# MEMORANDUM

TO: Governing Board

FROM: Tom W. Brown, General Counsel

DATE: June 1, 2009

RE: Enforcement Status & Litigation Report

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## ADMINISTRATIVE MATTERS WITHIN THE DISTRICT:

Frank Soucinek/Countryside Estates (CE07-0050)

Received July 19, 2007. Failure to submit as-built certification forms Sections A, B and C. Counsel sent an enforcement letter on August 1, 2007 seeking submission of Section C, an assessed penalty, administrative costs and attorneys' fees. As-built Section C was submitted on August 29, 2007. District staff will conduct a final site inspection to determine if there are problems to be addressed by permittee Upon inspection by District staff, a few problems exist that must be corrected and a subsequent as-built Section C must be submitted. Counsel notified Mr. Soucinek of the corrections that are required and the necessity of a follow-up Section C by letter dated September 25, 2007. Once the problems are corrected and District approves, Section C will be resubmitted. District staff conducted a site inspection on December 27, 2007 and February 20, 2008. No work has been done to bring the project into compliance. Counsel will initiate proceedings by April 30, 2008. Counsel has had several contacts with Mr. Soucinek and believes that he is making diligent effort to correct the matter. Calculations for the change to the retention area have been furnished to the District and a permit to modify the retention area was received by the District June 4, 2008. Thereafter, staff requested additional information because the modifications were not sufficient to make a wet pond in the limited area. Mr. Soucinek's engineers contacted the District on July 23rd and are working with staff to resolve the issue. Attorney will continue to monitor. Owner agreed to remove muck and fill in with sand to make retention area functional. Will complete work as soon as area is dry enough to allow. On October 29 the retention ponds were cleaned out pursuant to the permit modification application and when the water recedes, the applicant is to complete the rest of the work. We should have a follow up report within 30 days. No work done in November. Staff to give him 30 days to clean out retention pond. Staff met with Mr. Soucinek November 21, 2008. A new engineer is coming on board and staff will follow up. **As of May 27, 2009, Mr. Soucinek has failed to retain an engineer. Matter referred back to Counsel on May 20, 2009, to pursue further enforcement action. Recommend that Board authorize institution of Circuit Court action to enforce rules.**

Stephen Buckles (CE06-0107)

Received September 13, 2007. Mr. Buckles constructed a building, dock and walkway within the 75' setback and floodway of the Suwannee River without a permit. Counsel

sent an enforcement letter on September 14, 2007 seeking assessed penalties, administrative costs, attorneys' fees and either removal of all unpermitted structures located within the 75' setback or complete the application process and seek a variance if there are unpermittable structures located within the 75' setback. Mr. Buckles contacted counsel on October 1, 2007 and assured his cooperation in correcting the violations. Mr. Buckles was instructed that he has until October 31, 2007 to submit a petition for variance and apply for a permit. This file will be transferred back to District for a site inspection and to oversee the permit application process. District staff is to conduct a site inspection on October 3, 2007. A site inspection was conducted on October 3, 2007 wherein District staff and Mr. Buckles discussed the violations and ways to cure the problems. It was discovered that the violations at issue encompass Mr. Buckles land as well as an adjoining landowner. Therefore, District staff is to resend Notice of Violation letters to both parties on or before December 7, 2007. District received Petition for Variance on January 23, 2008 and it is under consideration. Staff requested additional information on February 27, 2008. Mr. Buckles has until April 25, 2008 to answer. The Petition was submitted only by Mr. Buckles and it appears that there is another owner involved who is not joined in the Petition named Linda Fennell. Staff will be recommending denial of the permit application as well as Mr. Buckles' request for a variance. District acted on a Petition for Variance by denying the request on June 10, 2008. Mr. Buckles met with staff on August 11, 2008 at the District. He was given thirty (30) days to respond to three (3) different options in order to come into compliance. A staff follow-up report will be given after September 12, 2008. Negotiations with staff are at a standstill. Will most likely refer back to attorney. The Governing Board, at the November meeting denied his petition for variance and Mr. Buckles agreed to furnish staff with previously requested information. Not received as of January 5, 2009. Still seeking information from Lafayette County officials Attorney determined Ms. Linda Fennell is owner of property based on copies of Deeds furnished to him. On January 28th, Ms. Fennell, as owner, was sent notice of violation with requests for action. She was given ninety (90) days to comply – due on April 30, 2009. Received response from Ms. Linda Fennell on April 27, 2009, wherein she stated, "I, Linda Fennell, do not recognize that there has been any violation as alleged by any SRWM staffers. Sincerely, Linda Fennell." Recommend that Board authorize institution of Circuit Court action to enforce rules.

**Board authorized institution of Circuit Court action on May 14, 2009. Counsel preparing Circuit Court complaint to be filed in Lafayette County on or before June 9, 2009.**

Breck Sloan/Beck Chrysler Dealership (CE07-0100)

Received October 24, 2007. The dry retention pond on the property is not functioning as permitted and needs to be redesigned as a wet pond or a filter/underdrain must be designed to draw down the seasonal high water table. Counsel sent an enforcement letter on October 29, 2007 seeking an assessed penalty, administrative costs and attorneys' fees. The letter also instructed Mr. Sloan as to the permit modification that will be required in order to bring the pond into compliance. A deadline of November 14, 2007 was provided. Breck Sloan responded on November 13, 2007 and proposed a four-month monitoring plan. District staff agreed to said plan. A written report is to be submitted to District on April 7, 2008, which shall show all findings and proposed

modifications. Report was not filed on April 7, 2008 with District. The penalties, administrative costs and attorney's fees were not paid and Staff has returned the file back to attorneys for enforcement. On July 30, 2008, Mr. Breck Sloan, by phone, claimed he thought the work had been done and promised immediate action. Counsel followed up with a letter to Mr. Sloan. On August 26, 2008, District staff received a call from Engineer Rudd Jones, new to the project, promising a proposal to fix the pond. Staff will follow up with him within ten (10) days. Owner given until October 15, 2008 to have plan filed with District. Owner has not contacted counsel or staff; the matter will proceed with administrative enforcement. On November 19th, Mr. Sloan's new engineer contacted District and should meet with staff and pay penalties this month. This did not happen; counsel is to file suit in Circuit Court in Bradford County. Defendant's registered agent was served on February 19, 2009.

On March 16, 2009, we filed for a Default and the Clerk entered the order on the same on March 17, 2009. Defendant filed an Answer in the wrong county on March 12, 2009. Defendant forwarded correspondence to the Bradford County clerk referencing the error on March 18, 2009. A telephone conference was held between District counsels, Defendant, Defendant's counsel, and Defendant's engineer on March 24, 2009. Defendant's counsel advised that he would submit a proposal on behalf of the defendant as to the actions to bring the pond into compliance along with the timeframe in which to do so. No action by defendant's counsel or engineer as of April 28, 2009. We therefore are proceeding with the lawsuit that has already been filed.

**Defendant's engineer has been in contact with District staff and submitted an application along with the application fee. However, Defendant failed to pay the past penalties, attorney's fees, and costs. District counsel will advise Defendant's counsel that the Defendant needs to pay the past penalties, attorney's fees, and costs by June 12, 2009. If he does so and then timely and properly completes the work thereafter, then the District will consider reducing the penalty. However, if we do not receive the past penalties, attorney's fees, and costs by June 12, 2009 we will proceed with continued enforcement proceedings.**

Kathleen Allred (CE07-0053)

Received January 28, 2008. Notice of Violation, Unpermitted Construction within 75-foot setback. Counsel sent enforcement letter on February 8, 2008 seeking assessed penalty, administrative costs and attorneys' fees to be paid on or before February 26, 2008. The work required to bring the property into compliance must be completed on or before March 11, 2008. Received information week of February 3, 2008 that Kathleen Allred is in the military currently stationed out of the country. Staff has given her an extension until July 1, 2008 to correct the issues. At Allred's request, an additional extension was granted to August 1, 2008. The unpermitted construction of a home within the 75-foot setback was corrected by removal of the home; however, the deck and dock remain. On August 25, 2008, staff contacted Ms. Allred and gave her until September 8, 2008, to either remove the deck and dock, or apply for a permit. Ms. Allred is back overseas and was given until December 31, 2008 to apply for a permit. Staff met with Ms. Allred's mother and brother on December 20, 2008 regarding permitting the remaining violations (they are permittable). Received letter

on December 31, 2008 stating that Allred redeployed, wants another extension until late spring. On January 8th, staff sent letter to family requesting husband, brother or mother to act as agent to complete the process. (Same)

Mac Johnson (CE08-0014)

Received March 3, 2008. Mac Johnson abandoned three irrigation wells without permit. He failed to respond to District's request of January 22, 2008 Attorney wrote and gave him until April 14, 2008 to comply. Although Mr. Johnson met with Staff and promised to have the work completed by April 14, 2008 Staff checked with well driller and no work has been done so an Administrative enforcement action seeking attorney's fees, penalties and correction was filed June 30, 2008 He was served July 17, 2008. His response is due to be filed at the District by August 6th. No response was received. We will submit an Order on behalf of the District. A recommended Order for Final Agency Action was sent to District on September 30, 2008. Governing Board took final agency action on proposed order at October meeting. Appeal time ran November 19, 2008. A Circuit Court case was filed in Circuit Court in Gilchrist County January 26, 2009. Mr. Johnson was served on February 4, 2009. Counsel contacted by Mr Johnson's attorney and one week extension was granted to file answer, now due on March 3, 2009. District also offered reduce penalty in half if project was timely brought into compliance Mr. Johnson's attorney was to speak to him regarding this offer.

Defendant's counsel did not file Answer, but instead filed Motion to Dismiss on February 27, 2009. A hearing is set for that Motion on April 14, 2009. Defendant has apparently obtained Clyde Smith as his licensed water well contractor. Defendant's attorney contacted District counsel on March 30, 2009 and advised that Mr. Smith and District staff together recently inspected the wells. He also advised that Mr. Smith submitted an abandonment plan to the District review and approval last week and permits were issued on April 1, 2009. On April 20, 2009, District counsel received a check from Defendant's counsel in the amount of $10,000 representing half of the $10,000 penalty and up to $5,000 in attorney's fees and costs. Defendant's counsel advised District counsel that the abandonment of the wells was completed by Mr. Smith on April 22, 2009. Upon confirmation from the District that the wells have been properly abandoned, District counsel will determine the final amount of attorney's fees and costs and whether any refund is due to the Defendant. Thereafter, this matter will be finalized and the Complaint will be dismissed without prejudice.

**District confirmed that the wells have been timely and properly abandoned. District counsel determined the final amount of attorney's fees and costs and determined that there is no refund due to the Defendant. District counsel will prepare and submit a Joint Stipulation for Voluntary Dismissal without prejudice to be signed by both counsel and then submitted to the court for entry of an Order**

Charlie Hicks, Jr. - Madison County (CE07-0087)

Received November 1, 2008. District discovered a violation on Mr. Hicks' property in Madison County On September 26, 2007--which was construction of a structure in the floodway, without obtaining a works of the District permit. A notice of violation

followed and several meetings with Mr. Hicks and various communications until the final contact when Mr. Hicks advised staff on October 28, 2008 to leave him alone, stating that he would not comply with any of District's requests. Counsel sent a demand letter on February 2, 2009 to Mr. Hicks, with a 30-day deadline to pay administrative costs, attorney's fees, penalties and to take corrective action. Certified letter unclaimed and returned. Letter then served on Mr. Hicks by process server on February 26, 2009. Administrative costs increased to include service fee and deadline now is Monday, March 30, 2009 for response. No response has been received from Mr. Hicks or his counsel and staff recommends that counsel be authorized to proceed against Mr Hicks in Circuit Court to enforce our rules.

**Board authorized institution of Circuit Court action on May 14, 2009. Counsel preparing Circuit Court complaint to be filed in Madison County on or before June 5, 2009.**

Steven Midyette (CE07-0065) – Gilchrist County

Received September 10, 2008. On March 16, 2002, the District discovered that Steven Midyette was clearing wetland vegetation within a riverine wetland slough without a permit. Mr. Midyette was notified that these activities required a permit. Mr. Midyette agreed to restore the integrity of the natural system but failed to do so. On September 5, 2007, the District discovered that Mr. Midyette was filling in wetlands and constructing a boat ramp within a riverine wetland slough without a permit. On September 7, 2007 the District issued a Notice of Violation and Stop Work Order. A consent agreement was prepared for both violations and was sent to Mr. Midyette. Mr. Midyette was ultimately given extensions until September 5, 2008 to sign and return the consent agreement He failed to sign. Counsel spoke to and sent a letter to Mr. Midyette in September 2008 regarding returning the signed consent agreement. Mr. Midyette advised he would do so after his attorney reviewed the same. The signed consent agreement was never received. Counsel forwarded an Administrative Complaint and Order to the District on December 8, 2008 to be signed. The Administrative Complaint and Order was filed on or about January 26, 2009. On February 25th, complaint was sent to Duval County Sheriff to serve.

Complaint was served on Defendant on March 9, 2009. Defendant filed a Petition for Hearing on March 27, 2009. On April 15, 2009, District entered an Order Dismissing Defendant's Petition for Administrative Hearing without Prejudice as the Petition was procedurally defective and gave Defendant fourteen days to file an Amended Petition for Hearing. Defendant's Amended Petition for Hearing is due to be filed with the District on or before April 28, 2009.

**Defendant filed an Amended Petition for Hearing dated May 2, 2009 which was received by the District on May 4, 2009. District forwarded the same to DOAH on May 18, 2009. DOAH issued its Initial Order on May 19, 2009. District counsel responded to the Initial Order on May 27, 2009. District counsel will commence with Discovery.**

Fred Shore/Suwannee Cove Condominiums (CE09-0011)

Received file from District on January 16, 2009. Certified letter to Mr. Shore on

February 9, 2009; he received on February 10, 2009. His attorney contacted Brown and was given a thirty (30) day extension to pay the penalty costs and fees. Mr. Shore did not pay the penalty or costs or fees, but applied for and received a permit from the District to do work correcting the problem on April 16, 2009. District will monitor the work on the permit and attempt to negotiate the penalty, costs and fees with Mr. Shore. (Same)

L.E Crawford/Rentz Pond (CE08-0015)

Received file from District on January 16, 2009, alleged violation of notice general permit to construct a minor surface water management system. Certified letter to Mr. Crawford on February 17, 2009. Awaiting receipt or unclaimed notice from post office. Certified letter was unclaimed so Mr. Crawford served via civil service on March 19, 2009. Mr. Crawford has until April 20, 2009 to pay all funds currently owing and to bring project into compliance. Mr. Crawford responded on April 21, 2009 and has not paid the penalties or costs, but is working to correct the problem. Staff, through Mr. Louis Mantini is monitoring the work of Mr. Crawford and hopefully the matter will be completed by the end of May. (Same)

SRWMD v. Bradford County Board of County Commissioners

On April 14, 2009, the Governing Board authorized staff to file an Administrative Complaint against Bradford County to revoke a permit previously issued by District to Bradford County on the grounds that the county did not own the property and was not authorized to obtain the permit on the property, since it was owned by the Florida Department of Transportation. This complaint was filed by the District, with the District on April 27, 2009, and service was mailed to Bradford County by certified mail on April 27, 2009, and received by defendant on April 28, 2009. They have until May 19, 2009 to request an administrative hearing.

**Bradford County did not request an administrative hearing regarding the permit revocation. Recommended that the Board enter a final order revoking Environmental Resource Permit 06-0215M.**

**ADMINISTRATIVE MATTERS WITH DIVISION OF ADMINSTRATIVE HEARINGS:**

SRWMD v Aqua Blue Spring Water, Inc (Water Use Permit WUP 2-05-00078):

**On May 14, 2009, the Governing Board authorized Counsel to file an Administrative Complaint against Willie P. Agner and Aqua Blue Spring Water, Inc. to revoke water use permit WUP 2-05-00078 for failure to use the water supply for a period of two years or more. This complaint was filed by District Counsel, with the District on May 27, 2009, and service was mailed to Willie P. Agner and Aqua Blue Spring Water, Inc. by certified mail on May 27, 2009.**

Nestle Waters North America, Inc. v SRWMD

**On or about May 26, 2009, the District referred Nestle Waters' Petition for Administrative Hearing to the Division of Administrative Hearings for assignment of an Administrative Law Judge. The Administrative Law Judge issued an initial order on May 26, 2009, requiring Counsel for both parties to**

**submit possible dates for the formal Administrative Hearing. Nestle Waters' Petition for Administrative Hearing challenges the District's notice of intent to issue Noticed General Environmental Resource Permit ERP 09-0042, which permit authorizes the construction of a water bottling facility. Noticed General Environmental Resource Permit 09-0042 was issued to Aqua Blue Springs Water, Inc., on April 17, 2009.**

**CIRCUIT COURT MATTERS:**

Suwannee River Water Management District v El Rancho No Tengo, Inc

Trial was conducted on November 7, 2006 and February 7 and 8, 2007. The Court granted District's request for a temporary injunction on July 11, 2007 and converted the temporary injunction to a permanent injunction in a final Order dated August 6, 2007.

On April 16, 2008, after hearing testimony and argument of counsel, the Judge orally announced a Judgment for penalties should be entered against Mr. Hill's corporation in the amount of $100,000.00. She further announced that within 48 hours rulings would be issued on the Defendant's Motion for Stay and our Motion for Contempt. On April 17, 2008 an Order was entered on Defendant's Motion for Stay denying El Rancho No Tengo's request to stay the requirement that the impoundment be immediately drained to the lowest feasible level while staying the remainder of the relief conditioned on the Defendant posting a $100,000.00 bond. The Court has not yet ruled on our Motion for Contempt. No bond was ever posted.

In August, 2008, a Writ of Execution was sent to the Columbia County Sheriff's Office with instructions to levy on the real property owned by Defendant as a means of enforcing the final order imposing $100,000 civil penalty. Sale of property was enjoined by automatic stay which occurred when Defendant filed for bankruptcy protection on November 19, 2008. An inspection of the dam was performed on April 2, 2009, during which District staff observed a substantial amount of water impounded behind the dam in violation of the Trial Court's order. Hill refused to cooperate. Staff launched a small boat and proceeded to the drain gate operating structure to determine the thread size on the rod. Staff then purchased hardware necessary to fashion a drain gate operating handle and completely opened the drain gate.

**On May 5, 2009, counsel for Defendant filed an Objection to Second Request to Produce and Motion for Protection alleging undue burden to transport the requested documents to counsel's office in Gainesville. Defendant stated that the documents were too voluminous and proposed that production be made at the Defendant's place of business, which is also the Hill family residence. Counsel for the District conferred with counsel for the Defendant by telephone and offered the offices of co-counsel in Lake City as a reasonable place for production to take place. Defendant's counsel offered to produce the documents at the Defendant's residence on May 13, 2009, and May 14, 2009, between the hours of 2:00 p.m. and 10:00 p.m. Counsel for the District filed a response to Defendant's objection on May 14, 2009, suggesting that the location**

**and times of day were not reasonable and that counsel for the Defendant did not confer with counsel prior to filing his objection and motion for protection.**

**A recent inspection of discharge from the spillway pipe indicates the drain gate has been reopened. The Defendant is out of compliance with the Court's injunction. Counsel for the District will file an amended contempt motion and seek to have it timely heard by the Court.**

**Matters Remaining In Circuit Court:**
**(a) Motion for Contempt**
**(b) Motion for Attorney's Fees in Trial Court**
**(c) Motion to Determine Attorney's Fees for Appeals**
**(d) Enforcement of Injunction and Collection of Penalties and Costs**

**BANKRUPTCY COURT MATTERS:**

El Rancho No Tengo, Inc. Bankruptcy

On November 19, 2008, El Rancho No Tengo, Inc., filed for Chapter 12 Bankruptcy protection in the United States Bankruptcy Court, Middle District of Florida. This filing resulted in cancellation of the sale. Attorney Lance Cohen of Jacksonville is lead counsel representing District in the bankruptcy proceeding.

Mr. Cohen filed a Motion to Modify Automatic Stay and an Objection to Confirmation of Debtor's Amended Chapter 12 Plan. On January 9, 2009, the United States Bankruptcy Court granted the Motion to Modify Automatic Stay to allow the appeals taken by El Rancho No Tengo of Orders and Judgments of the Circuit Court, Columbia County, to be prosecuted to appellate resolution and finality. It was further modified to permit the Appellate Court and/or Circuit Court to award attorney's fees and costs in connection with any appeal taken by El Rancho No Tengo of Orders and/or Judgments of the Circuit Court, Columbia County, to the extent permitted by applicable law. The U.S. Bankruptcy Court retained jurisdiction to further modify the automatic stay upon notice and hearing.

A second Motion to Modify Automatic Stay was heard on March 25, 2009. The Bankruptcy Court issued its order permitting the Circuit Court to consider current and future violations of the injunction and to fashion an appropriate remedy.

The District's Motion to Dismiss the Chapter 12 Bankruptcy was continued until May 13, 2009, at which time an evidentiary hearing will be held. On March 30, 2009, counsel for the District propounded upon the Defendant a Second Request for Production requiring Jeffrey Hill to produce corporate tax returns and other financial information. The Defendant's response is due on or before May 1, 2009.

**On May 13, 2009, counsel for the District attended the hearing with Lance Cohen, Esquire, and Jon Dinges on the District's Motion to Dismiss El Rancho No Tengo's Chapter 12 Case. On May 14, 2009, the bankruptcy court granted the District's Motion to Dismiss and the automatic stay was terminated as to all creditors.** ***This matter is concluded and will be removed from July's report.***

## FLORIDA SUPREME COURT MATTER:

Jeffrey Hill, as Agent for El Rancho No Tengo, Petition to Florida Supreme Court

**On May 4, 2009, Jeffrey Hill filed a Petition for Review with the Florida Supreme Court as agent for El Rancho No Tengo, Inc., and filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court with the First District Court of Appeals. The Petition for Review asks the Florida Supreme Court, among other things, to reverse the Circuit Court's injunction order and grant attorney's fees and costs to El Rancho No Tengo, Inc.**

**On May 20, 2009, counsel for the District filed a response to the Petition for Review requesting that the Florida Supreme Court deny El Rancho No Tengo's request for review arguing that Mr. Hill, as a non-attorney, cannot legally represent the corporation and that the Supreme Court lacks jurisdiction in this case under the state constitution.**

**On May 27, 2009, the Court dismissed Hill's Petition for Review, citing the Court has no jurisdiction. *This matter is concluded and will be removed from July's report.***

## MATTERS CURRENTLY WITH OUTSIDE COUNSEL:

Fred Treadway/Pennington Trails (ERP 06-0474 and ERP 06-0474M)

Received November 10, 2008. This matter involves a violation of individual permits issued to Fred Treadway for Trails of Pennington--East and Pennington Trails--West. Certain violations were promptly corrected, however, since March, 2008, other violations have not been corrected and staff has held numerous meetings with Mr. Treadway, his workers and his consultant, Dennis Price. The final meeting was held with Mr. Treadway on September 11, 2008, in an effort to work out a consent agreement and resolve the matter, but Mr. Treadway would not agree to a penalty. The items remaining to be corrected at this time include erosion and sedimentation of the ditches in both subdivisions and the blowout of the inflow structure in storm basin #3 in ERP 06-0474. Mr. Treadway will be contacted within two weeks to give him an opportunity to correct these matters before filing a civil action.

Because of conflict, this was referred to Jennifer Springfield December 3, 2008. She reviewed file, talked with District staff and is preparing a draft Consent Agreement, which should go out to Mr. Treadway this month. On March 30, 2009, District staff provided comments on the draft Consent Order. District's proposed Consent Order was sent to Mr. Treadway. Mr. Treadway's response is due no later than May 12, 2009.

**On April 30, 2009, counsel for the District conferred with Mr. Treadway regarding the proposed penalties. Mr. Treadway informed counsel that all of the remedial work had been completed, and that he was willing to pay costs and fees, but thought the penalty should only be $1000.00 to $1500.00. After review of Mr.**

**Treadway's file, the District is proposing a $5400.00 penalty if the site work is complete upon inspection and, if within 120 days of rendition, Mr. Treadway has at least one employee certified as an erosion and sedimentation control inspector, at which time the District will refund $1400.00 to Mr. Treadway. The proposed consent agreement has been revised and will be sent to Mr. Treadway as soon as the site inspection is performed by District staff.**

Jeff Hill/Smithfield Estates, Phase I and Haight-Ashbury Subdivision

Haight-Ashbury Subdivision. ERP violation. District issued permit number ERP02-0021 to Jeff Hill on March 16, 2004. The permit authorized the construction, operation and maintenance of a surfacewater management system to serve the Haight-Ashbury Subdivision. In October and November 2005, District staff received numerous complaints regarding the presence of standing water and possible flooding on lots within the Subdivision. Upon inspection by District staff, it was discovered that swales and cross-drains were missing, disturbed areas were not stabilized and the retention basin was undersized and not configured properly. A subsequent site inspection was conducted on May 15, 2007 and the system was still in violation. An Administrative Complaint and Notice of Rights were served on Mr. Hill on

August 13, 2007. Mr. Hill filed a deficient response on August 27, 2007 and District entered an Order denying his request for hearing but provided an additional 14 days to file an amended Response. Mr. Hill failed to file an amended Response and enforcement of the Administrative Order will be sought in circuit court. Petitions to Enforce Agency Action have been filed in Columbia County Circuit Court in the Smithfield Estates, Phase 1 and the Haight-Ashbury subdivision ERP matters. Jeffrey Hill and Linda Hill were served with the Petition as to Smithfield Estates on March 3, 2008. Jeffrey Hill was served in his personal capacity with the Petition as to Haight-Ashbury on March 3, 2008 and as Registered Agent on March 10 2008. Therefore, Respondents' answers are due March 23, 2008 and March 30, 2008, respectively.

On May 14, 2008, District filed a Motion to Strike El Rancho No Tengo's and Jeffrey Hill's Answers to Petition to Enforce Agency Action in case numbers 08-117-CA and 08-118-CA. On May 20, 2008, a Motion for Default was filed in case number 08-118-CA, as to Linda Hill for her failure to answer the complaint in said case. On May 27, 2008, Linda Hill filed a response to the District's Motion for Default in Case No. 08-118-CA (Smithfield Estates). A hearing on the District's motions to strike Respondent Jeffrey Hill's answers to District's petitions to enforce agency action in the Smithfield and Haight-Ashbury matters has been scheduled for September 8, 2008, as well as District's motion for a default judgment against Linda Hill in the Smithfield matter for failing to file an answer.

On September 8, 2008, a hearing was held on District's motions to strike Respondent Jeffrey Hill's answers to District's petitions to enforce agency action in the Smithfield and Haight-Ashbury, as well as District's motion for a default judgment against Linda

Hill for failing to file an answer in the Smithfield matter. Jeffrey and Linda Hill appeared without counsel and requested additional time to respond to the District's motions. In the Smithfield matter, the Court entered an order allowing Respondents, Jeffrey Hill and Linda Hill, an additional 30 days to respond and file answers to District's petition.

In the Haight-Asbury matter, the Court granted District's motion to strike the answer filed by Respondent Hill on behalf of the corporation, El Rancho No Tengo, because the law requires that corporations be represented by legal counsel. The Court gave the corporation 30 days to obtain counsel and file an answer to District's petition to enforce. The Court also gave Respondent, Jeffrey Hill, 30 days to respond to District's motion to strike his answer. Respondents' answers and responses are due on October 8, 2008.

In the Smithfield Matter: A hearing on the District's Motion to Strike Respondent's Answer to Petition to Enforce Agency Action and Petitioner's Motion for Default is scheduled for November 17, 2008. The Respondent, Jeffrey Hill, filed a combined "Amended Answer and Motion to Dismiss," and Linda Hill filed an Answer alleging that she does not own or control any of the property. In response, the District filed a combined Motion to Strike Jeffrey Hill's Amended Answer and Response to Motion to Dismiss.

In the November 17th hearing, the Court withheld a ruling on the motions and ordered the District to file a copy of the Permit and the parties to mediation. The parties have ten days from the date of the mediation order to choose and agree upon a mediator, and until February 16, 2009, to complete the mediation process.

Counsel for the District advised the Court that the parties have been unable to come to an agreement concerning a mediator. Jeffrey and Linda Hill filed a Motion to Rehear which stated, in part, that they had no money with which to pay for one third of the cost of mediation. Counsel for the District filed a response to the motion in which it agrees to waive mediation in the event the Court believes this to be in the parties' best interests. Case management conference scheduled for March 17, 2009.

The parties attended a Case Management Conference on March 17, 2009. Judge Johnson again ordered the parties to mediation despite the objection of Jeffrey Hill who alleged he could not pay one-third of the cost. Following the Case Management Conference, the District agreed to pay one-half of the Hills' one-third of the mediation fees under the terms of the proposed order, which provides that in the event mediation is unsuccessful and the District prevails on the merits of the case, Jeffrey L. Hill and Linda P. Hill will be ordered to pay a total of one-third of the total cost of the mediation fee. Additionally, this agreement and order will not serve as a limitation on any claim by the District for any other costs or attorney's fees. Columbia County staff is also willing to pay one-half of the Hills' one-third of the mediation fees; however, the County attorney is bringing this issue before the Board of County Commissioners at its April 9, 2009, meeting. The District has asked the Court to postpone the entry of the order pending the outcome of the April 9, 2009, Commission meeting.

The Columbia County Commission agreed to pay one-half of the Hills' one-third of the mediation fees at its April 9, 2009, Commission meeting. A Second Order Referring Parties to Mediation was entered by Judge Johnson on April 17, 2009. The parties have until June 1, 2009, to complete mediation. Counsel for the District is coordinating this effort.

**Counsel for the District scheduled mediation for May 18, 2009, but was later informed that Linda Hill could not attend. It was subsequently rescheduled for June 1, 2009, however, on May 19, 2009, Jon Dinges was served with a subpoena ordering him to appear in federal court on June 1st. On May 19, 2009, District counsel requested that the Court extend the mediation deadline to June 30, 2009. Judge Johnson issued an Order on May 22, 2009, extending the mediation deadline to July 30, 2009. Mediation is scheduled to take place on June 30, 2009.**

In the Haight Asbury Matter: a hearing on the District's Motion to Strike Respondent's Answer to Petition to Enforce Agency Action and Petitioner's Motion for Default is scheduled for November 17, 2008. Respondent, El Rancho No Tengo, retained James Cerveny, Esq., for the sole purpose of filing an answer and motion to dismiss in this action, which he did. The District filed its Response and Motion to Strike El Rancho No Tengo's Answer and Motion to Dismiss. Additionally, Jeffrey Hill filed a Motion to Dismiss to which the District filed a response requesting that the Court deny Respondent's motion.

In the November 17th hearing, the Court granted El Rancho No Tengo's Motion to Dismiss without any finding concerning ownership of the stormwater basin on the property. The Court withheld a ruling on the other motions and ordered the District to file a copy of the Permit and the parties to mediation. The parties have ten days from the date of the mediation order to choose and agree upon a mediator, and until February 16, 2009, to complete the mediation process.

Jeffrey and Linda Hill filed a Motion to Rehear which stated, in part, that they had no money with which to pay for one third of the cost of mediation. Counsel for the District filed a response to the motion in which it agrees to waive mediation in the event the Court believes this to be in the parties' best interests. Case management conference scheduled for March 17, 2009.

The parties attended a Case Management Conference on March 17, 2009. Judge Johnson again ordered the parties to mediation despite the objection of Jeffrey Hill who alleged he could not pay one-third of the cost. Following the Case Management Conference, the District agreed to pay one-half of Hill's one-third of the mediation fees under the terms of the proposed order, which provides that in the event mediation is unsuccessful and the District prevails on the merits of the case, Jeffrey L. Hill will be ordered to pay a total of one-third of the total cost of the mediation fee. Additionally, this agreement and order will not serve as a limitation on any claim by the District for any other costs or attorney's fees. Columbia County staff is also willing to pay one-half of Hill's one-third of the mediation fees; however, the County attorney is bringing

this issue before the Board of County Commissioners at its April 9, 2009, meeting. The District has asked the Court to postpone the entry of the order pending the outcome of the April 9, 2009, Commission meeting

The Columbia County Commission agreed to pay one-half of the Hills' one-third of the mediation fees at its April 9, 2009, Commission meeting. A Second Order Referring Parties to Mediation was entered by Judge Johnson on April 17, 2009.

The parties have until June 1, 2009, to complete mediation. Counsel for the District is coordinating this effort.

**Counsel for the District scheduled mediation for May 18, 2009, but was later informed that Linda Hill could not attend. It was subsequently rescheduled for June 1, 2009, however, on May 19, 2009, Jon Dinges was served with a subpoena ordering him to appear in federal court on June 1st. On May 19, 2009, District counsel requested that the Court extend the mediation deadline to June 30, 2009. Judge Johnson issued an Order on May 22, 2009, extending the mediation deadline to July 30, 2009. Mediation is scheduled to take place on June 30, 2009.**

Richard Cole/Grandview Village Units 3 & 4 (CE06-0086)

Received July 25, 2007. Construction of a bypass ditch that runs on the south and east side of the permitted project and discharges near the detention pond was not constructed in compliance with the permitted plans. The bypass ditch in its current state poses a threat of flooding to near by homes. There is fill material located in the retention area, which decreases storage space. A conflict in this matter prevents Counsel from actively pursuing this enforcement violation. This matter was referred to Jennifer Springfield on October 16, 2007. Mr. Cole's engineer contacted and is cooperating with District to bring the project into compliance. District staff conducted a site inspection on December 5, 2007. The permittee is working to bring the project into compliance. An inspection was conducted on January 2, 2008, that revealed there were no changes to the site since the last inspection on December 5, 2007. An inspection was conducted January 25, 2008 and no changes were made to the site since the January 2, 2008 inspection. A site inspection was conducted on February 20, 2008. This project continues to be in violation with new home construction now encroaching on the drainage easement. On March 11, 2008, the Board approved the issuance of an Administrative Complaint. Counsel for the District has prepared an Administrative Complaint and Proposed Order to be issued by the Executive Director and served on the permitee, Richard Cole. Staff met with representatives from Columbia County and Lake City in July to confirm their willingness to allow the permittee/respondent to use the park property at this location to construct a pipe system needed to bring the stormwater management system into compliance with District ERP rules. Counsel for the District therefore revised the draft Administrative Complaint and Proposed Order to eliminate all of the respondents except the permittee, Richard Cole as Trustee for the Grandview Park Land Trust. District staff is now in the process of having Mr. Cole served with its Administrative Complaint and Proposed Order.

District staff served Richard Cole with an Administrative Complaint and Order. Mr. Cole filed a Petition for Administrative Hearing with the District on August 21, 2008. The District is requesting an Administrative Law Judge be assigned to handle this matter as required by Chapter 120, *Florida Statutes*.

The Governing Board denied this request for hearing at its September 9, 2008 meeting, due to Petitioner's failure to include all of the information required. The governing Board also gave Petitioner 10 days to file a second amended petition, which did not occur prior to the September 18, 2008, deadline. Consequently, the Administrative Complaint and Order has become a final order which the District may enforce by filing a petition in circuit court.

On September 25, 2008, District staff met with Respondent and Lake City staff to discuss the final order requirements. It was agreed that maintenance on the system as constructed would be performed and an application to modify the permit would be submitted. On October 7, 2008, District staff inspected the site and discovered that the maintenance work completed did not satisfy the District's request to clean the pipes/ditch and the pond also needed maintenance. District counsel will send Respondent a letter notifying it of the necessity to bring the system into compliance with District rules and/or the permit by a certain date or authorization will be sought to file a petition for enforcement in circuit court. District staff continues to try to voluntarily resolve this matter with Respondent by using county-owned property to construct the ditch that was required under the permit.

A staff inspection on February 26, 2009, revealed that adequate maintenance work has been completed on the pipes, ditch, and pond. District staff will transfer the permit to Lake City as soon as maintenance access easements are granted to the City and Respondent pays a negotiated civil penalty, and the District's investigative costs and attorney's fees.

Counsel for District sent Respondent a letter on March 20, 2009, requesting that he facilitate the easement process between the lot owners and the City and proposing a settlement penalty of $10,000.00, plus costs and fees.

Stephen A. Smith sent a letter to Counsel for the District on behalf of Respondent agreeing to assist in obtaining the necessary access easements from the lot owners as requested, and to reimburse the District its enforcement costs and attorney's fees, but requested that the settlement penalty be waived. Counsel has discussed this proposal with District staff and Mr Smith. Jon Dinges was also contacted by a resident, Robert Hunt, who requested copies of the permits issued for Grandview Village, together with all of the information concerning the Administrative Complaint filed by the District. Mr. Hunt is concerned about drainage problems within the subdivision and stated that his home located on the south side of the property is suffering serious property damage from flooding. (Same)

<u>Cannon Creek Airpark ERP Violation</u>

On January 17, 2008, Leroy Marshall, Mark Wiencek, President of the Cannon Creek Airpark HOA, and other Board members met at the site. At the end of the site visit it was agreed that the HOA would advise District counsel shortly if there were areas that

required work but were not owned or maintained by the HOA. Staff met on-site with the homeowners. Subsequently, counsel received correspondence and supporting documentation from the HOA requesting 180 days to develop a proposal. Counsel met with Staff and thereafter responded in writing agreeing to the HOA request for additional time. The District previously agreed to a July 29, 2008, deadline for the homeowners to propose a resolution. To date, no proposal has been received. Therefore, District counsel will send a letter advising that enforcement action is imminent.

District counsel spoke to officers of the Homeowner's Association by telephone on August 7, 2008, and confirmed that no progress has been made. District staff subsequently learned that Columbia County officials are working on a stormwater project that may alleviate the practical need to obtain compliance with the existing District permit, but instead would require that the permit be modified to reflect the system as constructed. Therefore, District counsel is postponing the initiation of formal enforcement action at this time

District staff met with Greg Bailey of Bailey, Bishop & Lane who stated that he is working on the flooding problem as part of a master plan for the entire basin. In the event Mr. Bailey's plan is approved and constructed, it will also address the compliance issue under this permit. (Same)

Country Landings (within the Cannon Creek area) ERP Violations

Daniel Sauriol, President of the County Landings HOA, requested an extension of time for the HOA to submit its application to modify permit no. 4-91-0174. The District agreed to a thirty (30) day extension. Counsel sent Mr. Sauriol a letter advising that the HOA must submit its application to SRWMD on or before February 21, 2008. The District agreed to a thirty day extension. Subsequently, the District was notified that Mr. Sauriol, as well as the other officers of the HOA, had resigned. To date, an application has not been received. Counsel and staff met with the homeowners and their counsel on May 16, 2008 The District agreed to allow the homeowners additional time within which to negotiate a resolution with Ray Sessions and the District. The homeowners are currently soliciting remediation bids for the corrective action needed prior to completing their negotiation with Mr. Sessions. On July 24, 2008, the District received a copy of a letter sent by the attorney who represents some of the Country Landings area residents, Jeffrey Ludwig, to Ray Sessions' attorney. Mr. Ludwig had been present at the on-site meeting between Staff and these same residents in May. In his letter, Mr. Ludwig states that his client's have obtained two estimates for the work necessary to bring the system into compliance with the permit and demands Ray Sessions pay for the repairs and relinquish his control of the HOA to the residents for future operation and maintenance. Mr. Ludwig's investigation has also raised questions about whether the homeowners association to which the District transferred the permit in 1994 is the correct legal entity. Therefore, Staff anticipates the need to transfer the permit again following the corrective action

On September 22, 2008, the District received a copy of a letter from the attorney who represents some of the Country Landings area residents, Jeffrey Ludwig, to William Haley, Ray Sessions' attorney. Mr Ludwig requested that Mr. Sessions provide him with assurances that any work on the retention pond by Mr Sessions' contractor

would resolve the violation of District permit no. 4-91-00174. The District is allowing these parties an opportunity to come to an agreement regarding funding and performance of the corrective action. Mr. Ludwig's investigation revealed that the apparent permittee is Faye Carol. Therefore, Staff anticipates the need to transfer the permit again following the corrective action. William Haley no longer represents Mr. Sessions in this matter.

On November 11, 2008, counsel for the District spoke with Jeffrey Ludwig, the attorney who represents some of the Country Landings area residents. Mr. Ludwig provided the names of the owners of the two parcels of land on which the permitted retention pond is located – Raymond Sessions and George Kerce. It is the residents' position that the disruption of the permitted surface water retention pond and the obligations to repair it lies squarely with Raymond Sessions. Further, it Mr. Ludwig's position that Faye Carroll, the original permittee, did not properly validly transfer the permit to a homeowners association affiliated with Cannon Creek Airpark and no easement for access was recorded in favor of surrounding property owners or a homeowners association. The subsequently formed homeowners association was administratively dissolved on September 26, 2008. Counsel for District is preparing an administrative complaint

On December 15, 2008, Mr. Ludwig provided counsel for the District with documentation which he contends supports his argument that the permit was never transmitted to a valid entity and that Ray Session's mother, Faye Carroll, is arguably still the responsible entity for the permit These documents are currently being reviewed by counsel in preparation of filing an administrative complaint. The responsible parties to be named in the administrative complaint have been identified. They are Ray Sessions, Stephen Austin Session, K&M Development, L.L.C. and Faye Carroll. The administrative complaint has been drafted and is currently being reviewed by District staff.

The Administrative Complaint was served on the responsible parties (Respondents) via Certified Mail; Respondent Stephen Austin Session's copy was returned to the District on February 25, 2009, as "unclaimed after three notices" from USPS. However, on February 20, 2009, Respondents Carroll and both Sessions answered the Administrative Complaint while also disputing the issue of material fact regarding whether Faye Carroll is the person responsible for operation and maintenance of the stormwater management system under the permit, and alleging that while Country Landings Homeowners Association was not in existence on August 2, 1993, it was subsequently created and then assumed responsibility for operation and maintenance of the stormwater management system under the permit as acknowledged by the District in a letter dated July 6, 2006. Respondents request for a formal administrative hearing will be forwarded to the Division of Administrative Hearings for the appointment of an administrative law judge.

Ray Sessions, one of the Respondents in the administrative action, attended the March 10, 2009, Governing Board meeting, and met with David Still. Prior to this, Mr. Still also met with Mr. Sessions at the Country Landings site and discussed the site work required to bring the project into compliance with the permit. Under the

administrative complaint, Mrs. Carroll, the permittee, is responsible for correctly completing the site work in a timely fashion. In addition, temporary rights of access to do the work must be obtained from the property owners, and permanent rights of access to maintain the pond in perpetuity must be given to the ultimate long-term operation and maintenance entity, once such entity is approved by the District. Counsel for the District has suggested to Respondents' counsel that the operation and maintenance issues be worked out with the current residents and lot owners of Country Landings, including K&M Development of North Florida, LLC, which owns a portion of the pond, and approved by the District. The District agreed to have one of its engineers on-site during the work to ensure that compliance with the permit is achieved. Currently, the site work is being performed with oversight by District staff and Respondents' attorneys are working on the access easements and revising the Homeowners Association documents

Ray Sessions has been cooperating with District staff to bring the stormwater system into compliance with the permit. Work has been completed on the retention basin and Bill Freeman has been retained to survey the work and provide an As-Built survey to the District. Easements for access to the retention basin have been drafted by Mr. Sessions' attorney, Martin Friedman, and amendments to the Declaration of Covenants and the Articles of Incorporation for the homeowners association have also been prepared by Mr. Friedman in accordance with the District's requirements. Counsel for the District provided comments on the draft easements, deed restrictions and HOA documents to Mr. Friedman. One fully executed Grant of Drainage and Access Easement was received by the District on April 15, 2009; a second easement is in the process of being finalized. Once the as-builts are submitted and approved by District staff and the operation and maintenance documents are fully executed, recorded and filed, the permit will transferred to the Homeowners Association.

**On May 13, 2009, counsel for the District was informed that an as-built survey and engineer's certification were received by the District and that the work has been satisfactorily completed. However, all of the required operation and maintenance entity and access easement documents have not been completed. Once these are provided and approved by Counsel, District staff will transfer the permit to the homeowners association.**

## MATTERS WITH THE U.S. ENVIRONMENTAL PROTECTION AGENCY

None

## PENDING COMPLIANCE MATTERS

For a list of pending compliance matters, see the current Resource Management Regulatory Activity Report under the Resource Management section.