

BEFORE THE GOVERNING BOARD OF THE  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

RECEIVED  
DISTRICT CLERK'S OFFICE

JUN 18 2007 2:03 PM

SOUTH FLORIDA  
WATER MANAGEMENT DISTRICT



**SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT, a public corporation,**

**Complainant,**

**vs.**

**ORDER NO.**

**Wilco Land Development, Inc.,  
Respondent**

SFWMD 2007 005 CO ERP

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**CONSENT AGREEMENT**

This Consent Agreement is entered into between the Complainant, **SOUTH FLORIDA WATER MANAGEMENT DISTRICT** ("District") and the Respondent, Wilco Land Development, Inc. ("Respondent") by mutual consent, without trial or adjudication of any issue of fact or law.

**FINDINGS OF FACT**

The District and Respondent stipulate to the following Findings of Fact:

1. The District is a public corporation of the State of Florida existing by virtue of Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code, as a multipurpose water management district with its principal office at 3301 Gun Club Road, West Palm Beach, FL 33406.

2. Respondent, Wilco Land Development, Inc., is a Florida Corporation, whose mailing address for the purpose of this consent agreement is 2200 N. Federal Hwy, Suite 201, Boca Raton, Florida 33431.

3. Respondent has asserted responsibility for construction of the project on the Property, known as Highlands Equestrian Estates, located west of Graham Dairy Road on the south side of Lott Grade, just before the road turns from shell rock to dirt, (Section 23, Township 39 South, Range 28 East), Highlands County, Florida ("Property"). The Property is more particularly depicted on the location map attached hereto as Exhibit A and incorporated herein by reference.

4. On August 24, 2005, District staff conducted a site inspection of the Property. During this inspection, District staff noted construction of roads, swales, lakes, house pads and alteration of wetlands without a permit.

5. On September 14, 2005, a Notice of Violation (see attached Exhibit B) was issued to the Respondent, regarding the unauthorized construction of works and impacts to wetlands.

6. On December 21, 2005 a Settlement Letter (see attached Exhibit C) was sent to the Respondent. However, the Respondent did not agree to the terms.

7. After several phone conferences and meetings with District staff with no resolution, a Pre-Litigation Demand Letter (see attached Exhibit D) was sent on June 29, 2006.

8. On August 15, 2006, the Respondent applied for an Environmental Resource Permit.

9. On September 26, 2006, a revised Settlement Letter (see attached Exhibit E) was forwarded to the Respondent.

10. On October 4, 2006, an Environmental Restoration Plan (see attached Exhibit F) was received from the Respondent's consultant.

11. On October 17, 2006, written correspondence (see attached Exhibit G) was received that agreed upon the settlement terms outlined in the September 26, 2006 Settlement Letter, with the exception of a lump sum payment of penalties and costs. In lieu of a lump sum payment the Respondent has agreed to pay penalties and cost in installments. Payments shall be made in installments with a payment of five thousand seven hundred (\$5,720.00) due on or before March 1, 2007 and subsequent payments of five thousand dollars (\$5,000.00) due on or before May 1, 2007, July 1, 2007 and September 1, 2007.

#### **ULTIMATE FACTS AND CONCLUSIONS OF LAW**

12. The District alleges that the Respondent violated the District's rules by performing activities on the Property without prior issuance of an environmental resource permit pursuant to Chapter 373, Fla. Stat. and Chapters 40E-4 and 40E-40, Fla. Admin. Code., which prohibit the construction and operation of any works without first satisfying the criteria of the District through the permitting process.

13. Pursuant to Sections 373.413, 373.414 Fla. Stat., and the implementing regulations found in Titles 40E-4, Fla. Admin. Code, the District is authorized to require permits for construction, alteration and/or operation of surface water management systems, including activities which impact wetlands. In the issuance of such permits, the

District is authorized to impose reasonable conditions necessary to assure the activities will not be harmful to the water resources of the District.

14. The District may enforce its permits and orders pursuant to Chapters 373 and 120, Fla. Stat., by maintenance of appropriate actions and may recover a civil penalty for each offense in an amount not to exceed Ten Thousand Dollars (\$10,000.00) per offense, with each date during which such violation occurs constituting a separate offense. The District may further recover investigative costs, court costs and reasonable attorney's fees.

15. Without admitting liability, the Respondent has provided the District with reasonable assurances of good faith by entering into a Consent Agreement with the District in return for the District not initiating judicial or enforcement action for the alleged unpermitted activities described above. The Respondent agrees that all factual and legal matters, alleged herein and/or agreed to herein and/or which provide the basis for this Consent Agreement, (including all terms, provisions and matters referred to in the "Findings of Fact" and/or "Ultimate Facts" and "Conclusions of Law" sections), shall not be contested in any subsequent legal proceeding(s) which may be brought to enforce the terms of this Consent Agreement.

16. The District is authorized to enter into agreements pursuant to Section 373.083, Fla. Stat.

17. The Governing Board has authorized the Executive Director, or her designee, or the General Counsel, to execute this Consent Agreement.

**THEREFORE**, having reached a resolution of this matter, the District and the Respondent mutually agree and it is ordered that:

## ORDER

18. Respondent shall obtain an Environmental Resource Permit (ERP) and a Works of the District (WOD) permit for the proposed project within one hundred and twenty (120) days of the effective date of this consent agreement. Additionally, any requests for additional information by the District shall be replied to within thirty (30) days of receipt.

19. Respondent shall within thirty (30) days of the effective date of this consent agreement implement the restoration plan as shown in Exhibit F. When the restoration has been completed, the Respondent shall notify District staff of its completion, in order for an inspection to be performed.

20. Respondent shall, in settlement of the allegations alleged in this Consent Agreement, pay eighteen thousand , seven hundred twenty dollars (\$18,720.00) in civil penalty and the District's reasonable investigative costs and attorneys' fees in the amount of two thousand (\$2,000.00), which total the amount twenty thousand, seven hundred twenty (\$20,720.00) dollars shall be paid by cashier's check or money order and tendered to the District via U.S. Mail or hand-delivery at the following address: **South Florida Water Management District, 3301 Gun Club Road, Post Office Box 24680, West Palm Beach, FL 33416-4680, Attn: Lisandra Jones, Environmental Resource Regulation Division, Environmental Resource Compliance Department.** Payments shall be made in installments with a payment of five thousand seven hundred (\$5,720.00) due on or before March 1, 2007 and subsequent payments of five thousand dollars (\$5,000.00) due on or before May 1, 2007, July 1, 2007 and September 1, 2007. Respondent agrees that

these amounts are reasonable and shall not contest them in any subsequent action regarding this Consent Agreement.

21. This Consent Agreement shall not constitute an admission of liability on the Respondent's behalf.

### **GENERAL PROVISIONS**

22. The District hereby expressly reserves the right to petition for judicial enforcement of the terms of this Consent Agreement. In such event, the Respondent and its successors and/or assigns in interest shall not contest or deny any fact, legal conclusion, or any other matter or fact set forth in this Consent Agreement, including the Findings of Fact, Ultimate Facts and Conclusions of Law set forth herein. If the District successfully petitions or sues for enforcement of this Consent Agreement, the Respondent, its heirs, successors and/or assigns hereby agree to and shall pay all attorneys' fees, (including, but not limited to, the fair market value of in house counsel fees, as if performed by outside or private counsel, court costs and any other damages sustained by the District). In addition, the District hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes or the rules promulgated thereunder, or to alleviate an immediate serious danger to the public health, safety or welfare.

23. Failure to comply with this Consent Agreement shall constitute a violation of Chapter 373, Fla. Stat., and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

24. This Consent Agreement shall take effect after adoption by and execution on behalf of the Governing Board of the District, when the Consent Agreement is filed with and acknowledged by the Clerk of the District immediately thereafter, and shall remain in full force and effect until its terms and conditions are completed to the satisfaction of the District. The requirements of this Consent Agreement shall bind and inure to the benefit of the successors and assigns of the Respondent, except as modified by the parties hereto. In addition, prior to any sale, transfer, conveyance or lease of the Property, the Respondent shall provide a copy of this Consent Agreement to any prospective successor in interest. Additionally, the Respondent shall provide notification to the District of the sale, transfer or conveyance of the Property.

25. Respondent hereby waives the right to request an administrative hearing on the terms of this Consent Agreement under Sections 120.569 and 120.57, Fla. Stat., and its right to appeal this Consent Agreement pursuant to Section 120.68 Fla. Stat.

26. Entry of this Consent Agreement does not relieve the Respondent of the need to comply with all applicable federal, state or local laws, regulation or ordinances, including any District permitting requirements. Also, the Consent Agreement does not give the Respondent the authority to conduct any activities on the Property which are under District jurisdiction without first obtaining District authority.

27. Respondent is fully aware that a violation of the terms of this Consent Agreement may subject the Respondent to judicial imposition of damages, civil penalties up to Ten Thousand Dollars (\$10,000.00) per offense per day, costs and criminal penalties.

28. Persons who are not parties to this Consent Agreement, but whose substantial interests maybe affected by this Consent Agreement, may have a right to petition this Consent Agreement. A notice of rights is attached and incorporated as Exhibit H.

29. This Consent Agreement is a final order from the District, pursuant to Section 120.52(7), F.S., and is final and effective on the date filed with the Clerk of the District unless a petition for administrative hearing is filed in accordance with Chapter 120, F.S., or any other applicable state law. Upon the timely filing of a petition, the Consent Agreement will not be effective until further order from the District.

30. If any event occurs which causes delay or reasonable likelihood of delay, in complying with the requirements or deadlines of this Consent Agreement, the Respondent shall have the burden of proving that the delay was or will be caused by circumstances beyond the control of the Respondent, nor shall the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as contractor) to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the Respondent shall notify the District orally within 24 hours or by the next working day and shall, within seven days of oral notification to the District, notify the District in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstance beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a

period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of the Respondent's right to request an extension of time for compliance with the requirements or deadlines in this Consent Agreement.

31. In the event it is necessary for either party to initiate legal action regarding this Consent Agreement, venue shall be in the Fifteenth Judicial Circuit for Claims under state law and in the Southern District of Florida, West Palm Beach Division, for any claims which are justiciable in federal court.

**DONE AND SO ORDERED** at West Palm Beach, Palm Beach County, Florida, this

11TH day of JANUARY, 2007.

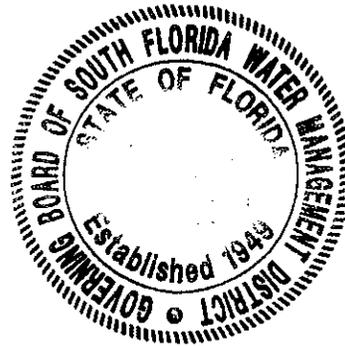
**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
BY ITS GOVERNING BOARD**

BY:   
Terrie Bates, Assistant Deputy Executive Director of Water Resources

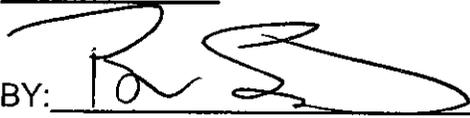
DM

ATTEST:

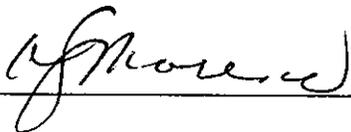
BY:   
Assistant Secretary



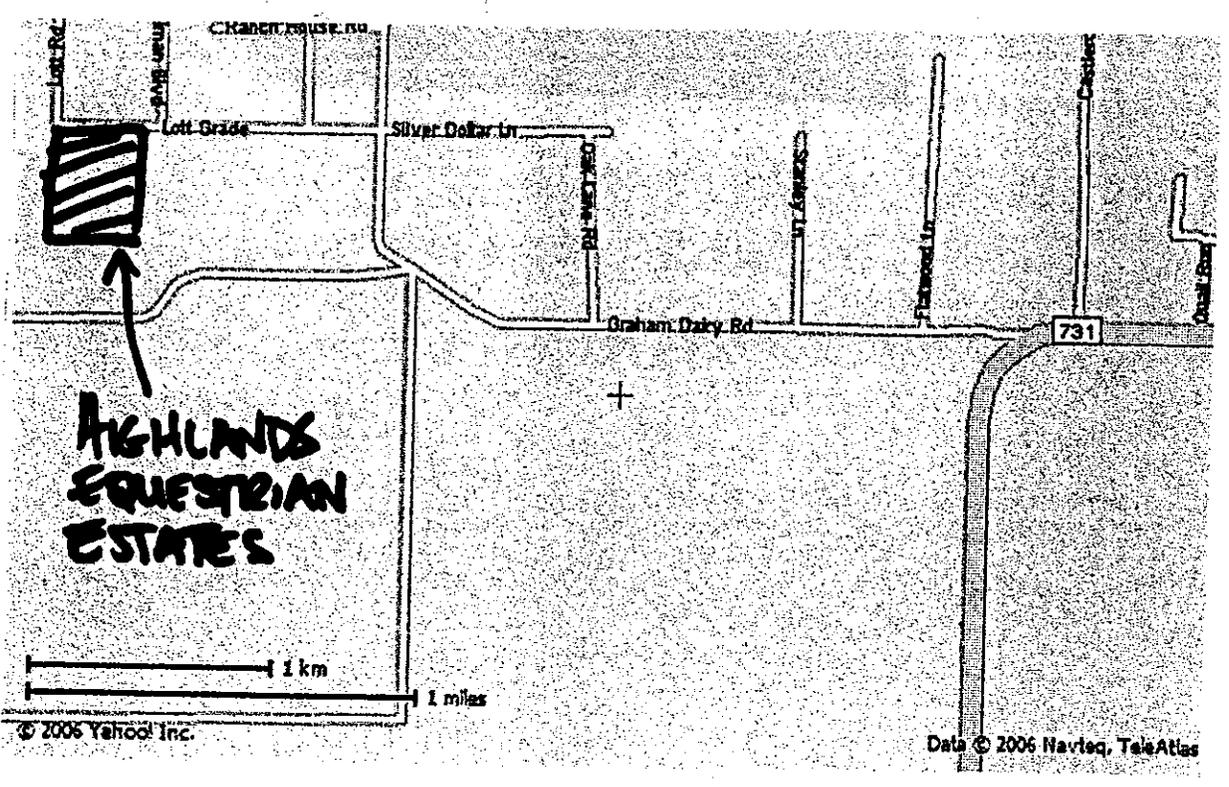
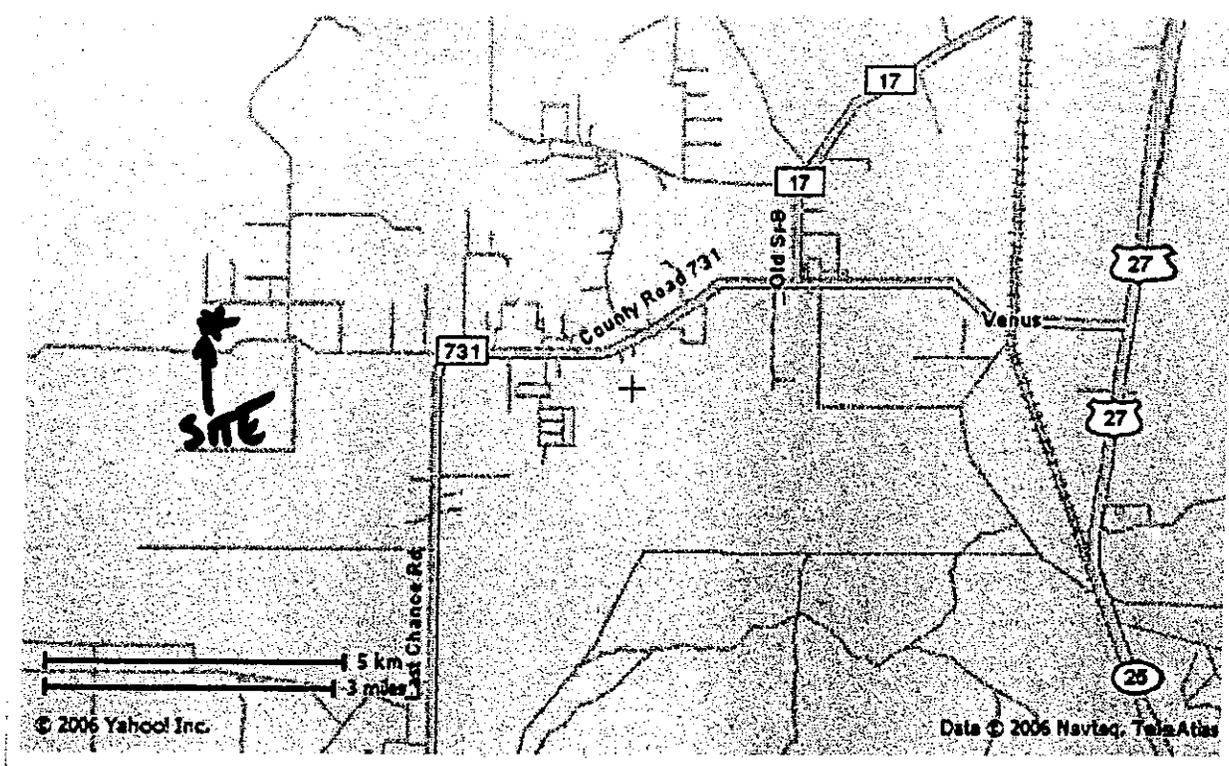
**RESPONDENT**

BY:   
Authorized Representative  
Wilco Development, Inc.

ATTEST:

BY: 

**EXHIBIT A  
LOCATION MAP**



**EXHIBIT B**  
**NOTICE OF VIOLATION**



CON 24-06-04  
Cost Code: 5161

September 14, 2005

Benjamin Burke  
Wilco Land Development, Inc.  
7515 W. Oakland Park Blvd.  
Suite 103  
Sunrise, FL 33319

Dear Mr. Burke,

**NOTICE OF VIOLATION/CEASE AND DESIST**

**Subject: Construction and Operation without a Permit  
Wilco Land Development, Inc.  
Highlands Equestrian Estates  
Highlands County Sec. 23/ Township 39 S / Range 28 E**

Recent field inspections by District staff indicate that activities in violation of Sections 373.413 and 373.414, Florida Statutes and Rule 40E-4, Florida Administrative Code are taking place on the aforementioned property. The violations include but are not limited to ditching, grading, lake excavation, road construction and culvert placement without the required permit authorization from the South Florida Water Management District. **You must immediately cease these activities.**

As a result of these violations the District will require the site be appropriately permitted or else restored to its original condition. The District will also seek payment of civil penalties of up to \$10,000 per violation per day, and recovery of staff costs. Specific terms for settlement of this violation will be forwarded to you under separate cover. If the violations continue to take place the District will take immediate legal action to mandate compliance.

**GOVERNING BOARD**

Kevin McCarty, *Chair*  
Irela M. Bagué, *Vice-Chair*  
Pamela Brooks-Thomas

Alice J. Carlson  
Michael Collins  
Nicolás J. Gutiérrez, Jr., *Esq.*

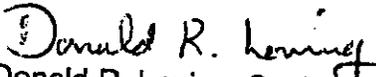
Lennart E. Lindahl, *P.E.*  
Harkley R. Thornton  
Malcolm S. Wade, Jr.

**EXECUTIVE OFFICE**

Carol Ann Wehle, *Executive Director*

You are requested to contact Ms. Angela Hendrichsen at (800) 250-4200, Ext. 3008, within ten (10) days of receipt of this letter to schedule a meeting to discuss the subject of this Notice. Your attention and cooperation in this matter is appreciated.

Sincerely,



Donald R. Loving, Senior Regulatory Supervisor  
Environmental Resource Compliance Division  
Okeechobee Service Center

**CERTIFIED MAIL NO. 7002 0510 0004 2937 3852**

c: Ramon Gavarrete, Highlands County Engineer  
Department of Environmental Protection – Ft. Myers

**EXHIBIT C**  
**SETTLEMENT LETTER – December 21, 2005**



Environmental Resource Regulation  
Cost Code: 5161

December 21, 2005

Benjamin Burke  
Wilco Land Development, Inc.  
7515 W. Oakland Park Blvd.  
Suite 103  
Sunrise, FL 33319

**Subject: In Aid of Settlement:  
Notice of Violation,  
Works without a Permit/Alteration of Wetlands  
Highland Equestrian Estates,  
Highlands County,  
Sec. 23/ Township 39 S / Range 28 E**

Dear Mr. Burke:

This correspondence is being sent to you in reference to your Notice of Violation dated September 14, 2005 for construction of works without a permit and alteration of wetlands in violation of Sections 373.413 and 373.414, Florida Statutes. In the Notice of Violation, you were informed that specific terms for resolution of this violation would be forwarded to you upon completion of staff's investigation.

The following four (4) items are the terms to resolve the violation:

1. Within thirty (30) days of the date of this letter, provide the names of all landowners as well as documentation that demonstrates you represent all landowners within this development for the purpose of settling this violation and obtaining District permits.
2. Restore the site to pre-construction condition, or obtain an Environmental Resource Permit and a Works of the District Permit for activities completed to date and for those proposed on the subject property within one hundred eighty (180) days of the effective date of a consent agreement resolving this violation. Please note that the 10-acre parcel, not owned or represented by your company, may be required to be addressed in the permit as a common drainage plan due to their link not only through the subdivision but through natural drainage.

**GOVERNING BOARD**

Kevin McCarty, *Chair*  
Irela M. Bagué, *Vice-Chair*  
Pamela Brooks-Thomas

Alice J. Carlson  
Michael Collins  
Nicolás J. Gutiérrez, Jr., Esq.

Lennart E. Lindahl, P.E.  
Harkley R. Thornton  
Malcolm S. Wade, Jr.

**EXECUTIVE OFFICE**

Carol Ann Wehle, *Executive Director*

3. Within thirty (30) days of the effective date of a consent agreement, payment of Two Thousand Dollars (\$2,000.00) in staff investigative costs.
4. Within thirty (30) days of the effective date of a consent agreement, payment of Thirty Three Thousand, Six Hundred Ninety-Six Dollars (\$33,696.00) in civil penalties.

If you chose to restore the site, you will be required to establish a District approved restoration plan and schedule in a consent agreement. If you chose to try to keep any works on the site and seek an ERP, the proposed project must meet all pertinent District requirements. An ERP application and Works of the District application are enclosed, and further information regarding ERP permitting requirements is available on the internet at [www.sfwmd.gov/org/reg](http://www.sfwmd.gov/org/reg). Note that all engineering-related planning must be prepared and certified by a professional engineer. You will be required to apply for this permit within 30 days of the consent agreement resolving this case, and you will be required to obtain the permit within 180 days of the agreement. If the application is denied or no permit is obtained within 180 days, the case will be referred back to enforcement. Complete restoration will be required, and additional penalties will be assessed to address the delay in restoration.

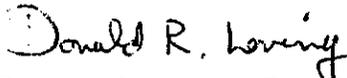
The District is authorized under Section 373.129 of the Florida Statutes to seek civil penalties and recover costs. The United States Environmental Protection Agency's (E.P.A.) Penalty Matrix was used as guidance to establish the civil penalty amount in this case. Be advised the \$33,696.00 civil penalty and \$2,000 District cost is a proposed settlement of this violation. Should you choose not to accept this proposal, the District will pursue the resolution of this violation through the judicial process with an increase in civil penalties and accumulated costs.

You are directed to respond to this letter, in writing, within fourteen (14) days of receipt with your acceptance or rejection of these terms of this proposed settlement. Should you accept the settlement, the District will document resolution through a Consent Agreement. This document will be forwarded to you within thirty (30) days of our receipt of your written acceptance. Upon your signature on the Consent Agreement and returning it to the District, the Consent Agreement will be presented to the District's Governing Board with a recommendation for approval. Once the Board has approved the Consent Agreement, you will be responsible to fulfill your obligations, including payment of penalties and costs within the time frames detailed in the Order section of the Agreement.

**PLEASE NOTE THE MATTERS DESCRIBED IN THIS CORRESPONDENCE MAY NOT REPRESENT ALL NECESSARY CORRECTIVE ACTION REGARDING THIS SITE, AS FURTHER INVESTIGATION MAY DISCLOSE ADDITIONAL INFORMATION. THIS CORRESPONDENCE IS NOT THE FINAL SETTLEMENT DOCUMENT. ANY TERMS AND CONDITIONS AGREED TO BY THE PARTIES WILL NOT BE A FINAL RESOLUTION OF THIS ACTION UNTIL SUCH TIME AS THEY ARE COMMITTED IN A CONSENT AGREEMENT EXECUTED BY THE RESPONSIBLE PARTY AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.**

If you have any questions please contact Angela Hendrichsen at 863-462-5260 ext. 3008. Your attention and cooperation in that matter is appreciated.

Sincerely,



Donald R. Loving, Regulatory Section Leader  
Environmental Resource Regulation Department  
Okeechobee Service Center  
South Florida Water Management District

DRL/anh

**CERTIFIED MAIL NO.: 7005 1820 0005 6704 3387**

c: Highlands County Engineer  
John Cook

**EXHIBIT D**  
**PRE-LITIGATION DEMAND LETTER**



# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574  
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

Cost Code: 5161

June 29, 2006

Brian Wilson  
Wilco Land Development, Inc.  
2200 N Federal Hwy  
Suite 201  
Boca Raton, FL 33431

Dear Mr. Wilson:

**Subject: Pre-Litigation Demand Letter:  
Highlands Equestrian Estates  
Highlands County Sec. 23 /Twp. 39 /Rge. 28**

The purpose of this letter is to advise you that the above referenced case has been transferred to the South Florida Water Management District's ("District") Office of Counsel. This transfer is deemed necessary due to your failure to respond or accept the District's settlement offer as set forth by the proposed settlement letter dated December 21, 2005. Consequently, your case will be assigned to a staff attorney within fourteen (14) days of the date of this letter.

The District is authorized to seek civil penalties up to \$10,000 per day, per offense, and recover our costs, including attorney fees, staff investigative time and surveillance expense under Section 373.129, Fla. Stat. District procedures allow you the opportunity to settle this violation under the conditions previously offered by the Enforcement Section of the Environmental Resource Compliance Division. You are urged to consider this settlement before it is withdrawn and necessary legal action is taken. Please be advised that once a staff attorney is assigned, any previous settlement offers may be withdrawn and the District may pursue additional civil penalties authorized by Chapter 373, Fla. Stat., as well as increased staff investigative costs.

## GOVERNING BOARD

Kevin McCarty, *Chair*  
Irela M. Baguè, *Vice-Chair*  
Pamela Brooks-Thomas

Alice J. Carlson  
Michael Collins  
Nicolás J. Gutiérrez, Jr., Esq.

Lennart E. Lindahl, P.E.  
Harkley R. Thornton  
Malcolm S. Wade, Jr.

## EXECUTIVE OFFICE

Henry Dean, *Executive Director*

Highlands Equestrian Estates

June 29, 2006

Page 2

Should you have any questions or wish to avoid legal action, please contact or write to Angela N. Hendrichsen, P.E., Senior Regulatory Professional.

Sincerely,

A handwritten signature in cursive script that reads "Damon Meiers".

Damon Meiers, P.E.  
Deputy Department Director  
Environmental Resource Regulation Department

DM/ah

c: Highlands County Engineer

**EXHIBIT E**  
**SETTLEMENT LETTER - September 26, 2006**



Environmental Resource Regulation  
Cost Code: 5161

September 26, 2006

Brian Wilson  
Wilco Land Development, Inc.  
7515 W. Oakland Park Blvd.  
Suite 103  
Sunrise, FL 33319

**Subject: In Aid of Settlement:  
Notice of Violation,  
Works without a Permit/Alteration of Wetlands  
Highland Equestrian Estates,  
Highlands County,  
Sec. 23/ Township 39 S / Range 28 E**

Dear Mr. Wilson:

This correspondence is being sent to you in reference to the additional information submitted on March 17, 2006 and the permit application received on August 15, 2006. In consideration of your efforts to comply, we are forwarding the following revised settlement terms to resolve the Notice of Violation dated September 14, 2005 for construction of works without a permit and alteration of wetlands in violation Sections 373.413 and 373.414 of the Florida Statutes.

The following five (5) items are the terms to resolve the violation:

1. Within thirty (30) days of receipt of this letter, submit a wetland restoration plan to the District for review and approval. The approved restoration plan will be incorporated into a consent agreement resolving these violations.
2. Restore the site to pre-construction condition, or obtain an Environmental Resource Permit and a Works of the District Permit for activities completed to date and for those proposed on the subject property within one hundred twenty (120) days of the effective date of a consent agreement resolving this violation. Please note that the 10-acre parcel, not owned or represented by your company, may be required to be addressed in the permit as a common drainage plan due to their link not only thru subdivision by thru natural drainage. Additionally, you will also be required to reply to any requests for

**GOVERNING BOARD**

Kevin McCarty, *Chair*  
Irela M. Bagué, *Vice-Chair*  
Miya Burt-Stewart

Alice J. Carlson  
Michael Collins  
Nicolás J. Gutiérrez, Jr., Esq.

Lennart E. Lindahl, P.E.  
Harkley R. Thornton  
Malcolm S. Wade, Jr.

**EXECUTIVE OFFICE**

Carol Ann Wehle, *Executive Director*

additional information within thirty (30) days of receipt.

3. Within thirty (30) days of the effective date of a consent agreement, payment of Two Thousand Dollars (\$2,000.00) in staff investigative costs.
4. Within thirty (30) days of the effective date of a consent agreement, payment of Eighteen Thousand, Seven Hundred twenty Dollars (\$18,720.00) in civil penalties.

If you chose to restore the site, you will be required to establish a District approved restoration plan and schedule in a consent agreement. If you chose to try to keep any works on the site and seek an ERP, the proposed project must meet all pertinent District requirements. An ERP application and Works of the District application are enclosed, and further information regarding ERP permitting requirements is available on the internet at [www.sfwmd.gov/org/reg](http://www.sfwmd.gov/org/reg). Note that all engineering-related planning must be prepared and certified by a professional engineer. You will be required to obtain the permit within 120 days of the agreement. If the application is denied or no permit is obtained within 120 days, the case will be referred back to enforcement. Complete restoration will be required, and additional penalties will be assessed to address the delay in restoration.

The District is authorized under Section 373.129 of the Florida Statutes to seek civil penalties and recover costs. The United States Environmental Protection Agency's (E.P.A.) Penalty Matrix was used as guidance to establish the civil penalty amount in this case. Be advised the \$18,720.00 civil penalty and \$2,000 District cost is a proposed settlement of this violation. Should you choose not to accept this proposal, the District will pursue the resolution of this violation through the judicial process with an increase in civil penalties and accumulated costs.

You are directed to respond to this letter, in writing, within seven (7) days of receipt with your acceptance or rejection of these terms of this proposed settlement. Should you accept the settlement, the District will document resolution through a Consent Agreement. This document will be forwarded to you within thirty (30) days of our receipt of your written acceptance. Upon your signature on the Consent Agreement and returning it to the District, the Consent Agreement will be presented to the District's Governing Board with a recommendation for approval. Once the Board has approved the Consent Agreement, you will be responsible to fulfill your obligations, including payment of penalties and costs within the time frames detailed in the Order section of the Agreement.

PLEASE NOTE THE MATTERS DESCRIBED IN THIS CORRESPONDENCE MAY NOT REPRESENT ALL NECESSARY CORRECTIVE ACTION REGARDING THIS SITE, AS FURTHER INVESTIGATION MAY DISCLOSE ADDITIONAL INFORMATION. THIS CORRESPONDENCE IS NOT THE FINAL SETTLEMENT DOCUMENT. ANY TERMS AND CONDITIONS AGREED TO BY THE PARTIES WILL NOT BE A FINAL RESOLUTION OF THIS ACTION UNTIL SUCH TIME AS THEY ARE COMMITTED IN A CONSENT AGREEMENT EXECUTED BY THE RESPONSIBLE PARTY AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

If you have any questions please contact Angela Hendrichsen at 863-462-5260 ext. 3008. Your attention and cooperation in that matter is appreciated.

Sincerely,

*Donald R. Loving*

Donald R. Loving, Section Leader  
Environmental Resource Regulation Department  
Okeechobee Service Center  
South Florida Water Management District

DRL/anh

**CERTIFIED MAIL NO.: 7005 2510 0001 8403 1115**

c: Highlands County Engineer  
John Cook

**EXHIBIT F**  
**RESTORATION PLAN**

# Restoration Plan for Equestrian Estates

## Objective

The project site, Equestrian Estates, lays South of Lott Road, Highlands County, Florida (Sections 23, Range 28 East, Township 39 South). The purpose of this Restoration Plan is to restore wetlands impacted by non-permitted activities.

## Existing Wetlands

The existing herbaceous wetlands are typical of those found on agricultural lands. They are impacted by the added nutrients of livestock and by drainage ditches. Torpedo grass was found in most of the wetlands.

## Restoration Plan

### Restoration

Table 1. Wetland Restoration Summary

FLUCFCS <sup>1</sup>	WETLAND ID	HABITAT TYPE	PRESERVED (ACRES)	WETLAND RESTORATION
641	641-1	Freshwater Marsh	3.25	0.5
<b>TOTAL</b>			<b>3.25</b>	<b>0.5</b>

## Wetland Restoration

Approximately 0.5 acres restored.

Planting Plan						
ZONES	ACREAGE	PLANT	SPECIES	SCHEDULE	SIZE	TOTAL NUMBER
Zone A	0.20 8712 sf	Cordgrass	<i>Spartina bakerii</i>	4' O.C.	4"	200
		Canna Lilly	<i>Canna flaccida</i>	3' O.C.	B.R.	400
		Bulrush	<i>Scirpus validus</i>	3' O.C.	B.R.	250
Zone B	0.3 13068 sf	Spike Rush	<i>Eleocharis cellulosa</i>	3' O.C.	B.R.	700
		Bog Rush	<i>Juncus effusus</i>	3' O.C.	B.R.	700
		Buttonbush	<i>Cephalanthus occidentalis</i>	4' O.C.	1 gal.	100
Planted	0.77	Live Oak	<i>Quercus virginiana</i>	Scattered	5' tall	10
Buffers	33541 sf	Blueberry	<i>Vaccinium myrsinites</i>	15' O.C.	1 gal.	80
		Fire Bush*	<i>Hamelia patens</i>	10' O.C.	1 gal.	70
		Florida Anise*	<i>Illicium floridanum</i>	10' O.C.	1 gal.	70
		Devil's Walking Stick*	<i>Aralia spinosa</i>	10' O.C.	1 gal.	70
		Love Grass	<i>Eragrostis spp.</i>	5' O.C.	Liner	700
		Native Wildflowers	Mixed	5' O.C.	Liner	700

\*or equivalent Native Shrubs

B.R. = Bare Root

## Wetland Enhancement

The nuisance species and pasture grasses in the existing wetlands will be treated or burned, depending on weather. The initial treatment will be aggressive in order to expedite the success of the wetland enhancement and creation areas. Large bare spots will be planted from the list of herbaceous wetland species above.

<sup>1</sup> Florida Land Use, Cover and Forms Classification System, Department of Transportation Handbook January 1999 edition.

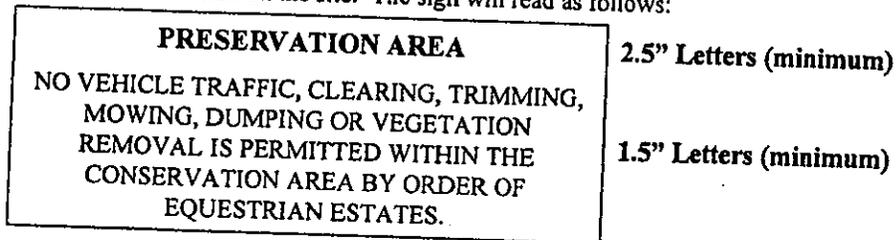
The maintenance program will encourage the recruitment of native species in the upland buffers (mowing and disking will cease). Buffers around the created wetlands will be planted as outlined above. A rigorous maintenance schedule is proposed to ensure successful re-planting.

### ***Responsible Entity***

Wilco Land Development, Inc. will be responsible for the maintenance and monitoring of the restored areas on the property for the required monitoring period. They will be responsible for enforcing the requirements set forth in this document.

### ***Preserve Area Boundary Markers and Signs***

The wetland and upland buffer will be placed within a recorded Conservation Easement. The Preserve Area will be posted with permanent signs and boundary markers. Boundary Markers will be placed at the corners of lots abutting Preserve Areas. Signs will be at least 11 x 14 inches in size and will be posted in conspicuous locations along the Preserve Area boundary, at a frequency of no less than one (1) sign per 100 feet. All boundary markers will be in place prior to construction on the site. The sign will read as follows:



### ***Monitoring Plan***

#### **Vegetation Survey**

Transects and Photo Stations will be established in the preserved wetlands and upland buffers. Major vegetative zones will be "sampled" twenty-five feet on either side of each transect. The percent cover for each plant species present will be recorded for each zone.

The preserved wetlands will be monitored quarterly for the first 2 years and annually for the rest of the 5 years. Monitoring will include the following:

- Percent Cover of Vegetation
- Percent Survival of Planted Species
- Maintenance problems & recommendations
- Water Elevation and Monthly Rainfall

#### **Fixed Point Panoramic Photographs**

A photo station will be established for each preserved wetland. Overlapping photographs of the wetlands and uplands will be taken to establish physical proof of the condition of each habitat. These photos will be included in the monitoring reports.

#### **Staff Gauge**

A staff gauge will be located in prominent areas. Water levels will be recorded during the monitoring and included in the monitoring reports.

#### **Wildlife Utilization**

Observations of wildlife utilization will be recorded during the surveys.

## **Estimated Costs**

The estimate cost of the restoration exceeds \$25,000, therefore a letter of credit or performance bond will be required in the amount of 110% of the estimate (\$34,600 X 110% = \$38,060).

Excavation .....	\$3,000
Initial Nuisance Species Eradication.....	\$1,000
Planting .....	\$11,000
Monitoring (\$1200/report).....	\$9,600
<u>Maintenance (\$2000/year).....</u>	<u>\$10,000</u>
Total .....	\$34,600

## **Schedules**

TASK	SCHEDULE
Maintenance Schedule	Monthly
Report Submittal:	
Time Zero Monitoring Report <sup>1</sup>	October 2006 <sup>1</sup>
1 <sup>st</sup> Monitoring Report	April 2007
2 <sup>nd</sup> Monitoring Report	October 2007
3 <sup>rd</sup> Monitoring Report	April 2008
4 <sup>th</sup> Monitoring Report	October 2008
5 <sup>th</sup> Monitoring Report	October 2009
6 <sup>th</sup> Monitoring Report	October 2010
7 <sup>th</sup> Monitoring Report	October 2011

<sup>1</sup>Upon completion of construction.

## **Success Criteria**

At the end of the first annual monitoring period, the restoration area shall have a minimum of 50% survival. The target survival rate at the end of the second annual monitoring period is a minimum of 80%. If the success criteria are not met then replanting will be required.

Success will be achieved when 80% of all the wetlands are covered by desirable wetland species and there is less than 5% cover by exotic or nuisance species.

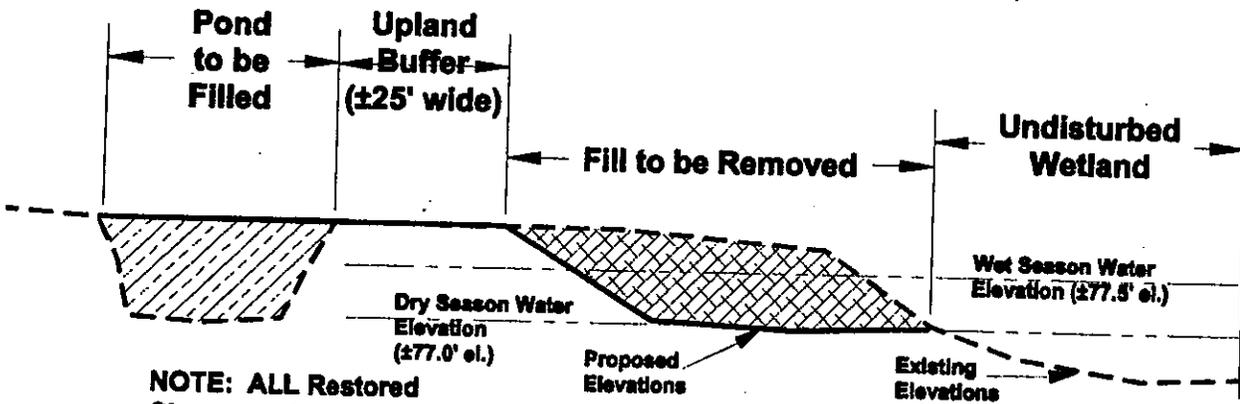
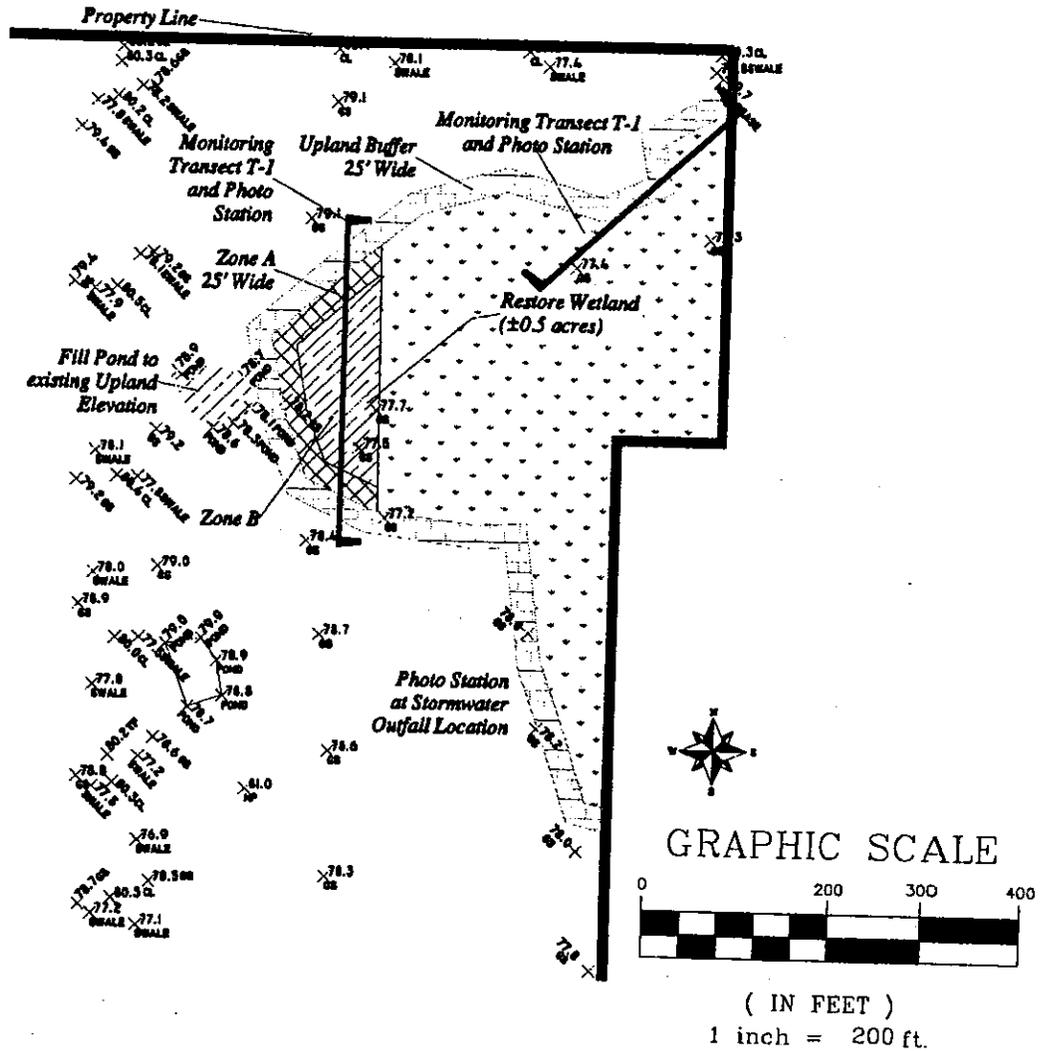
## **Maintenance Plan**

Maintenance will be conducted in perpetuity to insure that the preserved areas are maintained free of exotic vegetation (those species currently identified by the Florida Pest Plant Council's current list of most invasive plant species and incorporated herein by reference) and that other nuisance plant species will constitute no more than 5% of total cover. This will be achieved through physical removal of undesirable plants or application of appropriate herbicides EPA approved for aquatic use. Repeated applications will be made during the initial eradication effort and subsequent periodic maintenance events until exotic and nuisance coverage is within District guidelines. Should the wetland grasses be of a desirable species (i.e. maidencane) then burning is an acceptable activity to promote nutrient release and new growth.

## **Qualifications**

A qualified professional with knowledge of wetland ecology, hydrology and wildlife will conduct monitoring. A resume will be included with the monitoring reports to ensure this.

# Venus Wilco Equestrian Estates



## Wetland Restoration Plan

Job# JL06-03109  
 Revision Date: 10/3/06

**Southeast Soils & Environmental Services, Inc.**  
 4511 S Indian River Dr., Ft. Pierce, Florida 34982  
 Phone: 772-461-1092 Fax: 772-264-8074

**JL Environmental**  
 463 Crescent Drive, Melbourne, Florida 32901  
 Phone: 321-733-0812 Fax: 321-733-2931

**EXHIBIT G**  
**ACCEPTANCE LETTER**

**Wilco Land Development, Inc.**  
**2200 North Federal Highway Suite 201**  
**Boca Raton, FL 33431**  
**Tel.: (561) 417-3460 Fax: (954) 206-0308**

RECEIVED  
OCT 17 2006  
OKEECHOBEE  
SERVICE CENTER

October 11, 2006

Donald R. Loving, Section Leader  
Environmental Resource Regulation Dept.  
South Florida Water Management District  
205 North Parrot Avenue Suite 201  
Okeechobee, FL 34972-2916

RE: In Aid of Settlement:  
Notice of Violation,  
Works without a Permit/Alteration of Wetlands  
Highlands Equestrian Estates  
Highlands County,  
Sec. 23/ Township 39 S/ Range 28 E

Dear Mr. Loving:

Due to your correspondence being directed to an old address, we are in receipt of it as of October 5, 2006 and wish to reply within the seven (7) days required.

Per your correspondence dated September 26, 2006, we are in agreement and accept the terms as listed in number (1) and number (2) as to the restoration plan and the Environmental Resource Permit.

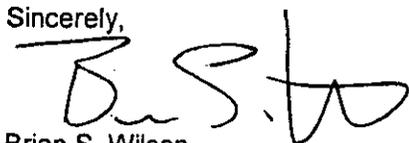
As to the terms listed in number (3) and number (4) regarding staff investigative costs and civil penalties, we ask that you consider one of two options.

Option 1: We will go forward to secure a loan payable in thirty (30) days to South Florida Water Management District in the amount of \$12,500.00 as payment in full with regard to this notice of violation.

Option 2. We would submit a payment of five thousand (\$5,000.00) dollars payable on the 1<sup>st</sup> of the month, every other month until paid in full.

We appreciate your help and consideration in this matter, and will look forward to hearing from you.

Sincerely,



Brian S. Wilson  
Vice President

BSW/am

**EXHIBIT H**  
**NOTICE OF RIGHTS**

## NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing and/or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

### **Right to Request Administrative Hearing**

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569, 120.57, and 120.60(3), Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision in accordance with Rule 28-106.111, Fla. Admin. Code. Any person who receives written notice of a District decision and fails to file a written request for hearing within 21 days waives the right to request a hearing on that decision as provided by Subsection 28-106.111(4), Fla. Admin. Code.

The Petition must be filed at the Office of the District Clerk of the SFWMD, 3301 Gun Club Road, P.O. Box 24680, West Palm Beach, Florida, 33416, and must comply with the requirements of Rule 28-106.104, Fla. Admin. Code. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Pursuant to Rule 28-106.104, Fla. Admin. Code, any document received by the office of the District Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

- Filings made by mail must include the original and one copy and must be addressed to the Office of the District Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must also include the original and one copy of the petition. **Delivery of a petition to the District's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the District's security officer to contact the Clerk's office.** An employee of the District's Clerk's office will file the petition and return the extra copy reflecting the date and time of filing.
- Filings by facsimile must be transmitted to the District Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the District Clerk receives the complete document.

The following provisions may be applicable to SFWMD actions in combination with the applicable Uniform Rules of Procedure (Subsections 40E-0.109(1)(a) and 40E-1.511(1)(a), Fla. Admin. Code):

- (1)(a) "Receipt of written notice of agency decision" as set forth in Rule 28-106.111, Fla. Admin. Code, means receipt of either written notice through mail or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action.
- (b) If notice is published pursuant to Chapter 40E-1, F.A.C., publication shall constitute constructive notice to all persons. Until notice is published, the point of entry to request a formal or informal administrative proceeding shall remain open unless actual notice is received.
- (2) If the District's Governing Board takes action which substantially differs from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law. The District Governing Board's action is considered to substantially differ from the notice of intended agency decision when the potential impact on water resources has changed.
- (3) Notwithstanding the timeline in Rule 28-106.111, Fla. Admin. Code, intended agency decisions or agency decisions regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands pursuant to Section 373.427, Fla. Stat., shall provide a 14 day point of entry to file petitions for administrative hearing.

#### **Hearings Involving Disputed Issues of Material Fact**

The procedure for hearings involving disputed issues of material fact is set forth in Subsection 120.57(1), Fla. Stat., and Rules 28-106.201-.217, Fla. Admin. Code. Petitions involving disputed issues of material fact shall be filed in accordance with Rule 28-106.104, Fla. Admin. Code, and must comply with the requirements set forth in Rule 28-106.201, Fla. Admin. Code.

#### **Hearings Not Involving Disputed Issues of Material Fact**

The procedure for hearings not involving disputed issues of material fact is set forth in Subsection 120.57(2), Fla. Stat., and Rules 28-106.301-.307, Fla. Admin. Code. Petitions not involving disputed issues of material fact shall be filed in accordance with Rule 28-106.104, Fla. Admin. Code, and must comply with the requirements set forth in Rule 28-106.301, Fla. Admin. Code.

#### **Mediation**

As an alternative remedy under Sections 120.569 and 120.57, Fla. Stat., any person whose substantial interests are or may be affected by the SFWMD's action may choose to pursue mediation. The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. Choosing mediation will not adversely affect the rights to a hearing if mediation does not result in a settlement.

#### **DISTRICT COURT OF APPEAL**

Pursuant to Sections 120/60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.