

ADMINISTRATIVE APPEAL DECISION

FILE NO. 20020305 (JF-CIC)

JACKSONVILLE DISTRICT

Review Officer: Arthur L. Middleton, U.S. Army Corps of Engineers (USACE),
South Atlantic Division, Atlanta, Georgia.

Appellant Representative: David Vanderhoff, represented by Greg Sawka, of Southeast Soil & Environmental Service, Inc.

Receipt of Request for Appeal (RFA): August 12, 2002

Appeal Conference Date: February 26, 2003

Site Visit Date: February 26, 2003

Background Information: The USACE Jacksonville District (District) received a request for jurisdictional determination that was signed by the appellant's agent on May 20, 2002. The single DATA FORM provided with the request was completed on May 9, 2002. The DATA FORM identifies 80% of the dominant plant species are FAC or wetter, states that the depth to free water in sample soil pit and to saturated soil is > 18 inches, and that while the soil is mapped as hydric, it is non-hydric (14 soil borings, all non-hydric). The wetland determination remarks state, "drained site conditions common to subdivision." USACE personnel visited the subject site on June 5, 2002. The DATA FORMS completed by the USACE project manager disagree with the request regarding the hydric soil and hydrology indicators. The USACE personnel reported that the soil was saturated in the upper 12 inches, a primary indicator of hydrology, but failed to document the exact depth to which water filled the sample pit at the data point. The other primary indicator of hydrology listed in the USACE DATA FORMS is Drainage Patterns in Wetlands, with Secondary Indicators listed as "Local Soil Survey Data" and "Other". An explanation in the remarks states: "Soil moist throughout top 18". Berm (2-3' high) along north prevents surface water [from draining] into canal. Hydrology indicates water flow to east of lot. JD performed during dry season, Canal 1-2' below normal levels." In the Wetland Determination, Remarks section, the USACE DATA FORMS state among other things that particular vegetation indicates "altered hydrology".

The appellant's agent re-visited the site on July 31, 2002. In an E-mail to the USACE the appellant's agent states: "I revisited the site on July 31, 2002. After the wettest July on record, I found the site to still lack a sufficient water table to be considered wetland." Photographs provided with the E-mail, and labeled 7/31/02 LOT 220 Deer Run, show 3 different soil pits that contain no water.

Summary of Decision: I find that the appeal does not have merit. While the District evaluated and documented their approved jurisdictional determination dated June 11, 2002, generally according to applicable laws, regulations and policy guidance, there is some discrepancy in the

record between what the appellant provided in the original JD request and documented after the July 31, 2002, site visit and what was recorded by the USACE on June 5, 2002. The excavation of a canal along the property boundary could have affected the local water table. Normal environmental circumstances are dynamic and can be altered by anthropogenic activities. When the hydrology is removed from a wetland, the site may retain relict hydric soil indicators and hydrophytic vegetation, even though the site is no longer considered a wetland. However, it is incumbent upon the appellant to provide substantive information by the use of appropriate hydrology tools to gather quantitative information about the shallow groundwater regime associated with the subject site.

Appeal Evaluation, Findings and Instructions to the Jacksonville District Engineer (DE):

Reason(s) for the appeal as presented by the appellant:

Reason 1: “DATA SHEETS NOT COMPLETE”

Finding: This reason for appeal does not have merit.

Action: No action required.

Discussion: The two sets of DATA FORMS, one completed by the appellant’s consultant and one completed by the USACE project manager, provided with the administrative record for this appeal are sufficiently completed. Although the specific depth of surface water or in the sample soil pit are not filled-out in the USACE DATA FORMS, the vegetation, hydrology, and soils sections are otherwise filled in and the wetland determination section is completed, including remarks.

Reason 2: “DATA SHEETS DO NOT REFLECT FIELD CONDITIONS”

Finding: This reason for appeal does not have merit.

Action: No action required.

Discussion: To be a wetland under the USACE 1987 Wetland Delineation Manual (“1987 Manual”), an area must generally meet 3 parameters; vegetation, hydric soil, and wetland hydrology. The vegetation sections from both sets of DATA FORMS are consistent. There are differences in the hydrology and soils sections. Both agree that no recorded data is available, but the appellant’s agent concludes that the water table is below 18 inches and that hydric soils are not present. Although the Soil Survey indicates this area to be mapped as a Hydric Soil, there is the possibility that the normal environmental circumstances have been altered or that there is a non-hydric soil inclusion on this site. The appellant’s DATA FORMS state that the soil is no longer hydric due to drainage. The USACE DATA FORMS conclude that wetland hydrology exists on this site based on two primary indicators of hydrology; saturation in the upper 12 inches of the soil and drainage patterns in the wetlands. They also document the presence of two secondary indicators of hydrology; local Soil Survey data, and an on-site drainage obstruction that prevents surface water flow into an adjacent canal.

The hydrology indicators considered by USACE are appropriate for determining if wetland hydrology is present on the subject site. The 1987 Wetland Delineation Manual states: "Hydrology is often the least exact of the parameters, and indicators of wetland hydrology are sometimes difficult to find in the field. However, it is essential to establish that a wetland area is periodically inundated or has saturated soils during the growing season." Primary and secondary indicators of hydrology are sufficient to document the presence of hydrology.

The 1987 Manual lists six field indicators of wetland hydrology. These include Visual observation of inundation, Visual observation of soil saturation, Watermarks, Drift lines, Sediment deposits, and Drainage patterns within wetlands. Two of these are described on the USACE data forms - Visual observation of soil saturation and Drainage patterns within wetlands.

Visual observation of saturated soil requires digging a soil pit to a depth of 16 inches and observing the level at which water stands in the hole after sufficient time has been allowed for water to drain into the hole.

Drainage patterns within wetlands must be used with caution. Drainage patterns also occur in uplands after periods of considerable precipitation.

During the appeals conference, it was disclosed by the USACE project manager that the water tables in the vicinity of the subject site begin to rise in June and apex in August and September. However, it is also noted that June and July 2002 were some of the wettest of those two months in recorded history. On September 9, 2002, the appellant submitted additional hydrology data after the USACE DATA FORMS were completed. On that same date the District addressed the new hydrology data, implying that it was not from an appropriate source.

The USACE data forms indicate that the direction of water flow in the site toward the east, the jurisdictional determination was performed during the dry season, and that the adjacent canal was 1-2 feet below normal levels.

The USACE data sheets and the appellant's data sheets both list the soil on the subject site to be mapped as Holowaw fine sand. But the USACE and the appellant disagree that the soil is mapped correctly. What is consistent is that both sets of data forms describe hydric soil based on color.

Reason 3: "SOILS ARE NON-HYDRIC BASED ON FIELD INVESTIGATION"

Finding: This reason for appeal does not have merit.

Action: No action required.

Discussion: As noted above in Reason 2, the USACE data sheets and the RFA data sheets both list the soil on the subject site to be mapped as Holowaw fine sand. This soil is listed as a Hydric Soil by the NRCS. But the USACE and the appellant disagree that the soil is mapped correctly, with the appellant asserting essentially that site drainage has removed hydric soil conditions.

What is consistent is that both sets of data forms describe hydric soil based on color. The real issue here would appear to be hydrology.

In addition, the District identified other hydric soil indicators at the site to include; Organic streaking in sandy soils and soils stain fingers when rubbed.

Reason 4: “SITE LACKS SUFFICIENT HYDROLOGY; ADDITIONAL WATER TABLE MONITORING (7/31/02) INDICATES LACK OF HYDROLOGY”

Finding: This reason for appeal does not have merit.

Action: No action required.

Discussion: As noted above in Reason 2, there are discrepancies in the hydrology information provided by the applicant and that provided by the USACE. The District relied on primary and secondary hydrology indicators to document the presence of hydrology on the site.

Hydrology indicators do not prove the frequency and or duration of the wetland hydrology. In order to prove frequency and duration of the wetland hydrology in this case the appellant should employ appropriate hydrology tools such as installation of monitoring wells or piezometers to gather quantitative information about the shallow groundwater regime associated with the subject wetland. The resulting data could then be submitted to the District as new information to warrant a new jurisdictional determination.

Reason 5: “WETLANDS” ARE HISTORIC & EVIDENCE OF RELICT CONDITIONS EXIST”

Finding: This reason for appeal does not have merit.

Action: No action required.

Discussion: The excavation of a canal along the property boundary could have affected the local water table. Normal environmental circumstances are dynamic and can be altered by anthropogenic activities. As noted above, the USACE data sheets and the RFA data sheets both list the soil on the subject site to be mapped as Holowaw fine sand. This soil is listed as a Hydric Soil by the NRCS. However, both sets of data forms describe hydric soil based on color. Also, as noted above, there are discrepancies in the hydrology in the hydrology information provided by the applicant and that provided by the USACE. Both agree that no recorded data is available, but the appellant’s agent concludes that the water table is below 18 inches and that hydric soils are not present. The USACE data forms conclude that wetland hydrology exists on this site based on moisture in the upper 12 inches of the soil, drainage patterns in the wetlands, local Soil Survey data, and on-site drainage obstruction.

The appellant’s agent re-visited the site on July 31, 2002, to reevaluate the area’s hydrology during a wetter time of year. It was also noted that this had been an exceptionally wet June and July. The appellant’s agent reported that visual observations of soil saturation were still absent.

Photographs of the soil pits labeled 7/31/02 LOT 220 Deer Run, show 3 different soil pits that contain no water, although the shovel, in the pits, appears wet.

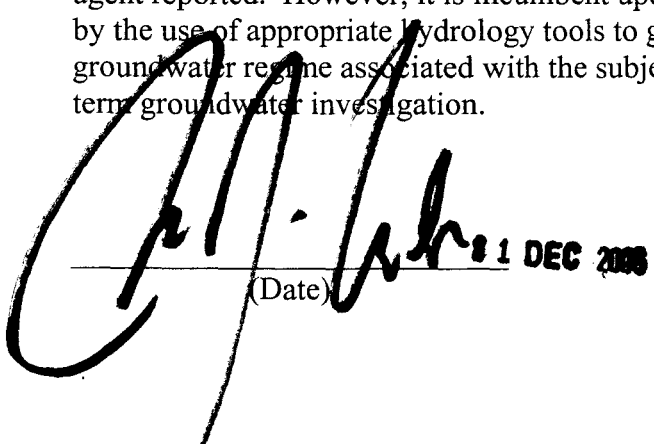
What is being presented is an area that has wetland vegetation, is mapped as a hydric soil and has field indicators of hydric soil conditions, but (based on the record presented) is only displaying field indicators of wetland hydrology. The excavation of a canal along the property boundary could have affected the local water table but that is not a known fact. Both the applicant and the USACE recognize that the site has been altered. When the hydrology is removed from a wetland, the site may retain relict hydric soil indicators and hydrophytic vegetation, even though the site is no longer considered a wetland. This wetland parameter requires further consideration based on the conflict in the record. In order to document that the hydrology has been effectively removed or is otherwise absent from this site, the appellant should employ appropriate hydrology tools noted in Reason 4 above, to gather quantitative information about the shallow groundwater regime associated with the subject site.

Information Received and it's Disposition During the Appeal Review:

1) The Jacksonville District furnished a copy of the Administrative Record for the subject request.

2) The appellant provided a copy of Mr. Sawka's original DATA FORM, along with the RFA.

Conclusion: After reviewing and evaluating the administrative record provided by the Jacksonville District, I conclude that there is sufficient information in the administrative record to support the District's Approved Jurisdictional Determination, dated June 11, 2002. There are discrepancies between what the District reported for site hydrology and what the appellant's agent reported. However, it is incumbent upon the appellant to provide substantive information by the use of appropriate hydrology tools to gather quantitative information about the shallow groundwater regime associated with the subject site. This may require additional, and/or long term groundwater investigation.



(Date) 21 DEC 2006

Michael J. Walsh
Brigadier General, US Army
Commander