U.S. ARMY CORPS OF ENGINEERS
NORTH ATLANTIC DIVISION

Date: 2 August 2007

ADMINSTRATIVE APPEAL DECISION

MERRIMART MANAGEMENT COMPANY, LLC
BALTIMORE DISTRICT FILE NO. 200600709

Review Officer: James W. Haggerty, U.S. Army Corps of Engineers, North Atlantic Division

Appellant: Merrimart Management Company, LLC

Date of Receipt of Request for Appeal: 10 March 2006

Date of Acceptance of Request for Appeal: 26 June 2006

Appeal Conference/Site Visit Date: 15 August 2006

NAD-ACCEPTED REASONS FOR APPEAL:

NAD accepted the following reasons for appeal for consideration, as enumerated in the appellant's 7 March 2006 letter:

1) Wetland hydrology on the project site is the artificial result of stormwater runoff from an adjacent subdivision and the draining and cleaning of a local water tower.
2) The administrative record states that the National Wetland Inventory Map does not show any wetlands on the property.
3) None of the soils in the project area are classified as hydric soils by the Natural Resource Conservation Service.

BACKGROUND INFORMATION:

On 29 December 2005, the Baltimore District ("the district") received an request for a determination of Department of the Army ("DA") jurisdiction for the proposed Kati-Springs subdivision, to be construction on a 1.18-acre parcel of land off Highmount Lane near Watts Branch, a tributary of the Potomac River in Prince George's County, Maryland. The district performed a site inspection on 16 August 2005, in advance of the submission of the formal jurisdictional determination request. The district issued an approved jurisdictional determination on 11 January 2006, and indicated there was one jurisdictional watercourse on the project site along with a small jurisdictional non-tidal wetland area located partly within the northeastern portion of the site. After the appellant submitted the request for appeal on 7 March 2006, he attempted to resolve this matter informally with the district. The district conducted two additional site inspections with the appellant, but did not modify the original determination. During a telephone conversation on 16 June 2006, the appellant requested that North Atlantic Division process his appeal request.

INFORMATION RECEIVED DURING THE APPEAL REVIEW AND ITS DISPOSITION:

a) The district provided a copy of the administrative record, which was reviewed and considered in the appeal review process along with the results of the 15 August 2006 site inspection and appeal conference.
b) During the appeal conference, all in attendance reviewed a drainage map of the portion of Prince George's County in which the project site is located. The appellant's environmental consultant brought the map to the conference, to help clarify the appellant's first reason for appeal indicated above. This was accepted as clarifying information in accordance with Title 33 of the Code of Federal Regulations ("33 CFR"), Part 331.7 (e).

OVERALL CONCLUSION:

The appellant's request for appeal is being remanded to the district for reconsideration in light of the guidance issued on 5 June 2007 by Corps Headquarters and the U.S. Environmental Protection Agency implementing the 19 June 2006 U.S. Supreme Court decision in the consolidated cases of *Rapanos v. United States and Carabell v. United States*, since portions of the site appear to contain hydrologic features that are addressed in said guidance.

TODD T. SEMONITE
Brigadier General, USA
Commanding