



FLORIDA DEPARTMENT OF Environmental Protection

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

October 4, 2024

James L Gissy
Gissy Springs LLC
9259 Point Cypress Dr,
Orlando, FL 32836
kristen@gissyholdings.com

Re: 9150 SW 177th Ave Rd
ERP Site ID 278137
OGC Case No: 24-2402
Marion County

Dear Mr. Gissy:

Enclosed is a Consent Order ("Order") prepared by the Department for resolution of the referenced enforcement case. Please review this document and within 20 days of receipt, either: 1) return a signed copy to the Department or 2) provide comments and suggested changes. Once fully executed, a copy of the final document will be forwarded to you.

Should you have any questions or comments, please contact Charlie Nolan at 407-897-2913 or via e-mail at Charlie.M.Nolan@FloridaDEP.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Watkins", is written over a horizontal line.

Aaron Watkins, Director
Central District

Enclosure: Consent Order

cc: FDEP: Charlie Nolan, Daniel Hall, Jeff Sowards
Gissy Springs, Property Manager: Kevin Shepard, kevinsatas70@gmail.com

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION)	IN THE OFFICE OF THE CENTRAL DISTRICT
)	
Complainant,)	
)	
vs.)	OGC FILE NO. 24-2402
)	
Gissy Springs LLC)	
)	
Respondent.)	

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department"), and Gissy Springs LLC ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce Chapter 373, Part IV, and Chapter 403, Florida Statutes, and the rules promulgated and authorized thereunder, Title 62, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a person within the meaning of Section 373.019(15), Florida Statutes.

3. Respondent is the owner of property located at 9150 SW 177th Ave Rd, Dunnellon, FL 34432, further identified by the Marion County Property Appraiser's office by Parcel ID 34572-002-00 and by the Department by ERP Site ID 278137. The property is located adjacent to the Rainbow Springs Group Run, which is a Class III waterbody designated an Outstanding Florida Water and is within the Rainbow Springs Aquatic Preserve. The property surrounds the Indian Creek Springs Group,

which is a Class III waterbody designated as an Outstanding Florida Water and feeds directly into the Rainbow Springs Group Run.

4. The Department finds that the Respondent constructed an approximately 78-foot-long metal fence with a gate on the above described property within the landward extent of the Indian Creek Springs Group and adjoining wetlands, waters of the State, as defined by Florida Law. The fence and gate structure prevents access to a portion of the Indian Creek Springs Group.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is,

ORDERED:

5. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$2,000.00 in settlement of the matters addressed in this Consent Order. This amount includes \$500 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The penalty in this case includes no violations of \$2,000.00 or more.

Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/> It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

6. Within 30 days of the effective date of this Order, Respondent shall submit an Individual Permit application to authorize the fence and gate structure.

a. If the permit is approved in the current configuration, upon approval and within 15 days of permit issuance, Respondent shall purchase any

and all required mitigation credits and provide proof of purchase to the Department.

b. If the permit is approved with required modifications to the current configuration, within 15 days of permit issuance, Respondent shall purchase all required mitigation credits and provide proof of purchase to the Department and within 90 days all required modifications or restoration shall be completed.

c. If the permit is not obtained within 365 days or is otherwise denied, Respondent shall implement the Restoration Actions attached hereto and incorporated herein as Attachment I in the manner and within the time frames specified therein.

7. With the exception of the activities described in the Restoration Actions, effective immediately and henceforth, Respondent shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state without first obtaining a valid Department permit or written notification from the Department that the activities appear to be exempt as proposed from Department permitting requirements; nor shall Respondent conduct any activities on state owned lands below the ordinary or mean high water lines without first obtaining a lease, easement, or other consent of use from the Department.

8. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 5, 6, and 7 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Water Quality Assurance Trust Fund." The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this

paragraph shall be in addition to the settlement sum agreed to in paragraph __ of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

9. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

10. Respondent shall allow all authorized representatives of the Department access to the property at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

11. This Consent Order only addresses violations of the rules and statutes of the Department and does not address potential violations of the rules and statutes of the Board of Trustees of the Internal Improvement Trust Fund for the use of lands owned by the State of Florida. Entry of this Consent Order does not constitute a permit from the Department nor does it convey any authority from the Board of Trustees of the Internal Improvement Trust Fund involving the use of sovereignty or other lands of the State. In order to ascertain whether any authority is needed to use sovereign lands, the Respondent must contact the Department of Environmental Protection, Division of State Lands. A copy of this Consent Order will be furnished to the Division of State Lands. The Respondent is hereby advised that Florida law states: "No person shall commence any excavation, construction or other activity involving the use of sovereign or other lands of the State, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund under Chapter 253, Florida Statutes, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement or other form of consent authorizing the proposed use." If such work is done without consent, a fine for each offense in an amount of up to \$10,000.00 may be imposed.

12. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

13. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 373.129, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 373.430, Florida Statutes.

14. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$15,000 per day per and criminal penalties.

15. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require

reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient

petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the

parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

16. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

17. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Consent Order. This waiver does not affect any claim the Department or the Board of Trustees of the Internal Improvement Trust Fund may have for violations not addressed herein, notwithstanding that the other claims may involve the same activities addressed herein.

18. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

19. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

20. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, **3319 Maguire Boulevard, Suite 232, Orlando, FL 32803.**

21. In the event of a sale or conveyance of the property, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property, (1) notify the Department of such sale or conveyance and (2) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the property shall not relieve the Respondent of the obligations imposed in this Consent Order.

22. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

23. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

DATE

James L. Gissy
Manager

-----FOR DEPARTMENT USE ONLY-----

DONE AND ORDERED this _____ day of _____, 2024, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Aaron Watkins
District Director

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date

cc: Lea Crandall, Agency Clerk
Mail Station 35

ATTACHMENT I: RESTORATION ACTIONS

1. Within 90 days of the permit denial, Respondent shall complete the following

Restoration Actions:

a. Respondent shall remove the fence and gate structure from the wetlands and surface waters and then regrade the area.

d. Turbidity barriers such as staked hay bales and staked silt screen shall be installed no more than 5 feet from the waterward or downstream edge of the restoration area to control turbidity during all restoration activities. The turbidity barriers shall be maintained and shall remain in place until the restoration actions are completed and the turbidity is measured at less than 25 NTU's over background levels.

2. Within 30 days of completion of these Restoration Actions, Respondent shall submit the following information to the Department:

a. Written notification that the Restoration Actions have been completed.

b. Enough color photographs to show the entire structure has been removed and the area regraded.