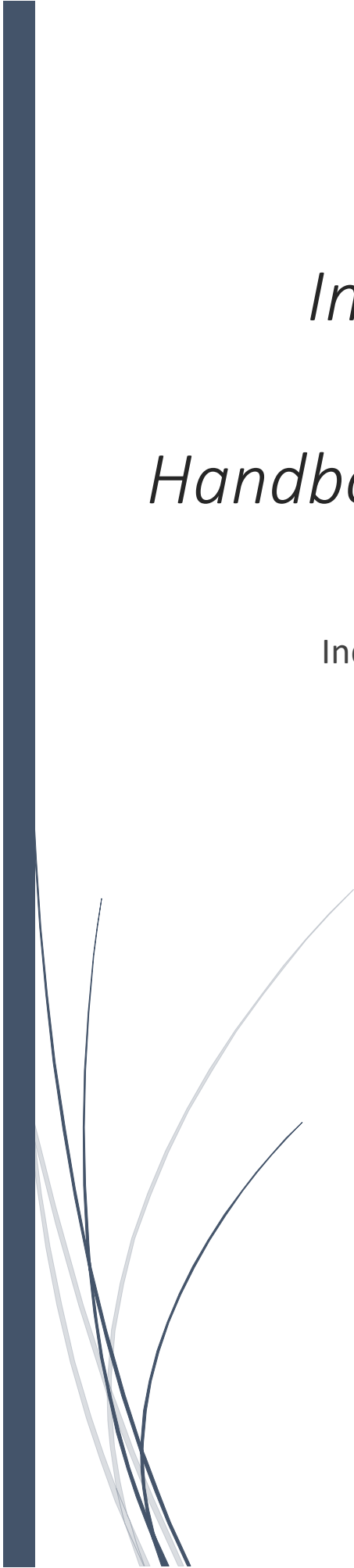


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Indiana Land & Water Conservation Fund Handbook 3: Federal Review and Approval

Indiana Department of Natural Resources
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Indiana Department
of Natural Resources

Handbook 3: LWCF Environmental, Historical, and Cultural Coordination

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Award Timing, Site Visits, and Pre-Award Costs

Federal Review Stages

An LWCF application must obtain three National Park Service (NPS) approvals before the grant can be officially awarded via the Notice of Award (NOA) and subsequent State Grant Agreement (SGA). The NPS approvals include:

1. *Program Officer Approval*: ensures that the project is eligible for LWCF and meets all requirements in the Federal LWCF Manual and 2 C.F.R. 200.
2. *Compliance Officer Approval*: ensures that the project has completed all necessary steps to satisfy NEPA and Section 106 regulatory compliance requirements.
3. *Federal Award Officer (FA) Approval*: double-checks the financial standing of the applicant/subrecipient, and completion of all prior reviews, then executes the NOA.

Cascading Grant Agreements

1. The NOA is the official agreement between the National Park Service and State of Indiana to complete the project, with the local project sponsor as the grant's subrecipient.
2. After the NOA is received, the State will work with the project sponsor to execute the State Grant Agreement (SGA).
3. The SGA enables the State to reimburse the local project sponsor; See LWCF Handbook #5: Pre-Construction Requirements, for more details.
 - a. Expect at least 90 days for the SGA to be fully executed after all information is confirmed.

Federal Funding Cycles

As stated in previous handbooks, federal regulatory review can be time consuming. Regulatory coordination and federal approval timelines are largely affected by two factors (1) the complexity of the project and (2) the quality of documentation submitted to the National Park Service.

Complete applications are only accepted by the National Park Service during certain times of the year. The state application cycle is designed to complement the federal application cycle, but delays in regulatory review processes will compromise the federal award process and timing. Thus, it is critical that federal regulatory review begins as soon as possible after notification of state selection.

If a federal application cannot be completed by NPS's deadlines, then it will be pushed to the next application cycle. There are two federal application windows in a calendar year. If an application misses these application deadlines, the grant is forfeited.

Reimbursement & Pre-Agreement Costs

Except for appraisal services and boundary surveys, most federal approval coordination tasks are eligible for cost-sharing within the LWCF Program. *Federal regulatory coordination should be identified as pre-agreement costs in the project application as they are required for federal approval.*

Documentation requirements for pre-agreement costs are listed in LWCF Handbook #2: Application Instructions. The federal approval phase of the application is the last chance to identify pre-agreement costs for an LWCF project, without requiring a grant agreement amendment.

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Pre-Award Site Inspection

NPS requires that all projects recommended for award are visited by DNR grant staff. The purpose of these inspections is to confirm grant staff's understanding of site conditions. Grant staff will contact project sponsors to schedule site inspections. At least two people from the local project team should be present during the Indiana grant staff inspection.

Caveats

The National Park Service has the final decision-making power and control of the award date. The time between state selection and federal approval is several months long at minimum. It is not unusual for federal review periods to last 10 months or more. The following caveats are applicable during the federal application phase:

1. **Applicants may not engage in any ground disturbing or clearing activities until federal approval is granted.**
 - a. This includes any construction work happening within the project area even if it is not related to the LWCF project.
 - b. Failure to abide by ground disturbance prohibitions at any point may result in the loss of grant funds.
2. *Any change* in site layout or Area of Potential Effect (APE) boundaries effectively re-starts the entire federal regulatory review process.
 - a. Site layouts should be double-checked and confirmed prior to submitting documents to regulatory review agencies to prevent delays.
 - b. This includes after federal approval is granted, during active project administration
3. NPS reserves the right to add pre-award conditions to any grant award. These conditions often prohibit ground-disturbing activities until certain criteria are met (e.g. habitat or species surveys, archeology work, permitting, etc.).

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Federal Regulatory Coordination

After an application is selected by the state, further coordination is needed for National Park Service Review. Most of the federal regulatory processes were started in the state application, to be completed upon selection as a state recommended project. The coordination tasks listed below must be completed prior to federal approval.

Each task has a dedicated instruction section later in this handbook, with links to external resources.

1. Threatened/ Endangered Species, Migratory Bird, and Eagle Impact Assessment
 - a. Applicants will complete regulatory review in the USFWS IPaC System
 - b. Applicants will coordinate with USFWS for concurrence
2. Water and Wetlands Coordination (where applicable)
 - a. Applicants will coordinate with DNR Division of Water, IDEM, and USACE to complete reviews and permitting processes
3. Farmland Review Coordination (where applicable)
 - a. Applicants will coordinate with the Natural Resources Conservation Service (NRCS) and USDA Service Center
4. Section 106 Historic and Cultural Coordination
 - a. Applicants will submit Section 106 information prepared during the state application to the State Historic Preservation Officer (SHPO) for review
 - b. Once all above-mentioned reviews are complete, the National Park Service will conduct THPO coordination
 - c. Archeological review and reports will be conducted on an as-needed basis

Standard Coordination Guidance

Any time a regulatory agency is contacted for environmental coordination purposes, the project sponsor should copy their grant coordinator on the email. At minimum, this includes the review initiation email and the response email with any findings or official determination.

If project sponsors have not engaged a “qualified individual” at this point in the application, now is the time to do so. Failure to engage a “qualified individual” will likely lengthen the federal regulatory review process, and delay NPS approval.

A “qualified individual” generally refers to either a wildlife biologist or environmental scientist. For projects with cultural or historical resources, a qualified archeologist may need to be engaged.

Grant coordinators will submit federal regulatory review documents to NPS on behalf of the project sponsor. A compliance officer at NPS will review all the provided documentation and may ask clarifying questions or request additional information. In these cases, Indiana grant coordinators will act as the translator/ courier between NPS and the local project sponsor.

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Design/Engineering Disclaimer

For large complex projects and projects with sensitive resources within or adjacent to the APE, fully engineered construction plans may be required for federal approval. NPS will need to see the comprehensive final design sufficient for permitting and regulatory review, which could include (but are not limited to):

- Topographical surveys
- Erosion control plans
- Demolition plans
- Hydrology assessments

As a reminder, professional service fees can be identified as *pre-agreement costs*, to be reimbursed after the state grant agreement is in place (~1 year from federal submission).

Section 106 Historical Coordination

Completing SHPO Coordination

A review process for actions proposed to be taken, funded, permitted, or licensed by a federal agency is mandated by Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470f) and is spelled out in regulations of the Advisory Council on Historic Preservation at 36 C.F.R. Part 800).

Post state selection, submit all SHPO documentation to DHPAReview@dnr.IN.gov.

- Generally, SHPO will respond to the initial review request within 30 days.
- SHPO may request additional information or reconnaissance work based on the findings of the Section 106 review.

Until SHPO has the information required to make a preliminary determination of effect on historical and cultural resources, THPO coordination cannot begin at the federal level. As such, it is recommended to submit Section 106 review request to SHPO as soon as is feasible.

Completing THPO Coordination

All LWCF projects must be reviewed and approved by tribes with an interest in the project vicinity whether they reside within or claim ancestral territory in the area. All official **tribal coordination is completed at the federal level between the National Park Service and the Tribal Historic Preservation Officer (THPO)**. During the federal application phase, the applicant may not need to complete further regulatory tasks. However, projects may be required to complete archeological reconnaissance on an as-needed basis.

Completing Archeological Reconnaissance

Applicants may be required to obtain an archeological report, depending on the SHPO and/or THPO review results. For more information about archeological reports, refer to the Division of Historic Preservation's Archaeology Review Guidance Webpage here: dnr.IN.gov/historic-preservation/review-and-compliance/archaeology/#Recording_Archeological_Sites_Cemeteries

In some cases, applicants may be asked to complete archeological work prior to submitting the project for THPO review. When required, applicants should obtain a [Phase 1 Cultural Resource Survey](#) to assist in

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coordination efforts with THPOs. If a cultural resource survey is deemed necessary, the following information should be provided to the DNR grant staff.

1. Contract with scope of work from the archeological firm completing the Phase 1 Cultural Resource Survey.
 - a. To find a qualified archeological firm consult [DHPA's Find Help webpage](#).
2. Completed cultural resource survey results.
3. List of agencies and organizations receiving a copy of the survey results.

Environmental Review: NEPA

The National Environmental Policy Act and LWCF

The National Environmental Policy Act (NEPA) aims to foster excellent decision-making based on an understanding of potential environmental consequences, gather relevant information from a wide variety of sources, provide opportunities for public input, and allow public scrutiny of agency actions. For the LWCF program the NEPA process is used to evaluate potential impacts of proposed actions specifically related to LWCF §6(f)(3) protected areas.

Most LWCF projects qualify for a categorical exclusion (C.E.). However, all projects must undergo some environmental coordination to determine C.E. eligibility including but not limited to the following.

Section 7 Endangered Species Act, and Migratory Bird Treaty Act

All projects must coordinate with the U.S. Fish and Wildlife Service to determine if the project impacts threatened or endangered species in Indiana. This effort is part of the Section 7 Endangered Species Act, and Migratory Bird Treaty Act, portions of NEPA compliance reviews. Further information and technical assistance is available through the U.S. Fish and Wildlife Service Indiana Ecological Services Field Office: fws.gov/office/indiana-ecological-services/library.

Applicants should already have an IPaC species list, generated during the state application process. A species list identifies the threatened or endangered species, and migratory bird and eagle species, within the project vicinity. Now, applicants will finish the coordination process to determine impacts on these species or their habitats.

Completing IPaC: DKeys and USFWS Concurrence

1. Project sponsor's "qualified individuals" must create an IPaC account, starting at: ipac.ecosphere.fws.gov
 - a. If a project sponsor already created a secure IPaC account and IPaC project page, they can grant access to the "qualified individual." Otherwise, a secure account must be created, and an official species list must be generated.
 - b. It is strongly recommended to add the Indiana State Park Grant Coordinator to the IPaC project, so they have access to all relevant documentation.
2. The "qualified individual" will complete any applicable Determination Key (dkey) surveys and generate Technical Assistance letters.
3. If the dkey surveys resulted in any impact determination other than *no effect*, the U.S. Fish & Wildlife Service must provide concurrence for the determination.

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4. The “qualified individual” must email the USFWS Indiana Field Office (IndianaFO@fws.gov), including the following:
 - a. Subject line must include the IPaC project code
 - b. Email attachments must include:
 - i. Species list
 - ii. Technical Assistance letters
 - iii. APE Map and engineered site plan
 - c. Email body must include:
 - i. Project description
 - ii. Determination, and justification, for federally listed species
5. If no response is received from the Indiana Field Office within 30 days, respond to the same email thread to remind the Field Office of the request.
 - a. NPS requires that USFWS concurrence to satisfy the threatened and endangered species component of NEPA review
 - b. If 60 days have passed since the initial review request, and no response has been received, notify your grant coordinator and await further guidance

Completing Migratory Bird and Eagle Review

1. The “qualified individual” must review the Migratory Bird and Eagle portions of the IPaC Species List, including nesting/breeding seasons and probability of presence summaries.
 - a. If any breeding seasons of Migratory Birds overlap with or extends beyond the vegetation-clearing window for Bats in Indiana (October 1 – March 31), the applicant must commit to either:
 - i. Not clearing vegetation within the breeding season for applicable migratory birds
 - ii. Conducting species surveys prior to clearing vegetation, and providing a plan for conducting said surveys
2. The “qualified individual” must write a letter including the above-mentioned reviews, in addition to:
 - a. (As needed) Migratory Bird and Eagle impact mitigation plan
 - b. Providing a justified determination of need to survey for eagles (individuals or habitat), based on the project’s location and IPaC species list
3. The letter and survey plan (where applicable) will be sent to the NPS Compliance Team for review and approval

Water and Wetlands Coordination

Projects that are adjacent to or share property boundaries with a water resource must coordinate with the appropriate regulatory agency to determine if there are any adverse impacts. Applicants should have determined the need for federal coordination and permitting for these resources during the state application process. Now, it is time to officially submit documentation for review and approval.

Federal Coordination

All projects with water resources must coordinate with the U.S. Army Corps of Engineers (USACE) for an official determination of impact. Some examples of areas that may be within the jurisdiction of the

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USACE include wetlands, marshes, swamps, streams, creeks, rivers, ponds, lakes, seasonally saturated forested and non-forested wetlands.

Refer to the USACE Districts in Indiana map to determine which district the LWCF project is in, and corresponding contact information: [IN.gov/idem/waterways/information-about/us-army-corps-of-engineers/](https://www.in.gov/idem/waterways/information-about/us-army-corps-of-engineers/)

State Coordination

Indiana Department of Environmental Management (IDEM) and DNR Division of Water have partnered to create the Indiana Waterways webpage to determine if a permit from either agency is required to complete the project. The National Park Service requires a list of necessary permits as part of the federal application review phase.

The determination of need and draft requests (where applicable) should have been determined in the state application process. Now, it is time to submit the necessary permit requests. Note that these webpages are specific to the most common IDEM and Division of Water permits, grantees may have to reach out to each agency/division in the case of unique circumstances.

- Indiana Waterways Website: [IN.gov/waterways](https://www.in.gov/waterways)
- Indiana Department of Environmental Management: [IN.gov/idem/resources/e-services/](https://www.in.gov/idem/resources/e-services/)
- Indiana Department of Natural Resources; Division of Water: [IN.gov/dnr/water/contact-us/](https://www.in.gov/dnr/water/contact-us/)

Permitting Delays

For projects that have not progressed very far with design/engineering efforts, or have tricky permitting requirements, it is possible to receive federal approval without obtaining permits. However, NPS and LWCF reserves the right to *prohibit all ground disturbing activities until all necessary permits are obtained*.

Wetlands & “Wet Areas”

If the project area has a ‘wet area’ that regularly holds standing water, it is best to check additional resources to determine if it is an official wetland. The National Wetlands Inventory (NWI) mapping tool is used to check if a ‘wet area’ is an official wetland. Wetland Mapper Tool: fws.gov/program/national-wetlands-inventory/wetlands-mapper

NWI data gathered prior to recent area development may not include accurate wetland conditions. When in doubt, contact USACE for a determination of impact. If a formal wetland delineation is needed:

- Provide copies of correspondence and USACE determination for NPS review
- As necessary, amend the cost estimate to include wetland delineation professional fees

Floodplains & Flood Insurance

Projects adjacent to or whose boundary contains water resources must check if the project falls within a Federal Emergency Management Agency (FEMA) Floodplain. NPS uses the FEMA 100-year floodplain as the determination if flood insurance is required.

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If the project is in a floodplain (whole, or in part), the project sponsor must purchase flood insurance to protect the mutual investment in the development of the property.

- Applicants should have determined if their project was within a FEMA floodplain during the state application process.
- Requirements for flood insurance can be found in the [National Park Service LWCF Manual](#).
- Proof of Flood Insurance must be submitted to NPS to receive federal approval

Farmland Review & Coordination

Projects that include acquisition or development of farmland must consult with the Natural Resources Conservation Service in compliance with the Farmland Protection Policy Act (FPPA). Grantees must complete a [Farmland Conversion Impact Rating form](#), and submit a copy to the local United States Department of Agriculture (USDA) Service Center Office.

USDA Service Center Locator Tool:

offices.sc.egov.usda.gov/locator/app?service=page/CountyMap&state=IN&stateName=Indiana&stateCode=18

Federal Approval

Completing Federal Regulatory Review

In accordance with the National Environmental Policy Act (NEPA), the National Park Service will prepare either a Categorical Exclusion (C.E.) or other determination documentation using information provided during the federal review and approval process. Grant staff will notify project sponsors when the C.E. is completed, and the application proceeds to final Federal Award review.

Final Federal Awarding Processes

The National Park Service uses all the information gathered during the federal review process to create a Notice of Award (NOA), the formal federal contract agreement. This document serves three main purposes:

1. Formally allocates the grant amount, from Indiana's available LWCF funding, to a specific project.
2. Determines the grant's period of performance and scope of work.
3. Defines any Award Specific Conditions (ASCs) for the project, if applicable. ASCs typically prohibit ground disturbing activities.
 - a. Grant Staff will share Award Specific Conditions with local subrecipient

Once the NOA is executed, the Indiana LWCF team will notify local subrecipient. See LWCF Handbook #5 for next steps related to the State Grant Agreement (SGA) and pre-construction tasks.