

EI-2610



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FACSIMILE TRANSMITTAL

DATE: 12/20/06 TIME: 1:45p.m.

NUMBER OF PAGES: 4 INCLUDING THIS COVER PAGE.

TO: Catherine Glidden

ADDRESS: STB

FAX NUMBER: (202) 565-9000

FROM: JOHN A. SIMS

Re: ABB-447X

TELEPHONE NUMBER: (817) 352-2376

SPECIAL INSTRUCTIONS: This is regarding the
Condition in the STB decision served
on December 20, 2006.

IF YOU RECEIVED THIS MATERIAL IN ERROR
PLEASE CALL (817) 352-2376
EQUIPMENT USED FOR TRANSMITTING - LANIER FAX 7550
TELECOPIER NO. (817) 352-2397

IMPORTANT: This message is intended for the use of the addressee and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. Therefore, if you are not the intended recipient, please notify us immediately by telephone for instructions for the return of the message to us at the above address via the United States Postal service. Thank you.



DEPARTMENT OF THE ARMY
CHICAGO DISTRICT, CORPS OF ENGINEERS
111 NORTH CANAL STREET
CHICAGO, ILLINOIS 60606-7206

REPLY TO
ATTENTION OF:

Technical Services Division
Regulatory Branch
LRC-2006-961

DEC 06 2006

SUBJECT: No Objection to the Abandonment of a BNSF Railroad Bridge Located at I-88 and West of Route 31, Aurora Township, Kane County, Illinois (N ½ of Section 9, T38N R8E)

Ian Thomas
Sidney Strickland and Associates, PLLC
3050 K St. N.W., Suite 101
Washington, DC 20007-5108

Dear Mr. Thomas:

This is in response to your request that the U.S. Army Corps of Engineers complete a jurisdictional determination for the above-referenced site. The subject project has been assigned number LRC-2006-961. Please reference this number in all future correspondence concerning this project.

Following a review of the information you submitted, this office has determined that there are no waterways, wetlands or other areas considered "waters of the United States" under Corps of Engineers jurisdiction at the site. The ditches along I-88 in this location are not jurisdictional. A Department of the Army (DA) permit is required for any work involving a discharge of dredged or fill material into waters that fall under the jurisdiction of Section 404 of the Clean Water Act, 33 U.S.C. Sec. 1251 et seq. However, based on our review of the information you furnished, and assuming your project is conducted only as set forth in the information provided, this office has determined that a DA permit will not be required, as your project may be completed without causing a discharge into regulated waters. Please be aware that any unpermitted discharge into an area within the jurisdiction of this office may result in civil or criminal enforcement under the Clean Water Act, 33 U.S.C. Sec. 1319.

The jurisdictional determination decision document for the subject property is enclosed. This determination covers only your project as depicted in your notification. Measures should be taken to prevent construction materials and/or activities from entering any waters of the United States. Appropriate soil erosion and sediment controls should be implemented on-site to achieve this end. **This determination is valid for 5 years from the date of this letter.**

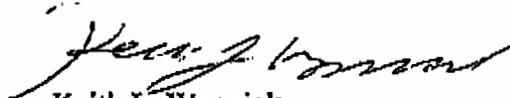
This letter is considered an approved jurisdictional determination for your subject site. If you object to this determination, please contact this office to obtain the Request for Appeal (RFA) form.

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It is your responsibility to obtain any required state, county, or local approvals for impacts to wetland areas not under the Department of the Army jurisdiction. In Kane County, please note that isolated non-waters of the United States not under the jurisdiction of the U.S. Army Corps of Engineers are regulated by the Kane County Stormwater Ordinance. For projects in incorporated areas of Kane County, contact the certified community for information related to the ordinance. For projects in unincorporated areas of Kane County, contact the Kane County Department of Environmental Management at (630) 208-3179.

If you have any questions, please contact Ms. Kimberly Fisher of my staff by telephone at (312) 846-5541 or email at kimberly.j.fisher@usace.army.mil.

Sincerely,



Keith L. Wozniak
Chief, West Section
Regulatory Branch

Enclosure

Copy Furnished w/out Enclosure:

Kane County Environmental Management (Anderson

APPROVED JURISDICTIONAL DETERMINATION DECISION DOCUMENT
U.S. Army Corps of Engineers, Chicago District

APPLICANT: Sidney Strickland and Associates PROJECT LOCATION/WATERWAY: Kane County

FILE NUMBER: LRC-2006-961 PROJECT REVIEW COMPLETED: [X] Office [X] Field

Approved Jurisdictional Determination (JD) (For sites regulated under 33 CFR 320-330). An approved JD is an appealable action. (33 CFR 331.2)

Based on available information:

- There are no waters on the project site.
[X] There are non-jurisdictional waters on the project site.
There are waters of the United States on the project site.
There are both waters of the United States and non-jurisdictional waters on the project site.

Basis of Jurisdictional Determination:

- There are no jurisdictional waters of the United States present on the project site.
The presence of waters which are currently used, or were used in the past, or may be susceptible for use to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (i.e., navigable waters of the U.S.) (33 CFR 328.3(a)(1))
The presence of interstate waters (including interstate wetlands!). (33 CFR 328.3 (a)(2))
The presence of a tributary to an interstate water or other water of the US. (33 CFR 328.3 (a)(5))
The presence of wetlands adjacent (bordering, contiguous, or neighboring) to interstate or other waters of the US, except for those wetlands adjacent to other wetlands. (33 CFR 328.3 (a)(7))
The presence of an isolated water (e.g., intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds)
[X] Other: The presence of a wetland formed by a ditch excavated in upland during the construction of the highway.
Section 10 waterway.

Information Reviewed

- U. S. Fish and Wildlife Service National Wetland Inventory:
U. S. Geological Survey Hydrologic Atlas:
USDA Natural Resources Conservation Service Soil Survey for Kane County.
[X] U. S. Geological Survey 7.5 Minute Topographic Maps: AURORA NORTH, 1993.
U. S. Geological Survey 7.5 Minute Historic Quadrangles:
U. S. Geological Survey 15 Minute Historic Quadrangles:
[X] Aerial Photographs (Name & Date):2004
Advanced Identification Wetland Maps: KANE COUNTY
[X] Site Visit Conducted on: 9/26/2006
Other information:

Rationale for Basis (applies to any boxes checked above): There are drainage ditches along either side of I-88, which were created in upland soil with the construction of the highway. These are not considered to be "Waters of the United States"

Lateral Extent of Jurisdiction (33 CFR 328 and 329):

- Ordinary High Water Mark indicated by:
[X] clear, natural line impressed on the bank
[X] destruction of terrestrial vegetation
[X] the presence of litter and debris
[X] shelving
[X] changes in the character of soils
[X] other:
[X] wetland boundary

Basis for Declining Jurisdiction:

- [X] Unable to confirm the presence of waters listed in 33 CFR 328.3(a)(1), 328.3(a)(2), or 328.3(a)(4) through 328.3(a)(7)
Area under consideration is likely to have been jurisdictional under pre-SWANCC Migratory Bird Rule criteria
[X] Area under consideration is not likely to have been jurisdictional under pre-SWANCC Migratory Bird Rule criteria
Headquarters declined to approve jurisdiction on the basis of 328.3(a)(3) [attach copy of HQ rationale]

Confirmation of Wetland Boundaries

- This office concurs with your wetland delineation report dated , prepared by
[X] This office does not confirm your wetland boundary.

Recommended by: [Signature] Date: 12-4-2006

Approved by: [Signature] Date: 12-6-2006

1Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology). Processes for determining wetlands on agricultural lands may vary from methods described in the Corps Wetland Delineation Manual (1987).

2 Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.