

M E M O R A N D U M

TO: Governing Board Members

FROM: Carolyn Ansay, General Counsel

DATE: August 27, 2012

SUBJECT: Action Required
Authorization to file suit
Daniel Borislow, LLC and all other appropriate parties –
Enforcement Action for property located at Summit Boulevard at Section 5, Township 44 South, Range 43 East, Palm Beach County, Florida (“Property”)

Background

This memorandum concerns a request to enforce requirements of Consent Agreement Order No. SFWMD 2008 232 CO ERP (“Consent Order”) that the District entered into with Daniel Borislow, LLC (“Respondent”), to resolve the construction of works and alteration of wetlands without prior issuance of an Environmental Resource Permit (“ERP”). Specifically, Respondent placed fill material on the Property, including in wetlands for the construction of a soccer field. The Respondent subsequently submitted an “after-the-fact” ERP application as required by the Consent Order in order to authorize the works, and the District subsequently noticed its intent to grant the application and issue ERP No. 05-09272-P to the Respondent. However, an adjacent property owner, Spots, Inc., challenged the ERP and requested a formal administrative hearing, alleging that the Respondent did not provide reasonable assurance that water storage and conveyance capabilities would not be adversely impacted by the works in violation of the ERP and the C-51 basin criterion.

Following a formal administrative hearing, the administrative law judge entered a recommended order on August 10, 2010, recommending that the District deny the Respondent’s ERP application because reasonable assurance was not provided that the works that were constructed would not flood Spots, Inc.’s property. The administrative law judge also found that C-51 Basin water storage loss had not been compensated. The District subsequently adopted the recommended order as an agency Final Order on September 9, 2010. To date, the Respondent has neither obtained an ERP to authorize the works that were constructed and are being maintained, nor restored the Property to pre-construction conditions. Numerous attempts have been made by District staff to contact the Respondent to resolve the non-compliance. To date, the Respondent has failed to resolve the violations.

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

This effort directly supports the District's water supply 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 Palm Beach County and the Respondent's actions have adversely impacted wetlands on the property.

What concerns could this Board item raise?

If this matter is not resolved, the Consent Order non-compliance could continue.

Why should the Governing Board approve this item?

The Governing Board should approve this item to remedy the Respondent's non-compliance, and to take appropriate action against all responsible parties.

If you have any questions, please do not hesitate to call me at extension 6976.

CA/AK