

Memorandum

CDBG Policy Guidance

Date: December 5, 2011

Policy: 11-03

SC Department of Commerce, Grants Administration, 1201 Main Street, Suite 1600, Columbia, SC 29201
www.sccommerce.com

Subject: CDBG Environmental Reviews
Resource: CDBG Implementation Manual, Chapter 2

HUD's Office of Environment and Energy (OEE) recently issued a memorandum regarding the applicability of the 8 Step Process for wetlands (required under Executive Order 11990) when using directional boring and drilling. The memo states that directional boring and drilling is a preferred alternative for utility lines compared to dredging and filling a wetland. HUD's policy is not to subject directional boring or drilling beneath a wetland to the 8 Step Process, provided certain conditions are met. The required conditions are outlined in the attached HUD memo.

Compliance with the HUD conditions must be documented and certified as part of the environmental review record (ERR). If the conditions of the HUD memo cannot be met, the 8 Step Process is required under E.O. 11990.

If you have any questions, please call Dick Scott or Lisa Kalsbeck.

This policy memorandum updates the Community Development Block Grant Program and becomes effective immediately unless otherwise stated. The program documents located on the SC Department of Commerce website have the most up to date policies of the CDBG program.

<http://sccommerce.com/cdbg-forms-and-documents>



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

MEMORANDUM FOR: Regional Environmental Officers
Field Environmental Officers

FROM: Charles Bien, Acting Director, Office of Environment and Energy,
DGE

SUBJECT: Directional Boring Beneath Wetlands and E.O. 11990

The Office of Environment and Energy's (OEE) policy for applying Executive Order 11990- Protection of Wetlands (E.O. 11990) requires the 8 Step Process when directional boring or drilling results in "new construction" in a wetland. OEE has determined that directional boring or drilling, when performed subject to certain conditions, can be a means to construct utility lines and other infrastructure without impacting wetlands or resulting in "new construction" in wetlands. Due to this finding, OEE's policy is not to subject directional boring or drilling beneath a wetland to the 8 Step Process, so long as the conditions below are met, documented, and certified as part of the environmental review record.

Executive Order 11990- Protection of Wetlands and Directional Boring

Under E.O. 11990, agencies must avoid wetlands development when there are practicable alternatives, provide early public notice when considering undertaking or providing financial assistance for new construction in wetlands, and minimize impacts when proposing actions in wetlands. E.O. 11990 at Section 2 (a) states that agencies "shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use." E.O. 11990 defines "new construction" as "draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities..." Directional boring or drilling beneath a wetland is not considered to be one of these examples or related activities when performed correctly. In order to encourage directional boring and drilling beneath a wetland and to discourage techniques that would constitute "new construction" activities, OEE will no longer require the 8 Step Process when the directional boring or drilling meets the following conditions. This policy should result in fewer "new construction" activities and preserve wetlands.

Directional Boring Requirements for Exclusion from the 8 Step Process

Directional boring and drilling is a preferred alternative for utility lines compared to dredging and filling a wetland. OEE's general policy is that directional boring or drilling should be the preferred method unless the technique will not work from an engineering perspective, such as if the buried utilities are of a diameter that would be too large to practicably use directional boring or drilling. Due to the possibility of adverse impacts, a qualified professional

engineer must ensure that the wetland will not be drained or impounded as a result of the activity and other best management practices must be applied.

In an effort to minimize the destruction, loss, or degradation of wetlands, these best management practices are required in order for the activity not to be subject to the 8 Step Process:

1. Document that a qualified professional engineer has determined that the boring or drilling is of sufficient depth below the wetland and the entry and exit points are of sufficient distance laterally from the wetland to avoid puncturing the wetland pan, draining the wetland, or causing similar adverse impacts to the wetland (e.g. at least 6 feet below the water table when wetlands are groundwater dependent)
2. Site all staging areas outside of wetland areas
3. Avoid construction during sensitive times of year that will impact fish spawning and bird nesting habitats
4. Maintain site specific erosion control measures
5. Restore the area to preconstruction conditions
6. Plant or re-establish vegetative buffers in coordination with an invasive species control plan

Compliance with these conditions should be documented and certified as part of the environmental review record. This policy only applies if the strata and hydrology associated with the wetland allow the wetland to be sufficiently preserved. If the boring or drilling is unsuccessful in preserving the wetland, the wetland must be restored within six months or an 8 Step Process under E.O. 11990 must be prepared. If the conditions of this memo cannot be met, the 8 Step Process is required under E.O. 11990 unless the activity is excluded under another policy document or applicable law or regulation. This memo does not exclude actions in floodplains from the 8 Step Process. Should you have any questions, please contact Jerimiah Sanders at (202) 402-4571.