

**UNITED STATES ATTORNEY'S OFFICE
Western District of Washington**



January 10, 2011

**SOUTHWEST WASHINGTON DEVELOPER SENTENCED
FOR ILLEGALLY FILLING WETLANDS
Defendant Filled Critical Wetlands in Effort to Ink
Deal for Equestrian Center**

PHILIP A. SMITH, 53, of Chehalis, Washington, was sentenced this morning in U.S. District Court in Tacoma to three years of probation to include four months of home confinement with electronic monitoring, 100 hours of community service and \$20,000 in restitution payable to the Environmental Protection Agency for investigative costs for damaging approximately 98 acres of wetlands in southwest Washington. SMITH used mechanized land clearing equipment in an effort to prepare the site for future commercial development. The admitted conduct violated the Clean Water Act prohibition on discharging pollutants into waters of the United States without first obtaining a permit.

"Mr. Smith deliberately ignored the laws that protect wetlands. His actions were egregious enough to spark a criminal investigation, resulting in a guilty plea and today's sentencing. It's important to us that the property is restored and everyone understands that individuals who destroy our natural resources are held accountable," said Ted Sturdevant, Director of the Washington State Department of Ecology.

"Mr. Smith gambled and lost," said Tyler Amon, Special Agent-in-Charge for EPA's Criminal Investigation Division in Seattle. "Unfortunately he was destroying valuable forested wetlands in the process. We will vigorously pursue and prosecute anyone who unlawfully damages natural resources for personal gain."

On September 20, 2010, SMITH admitted in his plea agreement to knowingly engaging in land clearing activities that included excavating wetlands and stream channels and redepositing or discharging the excavated materials into waters of the United States. The activities occurred on property he owned near Winlock, Washington. SMITH's land clearing operations spanned a period of over two years, beginning in August 2005 and concluding in October 2007 when inspectors discovered the illegal activity. In early 2008, the Environmental Protection Agency issued an order to SMITH requiring him to restore the wetlands. He did not comply with the order and a separate civil case was filed requiring restoration of the damaged wetlands. The civil case is being handled separately from the criminal case.

According to records in the case, 65 percent of the 190 acres SMITH owned near Winlock were covered in wetlands and small streams that drain into Lacamas Creek. The creek flows into the Cowlitz River and ultimately empties into the Columbia River. The wetlands at issue cannot be filled without a permit from the U.S. Army Corps of

Engineers. Neither SMITH nor anyone associated with the property ever applied for the required permit. In all, 98 acres of wetlands were cleared and disturbed between 2005 and 2007. While SMITH had a permit to log part of the property, he had no state or federal permits to disturb the wetlands.

In 2007, SMITH had sought to strike a deal with the Southwest Washington Regional Equestrian Center to build a \$70 million facility on the site. After being fined by the Washington State Department of Ecology for filling the wetlands, the deal fell through.

In his sentencing request for a prison term, Assistant United States Attorney Jim Oesterle noted that SMITH was well aware of the wetlands requirements, having run afoul of the same laws in 1998 on a different parcel of property. "In 1998 (SMITH) was notified by the Corps that he illegally filled wetlands without obtaining a permit. The Corps' failed efforts to conclude their enforcement action does not diminish the significance of Mr. Smith's prior encounter with the wetlands regulations and permitting requirements. He undertook the widespread land clearing operations in this case with full knowledge of what was required. He deliberately chose to ignore those requirements, likely hoping that the Corps would either never discover his new violations or merely impose limited corrective actions and a nominal fine. Mr. Smith mis-calculated the government's enforcement interests in this case. Rather than simply seek voluntary compliance as was sought in 1998, the government pursued criminal sanctions," Mr. Oesterle wrote in his sentencing memo.

The case was investigated by the Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers, and the Washington State Department of Ecology.

The case is being prosecuted by Assistant United States Attorney Jim Oesterle who heads the U.S. Attorney's Office working group on environmental crimes.

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