



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

JUN 26 2018

Regulatory Branch - Eastern Section

SUBJECT: Department of the Army Permit Application Numbers NAN-2012-00861-ESP and NAN-2018-00559-EDE - delineation of wetland adjacent to Old Place Creek, a tributary of the Arthur Kill at Graniteville, Borough of Staten Island, New York by Josif A. LLC

Joseph Alpert
271 Madison Avenue - 22nd Floor
New York, New York 10016

Dear Mr. Alpert:

On July 27, 2012, the New York District of the U.S. Army Corps of Engineers received a request from Mr. Charles S. Warren of Kramer, Levin, Naftalis & Frankel, LLP, on behalf of Joseph Alpert (Forest Avenue Associates) for a jurisdictional determination (JD) on a site consisting of approximately 28 acres in the Arthur Kill watershed at Graniteville, Borough of Staten Island, Richmond County, New York, which was previously determined to contained jurisdictional waters of the United States. Mr. Warren provided copy of an expired 2007 JD and a delineation map of wetlands within the review area.

On September 21, 2012, a site inspection was conducted by Craig Spits and Bart De Martino of this office. Present at the review area was Greg Fleischer of Carpenter Environmental Associates, Inc. Based on the material submitted and the observations of the personnel of this office, it was determined that the project site contains jurisdictional waters of the United States. Wetland determinations are based on the presence of hydrophytic vegetation, hydric soils and wetland hydrology in accordance with the criteria established in the 1987 "Corps of Engineers Wetlands Delineation Manual," Technical Report Y 87 1 that are either adjacent to or part of a tributary system and ordinary high water mark or mean high water line as indicated by the presence of physical markings including, a clearly marked border showing the water line.

The jurisdictional waters of the United States at the review site are shown on the drawing titled "ACOE Wetland Line Confirmation 2012" prepared by Carpenter Environmental Associates, Inc., dated July 3, 2012. Wetland "B", as indicated on the subject July 3, 2012 drawing, (previously referred to as Wetland "A" on a modified wetland delineation map dated December 8, 2006) is approximately 4.36 acres and directly abuts Old Place Creek on the project site, which is a tributary of the Arthur Kill, and is considered to be waters of the United States. This wetland and creek are located at southeast corner of the review area.

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In light of a U.S. Supreme Court decision (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178, January 9, 2001), the remaining wetland areas shown on the July 3, 2012 drawing (Wetlands "A", "C", "D", "E", "F", and "H") do not meet the criteria of waters of the United States under Section 404 of the Clean Water Act.

On April 30, 2018, a site inspection was conducted by Seika Robinson and Bart De Martino of this office. Present at the review area was Greg Fleischer now of Capital Environmental Consultants, (CEC) Inc. Based on the submitted drawing titled "ACOE Wetland Line Confirmation 2012" prepared by Carpenter Environmental Associates, Inc., dated July 3, 2012, and observations of the personnel of this office, it was determined that the project site still contains jurisdictional waters of the United States. It appears that there has not been changes in the non-jurisdictional and jurisdiction portions of the site, in the type of vegetation cover, its soil or the hydrological regime, which would have expanded or decreased the wetland size as determine in the 2012 JD. Wetlands "A", "C", "D", "E", "F", and "H" still do not meet the current criteria of waters of the United States under Section 404 of the Clean Water Act.

By email dated May 2, 2018, Mr. Greg Fleischer of CEC Inc. submitted documentation indicating that work commenced on the upland portion of the review area prior to the December 19, 2017 expiration of the subject jurisdictional determination. Therefore, it is recommended that the development of the site be carried out in such a manner as to avoid the discharge of fill material into the delineated waters of the United States.

Any questions concerning this matter, please contact Bart De Martino, of my staff, at (917) 790 8423.

Sincerely,



Ronald R. Pinzon
Chief, Eastern Section

c: Greg Fleisher, CEC, Inc.

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CENAN-OP-RE

**SUBJECT: Memorandum for the Record for Jurisdictional Determination
Application Number NAN-2018-00559-EDE by Joseph Alpert**

APPLICANT: Joseph Alpert

FILE NUMBER: NAN-2018-00559-EDE

LOCATION: Borough of Staten Island, Richmond County, New York

The subject site is located at Graniteville in the Borough of Staten Island, Richmond County, New York. The review area consists of approximately 28 acres of undeveloped land bordered to the north by Forest Avenue; to the east by South Avenue; to the south by Amador Street; and to the west by Morrow Street; and a tributary, Old Place Creek, flowing from east to west in the review area.

PRIOR JURSDICTION DETERMINATION:

On September 21, 2012, Project Manager Craig Spitz and Biologist Bart De Martino of this office, conducted inspections of the review area. Both the tributary and the wetlands were observed, as well as, upland areas within the review area. The primary hydrologically-connected wetland is Wetland "B" based on the July 3, 2012 drawing. The water source for the wetland is a combination of a shallow groundwater table, runoff from surrounding impervious surfaces, and precipitation. Drainage of Wetland "B" is from north to south, which drains into the tributary, Old Place Creek, and finally drains into the Arthur Kill.

Field observations noted by USACE inspectors on September 21, 2012 including soil cores hand-augured to 12-inches below grade as well as topographic, hydrologic, and vegetative features were used to define wetland boundaries and nexus to waters of the United States. Waters and wetlands in the review area are shown on the drawing entitled "ACOE Wetland Line Confirmation, Forest Avenue", prepared by CEA dated July 3, 2012. Based on the site inspection on **September 21, 2012**, the subject drawing accurately depicts the wetlands within the subject site boundaries (**See USACE Files NAN-2012-00861**).

JURISDICTIONAL DETERMINATION EXPIRATION DATE: December 19, 2017.

**SUBJECT: Memorandum for the Record for Jurisdictional Determination
Application Number NAN-2018-00559-EDE by Joseph Alpert**

DATE OF INSPECTION: April 30, 2018.

USACE INSPECTORS: Seika Robinson and Bart De Martino.

PARTICIPANTS/AFFILIATIONS: Greg Fleischer of Carpenter Environmental Associates, Inc. in 2012 and Capital Environmental Consultants, Inc. in 2018 on behalf of the applicant, Joseph Alpert.

PURPOSE OF INSPECTIONS: To confirm the extent of waters and wetlands of the United States as depicted on the drawing entitled "ACOE Wetland Line Confirmation, Forest Avenue", prepared by Carpenter Environmental Associates, Inc. (CEA) dated July 3, 2012, as requested by applicant Joseph Alpert.

OBSERVATIONS:

The following observations on **April 30, 2018** for the wetland delineation completed by CEA are summarized below:

- Wetland "B", was determined to be accurately depicted as hydraulically connected to the tributary, Old Place Creek, on the July 12, 2012 wetland delineation map.
- Wetlands "A", "C", "D", "E", "F", and "H" were determined by USACE inspectors to be accurately depicted as isolated wetlands on the wetland delineation map.
- A substantial amount of construction debris, discarded vehicle tires, and a discarded automobile, were observed. Some surface ponding from recent precipitation was also observed.

CONCLUSION AND PATH FORWARD::

- The December 19, 2012 wetland delineation submitted by CEA on behalf of the applicant Joseph Alpert was still accurate. The remaining wetland "A", "C", "D", "E", "F", and "H" on the property have been observed and addressed in USACE Files NAN-2012-00861 and NAN-2018-00559.
- By email dated 2 May 2018, Mr. Fleischer submitted the attached documentation indicating that the work, not within Corps jurisdiction, began prior to the December 19, 2012 expiration date of the JD.

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Application Number NAN-2018-00559-EDE by Joseph Alpert**

- A letter be sent to Mr. Alpert that reiterates the series of events from the July 27, 2012 request for a jurisdictional determination to the April 30, 2018 re-inspection.

Prepared by: *Bart De Martino*
Bart De Martino
Biologist
Eastern Section

Approved by: *Ronald R. Pinzon*
Ronald R. Pinzon
Chief
Eastern Section

JUN 26 2018