

CPI Workgroup Meeting – March 18, 2014

Summary of Subcommittee Activity

February- March 2014

The CPI Workgroup has been very busy during its first month. All six subcommittees met at least once during this period and identified issues that needed to be addressed. At the March 18, 2014, meeting these issues were discussed and many cross-cutting issues were identified.

A summary of each subcommittee's progress follows:

Legislative Committee:

This committee met on February 28, 2014, and March 14, 2014. A summary of the meeting outcomes and areas of focus is as follows:

- Harmonizing and evaluating the provisions in Part 196, Part 195, Part 795, and Part 201, as well as the OPRA statute and Act 381. Specific issues identified included:
 1. Consistency of recordkeeping requirements.
 2. Flexibility to use funds within an approved budget depending on project variances.
 3. Site Assessment activities eligible for grants.
 4. Moving certain items from Site Reclamation (Site Rec) Rules into statute.
 5. Consistency in DEQ and MEDC/MSF processes and accounting for school TIF that would result in one set of books for developers.

- Clarification is needed on issues such as:
 1. Part 213 "sites" are not "facilities" so a strict reading of the law would indicate that these projects cannot qualify for DEQ incentives. This needs to be fixed.
 2. When does loan interest begin accruing and when is repayment due? Currently different for different funding sources.
 3. Clarifying types of projects that can be funded – greater ability to reimburse funds already spent on eligible activities.
 4. DEQ vs MEDC/MSF funding for Demolition and Lead and Asbestos Abatement.

- Additional eligible Activities should be considered, including:
 1. Industrial Cleaning
 2. UST Removal (for DEQ)
 3. Energy Efficiency
 4. Asbestos Abatement (for DEQ)
 5. Mold Removal
 6. Sediment Removal and Disposal

- Capture-related issues, including:
 1. Can MEDC/MSF capture be extended beyond project completion to fund the LSRRF? (Currently only DEQ funds)
 2. Can 3 mill BRF capture be applied to LSRRF?
 3. Clarification is needed on the timing of the beginning of tax capture and the ability to amend/abolish brownfield plans prior to 5 years following plan creation.

Liability Committee:

This committee met on March 12, 2014; a summary of the meeting outcome is as follows:

- A fix is needed for situations where a buyer/developer is liable but not culpable. (I.e. may have not done a proper BEA).
- Pending Part 201 amendments will possibly address the cure of a BEA, but this is a big issue and it needs to be clear that this is a significant program need.
- Recommend that for grants, loans, and TIF the funding “would not benefit a party responsible for an activity causing a release.” This wording is consistent with Part 201 and it is felt it would also address RCRA liability issues.
- Suggested amendment to Part 111 to allow the state to be a party to sites when PPAs are in play to address RCRA liability.
- Concern was raised that this would need to be done in such a way as to not discourage the performance of BEAs.
- Discussion took place regarding placing a statute of limitation on the Act 381 claw back provision currently available to citizens to recover costs from a liable party.
- School TIF can be used to pay for the incremental costs that would exceed a liable party’s responsibility. Concern was raised that the increment needs to be better defined, as interpretation of this issue varies widely.

Core Community/ Placemaking Committee:

This committee met on March 13, 2014; a summary of the meeting is as follows:

- Reviewed history of State actions in targeting development programs to locations.
- Affirmed that change(s) to community eligibility in Act 381 require change(s) in Act 146 (Obsolete Property Rehabilitation Act).
- Analyzed feasibility of addressing Act 146 Core Community criteria in Act 146 within scope of the CSI charge and process. Considerations included outcomes, stakeholders, and process.
- Unanimously agreed to NOT engage in further analysis or recommendations relative to Core Community criteria.
- Agreed unanimously to proceed with the following:
 1. Evaluate present criteria defining “place-based” projects developed by the Interagency/ICC Placemaking Committee.
 2. Consider whether one or more Act 381-eligible activities should be modified to provide benefit to place-based projects.
 3. Evaluate criteria for Targeted Redevelopment Area for potential modifications.

Site Reclamation Rules Committee:

The Site Rec Rules Committee met on March 6, 2014, and March 13, 2014. These meetings primarily focused on the relevancy and significance of each of the eleven rules. In many cases, it was determined that a rule was no longer relevant, in other cases, the issue was relevant, but could be better represented in legislation, policy, or procedure. In those cases, the committee looked at the Part 196 (CMI) legislation to determine if the issue was already addressed. In many circumstances it was; in other circumstances, it was recommended that the wording be slightly modified or that new wording be added to Part 196.

The final determination was that all of the rules could be eliminated and this is the recommendation from the committee.

Elimination of the rules also eliminates the prohibition of funding asbestos abatement, as this is the only place the prohibition lives at this time. A determination on how to proceed on this issue needs to be made and has been deferred to the Demo committee. If the prohibition is to remain, it will either need to be added to Part 196 or a policy should be developed.

A few items identified in the current rules remain to be addressed, and they are as follows:

1. Requirements of resolution in support of the project from the LUG to be detailed further.
2. Concept of discouraging development of open space and undeveloped lands.

Demo, Pb, and Asbestos, Dredging Committee:

This committee met on February 26, 2014, and discussed several items including:

- Is there a need for some additional inter-agency coordination between MDEQ and MDEC? Examples of potential areas to explore include:
 1. Treatment of contaminated soils
 2. Joint support for project work plans that might not be mixed use, or might be located in the periphery of a downtown.
- Should more "due diligence" activities, such as building hazardous material surveys, or perhaps nomination for the national register of historic places be included under the same banner as the more traditionally funded environmental due diligence work?
- Should MDEQ be the lead agency for both the identification and abatement of lead and asbestos?
- That lead and asbestos be treated like DEQ due diligence costs, and be utilized without agency review to approve state school capture.
- Make costs for survey and federal nomination available for historic properties as eligible activities.

The main agenda item for the next meeting will be reviewing the draft DEQ recommendations on dredging.

Program Implementation Committee:

This committee met on March 7, 2014; a summary of the meeting outcome is as follows:

- Clarification is needed on Administrative costs incurred by the LUG vs. costs incurred by consultant activities.

- DEQ district interface varies significantly. DEQ policy is needed on how districts interface with local unit of governments (LUGs) for loans, grants, and Act 381 work plans.
- LUGs cannot get funding if they are a liable party. Consideration should be given to this issue. Can the statute be changed to allow for this? Maybe a 50/50 match requirement in these types of cases?
- Project Considerations:
 1. Housing projects should be eligible for grant money as long as it does not promote urban sprawl and supports the current community master plan.
 2. Looking at the possibility of providing multiple grants to large, transformational projects. Could use project specific benchmarks to assure progress. This issue requires further discussion.
 3. More emphasis should be given to environmental impact than community (placemaking) impact.
- Eligible Activities: Asbestos abatement should be eligible at LEAST for loans.
- Need a mechanism for alternative financial mechanisms to secure loans (other than revenue sharing) such as escrow accounts. Currently reviewing this issue.
- Grants currently require State Administrative Board Approval, which adds to the timing of the award process. Consideration should be given to bypassing Ad Board process and getting only DEQ Director signoff. Is this workable? Consideration of checks and balances needs to be looked at.
- Clarification needed on capturing TIF into the LSRF if eligible activities were paid for with grant monies. Is LSRF capture predicated on eligible activities or on having TIF?
- Final Reports:
 1. Better data for DEQ to determine environmental impacts is needed.
 2. Need measurements and benchmarks.
 3. Have on-line data source to measure project outcomes.
- Consideration for Future Funding:
 1. Three mills is not self-sustaining for grant and loan program.
 2. Measurements need to be put into place for 3 mills to determine continuation.
 3. Sustainable future funding needs to be pursued. Group will look into this further.