

Muscle Shoals Redevelopment Project

Instructions for Developers Purchasing Parcels Containing Wetlands

To meet regulatory requirements regarding the protection of wetlands, the Tennessee Valley Authority (TVA) included the following commitment in the Muscle Shoals Reservation Redevelopment (MSRR) Environmental Impact Statement (EIS):

“[I]n order to assure compliance with EO 11990, Protection of Wetlands, TVA would include specific language in the deed, transfer, or other conveyance documents for the property describing the presence of wetlands and requiring that any proposal for future land-based improvements or water use facilities in a wetland area would be subject to TVA review and approval prior to construction. **In the course of these future reviews of specific proposals, TVA would evaluate the potential impacts to the wetland(s) resulting from such proposals, including those outside the floodplain, and assure compliance with EO 11990 and its requirement for a ‘no practicable alternative’ determination and minimization of impacts.**”

This document will serve as guidance for this process.

Requirements for Submission of Development Proposals

1. Submit electronic versions of site development (concept) plans and project name to the Senior Vice President, TVA Economic Development, unless otherwise directed by the TVA.
 - The following components of the plans are required:
 - a description of the proposed facilities and work, particularly those that will impact wetlands;
 - the size and location of the proposed project site, including maps, project design drawings, aerial photos, etc.;
 - the acres of and type(s) of wetlands proposed to be impacted;
 - a description of why there is no practicable alternative to wetland impacts. Where practicable, development should be sited to minimize the potential adverse impacts to wetlands. An alternative is “practicable” if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes; and
 - any permitting requirements with the U.S. Army Corps of Engineers (USACE) or Alabama Department of Environmental Management (ADEM) and any proposed mitigation that will offset wetland impacts.
 - Refer to “Executive Order 11990 Protection of Wetlands Process Checklist” (page 3) for a description of the steps for a practicable alternatives analysis.

2. Upon receipt of the concept plans and the all the components listed above, TVA will acknowledge the receipt via email and review the project package. TVA will endeavor to provide input back to the developer within 30 days of receipt of the plans. The review will include a conclusion as to whether or not the project plan has sufficiently met the requirements of EO 11990 to minimize impacts to wetlands.

- If all the required components of the plan are not received, TVA will require additional time to review pending receipt of the required items.

3. If TVA determines the proposed plans have not met the regulatory requirements of EO 11990, TVA may request the developer modify development plans or implement additional mitigation to offset wetland impacts. Upon receipt of the modified plans, TVA would endeavor to review the revisions within two (2) weeks to determine if the changes are sufficient to meet regulatory requirements.

Construction-related activities in a wetland may not proceed until TVA has given its approval for the planned disturbance to the wetland.

Executive Order 11990 Protection of Wetlands Process Checklist

General Requirements	Regulation
Avoid the adverse impacts associated with the destruction and modification of wetlands and to avoid direct or indirect support of projects that may impact wetlands whenever there is a practicable alternative.	Executive Order 11990, May 24, 1977

1. Does the project include any of the following?

- New construction
- Ground disturbance
- Transfer or disposal of federal land (sale, easement, lease)
- Management activities on federal land
- TVA-financed construction
- TVA assistance for construction activities
- Lands planning
- Licensing of land activities

- Yes: Proceed to #2.

- No: Stop here. The Protection of Wetlands Executive Order 11990 does not apply.

2. Is there a wetland on the project site?

TVA defines a wetland as “those areas inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetation 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, mud flats, and natural ponds. Wetlands do not include temporary human-made ponds, sloughs, etc., resulting from construction activities.” Use both national and local resources to make your decision. A good first step is to check the National Wetlands Inventory’s digital wetlands mapper tool: <http://www.fws.gov/nwi/>

Note, however, that absence of wetlands on the National Wetland Inventory maps does not mean there are no wetlands present. These maps currently are over 30 years old, and often do not accurately represent site conditions. They were produced using aerial photography that often does not pick up certain types or sizes of wetlands. The only way to verify the presence or absence of wetlands is via a site visit. If site conditions or other documents indicate there may be a wetland, present check with TVA Environmental Compliance wetland staff for additional information on how to proceed.

Another note: The U.S. Army Corps of Engineers has a more restrictive definition of wetlands. A determination by the U.S. Army Corps that there is no jurisdictional wetland on site is not sufficient documentation for TVA’s purposes.

- No: Stop here. The Protection of Wetlands Executive Order 11990 does not apply. Record your determination that the project is not in a wetland.
- Yes: Consider moving or modifying your project to avoid wetland impacts. If not possible, proceed to #3.

3. Are there are any practicable alternatives to locating the project in a wetland?

Complete the 8-step decision-making process for wetlands.

Step 1: Determine whether the action is located in a wetland.

Step 2: Notify the public as part of the NEPA process; this should include early review of the proposal and involve the affected and interested public in the decision making process.

Step 3: Identify and evaluate practicable alternatives.

--locate the project within a wetland

--locate the project outside of a wetland

--no action or alternative actions that would serve the same purpose

Step 4: Identify potential direct and indirect impacts to wetlands associated with the project.

Step 5: Where practicable, design or modify the proposed action to minimize the potential adverse impacts to wetlands and to restore and preserve the wetland.

Step 6: Reevaluate the alternatives.

Step 7: Determination of no practicable alternative.

Step 8: Implement the proposed action, with mitigation as necessary to offset wetland impacts.

- Yes: If there are practicable alternatives, you should reject the project site or project specifics as they apply to wetland impacts and choose the alternative.

An alternative is “practicable” if it is “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” (EPA 404(b)1 guideline 40 CFR Section 230.10)

The analysis must show that an alternative non-wetland site is not available for non-wetland dependent activities and activities in non-wetlands areas will not have a less adverse environmental impact than activities in wetlands.

- No: Move forward following mitigation as required.

DISCLAIMER: This document is intended as a tool to help TVA staff complete NEPA requirements and the requirements of E.O. 11990. This document is subject to change. This is not a policy statement, and the Wetland Executive Order and Regulations take precedence over any information found in this document.