

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Office of Field Operations

DOCUMENT NUMBER: 021-0200-001

TITLE: Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation

EFFECTIVE DATE: May 25, 2013

AUTHORITY: See Appendix E.

POLICY: It is the policy of the Department of Environmental Protection (DEP) to fully support the protection of threatened and endangered species, and special concern species where applicable, during the administration of permit programs. DEP will ensure that permit applicants utilize the Pennsylvania Natural Heritage Program's (PNHP) Pennsylvania Natural Diversity Inventory (PNDI) to achieve those ends. PNDI is the primary source of information utilized by DEP during the permit review process for the protection of threatened and endangered species, and special concern species where applicable.

The PNDI coordination effort facilitates the avoidance and minimization of impacts to threatened and endangered species, and special concern species where applicable, in the Commonwealth of Pennsylvania. PNDI coordination has the benefit of supporting biodiversity conservation and sustainability, when implemented in a manner consistent with the requirements of the laws and regulations implemented by DEP.

PURPOSE: The purpose of this policy is to guide permit applicants in meeting legal requirements related to the protection of threatened and endangered species, and as appropriate, special concern species.

APPLICABILITY: This policy applies to applicable DEP permits and authorizations. It also applies to County Health Departments and County Conservation District permit review staff when conducting delegated duties on behalf of DEP. The policy is not to be applied where it conflicts with statutory or regulatory requirements.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. Nothing in this policy is intended to modify the provisions of existing agreements, or program-wide consultations and biological opinions.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 22 pages (including appendices)

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1. DEFINITIONS:

Critical Habitat: *The specific areas within the geographic area occupied by a threatened or endangered species designated in accordance with the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq., that exhibit those physical and biological features essential to the conservation of the species and which may require special management considerations or protections.*

Impact: *A negative effect on a plant or animal species, including destruction of species and loss of critical habitat.*

Jurisdictional Agencies: *Pennsylvania Department of Conservation and Natural Resources (Bureaus of Forestry and Topographic and Geologic Survey), Pennsylvania Fish and Boat Commission, Pennsylvania Game Commission, and U.S. Fish and Wildlife Service.*

Permit: *Authorizations issued by DEP, giving approval to perform a regulated activity. For the purpose of this policy, “permits” includes the authorization types such as: permits, plan approvals and registrations under general permits. This definition does not include certifications and licenses.*

Permit Application: *An application, notice of intent, request for plan approval, registration or other request for a permit.*

Permitted Activity: *An activity requiring a permit under laws and regulations administered by DEP.*

Rare and Significant Ecological Features: *Non-species resources identified on a PNDI Receipt. These may include unique geological features, significant natural features or significant natural communities.*

Special Concern Species: *Plant and animal species that are not listed as threatened or endangered by a jurisdictional agency, but are identified on a PNDI Receipt as an at risk species. These include: (1) plant and animal species that are classified as rare, vulnerable, tentatively undetermined or candidate, (2) taxa of conservation concern and (3) special concern plant populations.*

Threatened and Endangered Species: *Those animal and plant species identified as a threatened or endangered species, as determined under: Endangered Species Act of 1973, 16 U.S.C.A. § 1531 et seq.; Wild Resources Conservation Act, 32 P.S. § 5301; Fish and Boat Code, 30 Pa. C.S.A. § 101 et seq.; and Game and Wildlife Code, 34 Pa. C.S.A. § 101 et seq. This also includes animal and plant species proposed for listing as endangered and threatened, pursuant to the Endangered Species Act of 1973, 16 U.S.C.A. § 1531 et seq.*

2. BACKGROUND

The Pennsylvania Natural Diversity Inventory

The Pennsylvania Natural Diversity Inventory (PNDI) refers to the database informing the Environmental Review Tool. The PNDI system is managed by the Department of Conservation

and Natural Resources (DCNR) in order to build, maintain and provide accurate and accessible ecological information needed for conservation, development planning, natural resources management and for protection of threatened and endangered species (T&E Species), special concern species, and rare and significant ecological features.

Inventories are conducted and data is collected to identify and describe the Commonwealth's ecological information. This information is entered into the PNDI database. Site-specific information describing this information is stored in an integrated data management system consisting of GIS-based layers and accompanying data, thus comprising the PNDI information system. The PNDI information system is continually updated.

Plant and animal species tracked within the PNDI information system include those classified as threatened and endangered, as well as special concern species classified as rare, tentatively undetermined or candidate. These classifications are provided by DCNR, Pennsylvania Game Commission (PGC), Pennsylvania Fish and Boat Commission (PFBC), and the U.S. Fish and Wildlife Service (USFWS). Species are recommended for state-listing by each jurisdictional agency with guidance by species technical committees in the Pennsylvania Biological Survey.

The PNDI system contains only those *known* occurrences of T&E Species, special concern species and rare and significant ecological features. Therefore, the absence of a record in the PNDI system does not mean that there are not threatened or endangered, or special concern species, or rare or significant ecological features on any particular site.

Advantages of Early Coordination

Early coordination (prior to permit application), by prospective applicants and their consultants with the appropriate jurisdictional agencies using the PNDI system is the most effective means of timely permit decision. The online PNDI Environmental Review Tool ("PNDI ER Tool") (accessed at www.naturalheritage.state.pa.us) is essential in guiding prospective applicants. For example, jurisdictional agencies may recommend season specific surveys to determine potential impacts. If applicants are aware of such requests early in the project development process, it may be possible to complete surveys without delaying the project. In addition, early awareness of threatened or endangered species, and where applicable special concern species, can minimize the likelihood of Potential Impacts requiring plan amendments or other modifications to projects during the permit review process.

Rare and Significant Ecological Features

The procedures and policies set forth in this document are focused on Potential Impacts on specific species in the PNDI database, including T&E Species, as well as special concern species. The PNDI database also tracks rare and significant ecological features that are not necessarily tied to a specific protected species (e.g., the serpentine barrens of Pennsylvania). If a PNDI Receipt generates a Potential Impact for a rare and significant ecological feature, the applicant and permit reviewer should consult the appropriate regulatory chapter covering the permit application for any specific requirements applicable to DEP's review of potential impacts to non-species specific features.

3. POLICY AND PROCEDURES FOR PERMIT APPLICANTS

A. PNDI Environmental Review Tool

In order to assist applicants in complying with DEP's regulatory requirements, DEP, the PNHP partners and/or cooperators, which include, DCNR, PGC, PFBC, Western Pennsylvania Conservancy and USFWS, have developed the PNDI ER Tool.

The PNDI ER Tool is a user-friendly interface that enables the public, including applicants, consultants and project planners to perform PNDI project screenings online. DEP and Conservation District staff can also access the PNDI ER Tool for project screening.

The online PNDI ER Tool can be accessed at www.naturalheritage.state.pa.us. For information on how to use the PNDI ER Tool, click the link directly below the tool titled "How to use the ER Tool."

B. Project Area & Large Projects

It is important that the correct and accurate project area and project type is entered into the PNDI ER Tool. See Appendix A for more details on determining the project area and type.

Some projects are too large to be drawn in the PNDI ER Tool and are therefore called "Large Projects." A Large Project is identified by the limitations of the PNDI ER Tool. Large Projects should be submitted directly to all four jurisdictional agencies listed in Appendix D. The jurisdictional agencies will review the project and provide a response.

If a project is considered a Large Project, applicants should forward a completed PNDI Form (Appendix B) and a copy of a USGS 7.5 minute quadrangle map (or equivalent) with project boundary and quad name marked on the map to each of the jurisdictional agencies mentioned in Appendix D. Large Projects should not be submitted in parts. The entire project area including roads and infrastructure should be submitted as a single unit to the jurisdictional agencies. Please mail only one (1) copy of the project review request to each agency. [Do not email the project information unless the jurisdictional agency allows it.] Allow approximately 30 days from agency receipt of the review request for a response. To request the status of a review at any time, the applicant may contact the jurisdictional agencies using the contact information listed in Appendix D.

C. Large Project Form

To facilitate PNDI coordination, DEP, PNHP and coordinating jurisdictional agencies have developed the PNDI environmental review Large Project Form ("PNDI Form") (See Appendix B).

The PNDI Form can be accessed from the PNHP website www.naturalheritage.state.pa.us or obtained from DEP and County Conservation District offices. The most up-to-date PNDI Form is available at the following web address: www.gis.dcnr.state.pa.us/hgis-er/hgis/PNDI%20Large%20Project%20Form.doc.

The PNDI Form can be submitted to DEP to perform the PNDI online search if the applicant does not have Internet access.

Applicants will then submit the PNDI Receipt to jurisdictional agencies for further review as described below. Also, applicants should submit the PNDI Form directly to the jurisdictional agencies for PNDI review if a project is considered a “Large Project”.

D. Environmental Review Tool Questions

During the screening process, the online PNDI ER Tool sometimes generates questions based on the project type, location or the species present in the area. Answers to these questions may reduce the need for further coordination with jurisdictional agencies.

If questions arise while using the online PNDI ER Tool, the applicant must answer them to the best of their knowledge. The results of the search are based on answers provided; if answers given to these questions are later found to be inaccurate, the search must be conducted again based on the correct information.

E. PNDI Receipt

The online PNDI system generates a search “receipt” entitled *PNDI Project Environmental Review Receipt* (“PNDI Receipt”). This PNDI Receipt contains important information regarding any T&E Species, special concern species, and rare and significant ecological features for each PNDI screening.

- PNDI Receipts are not automatically submitted to DEP or the jurisdictional agencies. The person conducting the online screening must submit the PNDI Receipt to DEP with their permit application. Where applicable, the receipt must be submitted to the jurisdictional agencies indicated on the PNDI Receipt.
- The PNDI Receipt will indicate that there are either “No Impacts,” or that there are “Potential Impacts,” “Avoidance Measures,” and/or “Conservation Measures” within the project area.
- Indication of a Potential Impact, an Avoidance Measure, or a Conservation Measure is commonly referred to as a “Potential Impact.”
- The applicant should follow the directions on the PNDI Receipt as to which agency(ies) should be sent a copy of the PNDI Receipt and all necessary project description documents.
- PNDI Receipts contain both standard language and information specific to a particular search. When a PNDI Receipt is submitted to DEP as part of the permit review process, DEP staff will review the details of the PNDI Receipt to verify that it is complete, has the correct project information, and is signed and initialed where required.

- It is important that the details on the PNDI Receipt closely match the project type, size, and location of the project submitted for the permit application. The results of the PNDI screening are valid only if the information entered is accurate. If the PNDI Receipt information is inconsistent with other information available regarding the project, the online PNDI screening must be re-run and any Potential Impacts resolved.
- PNDI Receipts are valid for two years from the date of the screening or two years from the issuance of a clearance letter or other resolution of a Potential Impact with a jurisdictional agency (whichever is later). If a permit application is submitted or a DEP permit decision is rendered more than two years after the later of the initial PNDI Receipt, clearance letter or resolution, then a new PNDI screening is required.
- The PNDI screening is valid only for the specific location and project for which it was run and is documented on the PNDI receipt.
- PNDI receipts, clearance letters, determinations and other resolutions of a potential **species** impact with a jurisdictional agency are valid for a permitted activity occurring within the specific location or project area **identified and documented on the PNDI receipt** during the two-year term. If the same applicant applies for subsequent permit(s) within the project area identified and documented on the PNDI receipt within the two-year term, then the applicant will not be required to conduct a new PNDI screening for the subsequent permit application, provided the applicant submits a copy of the PNDI receipt clearance letter, determination, or other resolution with the subsequent application.
- The PNDI database is not the only means to identify T&E Species that may be affected by a proposed DEP permitted activity. Evidence of the presence of T&E Species may be provided by recent field observations that are not or were not yet reflected in the PNDI database when the original PNDI screening was performed. Such evidence of the presence of T&E Species may trigger the regulatory requirements under the statutes and regulations identified in Appendix E, even in the absence of a Potential Impact identified by the PNDI screening.

F. Jurisdictional Agency Consultation

The jurisdictional agency to be consulted is determined by the species present, and the applicable state and federal regulations (see Appendix C, E). These agencies include DCNR (Bureaus of Forestry and Topographic and Geologic Survey), PFBC, PGC and USFWS.

Consultation with a jurisdictional agency usually involves an examination of detailed project, site and species information. The jurisdictional agency will often request detailed information about the project in order to complete its review.

If the jurisdictional agency determines that the information provided is not sufficient to show that there will be no impact on the species, a field review/survey may be recommended to determine any potential impacts. If an applicant has objections to such

a request, it should in the first instance contact the jurisdictional agency and attempt to resolve the issue. If after this consultation, the applicant continues to have objections to a study request, it should contact DEP. DEP, after consultation with the applicant and the jurisdictional agency, will make the final decision on the need for and scope of a field review/survey.

If requested, the applicant should provide a mitigation plan to avoid, minimize, or otherwise mitigate impacts during project construction as well as after project completion.

In resolving Potential Impacts under the PNDI process, DEP must make its own independent determination during the permit review process. The final decision-making authority to (1) determine the need for and scope of any studies recommended by the jurisdictional agencies; (2) implement or require any avoidance, minimization, or mitigation for T&E Species, special concern species or rare and significant ecological features; and/or (3) approve or deny any permit application rests solely with DEP.

G. Special Concern Species

DEP permit review staff will ensure protection of T&E Species as required by regulations governing the applicable permit, using this Policy as a guide. Protection of other species, called “Special Concern Species” in this Policy, is a legal requirement only under certain permitting programs:

1. Chapter 105: Dams, Obstructions and Encroachments.
2. Chapters 86-90: Mining.
3. Chapters 271, 273, 275, 277, 279, 281, 283, 284, 285, 287, 288, 289, 293, 295, 297 and 299: Municipal and Residual Waste.
4. 2012 Oil and Gas Act, 58 Pa.C.S. § 3215.
5. Chapter 71: Sewage Facilities Planning Program.

Appendix C contains procedures to follow to ensure compliance with these requirements.

For the above listed programs, the jurisdictional agency may request the applicant to perform a survey for special concern species as a part of the consultation process. If the applicant and jurisdictional agency cannot agree upon either the need or the scope of any survey, then the applicant or jurisdictional agency may contact DEP lead reviewer. DEP retains the sole discretion on whether a survey should be conducted as a part of the permit technical review and scope of any such survey. If there is a disagreement between the applicant and the jurisdictional agency regarding a study for a species of special concern, the following procedure should generally be followed:

- 1) Discuss the study request with the applicant and with the jurisdictional agency.

- 2) If necessary, consult with the appropriate specialist (e.g., biologist) within DEP on the need and scope of any survey requested for the purposes of DEP's permit review process.
- 3) Make a determination whether a survey is necessary and if it is necessary, determine the scope of the survey.
- 4) Document the decision. For example, "A survey of [insert species of special concern] was requested by the [jurisdictional agency] to be performed by the applicant. Upon review of the available information and after consultation with the applicant and the jurisdictional agency, the potential effect upon the species of special concern [has been/has not been] demonstrated in such a manner to justify a survey for the species as a part of this permit application review. [Insert the factual context and specific rationales for decision.]"

H. Options For Permit Applicants

There are two options available to permit applicants for handling PNDI coordination in conjunction with DEP's permit review process involving either T&E Species or species of special concern (as applicable in Section G): Sequential Review and Concurrent Review.

1. Sequential Review

Sequential Review has been the traditional review process for T&E species. Under sequential review, the permit applicant runs the PNDI search and completes all coordination with the appropriate jurisdictional agencies prior to submitting the permit application. The applicant will include with its application, both a PNDI receipt and a clearance letter from the jurisdictional agency if the PNDI Receipt shows a Potential Impact to a species. Because the PNDI ER Tool is easily accessible to the public, it is recommended that PNDI coordination be completed prior to project development and submission of the permit application.

2. Concurrent Review

Where feasible, DEP will allow technical review of the permit to occur concurrently with the T&E species consultation with the jurisdictional agency.¹ The applicant must still supply a copy of the PNDI Receipt with its permit application. While DEP is commencing its completeness and technical review of the application, the applicant will engage in any consultation with the jurisdictional agencies as indicated on the Receipt.

¹ A concurrent review may not be feasible depending on the structure of the applicable regulatory requirements. For example, the Waste Program will not be able to complete its harms/benefits environmental assessment review without all of the information related to the impacts that the proposed facility would have to the areas/features listed in §§ 271.127 and 287.127, including T&E Species. All harms and mitigation measures must be identified. Any remaining (unmitigated) harms must then be balanced against the benefits of the facility. This evaluation of the Environmental Assessment occurs in Phase I of permit review or prior to technical review.

It is important to note, however, that the concurrent review option, if it is chosen, carries certain risks and consequences to the applicant. First, the permit generally will not be issued until the Potential Impact has been resolved, resulting in a delay for the applicant. This delay is noted in the Department's Permit Review Process and Permit Decision Guarantee Policy, Document No. 021-2100-001 (PRP/PDG Policy) as a possible processing delay that could extend the permit review timeframes. Second, the proposed activity subject to the permit application may need to be redesigned as a result of the PNDI consultation. Pursuant to the PRP/PDG Policy, any substantive project or design changes to that application made by the applicant will require a new application and fee to be submitted.

If an application is submitted for concurrent review, the application should be submitted to DEP along with the PNDI Receipt, a completed PNDI Form and a U.S.G.S. 7.5 minute quadrangle map with the project boundaries delineated on the map. The PNDI Receipt should also be submitted to the appropriate jurisdictional agency according to directions on the PNDI Receipt. Consultation between the applicable jurisdictional agencies may continue during DEP's review of the permit application, depending on the nature of the PNDI Receipt. DEP will consider the recommendations made by those agencies, comments by the applicant, applicable regulatory and statutory requirements, and any other information obtained from DEP staff, when making the permit decision.

I. Exemptions and Emergencies

The following applications are considered exempt from the requirements to conduct a PNDI search and proceed through the steps outlined above:

- Applications for modifications to the operation and management of existing facilities that do not involve new activities having potential impacts to T&E Species, or Special Concern Species where applicable,
- Applications for permit renewals with no significant changes to previously authorized activities,
- Emergency undertakings, and
- Emergency response actions, including the issuance of emergency permits.

An emergency undertaking is one that requires an immediate response to an imminent threat to public health, safety, property or the environment. Examples of emergencies may include responses to natural disasters or major environmental accidents. When addressing an emergency, DEP will take appropriate steps to protect T&E Species and Critical Habitat and special concern species as the situation allows. Some emergencies may require follow-up permits, which may not be exempt from PNDI coordination.

J. Resolution of PNDI Screening Results

The PNDI Receipt will determine whether the process is completed (because there are no potential impacts), or whether further actions are needed. If the PNDI Receipt indicates

further action, it will direct the applicant to the appropriate jurisdictional agency(ies) to resolve the Potential Impact(s).

1. No Impact

In general, if the PNDI Receipt indicates that there are no potential impacts to T&E Species, or to special concern species where applicable, then DEP will require no additional information.² To document that the PNDI process has been completed, copies of the PNDI Receipt must be submitted to DEP. No further action is necessary regarding PNDI coordination. If there is a Potential Impact for a special concern species, the applicant is not required to take further action except for permits described in Section 3.G above. A PNDI Receipt showing a response of “No Further Review Required” under the Search Results portion of the Receipt shall serve as the Clearance Letter from the jurisdictional agency.

2. Potential Impacts

A “Potential Impact” PNDI Receipt means the project is located in the vicinity of T&E Species, or a special concern species and needs to be reviewed in more detail by the jurisdictional agency/ies indicated on the PNDI Receipt. Where potential impacts are identified, the PNDI Receipt will provide appropriate jurisdictional agency contact information to facilitate further review and coordination. The PNDI Receipt lists the types of information that the jurisdictional agency requests in order to resolve any Potential Impacts. Avoidance Measures can be found directly on the PNDI Receipt which allows the applicant to commit to implementing as described below.

Once the Potential Impacts are resolved with the jurisdictional agency(ies), the agency(ies) will issue a “Clearance Letter.” The Clearance Letter serves to document that there are no longer any Potential Impacts, in the opinion of the applicable jurisdictional agency. Clearance Letters may contain measures to avoid, minimize or mitigate impacts to T&E Species or a species of special concern. The Clearance Letter must be submitted to DEP as part of the permit review process. DEP will consider the Clearance Letter when making its permit decision. The Clearance Letter may also encompass other resolutions to the potential impacts, including biological opinions and programmatic consultations provided by the jurisdictional agencies or incidental take permits issued by the USFWS.

If the applicant believes that it cannot resolve the Potential Impacts but still wants to proceed with the permit application, the applicant must contact DEP and provide the relevant information. DEP will consider the information when making its permit decision. DEP has a strong preference for Clearance Letters to

² One exception is for bog turtles under the Chapter 105 program and the coordinated federal process with the U.S. Army Corps of Engineers Section 404 permits under the Clean Water Act. If the proposed activity will impact wetlands in certain specified southcentral and southeastern counties, the applicant will have to complete a Bog Turtle Screening Form, available from DEP or the appropriate County Conservation District and coordinate with the appropriate jurisdictional agencies regardless of whether the PNDI Receipt shows “No Impact.”

demonstrate compliance with legal requirements, although DEP may use its discretion to make its permit decisions.

3. Avoidance Measures for T&E Species

A PNDI Receipt sometimes indicates Avoidance Measures. Avoidance Measures are automatically produced steps the applicant can take to avoid impacting the species. Avoidance Measures do not require consultation with the jurisdictional agencies if they are implemented. The applicant can document its commitment to conduct the Avoidance Measure by indicating this on the PNDI Receipt.

However, if the applicant chooses not to conduct the Avoidance Measure described on the PNDI Receipt, the applicant must contact the jurisdictional agency for consultation. If the Potential Impact is not resolved, the applicant may contact DEP and provide relevant information. DEP will confer with the jurisdictional agency(ies) involved, and consider the recommendations made by the jurisdictional agency(ies), comments by the applicant and any other information, when making the permit decision.

When a Receipt with Avoidance Measures for T&E Species is submitted as part of DEP permit application process, DEP staff should verify that the Avoidance Measures were initialed on the PNDI Receipt. By initialing the measures, the applicant agrees to implement them, and this needs to be indicated in the permit issued by DEP.

Avoidance Measures should be included by the applicant in the Project Description for applications for coverage under General Permits. For individual permits, the Avoidance Measures should be included in the Project Description contained in the permit application and may be added as conditions of the permit.

4. Conservation Measures for Species of Special Concern

The PNDI ER Tool sometimes generates Conservation Measures. These Conservation Measures are scientifically based guidance meant to reduce further impact to species in the vicinity of the project. Conservation Measures are encouraged to be followed in their entirety and may be pursued at the discretion of the project applicant. In addition, for the permits under the programs in Section 3.G, DEP retains the discretion to include the conservation measures as a condition in the permit.

Appendix A: Determination of Project Type and Area

In order for a PNDI search to be valid, it is important that the correct project area and type is entered into the PNDI Environmental Review Tool (“PNDI ER Tool”).

Determining Project Type

Select the Type of project that is being submitted from the project list provided. There are often secondary and tertiary selections that greater define the project type. Project Type is a VERY important component of the PNDI ER Tool—please be sure to choose the category that BEST describes the project. You may browse alternate project types, then return to the main menu by pressing the “Back” or “Project Type” buttons.

Locating the Project

Project areas can be navigated within the PNDI ER Tool by any of five different methods: municipality, USGS quad name, street address, zip code or latitude/longitude.

Determining Project Areas

For purposes of PNDI searches, the Project Area is the entire site in question. If there is a 200-acre subdivision, but the permit application is for a stream crossing only—the entire 200-acre subdivision is the Project Area. This procedure is so that all potential areas of earth disturbance are reviewed for possible impacts. If new access roads, utility lines, etc., will be constructed as part of the project they must be included in the total project disturbance area.

Drawing Project Areas

Projects can be drawn within the PNDI ER Tool three different ways: points, lines, and shapes.

Points: Should only use when the area of disturbance will be less than five acres (e.g. cell towers, oil wells, culvert replacements, minor bridge repairs).

Lines: Use for linear projects (e.g. roadway repair, sewer lines, transmission lines).

Polygons: Use polygons whenever possible. It best describes the footprint of the project because it outlines the project boundary. Can be used for all project types (e.g. residential development, new buildings, timber sales).

Appendix B: PNDI Form



Pennsylvania Natural Diversity Inventory LARGE PROJECT FORM

How to Use the PNDI Large Project Form

If your Project is a “Large Project”— too large/long to search on the online system

Projects are considered “Large Projects” when the ENTIRE project is:

- Linear/Large Projects that exceed the PNDI online project size limits of 10 miles in length or 5165. acres
- Township-wide, Countywide or Statewide Projects. Examples: Act 537 Sewage Plans, Wind Farms, Roadway Improvements exceeding map limits above.

Due to system limitations and agency requirements, projects should not be submitted piecemeal. The entire project area including roads and infrastructure should be submitted as a single unit.

What to Send to Jurisdictional Agencies

Send the following information to all of the agencies listed on the Large Project Form.

Check-list of Minimum Materials to be submitted:

- Completed Large Project Form
- Supplemental project narrative with a description of the overall project, the work to be performed, current physical characteristics of the site and acreage to be impacted.
- USGS 7.5-minute Quadrangle with project boundary clearly indicated, and quad name on the map

The inclusion of the following information may expedite the review process.

- GIS shapefiles depicting the project extent
- A basic site plan (particularly showing the relationship of the project to the physical features such as wetlands, streams, ponds, rock outcrops, etc.)
- Color photos keyed to the basic site plan (i.e. showing on the site plan where and in what direction each photo was taken and the date of the photos)
- Information about the presence and location of wetlands in the project area, and how this was determined (e.g., by a qualified wetlands biologist), if wetlands are present in the project area, provide project plans showing the location of all project features, as well as wetlands and streams

PNDI Large Project Form Definitions

Applicant: Person that owns the property or is proposing the project or activity

Contact Person: Person to receive response if different than applicant (e.g. Consultant)

Project Name: Descriptive title of project (e.g. Twin Pines Subdivision, Miller Bridge Replacement)

Proposed Activity: Include ALL earth disturbance activities for project (e.g. for a timber sale—include stream crossings, cutting areas and new roadway accesses). Also include Current Conditions (e.g. housing, farmland, current land cover), and how Construction/Maintenance Activity is to be accomplished

Total Acres of Property: Entire site acreage (e.g. timber sale property—including road access (200 acres)

Acreage to be Impacted: Disturbance acreage (e.g. timber sale—if the property is 200 acres, but only 100 acres will be disturbed, for example: cutting on 90 acres, a road impacting 10 acres); include all temporary and permanent activities



Pennsylvania Natural Diversity Inventory

Pennsylvania Natural Diversity Inventory

LARGE PROJECT FORM

This form provides site information necessary to perform an Environmental Review for special concern species and resources listed under the Endangered Species Act of 1973, the Wild Resource Conservation Act, the Pennsylvania Fish and Boat Code or the Pennsylvania Game and Wildlife Code.

Applicant Information

Name:

Address:

Phone Number:

Fax Number:

Contact Person Information - if different from applicant

Name:

Address:

Phone Number:

Fax Number:

Email:

Project Information

Project Name:

Project Reference Point (center point of project): Latitude: Longitude: Datum:

Municipality: County:

Attach a copy of a U.S.G.S. 7 ½ Minute Quadrangle Map with Project Boundaries clearly marked.

U.S.G.S. Quad Name:

Provide GIS shapefiles showing the project boundary (strongly recommended)

Project Description

Proposed Project Activity (including ALL earth disturbance areas and current conditions)

Total Acres of Property: Acreage to be Impacted:

1. Will the entire project occur in or on an existing building, parking lot, driveway, road, maintained road shoulder, street, runway, paved area, railroad bed, or maintained lawn? Yes No
2. Are there any waterways or waterbodies (intermittent or perennial rivers, streams, creeks, tributaries, lakes or ponds) in or near the project area, or on the land parcel? If so, how many feet away is the project?
Yes Feet No
3. Are wetlands located in or within 300 feet of the project area? Yes No If No, is this the result of a wetland delineation?
4. How many acres of tree removal, tree cutting or forest clearing will be necessary to implement all aspects of this project?

Dept. of Conservation and Natural Resources

Bureau of Forestry, Ecological Services Section
400 Market St., PO Box 8552
Harrisburg, PA 17105
fax: 717-772-0271

PA Fish and Boat Commission

Natural Diversity Section
450 Robinson Lane
Bellefonte, PA 16823

PA Game Commission

Bureau of Wildlife Habitat Management
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Appendix C: Procedures for Special Concern Species

The individual regulatory chapters administered by DEP vary widely in scope and language with respect to the treatment of special concern species in the permit application review process. Appendix C is meant as a resource to briefly outline the applicable regulatory language relative to special concern species and the appropriate legal mechanism for review of issues related to protection of special concern species.

1. Chapter 105: Water Obstructions and Encroachments

Chapter 105 requires DEP to address impacts to wildlife in general, in addition to those on the official list of T&E Species. Section 105.13(d)(1)(x) requires the application to include an impacts analysis of potential impacts to “fish and wildlife” and “aquatic habitat.” Section 105(14) provides with respect to DEP’s permit application review:

- (b) In reviewing a permit application under this chapter, the Department will use the following factors to make a determination of impact:

- (4) The effect of the dam, water obstruction or encroachment on ...fish and wildlife, aquatic habitat...
- (5) The impacts...on...natural areas, wildlife sanctuaries...

Section 105.16 requires a process to be followed by DEP if there may be an impact on these species and non-wetland resources.

However, DEP has discretion with regard to evaluating impacts to special concern species and resources, and in deciding how they should be addressed. For Chapter 105 permits, if the applicant objects to a request made by a jurisdictional agency regarding a special concern species or resource, it may communicate that to DEP. DEP will then determine: (1) if there is a potential impact to a special concern species or resource; (2) if that impact would be “adverse;” (3) if the applicant has made sufficient efforts to reduce or mitigate the adverse impact; and (4) whether the public benefits of a project outweigh the remaining adverse impacts to the special concern species or resource. Those public benefits include, among other things, correction and prevention of pollution, protection of public health and safety, development of energy resources, and creation or preservation of significant employment. 25 Pa. Code § 105.16(b).

2. Chapters 86-90: Mining

Chapters 86-90 afford protection to species not listed as threatened or endangered. The permit criteria in Chapter 86 serve as a general overlay to the more specific rules and procedures governing the issuance of permits under Chapters 87-90, relating to specific types of coal mining activities. There are several provisions that require DEP to look at wildlife more broadly than just T&E listed species.

- 25 Pa. Code § 86.37(5) provides that mining may not be conducted on lands subject to the limitations or prohibitions of Subchapter D. Section 86.102 provides that mining activities may not be conducted on state forest, state park or state game lands, but limited mining may be conducted on those lands if significant land and water conservation benefits will result when remining of previously mined land is proposed and/or there will not be significant impacts to wildlife. 25 Pa. Code § 86.102(4), (5) and (6).
 - 25 Pa. Code § 87.50 requires an application to include fish and wildlife resource information for the proposed permit area in order to design the fish and wildlife protection and enhancement plan mandated by 25 Pa. Code § 87.84. This fish and wildlife protection and enhancement plan is intended to provide a description of how the applicant will minimize disturbances and adverse impacts on fish and wildlife and related environmental values.
 - 25 Pa. Code § 88.33 requires an applicant to submit fish and wildlife resource information with the permit application specific enough for an applicant to design a fish and wildlife protection and enhancement plan. The fish and wildlife protection and enhancement plan specifies the ways in which an applicant will minimize disturbances and adverse impacts on fish and wildlife and related environmental values. 25 Pa. Code § 88.62.
 - Chapter 89 requires an applicant to include an operation plan and a reclamation plan in the application package. The operation and reclamation plans both require an operator to meet certain performance standards relating to the protection of fish, wildlife and related environmental values in order to minimize disturbances and adverse impacts on fish and wildlife. 25 Pa. Code §§ 89.65 & 89.82. The reclamation plan further requires an operator to provide fish and wildlife resource information with the application. 25 Pa. Code § 89.74.
 - 25 Pa. Code § 90.18 requires the submission of fish and wildlife resources information with an application. This information is to be used by the applicant to design and implement a fish and wildlife protection and enhancement plan to minimize disturbances and adverse impacts on fish and wildlife and related environmental values. 25 Pa. Code § 90.48.
3. Chapters 271, 273, 275, 277, 279, 281, 283, 284, 285, 287, 288, 289, 293, 295, 297 and 299:
Waste Management

25 Pa. Code §§ 271.127 and 287.127 (relating to environmental assessment) at subsections (a) require a permit applicant to include at a minimum a detailed analysis of the potential impact of the proposed solid waste facility on the environment, including fish and wildlife, plants, aquatic habitat, threatened or endangered species and water uses. The applicant shall also consider features such as scenic rivers, state and Federal forests and parks, historic and archaeological sites, national wildlife refuges, state natural areas, national landmarks, wetlands, special protection watersheds designated under Chapter 93 and other features deemed appropriate by DEP. The permit application shall also include all correspondence received from any State or Federal agency contacted as part of the environmental assessment. Subsections (b) provide that the environmental assessment shall describe the known and potential environmental harms of the

proposed project and provide a written mitigation plan that explains how the applicant plans to mitigate each harm and describes any harms that may not be mitigated. DEP reviews the assessment and mitigation plans to determine whether there are additional harms and whether all harms will be mitigated. In doing this review, DEP will evaluate each mitigation measure and will collectively review mitigation measures to ensure the individually and collectively they adequately protect the environment and the public health, safety and welfare. With respect to siting criteria, the following regulatory sections apply: 25 Pa. Code §§ 273.202, 275.202, 277.202, 279.202, 281.202, 283.202, 284.220, 284.320, 285.134, 287.127, 287.661-662, 288.202, 288.422, 288.522, 288.622, 289.422, 289.522, 293.202, 295.202, 297.202, 299.144, 299.153 and 299.158.

4. 2012 Oil and Gas Act

Section 3215(c) of the 2012 Oil and Gas Act requires the department, on making a determination on a well permit, to consider the impact of the proposed well on public resources, including the habitats of rare and endangered flora and fauna and other critical communities. 58 Pa.C.S. § 3215(c)(4). The department has historically and continues to interpret “other critical communities” to include special concern species.

The Department is currently developing regulations to implement the 2012 Oil and Gas Act. These regulations are expected to address this provision. In the meantime, the department will utilize the following process to meet the statutory requirements.

Well permit applicants must, as part of the well permit application, identify the habitats of special concern species where the proposed well site or access road will be located and describe any means proposed to be taken to avoid or mitigate impacts to special concern species. The applicant must provide documentation that it has completed an online PNDI Environmental Review. If there is a conflict with a special concern species, the applicant must notify the applicable agency(ies) regarding potential impacts as indicated on the PNDI receipt. The applicant should consult with the applicable agency(ies) to avoid and mitigate impacts to special concern species. Additionally, the applicant should conduct any Avoidance Measures recommended by the agency(ies), and is encouraged to follow any Conservation Measures. The applicant should submit any other relevant information to the Department to aid in its consideration of the impacts to special concern species. The department will consider the impacts to special concern species and review the applicant’s avoidance and mitigation measures, if any.

5. Chapter 71: Sewage Facilities Planning

Under Chapter 71, a municipality must prepare and submit an official plan to meet the sewage needs of the municipality. The plan must undergo an alternatives analysis for various sewage disposal practices adopted by the plan. DEP evaluates each alternative listed in response to paragraph for, among other things, protection of rare, endangered or threatened plant and animal species as identified by the Pennsylvania Natural Diversity Inventory.

Appendix D: Jurisdictional Agency Contact List

For information on the current official status of a species, please consult the appropriate agency, as listed below.

1) PLANTS AND PNDI

DCNR has responsibility for managing the Commonwealth's native wild plants, as well as overall management of PNDI database/operations. DCNR also maintains locational information of terrestrial invertebrates, significant natural communities and geologic features.

Department of Conservation and Natural Resources

Bureau of Forestry, Ecological Services Section
400 Market St.
P.O. Box 8552
Harrisburg, PA 17105-8552
717-787-3444
Fax: 717-783-5109

2) FISH, REPTILES, AMPHIBIANS AND AQUATIC ORGANISMS

The PFBC is responsible for the management of fish, reptiles, amphibians and aquatic organisms.

Pennsylvania Fish and Boat Commission

Natural Diversity Section
450 Robinson Lane
Bellefonte, PA 16823
814-359-5237
Fax: 814-359-5175

3) BIRDS AND MAMMALS

The PGC has the responsibility for managing the state's wild birds and mammals.

Pennsylvania Game Commission

Bureau of Wildlife Habitat Management
Division of Environmental Planning and Habitat Protection
2001 Elmerton Avenue
Harrisburg, PA 17110-9797
717-787-6818
Fax: 717-787-6957

4) FEDERAL STATUS SPECIES

The USFWS is responsible for federally listed, proposed and candidate species under the Federal Endangered Species Act; this responsibility is shared with the appropriate state agency.

United States Fish and Wildlife Service

Endangered Species Biologist
315 South Allen St., Suite 322
State College, PA 16801
814-234-4090
Fax: 814-234-0748

Appendix E: List of Legal Authorities

FEDERAL

Statutes:

Endangered Species Act of 1973
16 U.S.C. §§ 1531 *et seq.*

Regulations:

50 CFR § 17.11 (Endangered and threatened wildlife)
50 CFR § 17.12 (Endangered and threatened plants)
50 CFR § 17.95 (Critical Habitat - fish and wildlife)
50 CFR Part 222 (General endangered and threatened species)
50 CFR Part 226 (Designated critical habitat)
50 CFR Part 402 (Interagency Cooperation)
50 CFR Part 424 (Listing endangered and threatened species and designating critical habitat)

STATE

Statutes:

Wild Resources Conservation Act (administered by DCNR)
32 P.S. §§ 5301 *et seq.* (Plants)
(Section 5307 – Wild Plant Management)

Fish and Boat Code (administered by the PFBC)
30 Pa. C.S.A. §§ 101 *et seq.* (Fish, amphibians, reptiles and aquatic organisms)
(Section 102 – Definitions and Section 2305 Threatened and Endangered Species)

Game and Wildlife Code (administered by the PGC)
34 Pa. C.S.A. §§ 101 *et seq.* (Birds and mammals)
(Section 102 – Definitions and Section 2167 Endangered or Threatened Species)

2012 Oil and Gas Act, 58 Pa.C.S. 3201-3274 (administered by DEP)
58 Pa.C.S. § 3215 (Well Location Restrictions)

Regulations:

DCNR

17 Pa. Code Chapter 45 – Conservation of Pennsylvania Native Wild Plants (Plants)

PFBC

58 Pa. Code Chapter 75 – Endangered and Threatened Species (Fish, amphibians, reptiles and aquatic organisms)

PGC

58 Pa. Code Chapter 133 – Wildlife Classification (Birds and mammals)

Mineral Resources

25 Pa. Code § 77.126 (Criteria for permit approval or denial)
25 Pa. Code § 78.15 (Application Requirements)
25 Pa. Code § 86.37 (Criteria for permit approval or denial)
25 Pa. Code § 86.101 (Definitions.)
25 Pa. Code § 86.102 (Areas where mining is prohibited or limited)
25 Pa. Code § 86.122 (Criteria for designing lands as unsuitable, fragile lands)
25 Pa. Code § 86.129 (Coal exploration on areas designated as unsuitable for mining)
25 Pa. Code §§ 87.50, 88.33, 89.74 and 90.18 (Fish and wildlife resource information.)
25 Pa. Code §§ 87.159, 88.133 and 88.221 (Postmining land use.)
25 Pa. Code §§ 87.138, 89.65, 89.82 and 90.150 (Protection of fish, wildlife and environmental values.)
25 Pa. Code § 87.84, 88.62 (Fish and wildlife protection and enhance plant plans.)
25 Pa. Code § 90.202 (General requirements.) (Siting coal refuse disposal site.)

Waste Management, Environmental Cleanup and Brownfields

25 Pa. Code § 236.128 (Natural Resources.)
25 Pa. Code § 245.235 (Environmental assessment.)
25 Pa. Code § 250.1 (Definitions.)
25 Pa. Code § 250.311 (Evaluation of ecological receptors.)
25 Pa. Code § 269.a.50 (Environmental assessment considerations.)
25 Pa. Code §§ 271.127, 287.127 (Environmental assessment.)
25 Pa. Code §§ 271.127, 273.202, 275.202, 277.202, 279.202, 281.202, 283.202, 284.220,
284.320, 285.134, 287.127, 287.661-662, 288.202, 288.422, 288.522, 288.622, 289.422,
289.522, 293.202, 295.202, 297.202, 299.144, 299.153 and 299.158 (relating to siting criteria)
25 Pa. Code § 271.915 (Management practices.) (Sewage sludge.)
25 Pa. Code § 291.201 (General provisions.) (Land application of residual waste.)

Water Resources

25 Pa. Code § 71.21 (Content of official plans.)
25 Pa. Code § 92a.12 (Treatment requirements.)
25 Pa. Code § 93.4c (Implementation of antidegradation requirements.)
25 Pa. Code § 102.6 (Permit applications and fees.)
25 Pa. Code § 105.16 (Environmental, social and economic balancing.)
25 Pa. Code § 105.17 (Wetlands.)
25 Pa. Code § 105.381 (Location of dredging.)
25 Pa. Code § 105.401 (Permit applications.)