

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 05-80339-CIV-MIDDLEBROOKS/JOHNSON

FILED BY Tg D.C.
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CLARENCE MADDOX
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S.D. OF FLA. - W.P.B.

FLORIDA WILDLIFE FEDERATION, a Florida
not-for-profit corporation; and SIERRA CLUB INC.,
a not-for-profit corporation,

Plaintiff,

v.

UNITED STATES ARMY CORPS OF ENGINEERS;
and COLONEL ROBERT M. CARPENTER,
District Engineer, in his official capacity,

Defendants,

PALM BEACH COUNTY and THE SCRIPPS
RESEARCH INSTITUTE,

Intervenors.

**ORDER ON JOINT MOTION
TO CLARIFY AND MODIFY INJUNCTION**

THIS CAUSE comes before the Court upon Intervenors' Palm Beach County and The
Scripps Research Institute Joint Motion to Clarify and Modify Injunction (DE 101), filed
November 18, 2005. The Court has reviewed the record and is otherwise fully advised in the
premises.

On September 30, 2005, the Court granted summary judgment in favor of Plaintiffs,
finding that the U.S. Army Corps of Engineers had unlawfully issued a permit to Palm Beach
County for the development of its Biotechnology Research Park / Scripps Project on Mecca
Farms because, among other things, the Corps had failed to take a "hard look" at all direct.

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indirect and cumulative effects on the environment as required by federal law.

On November 10, 2005, after hearing from all the parties, I concluded that the appropriate remedy for this violation of environmental law was to set aside the Corps' permit, remand the application to the Corps for further consideration, and, with a few exceptions, enjoin the County from further construction on the Mecca Farms site pending adequate environmental review.

The only County activities I excluded from the injunction were work on Seminole Pratt Whitney Road that by September 30, 2005 had been more than 40% completed; Phase III of construction of the Northern Region Pipeline Project, which the County maintained was necessary to serve the Beeline Community Development District and Seacoast Utilities Authority, regardless of whether the Research Park was constructed; and any mitigation measures to compensate for the environmental harm already caused by the dredging and filling of jurisdictional wetlands on the site.

I declined to enjoin Scripps' construction of three buildings on a 44-acre parcel within the site, not because I concluded that such construction should go forward, but primarily because I recognized Scripps' unique legal posture in the case. Wetlands where the Scripps construction was underway had been filled before this lawsuit was filed, and by the time the land was delivered by the County to Scripps in late May 2005, Scripps itself required no federal permits or authorization to undertake its construction.

At the November 8, 2005 hearing, the Corps stated that although comprehensive environmental review could take "a couple of years," the Corps' ability to use environmental studies already prepared for state permitting proceedings could speed the process up to some extent. Under the best circumstances, the Corps stated, the review could be done within a year.

Scripps stated that, if allowed, it would go forward with constructing the three buildings, regardless of whether, at the end of the day, any other portion of the Research Park could ever be completed. Scripps also stated that it had sufficient power and access to its site to complete construction, and did not foresee any additional needs for the site until more than a year from now.

As I have repeatedly said, my role in this case is limited to ensuring that the environmental review mandated by Congress goes forward with integrity. I recognize that any construction on the Mecca Farms site has some tendency to undermine the required environmental review, which should have taken place before construction began. However, the circumstances presented led to my conclusion that it would be inequitable to enjoin Scripps. My November 10, 2005 Order therefore tailored injunctive relief so as to assure that the environmental review required by federal law could go forward unhampered and unprejudiced, while allowing Scripps to continue construction of its three buildings pending that environmental review, if Scripps chose to proceed on that course.

Joint Motion to Modify Injunction

Scripps and the County now urge the Court to modify the injunction by allowing the construction of additional roads and infrastructure across the 535-acre site to ensure that the three buildings constructed by Scripps on the 44-acre parcel are usable after they have been built.

It was never my intention to preclude the use of those buildings, if Scripps elected to continue construction on the Mecca Farms site. Certainly, no such use would be precluded if the Corps, after conducting adequate environmental review, issued a valid permit for the Research Park Project. Even if the Corps denies the permit for the Research Park Project, it is not my

intention that these buildings should have no access or services, unless the Corps requires restoration of jurisdictional wetlands that would preclude this. It was partly for this reason that my November 10, 2005 Order included a provision for modification.

A difficulty arises, however, because Scripps and the County have so far elected to locate those buildings in an apparently remote area within Mecca Farms, with no existing infrastructure for power, gas, water, drainage and sanitation, or adequate roadways. What is more, the County's road and infrastructure plans are designed not to serve the Scripps buildings alone, but to serve the 535-acre project submitted by the County to the Corps, and, to some extent, the entire 1,920-acre development planned for Mecca Farms.

Because the environmental issues raised by the County's permit application have not yet been adequately reviewed, I cannot allow the County to proceed with road and infrastructure construction for its proposed Research Park Project. To do so would undermine the integrity of the environmental review process and could limit the Corps' full range of enforcement or restoration options, should it deny the permit.

I am therefore not prepared to allow any more construction or development than the minimum necessary to the functioning of the three Scripps buildings until a lawful permit is issued, should Scripps decide to proceed with that construction. I recognize that this limitation pending environmental review may be burdensome, create inefficiencies or require stop-gap measures. Scripps and the County may determine that pursuing such modification would be impractical or infeasible based on other considerations. They may elect to await the required environmental review to see whether they can proceed with their comprehensive roadway and infrastructure plans. Or, they may decide to tailor their plans to serve Scripps' three buildings

now, and take additional steps later, if and when a valid permit for the remainder of the project issues. Again, these are not issues for me to decide, but rather for the County and Scripps.

I am therefore going to deny without prejudice the request for modification of the injunction, allowing Scripps and/or the County to file another request in accordance with the criteria set forth below, should they choose to do so:

- (A) Any requests for modification must be targeted to the construction, operation of and access to the three Scripps buildings alone, until adequate environmental review can be performed regarding the Research Park Project.
- (B) A party seeking modification must provide a precise timetable for the requested activities, specifically describing how much time is required for each activity, and why the party believes such activity must occur before environmental review is complete.
- (C) Before filing a request for modification, the requesting party must confer with all other parties in this case. I will be inclined to grant modifications requested by agreement between the parties.

Joint Motion for Clarification

The County and Scripps have also asked the Court to clarify whether the November 10, 2005 Order allows (1) construction of a 16-acre utility site southeast of the Scripps buildings; (2) installation of drainage and utilities along Seminole Pratt Whitney Road; (3) the dredging of 1.2 acres of jurisdictional wetlands necessary to complete all mitigation required under the Corps' invalidated permit; and (4) excavation at the Mining Lake in the western portion of the property.

Having reviewed these requests, I provide the following clarifications:

- (1) Construction of a 16-acre utility site southeast of the Scripps buildings on the Mecca Farms site is allowed only to the extent that it (A) constitutes part of construction of phase III of the Northern Region Pipeline Project; and (B) is necessary to serve the Beeline Community Development District, Seacoast Utilities Authority, and the three Scripps buildings, regardless of whether any other development of the Research Park is constructed.

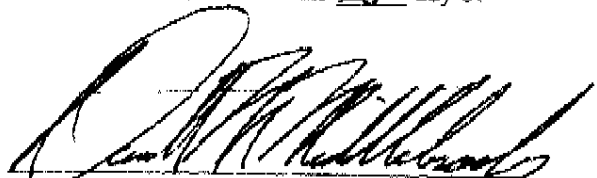
- (2) The only work on or along Seminole Pratt Whitney Road excluded from the injunction is the work described under the heading "Seminole Pratt Whitney Road (#3503-361-0620-6551)" as 40.47% complete as of September 30, 2005, in the County's construction contract with J.W. Cheatham, Inc., which was provided to the Court as Exhibit 8 to the Affidavit of William R. Sears. (DE 82.)
- (3) The mitigation measures excluded from the injunction do not include the additional dredging or filling of any jurisdictional wetlands; in other words, the County may only perform mitigation that does not require additional dredging or filling of jurisdictional wetlands.

I find that the County's request for clarification as to the issue of excavation at the Mining Lake in the western portion of the property requires additional briefing and a response from the other parties, and may be included in a subsequent request for modification in accordance with the criteria set forth above.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Joint Motion to Modify the Injunction (DE 101-2) is DENIED WITHOUT PREJUDICE to re-file in accordance with the criteria set forth herein. The Joint Motion to Clarify the Injunction (DE 101-1) is GRANTED as provided herein.

DONE AND ORDERED in Chambers, at West Palm Beach, Florida this 21st day of
November, 2005.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

copies to all counsel of record