

**Myakka River Management Coordinating Council
Lemon Bay Park
570 Bay Park Blvd.,
Englewood, FL 34223
December 13, 2019
9:30 A. M. – 12:30 P.M.**

MINUTES

The meeting began at 9:30 A. M. with Jono Miller presiding. This meeting was advertised in the Herald Tribune on Friday, November 29, 2019.

MEMBERS IN ATTENDANCE

Jono Miller – Sierra Club

Lee Amos-CFGC

Rebecca Armstrong – FDEP/MRSP

Lou Kovach-Homeowner

Hugh Halvik-GCHSC

Corky Pezzati-SCLWV

Paul Thomas-FWC

Allain Hale-ECOSWF

Jim Beever-SWFRP

Kathryn Harring-City of Venice

Vivianne Cross-FDOT

Howard Berna - SCNR

Victor Dobrin-Homeowner

Verne Hall-City of Sarasota

David Jayroe – City of North Port

Juliette Jones-Friends of WMS

Chuck Johnston – O Bar O Ranch

Mike Choinard-Homeowner

Marlene Guffey-Homeowner

Steven Schaefer-Friends of Myakka

Bob Clark-Venice Audubon

Barbara Lockhart-NP FOWL

INTERESTED PARTIES

Chris Oliver – FDEP/FPS

Chris Becker – FDEP/FPS

Zane Walsh -member of public

Jon Robinson-Sarasota County

Andrea King-PRNR/BWA

Zachary Westmark-FDEP/FPS/MRSP

Nadine Hallenbeck – FDEP/FPS

Joan San Lwin-member of public

Matt Brady-Sarasota County

Michelle Durr-MRSP

Wayne Douchkoff – RCCS member

Matt Stevens-FWC

- **Call to Order and Roll Call was made.**
- **Public Comments:** None
- **Approval of the Meeting Minutes from June 7, 2019 Council Meeting.**
Lou Kovach moved adoption of the Minutes. Steven Schaefer seconded. The Minutes were adopted.
- New members introduced themselves. Barbara Lockhart is with North Port Friends of Wildlife. Hugh Havlik is with the Greater Charlotte Harbor Sierra Club. They are an environmental interest group. They do about 80 outings a year to get more people interested in the environment. Outings are open to the public and are free.

UPDATES:

Howard Berna-Sarasota County

The Sarasota County Board of Commissioners held a public hearing on 1400 Jackson Road in October relating to shoreline protection at Senator Bob Johnson's former residence. There has been severe erosion in this area that is now threatening the structure. The board approved a Water Navigation Control Authority Permit (WNCA) for construction of a retaining wall in conjunction with a variance for allowing the homeowner to protect their home.

Jono asked about the tent at Snook Haven.

Andrea King replied that a meeting with the concessionaire recently took place and they agreed to change the color of the canopy to green. It is a temporary structure and it does not include any vegetation clearing.

Mike Choinard asked what the cost for a variance is.

Howard replied there is a \$1,000 variance fee and a \$3,000 application fee.

David Jayroe-City of North Port

David showed a map indicating where the City of North Port has property along the Myakka River. He stated that most of the area is not inhabitable. There is a small subdivision called Lake Geraldine where they have development. They have a database for when permits come in and if the parcel ID numbers are in that area, they get flagged since they do not allow building within 220 feet of the river. This is on their website under their Unified Development Code (UDC). They are building a new water control structure in Cocoa Plum right before the Cocoa Plum drains into the Myakkahatchee Creek. They test the turbidity daily and it is never been outside of the mandated amount.

Bob Clark asked about the West Villages.

Jono stated that it might be possible to get a representative from West Villages to come and talk to the group about their plans.

Victor Dobrin stated that there is a new map for West Villages, and that they fall under the jurisdiction of North Port. There is a water treatment plant there that will be up and running by the end of 2019.

Jono clarified that the county does the permitting in the protection zone while the state does the permitting in the river area.

Joan San Lwin asked if all of West Villages was in North Port.

Victor clarified that 30% is in the unincorporated area (of Sarasota County).

Chris Becker asked if the protection zone includes vegetation buffers.

David replied that the 220 feet is broken down into many subsections.

Victor added that Village H and Village I have not been approved yet and there are currently no inroads.

Kathryn Harring-City of Venice

Kathryn reviewed how they permit in regard to the Myakka River Protection Zone (MRPZ). There are no projects in the area currently. They work with Sarasota County and follow their permitting process.

Paul Thomas-FWC

There is a habitat and species group that has a new project on the Myakka River. They have done work on the Peace River and the Withlacochee River. They will be working on a flats assessment which includes checking for any habitat degradation, creating a restoration plan and monitoring the fish population.

Joan asked about Red Tide in El Jobean.

Jim Beever responded that there has been a long persistence of red tide because of the high temperatures. The recent weather pattern pushed red tide out of the gulf and into estuaries because of the prevailing winds. Fertilizer bans have been lifted because it is out of the wet season. A few cold fronts that stay are needed to kill the existing bacteria.

Allain Hale-ECOSWF

Allain read a statement from Becky Aych regarding a Sarasota County initiated Comprehensive Plan Amendment change that will change the designation of the area North of Fruitville Road and West of Verna from a hamlet designation to rural heritage/estates. The hamlet designation was sold as a way to protect open space and agriculture with a cluster of houses from 50-100 and a commercial activity located in the center. The first hamlet (the only one so far) was 400 houses with 600 acres of stormwater ponds for the protected open space/agriculture use. The lots are actually smaller than an acre and can be served by septic tanks, if there is central water. This would allow for 2,400 houses. The county's CPA-2019-C would only allow for 1,200, still on septic tanks, but with a 5-acre separation. Maps dating back to 1971 show this land as pasture and grazing land. It has been used for hay fields, a very large dairy field, sod fields, sludge (domestic residuals) spreading and vegetable row crops.

Lee Amos-CFGC

Two additional properties have been closed on since the last meeting. They were able to protect 84 acres on Fruitville Road fronting Howard Creek. It consists of bottomland forest and pasture land and it is owned by Resilient Retreat which will be a treatment center for survivors of trauma including emergency services, police officers and combat veterans. Resilient Retreat wanted to establish this as a place of healing in nature, so they worked with CFGC to place a conservation easement on the entire property.

Bob Clark asked how far it is from the Myakka River.

Lee replied it is about seven miles away.

The USDA placed a conservation easement on the Murphy Marsh property, which is about 534 acres in the center of the Tatum Sawgrass Marsh. The USDA easement through the NRCS program will provide restoration to this area. Another 40-acre piece owned by the foundation will remain a wildlife sanctuary but will not open to the public. They are managing it for gopher tortoises and, hopefully one day, Florida scrub-jays.

MJ ranch is ranking now on the Florida Forever List as part of the Myakka Ranch Lands priority site. It includes five miles of river frontage and four large blocks of sand pine/sand hill, which will hopefully be protected.

They have also submitted a proposal to NRCS requesting funding for conservation easements in the area through their RCPP program. Sarasota and Manatee Counties have partnered with them. It would provide money to purchase conservation easements in Sarasota, Manatee and Charlotte Counties, with a little in Hardee and Desoto.

Discussion continued on the status of various properties near the Myakka River.

Chuck Johnston-O Bar O Ranch

This area of land was originally owned by the Downs family. They owned 6,000-acres of pineland reserve and another piece along the river. Prior to Myakka River State Park being a state park, they had cattle on some of that land too. When the land became park land in the 1930s, they purchased other surrounding pieces and moved their cattle there. They do not use any fertilization and only plant native grasses. The NRCS is to put in fences to manage grazing more intensively. The ranch mapped the high-water areas and added exclusion fences to keep the cattle out of wet areas to prevent erosion. They also have a buffer area, with native lagoons and a filtration system. They are one of three agricultural operations in Sarasota County to win the This Farm Cares recognition. They have put in solar water for their cattle so they can drink that instead of the natural water.

Jono asked about the rotation of the cattle in the fields.

Chuck said Mr. Downs put 165 acres in conservation in 2004 with Sarasota County and there remains almost no grazing in that area.

Mike asked about Downs Dam.

Jono replied that it is built on limestone. It was bad because it prevented the movement of manatees and fish up and down the river but, at the same time, it also prevented poachers and other illegal activity, which was a good thing.

Rebecca Armstrong-Myakka River State Park

The north gate is now closed to the public except for weekends. This has resulted in a reduced amount of traffic in the mornings and evenings with a decrease in speeding. The dumpster at

Upper Lake has been moved to a better, less obstructive location. This year, three nuisance alligators were removed from the weir area. Steve Giguere, the park manager is asking for fishing and cast netting to be banned from the weir area. They are just waiting for a ruling from the district office.

Bob Clark asked about increased traffic from the snow goose.

Rebecca replied that it was hard to tell because it is regularly a popular area.

Allain asked about using surveillance cameras to catch visitors violating rules.

Rebecca stated there is a camera at the north gate but no others. She advised she'll bring the suggestion to management.

Discussion continued on enforcement of the regulations. The park rangers do not have the authority to issue any citations, only FWC can do that. They need to actually see a violation in progress to issue a citation. Most of the time when FWC arrives the violators are already gone.

Lee asked about hiring off duty FWC officers as an option.

That is an option but there are rules that go along with that.

Lee also mentioned that there may be other groups that would be interested in funding the hiring of off duty FWC officers to protect the resources at the park.

Rebecca advised that starting in January 2020, a patrol shift will be going out once a week to put a ranger on the water.

The new concessionaire submitted an Environmental Protection Plan to park management. The plan is being revised. Once it has been reviewed and edited it will go to the district office for approval.

There has been talk of possibly turning the dumpster area into an interpretive kiosk for the Wild and Scenic River. This would be only temporary until the large metal posts that are already in the ground there can be removed.

With fire season coming up, they have been doing fire line prep and exotic treatment. They have an airboat contract for treating invasive grasses along the river but this has to wait for water levels to rise.

Chris Oliver-MWSR Program Update

The Florida Park Service continues to explore funding options and working with the Water Management District (WMD) and FWC to explore paths to restoring the Upper Myakka Lake (UML)/Bypass & weir area and the Downs' Dam area. They continue to seek funding to conduct a feasibility study related to restoration of the UML Bypass/Weir Area as directed in the adopted Myakka Wild & Scenic River Management Plan, under Action 2.4. In October 2017 an

application was submitted to request funding through the SWFWMD Cooperative Funding Initiative (CFI) to conduct modeling to identifying the best solution to this long-standing issue. An agreement with the WMD was signed in March. In October 2018, a similar CFI proposal was submitted to study the Downs' Dam area for restoration.

Chris Becker and Chris Oliver have had discussions with the FDEP's Regulatory South District Office (SDO) on various exemption requests, ERP, and Myakka Permits and have been present at site visits related to determinations of the river area.

Currently, the Myakka CWA is at its seasonal low. An increase in activity should begin sometime in January.

There has seemingly been an increase in violations on the river. Many unpermitted boaters, all of whom were speeding, were seen three times on the Lower Myakka Lake (LML) in the Wilderness Preserve since the last meeting. Also, twice at the Venice Myakka River Park, there were unsafe boating activities from the kayak lagoon, one doing fast loops and another zipping in to pull out on the kayak platform. The latter were also trying to take 12 medium sized endangered giant airplants on a branch. Chris advised them they could not be taken. Twice Chris saw campers on the Carlton Memorial Reserve and since August a total of six jonboats were encountered during the one hour within this river section. All were headed upriver in three loose groupings. Five were in blatant non-compliance with posted speeds making large wakes. There are concerns about a recreational conflict with alligators especially at popular spots like the MRSP Bridge and UML weir. There has been an increase in fishing, especially cast nets and alligators are getting fed, then photographers and paddlers encounter the wildlife.

Discussion took place on access under the CR-780 bridge. Now that construction is finished, many people are using the right of way to launch boats illegally.

Break 11:10-11:20

NEW BUSINESS:

As the meeting resumed Jono played a video, the [Oral History Video: Senator Bob Johnson talks about life on the Myakka River](https://sarasota.wateratlas.usf.edu/oral-history-project/) which can be found on the Sarasota County Water Atlas. (<https://sarasota.wateratlas.usf.edu/oral-history-project/>)

Jono Miller-MWSR Permitting Overview

Jono gave a presentation related to a permitting issue that occurred since the last meeting. The project site was just south of Laurel Road on Jackson Road. Senator Bob Johnson purchased the land on the Myakka in the 1970s. He built his home there years later. Then it was sold to a private party (in 2014). The house is on the outside of a bend which is prime for erosion. The new owners tried to plant vegetation to keep the erosion at bay, but this was not a permanent solution and they realized they needed a structure to stop the erosion and save the house. To do this they would need a Major Work permit, a Myakka Protection Zone permit, an ERP permit, a Myakka River permit and a building permit.

Two county meetings were held, one for the variance to the MRPZ and one for a major work permit for the installation of a retaining wall. But, the remainder of this presentation will focus on the DEP Permitting process. The river area that DEP regulates is the open water of the river and wetlands. Then there is a buffer and the rest of the protection zone is regulated by the county. Originally, the state felt that this structure would be built in an upland area which would fall under Sarasota County's regulations.

The definition of any wetland according to the state is, those areas that inundated or saturated by surface or ground water at a frequency and duration sufficient to support normally due but supportive prevalence of vegetation typically adapted for life in saturated soils.

Both the county and the state were inclined to believe that the shoreline structure to protect the house was going in uplands (and not wetlands). There were a couple reasons for that; first the site seems like an upland, sandy soils with oaks and palms, it does not look like a marsh. Also, the owners produced a drawing from Tallahassee DEP showing a safe upland line (SUL). The SUL was placed between the toe of the slope of the river bank and the top of the river bank. This SUL determination meant that the river area at the site was just a few feet wide.

Previous efforts to determine river area and connected wetlands existed, in 1997 DEP and the Sarasota County Commission had an agreement that included maps of the approximate river area and adjacent County regulated MRPZ. These maps are very close to mapping of the river and wetlands done by USGS. When Bob Johnson saw this map (DEP 1997) and how it affected his property, he was said to have commented that he did not like it but it was accurate.

What the SUL as drawn meant was we were going from this map (1997 DEP) which showed a very wide river area and pulling it in right next to river.

According to Rule 62-819, the SUL means the line at or above mean or ordinary high water used to calculate the acreage of a parcel. This permit had nothing to do with calculating the acreage of a parcel. The SUL was developed by the state when they were going to acquire land, they did not want to pay for land they already owned. The SUL is not mentioned in the Myakka ACT, or the Myakka Rule, or the Myakka Plan. The DEP Wetland Delineation Manual (WDM) states "Water bodies display a cyclic pattern that is expressed through the periodicity of the high and low water elevations above and beyond the typical seasonal variation. The cycle for any given waterbody can be as variable as the water bodies themselves. To determine an accurate elevation for the OHWL, the hydro pattern of the waterbody needs to be assessed. This can of course be accomplished through long-term hydrologic data collection. When available, the mean annual flood elevation is an acceptable approximation of the OHWL for flowing water systems." Since the mean annual flood elevation was an acceptable approximation of OHWL it did not make any sense that the SUL could be below the bank, because those of us familiar with the river know this cabin site flooded virtually every year. So, what is going here is that the power to issue Myakka River permits was delegated from this (FPS) District, that had no other regulatory issues, to the South District Office in Ft. Myers.

Returning to the WDM, the seasonal high water also had to be considered. “The presence of hydrological indicators must be used with reasonable scientific evidence.” The manual states that. “Overall, the most productive approach is to locate the least disturbed area along the waterbody and determine the edge of the mature, upland vegetative community. Flooding events are major physical disruption to non-wetland vegetative communities.” And, the WDM highlights saw palmetto as a pretty reliable indicator when delineating uplands from wetlands.

Jono and his wife went to the adjacent public property and took photographs to try to determine which areas would be considered upland. They examined and mapped the vegetative community including saw palmetto and overlaid this information on elevation and LiDAR maps. Jono continued with a discussion on what could be determined from the maps and noted regardless of whether the structure would be put in upland area or not, there are recent photographs that clearly show the posts supporting the house will soon be in the river if nothing is done.

Jono continued with the presentation with several themes that supported that the site frequently floods and should be considered river area, slides focused around these supporting documents or sources:

- Mapping of similar Hydric Hammock by DEP in 2019
- National Wetland Inventory mapping
- The 1959 Sarasota County Soil Survey
- The 1991 Soil Survey
- A county wetlands map
- Topographic Information derived from LIDAR imagery
- Annual inundation data from a nearby site
- Probability of inundation based on a USGS study
- USGS hydrographic information
- USFWS Study, The ecology of hydric hammocks: a community profile

With all of this information, Jono took a trip to the permitting office in Fort Myers to talk about this issue. The SDO was inclined to give the project an exemption (from permitting) believing that the project was within uplands. So, all this work was an attempt show to it was not, it was uplands and based on what DEP agreed to before and the available data, it should be considered wetland.

Mike asked so all this data was collected to try and keep these owners from preserving their home?

Jono replied No.

Mike inquired, all this information and they just pay a thousand dollars for a (County) variance anyway?

Jono noted that if the project is not in the MRPZ (adjacent uplands) then they did not need a variance and we can address that later.

Jono returned to the presentation adding that he then got a letter from SDO stating it was not possible to permit this because it is not a water dependent activity. He wrote back to them saying that he did not see the legal distinction between a seawall, a retention wall and a shore protection structure but by the time you complete this project this structure will be in the river. And, the language from the Myakka Rule states “creating, repairing or maintaining shore protection structures is a permitted activity” which implies these structures are permissible.

Lastly, the SDO letter stated it had to be in the public interest to be permissible. Jono noted this is going to adversely affect the resource values, hydrology, and interfere with wild and scenic views. But it makes no sense to take the house away, we all agree they should be able to protect their structure. If the cottage were to fall in, then there would be more affects to resource values, it would be worse than a wall. If the owners applied for a permit to allow their home to fall into the river, how would that work? It would be denied by citing 62D-15.008 (2) (b) 22, “Increasing visibility of storage, dilapidated, or unmaintained structures.” Surely, there is a legal principle somewhere that acknowledges that government cannot create a situation in which it simultaneously makes an action, installing a shore protection structure, and inaction, allowing the building to fall in, unpermissible. Something must be permissible in this situation. And, back to Mike’s point there is more language from the rule says, “ensure the protection necessary by retaining that degree of flexibility, responsiveness and expertise which will accommodate all diverse interests in a manor best calculated to be in the public interest”. The act on the rule states, “making authority minimize adverse impacts to land owners use of land for residential purposes”.

Jono highlighted that On October 31st, DEP stated “the entire project area is in wetlands contiguous with the Myakka River”. (A DEP Finding Report and Permits for the project were issued, 10-31-2019.)

Mike asked when this process started.

Chris Oliver stated the homeowner applied in March or April. (They applied for an ERP Exemption on 4-16-2019 electronically to the DEP Regulatory Office).

Mike asked what kind of retaining wall was approved.

Jono stated it is vinyl.

Discussion about wall materials and options continued.

Jono read from these DEP documents, “The department determined that the activity qualifies for an environmental resource permit therefore the permit is granted and determined that it qualifies for a Myakka River permit therefore the permit is granted.” Jono said that he spent considerable time to convince SDO that they were about to set a really dangerous precedent, of saying that there was there was no real river area, that the MRPZ started a bank of river and extended and that was all the County’s jurisdiction.

Mike asked if we will have to go through all this each time someone wants to install a retention wall?

Jono stated that he would hope that now we have cleared the air, it will be more expeditious. He also noted that the issue is not just about this property, the river will continue to meander. If your property is on the river, on an outside of the curve, sooner or later they will be looking for one of these permits. I wanted it to be clear that homeowners have a right to protect their property and build these walls. But, when they are in the river area, they are in the river area and we should not be trying to pretend that these areas are all upland when DEP and Sarasota County agreed on an approximate map. The maps might be off, maybe in some cases 50%, no problem. But it should not be going from a half mile wide down to two feet wide that is not keeping with intent (of the Act).

Jim added that this is short term solution and there will be a salt wedge that expands upriver as we experience sea level rise. Local governments are already looking at issues like access to properties like this.

Discussion continued on various topics including the status of the County's permit and variance for this project and more generally about what future property owners will most likely have to do to protect their property.

Chris Oliver-Feasibility Study-Upper Myakka Lake Water Control Structure

The Water Management District (WMD) and DEP are looking at a feasibility study at the UML water control structure (weir). The structure had an intended purpose back in 1937 to hold back water. It had a lot of unintended consequences. In 1974, bypasses were added to try to mitigate some of those problems, including invasive fish and invasive plants, like hydrilla and water hyacinth. Drawing down the lake was the goal in 1974. In 2006, that area blew out, it was not functioning before and it is definitely not functioning now. There are big holes and a wash out. The area cannot be left alone, or it will fall into the river. There are three options to remedy this, put it back exactly how it was, remove it completely or a combination of the two, which will make recreation and fish and manatee passage better. The feasibility study needs to be done and a cost benefit analysis to determine the possible long-term effects of each option. A draft report will hopefully be available in February for stakeholder input. Minimum flows and levels (MFL) from the WMD states there are 3 blocks, high medium and low. The benefits of restoring flows and timing are improving the marsh community, aiding in fire and exotic management programs and improving fish and manatee passage.

Jono brought up that the next meeting would likely be in January or February. That one issue will need to get someone from Tallahassee to talk about the promised Master Planning process to work out some of the issues that could not be handled within the new (MRSP) management Plan including legal access from the north, issues at Deep Hole, and the recreational carrying capacity stuff.

Chris reminded members they can contact him about meeting dates or topics.

Bob recommended scheduling meetings further in advance.

Howard asked about Law Enforcement and their efforts on the river.

Discussion continued on this and how many years ago, the FPS had its own enforcement and now it is harder to get enforcement on the river.

Chuck Johnston motioned to adjourn the meeting. Steve Schaeffer seconded.

The Meeting was adjourned at 12:30 p.m.

DRAFT