

# Protection of Wetlands

## Checklist for HUD or Responsible Entity

General requirements	Legislation	Regulation
Avoid the adverse impacts associated with the destruction and modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.	Executive Order 11990, May 24 1977	None, but can use 24 CFR 55 for general guidance.

**1. Does the project include new construction, rehabilitation that expands the footprint of the building, or ground disturbance?**

- No: STOP here. The Protection of Wetlands executive order does not apply. Record your determination that the project is not in a wetland.
- Yes: Proceed to #2

**2. Is there a wetland on your project site?**

Use both national and local resources to make this determination. A good first step is to check the National Wetlands Inventory's digital wetlands mapper tool: <http://www.fws.gov/nwi/> If site conditions or other documents indicate there may be a wetland, next check with city, county or tribal experts for local wetlands inventories. If none exist, the presence of hydric soils can indicate a wetland. If you suspect a wetland due to soil type or site conditions, you should commission a professional site survey to delineate the wetland and its boundaries.

HUD defines a wetland as those areas that are inundated with surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. **Please note that the US Army Corps of Engineers has a more restrictive definition of wetlands. A determination by the US Army Corps that there is no jurisdictional wetland on site is not sufficient documentation for HUD's purposes.**

Maintain, in your ERR, all documents you have collected to make your wetlands determination.

- No: STOP here. The Protection of Wetlands executive order does not apply. Record your determination that the project is not in a wetland.
- Yes: Consider moving your project so there will be no destruction or modification of the wetland. If not possible, proceed to #3

**3. Does your project involve new construction in the wetland? New construction includes draining, dredging, channelizing, filling, diking, impounding, and related activities.**

- No: STOP here. The Protection of Wetlands executive order does not apply. Record your determination that the project does not involve new construction in a wetland.
- Yes: Consider moving your project so there will be no destruction or modification of the wetland. If not possible, proceed to #4

**4. Consider whether there are any practicable alternatives to locating project in a wetland.**

- Complete the 8-step decision-making process for wetlands. Follow the 8-step decision-making process described in 24 CFR Part 55.20 with the following changes:
  - the exemptions at 24 CFR 55.12 for floodplain management requirements do not apply to wetlands;
  - Only one public notice required (with 15 day comment period) to provide opportunity for early public review of any plans or proposals for new construction in wetlands; (Step 2 in 24 CFR 55.20)
  - Step 4 should consider the factors relevant to a proposal's effect on the survival and quality of the wetlands.

A completed Individual Section 404 permit can be used as back-up documentation for the 8-step process.

- Yes: If there are practicable alternatives, you should reject the project site and choose the alternative.
- No: **Move forward following mitigation as required.**

**DISCLAIMER:** This document is intended as a tool to help Region X grantees and HUD staff complete NEPA requirements. This document is subject to change. This is not a policy statement, and the Floodplain Executive Order and Regulations take precedence over any information found in this document.