

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

SFWMD No. 2020-008-DAO-WS



IN THE MATTER OF:

Water Conditions within the
Boundaries of the South
Florida Water Management District

_____ /

**ORDER ON LANDSCAPE IRRIGATION
CONSERVATION MEASURES AMID DRY CONDITIONS**

The Executive Director of the South Florida Water Management District (District), after considering recommendations of District staff and direction from the Governing Board, issues this Order pursuant to Sections 373.083, 373.175, and 373.246, Florida Statutes, and Chapters 40E-21 and 40E-24, Florida Administrative Code, based on the following:

AREA OF APPLICATION

1. The entire District is subject to this Order. A map depicting the area governed by this Order is attached and incorporated as Exhibit A.
2. All surface and groundwater sources, described in Rule 40E-21.631, Florida Administrative Code, are subject to this Order.
3. Landscape irrigation water use, identified in Rule 40E-21.651, Florida Administrative Code, is subject to this Order.

FINDINGS OF FACT

4. The hydrologic dry season runs from November 1st through May 31st. From September 2019 through March 2020, the District received 15.38 inches of rainfall,

which represents a deficit of 6.50 inches from average rainfall. Additionally, from January 2020 through March 2020, the District received 3.60 inches of rainfall, only 54% of average, for a deficit of 3.08 inches. In March 2020, the District received only 0.24 inches of rainfall, which is the driest March the District has experienced in the 89-year period of record.

5. There are indications that below normal rainfall will persist through April 2020. It is also anticipated that the extreme heat, full sunshine, and relatively low humidity, common during this time of year, will support greater than normal future evapotranspiration rates.

6. During drier and hotter times, water user demands typically increase to meet the supplemental irrigation needs of landscaping. This additional demand reduces available supplies and lowers water levels.

7. The U.S. Drought Monitor publishes a weekly drought condition report. This report, on April 2, 2020, indicated all counties within the District's jurisdiction are in "Moderate Drought" and portions of Palm Beach, Broward, and Miami-Dade Counties, located in the Lower East Coast (LEC) Region, are "Abnormally Dry."

8. Lake stages and groundwater levels are decreasing across most of the Kissimmee Basin. In the last 7 days, the lake stage of Lake Weohyakapka, located in eastern Polk County, dropped into the yellow caution zone, and United States Geological Survey (USGS) well OSF-70R, a Floridan aquifer well located between Lake Tohopekaliga and East Lake Tohopekaliga, decreased 0.83 feet in the last 7 days and is in the red caution zone.

9. Groundwater levels at most monitoring stations in the Lower West Coast

Region have been declining over the last 7 days and are at notably lower levels compared to the historical averages for this time of year. USGS well L-738, located in Bonita Springs, decreased 0.57 feet and is in the yellow caution zone. In Lehigh Acres, the water level in USGS well L-2186, a Sandstone aquifer well, decreased 1.61 feet and is in the yellow caution zone. The largest decrease in the Mid-Hawthorn aquifer was at USGS well L-4820, located in North Cape Coral, hitting a new record low of -81.84 feet NGVD and remains in the red caution zone.

10. Surface and groundwater levels are decreasing in the Upper East Coast (UEC) Region as well. On April 5, 2020, the water level in the C-25 Canal measured 16.74 feet NGVD. Withdrawals from the C-25 Canal, as well as ditches and canals connected to the C-25 Canal, must cease when canal levels fall below the minimum water levels (i.e., 14 feet NGVD) adopted in Rule 40E-22.232, Florida Administrative Code. In Fort Pierce, the groundwater level in USGS well STL-213 dropped into the red caution zone.

11. The Water Conservation Areas (WCAs) west of the LEC Region, which includes Palm Beach, Broward, and Miami-Dade Counties, are the primary source of water for groundwater recharge, saltwater intrusion protection, and recharge of public drinking water wellfields for the region.

12. The United States Army Corps of Engineers' Water Control Manual for the WCAs and Everglades National Park sets regulatory floor elevations in the WCAs. Once a WCA regulatory floor elevation is exceeded, water deliveries are restricted to the volume imported from secondary sources. If a secondary source is not available when a WCA level falls below its regulatory floor elevation, then water supply deliveries to the

coastal areas cannot be made from that WCA, unless a temporary deviation from the regulation schedule is approved.

13. WCA-2 fell beneath its regulatory floor (Zone 3) on March 31, 2020. WCA-3A water levels are also decreasing towards the regulatory floor elevation. On April 5, 2020, the water level in WCA-3 was 7.79 feet NGVD, 0.29 feet above the floor elevation of 7.50 feet NGVD. Additionally, WCA-2 and WCA-3 water levels are lower and decreasing faster in comparison to this time last year.

14. In Miami-Dade County, surface water levels are also in decline. Over the last 7 days, the water level in L-31N/C-111 canal decreased 0.73 feet and is currently at 3.17 feet NGVD.

15. Lake Okeechobee is a secondary source of water for the LEC Region during the dry season. Lake Okeechobee's stage decreased to 11.56 feet NGVD on April 9, 2020 and is 0.86 feet lower than a month ago. This lake stage is 0.08 feet above the Water Shortage Management Zone of the Lake Okeechobee Regulation Schedule.

16. Given the above factors, it is essential that conservation of available surface and groundwater sources be implemented. There is the potential that water supplies over the remainder of the dry season may decline to the extent that sufficient water will not be available to meet the present and anticipated requirements of water users while protecting the water resources from serious harm.

17. The District supports local government landscape irrigation ordinances and increased compliance efforts of the mandatory year-round landscape irrigation conservation measures.

18. At its April 9, 2020 Business Meeting, the Governing Board recognized the

dry conditions, urged increased focus on water supply conservation, and gave the Executive Director authority to issue, modify, and rescind orders as necessary to assess and address the dry conditions. The Governing Board delegated to the Executive Director the authority to issue and modify this Order as necessary to address dry conditions. The Governing Board also delegated to the Executive Director the authority to issue additional orders, as necessary, to invoke mandatory water use restrictions to equitably distribute the remaining water supplies and prevent serious harm to the water resources if increased vigilance of the year-round landscape irrigation conservation measures is insufficient.

19. District staff will monitor water usage and water levels to assess the effectiveness of said water conservation measure.

CONCLUSIONS OF LAW

20. The District's water shortage plan regulating the withdrawal and use of water and protecting the water resources is set forth in Chapter 40E-21, Florida Administrative Code. See § 373.246, Fla. Stat. (2020).

21. The Governing Board or Executive Director may call for reductions in demand pursuant to subsection 40E-21.231(3), Florida Administrative Code.

22. The District may increase water resource and demand monitoring pursuant to Rule 40E-21.401, Florida Administrative Code.

23. This Order provides notice to water users of the potential for future water use restrictions and encourages water conservation and increased use of alternative water sources.

24. The District recognizes the serious threat to public health, safety, and

welfare posed by COVID-19, and the public health emergency posing a risk to the entire State of Florida. This Order does not prevent the full implementation of recommendations from the Centers for Disease Control and Florida Department of Health and should be applied in conjunction with all Executive Orders issued by the Governor of Florida and the current state of emergency posed by COVID-19.

25. If water use restrictions are imposed in the future, the Governing Board may request local, city, and county officials to assist the District in the enforcement of its order. See § 373.609, Fla. Stat. (2020).

ORDER

Based upon the findings above, the Executive Director orders that:

26. An Order on Landscape Irrigation Conservation Measures Amid Dry Conditions is issued for all landscape irrigation users withdrawing water from surface and groundwater sources within the District's boundaries depicted in Exhibit A.

27. Landscape irrigation users shall conduct landscape irrigation in conformance with Rule 40E-24.201, Florida Administrative Code. The provisions of Rule 40E-24.201, Florida Administrative Code, are attached hereto as Exhibit B. If landscape irrigation users irrigate no more than 2 days per week and only between 7 p.m. to 7 a.m., additional water conservation will be achieved.

28. Landscape irrigation users should apply no more than $\frac{3}{4}$ inch to 1 inch of water per week on their lawns and landscapes and only as needed to supplement rainfall.

29. Users conducting landscape irrigation with reclaimed water are not restricted.

30. Any plant material may be watered using low volume irrigation, micro-

irrigation, low volume hand watering methods, and rain barrels, cisterns, or other similar rain harvesting devices without regard to the watering days or times allowed.

31. Additional information regarding water conservation practices and techniques is available at <https://www.sfwmd.gov/community-residents/water-conservation>.

32. As provided in subsection 40E-24.401(1), Florida Administrative Code, local governments shall respond to address-specific or location-specific violations.

33. This Order does not relieve landscape irrigation users from complying with any applicable local government, state, or federal law, rule, or ordinance. This Order does not relieve landscape irrigation users from complying with local ordinances, enacted under subsection 40E-24.301(1), Florida Administrative Code, that may be more stringent than Rule 40E-24.201, Florida Administrative Code.

34. The Governing Board recognized the dry conditions, urged increased focus on water supply conservation, and gave the Executive Director authority to issue, modify, and rescind orders as necessary to assess and address dry conditions. The Governing Board delegated to the Executive Director the authority to modify or rescind this Order if the District's monitoring of water conditions and implementation of this Order reasonably demonstrates that a modification or rescission of the Order is warranted and necessary. The Governing Board also delegated to the Executive Director the authority to issue, modify, or rescind additional orders, as necessary, if the District's monitoring of water conditions leads to the desired implementation of additional orders.

35. A Notice of Rights is attached as Exhibit C.

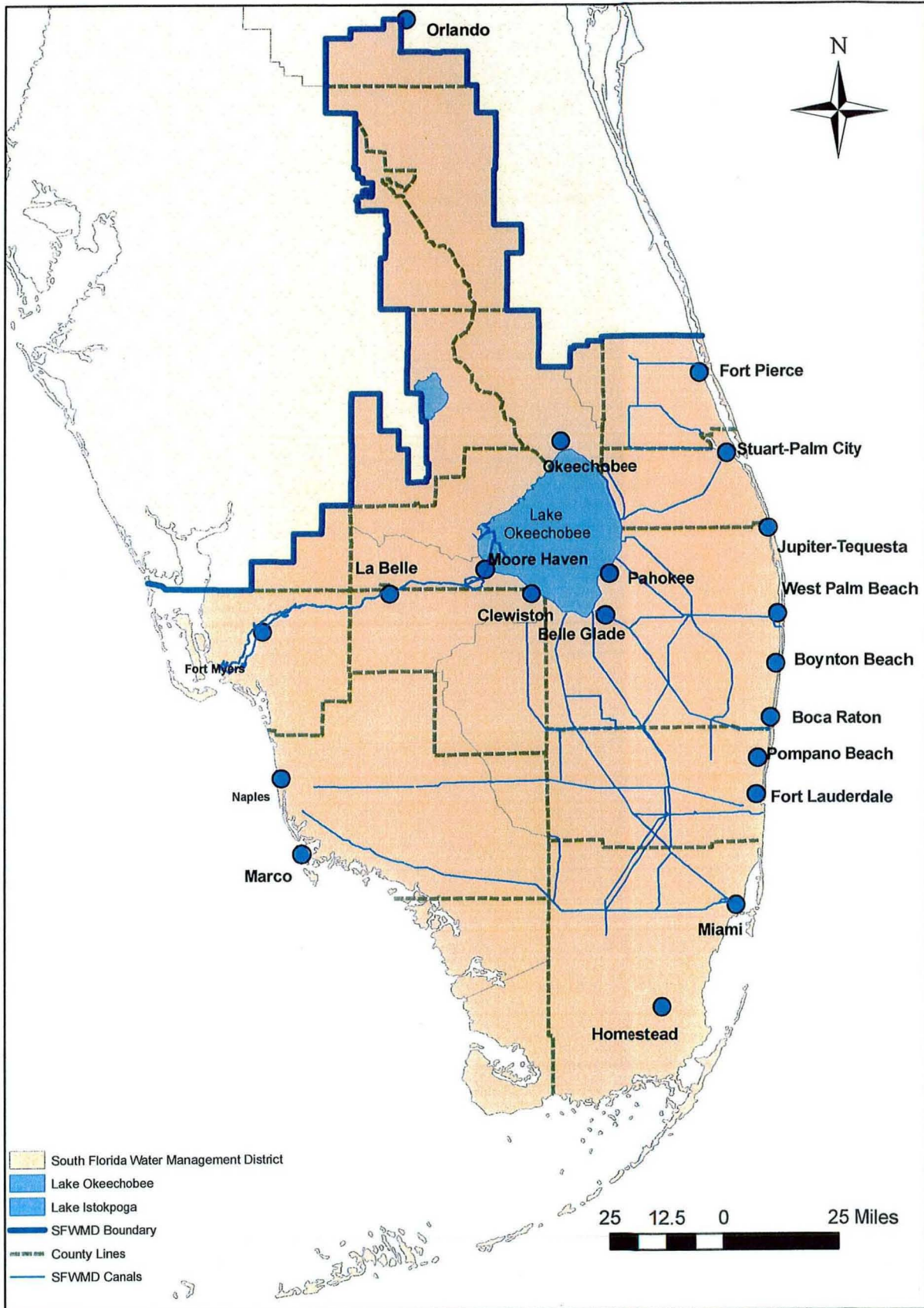
DONE AND SO ORDERED in West Palm Beach, Florida, on this 10th day of April
2020.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Executive Director



Drew Bartlett

DISTRICT-WIDE WATER SHORTAGE WARNING



**Year-Round Landscape Irrigation Conservation Measures
Rule 40E-24.201, Florida Administrative Code**

1. All wasteful and unnecessary water use is prohibited.
2. Landscape irrigation Districtwide shall be prohibited daily between the hours of 10:00 a.m. and 4:00 p.m.
 - a. Irrigation of new landscaping shall comply with the following provisions:
 - i. On the day the new landscaping is installed, the new landscaping may be irrigated once without regard to the normally allowable watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is also allowable without regard to the normal allowable watering days and times.
 - ii. The 90-day period begins the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice.
 - iii. Irrigation of new landscaping which has been in place for 30 days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday and Sunday.
 - iv. Irrigation of new landscaping which has been in place for 31 to 90 days may be accomplished on Monday, Wednesday, Thursday and Saturday.
 - v. Irrigation of the new landscaping is only limited to areas containing the new landscaping. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation under this paragraph. Targeted watering may be accomplished by low volume hand watering, or any appropriate method which isolates and waters only the new landscaping.
 - b. Irrigation of existing landscaping Districtwide shall comply with the following provisions:
 - i. Even-numbered addresses, installations with irrigation systems that irrigate both even and odd-numbered addresses within the same zones, such as multi-family units and homeowners' associations,

and rights-of-way or other locations with no address shall accomplish the necessary landscape irrigation only on Thursday and Sunday.

- ii. Odd-numbered addresses shall accomplish any necessary landscape irrigation only on Wednesday and Saturday.
- iii. Users located in Broward, Collier, Glades, Hendry, Lee, Martin, Miami-Dade, Monroe, Palm Beach, and St. Lucie Counties shall irrigate existing landscaping as provided below.¹
 1. Even-numbered addresses, installations with irrigation systems that irrigate both even and odd-numbered addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address, shall accomplish any necessary landscape irrigation only on Tuesday, Thursday and Sunday.
 2. Odd-numbered addresses shall accomplish the necessary landscape irrigation only on Monday, Wednesday and Saturday.
3. Landscape irrigation systems may be operated during restricted days and/or times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested. Landscape irrigation systems may routinely be operated for such purposes no more than once per week, and the run time for any one test should not exceed 10 minutes per zone.
4. Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:
 - a. Such watering in shall be limited to 1 application unless the need for more than 1 application is stated in the directions for application specified by the manufacturer; and
 - b. Such watering in shall be accomplished during normally allowable watering days and times for existing landscaping unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.

¹ Under subsection 40E-24.301(1), Florida Administrative Code, local governments can choose to enforce more stringent water conservation measures than required by Rule 40E-24.201, Florida Administrative Code (Year-Round Rule), if the provision is consistent with the Year-Round Rule's days of the week and times. Broward, unincorporated Lee, and Miami-Dade Counties, along with the City of Stuart, City of Cape Coral, and Town of Lantana, have enacted up to 2 days a week provision.

NOTICE OF RIGHTS

As required by Chapter 120, Florida Statutes, the following provides notice of the opportunities which may be available for administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, or judicial review pursuant to Section 120.68, Florida Statutes, 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. Some of the legal proceedings detailed below may not be applicable or appropriate for your situation. 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 (District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Florida Statutes. Persons seeking a hearing on a District decision which affects or may affect their substantial interests shall file a petition for hearing in accordance with the filing instructions set forth herein 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, Florida Statutes; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Florida Statutes. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, posting, or publication that the District has taken or intends to take final agency action. Any person who receives written notice of a District 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.

If the District takes final agency action that materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional point of entry pursuant to Rule 28-106.111, Florida Administrative Code.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Florida Statutes, shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The District may grant the request for good cause. Requests for extension of time must be filed with the District 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 whether the District and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

FILING INSTRUCTIONS

A petition for administrative hearing must be filed with the Office of the District Clerk. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at the District's headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed 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 District Clerk, 3301 Gun Club Road, West Palm Beach, Florida 33406.

- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the District's security desk does not constitute filing. It will be necessary to request that the District's security officer contact the Office of the District Clerk. An employee of the District's Clerk's office will receive and process the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document.

INITIATION OF AN ADMINISTRATIVE HEARING

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Rules 28-106.201 and 28-106.301, Florida Administrative Code, initiation of an administrative hearing shall be made by written petition to the District in legible form and on 8 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 District identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner, petitioner's attorney or qualified 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 District'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 District's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the District'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 District to take with respect to the District's proposed action.

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Florida Statutes, and Rules 28-106.111 and 28-106.401–.405, Florida Administrative Code. The District is not proposing mediation for this agency action under Section 120.573, Florida Statutes, at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Section 120.68, Florida Statutes, and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final District action may seek judicial review of the District's final decision by filing a notice of appeal with the Office of the District Clerk in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the appropriate district court of appeals via the Florida Courts E-Filing Portal.