



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 16 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Cindy Bartin, Esq.
Bartín Law Office
P.O. Box 861118
St. Augustine, Florida 32086

Re: Richmond American Homes of Florida, LP
Docket No. CWA-04-2008-5504(b)

Dear Ms. Bartin:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order (CA/FO) referenced above. Please make note of the provisions under Section V: Payment.

If you have any questions, please contact Judy Marshall, Associate Regional Counsel, at 404-562-9533.

Sincerely,

A handwritten signature in black ink, appearing to read "T. C. Welborn".

Thomas C. Welborn
Chief
Wetlands, Coastal and Nonpoint Source Branch

Enclosure

cc: Judy Marshall, OWLS
Mike Wylie, EPA
U.S. Army Corps of Engineers, Jacksonville, Florida
Florida Department of Environmental Protection, Jacksonville

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Richmond American Homes of Florida, LP) CONSENT AGREEMENT AND
15 Slipper Trail) FINAL ORDER
Flagler County, Palm Coast, Florida)
)
RESPONDENT.) Docket No.: CWA-04-2008-5504(b)

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CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding under Section 309(g)(2)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999), codified at 40 Code of Federal Regulations (C.F.R.) Part 22 (Part 22).

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has delegated this authority to the Director of the Water Management Division, who in turn has delegated this authority to the Chief of the Wetlands, Coastal and Nonpoint Source Branch of EPA Region 4 (Complainant).

II. Statutory and Regulatory Background

3. Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), states "[w]henever, on the basis of any information available - the Administrator finds that any person has violated [Section 301 of the CWA, 33 U.S.C. § 1311], . . . the Administrator . . . may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under [33 U.S.C. § 1319(g)(2)(B)]."

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states "[e]xcept as in compliance with . . . [Section 404 of the CWA, 33 U.S.C. § 1314], the discharge of any [dredged or fill material] by any person shall be unlawful." Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (COE), to issue permits for the discharge of dredged or fill material into navigable waters.

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a “discharge of pollutants” as “[a]ny addition of any pollutant to navigable waters from any point source”

6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”

8. Federal regulations under 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands.”

9. Federal regulations under 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(b) define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

III. Allegations

10. Respondent, Richmond American Homes of Florida, L.P. (RAH or Respondent), at all times relevant to this Consent Agreement and Final Order (CA/FO), was the owner and operator of a tract of land located on Slipper Trail, Palm Coast, Section 32, Township 12 South, Range 31 East, Flagler County, Florida, near 29° 25' 27.25" north latitude and 81° 11' 38.25" west longitude (Discharge Area). The Discharge Area is depicted in enclosed Exhibits A and B.

11. Respondent is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. In August 2005, Respondent commenced land clearing activities at the Discharge Area. Respondent then root-raked the Discharge Area by mechanical means. No fill from an outside source was placed on the Discharge Area, but spoil piles were created on the Discharge Area.

13. At an on-site inspection on September 29, 2005, the U.S. Army Corps of Engineers (COE) determined that Respondent, or those acting on behalf of the Respondent, conducted mechanized land clearing activities at the Discharge Area and discharged dredged and/or fill material into wetlands on the Discharge Area using earth moving machinery, during unauthorized activities associated with the clearing and filling of wetlands for residential development.

14. On October 13, 2005, COE requested that Respondent stop all work at the Discharge Area. All work was immediately ceased, and in response to a COE request, Respondent removed all spoil piles from the Discharge Area.
15. COE issued a Cease and Desist Order to Respondent on January 18, 2006.
16. Respondent answered COE's Cease and Desist Order by letter dated February 8, 2006.
17. By letter dated April 3, 2006, COE notified Respondent that this enforcement case was referred to EPA for resolution.
18. During an April 19, 2006, site visit by EPA, it was determined that Respondent's activities impacted approximately 0.18 acres of wetlands at the Discharge Area. These formerly forested wetlands are connected by a series of channels and canals to Bulow Creek which empties into Halifax Creek, a navigable-in-fact water of the United States.
19. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are "pollutants" as defined under the CWA § 502(6). A "discharge of a pollutant" as defined at Section 502(12)(A) of the CWA, 33 U.S.C. § 1362 (12)(A), is defined as any addition of any pollutant to navigable waters from any point source.
20. The earthmoving machines used by Respondent to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined under the CWA § 502(14).
21. Respondent's placement of the dredged and/or fill material at the Discharge Area constitutes a "discharge of pollutants" as defined under the CWA § 502(12).
22. At no time during the discharge of dredged and/or fill material at the Discharge Area in August of 2005, did Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed.
23. The discharge by Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the material discharged by Respondent remained in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

IV. Stipulations and Findings

24. Complainant and Respondent have conferred for the purpose of settlement under 40 C.F.R. Part 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without gathering any evidence or testimony, making of

any argument, or adjudicating any issue in this matter, and in accordance with 40 C.F.R. Part 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

25. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above, and neither admits nor denies the factual allegations set out above.

26. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

27. Respondent consents to the assessment of and agrees to pay the administrative penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

28. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

29. Complainant reserves the right to assess and collect any and all civil penalties for any violation described in this CA/FO to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to Complainant.

30. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

V. Payment

31. Under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19, and considering the nature of the violations and other relevant factors, Complainant has determined that Twenty Thousand Dollars (\$20,000.00) is an appropriate civil penalty to settle this action.

32. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via wire transfer as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727 [LINK {WIRE FORMAT} ---> PAGE 3]
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message must read D 68010727 Environmental
Protection Agency

In the reference space, Respondent must include the docket number of this CA/FO.

33. At the time of payment, Respondent shall send a separate copy of the wire transfer, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Mike Wylie
U.S. Environmental Protection Agency, Region 4
Wetlands Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

34. Civil penalty payments under this CA/FO are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

35. Under 40 C.F.R. § 13 and 31 U.S.C. § 3717 et seq., if Complainant does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, Complainant will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. Complainant will also assess on a monthly basis an up to six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

36. Under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by this CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

VI. General Provisions

37. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced under federal laws and regulations administered by EPA

38. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any federal or State statute, regulation or permit.

39. Except as otherwise set forth in this document, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties under the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth in this document, compliance with this CA/FO shall resolve the allegations of violations contained in this CA/FO. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed in this document, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or State statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

40. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

41. This CA/FO applies to and is binding upon Respondent and any officers, directors, employees, agents, successors and assigns of the Respondent.

42. Any change in the legal status of Respondent including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

43. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

44. In accordance with 40 C.F.R. Part 22.5, the individuals below are authorized to receive service relating to this proceeding:

For Complainant:

Judy Marshall
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9533

For Respondent:

Cindy L. Bartin
Bartın Law Office
P.O. Box 86118
St. Augustine, Florida 32086
(904) 794-4460.

45. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

46. Under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Florida was provided a prior opportunity to consult with Complainant regarding this matter.

47. This CA/FO in no way affects the rights of Complainant as against any person or entity not a party to this CA/FO.

VII. Release by Respondent

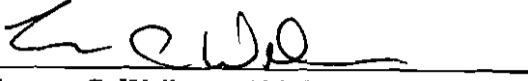
48. Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the Discharge Area or this CA/FO, including but not limited to, any claim that there has been a taking of Respondent's property without compensation.

VIII. Effective Date

49. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Thomas C. Welborn, Chief
Wetlands, Coastal and Nonpoint Source Branch
Water Management Division
U.S. EPA Region 4

Date: 5/13/08

For RESPONDENT, RICHMOND AMERICAN HOMES OF FLORIDA, LP:

a Colorado limited partnership

BY: RAH of Florida, Inc;
a Colorado Corporation,
its: general partner

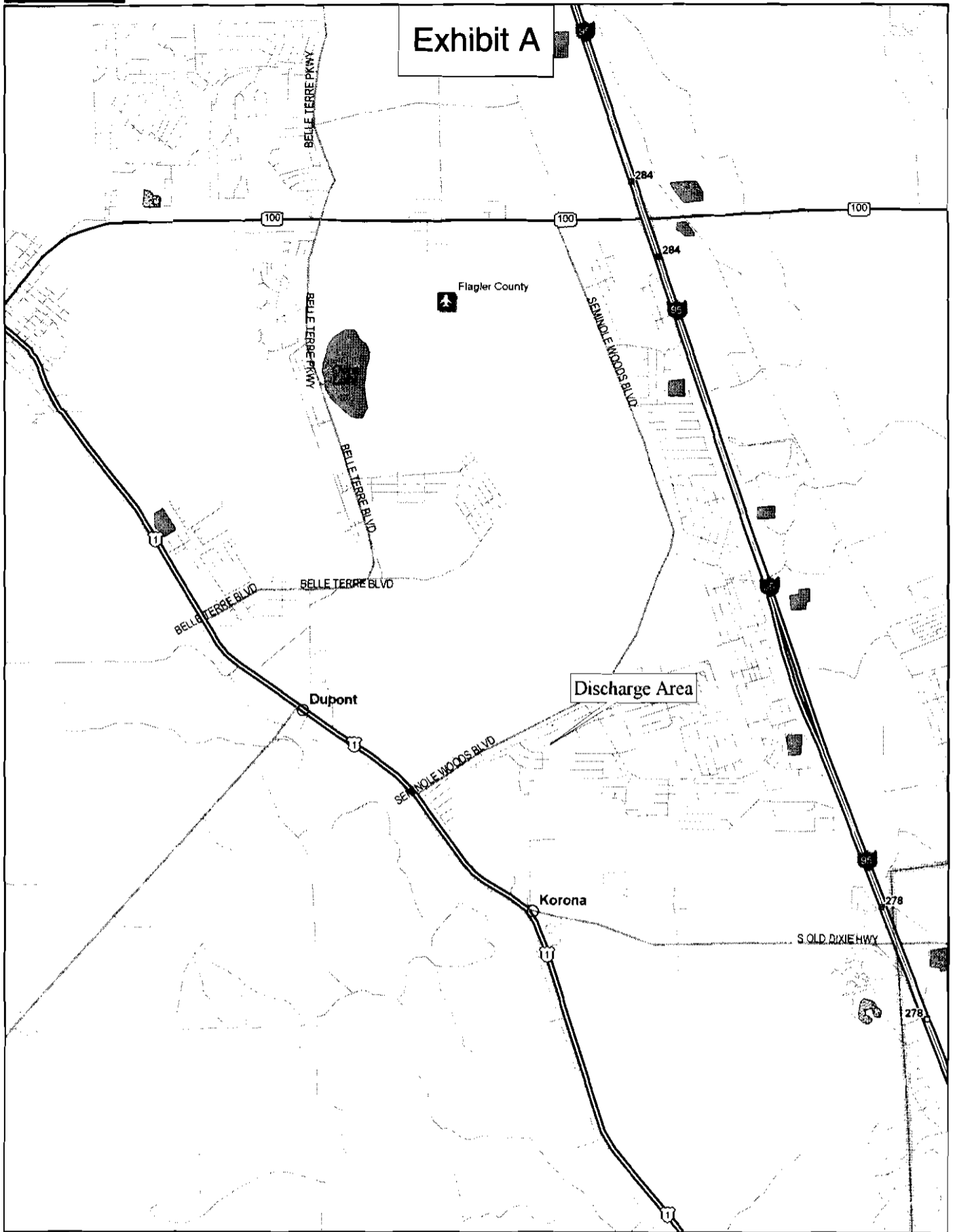
Lisa Luce

NAME: Lisa Luce

TITLE: Vice President

Date: 12.19.07

Exhibit A



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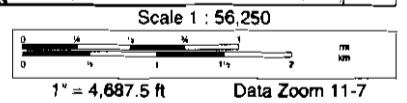
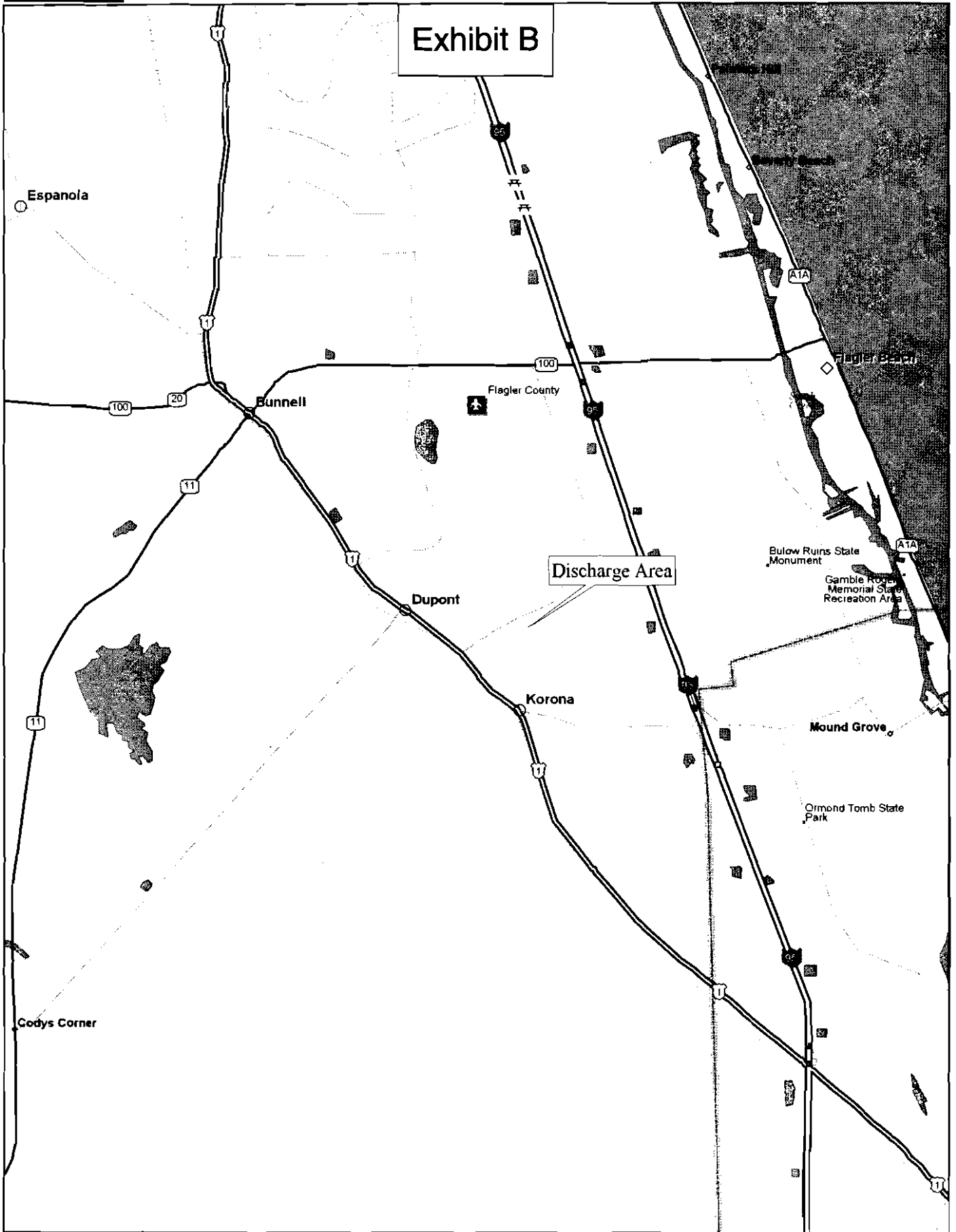
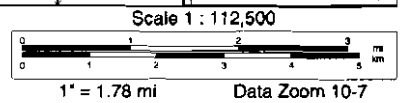


Exhibit B



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

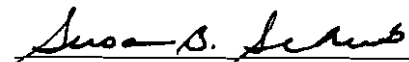
IN THE MATTER OF:)
)
Richmond American Homes of Florida, LP) CONSENT AGREEMENT AND
15 Slipper Trail) FINAL ORDER
Flagler County, Palm Coast, Florida)
)
RESPONDENT.) Docket No.: CWA-04-2007-5504(b)
)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/15/08



Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

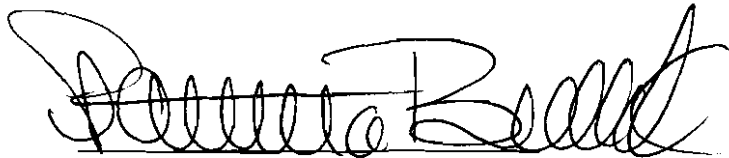
The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Richmond American Homes of Florida, LP., Docket No. CWA-04-2007-5504(b) (filed with the Regional Hearing Clerk on MAY 16 2008, 2008), was served on MAY 16 2008, 2008, in the manner specified to each of the persons listed below.

By hand-delivery:

Judy K. Marshall
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

By certified mail,
return receipt requested:

Cindy Bartin
Bartın Law Office
P.O. Box 861118
St. Augustine, Florida 32086



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9511