

Texas Water Development Board



TO: Board Members

THRU: Kevin Patteson, Executive Administrator
Les Trobman, General Counsel
Jeff Walker, Deputy Executive Administrator, Water Supply & Infrastructure

FROM: Kathy Calnan, Environmental Review Lead, Regional Water Planning & Development
Annette Lown Mass, Assistant General Counsel

DATE: June 1, 2015

SUBJECT: Rulemaking 31 TAC §371.42, §375.52 and §375.62, Types of Environmental Determinations: Categorical Exclusions

ACTION REQUESTED

Adopt proposed amendments to 31 Texas Administrative Code (TAC) §371.42, §375.52, and §375.62 relating to Types of Environmental Determinations: Categorical Exclusions.

BACKGROUND

The Texas Water Development Board (TWDB) authorized publication of proposed amendments to 31 TAC §371.42, §375.52, and §375.62 relating to Types of Environmental Determinations: Categorical Exclusions on March 26, 2015. The proposed amendments were published on April 10, 2015 in the Texas Register.

No comments were received, and no changes have been made to the proposed rulemaking.

The TWDB receives an annual capitalization grant from the Environmental Protection Agency (EPA) to administer the Clean Water and Drinking Water State Revolving Funds. The capitalization grant agreement requires the TWDB to ensure construction projects funded through these programs are compliant with the National Environmental Policy Act (NEPA). The Executive Administrator issues an environmental determination as the culmination of a project's NEPA-like environmental review.

A Categorical Exclusion is a type of environmental determination which applies to categories of actions that have been identified by the EPA not to have significant adverse effects on the quality of the human environment. The TWDB examines each project to determine: (1) if a project fits into one of the categories of actions that are exempt from a full environmental review, and (2) if an extraordinary circumstance associated with an individual project would disqualify the project for this type of exemption because of a significant adverse effect on the quality of the human environment.

PURPOSE AND BENEFIT

The purpose of the proposed amendments is to update and clarify the TWDB's rules related to categorical exclusions and extraordinary circumstances. The proposed amendments will more closely track the federal language for the implementation of the NEPA. The amendments clarify the circumstances under which a categorical exclusion may be available, the types of projects that are not eligible for categorical exclusions, and the extraordinary circumstances which may cause a project to be ineligible.

In general, the amendments will provide more latitude for the Executive Administrator to grant categorical exclusions, while still maintaining compliance with the federal law. For example, under the current rules, projects that affect the degree of treatment are not eligible for a categorical exclusion. Under the proposed amendments, these projects could possibly be eligible provided the projects do not require changes to the facility's discharge permit. In addition, the criteria relating to the construction of minor ancillary facilities has been broadened. Under the current rules, these types of facilities may be categorically excluded when installed on the same property as existing facilities but require a full environmental review if they are to be installed on property directly adjacent to existing facilities. Under the proposed amendments, construction of minor ancillary facilities on property directly adjacent to existing facilities could also be eligible for a categorical exclusion.

The amendments also modify the information that Applicants must provide to the Executive Administrator in order to demonstrate that the project is eligible for a categorical exclusion. The intent of this revision is to attain meaningful information from Applicants that may be used in the environmental review process.

These amendments will be in effect 20 days after filing with the Secretary of State.

RECOMMENDATION

Adopt the proposed amendments to 31 TAC §371.42, §375.52, and §375.62 relating to Types of Environmental Determinations: Categorical Exclusions.

This recommendation has been reviewed by legal counsel and the action requested is within the authority of the Board.

KC/JW:cd

Attachment: Proposed rulemaking for adoption

The Texas Water Development Board (TWDB) adopts amendments to Chapter 371, Drinking Water State Revolving Fund, §371.42, relating to the issuance of categorical exclusions pursuant to the National Environmental Policy Act, 42 U.S.C. Chapter 55; and more specifically, pursuant to 40 C.F.R., Ch. 1, Subchapter A, Part 6, Procedures for Implementation. The proposal is adopted with one non-substantive change as published in the April 10, 2015 issue of the *Texas Register* (40 TexReg 2074).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts the amendment that will more precisely conform the board's rule to the federal procedures for implementation of the National Environmental Policy Act. The same amendment was proposed in 31 TAC §375.52 and §375.62, relating to Types of Environmental Determinations: Categorical Exclusions in the board's Clean Water State Revolving Fund rules. In addition to the alignment of the board's rules to the federal procedures, the adopted amendment will make all of the board's state revolving fund rules related to categorical exclusions uniform.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

31 TAC §371.42 will more closely track the language related to categorical exclusions and extraordinary circumstances contained in the federal procedures for implementation of the National Environmental Policy Act. The amendment clarifies the circumstances under which a categorical exclusion may be available. The amendment also clarifies the types of projects that are not eligible for categorical exclusions and identifies extraordinary circumstances which may cause a project to be ineligible. In general, the amendment provides more latitude for the executive administrator to grant categorical exclusions, while still maintaining compliance with the federal law. The amendment also modifies the information that Applicants must provide to the executive administrator in order to demonstrate that the project is eligible for a categorical exclusion. The intent of this revision is to attain meaningful information from Applicants that may be used in the environmental review process.

Specifically, under the adopted amendments, the construction of new minor ancillary facilities that affect the degree of treatment or the capacity of the works may be eligible for a categorical exclusion provided that they do not involve a new or relocated discharge to surface or ground water, a substantial increase in the volume or loading of pollutant to the receiving water, and do not provide capacity to serve a population 30% greater than the existing population. In addition, the rule has been broadened to include as eligible for a categorical exclusion the construction of new minor ancillary facilities on property located directly adjacent to existing facilities. These modifications align the board's rule with the federal rule.

Another substantive change in the adopted amendments regards extraordinary circumstances which may cause a project to be ineligible for a categorical exclusion: the cost effectiveness of a project has been removed from this list of excluding factors. The executive administrator determined that this is a program eligibility requirement not an environmental constraint used to evaluate a project's eligibility for a categorical exclusion. To satisfy the programmatic

requirement regarding a project's cost effectiveness, Texas Water Development Board engineers currently conduct: (1) a preliminary review of project costs based on information submitted in the financial assistance application, and (2) a thorough cost effectiveness analysis during review of a project's Engineering Feasibility Report.

The amendment is adopted with one minor correction to the published proposal by removing the word “or” between “functional” and “replacement in §371.42(b)(3).

REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking pursuant to Texas Government Code §2001.0225, which requires a regulatory analysis of major environmental rules. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The board is required to conduct a regulatory impacts analysis of a major environmental rule when the result of the adopted rulemaking is to exceed a standard set by federal law, unless the adopted rulemaking is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government implementing a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 3605 on the Texas Water Development Board to establish thresholds for retail public utility excess water loss and address the use of financial assistance to mitigate system water loss. The board has determined that the adopted rulemaking does not meet the definition of "major environmental rule" under that section; therefore, no regulatory impacts analysis of the adopted rulemaking is required. No comments were received by the board on the draft regulatory impacts analysis.

TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this adopted rule constitutes neither a statutory nor a constitutional taking of private real property. The adopted rule does not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 3605 on the Texas Water Development Board to establish thresholds for retail public utility excess water loss and address the use of financial assistance to mitigate system water loss. The adopted rulemaking would substantially advance this purpose by amending 31 TAC §371.42 to incorporate new statutory requirements. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

The proposal is also proposed under the authority of Texas Water Code §15.605, which authorizes the board to adopt necessary rules to carry out Subchapter J of Texas Water Code Chapter 15, relating to Financial Assistance for Water Pollution Control.

The proposed rulemaking affects Texas Water Code, Chapter 15.

§371.42. Types of Environmental Determinations: Categorical Exclusions.

(a) Categorical Exclusions may be available for projects that will not result in significant impacts on the quality of the human environment and that do not involve extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section.

(b) Projects that may be eligible for a categorical exclusion (CE) include the following actions on existing systems:

(1) those that involve upgrades that are minor;

(2) minor expansion of system capacity;

(3) the rehabilitation, including functional replacement of the existing system and system components; and

(4) the construction of new minor ancillary facilities located adjacent to or on the same property as existing facilities.

(c) Projects not eligible for a CE include:

(1) projects that would otherwise be eligible for a CE but due to extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, are not eligible for a CE;

(2) projects that involve new or relocated discharges to surface or ground water;

(3) projects that will likely result in the substantial increase in the volume or the loading of a pollutant to the receiving water;

Texas Water Development Board

31 Tex. Admin. Code § 371.42

Drinking Water State Revolving Fund – Environmental Determinations: Categorical Exclusion

(4) projects that will provide capacity to serve a population 30% greater than the existing population;

(5) projects that are not supported by the state, or other regional growth plan or strategy; and

(6) projects that directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

(d) Extraordinary circumstances may become known at any time during the planning, design or construction of a project and may cause the project to be ineligible for a CE. Extraordinary circumstances include, but are not limited to, the following known or expected impacts:

(1) potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time;

(2) disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities;

(3) a significant effect on federal or state-listed threatened or endangered species or their critical habitat;

(4) a significant effect on national or state natural landmarks or property with nationally significant or state historic, architectural, prehistoric, archeological or cultural value;

(5) a significant effect on environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers and significant fish or wildlife habitat;

(6) a significant adverse air quality effect;

(7) a significant effect on the pattern and type of land use or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans;

(8) significant public controversy about a potential environmental impact of the proposed project; and

(9) conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource protection or land-use laws or regulations.

(e) Upon the discovery of extraordinary circumstances, the executive administrator may deny a CE or rescind an existing CE.

(f) An Applicant shall submit sufficient information to demonstrate why the project is eligible for a CE including, but not limited to the following documentation:

(1) a brief but complete description of the project;

(2) plan maps or maps of the project depicting the location of all construction areas, the planning area boundaries, and any known environmentally important natural areas;

(3) information regarding the eligibility of the project for a CE under the criteria listed in subsection (b) of this section; and

(4) any information that may be helpful to determine whether any extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, apply to the project.

(g) The executive administrator shall review the information submitted and may request additional information as needed to complete the determination regarding the eligibility of a proposed project for a categorical exclusion.

(h) The executive administrator's determination relating to a CE shall be subject to public notice which shall be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.

The Texas Water Development Board (TWDB) adopts amendments to Chapter 375, Clean Water State Revolving Fund, Subchapter E, Division 1, §375.52, and Division 2, §375.62, relating to the issuance of categorical exclusions pursuant to the National Environmental Policy Act, 42 U.S.C. Chapter 55; and more specifically, pursuant to 40 C.F.R., Ch. 1, Subchapter A, Part 6, Procedures for Implementation. Section 375.52 pertains to environmental reviews and determinations for state projects. Section 375.62 pertains to environmental reviews and determinations for federal projects. The proposal is adopted without changes as published in the April 10, 2015 issue of the *Texas Register* (40 TexReg 2077).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts the amendments to more precisely conform the board's rule to the federal procedures for implementation of the National Environmental Policy Act. The same amendment was proposed in 31 TAC §371.42, relating to Types of Environmental Determinations: Categorical Exclusions in the board's Drinking Water State Revolving Fund rules. In addition to the alignment of the board's rules to the federal procedures, the adopted amendment will make all of the board's state revolving fund rules related to categorical exclusions uniform.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Section 375.52, Types of Environmental Determinations: Categorical Exclusions.

This rule is applicable to projects receiving state funds or non-equivalent funds through the Clean Water State Revolving Fund. Section 375.52 will more closely track the language related to categorical exclusions and extraordinary circumstances contained in the federal procedures for implementation of the National Environmental Policy Act. The amendment clarifies the circumstances under which a categorical exclusion may be available. The amendment also clarifies the types of projects that are not eligible for categorical exclusions and identifies extraordinary circumstances which may cause a project to be ineligible. In general, the amendment provides more latitude for the executive administrator to grant categorical exclusions, while still maintaining compliance with the federal law. The amendment also modifies the information that Applicants must provide to the executive administrator in order to demonstrate that the project is eligible for a categorical exclusion. The intent of this revision is to attain meaningful information from Applicants that may be used in the environmental review process.

Specifically, under the adopted amendments, the construction of new minor ancillary facilities that affect the degree of treatment or the capacity of the works may be eligible for a categorical exclusion provided that they do not involve a new or relocated discharge to surface or ground water, a substantial increase in the volume or loading of pollutant to the receiving water, and do not provide capacity to serve a population 30% greater than the existing population. In addition, the rule has been broadened to include as eligible for a categorical exclusion the construction of new minor ancillary facilities on property located directly adjacent to existing facilities. These modifications align the board's rule with the federal rule.

Another substantive change in the adopted amendments regards extraordinary circumstances which may cause a project to be ineligible for a categorical exclusion: the cost effectiveness of a project has been removed from this list of excluding factors. The executive administrator determined that this is a program eligibility requirement not an environmental constraint used to evaluate a project's eligibility for a categorical exclusion. To satisfy the programmatic requirement regarding a project's cost effectiveness, Texas Water Development Board engineers currently conduct: (1) a preliminary review of project costs based on information submitted in the financial assistance application, and (2) a thorough cost effectiveness analysis during review of a project's Engineering Feasibility Report.

Section 375.62, Types of Environmental Determinations: Categorical Exclusions.

This rule is applicable to projects receiving federal funds or equivalent funds through the Clean Water State Revolving Fund. Section 375.62 will more closely track the language related to categorical exclusions and extraordinary circumstances contained in the federal procedures for implementation of the National Environmental Policy Act. The amendment clarifies the circumstances under which a categorical exclusion may be available. The amendment also clarifies the types of projects that are not eligible for categorical exclusions and identifies extraordinary circumstances which may cause a project to be ineligible. In general, the amendment will provide more latitude for the executive administrator to grant categorical exclusions, while still maintaining compliance with the federal law. The amendment also modifies the information that Applicants must provide to the executive administrator in order to demonstrate that the project is eligible for a categorical exclusion. The intent of this revision is to attain meaningful information from Applicants that may be used in the environmental review process.

Specifically, under the adopted amendments, the construction of new minor ancillary facilities that affect the degree of treatment or the capacity of the works may be eligible for a categorical exclusion provided that they do not involve a new or relocated discharge to surface or ground water, a substantial increase in the volume or loading of pollutant to the receiving water, and do not provide capacity to serve a population 30% greater than the existing population. In addition, the rule has been broadened to include as eligible for a categorical exclusion, the construction of new minor ancillary facilities on property located directly adjacent to existing facilities. These modifications align the board's rule with the federal rule.

Another substantive change in the adopted amendments regards extraordinary circumstances which may cause a project to be ineligible for a categorical exclusion: the cost effectiveness of a project has been removed from this list of excluding factors. The executive administrator has determined that this is a program eligibility requirement not an environmental constraint used to evaluate a project's eligibility for a categorical exclusion. To satisfy the programmatic requirement regarding a project's cost effectiveness, Texas Water Development Board engineers currently conduct: (1) a preliminary review of project costs based on information submitted in the financial assistance application, and (2) a thorough cost effectiveness analysis during review of a project's Engineering Feasibility Report.

REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking pursuant to Texas Government Code §2001.0225, which requires a regulatory analysis of major environmental rules. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The board is required to conduct a regulatory impacts analysis of a major environmental rule when the result of the adopted rulemaking is to exceed a standard set by federal law, unless the adopted rulemaking is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government implementing a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 3605 on the Texas Water Development Board to establish thresholds for retail public utility excess water loss and address the use of financial assistance to mitigate system water loss. The board has determined that the adopted rulemaking does not meet the definition of "major environmental rule" under that section; therefore, no regulatory impacts analysis of the adopted rulemaking is required. No comments were received by the board on the draft regulatory impacts analysis.

TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this adopted rule constitutes neither a statutory nor a constitutional taking of private real property. The adopted rule does not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 3605 on the Texas Water Development Board to establish thresholds for retail public utility excess water loss and address the use of financial assistance to mitigate system water loss. The adopted rulemaking would substantially advance this purpose by amending 31 TAC §375.52 and §375.62 to incorporate new statutory requirements. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

The proposal is also proposed under the authority of Texas Water Code §15.605, which authorizes the board to adopt necessary rules to carry out Subchapter J of Texas Water Code Chapter 15, relating to Financial Assistance for Water Pollution Control.

The proposed rulemaking affects Texas Water Code, Chapter 15.

§371.52. Types of Environmental Determinations: Categorical Exclusions.

(a) Categorical exclusions may be available for projects that will not result in significant impacts on the quality of the human environment and that do not involve extraordinary circumstances , as listed in subsection (d)(1) - (9) of this section.

(b) Projects that may be eligible for a categorical exclusion include the following actions on existing systems:

(1) those that involve upgrades that are minor;

(2) minor expansion of system capacity;

(3) the rehabilitation, including functional replacement of the existing system and system components; and

(4) the construction of new minor ancillary facilities located adjacent to or on the same property as existing facilities.

(c) Projects not eligible for a CE include:

(1) projects that would otherwise be eligible for a CE but due to extraordinary circumstances , as listed in subsection (d)(1) - (9), of this section are not eligible for a CE;

(2) projects that involve new or relocated discharges to surface or ground water;

(3) projects that will likely result in the substantial increase in the volume or the loading of a pollutant to the receiving water;

(4) projects that will provide capacity to serve a population 30% greater than the existing population;

(5) projects that are not supported by the state, or other regional growth plan or strategy; and

(6) projects that directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

(d) Extraordinary circumstances may become known at any time during the planning, design or construction of a project and may cause the project to be ineligible for a CE. Extraordinary circumstances include, but are not limited to, the following known or expected impacts:

(1) potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time;

(2) disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities;

(3) a significant effect on federal or state-listed threatened or endangered species or their critical habitat;

(4) a significant effect on national or state natural landmarks or property with nationally significant or state historic, architectural, prehistoric, archeological or cultural value;

(5) a significant effect on environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers and significant fish or wildlife habitat;

(6) a significant adverse air quality effect;

(7) a significant effect on the pattern and type of land use or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans;

(8) significant public controversy about a potential environmental impact of the proposed project; and

(9) conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection or land-use laws or regulations.

(e) Upon the discovery of extraordinary circumstances, the executive administrator may deny a CE or rescind an existing CE.

(f) An Applicant shall submit sufficient information to demonstrate why the project is eligible for a CE including, but not limited to the following documentation:

(1) a brief but complete description of the project;

(2) plan maps or maps of the project depicting the location of all construction areas, the planning area boundaries, and any known environmentally important natural areas;

(3) information regarding the eligibility of the project for a CE under the criteria listed in subsection (b) of this section; and

(4) any information that may be helpful to determine whether any extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, apply to the project.

(g) The executive administrator shall review the information submitted and may request additional information as needed to complete the determination regarding the eligibility of a proposed project for a categorical exclusion.

(h) The executive administrator's determination relating to a CE shall be subject to public notice which shall be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.

§371.62. Types of Environmental Determinations: Categorical Exclusions.

(a) Categorical Exclusions may be available for projects that will not result in significant impacts on the quality of the human environment and that do not involve extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section.

(b) Projects that may be eligible for a categorical exclusion include the following actions on existing systems:

(1) those that involve upgrades that are minor;

(2) minor expansion of system capacity;

(3) the rehabilitation, including functional replacement of the existing system and system components; and

(4) the construction of new minor ancillary facilities located adjacent to or on the same property as existing facilities.

(c) Projects not eligible for a CE include:

(1) projects that would otherwise be eligible for a CE but due to extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, are not eligible for a CE;

(2) projects that involve new or relocated discharges to surface or ground water;

(3) projects that will likely result in the substantial increase in the volume or the loading of a pollutant to the receiving water;

(4) projects that will provide capacity to serve a population 30% greater than the existing population;

(5) projects that are not supported by the state, or other regional growth plan or strategy; and

(6) projects that directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

(d) Extraordinary circumstances may become known at any time during the planning, design or construction of a project and may cause the project to be ineligible for a CE. Extraordinary circumstances include, but are not limited to, the following known or expected impacts:

(1) potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time;

(2) disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities;

(3) a significant effect on federal or state-listed threatened or endangered species or their critical habitat;

(4) a significant effect on national or state natural landmarks or property with nationally significant or state historic, architectural, prehistoric, archeological or cultural value;

(5) a significant effect on environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers and significant fish or wildlife habitat;

(6) a significant adverse air quality effect;

(7) a significant effect on the pattern and type of land use or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans;

(8) significant public controversy about a potential environmental impact of the proposed project; and

(9) conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

(e) Upon the discovery of extraordinary circumstances, the executive administrator may deny a CE or rescind an existing CE.

(f) An Applicant shall submit sufficient information to demonstrate why the project is eligible for a CE including, but not limited to the following documentation:

(1) a brief but complete description of the project;

(2) plan maps or maps of the project depicting the location of all construction areas, the planning area boundaries, and any known environmentally important natural areas;

(3) information regarding the eligibility of the project for a CE under the criteria listed in subsection (b) of this section; and

(4) any information that may be helpful to determine whether any extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, apply to the project.

(g) The executive administrator shall review the information submitted and may request additional information as needed to complete the determination regarding the eligibility of a proposed project for a categorical exclusion.

(h) The executive administrator's determination relating to a CE shall be subject to public notice which shall be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.