

**COMMISSION AGENDA**  
4.7.09 # 216

TO: The Honorable Chairman and Members of the Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Authority for County Attorney to Initiate Litigation  
Pinellas County v. Kim Freedom and Randall Freedom, as Co-Trustees,  
Freedom Land Trust, and KOS Corporation

DATE: April 7, 2009

**RECOMMENDATION:** I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS APPROVE THE INITIATION OF LITIGATING AGAINST KIM FREEDOM AND RANDALL FREEDOM AS TRUSTEES, FREEDOM LAND TRUST, AND KOS CORPORATION

**DISCUSSION:** The attached Complaint involves an alleged environmental infraction which occurred at a commercial plaza located off of McMullen Booth Road. The defendants in the case are the property owner and management company that exhibited control over the commercial plaza at the time of the events described in the Complaint. The suit relates to several discharges of non-stormwater effluent to Mullet Creek, which is part of the County's municipal separate storm sewer system (MS4). Through staff investigation, including the testing of water samples collected at the site, it was discovered that the effluent discharged to Mullet Creek was raw sewage. As outlined in the complaint, there were several separate instances of discharge to Mullet Creek, each of which has been outlined.

As you may be aware, the County holds permit number FLS000005, which requires that it manage its MS4 throughout unincorporated Pinellas County. As part of that permit, the County is required to prevent non-stormwater discharges to its MS4. In furtherance of this requirement, the County has passed an Ordinance prohibiting such discharges to the MS4, which is found in Chapter 58 of the Code. This suit is being brought pursuant to the County's authority under the referenced permit, associated ordinances contained in Chapter 58, and the Pinellas County Environmental Enforcement Act, which currently provides for penalties of up to Ten Thousand Dollars (\$10,000) per day, per incident for violations of County ordinances that result in degradation to the national resources of Pinellas County.

A copy of the Complaint (without attachments) is attached.

JLB:JWC:tsc

Attachment

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IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

PINELLAS COUNTY, a political  
subdivision of the State of Florida,

Plaintiff,

-vs-

Case No.: 09-  
UCN:

KIM FREEDOM and RANDALL FREEDOM,  
as Trustees, FREEDOM LAND TRUST, and  
KOS Corporation,

Defendants.

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COMPLAINT

Plaintiff, Pinellas County, files this Complaint against Defendants Kim Freedom and Randall Freedom, as Co-Trustees, Freedom Land Trust (hereinafter referred collectively to as "Freedom"), and KOS Corporation, and states as follows:

JURISDICTION AND VENUE

1 This is an action for civil penalties and an injunction pursuant to Chapter 90-403, Laws of Florida (1990), as amended by Chapter 2005-294, Laws of Florida (2005).

2 This Court has jurisdiction pursuant to Section 26.012, Florida Statutes.

3 This action involves a controversy, the value of which exceeds Fifteen Thousand Dollars (\$15,000.00).

4 Venue properly lies in this Circuit because the events and activities involved in this suit occurred on property located in Pinellas County, Florida.

PARTIES

5 Plaintiff, Pinellas County, is a political subdivision of the State of Florida.

6 Defendant, Freedom, is the trustee of a land trust, which is organized under the laws of the State of Florida.

7 Defendant, KOS Corporation, is a corporation, which is organized under the laws of the State of Florida.

8 Defendant Freedom, is vested with title to real property located at 2475 McMullen Booth Road, and more particularly described in Exhibit A (hereinafter “the subject property”). The subject property was conveyed to Defendant via a warranty deed, which is recorded in the Pinellas County official records at Book 6967, Page 2357.

9 At the time of the events described in this Complaint, Defendant KOS, managed the subject property and exercised domination and control over said property.

10 Plaintiff, Pinellas County, holds permit number FL000005, which requires it to effectively prohibit non-stormwater discharges into its Municipal Separate Storm Sewer System (MS4).

11 Plaintiff, Pinellas County, has adopted local ordinances that prohibit any discharge to the MS4 or to any receiving waters of the County that is not composed entirely of stormwater and further, requiring that best management practices (BMPs) be used on construction sites to prevent discharge of construction materials from the site.

#### FACTUAL ALLEGATIONS

12 On May 13, 2005, Plaintiff received a complaint that an unidentified effluent was discharging from the subject property into Mullet Creek.

13 Mullet Creek is part of Plaintiff’s MS4 and ultimately discharges to Tampa Bay.

14 On May 13, 2005, Plaintiff investigated the complaint and, during the course of its investigation, collected a sample of the effluent being discharged into its MS4.

15 Plaintiff tested the samples collected on May 13, 2005 and found elevated bacterial counts, which indicated the previously unidentified effluent was raw sewage.

16 On May 13, 2005, Defendants, or an agent thereof, contacted an environmental remediation company to contain the effluent being discharged. Said environmental remediation company dispatched a crew to the subject property the same day, which crew was prepared to contain the fluent being discharged.

17 On May 13, 2005, Defendants, or an agent thereof, sent the environmental remediation company away before any work was performed to contain the non-stormwater effluent being discharged.

18 On May 16, 2005, Plaintiff inspected the subject property and found a non-stormwater effluent, raw sewage continuing to discharge to Mullet Creek.

19 Due to Defendants' actions in dismissing the enviromental remediation company, raw sewage was allowed to discharge to Mullet Creek during the intervening weekend.

20 On May 16, 2005, Defendants, or an agent thereof, contacted the environmental remediation company again to contain the discharge. At that time, the stormwater vault from which the non-stormwater effluent was discharging was cleared and the discharge was temporarily stopped.

21 On May 18, 2005, Plaintiff, via its staff, inspected the subject property again and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

22 On May 24, 2005, Plaintiff, via its staff, inspected the subject property again and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

23 On May 26, 2005, Plaintiff, via its staff, inspected the subject property again and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

24 On June 2, 2005, Plaintiff, via its staff, inspected the subject property again and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

25 On June 7, 2005, Plaintiff, via its staff, inspected the subject property again and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

26 On June 9, 2005, Plaintiff, via its staff, inspected the subject property again and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

27 On June 16, 2005, Plaintiff, via its staff, inspected the subject property again and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

28 On July 14, 2005, Plaintiff, via its staff, inspected the subject property again and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

29 On March 9<sup>th</sup>, 2006, Plaintiff, via its staff, inspected the subject property again after receiving a complaint and discovered non-stormwater effluent discharging from the subject property into Mullet Creek.

30 Discharge of any substance, other than those composed entirely of stormwater, to the County's MS4 violates local ordinances.

31 The various discharges of non-stormwater effluent to the County MS4, or Mullet Creek, caused degradation to the natural resources of Pinellas County.

32 Plaintiff, Pinellas County, has incurred costs and continues to incur costs and expenses while investigating the matter and in controlling and abating the violation through appropriate enforcement action. Such costs are recoverable pursuant to Chapter 90-403, Laws of Florida (1990), as amended.

33 When a governmental agency is enforcing lawfully promulgated rules and regulations, irreparable harm is presumed and alternative legal remedies are ignored.

WHEREFORE, Plaintiff, Pinellas County, respectfully requests that this Court:

- A. Issue a permanent injunction requiring Defendants to comply with Pinellas County ordinances relating to non-stormwater discharges;
- B. Assess civil penalties against the Defendants as provided by Chapter 90-403, Laws of Florida (1990), as amended;
- C. Assess the County's costs and expenses against the Defendants as provided by Chapter 90-403, Laws of Florida, (1990) as amended, including attorney's fees; and
- D. Enter such other relief as the Court deems just and appropriate.

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