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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

National Environmental Policy Act Implementing Procedures

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of Final National Environmental Policy Act Implementing Procedures.

SUMMARY: This document contains the final National Endowment for the Humanities (“NEH”) procedures for compliance with the National Environmental Policy Act of 1969 (“NEPA”), as amended. This action is necessary to implement these procedures and make them available to the public on NEH’s internet site.

DATES: These procedures are effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Michael McDonald; (202) 606-8322; gencounsel@neh.gov.

SUPPLEMENTARY INFORMATION:

NEH is an independent agency within the executive branch of the United States government, established by the National Foundation on the Arts and the Humanities Act of 1965. NEH extends financial assistance to individuals and organizations to support research, education, preservation, and public programs in the humanities. It also has statutory authority to extend financial assistance to cultural organizations to enable infrastructure development and capacity building, including through the design, purchase,

construction, restoration, or renovation of facilities needed for humanities activities and historic landscapes.

NEPA and implementing regulations promulgated by the Council on Environmental Quality (“CEQ”) (40 CFR parts 1500-1508) established a broad national policy to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, as well as to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans.

The CEQ regulations implementing the procedural provisions of NEPA are designed to ensure that this national policy, environmental considerations, and associated public concerns are given careful attention and appropriate weight in all decisions of the federal government. Section 102(2) of NEPA and 40 CFR 1505.1 and 1507.3 require federal agencies to develop and, as needed, revise implementing procedures consistent with the CEQ regulations. NEH is issuing the following NEPA implementing procedures that comply with NEPA and supplement the CEQ regulations. Per 40 CFR 1507.3, CEQ has reviewed these final implementing procedures for conformity with NEPA and the CEQ regulations, and considered NEH’s responses to comments from the public.

The remaining sections of **SUPPLEMENTARY INFORMATION** will provide background and address comments NEH received in response to its proposed NEPA implementing procedures. Following the **SUPPLEMENTARY INFORMATION** is the text of the final procedures.

Background

On October 15, 2018, NEH published a notice in the *Federal Register* (83 FR 52235)

advising the public of its intent to promulgate NEPA implementing procedures, including a list of “categorical exclusions” (i.e., those actions which do not individually or cumulatively have a significant effect on the human environment and for which, in the absence of extraordinary circumstances, further environmental review and documentation is not required). NEH solicited public comments on its proposed procedures.

Consistent with CEQ regulations, NEH consulted with CEQ prior to making its proposed implementing procedures available for public review and comment. 40 CFR 1507.3. The comment period closed on November 15, 2018. NEH received comments from three individuals, which it posted to the NEH website at <https://www.neh.gov/public-comments-neh-rulemaking-and-other-notice>.

Comments

One commenter expressed concern that NEH intends to issue these procedures to inhibit its ability to fund humanities-related projects. That commenter also questioned whether an NEH-funded project would ever not receive a “Finding of No Significant Impact.”

NEH has determined to issue these procedures because: (i) CEQ regulations require that agencies adopt procedures to ensure that their decision-making is consistent with the policies and purposes of NEPA (40 C.F.R. 1505.1 and 1507.3); (ii) CEQ specifically advised NEH to adopt NEPA implementing procedures; and (iii) NEH identified a particular need to adopt such procedures in light of recent agency efforts to support projects involving the design, purchase, construction, restoration, and renovation of facilities and historic landscapes. These efforts, supported through NEH’s Challenge Grant program, will strengthen the institutional base of the humanities by enabling

infrastructure development and capacity building. NEH's NEPA implementing procedures, and in particular the categorical exclusions, will facilitate—rather than impede—NEH's grant making activities by creating a protocol through which NEH and its award recipients will assess whether and to what extent NEH-funded activities require heightened environmental review as mandated by NEPA.

It bears emphasizing that the majority of NEH grant-making activities (i.e., those supporting research, education, preservation, and public programs in the humanities) are likely to fall under one of NEH's "General Categorical Exclusions," as activities having no inherent potential for significant environmental impact, that require no further environmental documentation or review.

As for NEH-funded construction, restoration, and renovation projects, such projects must serve NEH's narrow statutory mission of promoting humanities excellence. Accordingly, such projects most often involve the construction or renovation of libraries, museums, and other facilities that house and advance scholarly research. To maximize public outreach, such NEH-funded construction activities often take place in already-developed areas. For these reasons, except for potential effects to historic sites, that NEH will evaluate under Section 106 of the National Historic Preservation Act ("NHPA"), NEH-funded construction and renovation projects generally pose minimal potential impact to the human environment. Accordingly, to the extent NEH has control and responsibility for such projects sufficient to implicate NEPA in the first instance, NEH anticipates that most of these projects are likely to fall under a Program Specific Categorical Exclusion.

The second commenter similarly requested that NEH not implement overly restrictive

procedures that could otherwise impede the agency's work. As explained above, much of NEH's business falls under one or more "General Categorical Exclusions," and NEH anticipates that most NEH-funded projects involving construction and renovation for which NEH has control and responsibility are likely to fall under a "Program Specific Categorical Exclusion."

It bears emphasizing that NEH drafted its proposed categorical exclusions with the dual goals of increasing administrative efficiency in NEPA compliance and avoiding misuse of categorical exclusions that could lead to non-compliance with NEPA requirements. Furthermore, it developed its categorical exclusions after (i) carefully considering each of its programs and activities; (ii) consulting with those NEH staff members responsible for administering NEH grants involving facility construction, restoration, renovation, and repair; (iii) canvassing the categorical exclusions used by other federal agencies; and (iv) consulting with CEQ. Based upon NEH's findings, which it documented in an "Administrative Record for NEH Proposed Categorical Exclusions under NEPA," NEH does not believe its procedures are overly restrictive or will unduly impede its work.

The third commenter submitted a number of proposed edits to NEH's implementing procedures. The commenter explained that he based his comments on simplifying the NEPA documentation process to ensure that NEH invests its environmental analysis and documentation on those actions that may significantly affect the quality of the human environment and avoid unnecessary work. NEH addresses the commenter's specific proposed edits in turn below.

First, the commenter proposed that NEH add text to the "Applicability" section of its

procedures (Section 2) clarifying those instances in which NEPA applies: namely, (i) when NEH has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can meaningfully be evaluated; (ii) the proposed action is subject to NEH control and responsibility; (iii) the proposed action would cause effects on the human environment as defined in 40 CFR 1508.14; and (iv) the proposed action is not statutorily exempt from the requirements of section 102(2)(C) of NEPA (42 USC 4332(2)(C)).

NEH agrees that it would be helpful to add such clarification to Section 2 of its implementing procedures. It notes that the limiting language closely follows that set forth in the CEQ regulations and that other agencies have included similar applicability guidelines within their NEPA implementing procedures: for example, the Department of the Interior (43 CFR 46.100) and the United States Forest Service (36 CFR 220.4).

Second, the commenter objected to NEH's proposal that actions otherwise meeting the criteria for Program Specific Categorical Exclusions require completion of a Record of Environmental Consideration ("REC") documenting NEH's determination that the activity qualifies for a categorical exclusion. Although the commenter acknowledged that other agencies impose similar documentation requirements with respect to projects involving construction, renovation, rehabilitation or other ground disturbance, he asked that NEH consider making the documentation requirement for Program Specific Categorical Exclusions optional, and suggested that NEH retain discretion to complete such documentation based on "risks." The commenter contended that the requirement that NEH complete an REC will increase the agency's paperwork burden with respect to actions that should otherwise be excluded from documentation.

NEH agrees that activities meeting the criteria set forth within its General Categorical Exclusions should require no further documentation, as such activities generally pose no inherent potential for significant environmental impacts. Accordingly, NEH did not propose completion of a REC for these activities. In addition, NEH concurs with the commenter's concern regarding the potential increase in burden that could result by using the REC attached in Appendix B, and has deleted it. NEH will document Program Specific Categorical Exclusions (Section B of Appendix A) in a manner that aligns with NEH's NEPA implementing procedures, but will not require the use of the REC to do so.

Specifically, for activities falling under a Program Specific Categorical Exclusion, NEH will document whether extraordinary circumstances exist, and in the absence of extraordinary circumstances, NEH will require no further environmental documentation such as would be required to conduct an environmental assessment ("EA") or an environment impact statement ("EIS"). Accordingly, NEH's determination that such activities qualify for a categorical exclusion will greatly reduce the documentation burden on NEH and its award recipients by obviating the need for further environmental review.

Third, the commenter proposed a series of edits to NEH's enumeration of the "extraordinary circumstances" in Section 10 of its implementing procedures that would require preparation of an EA or EIS. Consistent with CEQ regulations (40 CFR 1508.27), and for the sake of clarity, NEH agrees to define "extraordinary circumstances" as arising when a typically-categorically excluded action has the reasonable likelihood to result in individually or cumulatively significant impacts on the public health, public safety, or the environment.

Consistent with a number of federal court decisions, NEH further agrees to add text to

Section 10 clarifying that the phrase “highly controversial” refers to a “substantial” and “scientifically-verifiable” controversy regarding a project’s impact. In addition, NEH will eliminate from its list of potential “extraordinary circumstances” reference to “scientifically controversial” effects, which the above edit has made redundant.

The commenter further recommended that NEH delete from its list of potential “extraordinary circumstances” reference to activities reasonably likely to (i) have a greater scope or size than is normal for the category of action; (ii) degrade already existing poor environmental conditions or initiate a degrading influence, activity or effect in areas not already significantly modified from their natural conditions; and (iii) have a disproportionately high and adverse effect on low income or minority populations (see Executive Order 12898). The commenter questioned whether the presence of these circumstances alone constitute “extraordinary circumstances,” and doubted those items’ utility as “criterion for extraordinary circumstances.”

NEH notes that the situations listed in Section 10 of these procedures are not themselves “criterion of extraordinary circumstances,” but are rather examples of “extraordinary circumstances.” NEH believes that the language it has added to these procedures explaining that, to give rise to an “extraordinary circumstance,” an action must have a reasonable likelihood of causing a “significant” impact on public health, public safety, or the environment, helps clarify that the list of enumerated effects are illustrative of potential extraordinary circumstances, and are not themselves dispositive. Accordingly, NEH has determined to retain reference to degraded pre-existing conditions and disproportionate effects on low income or minority populations, as it has now made clear that such effects constitute “extraordinary circumstance” provided they otherwise

have a significant impact on human health, safety or the environment.

NEH agrees with the commenter, however, that whether an activity is likely to have a greater scope or size than is normal for the category of action is not an especially helpful illustration of an activity giving rise to an extraordinary circumstance, and accordingly, NEH will delete that reference. Whether any particular action gives rise to “extraordinary circumstances” will necessarily depend on the action’s potential for significant impacts, which will most likely depend in some measure on its scope or size relative to similar actions.

The commenter recommended that NEH delete the “General Categorical Exclusions” from Appendix A of these procedures on the ground that NEPA does not require that agencies “establish categorical exclusions for actions that do not affect the natural and physical environment and the relationship of people with that environment.” NEH disagrees. While CEQ has made clear that NEPA applies only to “Major Federal Actions”—i.e., those actions with effects that “may be” significant (40 CFR 1508.18)—it has also defined “categorical exclusion” to mean those actions that do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). In other words, it is through the process of evaluating and issuing categorical exclusions that agencies determine which of their actions will not affect the natural and physical environment and the relationship of people with that environment. As memorialized in its Administrative Record for NEH Proposed Categorical Exclusions under NEPA, NEH determined that the activities identified in its General Categorical Exclusions have very little inherent potential for significant environmental impact. Accordingly, NEH will not require preparation of an REC for such activities or consideration of potential

extraordinary circumstances.

Moreover, NEH's inclusion within its General Categorical Exclusions of routine administrative and management activities, the preparation of regulations, and the approval and issuance of financial assistance to support research, education, preservation, and public programs in the humanities, is consistent with the categorical exclusions adopted by numerous other federal agencies: for example, the Denali Commission (45 CFR Part 900, Appendix B), the Department of the Interior (43 CFR 46.210), the Department of Health and Human Services – Indian Health Services (58 FR 569), and the U.S. Forest Service (36 CFR 220.6 (adopting the categorical exclusions issued by the Department of Agriculture at 7 CFR Part 1b.3)).

The commenter further noted that NEH's explanation in Appendix B that a categorical exclusion may only apply after NEH has determined that a particular construction, renovation or rehabilitation project is "not reasonably likely to have a significant effect on historic properties" is redundant of Section 10, in which NEH identified the "significant effect on environmentally sensitive resources" as a potential extraordinary circumstance. NEH included this language in Appendix B because the agency frequently supports projects involving renovation, repair and/or rehabilitation of historic properties. For such projects, NEH requires review under Section 106 of the NHPA. For this reason, and notwithstanding the fact that NEH has determined to delete Appendix B, NEH believes it is important that these NEPA implementing procedures expressly state that a categorical exclusion determination may not be made until after NEH has performed a review under Section 106 of the NHPA and determined that there exist no adverse effects to historic properties, or that any such effects can be mitigated

effectively.

The commenter further recommended that NEH delete from the second Program Specific Categorical Exclusion those conditions requiring that (i) there is no evidence of community controversy; (ii) the proposed use will not substantially increase the number of motor vehicles at the facility or in the area; and (iii) the construction or improvement will not result in uses that exceed existing support infrastructure capacities (road, sewer, water, parking, etc.). The commenter recommended that each such condition be considered as a potential extraordinary circumstance rather than a condition to a categorical exclusion.

NEH agrees with the commenter's suggestion regarding "community controversy." Because NEH will identify as a possible extraordinary circumstance effects that are "highly controversial" it would be redundant and potentially confusing to condition application of the second Program Specific Categorical Exclusion on a lack of "community controversy." Should a project have effects that are reasonably likely to be "highly controversial," the presence of such extraordinary circumstances would preclude application of a categorical exclusion.

NEH will, however, retain all other conditions associated with the second Program Specific Categorical Exclusion, including those pertaining to motor vehicle presence and existing infrastructure capacity. Such conditions are consistent with those included in the categorical exclusions of numerous other federal agencies: for example, the Department of Commerce (74 FR 33204), the U.S. Missile Defense Agency (79 FR 46410), the National Capital Planning Commission (1 CFR 601.12), and the Department of Homeland Security (71 FR 16790).

Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribution impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. These procedures have not been designated a “significant regulatory action” because they do not: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders. The text of the complete proposed procedures appears below.

Dated: May 17, 2019.

Michael McDonald,

General Counsel,

National Endowment for the Humanities.

Table of Contents

1. Purpose
2. Applicability
3. Environmental Policy
4. Terms and Abbreviations
5. Federal and Intergovernmental Relationships
6. Applicant Responsibility
7. NEH Responsibility
8. Public Involvement
9. Environmental Review Process
10. Categorical Exclusions
 - a. General
 - b. Conditions
 - c. Extraordinary Circumstances
11. Environmental Assessments
 - a. Content
 - b. General Considerations in Preparing Environmental Assessments
 - c. Public Involvement
 - d. Actions Resulting From Assessment
 - e. Findings of No Significant Impact
 - f. Proposals Normally Requiring an Environmental Assessment
12. Environmental Impact Statements
 - a. Notice of Intent and Scoping

- b. Preparation and Filing of Draft and Final Environmental Impact Statements
- c. Supplemental Environmental Impact Statement
- d. Adoption
- e. Proposals Normally Requiring an Environmental Impact Statement

The National Environmental Policy Act Procedures for NEH

1. Purpose

These procedures implement the provisions of NEPA, 42 U.S.C. 4321 et seq. They adopt and supplement the CEQ regulations implementing NEPA, 40 CFR parts 1500-1508, by establishing policy, directing environmental planning, and assigning responsibilities in NEH to prepare, review, and approve environmental documents, 40 CFR 1508.10, that comply with NEPA.

2. Applicability

These procedures apply NEPA to NEH programs and activities, including programs and activities carried out by state and local governments, federally-recognized tribal governments and non-governmental organizations with the use of NEH financial assistance, when the following apply:

- (a) The NEH has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can meaningfully be evaluated (40 CFR 1508.23);
- (b) The proposed action is subject to NEH control and responsibility (40 CFR 1508.18);
- (c) The proposed action would cause effects on the human environment, which CEQ has interpreted comprehensively to include the natural and physical environment

and the relationship of people with that environment (40 CFR 1508.14);

- (d) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)).

3. Environmental Policy

It is the policy of NEH to:

- (a) Start the NEPA process at the earliest possible time as an effective decision-making tool while evaluating a proposed action;
- (b) Comply with the procedures and policies of NEPA and other related environmental laws, regulations, and orders applicable to NEH actions;
- (c) Provide guidance to applicants responsible for ensuring that proposals comply with all appropriate NEH requirements;
- (d) Integrate NEPA requirements and other planning and environmental review procedures required by law or NEH practice so that all such procedures run concurrently rather than consecutively;
- (e) Encourage and facilitate public involvement in NEH actions that affect the quality of the human environment;
- (f) Use the NEPA process to identify and assess reasonable alternatives to proposed NEH actions to avoid or minimize adverse effects upon the quality of the human environment; and
- (g) Use all practicable means consistent with NEPA and other essential considerations of national policy to restore or enhance the quality of the human environment and avoid, minimize, or otherwise mitigate any possible adverse effects of NEH actions upon the quality of the human environment.

4. Terms and Abbreviations

- (a) For the purposes of this section, the definitions in the CEQ regulations, 40 CFR parts 1500 through 1508, are adopted and supplemented as set out in paragraphs (a)(i) through (vi) of this section. In the event of a conflict the CEQ regulations apply.
- (i) *Action.* Action and Federal action as defined in 40 CFR 1508.18 include projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by NEH.
- (ii) *Applicant.* The state, local or federally-recognized tribal government or non-governmental partner or organization applying to NEH for financial assistance or other approval. An applicant may be an organization already in receipt of NEH-awarded funds.
- (iii) *Approving Official.* The NEH Chairman or an NEH staff member designated by the NEH Chairman to fulfill the responsibilities defined in Section 6 below, including overseeing development of and approval of the NEPA document.
- (iv) *Finding of No Significant Impact (FONSI)* is a document by NEH briefly presenting the reasons why an action, not otherwise excluded as provided in Section 10 below, will not have a significant impact on the human environment and for which an EIS will not be prepared.
- (v) *NEH Proposal (or proposal).* A proposal, as defined at 40 CFR 1508.23, is an NEH proposal whether initiated by NEH, another federal agency or an applicant.

(vi) *NEH Chairman*: The Chairman of NEH, as established in Section 7 of the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 956.

(b) The following abbreviations are used throughout these procedures:

- (i) CATEX--Categorical exclusions;
- (ii) CEQ--Council on Environmental Quality;
- (iii) EA--Environmental assessment;
- (iv) EIS--Environmental impact statement;
- (v) FONSI--Finding of no significant impact;
- (vi) NEPA--National Environmental Policy Act of 1969, as amended;
- (vii) NOI--Notice of intent; and
- (viii) ROD--Record of decision.

5. Federal and Intergovernmental Relationships

NEH occasionally partners with federal, state and local agencies, and federally-recognized tribal governments, and may depend on these governmental agencies for project management. Under such circumstances, NEH may rely on the expertise and processes already in use by partnering agencies to help prepare NEH NEPA analyses and documents.

(a) With federal partners, NEH will work as either a joint lead agency (40 CFR 1501.5 and 1508.16) or cooperating agency (40 CFR 1501.6 and 1508.5). NEH may invite other Federal agencies to serve as the lead agency, a joint lead agency, or as a cooperating agency.

(b) Consistent with 40 CFR 1508.5, NEH may invite state and local government

partners, and federally-recognized tribal governments, to serve as cooperating agencies.

6. Applicant Responsibility

Applicants shall work under NEH direction provided by the Approving Official, and assist NEH in fulfilling its NEPA obligations by preparing NEPA analyses and documents that comply with the provisions of NEPA (42 U.S.C. 4321-4347), the CEQ regulations (40 CFR parts 1500 through 1508), and the requirements set forth in this part.

Applicants shall follow NEH direction when they assist NEH with the following responsibilities, among others:

- (a) Prepare and disseminate applicable environmental documentation concurrent with a proposal's engineering, planning, and design;
- (b) Create and distribute public notices;
- (c) Coordinate public hearings and meetings as required;
- (d) Submit all environmental documents created pursuant to these procedures to NEH for review and approval before public distribution;
- (e) Participate in all NEH-conducted hearings or meetings;
- (f) Consult with NEH prior to obtaining the services of an environmental consultant; in the case that an EIS is required, the consultant or contractor will be selected by NEH; and
- (g) Implement mitigation measures included as voluntary commitments by the applicant or as requirements of the applicant in NEH decision documents (FONSI or ROD).

7. NEH Responsibility

- (a) The NEH Chairman or his/her designee shall designate an Approving Official for each NEH proposal, and shall provide environmental guidance to the Approving Official;
- (b) The Approving Official shall provide direction and guidance to the applicant as well as identification and development of required analyses and documentation;
- (c) The Approving Official shall make an independent evaluation of the environmental issues, take responsibility for the scope and content of the environmental document (EA or EIS), and make the environmental finding;
- (d) The Approving Official shall ensure mitigation measures included in NEH decision documents (FONSI or ROD) are implemented; and
- (e) The Approving official shall be responsible for coordinating communications with cooperating agencies and other federal agencies.

8. Public Involvement

NEH will make diligent efforts to involve the public in preparing and implementing its NEPA procedures in accordance with 40 CFR 1501.4(b), 1506.6 and part 1503.

When developing a plan to include the public and affected parties in the environmental analysis process, NEH will consider the following factors: (a) the magnitude of the environmental considerations associated with the proposal; (b) the extent of expected public interest; and (c) any relevant questions of national concern. NEH will specifically publish EAs and draft FONSI on its website as provided in Section 11(c) below.

9. Environmental Review Process

The environmental review process is the investigation of potential environmental

impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document. NEH shall specifically determine whether any NEH proposal:

- (a) Is categorically excluded from preparation of either an EA or an EIS;
- (b) Requires preparation of an EA; or
- (c) Requires preparation of an EIS.

10. Categorical Exclusions

(a) **General.** A categorical exclusion (“CATEX”) is defined in 40 CFR 1508.4 as a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, in the absence of extraordinary circumstances, neither an EA nor an EIS is required. Actions that meet the conditions in paragraph (b) of this section and are listed in section A of appendix A of these procedures can be categorically excluded from further analysis and documentation in an EA or EIS. Actions that meet the screening conditions in paragraph (b) of this section and are listed in section B of appendix A require documentation.

(b) **Conditions.** The following three conditions must be met for an action to be categorically excluded from further analysis in an EA or EIS.

- (i) The action has not been segmented (too narrowly defined or broken down into small parts in order minimize its potential effects and avoid a higher level of NEPA review) and its scope includes the consideration of connected actions and, when evaluating extraordinary circumstances, cumulative impacts.

- (ii) No extraordinary circumstances described in paragraph (c) of this section exist.
 - (iii) The proposed action fits within one of the categorical exclusions described in either section of Appendix A of this part.
- (c) **Extraordinary Circumstances.** Any action that normally would be classified as a CATEX but could involve extraordinary circumstances will require appropriate environmental review documented in an NEH CATEX checklist to determine if the CATEX classification is proper or if an EA or EIS should be prepared. Extraordinary circumstances to be considered include those reasonably likely to:
- (i) Have effects on the environment that are highly controversial: i.e., a controversy that is both substantial and scientifically-verifiable.
 - (ii) Have effects on the human environment that are highly uncertain, involve unique or unknown risks, or involve unresolved conflicts concerning alternative uses of available resources;
 - (iii) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;
 - (iv) Relate to other actions with individually insignificant but cumulatively significant environmental effects;
 - (v) Degrade already existing poor environmental conditions or initiate a degrading influence, activity, or effect in areas not already significantly modified from their natural condition;
 - (vi) Have a disproportionately high and adverse effect on low income or

- minority populations (see Executive Order 12898);
- (vii) Limit access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or adversely affect the physical integrity of such sacred sites (see Executive Order 13007);
 - (viii) Threaten a violation of a federal, tribal, state or local law or requirement imposed for the protection of the environment;
 - (ix) Significantly affect subsistence activities; or
 - (x) Significantly affect environmentally sensitive resources, such as (A) properties listed, or eligible for listing, in the National Register of Historic Places; (B) species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or their habitat; or (C) natural resources and unique geographic characteristics such as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; special aquatic sites (defined under Section 404 of the Clean Water Act); floodplains; national monuments; and other ecologically significant or critical areas.

11. Environmental Assessments

An EA is required for all proposals, except those exempt from NEPA or categorically excluded under these procedures, and those requiring an EIS. An EA is not necessary if the NEH has decided to prepare an EIS. EAs provide sufficient evidence and analysis to determine whether to prepare an EIS or issue a finding of no significant impact (FONSI). In addition, an EA may be prepared on any action at any time in order to assist in

planning and decision making, to aid in NEH's compliance with NEPA when no EIS is necessary, or to facilitate EIS preparation. EAs shall be prepared in accordance with these procedures and shall contain analyses to support conclusions regarding environmental impacts. If a FONSI is proposed, it shall be prepared in accordance with Section 11(e) below.

(a) Content

- (i) The EA shall include brief discussions of the need for the proposal; of alternatives to the proposal as required by NEPA section 102(2)(E); and of the environmental impacts of the proposal and alternatives. The EA shall also include a listing of agencies and persons consulted in the preparation of the EA.
- (ii) The EA may describe a broad range of alternatives and proposed mitigation measures to facilitate planning and decision-making.
- (iii) The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that those requirements can be met.
- (iv) The EA should be a concise public document. The level of detail and depth of impact analysis will normally be limited to the minimum needed to determine the significance of potential environmental effects.

(b) General Considerations in Preparing Environmental Assessments

- (i) **Adoption of an EA.** NEH may adopt an EA prepared for a proposal before NEH by another agency or an applicant when the EA, or a portion thereof, addresses the proposed NEH action and meets the standards for an

adequate analysis under these procedures and relevant provisions of 40 CFR parts 1500 through 1508, provided that NEH makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

- (ii) **Incorporation by reference into the EA.** Any document may be incorporated by reference in accordance with 40 CFR 1502.21 and used in preparing an EA in accordance with 40 CFR 1501.4(b) and 1506.5(a), provided that NEH makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).
- (iii) **Applicant responsibility.** The applicant shall assist NEH with preparing the EA. NEH remains responsible for compiling the public hearing summary or minutes, where applicable; and copies of any written comments received and responses thereto.

(c) **Public Involvement**

- (i) In accordance with 40 CFR 1506.6, the Approving Official shall publish EAs and draft FONSI on the NEH website and make such documents available for public comment for not less than 15 calendar days.
- (ii) NEH will only take final action on an EA and draft FONSI after it reviews and considers public comments.

(d) **Actions Resulting From Assessment**

- (i) **Accepted without modification.** NEH may accept a proposal without modifications if the EA indicates that the proposal does not have significant

environmental impacts and a FONSI is prepared in accordance with Section 11(e) below.

- (ii) **Accepted with modification.** If an EA identifies potentially significant environmental impacts, the proposal may be modified to eliminate such impacts. Proposals so modified may be accepted by NEH if the proposed changes are evaluated in an EA and a FONSI is prepared in accordance with Section 11(e) below.
 - (iii) **Mitigated FONSI.** If mitigation is required to reduce the impacts below significant the FONSI shall identify the mitigation and adopt applicable monitoring and enforcement measures that are necessary to ensure the implementation of the mitigation measures.
 - (iv) **Prepare an EIS.** NEH shall require that the proposal be evaluated in an EIS, prepared in accordance with Section 12 below, if the EA indicates significant environmental impacts that are not mitigated below a specified level of significance.
 - (v) **Rejected.** NEH may always elect to reject a proposal.
- (e) **Findings of No Significant Impact**
- (i) **Content.** A FONSI shall include the EA or a summary of it and shall note any other environmental documents related to it (40 CFR 1501.7(a)(5)). If the EA is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.
 - (ii) **Publication.** NEH shall make the final FONSI available to the public on the NEH Web site.

(f) Proposals Normally Requiring an EA

Proposals that normally require preparation of an EA include proposed actions that potentially result in significant changes to established land use.

12. Environmental Impact Statements

An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(a) Notice of Intent and Scoping

NEH shall publish an NOI, as described in 40 CFR 1508.22, in the *Federal Register* as soon as practicable after NEH makes a decision to prepare an EIS. If there will be a lengthy period of time between NEH's decision to prepare an EIS and its actual preparation, NEH may defer publication of the NOI until a reasonable time before preparing the EIS, provided that NEH allows a reasonable opportunity for interested parties to participate in the EIS process. NEH and the applicant will coordinate during the time period prior to the publication of the NOI to identify: the scope of the action, potential modifications to the proposal, potential alternatives, environmental constraints, potential timeframes for the environmental review, and federal, state, or tribal entities that could be interested in the project, including those with the potential to become cooperating agencies. Through the NOI, NEH shall invite comments and suggestions on the scope of the EIS.

Publication of the NOI in the *Federal Register* shall begin the public scoping process. The public scoping process for an NEH EIS shall allow a minimum of 15 days for the receipt of public comments.

(b) Preparation and Filing of Draft and Final EISs

- (i) **General.** EISs shall be prepared in two stages and may be supplemented.
- (ii) **Format.** The EIS format recommended by 40 CFR 1502.10 shall be used unless NEH makes a determination on a particular project that there is a reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10, as further described in 40 CFR 1502.11 through 1502.18.
- (iii) **Applicant role.** The draft or final EIS shall be prepared by NEH with assistance from the applicant under appropriate guidance and direction from the Approving Official.
- (iv) **Third-party consultants.** A third-party consultant selected by NEH or in cooperation with a cooperating agency may prepare the draft or final EIS.
- (v) **NEH responsibility.** NEH shall provide a schedule with time limits, provide guidance, participate in the preparation, independently evaluate, and take responsibility for the content of the draft and final EIS.
- (vi) **Filing.** After a draft or final EIS has been prepared, NEH shall file the EIS with the Environmental Protection Agency (“EPA”) for publication of a notice of availability in accordance with 40 CFR 1506.9 and 1506.10.
- (vii) **Draft to final EIS.** When a final EIS does not require substantial changes from the draft EIS, NEH may document required changes in errata sheets, insertion pages, and revised sections. NEH will then circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as its final EIS. NEH will not circulate the draft EIS again; however, NEH will post the EIS on

its Web site and provide the draft EIS if requested.

- (viii) **Record of decision.** A record of decision (ROD) will be prepared in accordance with 40 CFR 1505.2 and 1505.3.

(c) Supplemental EIS

- (i) Supplements to either draft or final EISs shall be prepared, as prescribed in 40 CFR 1502.9, when NEH finds that there are substantial changes proposed in a project that are relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- (ii) Where NEH action remains to be taken and the EIS is more than three years old, NEH will review the EIS to determine whether it is adequate or requires supplementation.
- (iii) NEH shall prepare, circulate and file a supplement to an EIS in the same fashion (exclusive of scoping) as a draft and final EIS. In addition, the supplement and accompanying administrative record shall be included in the administrative record for the proposal. When an applicant is involved, the applicant shall, under the direction of the Approving Official, provide assistance.
- (iv) An NOI to prepare a supplement to a final EIS will be published in those cases where a ROD has already been issued.

(d) Adoption

- (i) NEH may adopt a draft or final EIS or portion thereof (see 40 CFR 1506.3), including a programmatic EIS, prepared by another agency.

- (ii) If the actions covered by the original EIS and the proposal are substantially the same, NEH shall recirculate it as a final statement. Otherwise, NEH shall treat the statement as a draft and recirculate it except as provided in paragraph (iii) of this section.
- (iii) Where NEH is a cooperating agency, it may adopt the EIS of the lead agency without recirculating it when, after an independent review of the EIS, NEH concludes that its comments and suggestions have been satisfied.
- (iv) When NEH adopts an EIS which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under 40 CFR part 1504, or when the EIS's adequacy is the subject of a judicial action which is not final, NEH shall so specify.

(e) Proposals Normally Requiring an EIS

Given the nature of NEH activities, there are no proposals that would normally require use of an EIS. NEH would most likely use an EA in any given case to determine whether a project has a potentially significant impact on the human environment. The conclusion reached by NEH in the EA would dictate whether it would then prepare an EIS.

Appendix A to the National Environmental Policy Act Procedures for NEH

Actions consistent with any of the following categories are, in the absence of extraordinary circumstances, categorically excluded from further analysis in an EA or EIS:

A. General Categorical Exclusions

1. Routine administrative and management activities including, but not limited to, those activities related to budgeting, finance, personnel actions, procurement activities, compliance with applicable executive orders and procedures for sustainable or “greened” procurement, retaining legal counsel, public affairs activities (*e.g.*, issuing press releases, newsletters and notices of funding availability), internal and external program evaluation and monitoring (*e.g.*, site visits), database development and maintenance, and computer systems administration.
2. Preparing, revising, or adopting regulations, including those that implement without substantial change the regulations, instructions, directives, or guidance documents from other Federal agencies.
3. Routine activities undertaken by NEH to support its program partners, such as serving on task forces, ad hoc committees or representing NEH interests in other forums.
4. Approving and issuing financial assistance to support research, education, preservation, and public programs in the humanities, except where such assistance supports the construction, restoration, or renovation of facilities, including the purchase or lease of new infrastructure, or otherwise involves ground disturbing activity.

5. Approving and issuing financial assistance to support facility planning and design.
6. Approving and issuing grants to support the purchase or lease of preexisting infrastructure.
7. Nondestructive data collection, inventory, study, research, and monitoring activities.

B. Program Specific Categorical Exclusions

Actions consistent with any of the following categories are, in the absence of extraordinary circumstances, categorically excluded from further analysis and documentation in an EA or EIS. A categorical exclusion determination may only be made after NEH has, if necessary, performed a review under Section 106 of the National Historic Preservation Act (“NHPA”) and determined and documented that such action is not reasonably likely to have an adverse effect on historic properties.

1. Upgrade, repair, maintenance, replacement, or minor renovations and additions to facilities, grounds and equipment, including but not limited to, roof replacement, foundation repair, access ramp and door improvements pursuant to the Americans with Disabilities Act (“ADA”), weatherization and energy efficiency related improvements, HVAC renovations, painting, floor system replacement, repaving parking lots and ground maintenance, that do not result in a change in the functional use of the real property.
2. Construction, purchase or lease of new infrastructure, including, but not limited to, museums, libraries and other community buildings, and office space, that is similar to existing land use if the area to be disturbed has no more than two acres

of new surface disturbance. The following conditions must be met:

- a. The structure and proposed use are compatible with applicable Federal, tribal, state, and local planning and zoning standards.
 - b. The site and scale of the construction or improvement is consistent with those of existing, adjacent, or nearby buildings.
 - c. The proposed use will not substantially increase the number of motor vehicles at the facility or in the area.
 - d. The construction or improvement will not result in uses that exceed existing support infrastructure capacities (road, sewer, water, parking, etc.).
3. Construction, purchase or lease of new infrastructure, including, but not limited to, museums, libraries and other community buildings, and office space, where such construction, purchase or lease is for infrastructure of less than 12,000 square feet of useable space.
 4. Demolition, disposal, or improvements involving buildings or structures when done in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), and other hazardous materials.