

Appropriate Use of Categorical Exclusions

Presented by:

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Topics addressed:

- Definition and Purpose
- Authority
- Policy/Procedures
- Categorical Exclusions used by NRCS
- Evaluation and Documentation
- Examples

Categorical Exclusion

- Various abbreviations used
 - CE
 - CatEx
 - CATEX
 - CatX
 - CX
 - And probably others!

Definition and Purpose

- 40 CFR Part 1508.4
- “Categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

Legal Authorities

- USDA NEPA Regulations
 - 7 CFR § 1
- NRCS NEPA Regulations
 - 7 CFR § 650

Documenting NEPA Compliance

The following sections are to be completed by the Responsible Federal Official (RFO)		
<p>NRCS is the RFO if the action is subject to NRCS control and responsibility (e.g., actions financed, funded, assisted, conducted, regulated, or approved by NRCS). These actions do not include situations in which NRCS is only providing technical assistance because NRCS cannot control what the client ultimately does with that assistance and situations where NRCS is making a technical determination (such as Farm Bill HEL or wetland determinations) not associated with the planning process.</p>		
Q. NEPA Compliance Finding (check one)		
The preferred alternative:		Action required
<input type="checkbox"/>	1) is not a federal action where the agency has control or responsibility.	Document in "R.1" below . No additional analysis is required
<input type="checkbox"/>	2) is a federal action ALL of which is categorically excluded from further environmental analysis AND there are no extraordinary circumstances as identified in Section "O" .	Document in "R.2" below . No additional analysis is required
<input type="checkbox"/>	3) is a federal action that has been sufficiently analyzed in an existing Agency state, regional, or national NEPA document and there are no predicted <u>significant</u> adverse environmental effects or extraordinary circumstances.	Document in "R.1" below . No additional analysis is required.
<input type="checkbox"/>	4) is a federal action that has been sufficiently analyzed in another Federal agency's NEPA document (EA or EIS) that addresses the proposed NRCS action and its' effects and has been formally adopted by NRCS . NRCS is required to prepare and publish its own Finding of No Significant Impact for an EA or Record of Decision for an EIS when adopting another agency's EA or EIS document. (Note: This box is not applicable to FSA)	Contact the State Environmental Liaison for list of NEPA documents formally adopted and available for tiering. Document in "R.1" below . No additional analysis is required
<input type="checkbox"/>	5) is a federal action that has NOT been sufficiently analyzed or may involve predicted significant adverse environmental effects or extraordinary circumstances and may require an EA or EIS.	Contact the State Environmental Liaison. Further NEPA analysis required.

Policy and Procedures

- General Manual
 - Title 190, Part 410.6
- National Environmental Compliance Handbook (NECH)
 - Subpart D, Part 610.46

A CE may be used if:

- The proposed action fits within a category of actions that has been categorically excluded in NRCS's or USDA's published NEPA procedures and meets the criteria to use a CE.

AND

- There are no extraordinary circumstances that may result in significant adverse effects that cannot be mitigated.

Extraordinary Circumstances

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	• Is the preferred alternative expected to cause significant effects on public health or safety?
<input type="checkbox"/>	<input type="checkbox"/>	• Is the preferred alternative expected to significantly affect unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?
<input type="checkbox"/>	<input type="checkbox"/>	• Are the effects of the preferred alternative on the quality of the human environment likely to be highly controversial?
<input type="checkbox"/>	<input type="checkbox"/>	• Does the preferred alternative have highly uncertain effects or involve unique or unknown risks on the human environment?
<input type="checkbox"/>	<input type="checkbox"/>	• Does the preferred alternative establish a precedent for future actions with significant impacts or represent a decision in principle about a future consideration?
<input type="checkbox"/>	<input type="checkbox"/>	• Is the preferred alternative known or reasonably expected to have potentially significant environment impacts to the quality of the human environment either individually or cumulatively over time?
<input type="checkbox"/>	<input type="checkbox"/>	• Will the preferred alternative likely have a significant adverse effect on ANY of the special environmental concerns? Use the Evaluation Procedure Guide Sheets to assist in this determination. This includes, but is not limited to, concerns such as cultural or historical resources, endangered and threatened species, environmental justice, wetlands, floodplains, coastal zones, coral reefs, essential fish habitat, wild and scenic rivers, clean air, riparian areas, natural areas, and invasive species.
<input type="checkbox"/>	<input type="checkbox"/>	• Will the preferred alternative threaten a violation of Federal, State, or local law or requirements for the protection of the environment?

Other Environmental Laws

The decision that a CatEx is appropriate for compliance with NEPA does not negate the responsibility of NRCS to comply with the mandatory consultation requirements under the National Historic Preservation Act, the Endangered Species Act, and any other legal requirements.

Cannot Use CE if:

- Actions without a CE are included in the preferred alternative
- Actions will have significant adverse impacts that cannot be mitigated (Extraordinary Circumstances)

Segmenting

- Dividing a proposed action into smaller component parts to avoid preparing a site-specific EA or EIS
- Connected actions
 - Trigger other actions
 - Cannot proceed unless other actions are taken previously or simultaneously
 - Depend on other actions to justify their existence (do not have independent utility)

Overarching Criteria ("Sideboards")

- (1) Soil erosion, sedimentation, and downstream flooding is mitigated;
- (2) Disturbed areas are re-vegetated with adapted species;
- (3) Work in streams is based on the principles of natural stream dynamics and processes;

“Side Boards” continued

(4) NRCS conservation practice standards are followed;

(5) Substantial dredging, excavation, or fill is not required;

(6) There’s no significant risk of exposure to toxic or hazardous substances.

CEs for Data Gathering & Interpretation programs

- 1) Soil survey
- 2) Snow survey and water supply forecasts
- 3) Plant materials for conservation
- 4) Inventory and monitoring
- 5) River basin studies under PL-566

USDA CEs

- 1) Policy development; planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;
- 2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;
- 3) **Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;**
- 4) Educational and informational programs and activities;
- 5) Civil and criminal law enforcement and investigative activities;
- 6) **Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation; and**
- 7) Activities related to trade representation and market development activities abroad.

NRCS CE (1)

- Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services.

NRCS CEs (2) and (3)

- 2) Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances.
- 3) Plugging and filling excavated drainage ditches to allow hydrologic conditions to return to predrainage conditions to the extent practicable.

NRCS CE (4)

- Replacing and repairing existing culverts, grade stabilization, and water control structures and other small structures that were damaged by natural disasters where there is no new depth required and only minimal dredging, excavation, or placement of fill is required.

NRCS CE (5)

- Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes.

NRCS CE (6)

- Removing or relocating residential, commercial, and other public and private buildings and associated structures constructed in the 100-year floodplain or within the breach inundation area of an existing dam or other flood control structure in order to restore natural hydrologic conditions of inundation or saturation, vegetation, or reduce hazards posed to public safety.

NRCS CE (7)

- Removing storm debris and sediment following a natural disaster where there is a continuing and imminent threat to public health or safety, property, and natural and cultural resources and removal is necessary to restore lands to predisaster conditions to the extent practicable (excavation must not exceed the predisaster condition.)

NRCS CE (8)

- Stabilizing stream banks and associated structures to reduce erosion through bioengineering techniques following a natural disaster to restore predisaster conditions to the extent practicable.

NRCS CEs (9) and (10)

- 9) Repairing or maintenance of existing small structures or improvements, including structures and improvements utilized to restore disturbed or altered wetland, riparian, in stream, or native habitat conditions.
- 10) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats.

NRCS CE (11)

- Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable preimpact condition.

NRCS CEs (12) and (13)

- 12) Repairing or maintenance of existing constructed fish passageways (e.g., fish ladders) or spawning areas impacted by natural disasters or human alteration.
- 13) Repairing, maintaining, or installing fish screens to existing structures.

NRCS CE (14)

- Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards; work will be confined to the existing footprint of the dam, and no major change in reservoir or downstream operations will result.

NRCS CE (15)

- Repairing or improving (deepening, widening, or armoring) existing auxiliary or emergency spillways associated with dams, originally constructed to NRCS standards, in order to meet current safety standards; work will be confined to the dam or abutment areas, and no major change in reservoir or downstream operation will result.

NRCS CE (16)

- Repairing embankment slope failures on structures, originally built to NRCS standards, where the work is confined to the embankment or abutment areas.

NRCS CE (17)

- Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards.
 - The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped which may result in a catastrophic failure.
 - Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the existing dam and abutment areas, and no major change in reservoir operations will result.

NRCS CE (18)

- Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards.

NRCS CE (19)

- Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration.

NRCS CEs (20) and (21)

- 20) Implementing soil control measures on existing agricultural lands.
- 21) Implementing water conservation activities on existing agricultural lands.

Documenting a CE Finding

Q. NEPA Compliance Finding (check one)		Action required
The preferred alternative:		
<input type="checkbox"/>	1) is not a federal action where the agency has control or responsibility.	Document in "R.1" below . No additional analysis is required
<input checked="" type="checkbox"/>	2) is a federal action ALL of which is categorically excluded from further environmental analysis AND there are no extraordinary circumstances as identified in Section "O" .	Document in "R.2" below . No additional analysis is required
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R. Rationale Supporting the Finding	
<p>R.1</p> <p>Findings Documentation</p>	<p>Practices in the preferred alternative will mitigate soil erosion and sedimentation, vegetate disturbed areas with species that are not invasive or noxious, and incorporate NRCS practice standards. Other sideboard criteria do not apply.</p>
<p>R.2</p> <p>Applicable Categorical Exclusion(s) (more than one may apply)</p> <p>7 CFR Part 650 <i>Compliance With NEPA</i>, subpart 650.6 <i>Categorical Exclusions</i> states prior to determining that a proposed action is categorically excluded under paragraph (d) of this section, the proposed action must meet six sideboard criteria. See NECH 610.116.</p>	<p>(1) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services; Requires that the established vegetative community maintain the sites ecological functions and services, which could not be accomplished by converting native forests or grasslands.</p> <p>(20) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting;</p>

I have considered the effects of the alternatives on the Resource Concerns, Economic and Social Considerations, Special Environmental Concerns, and Extraordinary Circumstances as defined by Agency regulation and policy and based on that made the finding indicated above.

S. Signature of Responsible Federal Official:

J. M. Responsible

Designated Conservationist

2/1/2016

Signature

Title

Date

In Summary:

- IF
 - one or more CEs describe all practices/activities to be implemented under the preferred alternative,
- AND
 - there are no extraordinary circumstances that cannot be mitigated,
- AND
 - applicable criteria and side boards are met,

THEN USE THE CE(s).

Do not tier to the national programmatic EA!

Questions?

For additional information contact your
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