



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

February 1, 2008

Regulatory Division
Special Projects/Enforcement Branch
Enforcement Section
SAJ-2003-2336 (IP-TEH)

Mr. John R. Sierra, Jr.
Sierra Properties
509 Guisando De Avila, STE 200
Tampa, Florida 33613

NOTICE OF PERMIT SUSPENSION

Dear Mr. Sierra:

This letter is to notify you that the U.S. Army Corps of Engineers (Corps) is suspending Department of the Army (DA) permit No. 2003-2336 (IP-TEH), which authorized you to perform work in jurisdictional wetlands associated with the Cypress Creek Town Center commercial complex. The project is located immediately west of the junction of State Road 56 and I-75, Pasco County, Florida.

The site is adjacent to Cypress Creek, a regulated water of the United States. Cypress Creek is considered an Outstanding Florida Water, a designation that recognizes the creek's important environmental functions and resource value to the citizens of the State of Florida.

Background

The referenced DA permit was issued by the Corps to Sierra Properties on May 15, 2007. The permit contained general and specific conditions, which identified required actions that must be implemented by the permittee.

The referenced DA permit included, as an attachment, a State of Florida permit and water quality certification (No. 43026931.001), which was issued to you on January 30, 2007, by the Southwest Florida Water Management District. The state permit did not authorize offsite discharges to Cypress Creek. Compliance with the state permit is required as a condition of your Federal permit.

On August 22, 2007, the Corps issued to Sierra Properties a Notice of Noncompliance for failure to comply with the conditions of the referenced DA permit. Noncompliance activities cited in the notice included offsite discharge of sediments and turbid water to Cypress Creek.

On January 24, 2008, Corps staff inspected the construction site and again documented the discharge of turbid water to Cypress Creek and an associated wetland.

Reasons for Suspension of the Permit

1. In discharging turbid water to Cypress Creek on two occasions and in failing to comply with your state permit, you have failed to comply with general conditions 2 and 5 of your Federal permit. General condition 2 requires that you maintain your site in good condition and in conformance with the terms and conditions of the permit. General condition 5 requires compliance with your state water quality certification.

2. The discharge of turbid water from the construction site to the creek is contrary to the basis of the Corps's authorization for the project. The Environmental Assessment and Statement of Findings are the Corps "decision documents" that reflect all the areas of consideration that were evaluated by the Corps project manager in order to determine compliance with our 404(b)1 guidelines and to arrive at the rationale for authorization of the project. A review of those documents reveals that on-site stormwater treatment and water quality in Cypress Creek and its associated wetlands were of paramount concern to the Corps reviewer for the Cypress Creek Town Center project. It is evident that the Corps reviewer relied heavily on the permittee's proposed plans and environmental controls to gain assurance that the project would meet the 404(b)1 guidelines, would be in the public interest, and would not impose significant, unacceptable impacts to wetlands and water quality.

In the secondary impact section of the 404(b)1 guidelines, the Corps reviewer felt assured that adverse secondary effects would be avoided as a result of the permittee's operation of a water management system that would pre-treat water before releasing it to adjacent wetlands.

In the water quality section of the 404(b)1 guidelines, the Corps reviewer found that "adverse impacts to water quality or downstream ecosystems as a result of the proposed project" would be avoided if the permittee pre-treated stormwater, obtained state water quality certification for a water management system, and established a water quality monitoring a program.

It is clear to the Corps that these assurances have not been met and that the lack of compliance warrants suspension of the permit until the permittee can provide assurance that an appropriate resolution to the observed problems has been developed and implemented.

Initial Corrective Action

The Corps seeks initial corrective actions for immediate assurance that additional offsite discharges will not occur. The Corps has identified pond D on the construction site as the main source of the turbid discharges. We require a written plan to reinforce the barrier at the discharge point of pond D and to address improved storage capability of pond D and any other ponds as necessary to prevent additional discharges. The plan must be developed and sealed by a Florida-registered professional engineer and must include a time schedule for immediate implementation of the remedial measures. We also seek a report from a qualified environmental professional to assess possible sedimentation or other environmental damage that may have resulted downstream in Cypress Creek and in the receiving wetland below pond D. These assurances should be provided to the Corps Tampa Regulatory Office within ten (10) days.

Compliance with this order for corrective action will not foreclose the Federal Government's options to initiate appropriate legal action or to later require the submission of a permit application or other remedial actions.

Suspension Guidance

Accordingly, DA permit SAJ-2003-2336 (IP-TEH) is now suspended. Except as authorized by the Corps for remediation, you are prohibited from working in any areas of the Cypress Creek Town Center site that have been identified as waters of the United States.

Following this suspension the Corps will decide whether to reinstate, modify, or revoke the permit. Within ten (10) days after receiving this notice of suspension, you may request a meeting with the district engineer or request a public hearing to present information regarding this matter. If you request a hearing, we will follow the procedures prescribed in 33 CFR part 327. After completion of the meeting or hearing (or in a timely manner, if you chose neither) we will take action to reinstate, modify, or revoke the permit.

If you have questions regarding this notice, please contact Thomas Farrell at the letterhead address or by telephone at 813-769-7072.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Grosskruger". The signature is stylized with a large, sweeping initial "P" and "G".

Paul L. Grosskruger
Colonel, U.S. Army
District Engineer