DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

REPLY TO
ATTENTION OF

APR 16 2010

Regulatory Division (1145b)

SUBJECT: File Number 252600S

Ms. Diane Heinze
Environmental Planning Permitting & Compliance Department
Port of Oakland
530 Water Street
Oakland, California 94607

Dear Ms. Heinze:

This letter is written in response to your June 30, 2008, appeal of the May 1, 2008, jurisdictional determination for the Oakland International Airport, Alameda County, California. In her final decision, the Division Engineer remanded the jurisdictional determination to the San Francisco District on June 2, 2009, indicating necessary further evaluation and consideration of information. Accordingly, the District conducted an additional site visit on October 28, 2009, and completed the required analyses and documentation. The District has determined that the May 1, 2008, jurisdictional determination accurately depicts the location and extent of wetlands and other waters pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403) and Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). As the appeal regulations (33 C.F.R. Section 331.9(c)) state, the final decision of the Division Engineer on the merits of the appeal concludes the administrative appeal process.

In addition, please note that the May 1, 2008, jurisdictional determination encompasses only the areas of the Oakland International Airport that are inboard of the levees. As we discussed during our meeting of November 18, 2009, the Port of Oakland will submit additional information regarding the extent of Section 10 and Section 404 jurisdiction for areas outboard of the levees.

Should you have any questions regarding this matter, please call Katerina Galacatos of our Regulatory Division at 415-503-6778. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter.

Sincerely,

ORIGINAL SIGNED
BY

JANE M. HICKS
CHIEF, REGULATORY DIVISION

Laurence M. Farrell
Lieutenant Colonel, U.S. Army
Commanding

Copy furnished:

Wendel Rosen Black & Dean, LLP, Oakland, CA (Attn. Bruce S. Flushman)
US EPA, San Francisco, CA

U.S. Army Corps of Engineers, San Francisco District

MEMORANDUM FOR RECORD

FILE NUMBER: 252600S

PROJECT: Port of Oakland, Oakland International Airport JD Appeal

DATE: January 19, 2010, revised April 7, 2010

SUBJECT: Consideration of June 2, 2009, remand of JD appeal.

In the June 2, 2009 remand for the Oakland International Airport jurisdictional determination, the Review Officer indicated five analyses and documentations required of the District. The following is description of each and the response of the District.

"The District must clearly describe the analysis which leads to the conclusion as to whether these waters are properly determined to be jurisdictional under Section 10 of the Rivers and Harbor Act of 1899."

Response: The San Francisco District is asserting jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 to wetlands (22.87 acres) and other waters (22.12 acres) that have a tidal influence below the plane of mean high water. The geographic jurisdiction of the Rivers and Harbors Act of 1899 includes all navigable waters of the United States which are defined (33 CFR Part 329) as, "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce."

"It must further clarify whether all waters over which it has asserted jurisdictional on the Airport property are regulated on the basis that they possess wetland characteristics or whether some are regulated as other waters based solely on the presence of an OHWM."

Response: The San Francisco District is asserting jurisdiction for Section 10 of the Rivers and Harbor Act for wetland and other waters that are tidal and below the plane of mean high water. The San Francisco District is asserting jurisdictional for Section 404 of the Clean Water Act for areas that meet the criteria for wetlands or have an ordinary high water mark.

"The District must document its analysis as to whether drainage features on the Airport property were excavated within waters or whether they were excavated in dry land and for any features it may determine to have been excavated on dry land, document the case-by-case analysis and the conclusion as to whether such waters should be determined to be waters of the U.S. for each such feature."

Response: The San Francisco District conducted a site visit on October 28, 2009 and re-examined all drainage ditches on the Airport property. The November 2, 2009, Memorandum For Record, documents that the District is exerting jurisdiction on drainage ditches only when they have an ordinary high water mark, wetland characteristics or both. Most features with OHWM's and/or wetland characteristics were relatively permanent waters that flow directly to the San Francisco Bay, a traditional navigable water. As per the May 30, 2007, U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook, "if a ditch has a relatively permanent flow into waters of the U.S. or between two (or more) waters of the U.S, the ditch is jurisdictional under the CWA." (pg. 36)

"The District, in its final decision, must fully consider the possibility that features on the Airport property should be exempt from jurisdiction as a waste treatment system."

Response: As the District has noted in both the memorandum transmitting the administrative record August 4, 2008 and our response for the December 16, 2009, JD appeal conference, the site does not qualify as a Waste Treatment System, for no waste is being treated and the Alameda County general NPDES permit provided by the Port for storm water discharge cannot reasonably have the effect of extinguishing all Clean Water Act jurisdiction for Alameda County.

"Finally, the District must rectify the error of omission on the jurisdictional determination (JD) form and insure the acreages in its final decision are consistent with associated maps."

Response: The District has revised the 2007 JD form, dated January 19, 2010.

_____ _____

Katerina Galacatos Date
Project Manager

U.S. Army Corps of Engineers, San Francisco District

MEMORANDUM FOR RECORD

FILE NUMBER: 252600S

PROJECT: Port of Oakland, Oakland International Airport

DATE: November 2, 2009

SUBJECT: Re-examination of drainage ditches at the Oakland International Airport

On October 28, 2009, Dan Martel and I met with representatives of the Port of Oakland (Diane Heinze, Colleen Liang, and Marucia Britto) to re-examine, on a case-by-case basis the drainage ditches at the Oakland Airport as directed by Tom Cavanaugh in the June 2, 2009, decision regarding the Port of Oakland's jurisdictional determination appeal. One issue for the Port of Oakland's jurisdictional appeal is the features mapped by their consultants as "drainage ditch dug on dry land and without groundwater connection" in the proposed jurisdictional map of October 9, 2006 and highlighted yellow on our October 28, 2009 field map.

The airport's drainage ditches were constructed to collect surface water and transport it to pumphouses that then pump the water into to the San Francisco Bay, a traditional navigable water. Attached is a copy of the airport's basin locations and stormwater drainage flow paths to the pumphouses. We re-examined the basis for claiming jurisdiction over drainage ditches on the airport on a case-by-case basis considering whether the feature had standing water or had wetland vegetation

The drainage ditches at the Oakland Airport appear to all have standing water, wetland vegetation or both. Drainage ditches that have wetland vegetation can be considered wetland areas hydrologically connected to the San Francisco Bay and therefore jurisdictional. Drainage ditches that have standing water are relatively permanent waters. The last rainfall event occurred on October 13th and it is reasonable to consider that the observed standing water within this drainage ditches is a result of the drainage ditch intercepting ground water.

Due to their proximity to the active runway, we were unable to verify three of these features: a) small feature in subbasin 8 that is connected to the central wetland area; b) small feature extending from wetland and water in subbasin 13; and c) small feature extending from the wetland and water in subbasin 14. All three appear to be ditches extending from wetland or waters of the U.S. We verified a similar feature in subbasin 10 that had standing water.

The Port of Oakland has done routine maintenance of removing sediments from the drainage ditches to maintain their ability to collect and transport water to the pumphouses and thereby reduce flooding on the airport. Port of Oakland staff repeatedly questioned Dan Martel and myself on feasibility and regulatory oversight of removing sediments from the drainages ditches, increasing the capacity of existing ditches, and constructing new ditches.

Data collection. We started in the northern part of the airport and worked our way towards the southern portion of the airport. The golf course area is outside of the airport boundary and was visited last.

Data Point 1, drainage ditch in subbasin 54: This is a long drainage feature along Doolittle Drive and had been mapped as a drainage ditch dug on dry land and without groundwater connection in the proposed jurisdictional map of October 9, 2006. It increases in depth and width as it progresses northwesterly towards subbasin 57 where it is less than 100 feet from the San Francisco Bay directly due east on the other side of Doolittle Drive. At our sample point, this feature is 3-5 feet deep, 15-20 feet wide with standing water and wetland vegetation is dominated by *Scirpus* sp. (OBL), *Distichlis spicata* (FACW), *Atriplex triangularis* synonym for *A. patula* (FACW), and *Spartin*a sp. (OBL).

Data Point 2, drainage ditch in subbasin 53: Re-examination of W25A, February 2, 2006 data sheet prepared by Huffman indicates that this feature is with a wetland area. This feature runs along the non-dial wetland area and is fully vegetated with *Salicornia virginica* (OBL) being the dominant species and trace occurrences of *Typha* sp. (OBL). This drainage feature flows northward into subbasin 55 and as per the storm water drainage flow diagram (attached at end of report) will end up in Pumphouse #2.

Data Point 3, drainage ditch in subbasin 55: This feature is a continuation of the drainage ditch of Data Point 2 and runs along the service road. The drainage ditch has standing water with well developed stands of *Salicornia virginica* (OBL).

Data Point 4, drainage ditch in subbasin 56: This feature is a drainage ditch constructed at the northeastern edge of the nontidal wetland area within subbasin 55 and had standing water with well developed stands of *Salicornia virginica* (OBL). This drainage ditch transports surface water from the wetland area to Pumphouse #2.

Data Points 5 and 6, drainage ditches in subbasin 52: Both of these drainage ditches flow northeastly towards Pumphouse #2, transporting water from subbasin's nontidal wetland area. The drainage ditches had 6-8 inches of standing water.

Data Point 7, drainage ditch in subbasin 61: This drainage feature drains directly into Pumphouse #2. The drainage ditch had standing water and the floating, aquatic macrophyte duckweed, *Lemna* sp. (OBL).

Data Point 8, drainage ditch in subbasin 51: This drainage feature drains directly to Pumphouse #2 and was vegetated by *Atriplex triangularis* synonym for *A. patula* (FACW) and *Chenopodium album* (FAC).

Data Point 9, drainage ditch in subbasin 61: This is the upper portion of the drainage ditch sampled with data point 7. There is standing water and more wetland vegetation: *Lemna* sp. (OBL), *Typha* sp. (OBL), *Atriplex triangularis* synonym for *A. patula* (FACW), and *Salicornia virginica* (OBL).

Data Point 10, drainage ditch in subbasin 60: this is a depressional features that was dominated by *Agrostis stolonifera* (FACW), *Cynodon dactylon* (FAC), *Atriplex triangularis* synonym for *A. patula* (FACW). The soil was still moist and had redoxomorphic features and there were surface sediment deposits indicative of prolonged ponding.

Data Point 11, drainage ditch in subbasin 60: continuation of feature in data point 10 that is increasing in depth and appears to be more developed.

Data Point 12, drainage ditch in subbasin 70: The lower end of this drainage ditch is well developed with standing water and wetland vegetation dominated by *Typha* sp. (OBL), *Atriplex triangularis* synonym for *A. patula* (FACW), *Cyperus eragrostis* (FACW), and *Distichlis spicata* (FACW).

Data Point 13, drainage ditch in subbasin 70: This is a drainage feature that drains into the drainage ditch of data point 12. The ditch had the wetland species *Agrostis stolonifera* (FACW) and *Distichlis spicata* (FACW) and surface sediment deposits.

Data Point 14, drainage ditch in subbasin 70: This data point was taken further along the drainage ditch in data point 12. At this sampling point the dominant plant species were *Agrostis stolonifera* (FACW) and *Distichlis spicata* (FACW). The soil had well developed iron staining and surface sediments deposits indicate prolonged ponding.

Data Point 15, drainage ditch in subbasin 70: This data point is at the connection of the main drainage ditch running north south along and the u-shaped drainage ditch ringing the field within subbasin 70. There are surface sediment deposits as well as salt crystals and the presence of *Polypogon monspeliensis* (FACW).

Data Point 16, drainage ditch in subbasin 70: This data point is further north along the drainage ditch running north south. This area appears to be deeper than data sampoing 15. The soil is moist to the surface with iron staining and the plants are mostly *Lemna* sp. (OBL) and *Distichlis spicata* (FACW).

Data Point 17, drainage ditch in subbasin 70: This is the southern end of the u-shaped drainage ditch and appears similar to data point 16.

Data Point 18, drainage ditch in subbasin 70: This is the southern end of the u-shaped drainage ditch near the southeastern corner and appears similar to data point 16.

Data Point 19, drainage ditch in subbasin 70: This is the central eastern portion of the U-shaped drainage ditch and represents the drier end of this feature. The vegetation is still considered wetland vegetation since it is dominated by Lolium perenne (FAC) and *Cynodon dactylon* (FAC).

Data Point 20, drainage ditch in subbasin 70: This data point is in the northeastern corner the U-shaped drainage ditch and is similar to data point 19.
Data Point 21, wetland area in subbasin 33: This wetland area was added to the proposed map. The area had surface ponding with vegetation dominated by the FACW species, *Distichlis spicata* and *Frankenia grandifolia*.

Data Point 22, drainage ditch in subbasin 33: This drainage feature was full of water and appears to be deep enough that it is a result of the drainage ditch having been excavated low enough to intercept ground water. This features most drain towards the storm drain located at the western edge of the drainage ditch and transports surface water from the wetland area directly to the north.

Data Point 23, drainage ditch in subbasin 24: This is a long drainage feature that runs the entire length of subbasin 24. Data point 23 is located at the western most end and has standing water. This feature is very deep with standing water. It appears to be deep enough that it is a result of the drainage ditch having been excavated low enough to intercept ground water.

Data Point 24, drainage ditch in subbasin 16: this is a long drainage feature that runs parallel to the drainage feature in subbasin 24 with similar characteristics. It too appears to be deep enough that it is a result of the drainage ditch having been excavated low enough to intercept ground water

Data Point 25, drainage ditch in subbasin 16C: This is a drainage feature that is abuting the wetland area in subbasin 16C and has standing water.

Data Point 26, drainage ditch in subbasin 24: This is another data point along the drainage feature sampled in data point 23. There is standing water in this section of the drainage ditch as well as the eastward end of the drainage ditch.

Data Point 27, drainage ditch in subbasin 16: This is another data point along the drainage feature sampled in the data point 24. There is standing water within the ditch as well as the eastward end of the drainage ditch.

Data Point 28, drainage ditch in subbasin 16: This is another data point along the central part of the drainage feature sampled in data point 24 and 27. There is standing water with wetland vegetation dominated by *Distichlis spicata (FACW).*

Data Point 29, drainage ditch in subbasin 23: This drainage ditch is collecting surface water from the wetland area on either side of it. There was standing water in the drainage ditch.

Data Point 30, drainage ditch in subbasin 23: This drainage ditch is collecting surface water from the abutting wetland area and had standing water.

Data Point 31, drainage ditch in subbasin 66: This drainage ditch is in the process of being filled by current grading activities that were permitted under the recent NWP to the Port of Oakland.

Data Point 32, drainage ditch in subbasin 66: This drainage ditch had standing water.

Data Point 33, drainage ditch in subbasin 27: This drainage ditch collects water from the abutting wetland area. The ditch had standing water and the vegetation was dominated by *Cynodon dactylon* (FAC).

Data Point 34, drainage ditch in subbasin 27: This is an additional drainage ditch to the on in sample data point 33 and also abut the wetland area in the central area. The drainage ditch has standing water and *Salicornia virginica* (OBL).

Data Points 34, 35, 36, 37, and 38 drainage ditch in subbasin 66: This drainage ditch runs along the service road and flows northeastly collecting surface water. The ditch had standing water and well established *Typha* sp. (OBL) at the western and central parts (data points 35, 36, 37 and 38). It appears to be deep enough that it is a result of the drainage ditch having been excavated low enough to intercept ground water.

Data Point 39, drainage ditch in subbasin 16: This drainage ditch appears to collect surface water from the surrounding south airfield. The ditch has standing water and the perimeter is lined with pampas grass, *Cortaderia selloan* (UPL).

Data Point 40, drainage ditch in subbasin 16a: This drainage ditch is abuting the large wetland area in subbasin 16. It had standing water and the perimeter is lined with pampas grass, *Cortaderia selloan* (UPL).

Data Point 41, drainage ditch in subbasin 16: This drainage ditch is fully vegetated with *Salicornia virginica* (OBL).

Data Points 42, 43, 44, 45, drainage ditch in subbasin 16a: These data points are along the same drainage ditch as data point 40. Water flows into the lagoon of Pumphouse #6. There is standing water at all data points within this drainage feature.

Data Point 46, drainage ditch in in subbasin 16a: This drainage ditch has standing water and appears to be draining the wetland area in subbasin 12.

Data Point 47, drainage ditch in subbasin 10: This drainage ditch with standing water.

Data Points 48, 49, 50, 51, 52, 53, and 54: Golf Course. We walked the golf course and noted athat all the features had standing water and the vegetation was dominated by *Typha* sp. (OBL) and *Salicornia virginica* (OBL).

_____ _____

Katerina Galacatos
Project Manager

Date

_____ _____

Dan Martel
Wetland Specialist

Date