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NORTHERN BORDER REGIONAL COMMISSION

Adoption of Categorical Exclusions under the National Environmental Policy Act

AGENCY: Northern Border Regional Commission

ACTION: Notice of adoption of categorical exclusions.

SUMMARY: The Northern Border Regional Commission (NBRC) is adopting categorical exclusions (CEs) established by the United States Forest Service that cover categories of actions that NBRC proposes to take pursuant to Section 109 of the National Environmental Policy Act. This notice identifies the Forest Service CEs and NBRC's categories of proposed actions for which it intends to use the Forest Service 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 CONTACT INFORMATION: Sarah Waring, NBRC Executive Director, telephone number: 603-369-3001, email: swaring@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.

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 categorical exclusion (CE). 42 U.S.C.

4336. 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. 42 U.S.C. 4336(b)(1). 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. 42 U.S.C. 4336(b)(2). 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. 42 U.S.C. 4336(b)(2). If the analysis concludes that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA, 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). 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. If no extraordinary circumstances are present, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2). If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to “adopt” or use another Federal agency's CEs for proposed actions. 42 U.S.C. 4336c. To use another agency's CEs under Section 109, the borrowing agency must identify the relevant CEs listed in another agency's (“establishing agency”) NEPA procedures that covers the borrowing 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 borrowing 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 sixteen-year history, the NBRC has awarded over 400 grants through its primary grant 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 Legislation (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, §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;

(8) to grow the capacity for successful community economic development in its region: and

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

II. Forest Service's Categorical Exclusions:

NBRC is in the process of developing its own list of CEs and, in the interim, has identified specific CEs developed by the Forest Service and codified in 36 CFR 220.6(d) and (e) as appropriate for NBRC to adopt. Because the Forest Service and NBRC programs have similar purposes that combine community economic development with resource preservation and conservation, the Forest Service CE categories closely align with the types of actions NBRC anticipates categorically excluding at this time.

NBRC intends to implement the adopted Forest Service CEs in a manner consistent with their original purpose and application. This includes use of the Forest Service's list of extraordinary circumstances (36 CFR 220.6(b)), CE-specific stipulations, and relevant examples. To promote consistency and transparency, NBRC has also added supplemental stipulations to each Forest Service CE adopted for NBRC use.

NBRC is adopting the Forest Service's documentation procedures outlined in 36 CFR 220.6(f) as a process framework but will apply only those components that are relevant and appropriate to NBRC's programs and authorities. This ensures that NBRC's use of the Forest Service CEs listed in 36 CFR 220.6(d) and (e) remains consistent with their intended scope and complies with the requirements of 42 U.S.C. 4336c, while allowing necessary adaptations for NBRC's distinct programmatic context. Additional details on how NBRC will implement, document, and publicly disclose the use of these CEs are provided in Section III, *Documentation of Categorical Exclusion and Public Notice*.

36 CFR 220.6(d) Categories of actions for which a project or case file and decision memo are not required. A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:

(5) Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:

(i) Applying registered herbicides to control poison ivy on infested sites in a campground;

(ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;

(iii) Repaving a parking lot; and

(iv) Applying registered pesticides for rodent or vegetation control.

This CE would be applied to NBRC grants that promote tourism or recreation, or grow the capacity for successful community economic development through the routine repair and maintenance of recreation sites and facilities on federal, state, tribal, or private lands in the NBRC region. The use of fungicides, herbicides or pesticides under the application of this CE would be limited to those with active ingredients registered with the EPA.

36 CFR 220.6(e) Categories of actions for which a project or case file and decision memo are required. A supporting record is required and the decision to proceed must be documented in a decision memo for the categories of action in paragraphs (e)(1) through (25) of this section. As a minimum, the project or case file should include any records prepared, such as: The names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo; and a list of the people notified of the decision. If the proposed action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by 36 CFR part 219 satisfies the decision memo requirements of this section.

(1) Construction and reconstruction of trails. Examples include, but are not limited to:

(i) Constructing or reconstructing a trail to a scenic overlook, and

(ii) Reconstructing an existing trail to allow use by handicapped individuals.

This CE would be applied to NBRC grants that promote tourism or recreation, or grow the capacity for successful community economic development through the construction and reconstruction of trails on federal, state, tribal, or private lands in the NBRC region.

(2) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor. Examples include, but are not limited to:

(i) Replacing an underground cable trunk and adding additional phone lines, and

(ii) Reconstructing a power line by replacing poles and wires.

This CE would be applied to NBRC grants that support the development of public or telecommunications infrastructure, or otherwise grow the capacity for successful community economic development through the routine construction and reconstruction of telephone and electric utility lines on federal, state, tribal, or private lands in the NBRC region.

(5) Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides or result in vegetation type conversion. Examples include, but are not limited to:

(i) Planting seedlings of superior trees in a progeny test site to evaluate genetic worth, and

(ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.

This CE would be applied to NBRC grants that promote resource conservation, tourism, recreation, or the preservation of open space through the regeneration of areas to native tree species on federal, state, tribal, or private lands in the NBRC region.

(6) Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include, but are not limited to:

(i) Girdling trees to create snags;

(ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand;

(iii) Prescribed burning to control understory hardwoods in stands of southern pine; and

(iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.

This CE would be applied to NBRC grants that promote resource conservation, tourism, recreation, or the preservation of open space, or otherwise grow the capacity for successful community economic development through timber stand and wildlife habitat improvement activities on federal, state, tribal, or private lands in the NBRC region. The construction of low standard roads under the application of this CE would be limited to roads 1 mile or less in length constructed for the primary purpose of accessing the timber stand and wildlife habitat improvement activities that are otherwise inaccessible.

(7) Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include, but are not limited to:

(i) Reconstructing a gabion with stone from a nearby source;

(ii) Adding brush to lake fish beds; and

(iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.

This CE would be applied to NBRC grants that promote resource conservation, tourism, or recreation, or otherwise grow the capacity for successful community economic development through the modification or maintenance of stream or lake aquatic habitat improvement structures on federal, state, tribal, or private lands in the NBRC region.

(11) Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

(i) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;

(ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(iii) Shall be completed within 3 years following a wildland fire.

This CE would be applied to NBRC grants that promote resource conservation, tourism, or recreation, or otherwise grow the capacity for successful community economic development through post-fire rehabilitation activities on federal, state, tribal, or private lands in the NBRC region.

(12) Harvest of live trees not to exceed 70 acres, requiring no more than 1⁄2 mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

This CE would be applied to NBRC grants that support the development of transportation or public infrastructure, promote resource conservation, provide job skills training, or otherwise grow the capacity for successful community economic development through the harvest of live trees on federal, state, tribal, or private lands in the NBRC region.

(13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than 1⁄2 mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, and

(ii) Harvest of fire-damaged trees.

This CE would be applied to NBRC grants that support the development of transportation or public infrastructure, promote resource conservation or job skills training, or grow the capacity for successful community economic development through the salvage of dead and/or dying trees on federal, state, tribal, or private lands in the NBRC region.

(14) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 1⁄2 mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and

(ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

This CE would be applied to NBRC grants that promote resource conservation, tourism, recreation, or job skills training through the sanitation harvest of trees to control insects or disease on federal, state, tribal, or private lands in the NBRC region.

(19) Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes. Examples include but are not limited to:

(i) Removing an unstable debris jam on a river following a flood event and relocating it back in the floodplain and stream channel to restore water flow and local bank stability;

(ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete, culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and

(iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

This CE would be applied to NBRC grants that support the development of transportation or public infrastructure, promote resource conservation or recreation, or otherwise grow the capacity for successful community economic development through the removal and relocation of debris and sediment following disturbance events to restore uplands, wetlands, or riparian systems on federal, state, tribal, or private lands in the NBRC region.

III. Documentation of Categorical Exclusion and Public Notice:

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 within 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 environmental effect.

NBRC does not currently have its own NEPA implementing procedures to guide the application of extraordinary circumstances. Because NBRC has adopted categorical exclusions from more than one agency, it will apply the extraordinary circumstances framework that corresponds to the originating agency for each CE. For example, when using a Forest Service CE, NBRC will apply the Forest Service's extraordinary circumstances criteria, as set out in 36 CFR 220.6(b).

When using a Denali Commission CE, NBRC will apply the Denali Commission's extraordinary circumstances factors as outlined in 45 CFR 900.204(c). This approach ensures that each CE is applied in a manner consistent with its original intent, as required by 42 U.S.C. 4336c.

36 CFR 220.6(b)(1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

(i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;

(ii) Floodplains, wetlands, or municipal watersheds;

(iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;

(iv) Inventoried roadless area or potential wilderness area;

(v) Research natural areas;

(vi) American Indians and Alaska Native religious or cultural sites; and

(vii) Archaeological sites, or historic properties or areas.

These resource concerns will be reviewed by NBRC when applying Forest Service CEs to determine whether a proposed action may have the potential to result in significant environmental effects. If extraordinary circumstances are present and cannot be resolved, NBRC will prepare an EA or EIS or determine whether the action is covered under an existing NEPA document. NBRC's consideration of extraordinary circumstances will be documented consistent with the approach outlined in Section III, *Documentation of Categorical Exclusion and Public Notice*.

V. Consultation with USFS and NBRC on CE Adoption:

In July, 2025, NBRC and USFS met to discuss the adoption of aforementioned categorical exclusions. NBRC's intended uses of the CE's are consistent with the way USFS has been relying on these CEs. NBRC explained the way they intend to rely on the CEs with specific examples of the projects NBRC is funding. Following this consultation, NBRC has determined that its proposed use of the USFS CEs as described in this notice is appropriate.

VI. Conclusion

This notice documents adoption of the Forest Service CEs listed above in accordance with 42 U.S.C. 4336c(4), and they are available for use by NBRC, effective immediately.

Jonathan O'Rourke,

Senior Program Specialist.

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