



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
FORT MYERS REGULATORY OFFICE
1520 Royal Palm Square Boulevard, Suite 310
FORT MYERS, FLORIDA 33919

January 4, 2007

Regulatory Division
South Permits Branch/West Permits Section
Fort Myers Field Office
SAJ-2005-6172(IP-MAE)

Mr. Constantine Benetis
US Home Corporation
10481 Six Mile Cypress Parkway
Fort Myers, Florida 33912

Dear Mr. Benetis:


The U.S. Army Corps of Engineers (Corps) is pleased to enclose the Department of the Army permit, which should be available at the construction site. Work may begin immediately but the Corps must be notified of:

- a. The date of commencement of the work;
- b. The dates of work suspensions and resumptions of work, if suspended over a week, and
- c. The date of final completion.

This information should be mailed to the Enforcement Section of the Regulatory Division of the Jacksonville District at Post Office Box 4970, Jacksonville, Florida 32232-0019. The Enforcement Section is also responsible for inspections to determine whether Permittees have strictly adhered to permit conditions.

IT IS UNLAWFUL TO DEVIATE FROM THE ENCLOSED APPROVED PLANS.

Sincerely,


Loren M. Mason, Ph.D.
Acting Chief, Regulatory Division



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DEPARTMENT OF THE ARMY PERMIT

Permittee: Mr. Constantine Benetis
US Home Corporation
10481 Six Mile Cypress Parkway
Fort Myers, Florida 33912

Permit No: SAJ-2005-6172(IP-MAE)

Issuing Office: US Army Engineer District, Jacksonville

NOTE: The term "you" and its derivatives, as used in this permit, mean the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the US Army Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Authorization for the construction of a residential development known as "Summerlin Place" on a 16.4 acre site. The project will require the discharge of approximately 6,120 cubic yards of fill into 1.7 acres of wetlands and the excavation of 12,000 cubic yards of material from 0.4 acre of wetlands. The work is to be completed in accordance with the attached plans (3 sheets) numbered SAJ-2005-6172(IP-MAE). These drawings can be found in Attachment A, which is attached to, and becomes part of, this permit.

Project Location: The proposed project site is located in freshwater and saltwater forested and herbaceous wetlands within the Estero Bay Drainage Basin, in Sections 27, Township 45 South, Range 24 East, Fort Myers, Lee County, Florida.

Latitude: 26°31'38" N, Longitude: 81°53'18" W.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **28 November 2011**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature and mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached (Attachment B).
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
7. The permittee understands and agrees that, if in the future, operation by the United States require the removal, relocation or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of such removal or alteration.

Special Conditions:

1. The permittee shall notify the Corps of Engineers in writing at least 48 hours prior to commencement of the work authorized by this permit and shall provide a written status report every six months until the authorized work has been completed.
2. Within 60 days of completion of the work authorized & mitigation, the permittee shall complete & submit a Self-Certification Statement of Compliance (Attachment C) to the Corps.
3. The applicant shall purchase 1.1 forested freshwater and 0.27 herbaceous freshwater mitigation bank credits from the Big Cypress Mitigation Bank.
4. The applicant shall purchase the mitigation bank credits concurrent with the onset of wetland impacts.
5. The 2.7 acres of on-site preservation areas shall be enhanced and managed in perpetuity for the control of invasive exotic vegetation as defined by the Florida Exotic Pest Plant Council's 2001 List of Invasive Species (Category 1)(<http://fleppc.org>). (See Attachment D) There shall be no invasive exotic vegetation or nuisance plant species of seed bearing size in the preservation area. Plants over three feet in height are considered to be seed bearing in size. At no time shall the density of invasive exotic vegetation or nuisance plant species smaller than seed bearing size exceed 1% of the areal cover in any individual stratum. At no time shall the total density of invasive exotic vegetation or nuisance plant species smaller than seed bearing size exceed a total of 5% for all strata.
6. The permittee shall ensure that the 2.7 acres of on-site preserve areas would remain in a natural state in perpetuity. The natural preserve areas are not to be disturbed by any dredging, filling, land clearing, agricultural activities, planting or any other construction work whatsoever, except as necessary to comply with the exotic removal and any supplemental plantings. The permittee should agree that the only future utilization of the preserved areas will be as a natural area. With the exception of the preservation plan, any work within the 2.7 acres of on-site preserves must be approved by the Corps of Engineers and may require a modification to the DA permit, additional mitigation or may require re-initiation of consultation with the FWS.
7. The permittee shall prepare a legally sufficient conservation easement for the 2.7-acre on-site preserve. The SFWMD will be the grantee for the on-site conservation areas. Any impacts or work in the 2.7-acre on-site preserve not authorized by the permit will require Department of the Army authorization, either as a modification or a separate authorization and may require additional mitigation.
8. The Standard Protection Measures for Eastern Indigo Snakes shall be implemented throughout project construction. (Attachment E)

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbors Act of 1899
(33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, and local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision:** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:


- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces, which this office did not consider in reaching the original public interest, decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions:** General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

SAJ-2005-6172(IP-MAE)
Summerlin Place

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.




(PERMITTEE) 12/6/06

(DATE)

~~Paul L. Grosskruger~~ *Constantine Benakis* Division

(TYPE OR PRINT PERMITTEE NAME AND TITLE) President

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



(DISTRICT ENGINEER) 1-4-07

(DATE)

folp
Paul L. Grosskruger
Colonel, U.S. Army

THIS PERMIT CONTAINS 7 ATTACHMENTS, TOTALING 99 PAGES

Attachment A – PERMIT DRAWINGS (3 Sheets)

Attachment B – WATER QUALITY CERTIFICATION (South Florida Water Management District Special Conditions in accordance with the General Condition number 5 on page 2 of this DA permit – 4 Pages)

Attachment C – SELF-CERTIFICATION STATEMENT OF COMPLIANCE (1 Page)

Attachment D – WETLAND PRESERVATION, MAINTENANCE & MONITORING PLAN JANUARY 2006 (4 pages)

Attachment E – STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE (1 Page)

SAJ-2005-6172(IP-MAE)
Summerlin Place

Permit Transfer: When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(PERMITTEE – SIGNATURE AND TITLE

DATE

Mr. Constantine Benetis
US Home Corporation
10481 Six Mile Cypress Parkway
Fort Myers, Florida 33912

PERMIT NUMBER: SAJ-2005-6172(IP-MAE)

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(TRANSFEREE - SIGNATURE)

(DATE)

(NAME AND TITLE - PRINTED/TYPED)

(NAME AND ADDRESS (CITY, STATE, AND ZIP CODE) - PRINTED/TYPED)

(TELEPHONE NUMBER)

The above transfer agreement should be completed and mailed to the local Corps of Engineers Regulatory Office or to:

U.S. Army Corps of Engineers, Jacksonville District
ATTN: Regulatory Division, Enforcement Branch
P.O. Box 4970
Jacksonville, Florida 32232-0019

SAJ-2005-6172(IP-MAE)
Summerlin Place

ATTACHMENT A: PERMIT DRAWINGS

3 Sheets

