

## MEMORANDUM

**TO:** Governing Board Members

**FROM:** Sheryl G. Wood, General Counsel

**DATE:** March 30, 2010

**SUBJECT: Action Required**

Authorization to file suit—

Highland Properties of Lee and Collier, Limited, and all other appropriate parties

Enforcement Action for property located at 7450 Davis Boulevard, Parcel ID Nos. 00407360000, 00408400008, 00408160005, 00406720007, and 00408440000, Naples, Collier County, Florida 34109 (“Property”)

### **Background**

On July 5, 2005, a Notice of Violation was issued to the Respondent for the construction of works and alteration of wetlands without first applying for and obtaining an environmental resource permit. The works constructed on the Property include the clearing of wetland vegetation and the installation of an above-grade access road through wetlands.

After several meetings with the Respondent and District staff, the Respondent entered into a Consent Agreement with the District, which was executed by the District’s Governing Board on March 21, 2006. The Consent Agreement required the Respondent to obtain a permit for all activities completed on the Property and any proposed activities within 360 days, or it had to immediately restore the Property to pre-construction conditions. The Consent Agreement also required the Respondent to pay the District a total of \$7,850 in penalties and costs.

Since the Consent Agreement was executed, Respondent has paid the penalties and costs. Respondent submitted a permit application for a proposed 87 acre mixed use development and for authorization to accept surface water runoff from a portion of Santa Barbara Boulevard, on April 5, 2007. However, the permit application is incomplete. Since the application was received, the District has sent the Respondent approximately 8 requests for additional information. Respondent has received several extensions of time to complete its application and has not yet done so.

Since the Consent Agreement was executed, District staff sent the Respondent a Pre-litigation Demand Letter and a Cease and Desist Notice. District staff has contacted the Respondent’s agent on several occasions to try to resolve this matter.

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

This effort directly supports the District's regulation program.

**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 Collier County and impacts wetlands through the unpermitted works and alteration of wetlands in violation of a Consent Agreement, which affects the conservation and management of wetlands, and the District's regulation of the management and storage of surface waters.

**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 Consent Agreement Order No. SFWMD 2006-033 CO ERP to resolve violations involving unauthorized filling in wetlands, and to take appropriate action against all responsible parties.

If you require further information, please contact me at (561) 682-6976).

SGW/kn