

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road
West Palm Beach, Florida 33406

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IN THE MATTER OF:

Water Shortage Variance Application
No. 4472 filed by Sailfish Point Property
Owners' Association

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT
SFWMD 2008-086-DAO-WS

ORDER GRANTING VARIANCE

This matter came to be heard before the Governing Board of the South Florida Water Management District ("District") on the 14th day of February, 2008. After being otherwise fully apprised of the matter, the Governing Board issues this Order, containing the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. On December 13, 2007, the District issued Water Shortage Order No. 2007-870-DAO-WS, imposing Modified Phase III Restrictions, with an effective date of January 15, 2008.
2. On January 31, 2008, the District received an Application for Variance ("Application") filed by Sailfish Point Property Owners Association ("Applicant"). A copy of the Application for Variance is attached and incorporated as Exhibit "A".
3. The Applicant did not appear at the February 14, 2008, Governing Board Meeting.
4. In a letter, dated February 16, 2008, District staff advised the Applicant that the Application for Variance was approved by the Governing Board. A copy of the letter is attached and incorporated as Exhibit "B".
5. Pursuant to subsection 373.083(5), Florida Statutes ("F.S."), and the District Policies and Procedures, Section 101.22(b), the District's Governing Board

delegated to the Executive Director and General Counsel, authority to execute final orders following Governing Board action.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

6. Rule 40E-21.275, F.A.C., governs the criteria for issuance of variances. Pursuant to Rule 40E-21.275(2), F.A.C., no application for variance shall be granted unless the applicant provides reasonable assurances that the variance will not otherwise be harmful to the water resources of the District and affirmatively demonstrates that one or more of the following circumstances exists:

- a. the variance is essential to protect health or safety, or
- b. compliance with the particular rule or order from which a variance is sought will require measures which, because of their extent or cost, cannot be accomplished within the anticipated duration of the shortage, or
- c. alternative restrictions which achieve the same level of demand reduction as the restrictions from which the variance is sought are available and are binding and enforceable, or
- d. the applicant is a public or private utility that demonstrates that special circumstances exist which necessitate the issuance of a variance, or
- e. the applicant's source of water includes an approved aquifer storage and recovery installation or a water reclamation project.

7. The District has determined that the Applicant has complied with the requirements of law and has provided sufficient information to enable the District to evaluate the merits of the request for a variance.

8. The Applicant has provided reasonable assurances that the variance will not otherwise be harmful to the water resources of the District and has met the criteria for issuance of a variance.

9. A Notice of Rights is attached hereto as Exhibit "C".

ORDER

Based on the foregoing Findings of Fact and Ultimate Facts and Conclusions of Law, the Governing Board of the South Florida Water Management District orders that Variance Application Number 4472 is hereby **granted**.

DONE AND SO ORDERED this 14th day of February, 2008, at a public meeting held at 3301 Gun Club Road, West Palm Beach, FL 33406.



ATTEST:
BY: *Jane [Signature]*
Assistant Secretary

DATE: 2/27/2008

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD

BY: *Sheryl Y. Wood*
Sheryl G. Wood
General Counsel

[Signature] Legal Form Approved
BY: *[Signature]*

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via Regular U.S. Mail to: Richard Marx, Sailfish Point Property Owners' Association, 2201 S.E. Sailfish Point Blvd., Stuart, FL 34996, this 21 day of February, 2008.



Jennifer Dawn Bokankowitz
Florida Bar No. 11764
South Florida Water
Management District
3301 Gun Club Road, MSC 1410
West Palm Beach, FL 33406
Telephone: 561-682-2258
Facsimile: 561-682-6276

G. If restrictions cannot be met because of extent or cost, describe measures necessary to meet all restrictions, restrictions which can be met, and the date of compliance:

As described in questions (E.), it is necessary that the residential properties, golf course property and common property be irrigated often enough to keep the salt spray rinsed off. As stated in question (E.), we are using Floridan water, which is high in chloride, removing the chlorides by means of reverse osmosis and redistributing it to the brackish surface water table by means of irrigation. In no way can this be negatively impacting the ground water table. We are respectfully requesting the same exemption granted to Highland Beach.

H. If this request is for a golf course which is unable to meet the front nine-back nine requirements, submit a map showing the proposed alternative division of the course in half and an explanation of the proposed irrigation scheme.

Please refer to question (G.). Please find attached, a map of our entire community, which shows the residential properties, the golf course property, the common property, the location of the residential irrigation system lake & pump station, & the location of the golf course irrigation system lake & pump station.

I. For applications for variance from restrictions on irrigation, provide a general description of the irrigation system, including pump or water system output and irrigated area:

This information is shown on the map described in question (H.)

J. Any other information the applicant believes is material:

Please be advised that the golf course utilizes all of the reclaimed effluent from the wastewater treatment facility.

We will continue to use wetting agents on the golf course & reduce watering in whatever capacity we can to conserve.

Richard Marx
Applicant's Signature

RICHARD MARX
Print name of Applicant

01/27/08
Date

.....For District Use Only.....

Date Received: _____ Date Application Complete: _____ Control No: _____

Compliance: Yes No

Form Sent _____ Received _____

Approved: _____

By: _____

Date: Feb 15, 2008



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

RES 16-08

February 16, 2008

Governing Board Approval

Mr. Richard Marx
Sailfish Point Property Owners' Association
2201 SE Sailfish Point Blvd.
Stuart, FL 34996

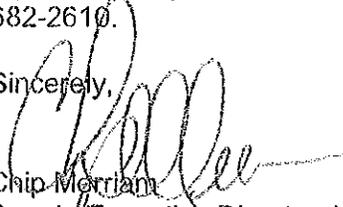
Dear Mr. Marx,

Subject: Water Shortage Variance No. 4472

On February 14, 2008, Governing Board of the South Florida Water Management District approved your application for a water shortage variance. The enclosed certificate details the variance and should be prominently displayed. The exceptions authorized in this variance are limited to the duration of the water shortage declaration existing on the date of this letter.

If you have any questions regarding this matter, please feel free to contact Cynthia Gefvert, P.G. at (561) 682-2610.

Sincerely,


Chip Merriam
Deputy/Executive Director, Water Resources

Enclosures



South Florida Water Management District Variance to Water Shortage Restrictions

Variance Control No.: 4472

Project Name: SAILFISH POINT PROPERTY OWNERS' ASSOCIATION

Issued To: RICHARD MARX
2201 SE SAILFISH POINT BOULEVARD
STUART, FL 34996

Expiration Date: END OF PHASE III WATER SHORTAGE

Specific Authorizations(s) APPLICANT USES 100% FLORIDAN WATER AND AN ONSITE REVERSE OSMOSIS FACILITY. THIS IS CONSIDERED AN ALTERNATE SOURCE OF WATER AND WILL NOT BE SUBJECT TO THE WATER RESTRICTIONS.

IF THE WATER SHORTAGE ADVANCES TO A MORE RESTRICTIVE LEVEL THE APPLICANT MUST REAPPLY FOR VARIANCE.

Approved by:

Chip Merriam

*Deputy Executive Director
Water Resources*

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's Governing Board 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.