

**BEFORE THE SOUTH FLORIDA
WATER MANAGEMENT DISTRICT**

IN RE:

**PETITION FOR DECLARATORY
STATEMENT by MICHAEL R. KUEBEL,
SARA L. KUEBEL, RICHARD J. DARDAS,
JO ANN JOHNSON, TRUSTEE, AND
CAROLYN T. BRACCI, Eden on the Bay
Subdivision, Collier County, Florida,**

SFWMD 2011-____ FOF-ERP

Petitioners.

**FINAL ORDER GRANTING PETITION OF EDEN ON
THE BAY HOMEOWNERS ASSOCIATION, INC. FOR LEAVE
TO INTERVENE IN A DECLARATORY STATEMENT**

On September 8, 2011, the South Florida Water Management District (“District”) received a Petition of Eden on the Bay Homeowners Association, Inc. for Leave to Intervene in a Declaratory Statement (“Petition for Leave to Intervene”) filed by Eden on the Bay Homeowners Association, Inc. (“Association”). The Petition for Leave to Intervene requests to intervene in a declaratory statement pursuant to Section 120.54(5)(b)6, Florida Statutes (“Fla. Stat.”), and Rules 28-105.0027 and 28-106.205, Florida Administrative Code (“Fla. Admin. Code”).

FINDINGS OF FACT

1. Standard General Permit Number 11-01694-P (the Permit) was issued on March 4, 1999, to Glen Eden on the Bay, L.P. The Permit pertains to a surface water management system serving 41 acres of residential development known as Glen Eden on the Bay located in Collier County, Florida and addresses structural buffers.
2. On May 12, 2008, the Permit was transferred to the Association.

3. On July 29, 2011, a Petition for Declaratory Statement before the South Florida Water Management District was filed with the District pursuant to Section 120.565, Fla. Stat. Notice of Receipt of the Petition for Declaratory Statement was published in the Florida Administrative Weekly on August 19, 2011.

4. The Petition for Leave to Intervene was filed by the Association on September 8, 2011.

5. Michael R. Kuebel and Sara L. Kuebel, Richard J. Dardas, Jo Ann Johnson, Trustee, and Carolyn T. Bracci, Eden on the Bay Subdivision, Collier County, Florida, filed a Response to the Association's Petition for Leave to Intervene ("Response") on September 13, 2011. A copy of the Notice of Rights is incorporated herein as Exhibit "A".

CONCLUSIONS OF LAW

6. The District determined that the Petition for Leave to Intervene should be GRANTED and makes the following Conclusions of Law.

7. Rule 28-106.205, Fla. Admin. Code, provides for persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties to petition the presiding officer for leave to intervene.

8. The Association is the permittee, and therefore, is a person whose substantial interest will be affected by this proceeding. It, therefore, has standing to

intervene in this proceeding.

DONE AND ORDERED this ____ day of October, 2011 in West Palm Beach, Florida.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,
BY ITS GOVERNING BOARD

Governing Board Chairman

ATTEST:

LEGAL FORM APPROVED:

BY: _____

BY _____

DATE: _____

DATE: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the South Florida Water Management District's Final Order Granting Petition of Eden on the Bay Homeowners Association, Inc. for Leave to Intervene in a Declaratory Statement has been furnished via U.S. Mail to Steven J. Bracci, Esq., Steven J. Bracci, PA, 2590 Northbrooke Plaza Drive, Suite 208, Naples, FL 34119; Kate English, Esq., Neysa Borkert, Esq., Pavese Law Firm, 1833 Hendry Street, Ft. Myers, FL 33901; and Susan Martin, Esq., Office of Counsel, South Florida Water Management District, P.O. Box 24680, West Palm Beach, Florida 33416-4680, this ____ day of October, 2011.

Carolyn S. Ansay
General Counsel

NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., 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 the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

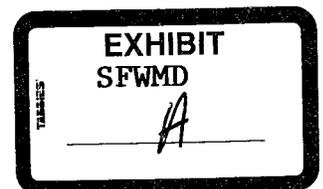
RIGHT TO REQUEST ADMINISTRATIVE HEARING

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 District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk 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 Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District 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.

Filing Instructions

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be 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 SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall 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 with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.



Initiation of an Administrative Hearing

Pursuant to 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 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other SFWMD identification number, if known.
2. The name, address 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.

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 extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

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 Sections 120.60(3) and 120.68, Fla. Stat., 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 pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.