



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
1520 ROYAL PALM SQUARE BOULEVARD, SUITE 310
FORT MYERS, FLORIDA 33919

REPLY TO
ATTENTION OF

July 15, 2010

Regulatory Division
Special Projects and Enforcement Branch
SAJ-2008-04055 (CDO)

Jerrie Lindsey
Director of the Office of Recreational Services
Florida Fish and Wildlife Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

CEASE AND DESIST ORDER

Dear Ms. Lindsey:

It has been reported to our office that dredge and fill activities have been conducted in waters of the United States for the purpose of maintaining navigability within an area called Cowbone Marsh and Fisheating Creek. The project is located in Sections 22, 27, 28 and 33, Township 40 South, Range 31 East, Glades County, Florida.

Information received in this office indicates that you are a party associated with this activity, either as a property owner or person performing or causing the performance of this work. It is my responsibility, as District Engineer, to enforce the provisions of the Clean Water Act, as amended and the Rivers and Harbors Act of 1899 as it relates to this activity and to request that further activity, as stated above, cease and desist.

Section 404 of the Clean Water Act 33 U.S.C. paragraph 1344, prohibits discharges of dredged or fill material into waters of the United States and their adjacent wetlands unless the work has been authorized by Department of the Army permit. Civil fines of no more than \$37,500 per day of violation, criminal fines of up to \$50,000 per day of violation, and imprisonment are provided along with injunctive relief, including restoration of the area.

RECEIVED
JUL 19 2010

D.E.P. South District

Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. paragraph 403, prohibits the placing of any structure in or over navigable waters of the United States and excavating from or depositing material into such waters unless the work has been properly authorized by a Department of the Army permit. In accordance with the Alternatives Fines Act, 18 U.S.C. §3571, criminal penalties may be imposed up to \$100,000 in fines for individuals and up to \$200,000 in fines for corporations, up to 1 year imprisonment, or both. Injunctive relief, including restoration, is also available.

If further work is performed after receipt of this cease and desist order, I must seek immediate legal action to halt such activity. It is requested that you acknowledge receipt of this letter within 15 days, comply with its terms, and provide information concerning the public and/or private need for this work, the beneficial and detrimental effects it will have on the surrounding environment, and any information you may wish to provide concerning the history of your activity. In addition, comments will be solicited from appropriate Federal and State agencies in order to better evaluate this activity.

In accordance with a Memorandum of Agreement between the Department of the Army and the U.S. Environmental Protection Agency (EPA) concerning federal enforcement of Section 404 of the Clean Water Act, a copy of this notification is being sent to the EPA for review and coordination. My staff will conduct a preliminary investigation to determine whether EPA or the U.S. Army Corps of Engineers will be the Federal agency responsible for evaluating the unauthorized work. You will be notified whether EPA or the Corps will be the agency to work with you to resolve the violation.

If you have any questions, please contact Cynthia Ovdenk in writing, at the letterhead address or by telephone 239-334-1975.

Sincerely,

Deborah L. Stegmann

for

Alfred A. Pantano, Jr.
Colonel, U.S. Army
District Commander

RECEIVED
JUL 19 2010

D.E.P. South District

Copy Furnished:

Ms. Molly Davis, Chief, Wetlands Enforcement Section
U.S. Environmental Protection Agency, 61 Forsyth Street, 15th
Floor, Atlanta, GA 30303

bcc:

DEP, Ft. Myers

✓ FWS, Vero Beach

NMFS, Miami

NOTE: Under our present permit regulations, we must make an evaluation, similar to that made on a permit application, to determine whether the above-mentioned work, or alternately some form of restoration, is in the general public interest. In order to conduct a complete evaluation of this project, we request any recommendations your agency may wish to offer regarding the probable beneficial and/or detrimental consequences of the present work versus those of possible restoration of the area.

Considering the need to act decisively on these violations, we request your comments be submitted no later than 30 days from the date of this letter to Ms. Cynthia Ovdenk at 1520 Royal Palm Square Boulevard, Suite 310, Fort Myers, Florida 33919. Should you require additional time in which to respond, please advise.

Please furnish an additional copy of your comments to our office.

RECEIVED
JUL 19 2010
D.E.P. South District