



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**JACKSONVILLE DISTRICT CORPS OF ENGINEERS**  
Regulatory Division, Enforcement Section  
P.O. BOX 4970  
Jacksonville, FLORIDA 32232-0019

Regulatory Division  
Enforcement/Special Projects Branch  
Enforcement Section

Permit Number: 199707942(JRB)

Date of Notice: **SEP 10 2004**

**PUBLIC NOTICE**

**1. TO WHOM IT MAY CONCERN:** I, Colonel Robert M. Carpenter, District Engineer, Jacksonville District, propose to issue an Order assessing a Class I Administrative Penalty against D.R.Horton, Inc., for a violation of a permit granted under the Clean Water Act.

**2. PERMIT INVOLVED AND ALLEGED VIOLATION:** Department of the Army (DA) permit number 199707942 was issued to Rutland Estates on 12 January 1999, and the property was then sold to South St. Petersburg Properties, Inc. with the permit being transferred on 24 April 2003. The property was subsequently sold to D.R. Horton however, the permit was not properly transferred to D.R.Horton, Inc. The permit authorized the discharge of fill material over 0.31-acre of forested/herbaceous wetlands for the development of a single-family residential subdivision. The project site is within wetlands located north of 54<sup>th</sup> Avenue South, St. Petersburg, Section 06, Township 32 South, Range 17 East, Pinellas County, Florida.

The responsible party performed the impacts, through clearing and filling waters of the United States, while failing to meet the special conditions of the issued permit. In the body of the permit it is stated, **"To compensate for the impacts to jurisdictional wetland areas, you propose the following: (1) The enhancement through selective grading and planting scheme of approximately 1.73 acres of wetland/upland areas. The areas will be placed in Conservation Easement to be held by the Southwest Florida Water Management District. (2) An additional 0.15 acres of uplands buffer around the conservation (area) will**

be enhanced, but is not proposed for conservation. (3) Lastly, 0.07 acres of shoreline habitat will be placed in conservation separate from the 1.73 acres and only after the proposed docking facility receives approval from all regulatory authorities."

**Description of the Nature of the Violation:** The responsible party failed to comply with the following permit conditions:

Item #1. Failure to provide conservation easement- Special Condition #4(1) of the permit states: "By December 31, 1999, the permittee will have a legally sufficient conservation easement prepared to ensure that the 1.73 acre enhanced area will remain in their natural state in perpetuity..." (The conservation easement documents have not been submitted.)

Item #2. Failure to complete wetland enhancements within required timeframes. Special Condition #7 of the permit states: "All areas of creation and recordation of conservation easements will be completed within 15 months of issuance of the permit" (The permit was issued 12 January 1999 and enhancement/creation mitigation was not started until February 2004.)

Item #3. Failure to transfer the permit. General Condition #4 states "In the event the permit is transferred, proof of delivery of a copy of the recorded conservation easement to the subsequent permittee or permittees must be submitted to the Corps together with the notification of permit transfer" (Horton purchased the property but failed to notify the Corps of permit transfer until the violations were discovered).

**3. AUTHORITY FOR PROCEEDING:** This administrative penalty proceeding is initiated under the authority of 33 U.S.C. §1319(g) and 33 CFR Part 326.6. The procedure for assessing civil penalties in cases such as this is set out in the statute and the regulation. Following the discovery and investigation of a violation of a permit, notice is given to the responsible party, the appropriate State agency, and the public. The responsible party, the State, or any member of the public may file comments within 30 days. If requested by the responsible party, a hearing will be held before a Presiding Officer who will submit a report and recommend a decision to me. I will issue a Final Order on the case to the responsible party. Public participation in the hearing is permitted if a hearing is held.

4. **PENALTY PROPOSED:** The amount of the penalty proposed in this case is \$8,000.00. However, this proposal is subject to revision in the interests of justice after all evidence and comments have been received and reviewed. The amount of the penalty that I am authorized to assess as a Class I penalty is \$11,000 per violation and not more than \$27,500 total. In a case involving multiple violators, each violator is subject to a separate, not joint, penalty.

5. **REQUEST FOR HEARING:** The responsible party has 30 days following receipt of this formal notice of Proposed Penalty to request a hearing. Written request, by the responsible party, for a hearing should be directed to me within this designated comment period and must state the specific reasons for requesting a public hearing. The request should specify, in summary form, the factual and legal issues in dispute and the specific grounds for defense. The responsible party has a right to present evidence at the hearing; however, he may not challenge the permit condition(s) or limitation(s), which is the subject matter of this order.

6. **COMMENTS/ADMINISTRATIVE RECORD:** During the 30-day comment period, any person may submit written comments on the Proposed Penalty Order. These comments should be sent to me within this designated comment period. Any submitted comments will be included in the administrative record relating to the Proposed Order. All information submitted by the responsible party and persons commenting on the Proposed Order will be placed in the administrative record which will be available for inspection during regular business hours at the Regulatory Division Office, Jacksonville District, U.S. Army Corps of Engineers. (The administrative record is subject to provisions of law restricting the disclosure of confidential information.)

7. **PUBLIC HEARING:** The responsible party and all persons who file comments will be given notice of any hearing held on this case. The responsible party and all commenters will have a reasonable opportunity to be heard and to present evidence at such hearing, if a hearing is held.

8. **FINAL DECISION:** If the responsible party does not request a hearing, I may issue the Final Order on this violation on or

after 30 calendar days following receipt of this formal notice by the responsible party.

9. **POST DECISION HEARING/APPEAL:** Any Final Order issued under these procedures shall become effective 30 calendar days following its issuance unless (1) a petition to set aside the Order and to hold a hearing is filed by any person who commented on the Proposed Order and the petition is granted, or (2) an appeal to the United States District Court is taken under 33 U.S.C. §1319(g)(8).

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