



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 30 2014

CERTIFIED MAIL 7007 2680 0000 3272 0064  
RETURN RECEIPT REQUESTED

Mr. Gregory Sean Foster  
Vista Builders, Inc.  
6143 Royal Palm Beach Boulevard  
West Palm Beach, Florida 33412

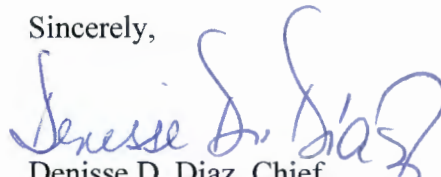
Re: Consent Agreement and Final Order No.: CWA-04-2014-5514(b)  
Vista Builders, Inc.  
Palm Beach County, Florida

Dear Mr. Foster:

Enclosed is a copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section V.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Ms. Judy Marshall, Associate Regional Counsel at (404) 562-9533.

Sincerely,

  
Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosure

cc: Ms. Deborah L. Wegmann  
U.S. Army Corps of Engineers, Jacksonville

Mr. Jose Rivera  
U.S. Army Corps of Engineers, Palm Beach Gardens Field Office

Mr. Cliff Wilson  
Florida Department of Environmental Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
VISTA BUILDERS, INC. )  
WEST PALM BEACH, FLORIDA ) DOCKET NO. CWA 04-2014-5514(b)  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

RECEIVED  
EPA REGION IV  
2014 SEP 30 AM 10:05  
HEARING CLERK

CONSENT AGREEMENT

I. Statutory and Regulatory 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. 40,176 (July 23, 1999), 40 Code of Federal Regulations ("C.F.R.") 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. The Administrator has delegated this authority to the Regional Administrator, EPA Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, EPA Region 4, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch, EPA Region 4 ("Complainant").

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. . . under [33 U.S.C. § 1319(g)(2)(A)]."

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.”

## **II. Allegations**

10. Vista Builders, Inc. (“Respondent”), is a corporation duly organized and existing under the laws of the State of Florida, and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all times relevant to this action, Respondent owned two parcels of land known as Lot Z-216 and Lot Q-356 within the development known as Palm Beach Country Estates. Lot Z-216 is located at 140<sup>th</sup> Trail North, Palm Beach Gardens, Palm Beach County, Florida, also known as Section 22, Township 41 South, Range 42 East, near latitude 26°53'3.42" North and longitude 80° 8'11.77" West. Lot Q-356 is located at 87th Way North, Palm Beach Gardens, Palm Beach County, Florida, also known as Section 17, Township 41 South, Range 42 East, near latitude 26°54'1.17" North and longitude 80°10'19.31" West.

12. On or about April 17, 2014, Respondent, or those acting on behalf of Respondent, used earth moving machinery to deposit dredged and/or fill material into wetlands at Lot Z-216 and Lot Q-356.

13. Respondent’s activities impacted approximately 0.29 acres of jurisdictional wetlands that abut and are adjacent to an unnamed tributary which flows to Canal C-18, and then to the Loxahatchee River. The Loxahatchee River is a tidally influenced traditional navigable water of the United States as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

14. The earth moving machinery employed by Respondent to deposit the dredged and/or fill material are “point sources” as defined at Section § 502(14) of the CWA, 33 U.S.C. § 1362(14).

15. The dredged and/or fill material are “pollutants” as defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. Respondent discharged pollutants into wetlands which are waters of the United States as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(b).

17. At the time of the discharge of dredged and/or fill material, Respondent did not have a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities.

18. Therefore, Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants into navigable waters without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

19. Each day the pollutants discharged by Respondent remain in waters of the United States without the required permit issued pursuant to 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.

### **III. Stipulations and Findings**

20. Complainant and Respondent have conferred for the purpose of settlement under 40 C.F.R. § 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. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

21. 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.

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

23. 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.

24. 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 recognizes 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.

25. The EPA 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 Respondents was materially false or inaccurate at the time such information or certification was provided to the EPA.

26. 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.

#### **IV. Payment**

27. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Five Thousand Dollars (\$5,000.00) is an appropriate civil penalty to settle this action.

28. 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 a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be submitted by U.S. Postal Service to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

29. At the time of payment, Respondent shall send a separate copy of the payment instrument, 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

Christopher Parker  
Wetlands Enforcement Section  
Clean Water Enforcement Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

30. 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), and 26 C.F.R. § 1.162-21, and are not tax deductible expenditures for purposes of federal law.

31. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure to pay the penalty assessed by the CA/FO in full by its due date may subject the 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 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.

#### **V. General Provisions**

32. 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 pursuant to federal laws and regulations administered by the EPA.

33. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other available enforcement actions. Such actions may include, without limitation, any administrative, civil or criminal action to seek penalties, fines, injunctive or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or State statute, regulation or permit.

34. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein.

35. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO.

36. 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.

37. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

38. 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.

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

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

For Complainant:

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

For Respondent:

Gregory Sean Foster  
6143 Royal Palm Beach Boulevard  
West Palm Beach, Florida 33412

41. 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 proposed CA/FO based on comments received during the public comment period.

42. Pursuant to 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.

43. 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 Lot Z-216, Lot Q-356 or this CAFO, including but not limited to, any claim that there has been a taking of Respondent's property without compensation.


44. Effective upon signature of this CA/FO, Respondent agrees that the time period commencing on the date of its signature and ending on the date that EPA receives the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by the EPA.

**VI. Effective Date**

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

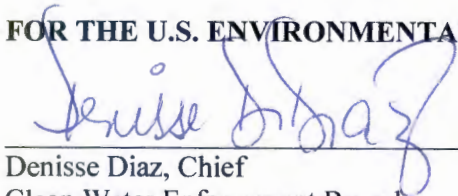
AGREED AND CONSENTED TO:

**FOR RESPONDENT VISTA BUILDERS, INC.:**

  
\_\_\_\_\_  
Gregory Sean Foster  
Title: President/owner

Date: 8/18/14

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

  
\_\_\_\_\_  
Denisse Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division

Date: 9/30/14



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) CONSENT AGREEMENT AND  
 ) FINAL ORDER  
VISTA BUILDERS, INC. )  
WEST PALM BEACH, FLORIDA ) DOCKET NO. CWA 04-2014-5514(b)  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

**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), Respondents are hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: Sept. 30, 2014

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

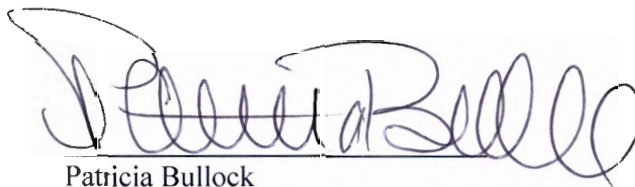
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of: **Docket No. CWA-04-2014-5514(b)** on the parties listed below in the manner indicated:

By hand-delivery: Judy Marshall  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

By Certified mail,  
return receipt requested: Gregory Sean Foster  
6143 Royal Palm Beach Boulevard  
West Palm Beach, Florida 33412

Dated: 9-30-14



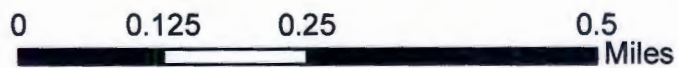
Patricia Bullock  
Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511



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EXHIBIT A  
Vista Builders  
Lot Z-216  
Palm Beach County, Florida



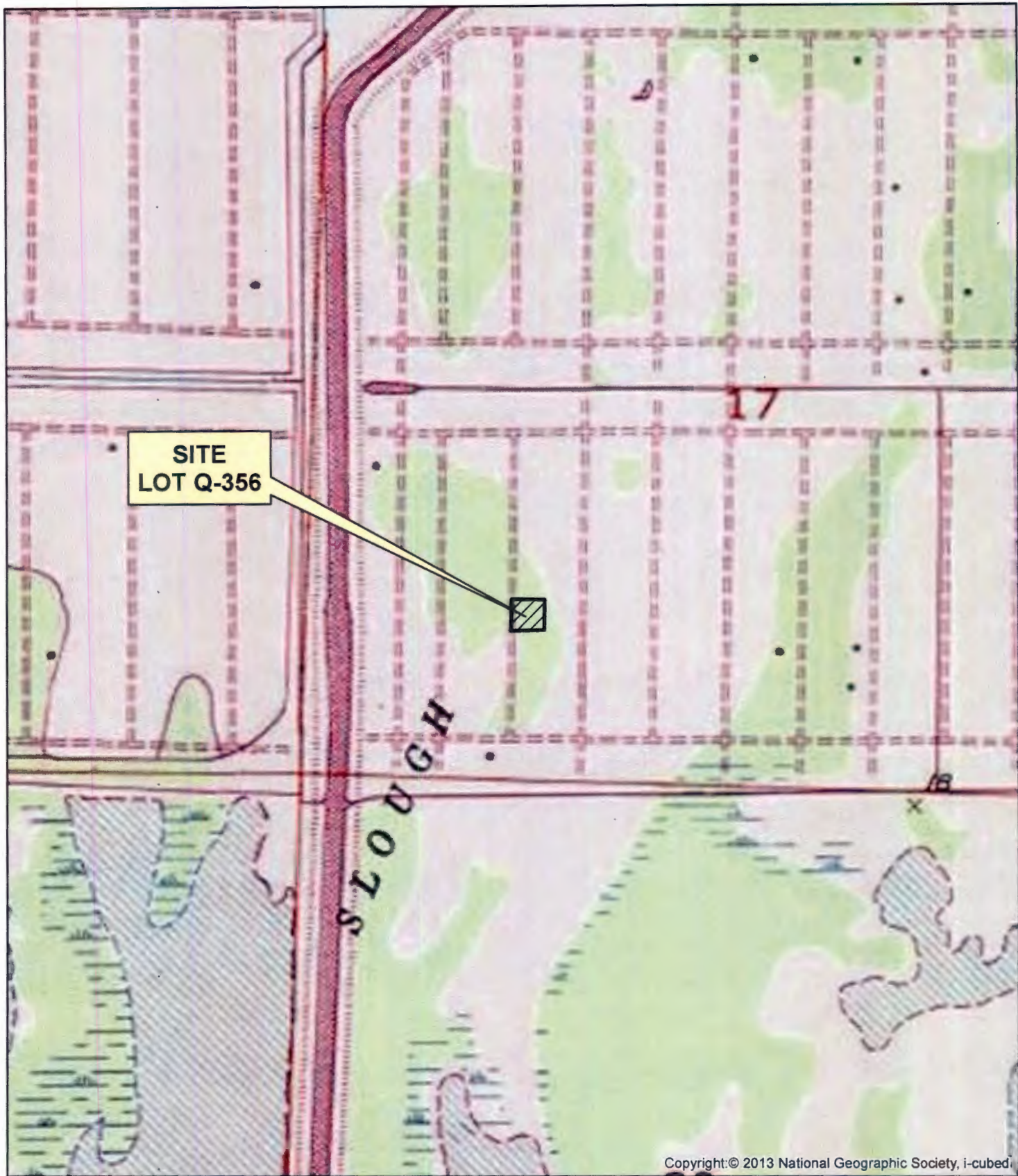
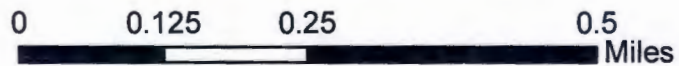
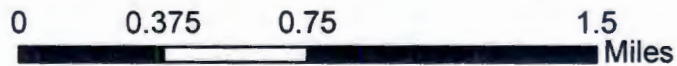


EXHIBIT B  
Vista Builders  
Lot Q-356  
Palm Beach County, Florida





**EXHIBIT C**  
**Vista Builders**  
**Lots Z-216 and Q-356**  
**Palm Beach County, Florida**



EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

=====

TO BE COMPLETE BY ORIGINATING OFFICE:

(attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox 9/29/14
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS.
Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.
SF Judicial Order/Consent Decree. FMS COLLECTS.
Other Receivables
This is an original debt.
This is a modification.

PAYEE: Vista Builders Inc., West Palm Beach, FL
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 5,000
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2014-5514 (b)

The Site-Specific Superfund (SF) Account Number:

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is:
If you have any questions call: in the Financial Management Section,
Telephone Number:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice/RH 1647 P.O. BOX 7611, Benjamin Franklin Station Washington, DC 20044
2. Originating Office (ORC)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the ADMINISTRATIVE ORDER should be sent to:

- 1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk
4. Regional Counsel