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NORTHERN BORDER REGIONAL COMMISSION

Adoption of Categorical Exclusions Established by the Denali Commission

AGENCY: Northern Border Regional Commission

ACTION: Notice.

SUMMARY: The Northern Border Regional Commission (NBRC) is adopting categorical exclusions (CEs) established by the Denali Commission, which the NBRC will apply to similar NBRC categories of actions to comply with the National Environmental Policy Act. This notice identifies the Denali Commission CEs and NBRC's categories of proposed actions for which it intends to use the Denali Commission's CEs and describes the consultation between the agencies.

DATES: The CEs identified below are available for the NBRC to use for its proposed actions effective upon publication.

FOR FURTHER INFORMATION CONTACT: Rich Grogan, NBRC Executive Director, telephone number: 603-369-3001, email: rgrogan@nbrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

National Environmental Policy Act and Categorical Exclusions

Congress enacted the National Environmental Policy Act, 42 U.S.C. 4321–4347, (NEPA) in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of

humankind. 42 U.S.C. 4321, 4331. NEPA seeks to ensure that agencies consider the environmental effects of their proposed major actions in their decision-making processes and inform and involve the public in that process. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review of any major Federal action—an environmental impact statement (EIS), environmental assessment (EA), or CE. 40 CFR 1501.3. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 40 CFR part 1502, 1505.2. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an environmental assessment (EA), which involves a more concise analysis and process than an EIS. 40 CFR 1501.5. Following the EA, the agency may conclude that the action will have no significant effects and document that conclusion in a finding of no significant impact. 40 CFR 1501.6. If the analysis concludes that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for

significant environmental effects, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

An agency may not segment an action to meet the definition of a CE. Agencies must evaluate, in a single review, proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action, and must consider as part of the review any connected actions. Connected actions are ones that automatically trigger other actions, cannot or will not proceed unless other actions are taken, or are interdependent parts of a larger action and depend on the larger action for their justification.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to “adopt” and use another Federal agency's CEs for proposed actions. 42 U.S.C. 4336c. To use another agency's CEs under section 109, the adopting agency must identify the relevant CEs listed in another agency's (“establishing agency”) NEPA procedures that covers the adopting agency's category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE for a category of actions is appropriate; identify to the public the CE that the adopting agency plans to use for its proposed actions; and document adoption of the CE. 42 U.S.C. 4336c. NBRC has prepared this notice to meet these statutory requirements.

NBRC's Programs

Created in 2008, the Northern Border Regional Commission (NBRC) is a Federal-State partnership whose mission is to help alleviate economic distress and encourage private sector job creation in Maine, New Hampshire, New York, and Vermont. In its 15-year history, the NBRC has awarded over 400 grants through its primary Catalyst Program, the Forest Economy Program (FEP), the Timber for Transit program, and other special initiatives.

Since 2008, the NBRC has grown each year, both in size and appropriations, and was included in the 2021 Bipartisan Infrastructure Law (BIL) passed by Congress, which appropriated $150 million to the Commission for deployment across its four-state footprint in support of a wide range of economic development projects. Eligible recipients for NBRC grant funds include State and local governments, Indian Tribes, and public and nonprofit organizations.

Through its grantmaking, the NBRC funds projects in the following categories, as prescribed in 40 U.S.C., subtitle V, section 15501:

(1) to develop the transportation infrastructure of its region;

(2) to develop the basic public infrastructure of its region;

(3) to develop the telecommunications infrastructure of its region;

(4) to assist its region in obtaining job skills training, skills development and employment-related education, entrepreneurship, technology, and business development;

(5) to provide assistance to severely economically distressed and underdeveloped areas of its region that lack financial resources for improving basic health care and other public services;

(6) to promote resource conservation, tourism, recreation, and preservation of open space in a manner consistent with economic development goals;

(7) to promote the development of renewable and alternative energy sources; and

(8) to otherwise achieve the purposes of this subtitle.

Denali Commission's Program

Created by Congress in 1998, the Denali Commission is essentially similar to the NBRC in its mission and function. The Denali Commission Act of 1998 established the Denali Commission (Commission), and as part of the act, the Commission's mission of providing job training and other economic development services in rural communities was established with a specific focus on promoting rural development, and providing power generation, transmission facilities, modern communication systems, water and sewer systems and other infrastructure needs in rural Alaska.

Since its inception, the Denali Commission Act of 1998 has been updated several times expanding its mission to include the planning and construction of health care facilities and the establishment of the Denali Access System Program for surface transportation infrastructure and waterfront transportation projects. The NBRC collaborates extensively with the Denali Commission on both administrative and programmatic matters.

II. Denali Commission Categorical Exclusions

NBRC is in the process of developing its own list of CEs and, in the interim, has identified the following CEs listed in appendices A and B to subtitle B of the Denali

Commission's NEPA implementing procedures, 45 CFR part 900. The NBRC will require all grantees to complete a CATEX Checklist, which will closely resemble the CATEX Checklist completed by applicants to the Denali Commission's programs. The NBRC will review the CATEX Checklist and project details and, if it determines that application of the CATEX is appropriate, will post a Memorandum for Record (MFR) on NBRC's NEPA-dedicated webpage, which may be accessed by the public.

Because the Denali Commission and the NBRC serve similar purposes with respect to economic development in their respective Congressionally prescribed regions, the list of categories in the Denali procedures aligns closely with the categories of actions for which NBRC contemplates using the CE at this time.

A. General Categorical Exclusions

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:

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.

Application of the CE will be limited to the following NBRC activities:

- Internal operations of the NBRC.

- Grants that support discrete administrative and management activities funded under the authority granted in 40 U.S.C. 15501(a) such as internal planning, budgeting, and procurement activities.

2. Routine activities that the Commission does to support its program partners and stakeholders, such as serving on task forces, ad hoc committees or representing Commission interests in other forums.

Application of the CE will be limited to the following NBRC activities:

- Participation in regional forums, e.g., multi-funder forums;
- Single or multiple-agency visits to projects and potential projects;
- Participation in strategic planning initiatives of stakeholders and regional partners;
- Participation on ad hoc committees designed to elucidate community needs and economic development objectives.

3. Approving and issuing grants for administrative overhead support.

Application of the CE will be limited to the following NBRC activities:

- Grants for capacity building initiatives in the NBRC's region to address limited capacity among partners and stakeholders, grantees and potential grantees. These initiatives include: Adding staff and/or contractual capacity within regional economic development entities for the purpose of technical assistance to grantees; Providing support for administrative overhead costs for these economic development entities; Providing grants for contractual support for grantees and potential grantees to be deployed through regional economic development entities.

4. Approving and issuing grants for social services, education and training programs, including but not limited to support for Head Start, senior citizen programs, drug treatment programs, and funding internships, except for projects involving construction, renovation, or changes in land use.

Application of the CE will be limited to the following NBRC activities:

- Grants for workforce development and training programs, planning initiatives, community visioning processes, and other community-based capacity-building initiatives.

5. Approving and issuing grants for facility planning and design.

Application of the CE will be limited to the following NBRC activities:

- Grants for discrete planning and design activities, such as climate resiliency planning, inventory assessments, and identifying local and regional sourcing of forest-based products, where such activities are independent of any actions taken to implement the resulting plans and designs.

6. Nondestructive data collection, inventory, study, research, and monitoring activities (e.g., field, aerial and satellite surveying, and mapping).

Application of the CE will be limited to the following NBRC activities:

- Grants to support discrete nondestructive data collection, inventory, study, research, and monitoring activities funded under 40 U.S.C. 15501(a).

7. Research, planning grants and technical assistance projects that are not reasonably expected to commit the Federal Government to a course of action, to result in legislative proposals, or to result in direct development.

Application of the CE will be limited to the following NBRC activities:

- Grants to support data collection and research that furthers the NBRC's, and/or grantees', stakeholders', partners', etc. understanding of the region's needs, capacity, or funding gaps as it pertains to economic development as defined by the NBRC and expressly noted in 40 U.S.C. 15501(a)
- Approving and issuing grants to organization to provide technical advice and grant administration assistance to organizations (e.g., community and economic development entities who provide technical and grant administration assistance to address lack of capacity at State, regional and local levels), where such assistance is independent of any implementation actions with potential environmental effects.

8. Acquisition and installation of equipment including, but not limited to, EMS, emergency and non- expendable medical equipment (e.g., digital imaging devices and dental equipment), and communications equipment (e.g., computer upgrades).

Application of the CE will be limited to the following NBRC activities:

- Grants to support acquisition and installation of fiber optic cable upgrades and other communications equipment within the existing footprint of a building, vehicle, existing electrical or communications infrastructure to improve broadband access;
- Grants to support acquisition and installation of medical, emergency, and communications equipment for medical facilities or emergency services within the existing footprint of a building, on a structure, or within a vehicle;

- Grants to support acquisition and installation of equipment within the existing footprint of a building or within a vehicle to support enhanced cellular access.
- Grants to support acquisition and installation of equipment for transportation and recreational infrastructure improvements.
- Grants to support acquisition and installation of equipment for forestry management activities and production of forestry products.
- Grants to support acquisition and installation of environmental monitoring equipment, such as weather stations.

B. Program 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 upon completion of the Denali Commission CATEX checklist:

1. Upgrade, repair, maintenance, replacement, or minor renovations and additions to buildings, roads, harbors and other maritime facilities, grounds, equipment, and other facilities, including but not limited to, roof replacement, foundation repair, ADA access ramp and door improvements, 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.

Application of the CE will be limited to the following NBRC activities, all of which would occur within the existing footprint of a building or on adjacent disturbed land:

- Grants to support renovation of health facilities to bring them up to modern use standards;
- Grants to support upgrades, maintenance, and repair of existing transportation infrastructure (e.g., covered bridges) including for the purpose of resiliency to changing local climate;
- Grants to support connections to existing trails, for example, from a city street to a bike path, and renovating tourist destination hubs to ensure continued access to tourist centers in the region where potential impacts of connections are documented and do not substantially alter existing facilities, traffic patterns or other existing infrastructure;
- Grants to support upgrades, repair, maintenance, replacement, minor renovations, or additions to existing buildings, roads, harbors, and/or other maritime facilities to ensure continued access for purposes of economic development and/or community access, where the addition will not result in changes to the existing functional use, and where any additions occur on adjacent previously disturbed land.

2. Engineering studies and investigations that do not permanently change the environment.

Application of the CE will be limited to the following NBRC activities:

- Grants to support improvement plans, rehabilitation planning, climate resiliency planning and the like, for projects including new water and wastewater infrastructure, outdoor recreation trails, and transportation studies for airports and roadways, where such assistance is independent of any implementation

actions with potential environmental effects and does not result in surface disturbance.

3. Construction or lease of new infrastructure including, but not limited to, healthcare facilities, community buildings, housing, and bulk fuel storage and power generation plants, where such lease or construction:

a. Is at the site of existing infrastructure and capacity is not substantially increased; or

b. Is for infrastructure of less than 12,000 square feet of useable space when less than two acres of surface land area are involved at a new site.

Application of the CE will be limited to the following NBRC activities, which would occur on previously disturbed land:

- Grants for new infrastructure for healthcare facilities;
- Grants for new infrastructure for childcare facilities;
- Grants for new infrastructure for community buildings and housing;
- Grants for projects that upgrade or replace outdated power generation technology;
- Grants for water and wastewater infrastructure;

4. Construction or modification of electric power stations or interconnection facilities (including, but not limited to, switching stations and support facilities).

Application of the CE will be limited to the following NBRC activities, which would occur on previously disturbed land:

- Grants to support the construction or modification of new or existing power stations and associated infrastructure in the region;

5. Construction of electric powerlines approximately ten miles in length or less, or approximately 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-way.

Application of the CE will be limited to the following NBRC activities:

- Grants to support new powerlines to communities seeking new connections or upgrades to existing infrastructure.

6. 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.

Application of the CE will be limited to the following NBRC activities, which would not involve the demolition of structures that are listed on or eligible for listing on the National Register of Historic Properties, or improvement activities outside the footprint of the existing structure:

- Grants to support demolition, disposal, or improvement of buildings or structures to support economic development activities as specified in 40 U.S.C. 15501(a).

III. Documentation of CE and Public Notice

The NBRC will document the use of the above CEs for each project to which they are applied and will maintain this documentation in the project's records in the NBRC's online file storage system. The CEs will be documented in a "Memorandum for Record" format to stay consistent across projects. NBRC annually provides required NEPA dedicated training to our State, regional, and local partners, as well as our grantees.

NBRC's NEPA process, including all templates, guidance documents, procedures, etc., are made available to the public on NBRC's NEPA-dedicated web page.

IV. Consideration of Extraordinary Circumstances

If an agency determines that a CE covers a proposed action, the agency must evaluate the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). NBRC does not currently have its own NEPA implementing procedures to guide its application of extraordinary circumstances. Until NBRC establishes NEPA implementing procedures, for purposes of considering extraordinary circumstances in connection with the Denali Commission CEs discussed in this notice, NBRC will consider whether the proposed action has the potential to result in significant effects by considering the factors listed in the Denali Commission's definition of extraordinary circumstances, including, but not limited to, a reasonable likelihood of significant impacts on environmentally sensitive resources; threatening a violation of a Federal, Tribal, State, or local law or requirement imposed for the protection of the environment; or disproportionate and adverse effects on communities with environmental justice concerns. NBRC would analyze proposed actions for the extraordinary circumstances in the Denali Commission's NEPA implementing procedures and consistent with the CEQ NEPA regulations. 45 CFR 900.204(c). NBRC will then assess whether an extraordinary circumstance is present and if so, whether the CE may nonetheless be applied, consistent with 40 CFR 1501.4(b) or any successor regulation. If NBRC cannot apply a CE to a particular proposed action due to extraordinary circumstances, NBRC will prepare an EA or EIS, consistent with 40 CFR 1501.4(b)(2), or determine if the action is covered under an existing NEPA document.

NBRC will document its consideration of extraordinary circumstances as part of the Memorandum for Record discussed in Part III above.

IV. Consultation with the Denali Commission and Determination of Appropriateness

NBRC worked with the Denali Commission to identify Denali Commission CEs that could apply to NBRC proposed actions and began consultation in September 2023. During this consultation, the agencies discussed whether the categories of NBRC proposed actions would be appropriately covered by the Denali Commission CEs; each Agency's process for review of projects with respect to CEs; and the extraordinary circumstances that NBRC should consider before applying these CEs to NBRC's proposed actions. The consultation continued through early November 2023, and consisted of detailed email exchanges and virtual meetings with the Denali Commission's lead reviewer of NEPA-related items.

At the conclusion of that process, the agencies determined that NBRC's proposed use of the CEs as described in this notice would be appropriate because the categories of actions for which NBRC plans to use the CEs are covered by the Denali Commission CEs.

V. Conclusion

This notice documents adoption of the Denali Commission CEs listed above in accordance with 42 U.S.C. 4336c(3), and they are available for use by NBRC effective immediately.

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