



PROJECT CERTIFICATION CRITERIA AND PROCESS

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PROJECT CERTIFICATION CRITERIA AND PROCESS

BACKGROUND

The Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADB) are binational organizations created in 1993 by the governments of the United States and Mexico under a side agreement to the North American Free Trade Agreement (NAFTA). Both institutions were established to help preserve, protect and enhance the environment of the U.S.-Mexico border region, in order to advance the well-being of the people of the United States and Mexico, through the development and financing of environmental infrastructure projects.

BECC and NADB assist local, state, federal and private entities in evaluating, developing, implementing, overseeing and measuring the results of environmental infrastructure projects. While BECC focuses on the technical and environmental feasibility of projects, NADB evaluates their financial feasibility.

These criteria are adopted under the authority of the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank, signed November 16 and 18, 1993 (the BECC/NADB Charter) and amended through Protocol of Amendment signed November 25 and 26, 2002, which became effective on August 6, 2004.

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I. Basic Eligibility

1. Project Type

Projects presented for project development, certification and financing must constitute an environmental infrastructure project, which is defined as a project that will:

- a) prevent, control or reduce environmental pollutants, or
- b) improve the drinking water supply, or
- c) protect flora and fauna

provided that such projects also:

- i) improve human health, or
- ii) promote sustainable development, or
- iii) contribute to a higher quality of life.

Consistent with this definition, projects addressed by BECC and NADB include, but are not limited to the following sectors:

- ❖ Water pollution
- ❖ Wastewater treatment
- ❖ Water conservation
- ❖ Municipal solid waste
- ❖ Industrial and hazardous waste
- ❖ Domestic water and wastewater hookups
- ❖ Recycling and waste reduction

** Sectors described above are given preference based on Chapter I, Article II, Section 3(d) of the BECC/NADB Charter*

- ❖ Air quality
- ❖ Clean and efficient energy
- ❖ Public transportation
- ❖ Municipal planning and development, including water management

Additional types of projects that may qualify as environmental infrastructure projects under the Charter include¹:

- ❖ Energy transmission or distribution infrastructure
- ❖ Renewable energy generation
- ❖ Public transportation infrastructure, including international border crossings
- ❖ Production of goods and services designed to enhance or protect the environment, if the project also provides a net environmental benefit to the border region
- ❖ Other infrastructure designed to minimize future negative environmental impacts in the border

Consistent with the original Charter, BECC and NADB will prioritize those projects that provide maximum environmental benefits to the border community.

2. Project Location

Projects must be located in the U.S.-Mexico border region, which is defined by the BECC/NADB Charter as the area in the United States that is within 100 kilometers and the area in Mexico that is within 300 kilometers of the international boundary. Projects located outside the border region may be considered upon a decision by its Board of Directors that the project would remedy a transboundary environmental or health problem.

3. Legal Authority

To be eligible for certification, a project shall observe or be capable of observing the environmental and other laws and regulations of the place where it is to be located or executed, including necessary operating permits, licenses, and other regulatory requirements related to land acquisition and rights-of-way. Project sponsors must have the legal authority to develop the project, provide the proposed services and/or receive financing. Additionally, the project's conformance to any applicable international treaties and agreements must be documented.

¹ Projects must be fully consistent with BECC and NADB guidelines for documenting human health and/or environmental benefits.

II. Project Development

BECC and NADB have implemented a parallel, coordinated project development, certification and financing approval process. BECC leads efforts related to tasks needed to accomplish technical, environmental and public participation requirements, while NADB leads efforts associated with the development of the project's financial elements.

Project development requirements are determined on a project-by-project basis, taking into account industry standards, regulatory or funding source requirements and specific project sponsor needs. Projects that are presented having completed their necessary development tasks may achieve certification and financing approval in a shorter timeframe than those for which tasks are pending. Project development activities may include but are not limited to:

- Facility plans
- Environmental impact studies
- Design criteria
- Public participation
- Final design
- Value engineering
- Plans and specifications
- Final construction/O&M costs
- Financial and legal analysis

** Financial activities described are evaluated by NADB. The applicable financial policies and guidelines can be found at www.nadb.org.*

A unique application and project development process exists for public-sector sponsored drinking water and wastewater projects seeking grant funding through the EPA-funded Project Development Assistance Program (PDAP) and Border Environment Infrastructure Fund (BEIF), which are managed by BECC and NADB respectively. Eligible projects are prioritized for grant funding assistance through a process typically carried out in two-year cycles. Information on the BEIF/PDAP Prioritization and Project Development Process can be accessed via the BECC website at www.cocef.org.

III. Certification Process

Projects must meet each criterion listed in Section IV and provide the information or documentation appropriate to evidence compliance. Demonstrating compliance with the criteria primarily involves submission of information or documentation that should be readily available as a result of development activities of the project. Furthermore, documentation to demonstrate compliance with the criteria may vary based on the type, size and complexity of a project, as well as on the level of project development.

When necessary project development tasks are complete (as discussed in Section II), a project is ready to be considered for certification and financing approval by the BECC/NADB Board of Directors. BECC and NADB develop a project proposal based on information provided by the project sponsor. The project proposal provides information on the eligibility, compliance with the criteria, applicable activities related to public consultation and a results measurement matrix. The BECC releases a summary of the project proposal, including a list of the most relevant project documents available, for a 30-day public comment period. Based on the results of the public comment period, a joint recommendation related to certification and financing is submitted to the BECC/NADB Board of Directors for approval. Consistent with the Charter, approval of projects is a decision exclusive to the Board of Directors.

Non-Disclosure of Confidential Information

A project sponsor may request a designation of confidentiality from BECC and NADB for certain business or proprietary information, trade secrets or information of a commercial or financial nature. Requests for confidentiality designation will be addressed in accordance with BECC and NADB's "Procedures regarding Disclosure of Information and Confidentiality", which are available at www.cocef.org. Information that is designated as confidential will be entitled to protection from public disclosure. These provisions apply exclusively to the BECC and NADB process and do not extend to non-disclosure and confidentiality rules followed by regulatory or other government agencies.

IV. Certification Criteria

Every project is required to meet the BECC's Technical, Environmental and Financial Criteria, as follows.

1. Technical

The *Technical* criteria contain elements necessary to establish the project's technical feasibility. The project is required to satisfy the following:

a) Project Description

The sponsor shall provide:

- A description of the geographic location and general profile of the community, as well as of the specific project location in relation to the border;

- a description of the scope of the project, cost and site layout indicating the project details and other information that will visually reflect the project;
- the status of development and a schedule of pending project development activities; and
- a list and schedule of construction components to be implemented.

b) Technical Feasibility²

To demonstrate the project's technical feasibility, the sponsor shall provide a description of the selected technology or the technology under consideration; the methodology for technology selection; and documentation related to the technical development of the proposed project, such as feasibility studies, engineering design, or applicable design criteria.

c) Land Acquisition and Rights-of-Way Requirements.

Project sponsors shall provide documentation of land and right-of-way acquisition or demonstrate the ability to acquire the necessary property or permissions in a timely manner to implement, operate and maintain the project. Documentation such as property deeds, contracts for sale, eminent domain authority or others shall be provided.

d) Management and Operations

The project sponsor must demonstrate the capacity to implement the project as well as operate and maintain the environmental infrastructure, with appropriate/sufficient budgeting to cover O&M expenses. Appropriate information related to project management and institutional capacity shall also be provided.

² The project sponsor may be required to have a review conducted by an independent engineer. This review will be conducted in coordination with the North American Development Bank.

2. Environmental

The *Environmental* criteria contain elements to verify compliance with applicable environmental laws and regulations, establish the anticipated environmental results and potential health benefits to be achieved by the proposed project. To accomplish this, a project is required to satisfy the following:

a) Compliance with Applicable Environmental Laws and Regulations

The BECC is not a regulatory agency and will not require any additional permits or regulatory authorizations. Project sponsors must:

- identify all local, state, and federal environmental and cultural resource (i.e., historical, archeological, and ethnic resources) requirements applicable to the project and necessary to achieve regulatory or funding authorizations;
- demonstrate the project's compliance or ability to comply with all such regulatory requirements, including permits and environmental clearances; and
- a schedule of pending environmental tasks and authorizations.

Documentation, such as regulatory agency findings or rulings, project authorizations, or a description of compliance activities and the status of meeting compliance requirements shall be provided. BECC may assist the sponsor in coordinating the process with the applicable agencies.

b) Environmental Effects/Impacts

Based on the information and clearances provided by the sponsor, the BECC, in consultation with the sponsor, will prepare a description that will document:

- the existing human and/or environmental health conditions proposed to be addressed by the project, as well as the evaluation of the no-action alternative;
- the anticipated direct or in-direct environmental benefits expected to be achieved by the project;
- the mitigation of risks to the environment for the proposed project;
- if applicable, natural resource conservation measures for the project, such as green building practices, water conservation, waste reduction/reuse/recycling, clean and efficient energy, and other clean technologies;

- if applicable, the anticipated direct or in-direct human health benefits expected to be achieved by the project; and
- if applicable, any transboundary environmental effects.

The project sponsor shall provide the BECC with all information, documents and input necessary to support the evaluation of compliance with this criterion.

Upon implementation of a project, the anticipated environmental and/or human health benefits will be assessed pursuant to Section VI (Results Measurement and Closeout), in consultation with the sponsor.

3. Financial

The purpose of the *Financial* criteria is to ensure that a project meets financial standards in terms of viability, security and legal structure. In accordance with its own procedures and guidelines, NADB conducts a detailed financial analysis that seeks to ensure that the project has sufficient revenues, equity, grants or other financial support at the time of funding to provide a demonstrable and reasonable assurance of loan repayment. In consultation with the sponsor, NADB documents project costs, sources of revenue, use of funds and any potential rate impacts. Additionally, NADB prepares a detailed loan document for submittal to its Board of Directors, in consideration of certification and financing approval. Projects seeking loan financing from NADB must comply with NADB loan policy guidelines available at www.nadb.org.

V. Public Access to Information

In accordance with the BECC-NADB Charter and the BECC's Procedures regarding Public Notice, BECC shall ensure, to the extent possible, the availability of public information and reasonable opportunity to comment on all projects for which certification and financing is requested.

To ensure adequate access to public information, the BECC/NADB and the project sponsor shall conduct the following activities:

1. Public Consultation

To ensure adequate access to public information, the BECC and NADB will release a summary of the project proposal, including a list of the most relevant project documents available, for a 30-day public comment period. Public consultation will be conducted in accordance with provisions regarding Non-Disclosure of Confidential Information discussed under Section III above. Upon

conclusion of the public comment period, BECC and NADB will provide the Board of Directors with the comments received, along with the appropriate response to those comments. For purposes of responding to public comments, BECC and NADB may consult with the project sponsor as necessary.

2. Outreach Activity Summary

Voluntarily, or pursuant to legal, regulatory or funding requirements³, the project sponsor may have conducted public outreach efforts such as the use of local steering committees, meetings with local organizations, surveys, public meetings, social media or other activities to disseminate information on the project. In such cases, the sponsor shall provide BECC, as applicable, with information on the activities conducted, including a summary of any public feedback received.

Project sponsors can request assistance from BECC for any additional community outreach and consultation efforts that the sponsor deems appropriate, based on project complexity, rate impacts, local political dynamics, environmental and community impacts, and other factors. BECC has developed detailed public participation guidelines that may be used to facilitate and guide those efforts.

BECC is responsible for advising the Board of Directors in its consideration of any project for certification and financing, of the results of public consultation and outreach activities.

VI. Results Measurement and Closeout

BECC and NADB have implemented a results measurement framework as a systematic approach for establishing, monitoring and documenting the achievement of results related to the investments in environmental infrastructure projects. The process includes development of a Results Matrix by BECC and NADB, in consultation with the project sponsor, which identifies a project objective, anticipated outcomes and related indicators, outputs as well as inputs and implementation activities. For every project that is submitted to the BECC/NADB Board of Directors for certification and financing approval, a Results Matrix is included. Timeframes and methodology for measuring results and any expectations regarding information required from the sponsor are

³ Projects seeking grant funding through PDAP and BEIF are required to document sufficient public outreach efforts by incorporating a variety of the tools listed in this section including, typically, two public meetings during the project development process. BECC will inform sponsors of those requirements in the early stages of project development.

clearly defined at the time of certification and approval of financing in the Results Matrix.

As part of post-certification activities, a project closeout review will be performed to assess the project after it has completed construction in terms of meeting the goals and objectives established at the time of certification and financing approval. Normally, closeout efforts are conducted between 6-12 months after the project has initiated operations. The Close-Out Process provides a review of physical facilities constructed, facility performance and achievement of objectives, as reflected in the results measurement matrix. BECC and NADB will notify project sponsors of information that is required to successfully complete close-out and results measurement tasks.

The project sponsor shall provide the BECC and NADB with all information, documents and input necessary to support results measurement and closeout activities. This information could include infrastructure performance (i.e., connections, installed capacity, traffic counts), regulatory compliance, and financial statements.

Conclusion

The project certification criteria and process contained in this document are one of the pillars for BECC and NADB to successfully fulfill their mission and contribute to sustainable development in the U.S.-Mexico border region.