

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: April 21, 1999

Title 256 –DEPARTMENT OF NATURAL RESOURCES

Chapter 2 – APPLICATION PROCEDURES AND REQUIREMENTS

001 Filing Fees. No filing fee is required to accompany any project proposal or any application for assistance under the Act.

002 Filing Location. All project proposals, applications or other documents or instruments supplied by an applicant in connection with a request for financial assistance from the Fund shall be filed with the Director.

003 Application Procedure. It is recommended that each formal application for financial assistance from the Fund be preceded by a Project Proposal. An applicant may include the cost to the applicant of the feasibility report, the contents of which are specified by section 2-012 as a portion of the project costs of any project for which funding in an amount of less than \$100,000 is requested. Such cost may also be included as a portion of the project costs of any project for which funding in excess of \$100,000 is requested if, and only if, a project proposal has been previously submitted.

004 Information Required in Project Proposal. If the applicant decides to submit a Project Proposal, twenty-five copies shall be filed unless otherwise directed by the Director. The Project Proposal shall include the following information:

004.01 Name and address of applicant;

004.02 Applicant's authorized representative and his name and address;

004.03 A description of the proposed project and the desired accomplishments;

Title 256
Chapter 2

- 004.04 The primary purpose of the proposed project;
- 004.05 Other purposes of the proposed project;
- 004.06 A statement of urgency and need for the proposed project;
- 004.07 The applicant's most recent financial statement or budget document;
- 004.08 The estimated costs of the project;
- 004.09 The expected benefits from the proposed project;
- 004.10 The anticipated funding or other assistance from other sources;
- 004.11 The type and approximate amount of state assistance to be requested;
- 004.12 A discussion of probable environmental effects which shall include the applicant's plans to determine the potential impact of the proposed project on any threatened or endangered species or the critical habitat of any such species. Copies of any applicable correspondence with the Game and Parks Commission shall be included, if available.
- 004.13 The estimated schedule of construction of the project, and;
- 004.14 A discussion of alternatives for accomplishing the purpose of the project.
- 004.15 An indication whether liability insurance or contractor bonding will be required.

Title 256
Chapter 2

005 Details of Project Proposals. The information required in Project Proposals shall be in such detail as directed by the Commission and Director. Appropriate guidelines for assistance in Project and Program Proposal preparation shall be prepared and distributed to all state agencies or political subdivisions expressing a need for such assistance.

006 Omissions in Project Proposal. If the Commission or the Director desires additional information on a Project Proposal, it will so notify the applicant. If the Director determines that a Project Proposal is not complete, or if additional information is required, the Director will notify the applicant of such omissions. The applicant shall be expected to correct any such omission or provide any additional information requested within 60 days following notification.

007 Review by Commission and Director. Upon receipt of a properly completed Project Proposal, the Director shall review it forthwith, make a preliminary evaluation, and advise the Commission within 90 days: (1) that the Director recommends the Sponsor be authorized to proceed with preparation of a formal application and feasibility report; or (2) that, based upon the submitted proposal, the Director does not recommend the Sponsor prepare an application and feasibility report. The reasons for any negative recommendation shall be stated. If the Director recommends proceeding, he or she shall also indicate the type of funding for which the project may be eligible and a cost-share range within which a funding recommendation is probable if the project is later determined to be eligible for funding. The Director may make any additional recommendations regarding the contents of the formal application and feasibility report he or she deems appropriate. Any such recommendations shall be forwarded to the Sponsor by the Department along with a notice of when the Commission will next be considering Project Proposals that have been reviewed by the Director but have not yet been acted on by the Commission. The Sponsor will be invited to appear before the Commission and comment on the Director's recommendations at that time. Upon review and consideration of the Director's recommendations and the Sponsor's comments, if any, the Commission shall determine whether the Director is to advise the applicant: (1) that it is authorized to proceed with preparation of a formal application and feasibility report; or (2) that it is recommended that an application and feasibility report not be prepared; the reasons for a negative

Title 256
Chapter 2

recommendation shall be stated. If the Commission has compared and ranked two or more projects for which project proposals were reviewed at the same time, the Sponsor shall also be informed as to the relative ranking of each such proposed project.

008 Public Hearing and Notification. Except for projects requesting less than \$100,000 from the Fund, the applicant shall conduct at least one public hearing on all aspects of the proposed project or program prior to submission of the formal application and feasibility report. Notice of the hearing shall be provided to the general public by the publication, at least ten days prior thereto, in a newspaper or newspapers of general circulation within the project or program area. A copy of such notice will be provided to the Director. Information gained from the hearing, including a summary of testimony presented, is to be forwarded with the application.

009 Time to Complete Formal Applications. Upon notice by the Director of the Commission's findings on the Project Proposal, the Applicant shall be given a period of one year to complete a formal application and feasibility report. If an application is not completed within one year, or within such additional time as the Commission may grant for good cause shown, the Commission may request the filing of a new Project Proposal.

010 Form of Formal Application and Feasibility Report. Applicants for financial assistance from the Fund shall file twenty-five copies of an application and feasibility report. Such application shall contain a specific request for each type of assistance applied for in a specified amount. The contents of such application and feasibility report shall include all items required by sections 2-011 to 2-018 unless otherwise authorized by the Director. Feasibility reports shall be prepared at the initial expense of the applicant and with the assistance of licensed engineers, financial consultants, economists, recreation planners, wildlife specialists, or other consultants if deemed necessary by the applicant or by the Director following his or her evaluation of the Project Proposal. Costs of preparation of the feasibility report incurred by the applicant may be included if consistent with section 2-003.

Title 256
Chapter 2

011 Contents of Formal Application. Except to the extent that such information has previously been indicated through submission of a Project Proposal, the formal application shall include the following information:

011.01 A cover letter from the applicant submitting the feasibility report, the contents of which are specified by section 2-012;

011.02 The name and address of the applicant's authorized representative;

011.03 An outline of the initial development and background of the project;

011.04 An explanation of the need and urgency of the project;

011.05 A description of project goals and purposes;

011.06 A general discussion of alternative plans considered including a comparison of the technical, economic, and environmental aspects of each alternative with the plan chosen; and

011.07 A statement whether money from other sources is available or has been sought.

012 Contents of Feasibility Report. Contents of the feasibility report are to be of sufficient detail to demonstrate the technical, economic and financial feasibility, as well as the legal soundness, of the proposed project. Additionally, the expected positive and adverse environmental and ecological consequences of the project shall be therein demonstrated. The extent of detail necessary in the feasibility report will depend upon the type, purpose, and complexity of the project. Upon completion of any project proposal review, the Director will, to the extent deemed necessary, advise the applicant as to:

Title 256
Chapter 2

012.01 The criteria utilized to evaluate the technical, economic, financial, legal, and environmental aspects of the project;

012.02 The informational detail to be contained in the feasibility report.

013 Technical Feasibility.

013.01 A structural project 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. Technical data and information to be provided in the feasibility report should include, but is not limited to, the following:

013.01A A detailed discussion of the plan of development selected for the project;

013.01B A description of all field investigations made to substantiate the feasibility report;

013.01C Maps, drawings, charts, tables, etc., used as a basis for the feasibility report;

013.01D A description of the water and land rights associated with the project and pertinent water supply and water quality information, if appropriate;

013.01E A detailed discussion of each component of the final plan preparation including, when applicable:

013.01E1 Required geologic investigation;

013.01E2 Required hydrologic data;

Title 256
Chapter 2

013.01E3 Design criteria for final design including, but not limited to, soil mechanics, hydraulic, hydrologic, structural, embankments and foundation criteria.

013.02 A non-structural project 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. Data necessary to establish the technical feasibility should include, but is not limited to the following:

013.02A A detailed discussion of the plan of development designed for the project, including techniques to be utilized in all aspects of the project;

013.02B A description of field or research investigations utilized to substantiate the project conception;

013.02C A description of the water and/or land rights necessary for project continuation, if applicable;

013.02D A discussion of the anticipated effects, if any, of the proposed project upon the development and/or operation of existing or envisioned structural measures including a brief description of any such measure.

014 Economic Feasibility. Except as otherwise specified by subsection 014.04 or subsection 014.05 of this section, a project is economically feasible if primary, tangible benefits exceed project costs. In addition, for projects for which \$100,000 or more is requested from the Fund, each project's purpose in a multi-purpose project must provide benefits equal to or greater than its separable or specific cost as specified by the Director and there must be no known means of accomplishing the same purpose or purposes more economically. The Director and the Commission may also require that separable project features or increments have benefits which equal or exceed their costs. All costs and benefit data reported by the applicant will be based upon

Title 256
Chapter 2

current data and sources for all data must be documented. Certain commodity prices, recreation benefit prices, and wildlife prices will be prescribed by the Director. The Director may also prescribe other cost and benefit information necessary for completion of the feasibility report. The period of analysis for economic feasibility studies shall be fifty (50) years or the life of the project, whichever is less.

014.01 Cost Information. The report shall include all relevant cost information including, but not limited to, all actual or anticipated costs for the feasibility study, the engineering and inspection costs, capital construction costs, annual operation and maintenance costs, and annual replacement costs. Cost information shall also include the estimated construction period as well as the estimated project life.

014.02 Benefit Information. Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose project, the benefits will be estimated for each purpose and displayed by year for the project life. Intangible and secondary benefits of the proposed project or program should be described for consideration and evaluation by the Director and the Commission. Benefit measurement techniques and criteria shall be provided to the applicant by the Director.

014.03 Cash Flow Stream. All benefit and cost data will also be presented in a table form to indicate the annual cash flow for the life of the project, not to exceed 50 years. A form for so indicating the annual cash flow shall be supplied by the Director.

014.04 Rate-of-Return on Investment. The cost and benefit data expressed in the cash flow stream will be utilized by the Director to calculate the rate-of-return on the investment. The rate-of-return on the investment is the discount rate applied to future benefits and costs at which costs and benefits become equal and the net present worth of the project cash flow is zero. The Commission may prescribe a minimum rate-of-return for a project to be considered economically feasible.

Title 256
Chapter 2

014.05 Other Methods. In the case of proposed programs or projects for which there is no generally accepted method for calculation of primary, tangible benefits, the economic feasibility of such program or project shall be demonstrated by such method as the Director and the Commission deem appropriate.

015 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 repay the reimbursable costs and to operate, maintain, and replace the project. When a loan is involved, financial feasibility requires assurance that the projects can be adequately operated, maintained, and replaced and that the loan can be repaid during the repayment life of the project. Financial data supplied by the applicant shall include the applicant's most recent financial statement, budget document or other documentation necessary to illustrate the following:

015.01 The legal limit of the rate of taxation by the applicant and the rate currently being levied;

015.02 The limit of property that can be locally taxed by the applicant;

015.03 The level and trend of actual valuation;

015.04 The rate of local delinquency;

015.05 The legal limit of revenue and general obligation bond indebtedness;

015.06 Any debts, including bonded indebtedness and those resulting from contractual or other obligations.

If a loan is requested, applicant shall also supply a complete year-by-year repayment schedule in such detail as directed by the Director.

Title 256
Chapter 2

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

016.01 The Director has found that 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

016.02 The plan of development minimizes, in a manner satisfactory to the Director, any adverse impacts on the natural environment and adequately addresses existing cultural resources.

In addition to any proposed mitigation measures, if applicable, all aspects of the proposed project which can be anticipated to result in environmental enhancement shall be considered in determining whether the plan of development does minimize adverse impacts. To assist the Director in determining environmental acceptance, the applicant will demonstrate the probable environmental and ecological consequences of the project by addressing all areas of study identified on the environmental acceptance form (NRC/NRDF Form 02Ev1).

017 Federally Assisted Projects. When assistance from the Fund is requested for participation in a project planned by an agency of the federal government, the federally prepared plan of work can be submitted by the applicant for the purpose of complying with Sections 2-013, 2-014, and 2-016 and shall be submitted at the request of the Director. The Director does, however, reserve the right to reject all or a portion of any such plan of work on the grounds that the information provided therein is insufficient or inadequate for full evaluation of the proposed project's eligibility for assistance from the Fund.

018 Required Legal Data. The applicant shall assure the Director and the Commission that all legal requirements have or can be met prior to the allocation of any funds for the proposed program or project. Legal data submitted by the applicant in the feasibility report shall include the following:

Title 256
Chapter 2

018.01 Citation(s) to the legal authorities relied upon by the applicant to undertake or participate in the proposed program or project.

018.02 An explanation, with appropriate documentation of legal authorities, of the applicant's intention to finance that part of the project or program for which assistance from the Fund is not requested.

018.03 A showing that the applicant has or can acquire all necessary land rights and water rights.

018.04 Copies of any available proposed or executed contracts for construction or consultant services necessary for construction of the proposed program or project and included as part of the total cost of the project.

018.05 A listing of any permits, licenses, or other approvals required for the proposed project, their current status, and estimated schedule for compliance.

018.06 An explanation of the sponsor's plan to require consultants, contractors, and sub-contractors to obtain liability insurance or bonding to ensure the proper design and construction of the project.

018.07 An analysis of the sponsor's potential liability for damages from the project, including dam failure, overflow, or seepage of water and an explanation of the sponsor's plan to protect itself from any such liability.

018.08 A certified copy of a resolution of the applicant requesting financial assistance from the Department and containing a finding that the applicant cannot finance the project from other available state or federal sources.

Title 256
Chapter 2

018.09 Such other information, plans, and specifications as are requested by the Director or the Commission and which are reasonably necessary for an adequate understanding of the project.

018.10 A notarized statement executed by the applicant's official representative that the facts contained in the application are true and correct to his or her best knowledge and belief.

019 Omissions in Application. If an application submitted to the Director is not complete or if additional information is required, the Director will so notify the applicant. If the application is not completed within 90 days after the notice, unless the Director extends this time for good cause shown, the Director will return the application to the applicant without making any findings on the application and without prejudice to the submission of a new application at any future time.

020 Use of Department Data. Any pertinent data of the Department made available to applicants for use in preparing applications and feasibility reports will be furnished at cost.