

ENVIRONMENTAL REVIEW REQUIREMENTS for Land & Water Conservation Fund proposed projects - 2024

IT IS ESSENTIAL TO BEGIN THIS PROCESS EARLY, EVEN DURING THE GRANT APPLICATION PROCESS. THE NPS APPROVAL IS CONTINGENT ON THIS INFORMATION.

The federal legislation that coordinates the consideration of the potential for impacts to the human environment as a result of a federal action is the National Environmental Policy Act (NEPA). The National Environmental Policy Act (NEPA) of 1969, as amended, is landmark environmental protection legislation which established creating a balance between the use and preservation of natural and cultural resources as a goal. LWCF proposals are considered federal actions because the funding for the program is federal. The NEPA process coordinates compliance with applicable related but separate federal, state, and local environmental requirements such as the Endangered Species Act, Historic Preservation Act and Coastal Zone Management Act.

Early in the planning to pursue a Federal grant, please ensure that the **Full Scope** of your park plan with the full **Area of Potential Extent** is shared with all agencies. For acquisition projects, the scope must include the proposed plans for the property including existing conditions and any potential development within the next three years to ensure all foreseeable direct, indirect, and cumulative impacts are evaluated. For construction projects all items are identified including descriptions of **depth of disturbance, impact or creation of wetlands, and a full list of desired outdoor public recreation amenities.**

This information will be summarized on the Application and Revision (A&R) Form. Additionally the applicant must provide **individual PDF's of all pertinent agency correspondence** and any record of public comment information.

Agency Correspondence:

For LWCF proposals, the NEPA process coordinates compliance with **separate** but related federal, state, and local environmental requirements as applicable.

PLEASE SUBMIT EACH AGENCY LETTER AS A SEPARATE PDF to allow reviewers an easy way to locate each item. DHR and DEQ are top priorities to send project details, to allow time for their review and provide comments within 30 days.

At a minimum, compliance by the applicant with the following federal laws and executive orders shall be coordinated during the NEPA process and should be integrated into the impact analysis required.

Environmental Resources and Mandatory Criteria Tables – see [NPS Application Form](#)

There are two tables in the A&R form that are required to be submitted to NPS. The Environmental Resources table lists several environmental resource topics. Applicants are requested to choose an impact estimate level (positive impact, negative impact, or further information needed) that describes the degree of **potential impact** for each listed resource that may occur directly, indirectly and/or cumulatively as a result of the proposal. For each resource and anticipated impact applicants are required to provide a brief explanation of how the resource might be affected, how the impact level was determined, and why the chosen impact level is appropriate. If additional space is needed to provide these explanations, please provide an attachment(s) clearly identify the resource, the anticipated impact and the explanation. Reference to topical experts and any resources used that assisted in determining the anticipated impact levels must be provided in a separate PDF.

The Mandatory Criteria table contains a list of mandatory criteria that preclude the use of categorical exclusions for the purpose of the National Environmental Policy Act. Applicants are requested to answer and provide an explanation for each answer. If the answer “yes” or “?” applies to any of the mandatory criteria, more detailed information on the project would be needed in order for it to continue to be considered for funding. Please contact DCR to discuss details.

The information provided in the two tables is required to be submitted to the NPS to guide their selection of one of the following NEPA “pathways”: 1) a Categorical Exclusion recommendation 2) the necessity of further environmental analysis through an Environmental Assessment (EA) or 3) Environmental Impact Statement (EIS). **DCR provides initial review and recommendation for the NEPA and Section 106 pathway, but NPS has the final authority to determine the NEPA pathway and findings. If the**

National Historic Preservation Act, (NHPA) Section 106, as amended.

Section 106 of NHPA requires analysis of the effects of federal actions on historic properties. The State Historic Preservation Office (SHPO), Tribal Historic Preservation Officers (THPO), and as necessary, the Advisory Council on Historic Preservation must be given a reasonable opportunity to review and comment on these actions. Section 106 review and NEPA are two separate, distinct processes. They can and should occur simultaneously, but one is not a substitute for the other. The information and mitigation gathered as part of the Section 106 review must be included in the NEPA document, and the Section 106 process must be completed by the project sponsor before NPS can sign a categorical exclusion, or issue a finding of no significant impact (FONSI) or a record of decision (ROD) so that the proposal may be approved for a LWCF award.

In Virginia, the Department of Historic Resources (DHR) is the resource agency responsible for issuing determinations regarding compliance with NHPA, Section 106. Project sponsors must READ and FOLLOW the instructions posted on the DHR website for obtaining a NHPA Section 106 project review. The DHR website with instructions is located at: <http://www.dhr.virginia.gov/review/orcFedPrjRev.html>. The ePix online project review portal of DHR is located at <https://solutions.virginia.gov/ePIX/>. Registration with ePix is required to use the system. Registration with the system is free. Please follow the instructions and answer all required fields. **For the purposes of this review, the federal entity is the National Park Service, the program is the Land and Water Conservation Fund and the Code of Federal Domestic Assistance number is 15.916.** The review process is a two part process. An archival review followed by a federal project review. The archival review is a required component of the project review process for Section 106 reviews. **Applicants must provide copy of the comment letter received from the DHR that requires a Section 106 determination before any grant can be forwarded to the NPS by DCR for approval. If a Section 106 determination letter has been issued by DHR for your project, please include it with your LWCF proposal. If no letter has been received please indicate that and begin the process promptly.**

NPS will perform initial Tribal consultation, but only after receiving the DHR letter of comment and/or review. Any correspondence resulting from Tribal communication will be shared with DCR, the applicant and NPS. If surveys or further information is requested, that must be completed by the applicant.

If the NEPA pathway or Section 106 cannot be determined by May 18, 2024 the project will likely not be authorized by Fall 2024 and there is no guarantee the application can be held for future Grants.gov opportunities.

ALSO BEGIN COORDINATION WITH THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) within the application process.

Review with DEQ should include wetlands, erosion and sediment control, and/or begin the Joint Permit Application (JPA) process. These are some of the programs DEQ participates in as a reviewing state agency.

Floodplain Management and Wetland Protection, Executive Orders 11988 and 11990

Executive Orders 11988 and 11990 direct the avoidance of long and short term adverse impacts associated with modifying or occupying floodplains and wetlands. These orders also require the avoidance of direct or indirect support of floodplain or wetland development whenever there is a practical alternative. For LWCF purposes, applicants must comply with this executive order. Evidence documenting the applicant's coordination efforts with responsible state and federal authorities for determining floodplain management and wetland impacts must be submitted to DCR. For proposals involving floodplain areas, coordination with the local entity responsible for floodplain management is needed to determine potential impacts. For proposals involving wetlands or potential wetlands, coordination with the Virginia Department of Environmental Quality, U.S. Army Corps of Engineers and Virginia Marine Resources should be initiated. The Virginia Department of Environmental Quality has general guidance information on wetlands posted at <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Permits.aspx>.

Coastal Zone Management Act Federal Consistency Determination

Pursuant to the Coastal Zone Management Act (CZMA), federal actions with potential effects on anyland or water use or natural resources within Virginia's coastal zone must be consistent with the enforceable policies of the Virginia Coastal Resources Management Program. The federal consistency regulations implement the CZMA requirement that federal actions be consistent with the enforceable policies of a coastal state's federally approved coastal management program, before they can occur. Effects include both direct and indirect which result from the activity. The Virginia Department of Environmental Quality (DEQ) is responsible for compliance with CZMA and issuing consistency determinations. DEQ has created an online Federal Consistency Information Package. The information is available as a webpage on the DEQ website or as a PDF

(www.deq.state.va.us/Programs/EnvironmentalImpactReview/FederalConsistencyReviews.aspx, www.deq.state.va.us/Portals/0/DEQ/EnvironmentalImpactReview/FederalConsistencyManual.7.27.11.pdf).

Item 3, under "Review Procedure" addresses federally assisted projects. Applicants with **proposals occurring within the Coastal Zone Management Area must request a consistency determination from the DEQ.** Please READ the Federal Consistency Information Package and follow the instructions. Please provide a project description which indicates **the request for the federal consistency determination is due to federal funding assistance from the Land and Water Conservation Fund of the National Park Service and administered in Virginia by the Department of Conservation and Recreation.** Applicants with projects occurring in the Coastal Zone Management Area must submit the response letter from the DEQ in order to be approved for funding.

If your project is not located within the Coastal Zone Management Area a consistency determination is not needed for your project.

Environmental Justice (EJ) in Minority and Low-Income Populations, Executive Order 12898.

Executive Order 12898 directs federal agencies to assess whether their actions have is proportionately high and adverse human health or environmental effects on minority and low-income populations. For LWCF purposes, applicants must specifically analyze and evaluate the impact of the LWCF proposal on minority and low-income populations and communities, as well as the equity of the distribution of the benefits and risks of the decision in the NEPA document. If EJ does not apply to your proposal this should be noted and a statement why does not apply needs to be described.

Endangered Species Act, (ESA) Section 7 and Code of Virginia 3.2-1000 Plant and Insect Species Act and 29.1-563 Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service on any action that may affect endangered or threatened species or candidate species, or that may result in adverse modification of critical habitat. For LWCF purposes the applicant must carry out this consultation and provide evidence that it has occurred.

The U.S. Fish and Wildlife Service – Virginia Field Office has created an online review. The website is <https://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>. Applicants should READ and FOLLOW the instructions for obtaining a review. Note that Step 2 requires an “official species list” to be generated by the USFWS and Step 3 requires coordination with the Virginia Division of Natural Heritage and the Virginia Department of Game and Inland Fisheries (see below). Applicants must submit to DCR a copy of the completed USFWS online review process: IPAC area, Official Species List, Species Conclusion Table, supporting documentation for each step, the USFWS ESA, Section 7, determination letter and the USFWS return receipt that verifies the project package has been successfully submitted to the Virginia Field Office. If applicants have completed this process within the past 6 months, please include the required information with your LWCF proposal.

Virginia Division of Natural Heritage

Instructions for obtaining project review comments from the Virginia Division of Natural Heritage are online at http://www.dcr.virginia.gov/natural_heritage/infoservices.shtml#techserv under “Environmental Review Services” located toward the bottom of the webpage. Project sponsors may request the review either online or through a mail in form. Please READ and FOLLOW the instructions for obtaining a review. Applicants must provide a copy of the comment letter received from the Virginia Division of Natural Heritage to DCR before any grant could be approved for the project. The USFWS requires that any information regarding federally listed species received from the Division of Natural Heritage must be documented on the Species Conclusion Table for the USFWS project review.

Virginia Department of Wildlife Resources

Instructions for obtaining project review comments from the Virginia Department of Wildlife Resources are online at <https://dwr.virginia.gov/environmental-programs/environmental-services-section/> under “Project and Permit Review Process”. Please note that there are several additional types of information DWR may require in addition to the project description, location coordinates and topographical map showing the project location. Therefore it is imperative that applicants follow the instructions precisely and submit the projects to the Department of Wildlife Resources electronically at ProjectReview@dwr.virginia.gov. Applicants must provide copy of the comment letter received from the Virginia Department of Wildlife Resources before any grant can be forwarded to the NPS by DCR for approval. The USFWS requires that any information regarding federally listed species received from the Department of Wildlife Resources must be documented on the Species Conclusion Table for the USFWS project review.

For additional questions, contact :
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REFERENCE

NPS has released the National Park Service Land & Water Conservation Fund Manual Version 73 October 2023. Please review the requirements listed in Chapter 6 for more information.