

Permit: USACE Permit Nos. 200411323 and 200411324

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 permits.

Name/Address of Permittee:

Sunset Bay, LLC

Permitted Activity:

The discharge of earthen fill material within Department of the Army (DA) jurisdictional wetlands to facilitate the development of a residential/condominium complex on property at the Bermuda Bay Development, located off the south side of Ocean Bay Boulevard, adjacent to Colington Creek, in Kill Devil Hills, Dare County, North Carolina, consistent with the application and plans for USACE Permit Nos. 200411323 and 200411324.

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

Sunset Bay, LLC, failed to comply with special condition b. of each of the subject permits, which state that, "The Permittee shall preserve and maintain 3.0 acres of DA jurisdictional wetlands identified on the applicant's property plat submitted with the application (plat number P01077, dated 2-26-04, titled Sunset Bay, LLC). The Permittee is prohibited from performing any of the following activities on the property: Filling; grading; excavating; earth movement of any kind; construction of roads, buildings, signs, or any other structure; any activity that may alter the drainage patterns on the property; the destruction, mowing, or other alteration of vegetation on the property; disposal or storage of any garbage, trash, or other waste material; or any other activity which would result in the wetlands being adversely impacted or destroyed. Conservation area boundary shall be clearly marked to prevent future inadvertent impacts."

Sunset Bay, LLC, failed to comply with special condition c. of each of the subject permits, which state that, "Prior to beginning work authorized by this permit, the Permittee shall execute and cause to be recorded a conservation easement prohibiting those activities listed in condition b. above. The holder of this easement shall be approved by the Corps of Engineers prior to recordation of the easement. The Permittee shall provide the Corps of Engineers, a copy of the recorded easement within 60 days of the recordation of the easement. The Permittee shall take no action inconsistent with the terms and purpose of the conservation easement on the property described therein."

Sunset Bay, LLC, failed to comply with special condition d. of each of the subject permits, which state that, "Condition c. above runs with the land. The Permittee shall not sell, lease, or otherwise convey any interest in the property without first providing sixty (60) days written notice to the Corps of Engineers of

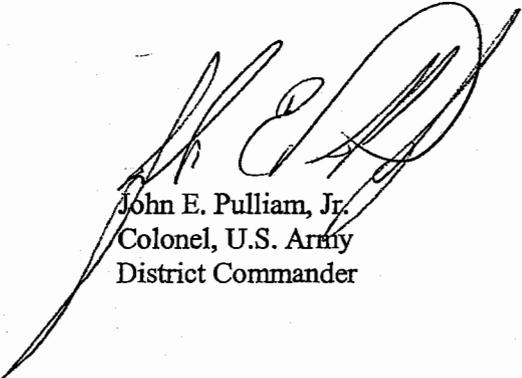
the proposed conveyance. The instrument affecting such conveyance shall include legally binding restrictions on the use of the mitigation property as described in condition b. above, to be enforceable by the Permittee as well as the U.S. Army Corps of Engineers, Wilmington District. The instrument establishing such restrictions shall be subject to the approval of the Corps of Engineers. The Permittee shall enforce the terms of the required restrictions.”

Description of the Nature of the Violation(s):

As of March, 2006, Sunset Bay, LLC, had begun construction of the residential/condominium complex without preserving the land as required in special condition b. of each of its permits. Sunset Bay, LLC did not record or execute a conservation easement prior to beginning work authorized by the permits, as required by special condition c. of each of its permits. Sunset Bay, LLC sold its interest in the subject property without accomplishing the required preservation, as required by special condition d. of each of its permits. Sunset Bay, LLC, only recently completed the requirements for the conservation easement. As such, Sunset Bay, LLC, has violated three separate conditions of two separate Department of the Army permits, for a total of six individual violations of Section 301 of the Clean Water Act.

I propose to assess a Class I Administrative Penalty against the permittee in this case for \$ 22,000; 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 4th day of June 2006.



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