

Virginia Recreational Trails Program

Environmental Review and Public Comment Requirements

As a federally funded program all RTP projects are considered federal actions. As a federal action, all projects must demonstrate compliance with the National Environmental Policy Act (NEPA); Section 106 of the Historic Preservation Act (NHPA); 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.

In addition to the federal environmental review requirements, all projects must comply with local and state permitting requirements. **Please contact your local permitting office to determine any county/city/agency permitting requirements as soon as possible.** Copies of permits and agency permitting coordination obtained for the project may be requested by DCR and/or Federal Highway Administration (FHWA) for project records.

Environmental review requirements are largely based on the scope of work being planned and the natural habitat of the area, and documentation of the environmental review becomes part of the federal record for the project. Construction of the project cannot begin until due diligence of this review is completed and presented to DCR Recreation Grants staff and approved by the FHWA.

The National Environmental Policy Act (NEPA) of 1969, as amended, is landmark environmental protection legislation which was established with the goal of creating a balance between the use and preservation of natural and cultural resources. The National Historic Preservation Act (NHPA) of 1966, Section 106, ensures the protection of historic and cultural resources and requires analysis of the effects of federal actions on historic properties.

The NEPA and NHPA processes coordinate compliance with separate but related federal, state, and local environmental requirements. Identifying potential impacts helps guide the appropriate NEPA pathway for the project. There are three pathways which may be appropriate:

1. Categorical Exclusion,
2. Environmental Assessment, or
3. Environmental Impact Statement.

Typically, RTP projects qualify for a Categorical Exclusion (CE). Please see the CE Determination form template provided at <https://www.dcr.virginia.gov/recreational-planning/traifnd>. However, if *any* agencies recommend further correspondence and/or survey work this must be completed and may result in an Environmental Assessment or Environmental Impact Statement pathway. FHWA has final authority for environmental review approval.

Upon the completion of all agency correspondence described below, submit a draft of the CE Determination form and a PDF of all agency correspondence to DCR Recreation Grants staff at recreationgrants@dcr.virginia.gov for review. Once DCR concludes all necessary documentation is provided, staff will forward all information to FHWA programmatic staff for their final review and approval.

Projects must have FHWA approval of the NEPA pathway documentation prior to going to bid and before moving forward with construction.

Environmental Coordination Procedures Summary Checklist

Use the Categorical Exclusion Determination form available at <https://www.dcr.virginia.gov/recreational-planning/trailfnd> to summarize the results of each required review area listed below. For each functional area in the form, select the determination that matches with the agency response, if applicable, or with your analysis, if an agency response was not required. In the comments section, include the date of agency response and any other pertinent notes. Additional guidance on each review item is available on the following pages.

- ☐ Section 106 - National Historic Preservation Act Review - VA Department of Historic Resources ePIX for Federal Projects
- ☐ Section 7 - Endangered Species Act Review, includes:
 - ☐ U.S. Fish and Wildlife Service iPac Project Review
 - ☐ VA Department of Wildlife Resources Environmental Services Staff review
 - ☐ VA DCR Division of Natural Heritage Project Review
- ☐ Erosion and Sediment Control Review, includes:
 - ☐ Floodplain Analysis - Local Floodplain Administrator, may also include:
 - ☐ Flood Level Rise Analysis - U.S. Army Corps of Engineers (if proposed project is in a floodway and in a community participating in the National Flood Insurance Program (NFIP))
 - ☐ VA Department of Environmental Quality Office of Environmental Impact Review (DEQ OEIR) - DEQ, and other agencies as directed by DEQ, may include:
 - ☐ Wetlands/Shoreline Analysis - as directed by DEQ or multiple agencies through Joint Permit Application process
 - ☐ Stormwater Impact Analysis - as directed by DEQ
 - ☐ Coastal Zone Management Act Review – as directed by DEQ (if within Coastal Zone)
- ☐ Permitting (must identify required permits on CE Determination form, but permits can be obtained during construction phase)
- ☐ Environmental Justice Impact Review
- ☐ Public Comment Period

Environmental Coordination Procedures

At a minimum, compliance by the project sponsor with the following federal laws and executive orders shall be coordinated during the environmental review process and should be integrated into the impact analysis. The scope of work presented to the agencies must be comprehensive of the full project area of potential effects and description of proposed disturbance(s).

Use the Categorical Exclusion Determination form available at <https://www.dcr.virginia.gov/recreational-planning/trailfnd> to summarize the results of each required review.

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. **However, the information and mitigation gathered as part of the Section 106 review must be included in the NEPA document.** The Section 106 process must be completed by the project sponsor before FHWA can sign a categorical exclusion (CE) or issue a finding of no significant impact (FONSI) or a record of decision (ROD) for the NEPA review.

In Virginia, the Department of Historic Resources (DHR) serves as the SHPO and 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: <https://www.dhr.virginia.gov/environmental-review/federal-project-review/>. RTP projects are considered Federal Projects for this review. Once on this website, click on the “How to request DHR review of a Federal project” and follow the instructions to complete the ePIX review process for a Federal Project. If you do not already have an ePIX account, you will be prompted to create one.

For the purposes of this review, the federal entity is the Federal Highway Administration, the program is the Recreational Trails Program and the Code of Federal Domestic Assistance number is 20.219.

The complete Section 106 review is a two part process. An archival review, as outlined above, followed by a project review by the federal agency. A letter from DHR that provides a NHPA Section 106 determination for the archival and architectural review is required for obtaining the final federal project review and approval from the FHWA. **Project sponsors must submit to DCR a copy of the determination comment letter or email from DHR.**

Endangered Species Act (ESA), Section 7

Section 7 of the Endangered Species Act (ESA) requires consultation with the U.S. Fish and Wildlife Service on any action that may affect endangered or threatened species or candidate species or that may result in adverse modification of critical habitat.

The U.S. Fish and Wildlife Service has created a multi-step, online project review portal called Information for Planning and Consultation (IPaC). The website is located at <https://ipac.ecosphere.fws.gov/>. You will have to create an IPaC account.

Project sponsors should follow the instructions for obtaining a review. All steps must be completed for the review to be considered valid. **Project sponsors must submit a copy of the completed USFWS online review** (IPaC area, Official Species List, Species Conclusion Table, supporting documentation, and the determination letter from the USFWS, etc.).

Note that Step 1 of the USFWS online review requires an “official species list” to be generated by the USFWS and additional steps require coordination with the Virginia Division of Natural Heritage and the Virginia Department of Wildlife Resources (formerly Game and Inland Fisheries). You must also contact these agencies as outlined below:

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/ereview>. Follow the instructions for obtaining a review using the Information Services Order Form. 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.

Project sponsors must provide a copy of the comment letter received from the Virginia Division of Natural Heritage to DCR.

Virginia Department of Wildlife Resources

Instructions for obtaining project review comments from the Virginia Department of Wildlife Resources (DWR) are online at <https://dwr.virginia.gov/wies/environmental-services/> under “Federal and State Agencies, Permit Writers, and NGO Conservation Partners”. 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 project sponsors collect the necessary information and follow the instructions precisely to submit the projects to the DWR electronically at ProjectReview@dwr.virginia.gov.

Note that a preliminary DWR review may be obtained through the Fish and Wildlife Information Service at <https://vafwis.dgif.virginia.gov/fwis/>. This may be helpful in determining if your project is likely to have impacts to wildlife resources and habitats.

Project sponsors must provide a copy of the comment letter or email received from the Virginia DWR incorporated in the final correspondence document. Any information regarding federally listed species must be documented on the Species Conclusion Table for the USFWS project review. Comments from the DWR are required to demonstrate compliance with Code of Virginia 3.2-1000 Plant and Insect Species Act and 29.1-563 Endangered Species Act.

Floodplain Management and Wetland Protection, Executive Orders 11988 and 11990

Executive Orders 11988 and 11990 direct the avoidance to the maximum extent possible 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. **Evidence documenting the project sponsor's coordination efforts with responsible state and federal authorities for determining floodplain management and wetland impacts must be submitted to DCR.**

Floodplains

Project sponsors must contact their local floodplain administrator for an official floodplain determination and comply with the community's local floodplain ordinance, including receiving a local permit, if necessary. Failure to comply with the local floodplain ordinance could result in enforcement action from the locality.

To find local floodplain administrator contact information and community National Flood Insurance Program (NFIP) participation, use DCR's Local Floodplain Management Directory at <https://www.dcr.virginia.gov/dam-safety-and-floodplains/floodplain-directory>.

It may be advised to conduct a flood level rise analysis. Information can be found at <https://www.fema.gov/flood-maps/guidance-reports/guidelines-standards>.

General information on floodplains can be obtained from the DCR Division of Dam Safety and Floodplain Management at <https://www.dcr.virginia.gov/dam-safety-and-floodplains/fpvfris>.

Wetlands and Streams

For proposals involving wetlands or potential wetlands or state waters, coordination with the locality wetlands and/or development offices should be initiated to determine if further consultation with Virginia Department of Environmental Quality (DEQ), Virginia Marine Resources (VMRC), and/or U.S. Army Corps of Engineers (USACE) is needed.

Most projects will be advised to request a review from the DEQ Office of Environmental Impact Review. DEQ will screen the project and provide direction on erosion and sediment control, stormwater impacts, wetlands impacts, the Coastal Zone Management Act (CZMA), and required permits. They may also provide directions for further coordination with agencies or will direct to other regulatory agencies if needed.

See <https://www.deq.virginia.gov/permits-regulations/environmental-impact-review/document-submissions> and follow the instructions for requesting a NEPA review (all projects) and a CZMA Federal Consistency determination (if in CZMA zone) for a federally-funded project. In submitting the request to the DEQ provide a description which indicates *the request for the NEPA review/ CZMA Federal Consistency determination is due to federal funding assistance from the Recreational Trails Program of the Federal Highway Administration which is administered in Virginia by the Department of Conservation and Recreation.*

Additional information specifically on the CZMA Federal Consistency determination can be found at <https://www.deq.virginia.gov/permits-regulations/environmental-impact-review/federal-consistency> under “Federal Consistency Manual.”

Projects with potential impact to tidal wetlands or state waters should contact the Virginia Marine Resource Commission <https://mrc.virginia.gov/hmac/hmoverview.shtm>.

When it is determined that the project may impact wetlands or state waters, it is recommended to complete a Standard Joint Permit Application (JPA) instead of contacting the agencies individually. This should be initiated early in the planning process to ensure all entities (DEQ, VMRC, and USACE) are properly notified and have opportunity to comment. For specific information and guidance on the JPA process please see <https://www.nao.usace.army.mil/Missions/Regulatory/JPA.aspx>.

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

Executive Order 12898 directs federal agencies to assess whether their actions have proportionately high and adverse human health or environmental effects on minority and low-income populations. Project sponsors must specifically analyze and evaluate the impact of the RTP proposal on minority and low-income populations and communities, as well as the equity of the distribution of the benefits and risks. One resource to evaluate EJ impacts could be the EPA EJScreen Environmental Justice Screening and Mapping tool available at <https://www.epa.gov/ejscreen>.

Public Comment Requirements

Construction Projects

Projects that involve new construction must hold a public comment period to ensure the public is aware of the proposed project and has an opportunity to provide input. 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. The public notice must be published at least once per week for at least two consecutive weeks in a newspaper of general weekly circulation or published three consecutive days in a paper of general daily circulation in the service area(s) involved in the project.

The notice must include a description of the proposed project and its anticipated impacts. The notice must include the name, address, and contact information of the project sponsor and the location where detailed information about the project can be found for review by the public. The notice must also indicate that partial funding is provided by the Recreational Trails Program. Comments should be received in writing. **Evidence of the public comment must be submitted to DCR before any grant will be awarded.**

To satisfy evidence of a public comment period the following information is required:

- a) A photocopy of the legal advertisement showing the date(s) on which it ran in the newspaper. Also include a link or copies of the website if posted online.

- b) A description of the total public involvement for this project beyond the legal advertisement.
- c) A description of the nature of the public comments received during the official public comment period. Provide a tally of comments in support of the project and those against it.
- d) A summarization of the most important comments received and your responses to these comments.
- e) A summarization of changes made to the project as a result of public comments.
- f) Comments received and made must be available to DCR for review upon request.

The public comment period must be open for a minimum of two weeks with a preferred window of 30 days as feasible with project timeline requirements.

Maintenance Projects

Proof of public input other than an official public comment period may be accepted in lieu of a formal public comment period for projects that involve only repair or maintenance of existing trails. This applies only for Categorical Exclusion pathways. Maintenance project sponsors should contact DCR staff to discuss the project's alternative public input before determining which method to follow.

In Summary:

Copies of the letters and database results showing environmental coordination for NEPA, Section 106 of the Historic Preservation Act, Section 7 of the Endangered Species Act, Executive Orders 11988 and 11990, Executive Order 12898 and the Coastal Zone Management Program, a Categorical Exclusion Determination form, and the evidence of a public commenting period must be submitted to DCR in order to close-out the Preliminary Engineering project phase and authorize for Construction.

A complete package of the required documentation should be submitted to recreationgrants@dcr.virginia.gov.

Please reference the checklist in this document and Categorical Exclusion Determination form available at <https://www.dcr.virginia.gov/recreational-planning/trailfnd>. This will serve to summarize all of the information obtained from the required correspondence.