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# U.S. Environmental Protection Agency/National Environmental Policy Act: Notice of Adoption of Categorical Exclusion for Restoration Activities of Wetland/Riparian Instream Habitats

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The United States Environmental Protection Agency (“EPA”) published a Notice in the April 15th Federal Register that it is adopting a categorical exclusion (“CE”). See 89 Fed. Reg. 26141.

The CE is described as excluding restoration activities of wetland, riparian, instream, and native habitats.

The CE would be utilized in certain water grants and loan programs administered by the EPA. The CE is currently utilized by the United States Fish and Wildlife Service (“Service”).

The National Environmental Policy Act (“NEPA”) requires federal agencies to include values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions. The statute requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to prepare this document is only triggered in the event of a major federal action that will significantly affect the human environment.

As opposed to an EIS, which is a much more detailed document, an Environmental Assessment (“EA”) provides sufficient evidence and analysis for determining whether a Finding of No Significant Impact for an EIS should be prepared. Neither an EA nor an EIS need be prepared if a particular federal action falls within the scope of a NEPA CE.

CEs are promulgated by the federal agencies and are described actions which have been determined to not involve significant environmental impacts. Section 109 of NEPA allows a federal agency to “adopt” and use another agency’s CEs for a category of proposed agency actions. See 42 U.S.C. 4336(c).

EPA states that it intends to use the Service’s CE for its restoration activities under two programs:

- Community Grants Program
- Water Infrastructure Finance and Innovation Act Program

The Community Grants and Water Infrastructure Finance and Innovation Act programs potentially involve the construction of new or upgrades to existing small structures or improvements. These may include water control structures, berms, and dikes for the restoration of wetland, riparian, instream, or native

habitats. Such restoration activities are stated to typically result in no or minor adverse effects on the environment.

A copy of the Federal Register Notice can be downloaded [here](#).