

Lee County Board Of County Commissioners

Agenda Item Summary

Blue Sheet No. 20041705

1. **REQUESTED MOTION:**

**ACTION REQUESTED:** Request BOCC execute the attached Consent Agreement with South Florida Water Management District (SFWMD) for a violation that occurred along the Briarcliff/Fiddlesticks Ditch in association with the Alico Road Widening project. Also approve payment of \$8,240.00 to the SFWMD as part of the settlement.

**WHY ACTION IS NECESSARY:** Execution of this Consent Agreement avoids formal enforcement action to be taken by SFWMD.

**WHAT ACTION ACCOMPLISHES:** Completes the resolution of the violation previously identified by the South Florida Water Management District in July 2003.

2. **DEPARTMENTAL CATEGORY:**

09  
COMMISSION DISTRICT # 5

C9A

3. **MEETING DATE:**

01-18-2005

4. **AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. **REQUIREMENT/PURPOSE:**

(Specify)

- STATUTE
- ORDINANCE
- ADMIN.
- CODE
- OTHER

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT Transportation
- C. DIVISION

BY: Scott M. Gilbertson

**BACKGROUND:**

During design of the Alico Road project, the need for a temporary construction easement was identified in the plans along the Briarcliff Ditch in the vicinity of what is known as the Alico Road Mine. Unfortunately this easement was not included in the right of way maps and therefore was not acquired. Subsequently the landowner, at the request of the SFWMD, recorded a conservation easement over this portion of the property, unbeknown to us at the time. The conservation easements were recorded in March and July of 2002. The recording of the conservation easement on the mine property prohibited use of any portion of the encumbered property as a temporary construction easement. Due to this miscommunication the contractor proceeded as if the temporary construction easement had been obtained and had parked equipment on the property.

In June 2003, the South Florida Water Management District observed that the contractor for Alico Road had disturbed an area along the Briarcliff/Fiddlesticks canal that was within the conservation easement on the mine property. A Notice of Violation dated July 2, 2003 was sent to Lee County. An August 4, 2003 letter from the SFWMD indicated

CONTINUED ON PAGE 2

8. **MANAGEMENT RECOMMENDATIONS:**

9. **RECOMMENDED APPROVAL:**

A Departme nt Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services <i>P. Mullis 12/28/04</i>				G County Manager
					OA	OM	Risk	GC	
<i>12/28/04</i> <i>W. Gilbertson</i>	NA	NA		<i>K. H. ?</i> <i>12/28/04</i>	<i>12/28/04</i>	<i>12/28/04</i>	<i>12/28/04</i>	<i>12/28/04</i>	<i>J. Under</i> <i>12-27-04</i>

10. **COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: 12/27/04  
Time: 3:50  
Forwarded To: 20041705.DOC  
12/28/04

RECEIVED BY  
COUNTY ADMIN:  
12/28/04  
COUNTY ADMIN  
FORWARDED TO:  
12/28/04  
10:15am

**7. BACKGROUND (Continued):**

that the terms to resolve the violation were as follows: the restoration of the disturbed area to pre-construction conditions, payment of \$6,240.00 civil penalty and \$2,000.00 investigative costs and attorney fees.

Lee County Department of Transportation prepared a restoration plan for the disturbed area, obtained approval from the SFWMD, and proceeded with the plantings. Execution of the Consent Agreement and payment of the penalties, costs and fees will complete the resolution of the violation.

Funds are available in account #20403030700.506110.



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

LOWER WEST COAST REGIONAL SERVICE CENTER 2301 McGregor Boulevard, Fort Myers, FL 33901  
(239) 338-2929 • FL WATS 1-800-248-1201 • Suncom 748-2929 • Fax (239) 338-2936 • www.sfwmd.gov/org/exo/ftmyers/

**CON 24-06-04**  
Cost Code: 3119

November 12, 2004

Nicole Maxey  
LEE COUNTY BOARD OF COUNTY  
COMMISSIONERS  
1500 Monroe Street  
Fort Myers, FL 33901

Dear Ms. Maxey:

**Consent Agreement**

**Subject: Final Agency Action,  
Notice of Violation,  
Briarcliff - Fiddlesticks Ditch  
Application/Permit No. 36-03732-P  
Lee County Sec. 5-6 /Twp. 46 /Rge. 25  
Order No. \_\_\_\_\_**

The purpose of this letter is to complete the resolution of the violation previously identified by the South Florida Water Management District ("District") in the Notice of Violation dated July 2, 2003, a copy of which is attached. The "Works" addressed in the Notice of Violation include filling and grading. The proposed settlement includes:

- Payment of Six Thousand Two Hundred Forty Dollars (\$6,240.00) in civil penalty.
- Payment of Two Thousand Dollars (\$2,000.00) in staff investigative costs and attorney fees.

The total amount is Eight Thousand Two Hundred Forty Dollars (\$8,240.00). This payment is to be made by certified check or money order to the South Florida Water Management District, 3301 Gun Club Road, Post Office Box 24680, West Palm Beach, Florida 33416-4680, to the attention of Rudy Smith, Environmental Resource Regulation Division. The total payment is due within 14 days of execution of this agreement by the District's Governing Board.

**RECEIVED**  
NOV 17 2004  
EXECUTIVE OFFICE

*GOVERNING BOARD*

Nicolás J. Gutiérrez, Jr., Esq., *Chair*  
Pamela Brooks-Thomas, *Vice-Chair*  
Irela M. Baguc

Michael Collins  
Hugh M. English  
Lemart E. Lindahl, P.E.

Kevin McCarty  
Harkley R. Thornton  
Trudi K. Williams, P.E.

Henry Dean, *Executive Director*

**Briarcliff - Fiddlesticks Ditch**

**Order No. \_\_\_\_\_**

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Your execution of this short form consent agreement constitutes your acknowledgement to the terms of the order. This order will then be presented to the District's Governing Board with a staff recommendation for approval. The terms and conditions of which may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, 373.129, and 373.136, Florida Statutes.

Without admitting liability, you have provided the District assurances of good faith compliance with all agreements entered into between yourselves and the District in consideration for the District not taking action to seek judicial imposition of damages, or civil penalties for the violation described above. By signing this letter, you waive your rights set forth in the Notice of Rights attached hereto and incorporated by reference. If you do not sign and return this letter to the South Florida Water Management District, at the address given above, within 7 days of receipt it will be assumed that you are not interested in settling this matter according to the terms described herein. Subsequently, this matter would then be referred to the District's Office of Counsel with a recommendation that formal enforcement action be taken against you.

**Briarcliff - Fiddlesticks Ditch**

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If you have any questions please contact Jeanette A. Dandenault, P.E., CPESC, Senior Supervising Engineer at (239) 338-2929. Your attention and cooperation in this matter is appreciated.

Sincerely,



Jeanette A. Dandenault, P.E., CPESC  
Senior Supervising Engineer  
Lower West Coast Service Center  
South Florida Water Management District

JA/jd

Attachment(s)

**CERTIFIED MAIL NO. 7004 0750 0004 1651 9175**

c: Brown Collins, Synecological Analysts  
Chairman, Lee County Board of County Commissioners  
Mr. Pete Eckenrode, Lee County Development Services  
Ms. Ashley Foster, Office of Council, SFWMD  
Phoenix Construction Services, Inc.

**Briarcliff - Fiddlesticks Ditch**

**Order No.** \_\_\_\_\_

**November 12, 2004**

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DONE AND SO ORDERED at West Palm Beach, Palm Beach County, Florida,  
this \_\_\_\_\_ day of \_\_\_\_\_ 2004 .

SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
BY ITS GOVERNING BOARD

BY: \_\_\_\_\_  
Sheryl G. Wood, General Counsel

ATTEST:  
BY: \_\_\_\_\_  
Secretary

RESPONDENT

BY: \_\_\_\_\_  
Authorized Representative  
Lee County Board of County Commissioners

ATTEST:  
BY: \_\_\_\_\_