

BEFORE THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

**CORTEZ ROAD INVESTMENT AND FINANCE
and MARSHALL GOBUTY,**

Petitioners,

OGC case no.

v.

**MHC CORTEZ VILLAGE, L.L.C., LOGGERHEAD MARINAS and
FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Respondents.

**VERIFIED COMPLAINT AND REQUEST FOR AN INJUNCTIVE RELIEF TO AVOID
IRREPRABLE ENVIRONMENTAL HARM**

Petitioner, Cortez Road Investment and Finance, Inc. and Marshall Gobuty, (hereby collectively referred to as CRIF) hereby files this Petition and Request that the Department of Environmental Protection seek for Injunctive Relief to stop the illegal activities of MHC Cortez Village, LLC, (the marina), part of Loggerhead Marina (collectively the Marina), which activities impair, pollute, or otherwise injure the water and other natural resources of the state of Florida and the canal owned by CRIF. This action is pursuant to **403.412, Fla. Stat.** entitled the **Environmental Protection Act of 1971**. In support thereof CRIF states:

The Parties

- a. The contact information for CRIF is:

CRIF is the owner of the private canal described in the deed attached as **Composite Exhibit A**.

- b. Marshall Gobuty's contact information is:

Mr. Gobuty is the Director, President and Secretary for Cortez Road Investment and Finance Inc. Mr. Gobuty and his grandchildren utilize the canal for recreational activities including, but

not limited to, kayaking, canoeing, fishing, watching birds, manatees and other species that utilize the canal.

c. CRIF is represented by:

d. The contact information for the marina is:

12160 Cortez Rd. W
Cortez, FL 34215

e. The marina's website indicates that it is part of Loggerhead Marinas. The corporate address for Loggerhead Marina is:

2700 Donald Ross Rd,
West Palm Beach, Florida, 33410,

f. It's website indicates that it is part of Equity Lifestyle: cortezvillage@equitylifestyle.com

g. The Department of Environmental Protection has regulatory over the marina pursuant to Part IV of Chapter 373, Florida Statutes, Chapter 62-330, Fla. Admin. Code, and Environmental Resource Permit Applicant's Handbook I (AHI), incorporated by reference into Chapter 62-330, Fla. Admin. Code.

CRIF counsel has already alerted DEP to these issues, prior to taking the current action. CRIF requests enforcement, including a temporary injunction, followed by the permanent injunction to stop the illegal activities of the marina to avoid irreparable environmental impacts and harm to CRIF's private canal for the reasons described below.

MHC Cortez Village, LLC, a large commercial marina, does not have a valid environmental resource permit and is operating a system without a permit in a manner to cause environmental harm. Alternatively, if DEP finds that the marina legally holds permit number 41-0255306, then there are major violations of the permit conditions, as described below.

Upon information and belief, the marina has profited from its illegal activity in the amount of at least \$181,000 for the month of July alone.

Loggerhead Marina’s website, which contains the MHC Cortez Village Marina, states that it is committed to creating a cleaner environment and states that its marinas have the Clean Marina Designation:

CLEAN MARINA DESIGNATIONS

All Loggerhead Marina locations within states offering Clean Marina Designation programs (Kentucky currently does not offer a program) are proud to have obtained the Clean Marina Designation. Clean Marina is a compliance program focusing on environmental responsibility and managerial best practices that exceed regulatory requirements.

<https://loggerheadmarinas.com/about-us>

Despite this, Loggerhead marina operates without a valid state permit, or alternatively, to violate several provisions of the permit held by the previous owner. Not only does the marina not “exceed regulatory requirements”, it does not even meet regulatory requirements.

CRIF respectfully directs attention to the petition and testimony by the marina’s witnesses in **DOAH case number 21-2491, entitled MHC Cortez Village, LLC v. CRIF and Southwest Florida Water Management District** (DOAH case). In that case, MHC Cortez Village LLC stated that it owns and operates the marina described in the Petition for Administrative Hearing attached as **Exhibit B**. The SWFWMD ordered the transcript from this proceeding.

As citizens of the state, CRIF and Marshall Gobuty request injunctive relief under Section 403.412, Fla. Stat. to compel enforcement of the “laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations”. CRIF and Mr. Gobuty request a temporary injunction in order to stop the unpermitted activities, followed by a permanent injunction. (<https://floridadep.gov/sites/default/files/chapter6.pdf>)

VIOLATION OF PERMIT CONDITIONS

- a. The Marina Greatly Exceeds the Number of Slips allowed in the Permit**

The Marina admits in its Petition, attached hereto, that the marina has 365 permanent boat slips. During testimony in the case of MHC Cortez Village, LLC v. CRIF and Southwest Florida Water Management District, the marina's general manager, Skip McPhadden, also admitted that the marina has additional temporary boat slips. There is additional storage of vessels in the parking lot, documented in aerials. There are also additional slips in the water, utilized when the customers return to have the marina remove their boats from the water. When the temporary slips are full, the marina rafts boats together in the basin from the canal. The marina's slip lessees, including the additional boaters, utilize the CRIF privately owned canal to access the Intracoastal Waterway and Anna Marina Sound.

DEP maintains file no **41-0255306** for the marina property, **Site ID: ERP_0255306** (see Permit No.: 41-0255306-004, modifying 41-0255306-001).

Condition number 45 of DEP permit 41-0255306-001 states:

45. The permittee shall ensure the docking facility will be limited to a total of 295 boat slips, 272 dry and 23 wet, inclusive of all shoreline and upland storage. Power craft will not be allowed over this number of slips.

The marina admits in its Petition that it is maintaining up to 70 permanent slips in excess of permit limitations. The testimony of Mr. McPhadden shows that this amount is additionally exceeded by the temporary slip facilities. The unauthorized vessels utilize the CRIF private canal creating the potential for vessels leakage of oils, grease, gas, lubricants, head waste and other pollutants which will ultimately flow into Anna Maria Sound.

These additional vessels harm Mr. Gobuty and his grand children's recreational use and enjoyment of the canal, including, but not limited to, kayaking, canoeing, fishing, watching birds that utilize the canal, watching manatees and other species that utilize the canal.

b. The Additional Slip Lessees, Described as Inexperienced in the Marina's DOAH Testimony, create the Potential for Environmental and Water Quality Irreparable Harm

The final hearing testimony in the DOAH case by Mr. McPhadden and Mr. Karantz demonstrated that many of the marinas boaters are inexperienced. These additional inexperienced boaters create the potential for collisions with manatees, which certainly would be irreparable harm if the manatee is mortally wounded by use of the canal by the additional unauthorized boat slip lessees. Manatees are known to be present in the canal, and in fact are addressed in permit conditions. Mr. Gobuty and his grandchildren enjoy watching the manatees.

The marina presented much testimony regarding the potential for collision by these additional inexperienced slip lessees utilizing CRIF's private canal. CRIF will be harmed because if additional boaters are involved in collisions, as speculated by the marina in the DOAH case testimony, because it will cause environmental harm in CRIF's private canal from oil, grease, lubricants, head waste, other fluids, debris and other pollutants after the collisions the marina speculated may occur.

Additionally, the marina's witnesses testified that they believe the private canal is shallow. These unauthorized inexperienced boaters utilizing the additional unauthorized slips may hit these shallow areas stirring up the bottom causing turbidity and other water quality issues. Additionally it may cause issues to submerged vegetation. CRIF is a sustainable builder dedicated to green building and sustainability. Therefore, CRIF is harmed by injury to submerged vegetation and water quality in its privately owned canal.

Mr. Gobuty's recreational activities and enjoyment of the canal are impaired by the additional vessel traffic and the problems that the marina's witnesses speculate may occur. If the additional boaters lack minimal skills, as testified to by the marina in the DOAH proceeding, it also presents

a risk of injury to Mr. Gobuty and his grandchildren when they Kayak or canoe in the CRIF private canal.

c. The Marina Maintains a Commercial Service Department in Violation of Permit Condition 29

In the petition (attachment B), the marina also admits that it maintains a **commercial on-site service department**, fuel dock, and boat brokerage. The marina has therefore admitted that it is violating paragraph 29 of the permit, which states:

29. Boat maintenance or repair activities requiring removal of a vessel from the water or removal of major portions of the vessel, including the engine, for purposes of routine repair or maintenance on site, shall be prohibited for the life of the facility, except where removal is necessitated by emergency conditions which have resulted in or can result in the sinking of a vessel.

The marina's website admits that the marina does the following repairs:

“Do-It-Yourself Allowed: Yes
Repair Services
Hull: Yes
Engine (Inboard): Yes
Engine (Outboard): Yes”

See: <https://www.waterwayguide.com/service/cortez-village-marina>

The testimony in the DOAH case admitted that there are special racks for do-it-yourself repairs. The marina cannot control if do-it-yourself repairs discharge oil, grease, and other pollutant fluids into the surface water management system. It is requested that DEP investigate to determine if **hazardous wastes** can be discharged from vessels, when repairs are done by inexperienced mechanics.

In addition to violating this provision, Skip McPhadden, the marina general manager, admits that his employees **test vessels on the private canal to determine repairs needed**. These vessels, which need to be repaired, may **leak oils, greases, fluids, lubricants, head waste, gas, other fluids and other pollutants** into the private canal which discharges to the ICW and then Anna

Maria Sound. Therefore, there is an immediate, potentially irreparable effect to water quality and protected species such as the manatee.

CRIF is harmed by this environmental and water quality impact to the waters in its private canal. Immediate action is necessary to close the illegal service department since it is an unauthorized operation, violating condition 29, which creates the potential for irreparable environmental harm in the private canal and water that flows to Anna Maria Sound.

Mr. Gobuty's recreational interests and enjoyment of the canal are harmed by the impact of the unauthorized maintenance activities in the private canal.

d. The Marina Does Not Comply with the Permit's Stormwater Conditions

With regard to stormwater conditions, the marina is not currently complying, and has never complied, with condition number 59 of the permit. This condition states:

59. The Operation and Maintenance Entity shall submit inspection reports in the form required by the Department, FDEP Form # 62-343.00(6), Inspection Certification, 18 months after operation is authorized and every 18 months thereafter.

Therefore, there are **no reasonable assurances** that the marina is **complying with the stormwater conditions** of the permit. In fact, CRIF personnel have seen, during heavy storms, surface water flowing from the marina property, including the parking lot, into the canal. This results in the release of oils, greases, lubricants, gases, and other fluids into the private canal that CRIF owns, which discharges to the ICW and then Anna Maria Sound. This also presents an immediate, potentially irreparable effect to water quality and protected species such as the manatee, in the canal that CRIF owns. Mr. Gobuty's recreational interests and enjoyment of the canal are harmed by the impact unlawful discharges into the private canal.

Immediate action must be taken steps to address this issue.

e. Mitigation Conditions

The Oculus file does not appear to contain documentation that the mitigation conditions were satisfied. Conditions 49-57 include specific mitigation and reporting requirements, along with required success criteria.

OPERATION OF WORKS WITHOUT A PERMIT

Pursuant to Part IV of Chapter 373, Florida Statutes and Chapter 62-330, Fla. Admin. Code, an environmental resource permit is required to construct, operate and maintain a surface water management system and works. This statute, rule and permit requirements are to protect the water resources of the State of Florida. The marina is operating without a permit in violation of Florida law.

a. The Permit Was Not Transferred to the Operation Stage

Pursuant to Chapter 62-330, Fla. Admin. Code, AHI and condition number 13 of the permit, a construction completion certification must be submitted to DEP within 30 days of the completion of construction utilizing form 62-343.900(5), Fla. Admin. Code. In this certification, a registered professional certifies that the project was built pursuant to permit conditions. A registered professional could not have provided this certification because the facilities are built with at least 70 unauthorized permanent slips, other temporary unauthorized slips, and an unauthorized service department.

The permittee was required by condition 13 and ERP rules to submit a Request for Transfer of Environmental Resource Permit Construction Phase to the Operation Phase using form 62-343.900(7), Fla. Admin. Code. This also could not have been done since the facilities were not constructed within the limitations and requirements of the permit.

b. The Permit Was Not Transferred to the Marina When Ownership Changed

Section 6.3.2.1 states:

A modification to an individual or conceptual approval permit is required to reflect any sale, conveyance, or other transfer of

ownership or control of the real property, project, or activity covered by the permit, except for transfer to the operation and maintenance entity approved in the permit. Ownership must be demonstrated in accordance with sections 4.2.3(d) and (e), above. One of two procedures below is to be used, depending on whether the permit is in the construction phase or the operation and maintenance phase and the timing of the request:

(a) Upon transfer of ownership or control of the entire real property, project, or activity covered by a permit that is in the operation and maintenance phase, transfer of the permit to the new owner or person in control is automatic if the permittee provides the agency with written notice within 30 days of the change in ownership or control, except as otherwise provided in subsection 62-330.340(1), F.A.C.

(b) In all other situations a permit modification must be processed under subsections 62- 330.340(2) through (4), F.A.C.

The permit **could not have been transferred** to the operation and maintenance phase because the project was not built and is not operating pursuant to permit conditions. Therefore, there was no automatic transfer of the permit.

Additionally, notice was not provided to DEP within 30 days of the sale of the property. If notice was not provided in 30 days, there also cannot be an automatic transfer.

Therefore, the **marina does not have a permit**, is operating without a permit, and is violating Part IV of Chapter 373, Fla. Stat.

RELIEF SOUGHT

CRIF respectfully requests DEP immediately order the marina to cease the unauthorized activities at the marina. If necessary to stop the illegal activities, CRIF requests that DEP seek an immediate temporary injunction in Manatee County circuit court.

Dated: August 22, 2022
Boca Raton, Florida

Respectfully submitted,

By: /s/ Susan Roeder Martin
Susan Roeder Martin, Esquire
Florida Bar No.: 380350

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 22, 2022, a true and correct copy of the foregoing was served via Electronic mail to the following: *Kelley F. Corbari, Esquire* and *Kirk S. White, Esquire*, 500 South Bronough Street, Tallahassee, FL 32399-0250 (Kelley.corbari@floridadep.gov and kirk.white@floridadep.gov) *Matthew R. Chait, Esquire* and *Devon A. Woolard, Esquire*, 525 Okeechobee Boulevard, Suite 1100, West Palm Beach, FL 33401 (mchait@shutts.com and dwoolard@shutts.com).

VERIFICATION

I hereby verify that to the best of my knowledge, the above facts and allegations are true and correct.



Marshall Gobuty

Personally and for Cortez Road Investment and Finance Inc.