Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: INFORMATION: Review of EO 11990 Programmatic Wetland Finding

From: Jeffrey W. Kolb, P.E.
Division Administrator
Albany, New York

To: Director, Office of Environment, POD 41
New York State Department of Transportation
Albany, New York 12232

Date: January 15, 2008

The New York Division has reviewed the EO 11990 Programmatic Wetlands Finding for the New York State Department of Transportation (NYSDOT), dated April 9, 1997 (copy attached), and has determined that the Finding is still applicable to projects progressed by the NYSDOT.

Our Office reviewed the Finding to determine if any revisions or updates were needed. It was determined that the Finding is adequate to serve the needs of NYSDOT and no revisions or updates are needed at this time. Questions regarding the use of the programmatic Finding should be directed to the NYSDOT Office of Environment or to the New York Division Office.

Chris Woods
Environmental Program Coordinator

Attachment

MOVING THE AMERICAN ECONOMY
Presidential Executive Order 11990
Federal Highway Administration New York Division
Programmatic Wetland Finding for the New York State Department of Transportation

Evaluation and Wetland Finding for Federally Aided Highway Projects Classified as a Categorical Exclusion under 23 CFR 771.117 which involve only the use of U.S. Corps of Engineers (COE) Section 404 Nationwide Permits.

This programmatic Executive Order 11990 (EO11990) evaluation and wetland finding has been prepared for transportation improvement projects which require only a COE Section 404 Nationwide Permit for work which will affect waters of the United States. It satisfies the requirements of EO 11990 and U.S. Department of Transportation (DOT) Order 5660.1A for all projects that meet the applicability criteria listed below. No individual wetland finding need be prepared for such projects.

Background.

EO 11990, issued on May 24, 1977, requires each agency to develop procedures for Federal actions whose impact is not significant enough to require the preparation of an Environmental Impact Statement under Section 102(2)(C) of the National Environmental Policy Act (NEPA) as amended. It also includes a clause in Section 6 indicating that existing processes “to the extent possible” be used to fulfill the requirements of the order.

The DOT issued DOT Order 5660.1A on August 24, 1978. The DOT Order defines “New construction” as including any draining, dredging, channelizing, filling, diking, impounding, and related activities. It does not include routine repairs and maintenance of existing facilities. The DOT Order indicates that any project which will have a significant impact on wetlands will require preparation of an EIS. Paragraph 7f. of the Order states “In carrying out any activities (including small scale projects which do not require documentation) with a potential effect of wetlands, operating agencies should consider the following factors in implementing the Department policy relevant to a proposal’s effect on the survival and quality of wetland: (1) Public health, safety and welfare, including water supply, water quality, recharge and discharge, and pollution; flood and storm hazards; and sedimentation and erosion. (2) Maintenance of natural systems, including conservation and long-term activity of existing flora and fauna, species habitat diversity and stability, hydrologic utility, fish and wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural use as well as transportation uses and objectives.”

On August 28, 1987, the Federal Highway Administration published new regulations implementing the National Environmental Policy act codified in 23 CFR 771. Section 771.117 describes a class of actions that do not individually or cumulatively have a significant environmental effect and are excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement.

The COE has promulgated regulations establishing several types of general permits -Nationwide
Permits (NWPs) which are designed to regulate with little, if any, delay or paperwork certain activities having minimal impacts. These activities are authorized under an NWP only if that activity and the permittee satisfy all of the NWP’s terms and conditions.

Applicability

This programmatic wetland finding may be applied in the following circumstances:

1. The project being evaluated is classified as a Categorical Exclusion under NEPA.

2. The only COE permit(s) required fits the description and satisfies all of the terms and conditions, including regional conditions of an NWP.

3. The New York State Department of Transportation has prepared a Design Approval Document containing:
   A. A brief narrative describing the wetland(s) location, state and federal wetlands classifications, approximate wetland area, covertypes, and the area of proposed wetland impact;
   B. A plan showing the wetland(s) location, approximate boundaries, and area within the project limits, and the area(s) of proposed wetland impact;
   C. A brief discussion of the type and size of permanent and/or temporary direct and indirect impacts on the wetlands and its functions caused by draining, dredging, channelizing, filling, diking, impounding, and related activities considering factors described in Section five of EO 11990;
   D. A statement that there are no practicable alternatives to the construction in wetland(s) and brief supporting explanation describing the efforts to avoid impacts; and
   E. A brief discussion of the practicable measures to minimize harm to the involved wetlands that will be incorporated into the design and construction of the project.

4. The project has been developed in accordance with the procedure for a public involvement/public hearing program approved by FHWA pursuant to 23 CFR 771.111(h)(1).

In accordance with Executive Order 11990, Section 2(a), I find that for all Federal-aid projects which meet the above conditions (1) that there is no practicable alternative to the proposed construction and (2) the proposed project includes all practicable measures to minimize harm to the involved wetlands which may result from the construction of the transportation project. Any Federal-aid transportation project impacting wetlands not meeting the above conditions shall require an individual wetland finding.

Issued on ___________  

[Signature]  
Harold J. Brown  
Division Administrator