

# 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	24 CFR Part 55

**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/wetlands/Data/Mapper.html> 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. The definition includes wetlands separated from their natural supply of water and constructed wetlands. **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: 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: Proceed to #4.

**4. Does your project meet one of the categories of proposed action for which the 8-step decision making process does not apply?** (Below are several exemptions that apply to wetlands—please see 24 CFR 55.12(b) and 55.12(c) for additional categories of proposed action)

- The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property if:
  - The property is cleared of all existing structures and related improvements;

- The property is dedicated for permanent use for flood control, wetland protection, park land, or open space; and
- A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.
- A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland.
- Project site with an incidental portion situated in an adjacent floodplain, including the floodway or Coastal High Hazard Area, or wetland, but only if:
  - The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, or other similar activities) do not occupy or modify the 100-year floodplain (or the 500-year floodplain for critical actions) or the wetland;
  - Appropriate provision is made for site drainage that would not have an adverse effect on the wetland; and
  - A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland.
- Special Projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities.

Yes: Stop here. Record your determination that the project is exempt from floodplain management regulations per 24 CFR 55.12. Maintain copies of all of the documents you have used to make your determination.

No: Proceed to step 5.

**5. Does your project meet one of the categories of proposed action for which a limited 8-step process applies?** (Below are categories that apply to wetlands, please see 24 CFR 55.12(a) for additional categories of proposed action)

- Actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, nursing homes, assisted living facilities, board and care facilities, intermediate care facilities and one-to-four family properties in communities in the Regular Program of the NFIP and in good standing, units are not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, the action does not meet the thresholds for 'substantial improvement'<sup>1</sup> and the footprint of the structure and paved areas is not significantly increased.
- Actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures in communities in the Regular Program of the NFIP and in good standing, the action does not meet the thresholds for 'substantial improvement'<sup>1</sup> and the footprint of the structure is not significantly increased.

Yes: Complete the 5-step decision-making process for wetlands. You do not have to publish the notices in steps 2 or 7 or do an analysis of alternatives in Step 3. Analyze potential direct and indirect impacts (step 4); design or modify to minimize potential impacts (step 5); reevaluate the proposed action to determine if action is still practicable (step 6).

- If still practicable, document your analysis in the file and move forward.
- If not still practicable, either reject or modify project.

No: Proceed to #6.

**6. Are there practicable alternatives to impacting a wetland?**

**HUD strongly discourages use of funds for projects that do not meet an exemption in Part 55.12. Reject the Project Site or amend project so there is no destruction or modification of the wetland. If you decide to consider the project you must determine if there are alternatives by completing the 8-step decision-making process described in 24 CFR Section 55.20.** The 8-step decision-making process requires two public notice and comment periods. Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one acre of wetland. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable. For further details about compensatory mitigation please see 24 CFR 55.20(e)(2) and 55.2(b)(2).

A completed Individual Section 404 permit can cover steps 1-5 in the 8-step process if the project is not in the 100 year flood plain (or 500 year floodplain for critical actions) and all wetlands adversely affected by the action are covered by the permit. (24 CFR 55.28)

Yes: Reject or modify project.

No: Document your analysis, including wetlands notices, in your Environmental Review Record.

**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.

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<sup>1</sup> Substantial Improvement means any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair started or if the structure has been damaged before the damage occurred OR any repair reconstruction etc. that results in an increase of more than 20% of dwelling units or peak number of customers and employees (24 CFR 55.2(b)(8))