NEBRASKA ADMINISTRATIVE CODE

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Title 137 - Nebraska Environmental Trust Board

Chapter 5 -CRITERIA FOR ELIGIBILITY

001 Eligibility Requirements. To be eligible for consideration in the rating processes for funding, the applicant's proposed project must be consistent with the following criteria for eligibility as described in Sections 002 to 006 of this Chapter.

001.01 The grants shall not be used to provide direct assistance to regulatory programs.

001.02 The grants shall not be used to implement actions mandated by regulations except remediation.

001.03 No more than sixty percent (60%) of grant allocations in any year shall assist remediation of soils or ground water, and no grants for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized.

001.04 The fund shall not pay for private benefits or provide assistance to projects or portions of projects whose benefits are primarily private in nature. Compensation for contributions made to a project, such as land or land rights, shall not constitute payment for private benefits.

001.05 The fund shall not relieve private liability for environmental damage or, except for projects for remediation of soils or ground water, provide assistance to projects in order to relieve such liability. For purposes of this section, "private liability" shall mean liability to a person or entity and shall include fines or penalties imposed by a governmental entity.

001.06 The fund shall not pay for projects to the extent such projects have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship. For purposes of this section, “direct beneficiaries" shall not be deemed to include a person who receives incidental benefits from a project which primarily benefits the general public.

001.07 The grants should assist those projects which offer the greatest environmental benefits relative to cost.

001.08 The grants should assist those projects which provide clear and direct environmental benefits.

001.09 The grants should assist those projects which will make a real contribution to achieving the board's environmental categories.

001.10 The grants should assist those projects which offer the greatest public benefits; and

001.11 The grants shall not pay for land or easements acquired without the full and express consent of the landowner.

002 Environmental Acceptance. A project is considered to be environmentally acceptable when:

002.01 The project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species and shall meet the requirements contained in the Nongame and Endangered Species Conservation Act, Nebraska Revised Statute § 37-801 ~~Neb. Rev. Stat. §37-430 et seq.~~; and

002.02 The plan of development minimizes any adverse impacts on the natural environment, adequately addresses existing cultural resources and results in environmental net gain.

002.03 In addition to any proposed mitigation measures, all aspects of the project which can be anticipated to result in environmental enhancement shall be considered in determining whether the plan minimizes adverse impacts. The Board may request additional information it deems necessary in determining environmental acceptability. The applicant, if required by the Board, will be provided a reasonable period of time to respond to requests for information and such other items as the applicant of the Board identifies as relevant to the issued of environmental acceptance.

003 Clear and Direct Environmental Benefits. A project will be considered to have clear and direct environmental benefits if the realization of those benefits can be reasonable expected, as a result of the project and if those benefits will be obvious, even if not quantifiable. The application will need to describe the environmental benefits anticipated as a result of the project and how those benefits will be clearly and directly attained. Educational projects may be considered to have clear and direct environmental benefits.

004 Contribution to Achieve the Board's Funding Categories. Only those projects which contribute to the then existing environmental categories established pursuant to Chapter 2 of these rules shall be eligible for financial assistance.

005 Public Benefits. For a project to be eligible for funding assistance, it must produce public, not just private, benefits.

006 Financial and Technical Feasibility. Financial and technical feasibility may be evaluated by the use of subcommittees, contractual assistance or advisory groups. Standards for each of these factors are as set out below:

006.01 Financial Feasibility. A project is financially feasible if sufficient funds can be made available to complete the project and if sufficient annual revenues can be obtained to operate, maintain, and replace the project as applicable. Each applicant shall submit a project budget identifying the nature and amount of each source of funds to be used for the project; a schedule indicating when such funds will be received; and a schedule indicating when the funds available will be expended for project purposes. The remaining financial data supplied by the applicant will depend upon the type of applicant.

006.02 Technical Feasibility. A project that is structural in nature shall be considered technically feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering and other technical principles and concepts. A project which is nonstructural in nature shall be considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned.