



## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

May 24, 2019

Patrick Cheney  
5101 Minute Maid Road  
Ft. Pierce, FL 34945

Subject: Notice of Proposed Agency Action to Deny  
Environmental Resource Permit Application No.: 180613-16  
Project Name: Sunbreak Farms  
St. Lucie County

Dear Mr. Cheney:

On September 14, 2018 and January 11, 2019, the South Florida Water Management District ("District") sent you Requests for Additional Information (RAIs) requiring either the submittal of a monitoring plan or an alternative to demonstrate that the proposed pollution abatement practices function properly and meet the objectives of Section 4.9.3, Vol. II of the Applicant's Handbook. The District received a letter from your counsel on April 4, 2019, advising that no monitoring plan or other alternative will be provided and requesting that the District determine the application complete.

Attached is the District's Proposed Agency Action to deny the application, without prejudice to your right to reapply later. Absent further action by you, this denial will be final June 3, 2019.

Alternatively, you may withdraw your application prior to final agency action. If you choose to withdraw your application, the District will apply the submitted processing fee for this application to a new application filed within 365 days, as specified in Rule 5.5.3.7, Environmental Resource Applicant's Handbook Vol. I.

If you wish to refer the application and Proposed Agency Action to the Governing Board for final agency action, a written request must be received on or before May 31, 2019. The application and Proposed Agency Action will then be considered at the June Governing Board meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill S. Creech".

Jill S. Creech, P.E.  
Division Director, Regulation

Enclosures: Proposed Agency Action/Staff Report  
Notice of Rights

C: David Baggett, P.E., Engineering Design & Construction, Inc. (via Email)  
Kim Graham, P.E., St. Lucie County Public Works (via Email)  
David Dee, Esq., Gardner, Bist, Bowden, Bush, Dee, Lavia & Wright, P.A. (via Email)  
Dylan Reingold, Esq., Indian River County (via Email)  
State Rep. Larry Lee, Jr. (via Email)  
Cammie Dewey, P.E., St. John's River Water Management District (via Email)  
Virginia P. Sherlock on behalf of PGA Village Property Owners Association, Inc. (via Email)  
Dennis Corrick, Esq. (via Email)

## NOTICE OF RIGHTS

As required by Sections 120.569 and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all of the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

### **RIGHT TO REQUEST ADMINISTRATIVE HEARING**

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which affects or may affect their substantial interests shall file a petition for hearing with the Office of the District Clerk of the SFWMD, in accordance with the filing instructions set forth herein, within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action which materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional Rule 28-106.111, Fla. Admin. Code, point of entry.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Fla. Stat., shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

### **FILING INSTRUCTIONS**

A petition for administrative hearing must be filed with the Office of the District Clerk of the SFWMD. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at SFWMD headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, 3301 Gun Club Road, West Palm Beach, Florida 33406.

- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the SFWMD's security desk does not constitute filing. It will be necessary to request that the SFWMD's security officer contact the Office of the District Clerk. An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at [clerk@sfwmd.gov](mailto:clerk@sfwmd.gov). The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

### **INITIATION OF AN ADMINISTRATIVE HEARING**

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Fla. Stat., and Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

### **MEDIATION**

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401–.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

### **RIGHT TO SEEK JUDICIAL REVIEW**

Pursuant to Section 120.68, Fla. Stat., and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal with the Office of the District Clerk of the SFWMD in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the clerk of the appropriate district court of appeal.



**Last Date For Agency Action:** June 3, 2019

**INDIVIDUAL ENVIRONMENTAL RESOURCE DENIAL STAFF REPORT**

**Project Name:** Sunbreak Farms  
**Permit No.:** 56-00111-S  
**Application No.:** 180613-16  
**Application Type:** Environmental Resource (Construction/Operation Modification)  
**Location:** St Lucie County, S28, 33, 34/T33S/R38E  
S3,4,5,8,9,10,15,16,17,20,21,29/T34S/R38E  
**Applicant :** Sunbreak Farms L L C  
**Project Area:** 80.75 acres  
**Project Land Use:** Agricultural  
**Drainage Basin:** C-25  
**Receiving Body:** C-25  
**Special Drainage District:** NA  
**Conservation Easement To District :** No  
**Sovereign Submerged Lands:** No

**Class:** CLASS III

**PROJECT SUMMARY:**

This Environmental Resource Permit application requests Construction and Operation of a stormwater management (SWM) system to serve an 80.75 acre composting operation for a project known as Sunbreak Farms.

The proposed SWM system includes the construction of containment cells that will be used for on-site composting of aerobically digested and dewatered residuals with yard debris to produce Class AA compost pursuant to Florida Department of Environmental Protection Permit No. FLA979830. The Class AA compost material will be used onsite as a soil amendment and fertilizer for the existing agricultural production of row crops pursuant to Chapter 62-640 F.A.C. Please refer to the composting cell construction plans Exhibit 2.0 for details.

The applicant has not provided reasonable assurances that the project will not result in adverse impacts to water resources. The applicant did not provide the requested water quality monitoring plan and reporting schedule designed to provide data to determine if the pollution abatement practices incorporated into the design of the stormwater management system will function properly as required by Section 4.9.3, Volume II of the Applicant's Handbook.

Staff is recommending denial of the application pursuant to the conditions of issuance Chapter 62-330.301 F.A.C. Specifically, the applicant has not demonstrated that construction, operation and maintenance of the project:

(e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated.

**DRAFT****PROJECT EVALUATION:****PROJECT SITE DESCRIPTION:**

Refer to Exhibit 1.0 for a Location Map. The project is approximately 2.25 miles west of Interstate 95, north of the Florida Turnpike in St. Lucie County.

The site consists of existing row crops located within an agricultural project previously known as Cloud Grove. The majority of the property is located in St. Lucie County with the northern portion in Indian River County. The property includes a 640 acre above ground impoundment (AGI) used for storage of storm water for irrigation and flood protection. The AGI outfalls into an adjacent ditch that discharges to the C-25 Canal pursuant to Permit No. 56-00111-S. The SWM system also has the ability to discharge stormwater to the Minute Maid Canal, which discharges to the C-25 Canal.

**BACKGROUND:**

On October 19, 1978, the District authorized the operation (Application Nos. 21917, 21918, 21921) of an above ground impoundment for irrigation and flood protection of a 6,560 acre agricultural project known as Cloud Grove.

On June 29, 2006, the District authorized a permit transfer (Application No. 060127-19) to Florida Conservancy and Development Group LLC.

**WATER QUANTITY :**

The proposed operation of the SWM system associated with the composting containment cells includes a protocol to maintain the water table 1 foot below the lowest grade of the containment cells during composting.

**Discharge Rate :**

The project is located within the C-25 Basin which has a 10 year, 3 day design storm. The previously permitted design storm discharge rate remains unchanged.

The composting containment cells will retain 11.0 inches of rainfall within the cells associated with the 100 year, 3 day design storm event. Thus, the existing SWM system and 640-acre above ground impoundment will not receive storm water runoff from the composting area associated with 10 year, 3 day C-25 Basin design storm event.

The applicant provided an annual storm water runoff analysis which indicates the annual volume of storm water runoff will be reduced. The proposed project is intended to result in less annual storm water runoff volume and a reduction in the peak rate of storm water runoff from design storm event resulting in less discharge from the SWM system.

**WATER QUALITY :**

The applicant has provided the following:

- 1) The proposed project area will retain 11.0 inches (74 ac-ft) of storm water runoff from the 80.75 acre composting containment cells associated with the 100 year, 3 day design storm event.
- 2) The applicant provided a water quality analysis based on the proposed agronomic practices.

The applicant has not provided the requested water quality monitoring plan and reporting schedule designed to provide data to determine if the pollution abatement practices incorporated into the design of the SWM system will function properly. Section 4.9.3, Volume II of the Applicant's Handbook provides for requiring water quality monitoring for two reasons: 1) such data can be used to determine if the pollution abatement practices incorporated into the design for SWM system are functioning properly, 2) In some cases there may be a real and immediate concern regarding degradation of quality in the receiving waters, regardless of the apparent pollutant removal efficiency of the SWM system.

The intent of the water quality monitoring plan and reporting schedule is to develop sets of data that can be analyzed to determine if pollution abatement practices are functioning properly after the implementation of the biosolids composting activity at Sunbreak Farms. The water quality monitoring plan and reporting schedule should include, at a minimum: an explanation of how the proposed program will achieve valid measurements of flow, bacteria, nitrogen, phosphorus, and dissolved oxygen concentration; description of monitoring sites which should include on-site and off-site locations; sample collection methods, technique, preservation, identification and schedules; description of laboratory facilities, analyses, reporting delivery and data review; and other items as necessary to determine if the pollution abatement practices incorporated into the design are functioning properly and will prevent water quality degradation. The plan and schedule should be implemented at least six (6) months prior to the deliveries of biosolids to the site. The proposed plan should also include the recordation of pumped discharges (times, rates, and durations) from all stormwater discharge facilities located on the farm site. A time period for the monitoring and reporting should be defined within the plan, to be no less than five years. The plan and schedule must be submitted to the District for review and approval, prior to implementation.

**WETLANDS:****Wetlands And Other Surface Waters:**

There are no wetlands or other surface waters located within the project area or affected by this project.





**RELATED CONCERNS:**

**Third Party Interest:**

The following third parties have contacted the District with concerns about this application:

- St. Lucie County
- Indian River County
- St. Johns River Water Management District
- State Representative Larry Lee, Jr.
- David Dee, Esq.
- PGA Village Property Owners Association, Virginia Sherlock Esq.

District staff have coordinated several meetings with the applicant and the third parties to address questions and concerns.

**Enforcement:**

There has been no enforcement activity associated with this application.



**STAFF RECOMMENDATION TO EXECUTIVE DIRECTOR:**

The Staff recommends the following:

Denial of the application for Construction and Operation of a stormwater management system serving an 80.75 acre composting operation for a project known as Sunbreak Farms.

**STAFF REVIEW:**

**NATURAL RESOURCE MANAGEMENT APPROVAL**

**ENVIRONMENTAL EVALUATION**

**SUPERVISOR**

\_\_\_\_\_  
Jessica Huffman

\_\_\_\_\_  
Barbara J. Conmy

**SURFACE WATER MANAGEMENT APPROVAL**

**ENGINEERING EVALUATION**

**SUPERVISOR**

\_\_\_\_\_  
Glen J. Gareau, P.E.

\_\_\_\_\_  
Gary Priest, P.E.

**ENVIRONMENTAL RESOURCE COMPLIANCE BUREAU CHIEF :**

\_\_\_\_\_  
Ricardo A. Valera, P.E.

**DATE:** \_\_\_\_\_

**REGULATION DIVISION ASSISTANT DIRECTOR :**

\_\_\_\_\_  
Anthony M. Waterhouse, P.E.

**DATE:** \_\_\_\_\_

## STAFF REPORT DISTRIBUTION LIST

SUNBREAK FARMS

**Application No:** 180613-16

**Permit No:** 56-00111-S

### INTERNAL DISTRIBUTION

- X Glen J. Gareau, P.E.
- X Jessica Huffman
- X Gary Priest, P.E.
- X Barbara J. Conmy
- X Tony Waterhouse, P.E.
- X Randy Smith
- X Susan Martin
- X Ansley Marr
- X Jill Creech, P.E.

### EXTERNAL DISTRIBUTION

- X Permittee - Sunbreak Farms L L C
- X Engr Consultant - Engineering Design & Construction Inc
- X Other Interested Party - Gardner, Bist, Bowden, Bush, Dee, Lavia & Wright, P.A.
- X Other Interested Party - Indian River County
- X Other Interested Party - Pga Village Poa Inc.
- X Other Interested Party - State Rep.

### GOVERNMENT AGENCIES

- X City of Port St Lucie - Planning Div
- X City of Port St Lucie - Public Works
- X St. Lucie County Engineer
- X St. Lucie County Planning and Development Services
- X US Army Corps of Engineers Permit Section