

## MEMORANDUM

**TO:** Governing Board Members

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

**DATE:** April 26, 2010

**SUBJECT:** **Notice of Initiation of Administrative Enforcement Proceedings**  
Villas at Mandalay Development, LLC, Homeowners Association of Mandalay, Inc., and all other appropriate parties  
Enforcement Action for property located at Section 16, Township 50, Range 26, Naples, Collier County, Florida ("Property")

### **Background**

On May 3, 2005, the District issued environmental resource permit number 11-02292-P to the Villas at Mandalay Development, LLC ("permittee") for the construction and operation of a surface water management system to serve a 28.06 acre residential development in Collier County known as Mandalay Villas. The permittee proposed 5.37 acres of wetland impacts for the project. On-site mitigation for these impacts included the preservation and enhancement of 12.11 acres of wetlands, 0.24 acres of uplands, and a 0.19 acre upland buffer. Additionally, the permittee proposed 0.03 acres of temporary wetland impacts for the installation of an outfall structure in the wetland. This area was to be re-graded and re-planted after the control structure was installed.

To date, the permittee has failed to comply with the following permit conditions: 1) failure to submit three of the five annual monitoring reports; 2) failure to maintain the coverage of exotic and nuisance vegetation in the preserve areas at or below 5%; 3) failure to restore the temporary wetland impacts associated with the outfall structure construction; and 4) 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 the Homeowners Association of Mandalay, Inc., without a permit.

District staff sent the permittee and the property manager several notices of non-compliance, a Notice of Violation, requests for response, a settlement letter, and a pre-litigation letter, 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, and require the homeowners' 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.