

**U.S. ARMY CORPS OF ENGINEERS
NORTH ATLANTIC DIVISION**

Date: 23 February 2006

ADMINISTRATIVE APPEAL DECISION

ROBERT SUPPE
PHILADELPHIA DISTRICT FILE NO. 200500527-60

Review Officer: James W. Haggerty, U.S. Army Corps of Engineers, North Atlantic Division

Appellant: Robert Suppe

Appellant's Agent: Sean P. Gorby, Clemmys Environmental Services LLC

Date of Receipt of Request for Appeal: 6 December 2005

Date of Acceptance of Request for Appeal: 7 December 2005

Appeal Conference/Site Visit Date: 10 January 2006

NAD-ACCEPTED REASON FOR APPEAL:

NAD accepted for consideration the agent's belief, as stated in the Request for Appeal, that two specific wetland areas on the property (Wetland Areas "A" & "B") are hydrologically isolated and are, therefore, not jurisdictional pursuant to Section 404 of the Clean Water Act.

BACKGROUND INFORMATION:

On 14 April 2005, the Philadelphia District received a request for a determination of the extent of Department of the Army jurisdiction on an approximate 3.59-acre site identified as Tax Parcel No. 09-033.00-37, located in White Clay Creek Hundred, New Castle County, Delaware. The site is Lot 1 of the proposed Breezewood III residential development. The irregularly-shaped parcel is bounded to the south by Gender Road, a portion of which is closed to public access, to the east by Shady Drive East, to the north by a power line right-of-way, and to the west by unimproved lands.

The Philadelphia District conducted an inspection of the site on 17 June 2005 and concluded that the delineation of wetlands as performed by the agent was generally accurate, with the exception of the omission by the agent of one small wetland area in the western portion of the site. The Philadelphia District received a revised wetland plan including the area in question on 18 October 2005, and issued its approved jurisdictional determination on 3 November 2005.

INFORMATION RECEIVED DURING THE APPEAL REVIEW AND ITS DISPOSITION:

- a) The Philadelphia District provided a copy of the administrative record, which was reviewed and considered in the appeal review process along with the results of the 10 January 2006 site inspection and appeal conference.

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- b) During the appeal conference, the agent requested that the Review Officer peruse historical aerial photographs of the project vicinity. The Review Officer considered this to be clarifying information in accordance with 33 CFR 331.7.
- c) Also during the appeal conference, the applicant's engineer, "Chip" Hazel, P.E. requested that a third wetland area (Wetland Area "D") be included in the appeal request. This was agreed to among the Philadelphia District, the Review Officer and the appellant. Therefore, this appeal decision will cover three wetland areas on the property.

DECISION:

The appellant's request for appeal does not have merit because the administrative record and current Corps Regulatory policies support the Philadelphia District's determination that the three wetland areas in question are jurisdictional under the Clean Water Act.

EVALUATION OF THE REASONS FOR APPEAL/APPEAL DECISION FINDINGS:

In the request for appeal, the agent indicates his belief that Wetland Areas "A" & "B" are depressional wetlands with no apparent connection to any other waterbodies in the project vicinity. In a 21 June 2005 memorandum for the record, the Philadelphia District indicated that Wetland Area "B" is separated from contiguous wetlands by a road (Gender Road) and is therefore adjacent to waters of the United States in accordance with 33 CFR 328.3 (c). Similarly, the memorandum also stated that Wetland Area "D" is separated from Wetland Area "C" (NOTE: the agent is not contesting the jurisdictional status of Wetland Area "C") by a man-made berm and is also therefore adjacent to waters of the United States in accordance with 33 CFR 328.3 (c). The Philadelphia District further indicated in a Basis for Jurisdictional Determination prepared in conjunction with their approved jurisdictional determination that the wetlands on the property are all bordering or neighboring to an unnamed perennial tributary to the Christina River, which flows west of the site. The Christina River itself is a navigable water of the United States; therefore, any of its tributaries or wetlands adjacent thereto are jurisdictional waters of the United States. Wetlands that are bordering or neighboring are considered to be adjacent wetlands.

The site inspection confirmed that Wetland Area "A" is directly connected offsite to a watercourse that flows westward along the power line right-of-way to an eventual confluence with the unnamed perennial tributary of the Christina River. This watercourse in and of itself is a tributary of the Christina River. The inspection also confirmed that Wetland Area "B" is contiguous to Wetland Area "A", and Wetland Area "D" is contiguous to Wetland Area "C". This comports with the Philadelphia District's determination that all four wetland areas on the site are bordering or contiguous to the unnamed tributary of the Christina River, and as such all four wetlands are considered jurisdictional under the Clean Water Act in accordance with current regulations.

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OVERALL CONCLUSION:

After reviewing and evaluating the entirety of the administrative record provided by the Philadelphia District, NAD concludes that the Philadelphia District's determination regarding the jurisdictional status of the wetland areas on the property in question is adequately supported by the administrative record. NAD hereby finds that the appellant's request for appeal does not have merit.

SIGNED

WILLIAM T. GRISOLI
Brigadier General, USA
Commanding