### Environmental Review

Coal Board 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 Coal Board 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/Publications/environmental/default.asp> or <http://leg.mt.gov/css/services%20division/lepo/mepa/mepaforpublic.asp>

All necessary environmental review of the proposed project must be completed prior to submission of the application for grant funding. Any application received without documentation that the environmental review process has been completed may be rejected by the Department.

The applicant must provide documentation of the completed environmental review process and include with the application all documentation of the public review process, including but not limited to, the public notice for and minutes of a public hearing at which the environmental review was discussed, the public comments received, and the final decision on the environmental determination made during a public meeting.

#### 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 statutorily exempt from MEPA review under ARM 8.2.304(5):

* + 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;

The following types of actions are categorically exempted from MEPA review under ARM 8.2.328(2):

* + Projects that will be partially funded by, or for which the applicant must obtain a permit from, a state or federal agency which, by reason of its funding or permitting function, has primary responsibility to consider the environmental impacts of the project under MEPA or the National Environmental Policy Act;
  + Activities which do not involve or lead directly to construction, such as planning studies, scientific research and analysis, surveys, or engineering;
  + Projects primarily involving the acquisition of capital equipment;
  + Projects that involve only minor repairs or rehabilitation to an existing facility, including functional replacement of an existing facility or facility components;
  + Projects where the footprint of the proposed structures, pipelines, or other infrastructure would be substantially unchanged from existing conditions, and there is no increase in the population served by the facility; or
  + Emergency repairs, reconstruction, restoration, retrofitting, or replacement of an existing facility that

is in operation or under construction when damaged and the action:

1. occurs within the existing facility footprint and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
2. is commenced within six months after the date of the emergency.

If the proposed project qualifies for an exemption then the applicant should submit documentation that the environmental process (including public review process) is complete and the applicant has formally approved its determination that the project qualifies for an exemption. An exemption may not be appropriate if significant 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)

An EA is a written analysis of a proposed action to determine whether an EIS is required or is needed to serve one or more of the other purposes described in ARM 8.2.304(2). Normally, a thoroughly completed Environmental Checklist and responses to the six questions contained in the Environmental Review Form (see Appendix C of these guidelines) 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 applicant may prepare the draft EA, using all available information and evidence. The applicant’s authorized representative must sign the draft EA, and the final environmental determination must be made by the applicant’s 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, an applicant 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 applicant 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 applicant 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 applicant. **The applicant shall submit a copy of each completed EA to the Department as a part of the complete grant application.** The applicant 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 applicant, public involvement must include the opportunity for public comment, a public meeting or hearing, and adequate notice. The applicant is responsible for determining appropriate methods to ensure adequate public review on a case-by-case basis.

The applicant 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. (3) that an EIS is not necessary, and make a final decision on the proposed action (executing the contract with the Department to receive Coal Board funds for the grantee’s project).

### The applicant 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 applicant 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 applicant 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 an applicant 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 applicant 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 applicant’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 applicant 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 applicant must allow 30 days for public comment on the EIS, which may be extended an additional 30 days at the discretion at the applicant or upon application of any person for good cause. When preparing a joint EIS with a federal agency or agencies, the applicant 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 applicant 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 applicant (in all cases, a representative sample of comments must be included);
3. the applicant 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 applicant recommendation, preferred alternative, or proposed decision together with an explanation of the reasons.

The applicant 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 applicant may not make a final decision on the proposed action being evaluated in a Final EIS (executing the contract with the Department to receive Coal Board 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 applicant 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 applicant’s choice of reasonable alternatives, including the no-action alternative.

Any time the applicant proposes substantial changes to the project affecting the original EIS, the applicant 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 applicant must follow the original process and again provide environmental documents to Department.

Coal Board applicants are responsible for compliance with all applicable state environmental requirements. Some of the other state environmental requirements that *may* apply to Coal Board projects include:

* Stream Protection Act, Title 87, Chapter 5, Part 5, MCA
* Montana Solid Waste Management Act, Title 75, Chapter 10, Part 2, MCA
* Clean Air Act of Montana, Title 75, Chapter 2, MCA
* Water Quality Act, Title 75, Chapter 5, MCA
* Public Water Supplies, Distribution and Treatment, Title 75, Chapter 6, MCA
* Floodplain and Floodway Management, Title 76, Chapter 5, MCA
* The Montana State Antiquities Act, Title 22, Chapter 3, MCA
* The Montana Sage Grouse Habitat Conservation Program and Conservation Strategy, Executive Orders 10-2014 and 12-2015 and Chapter 445, Laws 2015 (SB 261) https:\\sagegrouse.mt.gov

Some of the environmental permits that may be required on your project from other state agencies include the following:

* Asbestos Control Program – contact the Department of Environmental Quality (DEQ).
* Montana Stream Protection Act (SPA 124 Permit) – contact the Montana Department of Fish, Wildlife and Parks at 444-2449.
* Montana Floodplain and Floodway Management Act (Floodplain Development Permit) – contact the Montana Department of Natural Resources and Conservation at 444-0860 or the local floodplain administrator.
* Federal Clean Water Act (404 Permit) – contact the U.S. Army Corps of Engineers in Helena at 441- 1375.
* Short-Term Water Quality Standard for Turbidity (318 Authorization) – contact the Montana Department of Environmental Quality at 444-3080.
* Montana Water Use Act (Water Right Permit and Change Authorization) – contact the Montana Department of Natural Resources and Conservation at 444-6667 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)
* Stormwater Discharge General Permits and/or Montana Pollutant Discharge Elimination System (MPDES Permit) – contact the Montana Department of Environmental Quality at 444-3080.
* Please check the DNRC website for a copy of “A Guide to Stream Permitting in Montana.” Their web address is [http://dnrc.mt.gov/permits/stream\_permitting/default.asp.](http://dnrc.mt.gov/permits/stream_permitting/default.asp)
* Cultural Resource Survey – You may need to perform a cultural resource survey for your project. The

State Historic Preservation Office (SHPO) can be reached at 444-7715 for more information. There is guidance for consulting with SHPO at [http://mhs.mt.gov/shpo/archaeology/consultingwith.asp.](http://mhs.mt.gov/shpo/archaeology/consultingwith.asp)

### Environmental Assessment

Each Coal Board applicant must either identify that the proposed project qualifies for an exclusion from MEPA, or identify and analyze the environmental impacts of the proposed project.

Any time the applicant proposes substantial changes to the project, after submission of the application but either before or after final ranking by the Department or approval by the Legislature and Governor, the Department will require the applicant to repeat its environmental review as set forth above.

The checklist contained within the *Uniform Application for Montana Public Facility Projects, Tenth Edition,* must be submitted with the Coal Board application. Please use the heading for the environmental assessment as shown below. Letters to the appropriate state and federal agencies must be sent and documented.

It is *the requirement to complete the entire environmental review process and include all documentation with the application*. The responsibility for completing the environmental assessment rests with the grantee. Please refer to environmental review language for specific details regarding completion of the entire environmental process.

The ‘environmental review form’ must be completed for Coal Board projects and submitted with the construction grant application. The form must be prepared by someone with a thorough knowledge of the project, expertise in environmental issues, and authority to sign for the applicant.

Please ensure all portions of the environmental process are completed prior to application submission.

* 1. Environmental Assessment Checklist
  2. Environmental Review form
  3. Final Action taken by resolution or documented local decision

**ENVIRONMENTAL REVIEW CHECKLIST**

|  |  |
| --- | --- |
| **NAME OF PROJECT:** |  |
| **PROPOSED**  **ACTION:** |  |
| **LOCATION:** | , Montana |

|  |  |  |
| --- | --- | --- |
| **Key Letter:** | | |
| **N:** No Impact; **B:** Potentially Beneficial; **A:** Potentially Adverse; **P:** Approval/Permits Required; **M:**  Mitigation Required | | |
| **PHYSICAL ENVIRONMENT** | | |
| Key | 1 | Soil Suitability, Topographic and/or Geologic Constraints (e.g., soil slump, steep slopes,  subsidence, seismic activity) |
|  |
| *Response and source of information:* |
|  |
| Key | 2 | Hazardous Facilities (e.g., power lines, hazardous waste sites, acceptable distance from explosive  and flammable hazards including chemical/petrochemical storage tanks, underground fuel storage tanks, and related facilities such as natural gas storage facilities & propane storage tanks) |
|  |
| *Response and source of information:* |
|  |
| Key | 3 | Effects of Project on Surrounding Air Quality or Any Kind of Effects of Existing Air Quality on  Project (e.g., dust, odors, emissions) |
|  |
| *Response and source of information:* |
|  |
| Key | 4 | Groundwater Resources & Aquifers (e.g., quantity, quality, distribution, depth to groundwater,  sole source aquifers) |
|  |
| *Response and source of information:* |
|  |

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| --- | --- | --- |
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| Key | 5 | Surface Water/Water Quality, Quantity & Distribution (e.g., streams, lakes, storm runoff,  irrigation systems, canals) |
|  |
| *Response and source of information:* |
|  |
| Key | 6 | Floodplains & Floodplain Management (Identify any floodplains within one mile of the boundary of  the project.) |
|  |
| *Response and source of information:* |
|  |
| Key | 7 | Wetlands Protection (Identify any wetlands within one mile of the boundary of the project.) |
|  | *Response and source of information:* |
|  |
| Key | 8 | Agricultural Lands, Production, & Farmland Protection (e.g., grazing, forestry, cropland, prime or  unique agricultural lands) (Identify any prime or important farm ground or forest lands within one mile of the boundary of the project.) |
|  |
| *Response and source of information:* |
|  |
| Key | 9 | Vegetation & Wildlife Species & Habitats, including Fish and Sage Grouse (e.g., terrestrial, avian  and aquatic life and habitats) https:\\sagegrouse.mt.gov |
|  |
| *Response and source of information:* |
|  |
| Key | 10 | Unique, Endangered, Fragile, or Limited Environmental Resources, Including Endangered Species  (e.g., plants, fish or wildlife) |
|  |
| *Response and source of information:* |

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| --- | --- | --- |
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|  |  |  |
| Key | 11 | Unique Natural Features (e.g., geologic features) |
|  | *Response and source of information:* |
|  |
| Key | 12 | Access to, and Quality of, Recreational & Wilderness Activities, Public Lands and Waterways,  and Public Open Space |
|  |
| *Response and source of information:* |
|  |
| **HUMAN ENVIRONMENT** | | |
| Key | 1 | Visual Quality – Coherence, Diversity, Compatibility of Use and Scale, Aesthetics |
|  | *Response and source of information:* |
|  |
| Key | 2 | Nuisances (e.g., glare, fumes) |
|  | *Response and source of information:* |
|  |
| Key | 3 | Noise -- suitable separation between noise sensitive activities (such as residential areas) and  major noise sources (aircraft, highways & railroads) |
|  |
| *Response and source of information:* |

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| --- | --- | --- |
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|  |  |  |
| Key | 4 | Historic Properties, Cultural, and Archaeological Resources |
|  | *Response and source of information:* |
|  |
| Key | 5 | Changes in Demographic (population) Characteristics (e.g., quantity, distribution, density) |
|  | *Response and source of information:* |
|  |
| Key | 6 | General Housing Conditions - Quality, Quantity, Affordability |
|  | *Response and source of information:* |
|  |
| Key | 7 | Displacement or Relocation of Businesses or Residents |
|  | *Response and source of information:* |
|  |
| Key | 8 | Public Health and Safety |
|  | *Response and source of information:* |

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| --- | --- | --- |
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|  |  |  |
| Key | 9 | Lead Based Paint and/or Asbestos |
|  | *Response and source of information:* |
|  |
| Key | 10 | Local Employment & Income Patterns - Quantity and Distribution of Employment, Economic  Impact |
|  | *Response and source of information:* |
|  |
| Key | 11 | Local & State Tax Base & Revenues |
|  | *Response and source of information:* |
|  |
| Key | 12 | Educational Facilities - Schools, Colleges, Universities |
|  | *Response and source of information:* |
|  |
| Key | 13 | Commercial and Industrial Facilities - Production & Activity, Growth or Decline. |
|  | *Response and source of information:* |
|  |
| Key | 14 | Health Care – Medical Services |

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| --- | --- | --- |
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|  |  | *Response and source of information:* |
|  |
| Key | 15 | Social Services – Governmental Services (e.g., demand on) |
|  | *Response and source of information:* |
|  |
| Key | 16 | Social Structures & Mores (Standards of Social Conduct/Social Conventions) |
|  | *Response and source of information:* |
|  |
| Key | 17 | Land Use Compatibility (e.g., growth, land use change, development activity, adjacent land uses  and potential conflicts) |
|  |
| *Response and source of information:* |
|  |
| Key | 18 | Energy Resources - Consumption and Conservation |
|  | *Response and source of information:* |
|  |
| Key | 19 | Solid Waste Management |
|  | *Response and source of information:* |
|  |

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| --- | --- | --- |
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| Key | 20 | Wastewater Treatment - Sewage System |
|  | *Response and source of information:* |
|  |
| Key | 21 | Storm Water – Surface Drainage |
|  | *Response and source of information:* |
|  |
| Key | 22 | Community Water Supply |
|  | *Response and source of information:* |
|  |
| Key | 23 | Public Safety – Police |
|  | *Response and source of information:* |
|  |
| Key | 24 | Fire Protection – Hazards |
|  | *Response and source of information:* |
|  |
| Key | 25 | Emergency Medical Services |
|  | *Response and source of information:* |
|  |
| Key | 26 | Parks, Playgrounds, & Open Space |

|  |  |  |
| --- | --- | --- |
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|  |  | *Response and source of information:* |
|  |
| Key | 27 | Cultural Facilities, Cultural Uniqueness & Diversity |
|  | *Response and source of information:* |
|  |
| Key | 28 | Transportation Networks and Traffic Flow Conflicts (e.g., rail; auto including local traffic; airport  runway clear zones - avoidance of incompatible land use in airport runway clear zones) |
|  |
| *Response and source of information:* |
|  |
| Key | 29 | Consistency with Local Ordinances, Resolutions, or Plans (e.g., conformance with local  comprehensive plans, zoning, or capital improvement plans) |
|  |
| *Response and source of information:* |
|  |
| Key | 30 | Is There a Regulatory Action on Private Property Rights as a Result of this Project? (consider  options that reduce, minimize, or eliminate the regulation of private property rights.) |
|  |
| *Response and source of information:* |
|  |

### Environmental Review Form

**On a separate piece of paper, please answer the following as they apply to your proposed project:**

1. **Alternatives:** Describe reasonable alternatives to the project.
2. **Mitigation:** Identify any enforceable measures necessary to reduce any impacts to an insignificant level.
3. **Is an EA or Environmental Impact Statement (EIS) required?** Describe whether or not an EA or EIS is required, and explain in detail why or why not.
4. **Public Involvement:** Describe the process followed to involve the public in the proposed project and its potential environmental impacts. Identify the public meetings -- where and when -- the project was considered and discussed, and when the applicant approved the final environmental assessment.
5. **Person(s) Responsible for Preparing:** Identify the person(s) responsible for preparation of this checklist.
6. **Other Agencies**: List any state, local, or federal agencies that have over-lapping or additional jurisdiction or environmental review responsibility for the proposed action and the permits, licenses, and other authorizations required; and list any agencies or groups that were contacted or contributed information to this Environmental Assessment (EA).

Authorized Representative, Title Date (Name of) District

Chairperson

Date:

### Sample of a resolution

**to accept the determination that (level of environment finding) is appropriate for the (applicant, type of project )**

WHEREAS, the (Name of applicant) has completed an assessment to identify potential environmental impacts to the (describe purpose of project);

WHEREAS, the draft Environmental Assessment was made available for public comment and the findings were presented and reviewed at a public meeting;

WHEREAS, no substantive public comment was received, (or public comment was received and responded to);

WHEREAS, The (Name of applicant) has determined that the (type of Project) will not significantly affect the quality of the human environment and accordingly the (Name of Applicant) has determined an Environmental Impact Statement (or Environmental Assessment and EIS if project is Categorical Exclusion); is not necessary;

NOW, THEREFORE, BE IT RESOLVED by the (Council, Board, Commissioners) as follows;

That (Name of Applicant), Montana adopts the final Environmental Assessment for the (type of project).

Passes and approved on this date of (date)

Signed:

Name:

Title:

Date:

Attested: