

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

JOSEPH E. ZAGAME
Petitioner/Appellant,

vs.

DEPARTMENT OF
AGRICULTURE AND
CONSUMER SERVICES
Respondent/Appellee,

and

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,
Intervenor/Appellee.

FINAL ORDER

Pursuant to the settlement agreement entered into by the Parties, attached hereto as Exhibit A, the Florida Department of Agriculture and Consumer Services hereby vacates its May 2, 2013, final order in Case No. 12-1356, and is closing its File No. A77568.

DONE AND ORDERED this 15 day of April, 2014.

ADAM H. PUTNAM
COMMISSIONER OF AGRICULTURE



Michael A. Joyner
Assistant Commissioner

Filed with Agency Clerk this 16th day of April, 2014.



Agency Clerk

Copies to: Petitioner/Appellant, Joseph E. Zagame
 Respondent/Appellee, Lorena Holley, General Counsel
 Respondent/Appellee, Alyssa Cameron, Senior Attorney
 Intervenor/Appellee, Amy Wells Brennan, Senior Attorney

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

JOSEPH E. ZAGAME,

Petitioner,

v.

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

Respondent,

and

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,

Intervenor.

1st DCA Case No. 13-2641
DOAH Case No. 12-1356
FDACS File No. A77658

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is entered into by and between JOSEPH E. ZAGAME, SR. ("Zagame"), whose address is 230 Mohawk Road, Clermont, Florida 34715; the FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES ("FDACS"), whose address is 407 South Calhoun Street, Tallahassee, Florida 32399-1000; and the SOUTHWEST FLORIDA WATER MANAGEMENT ("District"), whose address is 2379 Broad Street, Brooksville, Florida 34604 (collectively referred to herein as the "Parties").

WITNESSETH THAT:

WHEREAS, the District is an administrative agency charged with the responsibility to conserve, protect, manage, and control water resources within its geographic boundaries and to administer and enforce Chapter 373, Florida Statutes

("F.S.") and related rules under Chapter 40D, Florida Administrative Code ("F.A.C."); and

WHEREAS, FDACS is an agency of the State of Florida authorized under Section 373.407, F.S., to make binding determinations at the request of a water management district or landowner as to whether an existing or proposed activity qualifies for an agricultural exemption under Section 373.406(2), F.S.; and

WHEREAS, real property located within Section 23, Township 21 South, Range 23 East in Sumter County, Florida (the "Property") is held by various entities under the control of Zagame and his wife (generally referred to as the "Landowners"); and

WHEREAS, the Property is located within the geographic boundaries of the District as established by Section 373.069(2)(d), F.S.; and

WHEREAS, in June 2007, the District became aware of certain dredging and filling activities in an approximately 2.5-acre wetland on the Property; specifically, a 1.12-acre pond was dredged within the wetland and approximately 1.3 acres of the wetland was filled (collectively, the "Activities"); and

WHEREAS, on November 14, 2011, the District formally requested a binding determination from FDACS as to whether the Activities on the Property qualified for the agricultural exemption provided by Section 373.406(2), F.S., which was assigned FDACS File No. A77568; and

WHEREAS, on February 10, 2012, FDACS rendered its determination that the Activities did not qualify for the agricultural exemption pursuant to Section 373.406(2), F.S.; and

WHEREAS, on April 6, 2012, Zagame individually requested a formal administrative hearing to challenge FDACS's binding determination, which was referred to the Division of Administrative Hearings ("DOAH") on April 16, 2012 and was assigned Case No. 12-1356; and

WHEREAS, on May 10, 2012, the District was granted intervention in DOAH Case No. 12-1356; and

WHEREAS, a final hearing on the matter was held on August 8 and October 15, 2012 in Leesburg, Florida before an Administrative Law Judge ("ALJ") with DOAH; and

WHEREAS, on February 1, 2013, the ALJ entered an order recommending that FDACS enter a final order finding that the Activities on the Property are exempt pursuant to Section 373.406(2), F.S.; and

WHEREAS, on May 2, 2013, FDACS entered a final order finding that Zagame was entitled to an exemption limited to the 1.12-acre pond but was not entitled to an exemption for the 1.3 acres of fill placed in the wetland; and

WHEREAS, on May 30, 2013, Zagame appealed the final order to the First District Court of Appeal which was assigned Case No. 13-2641; and

WHEREAS, on June 7, 2013, the District filed a cross-appeal in Case No. 13-2641; and

WHEREAS, on July 1, 2013, the Parties voluntarily agreed to enter into mediation of its dispute; and

WHEREAS, the Parties have met and wish to resolve their dispute.

NOW, THEREFORE, in consideration of the aforesaid premises, which are hereby made a part of this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Within five days of approval of this Settlement Agreement by the District's Governing Board, the Parties agree to file a joint motion with the First District Court of Appeal in Case No. 13-2641 requesting that the Court remand the matter back to FDACS to conduct further proceedings between the Parties and the Landowners associated with this matter which are necessary to effectuate the terms and conditions of this Settlement Agreement.

2. Within five days after the case is remanded to FDACS from the First District Court of Appeal, FDACS agrees to hold the matter in abeyance so that Zagame and the Landowners may properly resolve their dispute with the District concerning whether the Activities qualify for the agricultural exemption provided in Section 373.406(2), F.S.

3. Zagame agrees to cause the Landowners to expeditiously obtain a Standard General Environmental Resource Permit (the "Permit") for the filling activities on the Property by appropriately amending Application No. 643440 currently pending before the District. Sections A, C, & E of the Environmental Resource Permit Application Form 547.27/ERP (08/11) and any supporting documentation encompass the entire framework of the Permit application. The District hereby acknowledges that the required fee for Application No. 643440 has been paid in full. Zagame shall cause the Landowners to obtain the Permit as expeditiously as possible but in no case later

than 180 days after this Settlement Agreement is approved by the District Governing Board.

4. Zagame agrees to employ a Florida licensed Professional Engineer and environmental consultant to assist the Landowners with obtaining the Permit, including to sign and seal the appropriate portions of the application. The District agrees to assist Zagame and the Landowners with obtaining the Permit to the extent allowed by law. A licensed Professional Engineer (P.E.) will be required to provide signed and sealed calculations related to the 100 year floodplain cut/fill volumes. The calculations must demonstrate that either: (a) no net fill will remain in the floodplain; or (b) any net fill remaining in the floodplain will have an insignificant adverse impact.

5. The District agrees that in consideration of the timely and complete performance of Zagame's obligations herein, it will not pursue further compliance or enforcement action with respect to the dredging activities consisting of the excavation of the 1.12-acre pond within the wetland.

6. The District will not unreasonably withhold the issuance of the Permit once Zagame fulfills all of the requirements of Sections A, C, and E of the Permit Application, and provides the required supporting documentation.

7. Within five days of the District's issuance of the Permit to the Landowners for the filling activities, Zagame agrees to withdraw his April 6, 2012 request for formal administrative hearing. Within five days of Zagame's withdrawal of his request for formal administrative hearing, the District agrees to withdraw its November 14, 2011 request for binding determination from FDACS. Within five days of the District's withdrawal of its request for binding determination, FDACS agrees to enter an order

vacating its May 2, 2013, final order in Case No. 12-1356, and close its File No. A77658. The foregoing notwithstanding, the District agrees that the Recommended Order issued by Judge Peterson, DOAH, on February 1, 2013 and the FDACS Final Order issued on May 5, 2013 will remain available in the public record for future reference by any interested party.

8. The Parties acknowledge that every obligation described within this Settlement Agreement is integral to the Parties' willingness to resolve the matters described herein. Therefore, the District agrees to waive all penalties and costs it would otherwise seek against Zagame and/or the Landowners for the Activities in consideration of the Parties' timely and complete performance of every obligation under this Settlement Agreement.

9. Each party shall bear its own costs and attorney's fees related to this matter.

10. The District agrees that settlement of this matter resolves the issues contained concerning the Activities addressed in this Settlement Agreement. Zagame further agrees to cause the Landowners to henceforth fully comply with all of the terms and conditions of the Permit issued by the District in accordance with Paragraph 3 above, including any modifications or renewals thereof. Zagame acknowledges by the execution of this Agreement that any future violation of Chapter 373, F.S., District rules, or the terms of the Permit, including any modifications or renewals thereof, may subject him or the Landowners to administrative action or civil suit. The District expressly reserves and retains the right to initiate appropriate legal action against Zagame, the Landowners, and any other appropriate parties to prevent or prohibit the future violation

of any applicable statutes, rules, orders, or permit conditions, except as specifically addressed herein.

11. This Agreement may be enforced by the Parties in any manner authorized by law and does not preclude either party from seeking judicial or administrative remedies for violation of the terms or conditions of this Agreement.

12. This Agreement shall be effective on the date the Parties have executed it. This Agreement is subject to review and approval by the District Governing Board. In the event the District Governing Board shall not approve this Agreement, it shall be null, void and of no legal effect. After this Agreement has been executed by Zagame, Zagame may not withdraw approval or terminate this Agreement under any circumstances unless the District Governing Board fails to approve this Agreement.

13. Zagame may apply in writing to the District for an extension of the time limits contained in this Agreement no later than five (5) days prior to the expiration of such time limit. The District may grant an extension of time in writing for good cause shown.

14. Entry of this Agreement shall not relieve Zagame of the duty to comply with all applicable federal, state and local laws, regulations and ordinances.

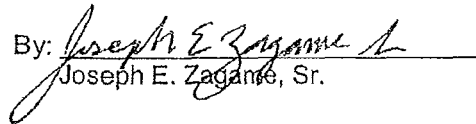
15. This Agreement, upon execution, constitutes the entire agreement of the Parties. The Parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed orally or by any means other than written amendments referencing this Agreement and signed by the Parties.

16. This Agreement may be executed in separate counterparts, which shall not affect its validity.

IN WITNESS WHEREOF, the District has caused this Agreement to be executed on the day and year written below in its name by its Governing Board; FDACS has caused this Agreement to be executed on the day and year written below in its name by its Commissioner of Agriculture; and Zagame has caused this Agreement to be executed on the day and year written below in his name.

JOSEPH E. ZAGAME, SR.

Date: August 20, 2013

By: 
Joseph E. Zagame, Sr.

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

[Signature]
Witness

By: [Signature]
Blake C. Guillory
Executive Director

8/27/13
Date

Approved as to Legal Form and Content
[Signature]
Office of General Counsel

Approved by the Governing Board of the Southwest Florida Water Management
District this 27th day of August, 2013.

By: [Signature]
Carlos Benuff, Chair

Attest: [Signature]
Randall S. Maggard, Secretary.

Filed this 14th day of

(Seal)

September 2013.

[Signature]
Deputy Agency Clerk

Joene Holly
Witness

ADAM H. PUTNAM
COMMISSIONER OF AGRICULTURE

By: [Signature]
Michael A. Joyner
Assistant Commissioner

8-28-13
Date

Filed this 5 day of
September, 2013
Paula Palmiotto
FDACS Agency Clerk