

## **Environmental Review Tool Kit**

This document includes information about the following topics in regards to Environmental Review:

- Statutory or Categorical Exemptions
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)
- Other Environmental Laws and Permits

The Environmental Checklist and TSEP Environmental Questions are included on our website as separate documents. For TSEP construction grant applications, both the checklist and the questions are required to be completed by the applicant and submitted with their construction grant application. Please refer to the Application Guidelines for further details.

### **Environmental Review**

TSEP grants are a state action subject to the Montana Environmental Policy Act (MEPA). MEPA specifies three different levels of environmental review, based on the significance of the potential impacts. The levels are: (1) exempt or excluded from MEPA review; (2) environmental assessment (EA), and (3) environmental impact statement (EIS). The following outlines the environmental review process that must be completed by the applicant for each project proposed for TSEP funding. For detailed information on MEPA, see *A Guide to the Montana Environmental Policy Act*, or *A Citizen's Guide to Public Participation in Environmental Decision making*, at: <http://leg.mt.gov/css/Services%20Division/Lepo/mepa/default.asp>

### **Statutory or Categorical Exemptions**

Certain actions are exempt from MEPA review, either because they have been specifically exempted by the statute or, because of their special nature, do not normally have a significant effect on the environment. The following types of actions are exempt from MEPA review:

- Administrative actions (routine clerical or similar functions, including but not limited to administrative procurement, contracts for consulting services, or personnel actions);
- Minor repairs, operations, and maintenance of existing equipment or facilities;
- Investigation and enforcement; data collection activities; inspection of facilities or enforcement of environmental standards;
- Ministerial actions (in which the agency exercises no discretion and rather acts upon a given state of facts in a prescribed manner);
- Actions that are primarily social or economic in nature and that do not otherwise affect the human environment;
- Actions that qualify for a categorical exclusion; and
- Specific actions of certain agencies that have been exempted by the Legislature.

Normally, a TSEP project will not qualify for an exemption. The only types of public facility projects that could qualify for an exemption are projects relating to existing facilities that involve only minor repairs or rehabilitation (including functional replacement) of the existing facility or facility components. Projects where the footprint of the proposed structures, pipelines, or other infrastructure would be substantially unchanged from existing conditions may also qualify for an exemption. Examples include, but are not limited to, the following: replacement of a facility or facility component in the same location in which they are currently located, or replacement of equipment in a public facility. In any event, an exemption may not be used if any public controversy exists over the project's potential effect on the quality of the human environment; the proposed project shows some potential for causing a significant effect on the quality of the human environment; or the project might possibly affect sensitive environmental or cultural resource areas or endangered or threatened species and their critical habitats.

### Environmental Assessment (EA)

EA means a written analysis of a proposed action to determine whether an EIS is required or to serve one or more of the other purposes described in ARM

8.2.304(2). Normally a thoroughly completed Environmental Checklist will suffice as the draft EA for public review and comment, and may then be revised as necessary to constitute the final EA. Anyone authorized to perform work on behalf of the local government or grant recipient can prepare the draft EA, using all available information and evidence. The grantee's authorized representative must sign the draft EA, and the final environmental determination must be made by the local government or grant recipient representatives or board. Preparation of an EA ensures the fullest appropriate opportunity for public review and comment on a proposed action, including alternatives and planned mitigation, and examines and documents the effects of a proposed action on the quality of the human environment. The EA also allows the project proponent to determine the need to prepare an EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action.

In addition, a grant recipient may prepare an EA whenever the proposed action is one that might normally require an EIS, but the significant effects of the project appear to be mitigated below the level of significance through design, enforceable controls, and/or conditions imposed by the agency or other government agencies. For an EA to suffice in this instance, the grant recipient must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The grant recipient may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.

An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to the grant recipient. The grant recipient shall submit a copy of each completed EA to the Department. The grant recipient is responsible for providing public review of an EA as necessary to match the complexity and seriousness of environmental issues associated with a proposed action and the level of public interest in the action. Methods of accomplishing public review include publishing a news release or legal notice to announce the availability of an EA, summarizing its content and soliciting public comment; holding public meetings or hearings; maintaining mailing lists of persons interested in a particular action or type of action and notifying them of the

availability of EAs on such actions; and distributing copies of EAs for review and comment. Where an action is one that normally requires an EIS, but effects that otherwise might be deemed significant are mitigated in the project proposal or by controls imposed by the grant recipient, public involvement must include the opportunity for public comment, a public meeting or hearing, and adequate notice. The grant recipient is responsible for determining appropriate methods to ensure adequate public review on a case-by-case basis.

The grant recipient shall consider all substantive comments received in response to a draft EA and decide, at a public meeting, that either:

- (1) that an EIS is necessary;
- (2) that the EA did not adequately reflect the issues raised by the proposed action and must be revised; or
- (3) that an EIS is not necessary, and make a final decision on the proposed action (executing the contract with the Department to receive TSEP funds for the grantee's project).

The grant recipient must provide a copy of the Final EA to the Department with documentation of public review, opportunity for public comment, and a final decision on the EA at a public meeting.

Any time the grant recipient proposes substantial changes to the project affecting the original EA, the grant recipient must repeat its environmental review for the revisions to the project, assuring the environmental impacts of the revised project are adequately identified, addressed by the grantee, and any necessary public review provided. When completed, the grant recipient must follow the original process and again provide environmental documents to Department.

### Environmental Impact Statement (EIS)

An EIS is required whenever an EA indicates that an EIS is necessary, or a grant recipient proposes an action that may significantly affect the quality of the human environment (a "major action").

MEPA and Department's rules require that a draft EIS circulated for public review must contain all of the following:

- (1) a description of the proposed action, including its purpose and benefits;
- (2) a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction and a description of their responsibility for the proposed action;
- (3) a description of the current environmental conditions in the area affected by the proposed action or alternatives, including maps and charts, whenever appropriate;
- (4) a description of the impacts on the quality of the human environment of the proposed action, including: direct, indirect, and cumulative impacts; potential growth-inducing or growth-inhibiting impacts; irreversible and irretrievable commitments of environmental resources, including land, air, water and energy; economic and environmental benefits and costs of the proposed action; and the relationship between local short-term uses of man's environment and the effect on maintenance and enhancement of the long-term productivity of the environment;
- (5) an analysis of reasonable alternatives to the proposed action, including the alternative of no action and other reasonable alternatives that may or may not be within the jurisdiction of the agency to implement, if any;
- (6) a discussion of mitigation, stipulations, or other controls committed to and enforceable by the grant recipient or other government agency;
- (7) a discussion of any compensation related to impacts stemming from the proposed action;
- (8) an explanation of the tradeoffs among the reasonable alternatives;
- (9) the grant recipient's preferred alternative on the proposed action, if any, and its reasons for the preference;
- (10) a section on consultation and preparation of the EIS that includes the names of those individuals or groups responsible for preparing the EIS; a listing of other agencies, groups, or individuals who were contacted or contributed information; and a summary list of source materials used in the preparation of the draft EIS;
- (11) a summary of the draft EIS; and
- (12) other sections that may be required by other statutes in a comprehensive evaluation of the proposed action, or by the National Environmental Policy Act or other federal statutes governing a cooperating federal agency.

Following preparation of a draft EIS, the grant recipient must distribute copies to the Governor; the Department; the Environmental Quality Council; appropriate state and federal agencies; and all persons who have requested copies. The grant recipient must allow 30 days for public comment on the EIS, which may be extended an additional 30 days at the discretion of the grant recipient or upon application of any person for good cause. When preparing a joint EIS with a federal agency or agencies, the grant recipient may also extend this period in accordance with time periods specified in regulations that implement the National Environmental Policy Act.

After the time for public comment and review has expired, the grant recipient must prepare a Final EIS for approval at a public meeting, which must also contain:

- (1) a summary of major conclusions and supporting information from the draft EIS and the responses to substantive comments received on the draft EIS, stating specifically where such conclusions and information were changed from those which appeared in the draft;
- (2) a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by the grant recipient (in all cases, a representative sample of comments must be included);
- (3) the grant recipient's responses to substantive comments, including an evaluation of the comments received and disposition of the issues involved;
- (4) data, information, and explanations obtained subsequent to circulation of the draft; and
- (5) the grant recipient's recommendation, preferred alternative, or proposed decision together with an explanation of the reasons.

The grant recipient must distribute copies of the Final EIS to the Governor; the Department; the Environmental Quality Council; appropriate state and federal agencies; all persons who submitted comments on or received a copy of the draft EIS; and all other members of the public upon request.

The grant recipient may not make a final decision on the proposed action being evaluated in a Final EIS (executing the contract with the Department to receive TSEP funds for the grantee's project) until 15 days from the date of transmittal of

the Final EIS to the Governor and Environmental Quality Council. Until the grant recipient reaches its final decision on the proposed action, no action concerning the proposal may be taken that would have an adverse environmental impact or limit the grant recipient's choice of reasonable alternatives, including the no-action alternative.

Any time the grant recipient proposes substantial changes to the project affecting the original EIS, the grant recipient must repeat its environmental review for the revisions to the project, assuring the environmental impacts of the revised project are adequately identified, addressed by the grantee, and any necessary public review provided. When completed, the grant recipient must follow the original process and again provide environmental documents to Department.

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### Other Environmental Laws and Permits

The following are some other environmental laws enforced by other state agencies or permits required from other agencies that may apply to the grantee's TSEP project:

- Stream Protection Act, Title 87, Chapter 5, Part 5, MCA (SPA 124 Permit) – contact the Montana Department of Fish, Wildlife and Parks at 444-2449.
- Montana Solid Waste Management Act, Title 75, Chapter 10, Part 2, MCA – contact the Department of Environmental Quality at 444-5300
- Clean Air Act of Montana, Title 75, Chapter 2, MCA – contact the Department of Environmental Quality at 444-3490
- Federal Clean Water Act and Montana Water Quality Act, Title 75, Chapter 5, MCA – contact the U.S. Army Corps of Engineers in Helena at 441-1375 and the Montana Department of Environmental Quality at 444-3080
- Short-Term Water Quality Standard for Turbidity (318 Authorization) – contact the Montana Department of Environmental Quality at 444-3080.
- Public Water Supplies, Distribution and Treatment, Title 75, Chapter 6, MCA – contact the Montana Department of Environmental Quality at 444-7423

- Montana Water Use Act (Water Right Permit and Change Authorization) – contact the Montana Department of Natural Resources and Conservation at 444-6601 or the local DNRC Water Resources Regional Office. A useful website regarding water rights can be found at [http://www.dnrc.mt.gov/wrd/water\\_rts/default.asp](http://www.dnrc.mt.gov/wrd/water_rts/default.asp)
- Floodplain and Floodway Management, Title 76, Chapter 5, MCA (Floodplain Development Permit) – contact the Montana Department of Natural Resources and Conservation at 444-0860 or the local floodplain administrator  
[http://www.dnrc.mt.gov/wrd/water\\_op/floodplain/pdfs/communities\\_floodplain\\_administrators.pdf](http://www.dnrc.mt.gov/wrd/water_op/floodplain/pdfs/communities_floodplain_administrators.pdf)
- Stormwater Discharge General Permits and/or Montana Pollutant Discharge Elimination System (MPDES Permit) – contact the Montana Department of Environmental Quality at 444-3080.
- The Montana State Antiquities Act, Title 22, Chapter 3, MCA (Cultural Resource Survey) – contact the State Historic Preservation Office (SHPO) at 444-7715. There is guidance for consulting with SHPO at <http://mhs.mt.gov/shpo/archaeology/consultingwith.asp>