

Permit: USACE Permit No. 200111049

PROPOSED ADMINISTRATIVE PENALTY ORDER

Under the authority granted by 33 U.S.C. § 1319(g) and 33 CFR Part 326.6, I, Colonel John E. Pulliam, Jr., District Engineer, Wilmington District, propose to issue this order assessing a Class I Administrative Penalty for violation of the above-referenced permit.

Name/Address of Permittee:

Fortune Bay Golf Club, LLC

Permitted Activity:

The discharge of earthen fill material within 221,720 square feet (5.09 acres) of Department of the Army (DA) jurisdictional wetlands and the excavation of earthen material from 108,029 square feet (2.48 acres) of DA jurisdictional wetlands, to facilitate the construction of a residential golf community, on property located off U.S. Highway 158, adjacent to the North River and the Albemarle Sound, in Powell's Point, Currituck County, North Carolina, consistent with the application and plans for USACE Permit No. 200111049.

Condition(s) or Limitation(s) of Permit Reportedly Violated:

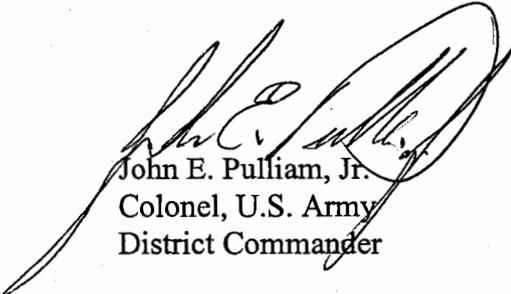
Fortune Bay Golf Club, LLC, failed to comply with special condition b. of the permit, which states, "The Permittee shall undertake the construction and monitoring of 2.51 acres of forested wetlands as described in the approved plan entitled *Mitigation Plan for Kilmarlic Residential Golf & Community*, prepared April 15, 2002, as revised April 17, 2002. The construction will be implemented concurrently with all phases of construction activities undertaken on this site as authorized by this permit."

Description of the Nature of the Violation(s):

Fortune Bay Golf Club, LLC, constructed the golf course and residential community without complying with this permit condition. Fortune Bay Golf Club, LLC, only recently completed construction of the required compensatory mitigation work.

I propose to assess a Class I Administrative Penalty against the permittee in this case for \$ 11,000; however, this proposal is subject to revision in the interest of justice after all evidence and comments have been received and reviewed. The amount that may be assessed as a Class I Administrative Penalty may not exceed \$11,000 per individual violation or a maximum amount of \$27,500.

Issued this 10th day of February 2006.


John E. Pulliam, Jr.
Colonel, U.S. Army
District Commander