

## MEMORANDUM

**TO:** Governing Board Members

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

**DATE:** April 26, 2010

**SUBJECT: Notice of Initiation of Enforcement Proceedings**  
Jerjo, Inc., Jerjo Limited, Inc., Ibis Club at Naples Condominium Association, Inc., and all other appropriate parties Enforcement Action for property located at 8295 Davis Boulevard, Section 3, Township 50 South, Range 26 East, Naples, Collier County, Florida

### **Background**

On November, 24, 1999, the District issued environmental resource standard general permit number 11-01763-P to Jerjo, Inc. ("permittee") for the construction and operation of a surface water management system to serve a 13.83 acre commercial development in Collier County known as Ibis Club Apartments. The property contains a 1.29 acre cypress wetland that connects to a larger wetland located south of the property. The permittee also proposed impacts to approximately 6.58 acres of red-cockaded woodpecker (RCW) foraging area and 6.24 acres of secondary RCW foraging area.

In order to offset the impacts of the proposed project, the applicant proposed to preserve a 0.57 acre onsite upland preserve adjacent to the wetland preserve, and to purchase 15 acres of off-site land adjacent to state owned lands to be maintained as RCW habitat. Currently, the off-site mitigation area is owned by Jerjo Limited, Inc., which has the same president as the permittee, Jerjo, Inc.

To date, the permittee has failed to comply with the following permit conditions: 1) failure to maintain the on-site preserve areas with coverage of exotic and nuisance plant species at or below 5%; 2) failure to submit a fully executed copy of the escrow agreement with the Division of Forestry; 3) failure to submit documentation that the 15 acre off-site RCW mitigation parcel has been deeded to the Division of Forestry; 4) failure to notify the District of the sale of the property upon which the project is located; 5) failure to request the conversion of the permit from the construction phase to the operation phase, and to initiate transfer of the permit to the District-approved operating entity. The surface water management system is currently being operated by Ibis Club at Naples Condominium Association, Inc.

District staff sent the permittee a Notice of Violation, a settlement letter, a request for response, and a pre-litigation letter, and corresponded with the condominium

association, but the matter remains unresolved. The District has the option to issue administrative complaints to resolve enforcement cases. Section 373.119, Florida Statutes, authorizes the executive director of a water management district to issue administrative complaints. The administrative complaint will contain orders for corrective action to remedy the non-compliance with the permit. It will also require the condominium association to accept transfer of the permit.

Once the administrative complaint is issued, the Respondents will have 14 days to petition for an administrative hearing with the District. If the Respondents timely file sufficient petitions, the District will forward the matter to the Division of Administrative Hearings with a request for the assignment of an administrative law judge. If the Respondents fail to file timely petitions, the Orders for Corrective Action in the Administrative Complaint will become final.

**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 permittee has impacted wetlands, and the impacts have not been offset due to its non-compliance with the permit. The permit non-compliance 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 non-compliance with the permit and associated adverse impacts could continue.