MEMORANDUM

TO: Governing Board

FROM: Tom W. Brown, General Counsel

DATE: September 1, 2009

RE: Enforcement Status & Litigation Report

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. Board has authorized civil action; because of pending discussions with Soucinek's contractor, staff has asked we hold up until August 10. **District staff has instructed counsel to proceed with filing of a complaint in Circuit Court. Counsel will draft and**

file complaint in the Circuit Court of Columbia County seeking modification of a non-functioning system.

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)**

Marian Harris (CE08-0053)

Received file from District November 10, 2008. Counsel sent a Notice of Violation to Marian Harris on July 17, 2009, via personal process service. As of August 3, 2009, Mr. Harris has not been located for service. **Counsel was informed via process server that Marian Harris now had a North Carolina address. Counsel sent via certified mail a Notice of Violation to the North Carolina address. Ms. Harris' niece contacted District staff and informed staff that Ms. Harris was in a nursing home in Tampa, but the family would correct any violations outstanding on the property. District staff conducted a site inspection and determined that vegetation that had been partially cleared last year has begun to grow back. District staff is currently drafting a consent agreement to be signed by Ms. Harris' representative that requires monitoring of this site for one year to insure that all cleared vegetation properly grows back. Once the consent agreement is finalized and executed by Ms. Harris' representative, this matter will be closed and removed from the Enforcement Report.**

Ronald Berg (CE09-0059)

Received file from District July 29, 2009. Counsel will send Notice of Violation, request for permitting and administrative costs and corrective action to Mr. Berg on or before August 10, 2009. **Counsel mailed a Notice of Violation via certified mail to Ronald Berg regarding the unpermitted sea wall that was constructed on his property in Dixie County. Mr. Berg was provided a deadline of September 8, 2009, in which to respond to counsel's Notice of Violation.**

Shaun and Christina Ritch and Roy Baker (CE08-0020)

Received file from District July 17, 2009. After the fact ERP issued for mud bogging August of 2007; but system has not been properly maintained; neighbors have been flooded; staff has not been able to have permitees complete remedial work. Counsel is evaluating District's enforcement options.

File was referred back to District counsel for further enforcement. On August 12, 2009, District counsel received instruction via email of steps necessary to bring the site into compliance. On August 31, 2009, District counsel sent a letter to the Ritchs regarding removing the berms and stabilizing the area with written confirmation that the same has been performed within 30 days. If the same is not timely completed, then District counsel will pursue further enforcement action.

ADMINISTRATIVE MATTERS WITH DIVISION OF ADMINSTRATIVE HEARINGS:

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.

As per the District, District counsel filed a Motion to Continue the trial and stay further proceedings for 30 days on June 25, 2009. On June 26, 2009, DOAH granted the motion canceling the hearing set for July 30 and placing the case in abeyance. The parties are to notify DOAH of status of proceedings by July 27, 2009. District counsel will continue to try to work with Defendant's counsel to try to resolve the matter without further court action.

On hold as per the District. We filed a 2nd Motion to Continue the trial and stay further proceedings for another 30 days on July 27, 2009. We are advised that the Defendant has been in contact with a couple of engineers to investigate cost to retain as well as cost to bring the project into compliance. District counsel will continue to try to work with Defendant's counsel to try to resolve the matter without further court action.

On hold as per the District. District counsel filed a 3rd Motion to Continue the trial and stay further proceedings for another 30 days on August 26, 2009. Defendant has retained Dennis Price to determine cost and bring the project into compliance. Received a copy of letter from Price to the District regarding the same. District counsel will continue to try to work with Defendant's counsel to try to resolve the matter without further court action.

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.

Andrew Decker, Esq., ERNT's bankruptcy attorney, contacted counsel for the District to propose a "mediation" for the purpose of finally settling this matter, including attorney's fees and costs. Robert Jordan, Esq. had offered to facilitate the meeting at no expense to the parties. As a precondition to mediation, however, the District required that ERNT be prepared to either remove the impoundment or obtain a permit. In addition, the District was not willing to discuss settlement unless the gate valve on the dam was fully opened and remained open as ordered by Judge Johnson.

On June 5, 2009, Paul Smith advised counsel for the District that Mr. Hill was prepared to remove the dam, which would result in the free flow of water downstream towards Alligator Lake. In addition, Mr. Hill was willing to discuss the conveyance of a conservation easement over a portion of the property to the District. The meeting was scheduled for June 8, 2009, but was cancelled on June 5, 2009, by the District based upon the belief that a meaningful settlement negotiation could not be had.

A June 11, 2009, inspection of the dam revealed that there was a substantial amount of water impounded behind the dam; however, the water was low enough to determine that the drain gate valve operating handle was missing. There was a small amount of flow from the primary spillway discharge pipe. After observing

general site conditions, District staff launched a boat and used the tool made during the April 2, 2009, inspection to again fully open the drain gate valve. The staff raised the drain gate 19 inches.

On July 15, 2009, District filed an amended motion for order to show cause why El Rancho No Tengo, Inc., should not be found in contempt of court. District requested four hours on Judge Johnson's calendar, and is currently waiting for her judicial assistant to provide proposed dates and times.

District counsel and Paul Smith, Esq., counsel for ERNT, were unable to agree on what constituted a time of day and location to produce the documents requested in our Second Request to Produce. As a result, a Motion to Compel the requested documents will be filed.

The following matters remain to be determined by the Circuit Court:

Matters Remaining In Circuit Court:
(a) District's Amended Motion for Contempt
(b) District's Amended Motion for an Award of Attorney's Fees for the Trial Proceedings and to Determine the Amount of Costs
(c) District's Motion to Determine the Amount of Attorney's Fees for the Appellate Proceedings
(d) District's Enforcement of the Injunction and Collection of Civil Penalty and Costs

A hearing on the District's Motion to Compel is scheduled for October 13, 2009, and a hearing on the District's Motion for Contempt is scheduled for December 10, 2009, both before Judge Johnson.

On August 28, 2009, counsel for District filed a Motion for Assessment of Appellate Attorneys' Fees in the amount of $52,173.01 pursuant to law and the First District Court of Appeal's orders *per curiam* affirming the trial court's final orders and granting the District's motions for attorney's fees.

Counsel for District also filed an Amended Motion for Costs and Attorneys' Fees under sections 373.129 and 373.136, *Florida Statutes,* seeking to recover its investigative and administrative costs in the amount of $49,584.91, and reasonable attorneys' fees in the amount of $159,241.55, expended in prosecuting this action in circuit court.

<u>Breck Sloan/Beck Chrysler Dealership (CE07-0100)</u>

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.

On hold as per District. 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 advised Defendant's counsel that the Defendant needed to pay the past penalties, attorney's fees, and costs by June 12, 2009. On June 10, 2009, the District met directly with Defendant's engineer and reached an agreement to resolve the violations, waive the penalties, and pay reduced attorney's fees and costs. Defendant has ninety days from the issuance of the ERP to get the project into compliance. Defendant is to pay the reduced attorney's fees and costs by July 3,

2009.

Defendant paid reduced attorney's fees and costs. Defendant has ninety days from the issuance of the ERP to bring the project into compliance. Enforcement is on hold pending completion of work.

On hold as per District. On June 10, 2009, the District met directly with Defendant's engineer and reached an agreement to resolve the violations, waive the penalties, and pay reduced attorney's fees and costs. District staff advised District counsel that the Defendant paid the reduced attorney's fees and costs. Defendant has ninety days from the issuance of the ERP to bring the project into compliance.

Linda Fennell/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 is preparing Circuit Court complaint to be filed in Lafayette County on or before June 9, 2009.

After further review, the question of ownership arose as to whether Stephen Buckles or Linda Fennell owned the property containing the structures in violation of District rules. Counsel deferred the matter to staff to determine the appropriate entity to pursue. District staff determined and informed Counsel on June 29, 2009, that Linda Fennell owns the land containing the structures in violation of District rules. Counsel will file a complaint in the Circuit Court of Lafayette County against Linda Fennell within ten (10) days.

July 29, 2009, a complaint was filed in the Circuit Court of Lafayette County against Linda Fennell for unpermitted structures constructed within the regulatory floodway of the Suwannee River and also within the 75 foot setback of the Suwannee River. Summons to process server 8/13/09. **Process server made numerous attempts to serve Ms. Fennell; however, Ms. Fennell no longer resides on the property. Process server is to update counsel once Ms. Fennell's current location is discovered.**

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

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.

Counsel filed a Complaint in Circuit Court in Madison County on June 4, 2009. Charles E. Hicks, Jr. was served with the Complaint on June 24, 2009. Mr. Hicks

has until July 14, 2009 to file an Answer to District's Complaint.

Mr. Hicks contacted counsel on July 8, 2009, regarding the pending litigation against him in Madison County. During the conference, counsel informed Mr. Hicks the actions required in order to bring his project into compliance with Florida law. Mr. Hicks was given until August 7, 2009, to pay the assessed penalty, administrative fees, and legal fees to date in good faith effort toward settlement of this matter. If Mr. Hicks fails to make this good faith gesture, counsel will proceed with the litigation rather than pursuing settlement.

Mr. Hicks has failed to contact counsel regarding this matter and has also failed to file an Answer to the Complaint filed in Madison County. Prior to moving the Court for a default against Mr. Hicks, counsel has given Mr. Hicks an additional two (2) weeks in which to file an Answer to the Complaint in Circuit Court. If Mr. Hicks fails to file an Answer to the Complaint in Madison County, counsel will have no choice to but seek a default against Mr. Hicks.

MATTERS CURRENTLY WITH OUTSIDE COUNSEL:

Fred Treadway/Pennington Trails (CE08-0029, 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.

On July 15, 2009, District staff conducted a site inspection and met with Fred Treadway at Pennington Trails subdivision (ERP06-0474) and Trails of Pennington East (ERP-0474M). District staff concluded that the required remediation has been accomplished with the exception of stabilizing the roadside ditch leading to Retention Pond No. 1, and removing the accumulated sediments from the pond. Additionally, District staff provided Mr. Treadway with a list of upcoming courses for the Florida Stormwater, Erosion and Sedimentation Control Inspector Training Program.

On July 23, 2009, a revised, proposed consent order was sent to Mr. Treadway containing the following remedial action:

a) Respondent shall immediately perform to the District's satisfaction the removal all sediment deposited in Retention Pond No. 1 and stabilize the roadside ditch that discharges to Pond No. 1. Upon completion of the work, Respondent must notify the District and schedule an inspection.

b) No later than 120 days after rendition of the consent order, Respondent must maintain in his employment at least one certified erosion and sedimentation control inspector. Upon completion of this requirement, Respondent must submit to the District the name of the employee and proof of such certification.

A penalty of $5400.00 and $2372.67 in administrative costs and attorney's fees are also proposed; however, upon the timely completion of the measures required by paragraphs a and b above, the District will agree to reassess the civil penalty and reduce the amount to $4,000.00, resulting in a refund in the amount of $1,400.00.

Mr. Treadway has signed the consent agreement and paid the negotiated penalty and the District's costs and fees. District staff will monitor Respondent's compliance with the corrective action in paragraph a) and completion of paragraph b) above.

Jeff Hill/Smithfield Estates, Phase I and Haight-Ashbury Subdivision (CE04-0003)

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.

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.

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.

By a later Order, the parties were given until June 30, 2009 to complete mediation. Mediation took place June 30th and Hill has until 5:00 P.M. on July 1, 2009 to sign a written mediation agreement or it is off the table for now. Counsel advised on July 2, 2009, Hill did not sign.

On June 30, 2009, the parties mediated this case. A settlement agreement was proffered to Mr. and Mrs. Hill. However, upon their review, Mr. and Mrs. Hill modified the agreement to state that *either the County or the Hills* would be required to bring Haight-Ashbury into compliance in the event the ERP modification application was denied. County staff is not willing to recommend approval of the agreement as changed by the Hills to the Commission since it does not believe the County should be legally bound in the event the Hills fail to cooperate. Marlin Feagle, the County's Attorney, has offered the Hills a second opportunity to sign the original settlement agreement without making any changes. The original settlement agreement addresses the corrective action needed to come into compliance with

the permit, but reserves the issues of penalties, costs, and fees for the Court. The settlement agreement if signed by the Hills and the County would also need to be approved by the Governing Board.

On August 12, 2009, the mediator declared an impasse in this case. On August 19, 2009, District counsel filed a notice that this action is at issue and ready to be set for trial. We are currently waiting for Judge Johnson to issue an order setting this matter for a case management conference.

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.

By a later Order, the parties were given until June 30, 2009 to complete mediation. Mediation took place June 30th and Hill has until 5:00 P.M. on July 1, 2009 to sign a written mediation agreement or it is off the table for now. Counsel advised on July 2, 2009, Hill did not sign.

On June 30, 2009, the parties mediated this case. A settlement agreement was proffered to Mr. and Mrs. Hill. However, upon their review, Mr. and Mrs. Hill modified the agreement to state that *either the County or the Hills* would be required to bring Smithfield Estates into compliance in the event the ERP modification application was denied. County staff is not willing to recommend approval of the agreement as changed by the Hills to the Commission since it does not believe the County should be legally bound in the event the Hills fail to cooperate. Marlin Feagle, the County Attorney, has offered the Hills a second opportunity to sign the original settlement agreement without making any changes. The original settlement agreement addresses the corrective action needed to come into compliance with the permit, but reserves the issues of penalties, costs, and fees for the Court. The settlement agreement if signed by the Hills and the County would also need to be approved by the Governing Board.

On August 11, 2009, the mediator declared an impasse in this case. On August 19, 2009, District counsel filed a notice that this action is at issue and ready to be set for trial. We are currently waiting for Judge Johnson to issue an order setting this matter for a case management conference.

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.

On June 29, 2009, Counsel for District received a letter from Stephen A. Smith indicating that he was meeting with Mr. Cole and the project engineer on June 29, 2009, and also had received information indicating that an easement may already exist which would be adequate to provide the City with access to the subject portion of the stormwater system for operation and maintenance purposes.

On June 30, 2009, counsel for the District received a letter from Stephen Smith, Esq., who stated that he met with Richard Cole, Trustee, and Greg Bailey, the project engineer. Mr. Smith informed counsel that he learned that the some of the lot owners upon whose property the existing drainage ditch is located have been contacted and refused to provide any type of an easement. When this possibility was previously discussed at a meeting last year between the Trust, the City, the County, and the District, an alternative arrangement was discussed whereby the County would give an easement along the adjoining boundary of its property to the City, the current operation and maintenance entity, so that a new drainage ditch could be constructed within that area. Currently, Greg Bailey is drafting a legal description for the area of the new drainage ditch.

Once the District has approved the draft document and the easement is established, the Trust has agreed to construct a new drainage ditch therein, but requests that the District waive any penalties.

On July 24, 2009, a revised, proposed consent order was sent to the Trust containing the following remedial action:

a) Within 30 days of execution of this Consent Order, Respondent must submit a draft drainage easement to the District for review and approval prior to recording, which allows for construction of a new ditch on adjacent Columbia County property, and operation and maintenance by Lake City of the portion of the stormwater management system located on County property.

b) Within 60 days of execution of this Consent Order, Respondent must construct a new drainage ditch, which complies with the permitted plans, within the immediately adjacent County easement area to replace the existing drainage ditch.

c) Within 90 days of execution of this Consent Order, Respondent must submit certified as-built drawings for the new ditch.

d) Upon District approval of the as-built drawings, Respondent must timely complete the process to transfer the operation and maintenance permit to Lake City.

A penalty of $5000.00 and $2074.40 in administrative costs and attorney's fees is proposed; however, in the event the work is completed in a timely manner and to the satisfaction of the District, the District will agree to reassess the penalties and provide a refund in the amount of $5000.00. Once the Trust signs the consent order, it must also be approved by the Governing Board.

On August 18, 2009, Steve Smith, an attorney who had an interest in the project, met with District counsel to discuss the proposed consent agreement. According to Mr. Smith, he and Mr. Cole are making some progress towards relocating the ditch, but desire to postpone signing a consent order. They have obtained the County's approval of the easement to the City and expect it to be finalized shortly. They are also taking steps to get construction underway as soon as possible. Mr. Cole understands that he must pay the District's costs and fees. Mr. Smith is speaking with the engineering firm which they believe is responsible for the easement not being created before the lots were sold. Mr. Smith indicated that he would send counsel a copy of the easement and his letter to the engineering firm. Counsel for District is pursuing further discussions with Mr. Smith concerning the proposed consent agreement.

Cannon Creek Airpark ERP Violation

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.

On June 5, 2009, counsel for the District received a letter from Vicki Berman, Esq., attorney for Faye Carroll. Ms. Berman contends that an easement from the owner of Lot 5 is no longer necessary because the plat shows the area in question as "retention basin" and the language in the dedication block creates a drainage easement. Ms. Berman further stated that the Third Amendment to the Declaration also creates a drainage easement. Counsel for the District agrees that, when taken together, these circumstances are sufficient to create a right of access for operation and maintenance.

As to the Articles of Incorporation, Ms. Berman argues that the District did not require any changes to the draft articles either when the original permit application was being reviewed or when the permit was transferred in 1993. She further opined that the District previously approved a transfer to the homeowners association thereby tacitly confirming that all requirements had been met.

Counsel for the District informed Ms. Berman that it was the District's position that the developer's initial attempt to create a homeowners association for Country Landings was unsuccessful and as a result, the District's transfer of the environmental resource permit for this project to the homeowners association in 1993 was also unsuccessful. The developer's second attempt in 2004 to create a homeowners association, while successful, was never approved by the District as the long-term operation and maintenance entity. Counsel informed Ms. Berman that the District will not accept the homeowners association as operation and maintenance entity or transfer the environmental resource permit to it until the developer proposes to further amend the articles of incorporation, and by-laws if necessary, so as to allow the residents of Country Landings to control the homeowners association.

On June 22, 2009, the District received a letter from John Wallace, Esq., attorney for Faye Carroll, regarding Permit No. 4-91-00089 (Captain's Quarters Subdivision), Permit No. 4-89-00133 (Cannon Creek Drainage Structure) and Permit No. 4-91-

00174 (Country Landings). Regarding Permit No. 4-91-00089, Mr. Wallace concluded that because the operation and maintenance responsibility was transferred by the District to the homeowners association (known as "Cannon Creek Homeowners' Association II, Inc.") on August 23, 1993, that it eliminated any future obligations of Faye Carroll to operate and maintain the surface water system. In reference to Permit No. 4-89-00133, Mr. Wallace asked that the District verify that it had received the as built certifications for the project associated with this permit.

On July 22, 2009, counsel for the District responded to Mr. Wallace's letter to Jon Dinges. Mr. Wallace was advised that research conducted by counsel uncovered the following information in connection with Permit No. 4-91-00089 (Captain's Quarters Subdivision):

a. The original permit was issued to Faye Carroll on October 10, 1991. Ms. Carroll was listed on the application for this permit as the property owner.
b. Documents regarding the proposed long-term operation and maintenance entity were submitted as part of the application and also approved by the District on October 10, 1991.
c. On August 27, 1993, based upon the as-built certification submitted to the District, the District transferred the permit to the operation and maintenance entity, "Cannon Creek Homeowner's Association II, Inc." The project name on the application and permit was "Cannon Creek Airpark Unit II."
d. However, it also appears that the articles submitted to and approved by the District were never filed with the Department of State (DOS).
e. On August 9, 2005, articles of incorporation for Captain's Quarters Homeowner's Association, Inc. (HOA) were submitted to the District but never approved and the permit was not transferred to this entity.
f. Articles of incorporation for Captain's Quarters HOA were filed with the Department of State on December 6, 2004, and it remains active.

Based on this research counsel for the District concluded that the original permittee, Faye Carroll, is still the permittee and the person responsible for operation and maintenance of the stormwater management system. Amendments to the articles of incorporation and restrictive covenants need to be made before the District can approve a transfer of the permit to the current homeowners association.

Mr. Wallace was advised that research conducted by counsel for the District uncovered the following information in connection with Permit No. 4-89-00133 (Cannon Creek Drainage Structure):

a. The original permit was issued to Faye Carroll on September 19, 1990, for a drainage structure to serve an airport runway project.
b. No long-term operation and maintenance entity was proposed as part of the permit application.
c. One large culvert has been installed at the location where three culverts were proposed and authorized by the District.

d. The required as-built certification has never been submitted to the District.
e. A request to transfer the permit has never been received by the District.
f. The Columbia County Property Appraiser's website indicates that the property is now owned by Cannon Creek Airport, Inc., which was formed in 1978 and remains active.

Counsel for the District informed Mr. Wallace that in order to transfer the permit to the current property owner for operation and maintenance, the District needed an as-built certification that demonstrated the one culvert as installed provided the same capacity as the three, permitted culverts would have provided. In lieu of this, a request for a permit modification authorizing the one culvert could be submitted. Thereafter, with the current owner's assent, Ms. Carroll can request that the permit be transferred to Cannon Creek Airport, Inc.

On August 11, 2009, counsel for the District suggested via an e-mail communication that all parties concerned (Faye Carroll, Ray Sessions, the property owners and the District) have a joint meeting after the Labor Day holiday to discuss the only remaining issue, to wit: who is to serve as the long-term operation and maintenance entity for the stormwater management system that serves the subdivision. Counsel for District advised the parties that the current circumstances with Mrs. Carroll as the permittee and Mr. Sessions in control of the HOA are not acceptable to the District and Mrs. Carroll, or sustainable for Mr. Sessions and the residents.

On August 26, 2009, Brad Zoeller, a resident of Country Landings, advised Mr. Friedman, Ray Sessions' attorney, that the residents of Country Landings had met to discuss the status of the Country Landings Homeowners Association at Cannon Creek. Mr. Zoeller requested Mr. Friedman provide him with a copy of the official HOA documents for his review prior to a meeting being scheduled. Mr. Friedman immediately complied. Counsel for District will continue to facilitate resolution of this final item by the interested parties.

PENDING COMPLIANCE MATTERS

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