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

REPLY TO ATTENTION OF

Regulatory Division
South Permits Branch
West Permits Section
Fort Myers Regulatory Office
200001926 (IP-HWB)

DEC 07 2005

Mr. J.D. Nicewonder, Jr.
148-B Bristol East Road
Bristol, Virginia 24201

Dear Mr. Nicewonder:

This letter refers to the Department of the Army permit application you submitted to discharge fill in freshwater-forested wetlands within the Cocohatchee watershed to construct a residential and golf course community known as "Mirasol." The project site is located north of Immokalee Road and east of Interstate 75 in Sections 10, 11, 15, 16, 21 and 22, Township 48 South, Range 26 East, Collier County, Florida. The U.S. Army Corps of Engineers (Corps) assigned the application the file number 200001926 (IP-HWB).

Your application has been reviewed in accordance with applicable Federal regulations. As a result of this review, it has been determined that the fill discharge is not in compliance with the Section 404(b) (1) Guidelines and that the project does not comply with the corps wetland policy. The discharge would result in significant adverse impacts to freshwater wetlands that perform important functions related to fish and wildlife resources, water quality, and the federally endangered wood stork. Furthermore, it has been determined that less damaging alternatives are available to you, such as removing the flow-way from the project. The flow-way is not necessary to realize the project purpose and would result in the direct loss of approximately 90 acres of wetlands. Secondary impacts from the flow-way have the potential to over-drain adjacent wetlands and could impact the receiving waters. Accordingly, it has been determined that your project is contrary to the public interest. Therefore, your Department of the Army permit is hereby denied.

You are hereby advised that you have certain options available to you with regards to this denial decision. These are outlined in the enclosed "Notification of Administrative Appeal Options and Process and Request for Appeal" form. It is very important that you read and understand the options provided. If you choose to appeal this denial you must follow the instructions provided for the appeal process as noted in Part C of the enclosed form. Your appeal request will be reviewed and processed in accordance with the procedures set forth at 33 CFR Part 331. The completed form must be mailed to the following address:

Commander, South Atlantic Division
U.S. Army Corps of Engineers
ATTN: Appeals Review Officer
CESAD-CM-CO-R, Room 9M15
60 Forsyth St., SW.
Atlanta, Georgia 30303-8801

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Robert M. Carpenter
Colonel, U.S. Army
District Engineer

Enclosure

Applicant: JD Nicewonder, Jr.		File Number: SAJ-2000-1926	Date:7 Dec 2005
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
X	PERMIT DENIAL		C
	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

If you have questions regarding this decision and/or the appeal process you may contact: Mr. Lawrence Evans (telephone 904-232-1177) U.S. Army Corps of Engineers, Jacksonville District Regulatory Division P. O. Box 4970 Jacksonville, Florida 32232	If you only have questions regarding the appeal process you may also contact: Mr. Stuart Santos (telephone 904-232-2018) U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division P. O. Box 4970 Jacksonville, Florida 32232

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number: