funds and **Exhibit 2-H.2** for Instructions on completing the NOI/RROF.
Form HUD 7015.15, *Request for Release of Funds and Certification*, must be properly executed pursuant to 24 CFR Part 58, Subpart H and forwarded to HUD by MDOC. Appropriate authority to use grant funds must be obtained from HUD before drawing down funds. See **Exhibit 2-K.1** for the *Request for Release of Funds and Certification* and **Exhibit 2-H.2** for Instructions on completing the *Request for Release of Funds and Certification*.
- **The unusual circumstances of this project may result in a significant environmental impact.** This project requires preparation of an Environmental Assessment (EA). An EA should be prepared pursuant to 24 CFR Part 58, Subpart E. See **Exhibit 2-I.1** for **Documentation of an Environmental Assessment** and **Exhibit 2-I.2** for Instructions on completing the ERR.

Part 3, the REGULATORY CHECKLIST, must be completed.

Flood Disaster Protection Act of 1973, as amended: Fill in the information. If the project/activity located within a Special Flood Hazard Area (SFHA) as mapped by the Federal Emergency Management Agency (FEMA), **and** the HOME-funded project/activity is Rental Housing, flood insurance must be obtained through the National Flood Insurance Program. If the project/activity located within a Special Flood Hazard Area (SFHA) as mapped by the Federal Emergency Management Agency (FEMA), **and** the HOME-funded project/activity is Homeowner (Owner-Occupied) Rehabilitation, flood insurance obtained through the National Flood Insurance Program is strongly recommended.

National Flood Insurance Reform Act of 1994, Section 582, (42 USC 5154a: Fill in the information.

Coastal Barrier Improvement Act of 1990, as amended: *Not applicable in the HUD Region VIII area. There are no coastal barriers identified in HUD Region VIII and in HUD Office of Native Americans, Northern Plains, States of CO, MT, NE, ND, SD, UT, and WY.*

Civilian Airport Runway Clear Zone and/or Military Airport Clear Zone: If an existing property is in a Runway Clear Zone or Clear Zone pursuant to 24 CFR Part 51, Subpart D, the HOME Grantee must advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information. However, **the Montana HOME Program recommends against purchasing property in a Runway Clear Zone or Clear Zone.**

➤ **Responsible Entity (RE)**

- For ALL HOME projects funded by the Montana Department of Commerce:
 - The Responsible Entity is the Montana Department of Commerce