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Sent: Monday, June 15, 2020 11:15 AM
To: Deborah Kopald <deborah_kopald@ymail.com>
Cc: Jack Jannarone <jjannarone@highlands-ny.gov>
Subject: RE: [Non-DoD Source] possible Army Corps of Engineers violations re: WEDNESDAY 7 p.m.
re:Fw: ZBA brief and Tree Hearing Webex login credentials

Ms. Kopald,

Based upon a desk-top evaluation of the property in question, Tax Map Parcel 11-1-1.52 in the Town of Highlands, it appears unlikely that the Tonnesons discharged fill material into waters of the United States, including wetlands.

When I don't have a lot of information on a site, but I want to get an idea of how wet a property might be, I go to the USDA web site and create a site-specific soil map. Their Web Soil Survey page is located at: <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>. Soils that are categorized as any degree of poorly drained could be wetland soils. Very poorly drained soils are almost always wetlands. Well drained soils are usually not wetlands, but sometimes would be in low or flat areas. Attached is the soil map that I generated at the USDA web site. It shows all of the soils within the area that I outlined are well drained or excessively drained. The soil map, plus the steep topography of the property would lead me to expect that the property is unlikely to contain any waters of the United States, including wetlands.

For your general information, below is general guidance regarding the Corps regulatory program:

The Army Corps of Engineers regulates activities that include dredging or construction activities in or over any navigable waters of the United States, the placement of any dredged or fill material in any waters of the United States (including coastal or inland wetlands) or the accomplishment of any work affecting the course, location, condition or capacity of such areas. Such activities may require a Department of the Army permit, in accordance with 33 CFR 320-332.

Most waterbodies, including wetlands, intermittent streams and natural drainage courses, are considered to be waters of the United States. Currently, the State of New York Department of Environmental Conservation (NYSDEC) recognizes and maps state fresh water wetlands as those wetland areas that are 12.4 acres or more and/or are ecologically unique. A NYSDEC determination classifying an area as a non-state regulated wetland does not free a property owner from his or her obligations under the Clean Water Act; the Corps regulates the discharge of dredged or fill material into all freshwater wetlands, regardless of size.

To remain out of Department of the Army jurisdiction completely, we recommend that an applicant limit the project to those areas upland of any waters or wetlands of the United States. Not only is this environmentally sound, but it could potentially save an applicant considerable time and expense while attempting to obtain necessary federal, state or local permits.

When fill material is contemplated to be placed within those areas of Corps jurisdiction, the extent of these waters of the United States needs to be delineated according to the Federal Methodology, which requires the evaluation of features including the hydrology, the vegetation, and the soils present on the site. The current method for delineating Army Corps of Engineers jurisdictional wetlands is in accordance with the "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1, and the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and

Northeast Region".

The manual may be obtained from the U.S. Army Corps of Engineers New York District website at: <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4530>

The regional supplement may be obtained from the U.S. Army Corps of Engineers New York District website at: <https://usace.contentdm.oclc.org/utills/getfile/collection/p266001coll1/id/7640>

It is possible that a project may qualify for a nationwide general permit (NWP), in accordance with 33 CFR 330 and the Issuance of Nationwide Permits in the Federal Register dated January 6, 2017 (82 FR 1860 - 2008). An activity is authorized under a nationwide general permit only if that activity and the permittee satisfy all of the nationwide permit's terms and conditions. Unless a nationwide general permit contains a condition requiring the applicant to notify the Corps prior to undertaking the proposed activity, a written authorization is not necessary. Activities that do not qualify for authorization under a nationwide general permit may still be authorized by an individual or regional general permit. The current nationwide permits can be found on the Army Corps of Engineers Headquarters website at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>, or at the New York District website at: <https://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>.

Given the above, the Corps of Engineers does not need to be further involved in this.

If you have any questions, let me know.

Brian

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