ADMINISTRATIVE APPEAL DECISION

WILLIAM THOMPSON, FILE NO. 4-2002-0618

ALASKA DISTRICT

DATE: December 13, 2002

Review Officer: Mores Bergman, U.S. Army Corps of Engineers (Corps), Representing the Pacific Ocean Division

Appellant: William Thompson, Bettles, Alaska

Receipt of Request For Appeal: September 2, 2002

Authority: Section 404 of the Clean Water Act

Appealed Action: Approved Jurisdictional Determination

BACKGROUND INFORMATION:

The Corps of Engineers Alaska District (District) received a permit application dated May 22, 2002 from Mr. William Thompson to discharge fill material in approximately 1.88 acres of wetlands in connection with a housing project near Fairbanks, Alaska. By letter of July 12, 2002, the District provided Mr. Thompson with an approved jurisdictional determination (JD) for the site in question, which identified his property as containing wetlands adjacent to other waters of the United States. On September 2, 2002, Mr. Thompson sent a Request for Appeal to the Corps Pacific Ocean Division, in accordance with the Corps Regulatory Appeals Regulation 33 CFR Part 331.

REASONS FOR APPEAL SUBMITTED BY APPELLANT:

The following reasons for appeal are verbatim from the appellant's Request for Appeal dated September 2, 2002.

Reason 1: "My property is not adjacent to interstate or navigable waters."

Reason 2: "My property has the same plant life and soil types as the property south and adjacent to my property (Lot 15) which is not a designated wetland."

INFORMATION RECEIVED DURING THE APPEAL REVIEW AND ITS DISPOSITION:

The District provided the Review Officer and the appellant with a copy of the administrative record for the case as required in regulation 33 CFR Part 331. This information was considered in the appeal review.

SUMMARY OF DECISION:

I find that the appeal does not have merit. The District has adequately shown in the administrative record that the site in question contains wetlands and that these wetlands are adjacent to other waters of the United States and are, therefore, also waters of the United States subject to jurisdiction under Section 404 of the Clean Water Act.

APPEAL DECISION FINDINGS AND INSTRUCTIONS FOR DISTRICT ACTION (IF REQUIRED):

Reason 1: My property is not adjacent to interstate or navigable waters.

Findings: This reason for appeal does not have merit, for the reasons contained in the "Discussion" section below.

Action: No action required by District.

Discussion: In the "Basis of Jurisdictional Determination" dated June 17, 2002, which was provided to Mr. Thompson by letter dated July 12, 2000, the District stated that the wetlands (located on the Thompson property) are adjacent to Ace Creek, a tributary of Cripple Creek, which is a tributary of the Chena River, which is a navigable waterway. Further, the District's administrative file contains a copy of the wetlands jurisdictional determination prepared on May 30, 2002, by Ms. Christy Everett, indicating that the Thompson property contains wetlands meeting the three parameter definition of wetlands (vegetation, soils, and hydrology), and that these wetlands drain to Ace Creek. Also found in the administrative file are maps and aerial photographs that show the Thompson property and the surrounding area which include locations of wetlands and streams. One aerial photograph, labeled "COE Wetlands Map 125", specifically shows that wetlands exist on Thompson property and on those properties surrounding the Thompson property, and that these wetlands form a continuum of wetlands that are contiguous to Ace Creek.

The Corps Regulation 33CFR Part 328.3 states that wetlands that are adjacent to other defined waters of the United States are also waters of the United States. Part 328.3(c) defines "adjacent" as bordering, contiguous, or neighboring. Part 328.4(c) of the regulation further describes the limits of jurisdiction for non-tidal waters of the United States, as extending to the limits of the adjacent wetlands when adjacent wetlands are present. The District's determination in this case is consistent with the provisions of regulation 33 CFR Part 328.

Mr. Thompson has not provided any information that supports his contention that the District's determination is incorrect.

I therefore conclude that this reason for appeal does not have merit.

Reason 2: My property has the same plant life and soil types as the property south and adjacent to my property (Lot 15) which is not a designated wetland.

Findings: This reason for appeal does not have merit, for the reasons contained in the "Discussion" section below.

Action: No action required by District.

Discussion: In reviewing the District's wetland delineation map entitled "COE Wetlands Map 125" and the District's wetland JD dated May 30, 2002, it is found that the plant life and soils are essentially the same on the Thompson property and on the adjacent lots 15, 17, and 19. These documents also show that all of lots 15, 17, 18, and 19, except for a small portion of the southwest corner of lot 15, are designated as wetlands. The District's administrative file also contains a map dated June 17, 2002, which was published with the public notice for the Thompson application (dated June 24, 2002). This map identifies the location of wetlands on the Thompson property (lot 18), as well as on those lots adjacent to the Thompson property (lots 15,16,17, and19). It also shows a line dividing wetlands and uplands for the areas in question. This map clearly shows that the majority of lot 15, and specifically that part of lot 15 that is adjacent to Mr. Thompson's property (lot 18), is designated as wetland.

Mr. Thompson has presented no evidence to support his contention that his property does not contain wetlands or to show that the District's determination is incorrect.

I therefore conclude that this reason for appeal does not have merit.

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 not have merit for the reasons stated in the discussions above.

Ronald L. Johnson
Brigadier General, U.S. Army
Division Engineer