

WETLANDS PROTECTION – Executive Order 11990

Federal policy recognizes that wetlands have unique and significant public values and calls for the protections of wetlands. Policy directives set forth in Executive Order 11990 are:

- (a) avoid long and short term adverse impacts associated with the destruction or modification of wetlands;
- (b) avoid direct or indirect support of new construction in wetlands;
- (c) minimize the destruction, loss or degradation of wetlands;
- (d) preserve and enhance the natural and beneficial values served by wetlands; and
- (e) involve the public throughout the wetlands protection decision-making process.

The term wetlands refers to those areas that are inundated by surface water or groundwater with a frequency sufficient to support vegetative or aquatic life that requires saturated or seasonally saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, wet meadows, river overflows, mud flats, and natural ponds.

Threshold for Review: Properties proposed for new construction, rehabilitation that expands the footprint of the building, or ground disturbance.

Level of Concurrence Required: Evidence from the National Wetland Inventory <http://www.fws.gov/wetlands/index.html> and, information from Tribal, City or State experts, and/or a “**Jurisdictional Determination**” from the U.S. Army Corps of Engineers (COE) that:

- 1) The proposed site/project is not located in an identified wetland area; or
- 2) The proposed site/project is identified is a wetland area. If the project is in a wetland the Tribe must either find a new site or document that there are no practicable alternatives by completion of the “8 Step” process.

Basic Steps to Obtain Concurrence:

- 1) Review the U.S. Fish and Wildlife National Wetlands Inventory Status Maps (See Appendices) State of Alaska DCRA Community Profile maps, Coastal Zone Maps, and other relevant information to assess the potential of the proposed site being located in or adjacent to a wetland.

If the Tribe has credible, traceable, verifiable information that shows the project is not in a wetland, the wetland determination is complete. If the Tribe does not have credible, traceable verifiable data available, or they determine the project may be in a wetland, contact the Army Corp of Engineers and request a jurisdictional determination using the form found on their website:

<http://www.poa.usace.army.mil/Portals/34/docs/regulatory/JD%20Request%20Form.pdf>

Include the determination in the ERR file (See Appendices).

- 2) If the U.S. Army COE provides a “**Jurisdictional Determination**” that the proposed site/project is located in or adjacent to a wetland or you determine there

is a wetland that meets Executive Order 11990 definition, the Tribe must complete the "8 Step" decision making process to determine there is no practicable alternative to building in a wetland (See Appendices). Include the determination in the ERR

If the project is in a jurisdictional wetland the Tribe may be required to obtain a 404 Permit from the Corp of Engineers. This permit is required to initiate the project but is not required to complete HUD's environmental review. If the 404 permit has been obtained prior to completion of the 8-step process, information obtained through the permit process can be used in completing the 8-step process.

To complete the 404 Permit application the Tribe will need to determine, in conjunction with the U.S. Army COE, if the project falls under the authority of the General Permit POA-2007-541 (see Appendices) or if an Individual permit is required. The Corp of Engineers has a video at:

<http://www.poa.usace.army.mil/Missions/Regulatory.aspx>

(under Permits Application Guidance-Permit Application Instructional Video) that includes the application process. They also have specific information on types of drawings to provide with the permit application (See appendices).

*****PLEASE NOTE***: Compensatory mitigation may be required. With compensatory mitigation the applicant is required to replace the lost wetland and wetland functions. The applicant may be able to accomplish the mitigation by restoring or establishing wetlands on or near the project site. They also may be required to pay into a mitigation bank or pay an in lieu fee to a third party that establishes larger off-site wetland areas that are used to mitigate for a number of smaller conversions.**

For CATEGORICAL EXCLUSION determinations: If the project requires compliance with the 8 step process, the Tribe must complete and post a NOI/RROF and submit an RROF to the AONAP.

Additional information regarding the U.S. Fish and Wildlife Service National Wetlands Inventory Status Maps can be found at the following Internet address:

FWS National Wetlands: <http://www.fws.gov/wetlands/Data/Mapper.html>
Corps of Engineers Website: <http://www.poa.usace.army.mil/Home.aspx>

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