

# ENVIRONMENTAL REVIEW

IN DEPTH RESOURCE

# Covered Subjects

- What is an environmental review
- Why is an environmental review completed
- Who is responsible for completing an environmental review
- Who can actually perform an environmental review
- Liabilities associated with an environmental review
- Citizen participation in the environmental review process
- Lead Paint and Asbestos
- Questions



# What is an Environmental Review

- An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether a project meets Federal, State and Local environmental standards.
- A copy of the environmental review must be placed in the project file and should be available at the office of the governmental entity that received the Federal funding and in the project file at the MEDC.
- The review documents the consultation with a host of agencies and is comprehensive in how it looks at a project.
- Be aware that it is important to clearly describe the project and exactly what will be done. It is imperative that the project description matches that of other documents such as the application for funding, the LOI and other documents

# What is an Environmental Review

- An example is if there is an infrastructure project which will replace water pipes, the fact that the project might entail the cutting down and removal of trees should be in the description. Tree removal may have detrimental effects to endangered species.
- The location of the project should be clearly spelled out. Especially when dealing with coastal areas.

# Why is an Environmental Review Completed?

- The environmental review process is required for all U.S. Department of Housing and Urban Development (HUD) assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users.
- Since Community Development Block Grants are funded through HUD, an environmental review is necessary.
- Note that if a project changes substantially an environmental amendment may be necessary. For example, the rehabilitation of an abandoned rail station to be used as a rest area along a trail may change the materials which are used on the roof. This might require an amendment because the State Historic Preservation (SHPO) Office will have commented on the original plan. This office might have questions regarding the new materials being utilized.

# Why is an Environmental Review Completed?

- Not every project is subject to a full environmental review.
- Every project's environmental impact must be examined, but the extent of the examination varies.
- The key is that every project must be in compliance with the National Environmental Policy Act (NEPA) and other Federal and State environmental laws.
- Documentation of the environmental review must be kept in every project file.

# Why is an Environmental Review Completed

- It is imperative that communities understand That:
- HUD regulations prohibit grant recipients and their partners from committing or spending HUD or non-HUD funds on any activity that could have an adverse impact or limit the choice or reasonable alternatives prior to a completion of an environmental review once a project is deemed “Federal”.
- For example a blight elimination project is utilizing CDBG money for the demolition of a building. The City has decided that they will pay for the engineering costs as part of their match. The contract for the engineering costs can not be signed before an environmental review has been completed.
- The prohibition includes
  - Physical activities such as
    - Acquisition
    - Rehabilitation
    - Construction

# Levels of Review



Exempt Activities



Categorically excluded from NEPA not subject to related laws and authorities



Categorically excluded from NEPA but subject to related Laws and Authorities



Environmental Assessment



Environmental Impact Statement

# Exempt Activities

- Exempt activities are those where an environmental assessment does not need to be completed.
- These include the following:
  - 1. Environmental and other studies, development of plans and strategies
  - 2. Information and financial services
  - 3. Administrative and management activities
  - 4. Public services that will not have a physical impact or result in any physical change. Examples would be services dealing with employment
  - 5. Crime prevention

# Exempt Activities

- 6. Child care
- 7. Health, drug abuse
- 8. Education
- 9. Counseling
- Inspections and testing of properties for hazards or defects
- Purchase of insurance
- Purchase of tools
- Engineering or design costs
- Technical assistance and training

# Exempt Activities

- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest effects from disasters, imminent threats or physical deterioration.
- Payment of principal and interest on loans guaranteed by HUD
- Any categorical exclusions listed in 58.35(a) provided that there are no circumstances which require compliance with any other Federal Laws and authorities cited in 58.5.
- Planning Grant (not associated with an imminent project under 7CFR Section 1970.53).

# Exempt Activities

- Examples:
- A community is replacing their sewer system and will need to engage an engineering firm. The engineering firm will need to draw up plans and specifications for the project. However regulations state that no contract can be signed paid for by Federal or Non-Federal funding before an environmental review is completed. The engineering costs will be paid by the community and counted as match.
- The CGA would submit an exempt activity determination sheet checking engineering or design costs. This does not exempt the project but exempts the activity so a contract can be signed and work can proceed on the engineering plans and specifications only.

# Exempt Activities

- A community wishes to submit a planning grant to study possible sites available for economic development activities.
- This would be considered an exempt activity
- A community wishes to submit a planning grant to study possible sites for ABC Company to build a facility in their town.
- This would not be considered an exempt activity because the grant would be associated with an imminent project.
- A community wishes to chose a CGA to perform grant work. The community has followed all of the proper procurement guidelines.
- The CGA activities would fall under Administrative and Management and that part of the project would be considered exempt. An environmental assessment on the project would still need to be done.

# Exempt Activities

- Even if a project has been deemed as an exempt activity there are three questions that need to be answered.
- 1. Is the project located in a flood hazard area, and is there a flood insurance program
- 2. Is the project located in a coastal barrier resource area
- 3. Is the project located in an airport runway clear zone. This includes military as well as civil airports.
- Note that if a project is located in a coastal barrier resource area, Federal funds can not be used.

# Why an Environmental Review is Completed

- We have gone over one of five categories of an environmental review.
- Questions?

# CENS

- CENS stands for Categorically excluded not subject to 58.5, 24 CFR 58.35(b)
- The following activities would meet the CENS criteria:
  - 1. Tenant Based Rental Assistance
  - 2. Supportive Services which includes health care, housing services, permanent housing placement, daycare, nutritional services, short-term payments for rent, mortgage assistance, assistance gaining access to local, State and Federal government benefits and services.
  - 3. Operation Costs, equipment purchases, inventory financing, interest subsidies, operation expenses and similar costs not associated with construction or expansion of existing operations.

# CENS

- 4. Economic Development activities such as equipment purchases, inventory finance, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations.
- 5. Activities to assist home ownership of existing dwelling units, this includes closing costs, downpayment assistance and activities that result in the transfer of title to a property.
- 6. Affordable predevelopment costs which include legal consulting, developer and other related costs associated with obtaining site options, project financing, administrative costs, fees for loan commitments and zoning approvals.
- As with the exempt level questions regarding flood insurance, flood hazards, coastal barriers and airport flyway zones will need to be answered.

# CENS



We have covered two levels of environmental reviews.



Questions?

# CEST

- CEST is finding of categorical exclusion subject to 58.5, 24 CFR 58.35(a).
- The major exclusions are as follows:
  - 1. Acquisition, repair, improvement, reconstruction or rehabilitation of public improvements other than buildings when the facility and improvements are in place and will be retained in the same use without change in size or capacity of more than 20%.
- Examples of this are:
  - Replacement of water and sewer lines
  - Reconstruction of curbs, sidewalks and repaving of streets.
- Be aware of the 20% capacity issue. If you have 8 inch water lines and you will replace them with 12 inch water lines the capacity has increased by more than 20% and the project will not meet this criteria.

# CEST

- 2. Specific projects directed to the removal of material and architectural barriers restricting mobility and accessibility to elderly and handicapped persons
- 3. Rehabilitation of buildings and improvements when the following are met:
  - Residential use (1-4) units where the density is not increased beyond 4 units, the land use has not changed and the footprint of the building has not increased. Most importantly the building is not in a floodplain or wetland.
  - Multi-Family use where the unit density has not increased by more than 20%, there are no changes in land use and the estimated cost of rehab is less than 75% of the total estimated cost of replacement after rehabilitation. Again the building is not in a floodplain or wetland.

# CEST

- In the case of a non-residential structure such as commercial, industrial or public buildings the facility and improvements are in place, will not change in size or capacity by more than 20% and there will be no change in the land use.
- Be careful of industrial. If a metal fabrication plant is being turned into a food manufacturing plant this project would not meet the criteria because there is a change of one industrial use to another.

# CEST

- 4. An individual action on up to 4 dwelling units where there is a maximum of 4 units on any one site or any combination of sites and units as long as it does not exceed 4.
- 5. An individual action on a project of 5 or more housing units developed on scattered sites which are more than 2,000 feet apart and there are no more than 4 housing units on any one site.
- 6. Acquisition, including leasing or disposition of equity loans on an existing structure or acquisition of vacant land provided that the structure, land or other improvements financed are of the same use.
- Example:
  - North Povallaville wants to acquire 5 acres of vacant land to build a supermarket in a food desert. This would not meet the requirement under CEST.
  - North Povallaville wants to acquire 5 acres of vacant land to create a community park. This would meet the requirement under CEST.
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# CEST

- Note that as in the exempt activities review questions regarding Flood hazard areas, flood insurance, coastal barrier resource area and airport runway clear zones will need to be answered.
- In these cases:
  - A Section 106 review is needed
  - A Statutory Checklist is needed

# CENS

- A Section 106 review is needed for CENS projects. The Section 106 review is completed by SHPO or the State Historic Preservation Office.
- Beginning July 1 2020 SHPO has mandated that only certified environmental consultants will be able to put together Section 106 reviews. This is to ensure that the reviews are complete and done in such a way that reviews will be done quicker and documentation provided will be utilized in a new database.
- Note that the cost of a Section 106 review production is an eligible CDBG cost.

# Environmental Assessment

- The following slides will speak to the Statutory Checklist.
- For each major subject, documentation must be provided as part of the environmental assessment.
- We have also included some possible resources which can be utilized.

# Environmental Assessment

- Note that a CGA may complete an exempt, CENT and CENS review as long as an Environmental Assessment is not needed.
- SHPO guidelines as of July 2020 require that a Section 106 application be completed by a certified 106 individual or firm.

# CEST



A project may convert to exempt because it does not require any mitigation for compliance with any listed statutes and does not require any formal permit or license.



A project cannot convert to exempt if one or more statutes/authorities require consultation.



CONGRATULATIONS



You have completed three of the five levels of Environmental Review



QUESTIONS?

# Statutory Checklist

- Historical properties
- SHPO Section 106
- [www.Michigan.gov/SHPOSection106](http://www.Michigan.gov/SHPOSection106)
- Floodplain Management
- Map should be attached showing that the project is not within a floodplain. Please show the location on the map with an X.
- [www.misc.fema.gov](http://www.misc.fema.gov) Special HUD checklist
- Wetlands Protection
- Map showing wetlands in the area should be in file
- [www.fws.gov/wetlands/data/mapper.htm](http://www.fws.gov/wetlands/data/mapper.htm)
- Special HUD checklist
- Coastal Zone Management
- Map showing the coastal zone near the project
- [www.mi.gov/coastalmanagement](http://www.mi.gov/coastalmanagement)
- Water Quality
- [http://www.epa.gov/safewater/sourcewater/pubs/qrg\\_ssamap\\_reg5.pdf](http://www.epa.gov/safewater/sourcewater/pubs/qrg_ssamap_reg5.pdf)
- Endangered Species
- <http://www.fws.gov/Midwest/endangered/section7/s7process/index.html>
- List for the county in question should be an attachment
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# Statutory Checklist

- Wild and Scenic Rivers
- <http://www.rivers.gov/Michigan.php>
- Air Quality
- <http://www.epa.gov/oaqps/greenbk/ancl.Html#michigan>
- An air quality map of the State of Michigan should be in the file.
- Farmlands Protection
- Thermal/Explosives
- Noise Control
- Airport Clear Zones
- Contamination/toxic sites
- Environmental Justice
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# Statutory Checklist

- The last six areas of concern can utilize the HUD portal which will walk the preparer through questions to determine the level of documentation
- Environmental Justice refers to looking if a particular project will have a negative effect on communities populated by minority groups or economically disadvantaged areas.

# Statutory Checklist

- Federal Requirements which must be looked at are:
- Flood Insurance
- Coastal barriers
- Airport Clear Zones
- Water Quality
- Solid Waste Disposal
- Fish and Wildlife
- Storm Water
- Note that solid waste disposal is very important when dealing with lead and asbestos materials

# Statutory Checklist

- Use Michigan Department of Environmental Quality Environmental permit checklist to make sure that no permits or state approvals are needed.
- The web site is [http:// www.Michigan.gov/documents/deq/deq-004-cau-permits-eqp3580\\_415019\\_7.pdf](http://www.Michigan.gov/documents/deq/deq-004-cau-permits-eqp3580_415019_7.pdf)
- Please be aware that the Army Corps of Engineers will be another agency that will need to be consulted on projects adjacent to a lake or river. Piers in the waterway, new bridges, floating docks etc. all need to be commented on by the Corps. Note that we can not approve an environmental review until all outside agencies have commented on the proposed project.

# Level of Review

- The final level of review is an Environmental Impact Statement
- This must be completed by an environmental specialist and generally is done when a mitigation process is needed. This usually occurs if there are buried tanks which are leaking and the level and type of toxin must be identified. Once identified the review will outline concrete steps which need to be made to make the site safe.

# Level of Review



Congrats you have made it! All five levels have been explained.



QUESTIONS?

# Who is Responsible for Completing an Environmental Review?



ANY COMMUNITY WHICH ACCEPTS FEDERAL FUNDS IS RESPONSIBLE FOR COMPLETING AN ENVIRONMENTAL REVIEW REGARDLESS OF WHO PHYSICALLY PERFORMED THE REVIEW.



THE COMMUNITY WHEN SIGNING THE REVIEW ACCEPTS LIABILITY IF SOMETHING SHOULD BE FOUND THAT WILL ADVERSELY AFFECT THE ENVIRONMENT.



THE HIGHEST LEVEL ELECTED OFFICIAL SHOULD SIGN THE ENVIRONMENTAL REVIEW HOWEVER, USUALLY THE CITY MANAGER OR A DEPARTMENT HEAD SIGNS THE REVIEW AS LONG AS THERE IS SOME KIND OF DOCUMENTATION SHOWING THAT A CITY COUNCIL HAS APPROVED THE SIGNATORY.

# Who can Perform an Environmental Review

- There are no Federal regulations which specifically states who can actually perform the environmental review.
- The CGA
- Environmental specialist
- UGLG staff
- However there are liabilities associated with not completing, incorrectly completing or allowing Federal funds to be utilized on a project which will have a potential environmental impact or a detrimental affect on the health and safety of the public.

# Who can Perform an Environmental Review?

- The MEDC suggests that UGLGs make a careful determination of who performs the environmental review. Beginning July 1 all SHPO 106 reviews will need to be performed by certified environmental specialists.
- The UGLG signs the environmental review and is ultimately responsible for ensuring compliance.
- MEDC strongly suggests any project located in or near a flood plain, has buried industrial waste or tanks, has potential asbestos contamination or will have a negative effect on a particular population group should utilize the services of an environmental specialist.

# Liabilities

- HUD at its discretion may decide to request all Federal funds be repaid on a project which has an incomplete or a project which has a negative environmental impact on a community.
- HUD at its discretion may decide to request a stop work order until a problem on a project is remedied. It would be the responsibility of the community to pay for any remediation from non-Federal funds.
- An example is Povallaville has a project using CDBG money which is being used to construct a new park on vacant land adjacent to the downtown area. In digging up the area to place piping for a fountain a buried tank is found which is leaking gasoline into the soil and groundwater. All work on this project is halted and an environmental firm is hired to do soil testing and water testing where it is determined that soil must be replaced and the clean up of the groundwater must take place. All of the additional cost of the remediation must be paid by Povallaville.

# Liabilities

- In extreme cases where life, health and safety of citizens are called into question the “responsible entity” can be subject to legal action.

# Citizen Participation

- Citizen participation is an important piece of the environmental review process. If an environmental assessment is determined to be needed a public hearing on the environmental assessment needs to take place.
- A community needs to either
- Publish a notice
- Post a notice

# Citizen Participation

Publishing a notice

Must be published in a local newspaper

Must give adequate notice so citizens can participate

Should be at a time and place where the maximum number of people will have the ability to participate.

Documentation that the notice was published should be in the project file.

# Citizen Participation

- Posting a Notice
- The posting of the notices of the public hearing shall be in locations where the public is likely to be informed. This may include:
  - Libraries
  - Senior Centers
  - Community Centers
  - City Hall
  - County Courthouse

Documentation of the postings are needed in the project file.

# Citizen Participation

- Note that documentation of the hearing should also be in the project file.
- Many communities hold the public hearing at a City or Town Council Meeting and comments are then incorporated into the minutes of the meeting.
- All comments should be placed in the file and should be added to the environmental assessment as an addendum.

# Citizen Participation

- A published notice has a seven day comment period and begins the day after publication
- A combined notice which also requests the release of funds has a fifteen day comment period and begins the day after publication.
- The MEDC then has a 15 day comment period which begins the day after MEDC receives the request for release of funds.

# Citizen Participation

- If a notice has been posted a notice of intent has a 10 day comment period beginning the day after posting and if it is a combined notice there is an 18 day comment period beginning the day after posting.
- As with the publication, MEDC has a 15 day comment period which begins the day after MEDC receives the notice.
- If the last day of a comment period falls on a weekend or holiday, comments will be accepted through the following business day.

# Lead-Based Paint

- The issue of lead based paint could be the focus of its own training.
- For detailed instructions please go to the GAM and review the lead based paint section.
- For CDBG projects, the lead based paint requirements fall into three major categories.
- Lead Paint requirements kick in whenever Federal funds are utilized to assist housing units built before 1978.

# Lead Based Paint

1. Notification
2. Assessment/Evaluation
3. Reduction

# Notification

- Lead Hazard information pamphlet
- Pamphlets should be provided to all households at time of application.
- Owners should document that pamphlets were received by an acknowledgement form signed by the tenant
- Disclosure of any lead based paint in the unit

# Assessment

- Assessment/evaluation methods include visual assessments, paint testing, and risk assessments. Each method has specific requirements and must be done by qualified professionals. The specific method required depends on the activity undertaken.

# Reduction

- Lead hazard reduction may include paint stabilization, interim controls, standard treatments or abatement.
- The specific requirements defined in Subpart R of the regulation must be done by qualified professionals. The specific method required depends on the activity undertaken. For definitions, refer to 24 CFR 35.110.

# Asbestos

- The handling of asbestos containing materials is regulated by the Environmental Protection Agency under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) 40 CFR part 61, and the Occupational Safety and Health Administration (OSHA) under regulations contained in 29 CFR 1926.1101.
- The MEDC asbestos policy states that all construction, demolition and rehabilitation done in whole or in part with CDBG funds must comply with State, and Federal asbestos removal requirements. It is the responsibility of the grantee, developers, owners and contractors to know and comply with local, State and Federal construction standards.
- MEDC has an Asbestos Applicability Worksheet, Form 5V which should be completed and in the project file.

# Environmental Review

- Congratulations, you have completed the Environmental Review Training.
- QUESTIONS?







