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THE ENVIRONMENT

## Permit to fill wetlands near Glades is challenged

**Saying the permit doesn't match the project, environmentalists sued a federal agency in an effort to halt the filling of wetlands where a mega-development is planned near the Everglades.**

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Environmentalists filed suit against federal regulators on Tuesday, charging they illegally reinstated a permit for a land owner to fill more than 500 acres of wetlands where a controversial development is envisioned at the edge of the Everglades.

The problem, the lawsuit argued, is that the land owner is using a federal permit issued for "low-impact agriculture" while at the same time pursuing separate applications with county and state agencies to build 6,000 homes in the same place.

Paul Schwiep, a Miami attorney representing the Tropical Audubon Society of Miami-Dade and the National Parks Conservation Association, said federal law requires the U.S. Army Corps of Engineers to review the impact of what is planned for the site.

It's not potatoes or palm trees, he said, but rather a community of 18,000 -- double the size of Florida City, which has annexed the property.

"They can't continue to make decisions about this permit under the pretext that it's for agriculture when everyone and anybody knows that's not their plan any longer," Schwiep said.

John Shubin, an attorney for landowner Atlantic Civil, which has agreed to sell the property to the Lennar Corp., a major developer, said environmentalists were attempting to make a case where one did not exist because the project had become a focal point in the political battle over whether to open new land to development in Miami-Dade County.

The project -- homes, shops, schools, movie theaters and a hotel planned for a degraded former marsh -- is outside the county's urban development boundary between Everglades and Biscayne national parks.

## **LONG WAY OFF**

Atlantic Civil, Shubin said, was lawfully complying with all the terms of its original permit, issued in 2001, and the Florida City Commons project remained a long way from reality -- facing extensive scrutiny from a range of county, state and federal agencies.

The Corps, Shubin said, still retains a right to review any new "secondary impacts" posed by future development.

"I don't believe it's reasonable nor does the law require the Corps to factor into its decision-making such potential future uses," Shubin said.

The Corps said it could not comment on the lawsuit, but John Studt, chief of the Corps' south permits branch, said that the agency's position -- stated in several letters to the landowner -- was that it retained authority to reevaluate Atlantic Civil's plans if there is any "substantial change in use."

## **POTENTIAL IMPACT**

He acknowledged the proposed development remained a serious concern that might pose "dramatically different" impacts to surrounding wetlands and on Everglades restoration projects intended to restore coastal wetlands and fresh water flows to Biscayne Bay.

"It's one thing to have three feet of fill," he said. "It's another thing to have multiple infrastructures. If they want to ultimately build houses, they have to come back to the Corps of Engineers."

Last August, the Corps took the highly unusual step of temporarily suspending Atlantic Civil's permit, angering developers who accused the agency of abusing its authority.

## **'CAREFUL' REVIEW**

A month later, the agency partially reinstated it, but allowed rock to be dumped only on a northern portion of the property, citing concerns that "dense residential community" would require new "careful" permit review.

After reevaluating the impact of the farm fill on planned Everglades projects, Studt said the Corps gave Atlantic Civil the green light in December to fill all 535.7 acres of wetlands in the 1,000-acre project.

The agency also gave the landowner an extension on the existing permit until August because the suspension had delayed work.

Environmentalists said by granting the extension, the Corps had violated laws requiring public notice and the "careful" review mentioned in Corps' letters.

## **SUSPENSION**

Richard Grosso, an attorney with the Environmental & Land Use Law Center in Fort Lauderdale who is also representing the groups, said the federal agency was right to suspend the permit but erred in backing off.

Once the property is filled, Grosso said, developers might argue the property is no longer wetlands and any federal review would essentially be rendered a "sham."

Grosso said the suit seeks a judge to halt work and order a full environmental review of the development.

He said a federal judge ordered the Corps to perform a similar broader review of Scripps Research Institute in Palm Beach County in November.