

# NORTHERN BORDER REGIONAL COMMISSION

## ADOPTION OF U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT CATEGORICAL EXCLUSIONS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

### **Existing Public Facilities and Improvements**

Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets). Application of the CE will be to NBRC grants for construction-type activities involving existing public infrastructure such as:

- Water lines
- Sewer lines
- Streets
- Sidewalks
- Curbs
- Drainage facilities
- Other public improvements that are not buildings

### **Acquisition, Leasing, Disposition, or Equity Loans**

Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use. This CE applies primarily to real estate transactions, not construction. Application of the CE will for NBRC grants that support economic development activities as specified in 40 U.S.C. 15501(a) and will include:

- acquisition of an existing building
- leasing an existing building
- disposal (sale or transfer) of property
- acquisition of vacant land

## ADDITIONAL PROCEDURES

### Documentation of Categorical Exclusions (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.

### Consideration of Extraordinary Circumstances

If an agency determines that a Categorical Exclusion (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's NEPA implementing procedures guide its application of extraordinary circumstances. However, to be consistent with the application of the adopted agency's CE NBRC will consider whether the proposed action has the potential to result in significant effects by evaluating factors listed in HUD's definition of extraordinary circumstances.

**Extraordinary circumstances.** Any action that normally would be classified as a CATEX but could involve extraordinary circumstances will require appropriate environmental review to determine if the CATEX classification is proper or if an EA or EIS should be prepared. Extraordinary circumstances to be considered include those likely to:

- (i) Actions that are unique or without precedent;
- (ii) Actions that are substantially similar to those that normally require an EIS;
- (iii) Actions that are likely to alter existing HUD policy or HUD mandates; or
- (iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

If NBRC cannot apply a CE to a particular proposed action due to extraordinary circumstances, it will prepare an Environmental Assessment (EA) or Environmental Impact Statement (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 above.

### Consultation with HUD and Determination of Appropriateness

NBRC engaged in consultation with HUD starting in June 2026 to discuss HUD Categorical Exclusions (CEs) that could apply to NBRC proposed actions. This consultation involved discussions on whether the categories of NBRC proposed actions would be appropriately covered by the HUD CEs, each agency's process for reviewing projects with respect to CEs, and the extraordinary circumstances that NBRC should consider before applying these CEs to its proposed actions. At the conclusion of this 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.