

ENVIRONMENTAL REVIEW AND PUBLIC COMMENT REQUIREMENTS

for Land & Water Conservation Fund proposed projects - 2021

As a federally funded program all Land and Water Conservation Fund grants are considered federal actions. Therefore, applicants must be able to demonstrate compliance with the National Environmental Policy Act; Section 106 of the Historic Preservation Act; Section 7 of the Endangered Species Act; and Executive Orders 11988 and 11990 (Floodplain Management and Wetland Protection,) and where applicable, consistency with the Coastal Zone Management Act.

The purpose of the environmental review is to provide information about the Land and Water Conservation Fund (LWCF) proposal and the anticipated impacts. The environmental documentation becomes part of the federal record for the project. Identifying potential impacts helps guide the NPS on which National Environmental Policy Act pathway should be pursued: 1) a recommendation for a Categorical Exclusion (CE), 2) development of an Environmental Assessment (EA), or 3) an Environmental Impact Statement (EIS).

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.

NEPA requires: 1) an analysis of the impacts of and alternatives to the proposed federal actions, 1) use of the analysis in deciding whether to proceed with the proposed actions; and, 3) an opportunity for the public to comment on the proposed actions and its anticipated impacts.

Please provide a draft of the Scope you plan to share with all agencies and the public prior to publication of the Public Comment for review by DCR. 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.

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

Public Comment Requirements:

To demonstrate compliance with the public comment requirement of NEPA, public input to the proposed project must be solicited through a legal advertisement in a daily newspaper with the widest circulation in the immediate project area. This advertisement should run for a minimum of one day with at least 30 days allowed for the public to comment. The notice must include a brief description of the proposed project with the name, address, and contact information of the project sponsor and the location of where more detailed information about the project including its potential impacts and planned or required mitigation may be found for review. Comments should be provided in writing. Evidence of the public comment must be submitted to DCR before any grant can be awarded.

To satisfy evidence of a public comment period the following information should be submitted:

- a) A photocopy of the legal advertisement showing the date on which it ran in the newspaper.
- b) Describe the total public involvement for this project beyond the legal advertisement.
- c) Describe the nature of the public comments received during the official public comment period. Tally numbers of comments in support of the project and the numbers against.
- d) Summarize the most important comments received and your responses to these comments. For example, if a reviewer made suggestions on how the project could be made better, how did you respond to that suggestion? Submit this summary with the LWCF application.
- e) Describe any changes to the project design or scope of work based on public input.
- f) Comments received and made must be available to DCR for review upon request.

Agency Correspondence:

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

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.

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.**

Recent guidance from NPS has determined that DCR will perform initial Tribal consultation. Any correspondence resulting from Tribal communication will be shared with the applicant and NPS. If surveys or further information is requested, that must be completed by the applicant.

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.

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 any land 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.

Environmental Resources and Mandatory Criteria Tables – see A&R 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). **NPS has the final authority to determine the NEPA pathway and findings.**

For additional questions, contact :

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Land & Water Conservation Fund Program

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REFERENCE

The majority of this document has been excerpted from the *National Park Service, Land & Water Conservation Fund State Assistance Program, Federal Financial Assistance Manual, Volume 69, Effective Date October 1, 2008*.

Further details about NPS NEPA guidance can be found in the *National Park Service NEPA Handbook* effective 2015.

NPS is currently working (March 2021) to release a modified LWCF Manual. Any pertinent updates to this Manual will be relayed to applicants and subrecipients. This may result in additional correspondence or compliance requirements.