ADMINISTRATIVE APPEAL DECISION

BRIAN KING, FILE NO. POA-2004-1717-9

ALASKA DISTRICT

25 May 2005

Review Officers:
James E. Gilmore, U.S. Army Corps of Engineers, Southwestern Division, Dallas, Texas Representing the Pacific Ocean Division.

Michael T. Lee, U.S. Army Corps of Engineers, Pacific Ocean Division.

Appellant Representative: Ms. Elizabeth Senear

Little Rock District Representatives: Ms. Serena Sweet

Permit Authority: Section 404 of the Clean Water Act.

Receipt of Request For Appeal (RFA): 31 January 2005

Appeal Conference/Site Visit Date: N/A

Background Information: The Corps of Engineers, Alaska District's (District) received a request for a Department of the Army wetland determination on 14 December 2004 from Ms. Elizabeth Senear, on behalf of Mr. Brian King. The project site is identified as Lot 1, King Slup Subdivision, Section 1, T. 16 S., R. 4 W., Copper River Meridian, Cordova, Alaska. By letter dated 13 January 2005, the District provided Ms. Senear with an approved jurisdictional determination (JD) for the site, which identified Mr. King's property as containing wetlands adjacent to other waters of the United States. On 31 January 2005, Ms. Senear submitted a Request for Appeal to the Corps Pacific Ocean Division, in accordance with the Corps Regulatory Appeals Regulation 33 CFR Part 331.

REASON FOR APPEAL SUBMITTED BY APPELLANT:

The following reason for appeal is verbatim from the appellant's Request for Appeal dated 31 January 2005

Appeal Reason 1: "I do not believe there are wetland species on this particular lot, unless all forest in Cordova is determined to be wetland. This area of Cordova does consist of muskeg interspersed with forest. However, this lot has no muskeg and is 100% timbered with a spruce/hemlock forest as far as I can tell. I would appreciate an on-site inspection when convenient. It is adjacent to Orca Inlet, however the area to be developed is back from the shoreline and almost inaccessible to it."

instead it used a National Wetland Inventory map to describe the soil as a " Palsurtine Scrub-Shrub, Needle Leaved Evergreen and Emergent Persistent, Saturated." This description does not describe a soil series but the plant community that is thought to be located on a particular area.

OVERALL CONCLUSION: After reviewing the appellant's reasons for appeal and reviewing information contained in the district's administrative record, I conclude that this Request For Appeal does have merit for the reasons stated in the discussions above.

26 May 05
Date

Robert L. Davis
Brigadier General, U.S. Army
Division Engineer