

# Fellsmere

August 17, 2018

VIA CERTIFIED MAIL 7017 1450 0000 5674 3514

RETURN RECEIPT REQUESTED

Mr. Todd Wodraska  
District Manager  
Sebastian River Improvement District  
Special District Services  
2501A Burns Rd.  
Palm Beach Gardens, FL 33410

Re: Initiation of Conflict Resolution Procedures

Dear Mr. Wodraska,

Please find a certified copy of Resolution 2018-18 passed by the City of Fellsmere City Council initiating conflict resolution procedures as set forth in Chapter 164, Florida Statutes. The govern-mental entities in conflict are the City of Fellsmere and the Sebastian River Improvement District ("SRID"). The nature of the conflict and the issues in conflict are identified in the Resolution. The City of Fellsmere is initiating the conflict resolution procedures, as these issues are within the scope of Chapter 164, as set forth in Section 164.1051, Florida Statutes and out of a desire to avoid potentially costly and protracted litigation between the City of Fellsmere and SRID by reaching an expeditious, effective and cost-effective resolution of the conflict.

The City of Fellsmere proposes 1:30 PM September 18<sup>th</sup>, 2018 at the City of Fellsmere council chambers located at 21 South Cypress Street, Fellsmere, Florida as the date and location of the conflict assessment meeting to be held pursuant to Section 164.1053, Florida Statutes. Based on the nature of the conflict, I suggest that at a minimum you, Mr. Block and Mr. Simons attend the meeting on behalf of SRID. The persons attending on behalf of the City of Fellsmere will be the City Manager and the City Attorney. Also, because of their interest in this matter, I have also invited, Bryan Corrigan, Dan Corrigan, Tad Corrigan and their attorney, Edward de la Parte, Jr. to attend the meeting. Of course, you are free to invite whomever you wish to attend as you see fit.

Sincerely,

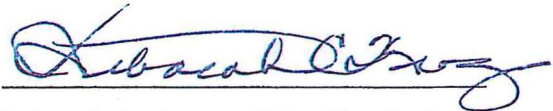


Jason Nunemaker, City Manager

Enclosure: Certified Resolution 2018-18

cc: Fla. Dept. of Transportation  
St. Johns River Water Management District  
Indian River County  
City of Sebastian  
School Board of Indian River County  
Vero Lakes Water Control District

I, Deborah C. Krages, CMC, City Clerk of the City of Fellsmere, Indian River County, Florida, do hereby certify this to be a originally executed Resolution numbered 2018-18 executed by the Mayor after adoption of same and as approved by the City Council of the City of Fellsmere during their regular meeting held on August 16, 2018, in the City Council Chambers, 21 S. Cypress Street, Fellsmere, FL. Resolution 2018-18 will be maintained in the public records of the City of Fellsmere, Indian River County, Florida, certified this 17<sup>th</sup> day of August 2018.



Deborah C. Krages CMC, City Clerk



RESOLUTION 2018-18

**A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, ADOPTED PURSUANT TO SECTION 164.1052, FLORIDA STATUTES, DECLARING THE INTENT OF THE CITY COUNCIL TO INITIATE THE CONFLICT RESOLUTION PROCEDURES SET FORTH IN CHAPTER 164, FLORIDA STATUTES; FINDING THAT A CONFLICT EXISTS WITH THE SEBASTIAN RIVER IMPROVEMENT DISTRICT, AS IT RELATES TO THE REGULATION OF STORMWATER DISCHARGES FROM THE LATERAL D WATERSHED INTO THE LATERAL D CANAL; INITIATING THE PROCEDURES OF THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT; DIRECTING THE CITY MANAGER MAIL A CERTIFIED COPY OF THIS RESOLUTION TO THE SEBASTIAN RIVER IMPROVEMENT DISTRICT, AS WELL AS OTHER GOVERNMENTAL ENTITIES, THEREBY INITIATING THE PROCESS OUTLINED IN CHAPTER 164, FLORIDA STATUTES; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Fellsmere is a municipal corporation, duly organized and existing under the laws of the State of Florida, which is located entirely within Indian River County and would be considered a “local governmental entity” pursuant to Section 164.1031(1), Florida Statutes; and

**WHEREAS**, the Sebastian River Improvement District (“SRID”) is an independent special district of the State of Florida, which was re-created by special act and is currently operating pursuant to Chapter 2007-309, Laws of Florida and Chapters 189 and 298, Florida Statutes, which is located entirely within Indian River County and would be considered a “local governmental entity” pursuant to Section 164.1031(1), Florida Statutes; and

**WHEREAS**, SRID encompasses ten thousand (10,000) acres more or less as set forth in Section 2 of Chapter 2 of Chapter 2007-309, Laws of Florida; and

**WHEREAS**, SRID is responsible for drainage, flood control, water management, operation and maintenance of district works of improvement and rights-of-way, and reclamation of lands within its jurisdictional boundaries using dikes, canals and water control structures within its boundaries, which drain to the Lateral C and L Canals, along with drainage from the City of Sebastian that enters the Lateral L Canal through the Elkan Dam/Waterway; and

**WHEREAS**, the Lateral C and L Canals drain south to north merging in a receiving area just south of the County Road 512 Bridge known as the SRID Flow Way before discharging into the South Prong of the Sebastian River; and

**WHEREAS**, SRID has built a protective levee referred to as the Lateral D Levee along its western boundaries in order to protect the lands within the district from drainage originating from lands located to the west of its boundaries; and

**WHEREAS**, the borrow area from which material was excavated to build this protective berm runs parallel and immediately to the west of the Lateral D Levee and is referred to as the Lateral D Canal; and

**WHEREAS**, the Lateral D Canal serves to intercept and convey stormwater originating from lands to the west to the South Prong of the Sebastian River merging with the Lateral C and L Canals within the SRID Flow Way; and

**WHEREAS**, the area approximately twenty thousand (20,000) acres that discharges into the Lateral D Canal is referred to as the Lateral D Watershed; and

**WHEREAS**, the Lateral D Canal and the entirety of the Lateral D Watershed lies outside the territorial boundaries of SRID; and

**WHEREAS**, on July 15, 1999, the City of Fellsmere adopted Ordinance 1999-08 annexing approximately 3,750 acres of unincorporated property in the Lateral D Watershed into the City of Fellsmere; and

**WHEREAS**, on December 6, 2007, the City of Fellsmere adopted Ordinance 2007-29 annexing approximately 2,592 acres of unincorporated property in the Lateral D Watershed into the City of Fellsmere; and

**WHEREAS**, on June 7, 2007, the City of Fellsmere adopted Ordinance 2007-10 annexing approximately 300 acres of unincorporated property in the Lateral D Watershed into the City of Fellsmere; and

**WHEREAS**, on October 2, 2014, the City of Fellsmere adopted Ordinance 2014-16 annexing approximately 8,845 acres of unincorporated property in the Lateral D Watershed into the City of Fellsmere; and

**WHEREAS**, on August 18, 2016, the City of Fellsmere adopted Comprehensive Plan Amendment #2016-02; and

**WHEREAS**, Policy ICE A.1.9 of Amendment #2016-02 provides that “[a]ny rules, policies or restrictions adopted by the Fellsmere Water Control District, the Vero Lakes Water Control District and the Sebastian River Improvement District regulating drainage of lands located within the boundaries of the City or works or improvements owned and controlled or regulated by said districts shall be consistent with and not stricter than any ordinance, rule or policy adopted by the City”; and

**WHEREAS**, Policy ICE A-5.2 of Amendment #2016-02 provides that “any rules, policies or restrictions adopted by the Fellsmere Water Control District, the Vero Lakes Water Control

District and the Sebastian River Improvement District regulating drainage of lands located within the boundaries of the City or works or improvements owned and controlled or regulated by said districts shall be consistent with and not stricter than any ordinance, rule or policy adopted by the City”; and

**WHEREAS**, Policy FLUE 21.7.5 of Amendment #2016-02 provides that “[t]he land necessary for water storage, attenuation and discharge for drainage of new development in the Villages of Fellsmere shall be arranged and managed as part of a comprehensive regional drainage system permitted by the City, FWCD and/or SJRWMD”; and

**WHEREAS**, Policy CIE A-5.1 of Amendment #2016-02 requires the following level of service requirements for drainage:

1. For projects located in the Old Town District, the LOS standards shall be as required by Section 62-330.055, Florida Administrative Code for Urban Infill or Redevelopment authorized by Section 373.4131(1) (b), Florida Statutes.
2. For projects located outside the Fellsmere Water Control District or the Vero Lakes Water Control District and subject to permitting requirements of the St. Johns River Water Management District (SJRWMD) or the Florida Department of Environmental Protection (FDEP), the LOS standard shall be that required by the SJRWMD or FDEP, as applicable.
3. For projects located within the Fellsmere Water Control District or the Vero Lakes Water Control District, the LOS standard shall also require a stormwater discharge limitation of 2 inches/24 hours for a 25 year - 24 hour storm event over the first 72 hours during and after the 24 hour storm event.
4. For projects located outside the Fellsmere Water Control District or the Vero Lakes Water Control District and not subject to permitting requirements of either SJRWMD or FDEP, as applicable, the LOS standards shall be as follows:
  - a. Water Quality. Detention of first inch of runoff.
  - b. Water Quantity. Post development peak rate of discharge must not exceed the predevelopment peak rate of discharge for the 25-year frequency, 24-hour duration storm event for water quantity.

The City of Fellsmere shall not be required to maintain the additional LOS standard related to projects within the FWCD or VLWCD for paving existing dirt roads or expanding existing roads; and

**WHEREAS**, for purposes of Policy CIE A-5.1.2 of Amendment #2016-02, the SJRWMD level of service standard requires that the post-development discharge rate must not exceed the pre-development peak rate of discharge for the mean annual 24-hour storm for systems serving new developments; and

**WHEREAS**, on December 6, 2017, the SRID Board of Supervisors proposed the adoption of a rule formally setting discharge limitations in accordance with a 2015 technical memorandum for all properties in the Lateral D Watershed, including those within the City of Fellsmere municipal boundaries; and

**WHEREAS**, on March 7, 2018, the SRID Board of Supervisors stated that rather than formally adopting a rule setting maximum discharge limits for the Lateral D watershed, it would instead impose the discharge limits on a “case-by-case” basis and set limits in accordance with the recommendations in the 2015 technical memo; and

**WHEREAS**, the City of Fellsmere disputes SRID’s authority to regulate stormwater discharges from the Lateral D Watershed into the Lateral D Canal; and,

**WHEREAS**, according to Section 3 of Chapter 2007-3009, Laws of Florida and Section 298.301(1), Florida Statutes, in the execution of its powers and authorities, SRID’s actions must be consistent with any adopted local government comprehensive plan within which the lands of the district are located; and

**WHEREAS**, there is a conflict between the SRID’s proposed stormwater discharge limits in the 2015 technical memo and the stormwater discharge restrictions for the Lateral D Watershed imposed by the City of Fellsmere’s Comprehensive Plan; and

**WHEREAS**, to the extent SRID has the authority to regulate stormwater discharges from the Lateral D Watershed into the Lateral D Canal, the City of Fellsmere disputes SRID’s authority to impose stormwater discharge limits on property located within the City of Fellsmere’s municipal boundaries, which conflict with the City of Fellsmere’s Comprehensive Plan; and

**WHEREAS**, the Florida Governmental Conflict Resolution Act provides that the purpose and intent of that Act is to promote, protect, and improve the public health, safety, and welfare and to enhance intergovernmental coordination efforts by the creation of a governmental conflict resolution procedure that can provide equitable, expeditious, effective, and inexpensive method for resolution of conflicts between and among local and regional governmental entities; and,

**WHEREAS**, prior to initiating court action against SRID regarding the above-referenced matters in dispute, the City of Fellsmere wishes to initiate the conflict resolution procedures in Chapter 164, Florida Statutes,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FELLSMERE, FLORIDA, THAT:**

1. The City of Fellsmere initiates conflict resolution procedures against SRID pursuant to Section 164.1052(1), Florida Statutes.
2. The issues in conflict between the City of Fellsmere and SRID are as follows:

- a. Whether SRID has authority to regulate stormwater discharges from the Lateral D Watershed into the Lateral D Canal.
- b. Whether, to the extent SRID has the authority to regulate stormwater discharges from the Lateral D Watershed into the Lateral D Canal, the City of Fellsmere Comprehensive Plan precludes SRID from imposing stormwater discharge limits on property located within the City of Fellsmere's municipal boundaries.

3. The issues in conflict between the City of Fellsmere and SRID fall within the scope of Chapter 164, as set forth in Section 164.1051, Florida Statutes.

4. The City Manager is directed to mail a certified copy of this resolution by certified letter, return receipt requested to SRID's District Manager and provide copies of the resolution and letter to the Florida Department of Transportation, the St. Johns River Water Management District, Indian River County, the City of Sebastian, the School Board of Indian River County and the Vero Lakes Water Control District, all of which are state, regional or local governmental entities, which in the City of Fellsmere's determination, may have a role in approving or implementing a particular element or aspect of any settlement of the conflict or whose substantial interests may be affected by the resolution of the conflict within five (5) days of the enactment of this resolution.

5. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was moved for adoption by Council Member Savage and Hernandez. The motion was seconded by Council Member Hernandez and, upon being put to a vote, the vote was as follows:

Mayor Joel Tyson	<u>ayes</u>
Council Member Fernando Herrera	<u>ayes</u>
Council Member Inocencia Hernandez	<u>ayes</u>
Council Member Sara Savage	<u>ayes</u>
Council Member Jessica Salgado	<u>ayes</u>

The Mayor thereupon declared this Ordinance duly passed and adopted this 16<sup>th</sup> day of August, 2018.

CITY OF FELLSMERE, FL

Joel Tyson  
Joel Tyson, Mayor

ATTEST:

Deborah C. Krages  
Deborah C. Krages, CMC City Clerk  
R-2018-18\_Fellsmere Ch 164\_Res.doc

(SEAL)