

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: December 29, 2009

SUBJECT: Action Required
Authorization to file suit—
Unauthorized filling on property and failure
to comply with a consent agreement,
Section 28, T 43 South, R 26 East, Lee County

Background

In April, 2004, the District completed a jurisdictional wetland determination of the subject property, indicating to the property owner that there was an approximate 1.8 acre marsh wetland on the site. On November 22, 2004, the District met with the property owner's consultant and told the contractor that any clearing of the cypress or marsh wetland on the property would be in violation of District rules. Despite these communications, in January, 2005, District staff observed dredging and filling of the marsh wetlands. The property owner at the time, Buckingham Development, LLC, was sent a Notice of Violation and subsequently a Settlement letter to resolve the violation. Sometime later the property was sold to Crosswinds at Buckingham Gardens, LLC (Crosswinds). On February 15, 2007, Crosswinds entered into a consent agreement with the District wherein the company agreed to pay the District \$11,700 dollars in civil penalties and \$2,000 in costs, and to either submit a completed environmental resource permit application within 180 days and obtain a permit that would address the wetland impacts, or to restore the impacted wetland by implementing an approved re-grading and planting plan by June 1, 2008. Crosswinds timely paid the civil penalties and costs. On April 26, 2007, Crosswinds submitted an environment resource permit application to develop the property as a 225 unit residential development that would address wetland impacts upon construction. However the application remains incomplete after four different requests for information from the District, the last request being sent on June 19, 2007, with no response from Crosswinds since that date. The impacted wetlands have not been restored to date. On August 27, 2008, Crosswinds was sent a pre-litigation letter stating that the matter was being referred to the District's Office of Counsel for further action. Crosswinds has not responded. On September 26, 2008, Crosswinds filed for inactive status with the Florida Division of Corporations.

How this helps meet the District's 10 year Strategic Plan

This effort directly supports the District's land resources mission.

Funding Source

This litigation will be handled by the District's Office of Counsel. Any costs associated with this litigation will be paid from budgeted ad valorem funds.

This Board item impacts what areas of the District, both resource areas and geography?

The subject property is located in Lee County and impacts the District's water resources by adversely impacting wetland functions, including wetland habitat and flood storage capacity.

What concerns could this Board item raise?

This matter should not raise any concerns other than concerns from the violators.

Why should the Governing Board approve this item?

The Governing Board should approve this item to enforce a consent agreement where the company has agreed to address the adversely impacted wetland habitat and functions. The company has not restored the wetlands and therefore must be brought before the courts to fulfill the terms of the consent agreement.