

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: March 24, 2009

SUBJECT: Action Required

Authorization to file suit — Non-Compliance with Consent Order No. SFWMD 2007 004 CO ERP on property owned by Wilco Land Development, Inc. located in Highlands County, Florida, Section 22, T 39 S, R 28 E, a/k/a Highlands Country Estates

Background

In 2005, District staff conducted a site inspection of the Highlands Country Estates and noted construction of roads, swales, lakes, house pads and alteration of wetlands without a permit. On September 14, 2005 a Notice of Violation was issued to Brian Wilson and Wilco Land Development, Inc. ("WILCO") regarding the unauthorized construction of works and impacts to wetlands. After several phone conferences and a meeting with District staff and with no resolution reached, a Pre-Litigation Demand Letter was mailed on June 29, 2006. On August 15, 2006 WILCO applied for an Environmental Resource Permit and on October 17, 2006 an Environmental Restoration Plan was received from the Respondents' consultant.

On October 17, 2006 WILCO entered into a Consent Agreement with the District in return for the District not initiating judicial or enforcement action against WILCO for the alleged unpermitted activities in 2005. On January 11, 2007 the District entered its Order No. SFWMD 2007 004 CO ERP with an effective date of January 18, 2007. This Consent Order required WILCO to: (1) no later than by May 18, 2007 obtain an Environmental Resource Permit (ERP) for its proposed project; (2) no later than by August 1, 2007 make all of its installment payments for the assessed penalties and costs; and (3) be in compliance with the required Environmental Restoration Plan.

WILCO originally submitted its ERP application on August 15, 2006 (Application No. 060815-17). The last of the Requests for Additional Information were sent to WILCO on July 18, 2007 to which District has not received any response. Consequently, Notice of Non-Compliance with Consent Agreement was hand delivered to Jerry Wilson on February 5, 2008 for which he signed a receipt. Subsequent communication attempts by District staff went unanswered.

At the present time, the project property remains unpermitted, the Environmental Restoration Plan has not been fully implemented nor complied with, and only

partial payments have been received from WILCO towards the District assessed civil penalty (\$18,720.00) and investigative costs and attorneys' fees (\$2,000.00) in the total sum of \$20,720.00.

The District Staff requests the Governing Board authorizes the District Staff to file suit, pursue any appropriate damages or remedies, and take all appropriate action, including the authority to settle the matter, against Wilco Land Development, Inc., Brian Wilson, Jerry Wilson and any other appropriate or necessary parties, for violation of the District's Consent Order No. SFWMD 2007 004 CO ERP, and any other violations of District rules, on said property.

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 Highlands 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 address clear violations of the District's environmental resource permitting requirements. The actions of the violators have adversely impacted wetland habitat and have potentially increased flooding on adjacent properties. The violators have not agreed to resolve the matter and therefore must be brought before the courts to address the matter fairly and promptly.