

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: May 26, 2009

SUBJECT: Action Required

Authorization to file suit—

Jack A. Freeman, Real Value Properties, Inc., Brian Scott Holdings, Inc., Jeffrey B. Freeman, Trustee, and all other appropriate parties
Enforcement Action for properties located in Sections 13 and 24,
Township 45 South, Range 26 East, Lee County, Florida

Background

This is a request to enforce requirements certain parties agreed to accomplish in a Consent Agreement and to resolve violations involving the construction and operation of a road in wetlands without an environmental resource permit (ERP). On February 24, 2005, the Governing Board entered into a Consent Agreement with Jack A. Freeman and Real Value Properties, Inc. (Respondents) to resolve violations of clearing and filling of approximately 14 acres of wetlands without first obtaining an ERP. The Consent Agreement required Respondents to obtain an ERP within 180 days of the effective date of the Consent Agreement, or submit and implement a restoration plan. On or about April 11, 2005, Jack Freeman (on behalf of Real Value Properties, Inc.) and Jeff Freeman (on behalf of Triple J Real Estate) submitted an ERP application to the District. On or about May 11, 2005, the District issued a request for additional information and the Respondents failed to respond. At present the ERP has not been obtained and the properties have not been restored in violation of the Consent Agreement. Since the Consent Agreement was executed, Respondents transferred four of the five parcels of land that were the subject of the Consent Agreement to Jeffrey B. Freeman, Trustee and Brian Scott Holdings, Inc. Also since the Consent Agreement was signed, a road was constructed in wetlands on two of the parcels without prior authorization. District staff has attempted to resolve these violations by issuing two Notices of Violation and Pre-Litigation Demand and Request for Response letters.

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 wetlands through the unpermitted works and alteration of wetlands without a permit, which affects the District conservation and management of wetlands.

What concerns could this Board item raise?

If this matter is not resolved, the unauthorized and unpermitted alteration of wetlands and the adverse impacts and/or construction could continue.

Why should the Governing Board approve this item?

The Governing Board should approve this item to enforce and/or remedy the non-compliance with District Consent Agreement Order No. 2005 021 CO ERP, and to resolve more recent violations of unauthorized construction and operation of a road in wetlands without the required permit, and take appropriate action against all responsible parties.

If you have any questions, please call me at ext. 6976.

SGWAK\kmn