

What to Do Now that You Have Your Stimulus Funding

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The American Recovery and Reinvestment Act (ARRA) of 2009 distributes federal money to a wider range of public and private organizations than ever before. Accepting ARRA funds opens these groups to strings attached to receiving federal money. Recognizing this, the ARRA requires that “adequate resources” be devoted to assisting these groups with one of the most prominent “strings”—the environmental review process.

The ARRA requires that applicable environmental reviews be completed on projects funded under the act, that such reviews be completed “on an expeditious basis” and that “the shortest applicable process allowed under the National Environmental Policy Act be utilized.” What does this mean for a local government, federal agency or private firm involved in ARRA work? Before this question is answered, let’s discuss what is meant by “environmental review.”

Environmental Review

Environmental review usually occurs under the National Environmental Policy Act (NEPA). This law, enacted in 1969, establishes general environmental policy and requires that federal agencies consider the effects of proposed work on “the quality of the human environment.” Other laws have similar requirements—most notably the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA). These, and a handful of other laws, apply to ARRA-funded projects. Review under these laws is just as mandatory as is review under NEPA, and the fact that you have complied with NEPA doesn’t necessarily mean you have complied with NHPA, ESA or any other policy—you must follow the regulations established for each one.

The Purpose of Review

The (often forgotten) purpose of these laws is to understand the environmental impacts that will occur if a federally funded project is carried out and determine reasonable ways to avoid or reduce severe impacts. It is important to remember that NEPA, and most of its kin, doesn’t prohibit having environmental impacts; they simply require that they be acknowledged, revealed to and discussed with the public, and resolved if there is a way to do so.

Adequate Resources

Providing “adequate resources” to complete environmental review means allocating enough money and time to identify potential effects, consulting with the interested public and experts as needed to define the effects, exploring ways to reduce or avoid them, and implementing the impact avoidance or reduction plans.

Shortest Applicable Process

Each federal agency has its own procedures for NEPA review, depending on the types of projects it funds. This process can be quick for simple projects with few impacts or more involved for projects with large, complex impacts.

Remember, significant delays occur when impacts are swept under the rug and a “quickie” analysis is conducted that does not fully review potential impacts and ways to resolve them. As a general rule, it is best to assume that impacts *will* occur, and then allocate the resources necessary to identify and resolve them.

What If Your Project is “Shovel Ready?”

There has been a lot of talk about funding “shovel-ready” projects. Presumably, this means projects for which, among other things, an environmental review has been completed. Even if a review was completed, you still need to be careful because your project may no longer be in compliance. Sometimes the law was “complied with” years ago and since then laws or circumstances have changed, which creates the need for further review. So a project that was “shovel-ready” a decade ago may not be ready today.

Who Can Help (or Hurt) You?

While there are numerous consultants eager to help you complete an environmental review of your projects, you have to be careful. Environmental review can be your project’s single largest time consumer. Significant time can be lost due to incompetent or inexperienced companies. There are also multiple meanings to “environmental review.” Some companies focus on solving problems of air and water pollution, while others pay close attention to impacts on natural resources but may not have significant experience with impacts on the urban environment or historical buildings. On the other hand, a consultant may know how to deal with the modern landscape but may not be proficient with plants and animals. Research is a critical element of selecting the right consultant. Checking with state and local regulators is a good way to start, but there is no one formula to follow to make sure you get the right kind of assistance.

The best way to answer that question is to think about what you propose to do and what it is going to do to the world. Will it dig up a lot of ground? Knock down or modify a building or neighborhood? Remove a lot of trees? Pump stuff into the air or water? Displace people? Once this has been determined, you can design a scope of work that focuses on assessing the impacts of such changes and look for firms that demonstrate the ability to assess them.

Don't Wait!

While much of the environmental review process depends on project specifics, there is one universal truth—the sooner you begin the process, the faster and more reliably you can expect to complete it. On the other hand, if you wait or treat it as an item on a checklist, you may get into the sort of trouble that can add substantial costs, serious delays or even end your project.

If you are considering an ARRA-funded project and not sure that an environmental review has been completed, begin the process now to understand the types of reviews that are necessary.

Note: The author would like to credit Tom King for leading the discussion on environmental impact assessment. This paper has benefited from ongoing discussion with him and others on this important topic.

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