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Administrative Records

(Let's be clear, this is not your collection of vinyl 45s)

**National Land and Water Conservation Fund State Grant Training
Denver, Colorado**

April 7-11, 2013



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Session Objectives

1. Understand the principles of records management.
2. Understand the scope of record retention.
3. Understand how to prepare a defense for your decision-making.
4. Provide an example of an administrative record prepared for U.S. District Court.



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Land and Water Conservation Fund Act

The purposes are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States.

Section 6(f)(3) states: “No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.”



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Access to Records



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LWCF Manual Chapter 7.D.6

Retention and custodial requirements for records.

In accordance with 43 CFR Part 12, the following policies will apply to records maintenance:

- a. Financial records, supporting documents, statistical records, and all other records pertinent to a grant program shall be retained for a period of three years after final payment on a project. The records shall be retained beyond the 3 year period if audit findings have not been resolved.
- b. State and local governments are authorized to substitute electronic copies in lieu of original records.

- c. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the state and local governments and their sub-grantee that are pertinent to a specific project for the purpose of making audits, examinations, excerpts and transcripts.
- d. The NPS shall submit, after project closeout and scanning, all copies of significant maps and records to the Federal Archives Record Center for retention into perpetuity and for compliance with Section 6(f)(3) of the LWCF Act.



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Grant Phases and Products

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1. Planning

- ✓ Public notices
- ✓ E-mails
- ✓ Conference call notes
- ✓ Meeting notes
- ✓ Survey instruments
- ✓ Survey results
- ✓ Draft documents
- ✓ Final documents
 - SCORPs
 - Special studies
 - Surveys
 - Books
- ✓ Contracts

2. Pre-application and Open Project Selection Process

- ✓ Solicitation announcements
- ✓ Pre-application materials required by the State
- ✓ Rating and ranking materials
- ✓ Tabular results
- ✓ Announcement

3. Application Package

- ✓ State/local sub-agreement
- ✓ State/NPS Agreement with general provisions
- ✓ Waivers of retroactivity
- ✓ SF-424
- ✓ Section 6(f)(3) project boundary map
- ✓ Location map
- ✓ PD-ESF
- ✓ NEPA (EA, EIS, or CE)
- ✓ DNF
- ✓ Pre-award inspection
- ✓ NHPA & Section 106
- ✓ Appraisals or waivers of valuation
- ✓ Statements of just compensation
- ✓ Waivers of just compensation
- ✓ Relocation assistance materials
- ✓ Cost estimates
- ✓ All other documentation required by the State
- ✓ All correspondence and other communications between the State and sub-grantee
- ✓ All photographs



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Grant Phases and Products (cont'd)

4. Documents generated as a result of NPS

Approval

- ✓ Executed agreement
- ✓ SF-424
- ✓ Evaluation reports
- ✓ Approval letters
- ✓ All correspondence and other communications between the NPS and the State

5. Active grant phase through closeout

- ✓ Contracts
- ✓ Amendments and associated forms
- ✓ Evidence of donations and their associated values
- ✓ Performance and financial reports
- ✓ Evidence of eligible expenses
- ✓ REPs
- ✓ ASAP documentation
- ✓ Evidence of a final inspection
- ✓ All photographs
- ✓ All correspondence and other communications between the State/sub-grantee and the State/NPS
- ✓ Audits

6. Compliance

- ✓ Compliance inspections
- ✓ All conversion related materials
- ✓ All conversion exception related materials
- ✓ All correspondence and other communications between the State/sub-grantee and the State/NPS



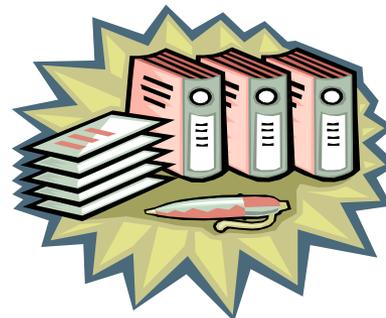
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What is NPS' definition of a record?

“All books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.”



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National Archives and Records Administration



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Freedom of Information Act (FOIA) and State Open Records Laws

- FOIA is a law that gives all citizens the right to access information from the federal government. It is often described as the law that keeps citizens in the know about their government.
- FOIA provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. A FOIA request can be made for any agency record.
- Requesters describe the information wanted and the format requested, in as much detail as possible. FOIA does not require agencies to do research for requesters, analyze data, answer written questions, or create records in response to a request.
- Open Government Guide is a complete compendium of information on every state's open records and open meetings laws. Go to: <http://www.rcfp.org/open-government-guide>



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Federal Decision-making



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- Federal decisions are made on the basis of the documentation before the agency at the time of the decision.
- Decisions cannot be arbitrary and capricious.



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Public Challenges

Generally, the public does not have “standing” in Federal decision-making meaning they have no official appeal rights.

Options available can include:

- Informal plea
- Congressional intervention
- Litigation



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Administrative Procedures Act

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- Public Law 79–404, 60 Stat. 237, enacted June 11, 1946
- Sets up a process for the United States federal courts to directly review agency decisions
- APA applies to federal executive departments and independent agencies
- There is a similar Model State Administrative Procedure Act drafted by the National Conference of Commissioners on Uniform State Laws for oversight of state agencies but not all states have adopted the model law
- Under APA, in order to set aside agency action, the court must conclude that the decision is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law
- Substantial evidence review gives the courts leeway to consider whether an agency's factual and policy determinations were warranted in light of all the information before the agency at the time of decision
- The court relies heavily on an administrative record in reviewing the case



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Administrative Record Examples

- Yankee Stadium Conversion



- Jean Klock Park Conversion



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Questions and Answers

