

MEMORANDUM OF DECISION

SUBJECT: Request for Appeal from Dr. Frasier Bingham, Department of the Army Permit Application 199261303

1. Background: The proposed project was to place fill material in 0.34 acre of wetlands to construct four road crossings to provide access to nine residential lots on three upland islands and a small upland peninsula for a proposed 13 lot residential subdivision in Bay County, Florida. The Jacksonville District denied the subject Department of the Army permit on 24 May 1999 for the following reasons:

- Project does not comply with the Section 404(b)(1) Guidelines because a less damaging practicable alternative was available (construction of bridges), the proposed discharge would contribute to significant degradation of the aquatic ecosystem, and the proposed discharge does not include all practicable and appropriate measures to minimize potential harm to the aquatic ecosystem.

Dr. Bingham submitted a Request For Appeal (RFA) in accordance with Title 33 Code of Federal Regulations Part 331 on 20 July 1999. Dr. Bingham's RFA was based on his belief that the District made a bad decision. He stated that Jacksonville District presented no sound data on which to base their denial and the District is stonewalling the question of the merits of the use of adequately ventilated fill sections versus raised bridging.

2. Issues and Findings:

a. The District presented no data on which to base their denial.

Information obtained during the Appeals Conference indicates that the District knew of no studies comparing the impacts of bridging versus fill. The District based their decision on past experience, knowledge of such projects, best professional judgment and comments from other environmental agencies. This is common and acceptable practice in situations where there are no known studies or other information available for reference. The applicant submitted no data or information to support his position for consideration by the District in the evaluation of his proposal.

b. The District is stonewalling the question of the merits of the use of adequately ventilated fill sections versus raised bridging.

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Impacts to aquatic resources must be avoided and minimized to the extent practicable. The District identified the permanent direct loss of wetlands from fill and the potential for the fill sections to erode into the marsh among their concerns. Title 40 Code of Federal Regulations Part 331 provides the Section 404(b)(1) Guidelines that must be applied to each Section 404 permit application. The Jacksonville District prepared a detailed Section 404(b)(1) analysis, which is part of the Environmental Assessment. The District identified several alternatives to both avoid and minimize impacts that would accomplish all or part of the applicant's proposal. The applicant was asked to provide information as to why bridging was not a less environmentally damaging practicable alternative. The applicant provided no alternative analysis to support a conclusion that a practicable alternative did not exist.

3. Conclusions:

- a. The administrative record provides an adequate and reasonable basis for the District's decision.
- b. Facts or analysis essential to the District's decision were not omitted from the administrative record. All information submitted by the applicant and other parties are contained in the administrative record.
- c. All relevant requirements of law, regulations, and officially-promulgated Corps of Engineers policy and guidance have been satisfied.
- d. The appeal is without merit.



J. RICHARD CAPKA
Brigadier General, USA
Commanding