

Myakka River Management Coordinating Council
Virtual Meeting on Microsoft Teams
January 31, 2022
9:30 A. M. – 12:35 P.M.

MINUTES

The meeting began at 9:30 A. M. with Jono Miller presiding. This meeting was advertised in the Herald Tribune on Monday, January 17, 2022.

MEMBERS IN ATTENDANCE

Jono Miller – Sierra Club
Juliette Jones-Friends of WMS
Chuck Johnston – O Bar O Ranch
Bob Clark-Venice Audubon
Barbara Lockhart-NP FOWL
Trisha Neasman-SWFWMD
Elizabeth Wong-City of North Port
Sophia Brown-CHNEP
Becky Ayech-ECOSWF
Corky Pezzati-SCLWV
Verne Hall-City of Sarasota
Victor Dobrin-Homeowner
Rob Wright-Sarasota Audubon
Steven Schaefer-Friends of Myakka

Ashley Ellis - SCNR
Steve Giguere- FDEP
Lou Kovach-Homeowner
Jonathon Bennett-FDOT
Alana Todd-TBRPC
Ryan Pieper-Charlotte County
Megan Cousar-FFS
Cristina Rimes-City of Venice
Lee Amos-CFGC
Greg Blanchard-Manatee County
Amelia Williams-SWFRPC
Mike Chouinard -Homeowner
Matt Stevens-FWC

INTERESTED PARTIES

Chris Oliver – FDEP/FPS
Chris Becker – FDEP/FPS
Michelle Keirse-MRSP
Lauren Peters-FDOT
Linda Dickson-Homeowner
Jon Robinson-Sarasota County
Amber Smith-SWFWMD
Keith Nadaskay - Mosaic
Audie Bock - Sarasota SWCD
Paul Semene - Sarasota County

Nadine Hallenbeck – FDEP/FPS
Wade Matthews-Sarasota Audubon
Jeremy Rogus- City of North Port
Jason McKendree-Triangle Ranch
Mike Jones-Sarasota County
Jessica Koelsch Bibza-NWF
John Fellows – US ARMY CESAJ
Vanessa Taylor – Sarasota County
Debbie Blanco - consultant
Wayne Douchkoff – ecotour operator

- **Call to Order was made.**
- **Public Comments:** Linda Dickson spoke about the deterioration at Hidden River Dike. There is an ongoing lawsuit and they are still seeking an answer on how to make repairs happen to the damaged area. Linda would like help from MRMCC by including the Dike in the planning to protect the watershed of the Myakka Wild and Scenic River. Lee Amos was scheduled to meet Linda to look for tropical soda apple but that had to be cancelled and she is looking to reschedule that visit with Lee.

Debbie Blanco noted she saw the agenda packet with the topic of Diocese of Venice shoreline stabilization permit and wanted to relay a recent experience. Working as an consultant for a rezone on a nearby parcel, she stated that she attempted to contact the South District Office

(SDO) to assist with a river area determination. She reported that the SDO did not know they were the responsible regulatory agency and she was told by email to contact SWFWMD. She informed them that SDO was responsible. SDO advised her to contact the Park Service District Office. Chris Oliver referred her back to SDO. She is still waiting on a return phone call from the SDO with recommendations on how to move forward. She is hoping that the Council will continue their efforts in encouraging the SDO to step up and fulfill their duties as required by state statute. She closed by saying, the article (meeting material) related to the Diocese of Venice shoreline stabilization permit indicates there are some inconsistencies in this.

Jessica Bibza introduced herself. She is with the National Wildlife Federation and she will be working on a project with FWC and Sarasota County related to Salt Creek/Warm Mineral Springs. This will include creek restoration and community outreach and engagement.

- **Approval of the Meeting Minutes from October 22, 2021.** Becky Ayeach motioned to approve the minutes. Steven Schaefer seconded. Minutes approved.

UPDATES:

Ashley Ellis-Sarasota County

There are no new applications or status updates to share regarding any variances in Sarasota County.

Jono asked about the status of Sarasota County processing the Diocese of Venice shoreline stabilization permit.

Ashley replied that it is still under review. The Diocese has applied for two different permits with Sarasota County. One is a WNCA major work permit for new shoreline hardening. And one is a Myakka River variance for the new shoreline hardening. Both will be heard on the same date, but until the application is deemed complete, that cannot be scheduled. They are still waiting to hear back from the Diocese's engineer regarding information missing from the application.

Greg Blanchard-Manatee County

No update.

Ryan Pieper-Charlotte County

Ryan gave an update on the Manchester Waterway project. It is still in the design stages, they are doing background and title searches for the easements and deeds, figuring out who is in charge of what lands and how they will be surveyed. Preconstruction costs are being discussed. The timeframe looks to be between 2022 and 2027. That would be for the resource surveys, pre-application meetings, coordination with state bureaus and land administration, bathymetry and upland surveys, desktop analysis, water quality, hydrological analysis, preliminary design, prepare for acquisition, environmental resource assessment, and so on. There may be three access points at the Como Waterway, O'Hara Waterway and Christopher Waterway.

Jono asked if where we are talking about dredging in a state aquatic preserve.

Ryan replied that it is. That is why they are making sure they are securing proper permitting to minimize impact. The County is doing surveys and water quality testing to make sure those reserve lands will not be impacted beyond what would be acceptable by the state or Army Corps.

Steven asked what the purpose is of having these access points.

Ryan replied that historically there was access to the Myakka through a dike system. There is interest to re-secure access to the Myakka River from the Manchester Waterway. The goal is to not upload any sediment or discharge nitrate to the Myakka River. They hope to do a cost-benefit analysis.

Becky asked that the Council be given regular updates and a chance to formally comment on this before any action is taken by the county or agencies.

Rob Wright asked if this was public driven, developer driven, or government driven.

Ryan was not sure but stated he would find out.

Elizabeth Wong-City of North Port

Elizabeth introduced their new Environmental Technician, Jeremy Rogus.

She has been involved in the Warm Mineral Springs (WMS) restoration activities. She attended a field meeting to look at the possibilities of educating the public more about manatees and how to not disrupt them. One method is signages in appropriate locations. Many residents do not know not to disrupt the manatees and this is especially important in cold weather.

Jono asked about the restoration.

Elizabeth replied that they will be dredging a section of the creek that is very shallow so it can better accommodate the manatees. FWC is spearheading this along with CHNEP. It is already designed and permitted. All the permits have been obtained and funded. The project is currently being bid on.

Becky Ayech asked if Elizabeth could share any information, they put out about manatees with ECOSWF so they can add it to their website.

Elizabeth will forward the information to Chris Oliver to be distributed to the Council.

Christina Rimes-City of Venice

No update.

Sophia Brown-CHNEP

The CHNEP has an upcoming project called the Myakka Headwaters Restoration to remove exotic invasive species and replant native species. The Myakka Headwaters property was conserved by the Conservation Foundation of the Gulf Coast (CFGC) within Flatford Swamp. It is still in the scoping phase with coordination from the Southwest Florida Water Management District (WMD) and CFGC. They have a fact sheet on their website, www.chnep.org, that has some information about what will be done, including a photo of the section of the design plans.

They have their 2022 SW Florida Climate Summit coming up on April 7th and 8th. Registration begins on February 1, 2022 on their website.

Jono asked if the climate summit will be online or in-person.

Sophia replied it will be on Zoom and in-person at the Fort Myers Collaboratory.

Becky asked if the success of the replanting will be dependent on returning to the natural hydroperiod.

Lee Amos replied that they are aware of the altered hydroperiod. They are planting a variety of species at a variety of elevations. They have some indications of what will survive based on what is thriving now and what is struggling now. There will be some mortality based on water quality and quantity, but believe they will be successful overall.

Jono asked if the intention is to plant species that were originally found in Flatford Swamp.

Lee stated, yes but explained that cattle grazing must be factored in. Cattle have been removed from this property, but historically a lot of species would have been grazed out from the cattle. Additionally, plants are also dying from chronic stress and not dying immediately. They want to build up the seed bank and the plants that are out there.

Jono asked if the plant list could be made available to Chris Oliver.

Lee replied he would do so.

Jonathon Bennett-FDOT

FDOT is widening River Road from U.S. 41 to I-75. It is two to six lanes from U.S. 41 to Center Road and two to four from Center Road to I-75.

They are also putting in rumble strips on the shoulder of State Road 72. It is in the contractor's contract to remove all the grindings from the side of the road.

Jono asked if they will be using the rest stop for a staging area on the River Road project.

Jonathan was not sure but if they are, it will be cleared first.

Jono asked if FDOT has a projected time in the future when they will have a reduced use or demand to use the rest stop North of I-75.

Jonathan was not aware of any but will look into it.

Jono mentioned that the property to the south of the interstate is part of Sleeping Turtles Preserve and There is a flow way that goes under the interstate under normal water stages. There could be a trail system that would start south of the interstate. People could cross under the interstate and access the public land at the rest area. Then a bridge could be created to go over Curry Creek to connect to the rest of the Sleeping Turtles Property.

Jonathan will bring up this idea with upper management.

Bob Clark asked how the design for a wildlife crossing is constructed. He also requested that the information be made available to the Council so they can make public comments.

Jonathan advised that let he will the Council know when public comments can be made.

Barbara asked what size animal the wildlife crossings can accommodate.

Jonathan was not sure but guessed it would be small mammals.

Becky commented on noise pollution with the addition of the rumble strips on S.R. 72.

Matt Stevens-FWC

FWC has finished their community fish sampling on the Myakka River. They are currently analyzing the data. Matt is hopeful he will have some data to present to the Council at the next meeting.

The (Myakka River) Threat Assessments project is still ongoing. So far, they have not seen anything too critical that needs restoration immediately. The project has run in to some delays due to Covid-19. He believes FWC could have some data to share with the Council from this in mid-summer.

Jono let Matt know that the Council may want a presentation on their findings.

Amber Smith-SWFWM

No Updates.

Megan Cousar-FFS

No Updates.

Becky Ayech-ECOSWF

In the ongoing litigation against the State of Florida for the money that was supposed to be used for purchase of conservation property, the judge said that the petitioners were too slow. ECOSWF have filed a motion for reconsideration since the State is the one that has been dragging their feet.

Becky has been in contact with WMD staff and attended a governing board meeting for SWFWMD in December 2021. She voiced her concern over taking water out of the Myakka River during the rainy season. Becky would like the WMD to come to the next Council meeting to report on Flatford Swamp.

Lee Amos-CFGC

Sarasota County acquired another 200 acres and that will be incorporated into the Old Myakka Preserve. CFGC spearheaded this effort and acquired the land using loans because Sarasota County was not able to purchase it quickly enough. CFGC then transferred the land to Sarasota County. There is another 40 acres in the same area that CFGC helped Sarasota County acquire and they own an additional 40 acres. A lot of conservation has taken place in the Tatum Sawgrass Marsh and the Crowley Museum and Nature Center is pursuing a conservation easement. The CFGC are close to having all of Tatum Sawgrass Marsh under conservation.

Lee also mentioned the sulfide toxicity at Flatford Swamp. They are in the early stages of trying to address this issue with soil amendments.

Jono asked where the sulfide was coming from.

Lee responded that it is from irrigation water that is used on crops. It is sulfur rich and then finds its way to the Myakka River. Water from the aquifer is higher in sulfur and the bacteria reduces the sulfur into sulfide which is toxic to plants. He also mentioned that there is a WMD report that details this.

Jono asked if CFGC is successful with conservation easements on Tatum Sawgrass Marsh, will that area be available to store high water events.

Lee replied that even though Tatum Sawgrass Marsh has been ditched and diked, that the modeling shows the berms affecting the two and five-year flood frequency but 100-year storms overtop most of the berms. He feels the easements have not changed its flood storage capacity.

Becky added that there will be a county public meeting on the Old Myakka Preserve addition at the community club at the ECOSWF schoolhouse sometime in spring 2022.

She also mentioned that around Tatum Sawgrass Marsh there are old sludge sites. It is her understanding that the toxins and minerals like arsenic, cadmium, lead and chromium disappear over time. Septic companies were reported for dumping straight into the marsh many times. Related to the sulfur in the water, Becky added that the rules and the WMD says that a well must be cased to the aquifer from which you are withdrawing. But the WMD never requires that. Most of the wells are drilled deep and cased shallow. For example, one of the wells on High Hat Ranch is drilled 1,200 feet but cased 75 feet. It is drilled into the Floridan Aquifer but cased in the intermediate aquifer. This is done because the intermediate water is better but it is not as productive. That was an old way of doing things so they could treat the water before it came to the surface and not have to do a lot of treatment on strictly the Floridan Aquifer water. She feels it is no surprise that the sulfur/sulfide content is high and continues to get higher and higher over time.

Chuck Johnson-O Bar O Ranch

Chuck mentioned that he saw some trees cut on the east side of the dam. He was not sure if this was something the park did or possibly boaters trying to get around that side of the dam.

He also advised that the ranch is having a lot of hog damage on their property. He is especially concerned about the conservation easement along the west side of the Myakka River. They try to control the hog population as much as possible but are surrounded by larger properties. He advised that the Ranch would be interested in a collaborative effort for hog removal.

Lee also voiced his interest in a collaborative effort.

Jono suggested a hog trapping system called Pig Brig. It consists of a net and some stakes, so it is very portable and easy to use.

Jon Robinson mentioned that for the first time Sarasota County has contracted with the USDA for a full-time staff person focusing on hogs. It cost over \$100,000 a year but they have already seen results.

Becky asked if they were using helicopters and snipers.

Jon responded that is a separate program and the county has not participated in that.

Stephen Giguere-Myakka River State Park

Steve noted that USDA did a helicopter removal south of S.R. 72. In three days, USDA removed nearly 90 hogs.

The Upper Myakka Lake (UML) Restoration project is moving forward. The removal and restoration should be starting within the next two weeks.

Trisha stated that filling Dennis Ragosta position is a top priority. The Council should have a permanent representative (for the WMD) soon.

Chris Oliver-MWSR

The MWSR program has been working with the WMD, FWC and U.S. Fish and Wildlife Service toward the UML Weir project and Downs' Dam. The UML Project is the target for the second week of February for contractor mobilization. There has been survey work on Downs Dam and there is a draft of 30% plans.

There has been an increase in the amount of shoreline protection concerns from private lots especially in the area south of Laurel Road. They are like the issue faced at Senator Bob Johnson's Residence.

Chris Oliver and Chris Becker had a meeting with the WMD in DEP regulatory about Flatford Swamp. The WMD intends to divert excess water from the river in the dry and wet seasons.

The FPS has been trying to get the floodplain marsh back to the way it is supposed to be. In the last century, the floodplain marsh has been dominated by invasive grasses, mostly paragrass. There is a combination of techniques being used to reduce the invasive grasses but getting the hydroperiod right is fundamental. The goal is to reduce the paragrass down below ten percent through a combination of herbicide applications and prescribed burning timed, as best we can, to natural flood events.

To try to combat speeding and unsafe boating, the FPS has downgraded the speed limit from "Slow Speed" to "Idle Speed" "No Wake: for almost all of MRSP. The UML remains posted Slow Speed but the river sections north and south of the lake down to the park boundaries are posted Idle Speed.

Fossiling still remains an issue. The Program is attempting to get clarity with a formal statement from a higher level at FDEP stating that fossiling is not allowed in the state park or in the Wild and Scenic River.

Alligator flushing at Deep Hole is still an issue. In previous years on a cold day, there could be 100 alligators out basking and 250 to 300 alligators in Deep Hole. Nowadays, it is often much less.

Chris showed photographs and described several fossiling and camping sites from Downs' Dam south to Laurel Road where cumulative impacts are damaging the natural resource values.

Chuck added that he has seen a lot of garbage being washed down the river. He also asked Chris about the 30% plan related to the dam.

Chris explained that the FDEP consultant, Wood, has given them a draft or conceptual plan. This plan is a starting point for removing Downs' Dam from the park side. It is a draft plan and does not have the final means and methods.

NEW BUSINESS:

Jono-Chair's Report

Chris Oliver, Ashley Ellis and Jono met with the new owners of the property immediately south of U.S. 41 on the west bank of the river. The new owners are revamping the restaurant there. Jono provided some guidance to the new owners on what may or may not be permissible there.

The building that houses the restaurant at Snook Haven is failing and will need to be replaced. The river house there dates back to the 1930s.

Jono testified to the WMD regarding Flatford Swamp. He noted that he carpooled to Brooksville with Becky.

Jono mentioned the Meadows RV Park adjacent to Senator Bob Johnson's Landing (SBJL). The county was hoping to acquire this property and surplus the western portion and area adjacent to U.S. 41 but keep the area north of SBJL. The property was sold before the county could act but negotiations are ongoing.

Jono noted that he wrote two emails, mentioned in the minutes, on behalf of the Council regarding the Diocese property. He also wrote to the seven experts who reviewed the management plan, as moved in the last Council meeting.

Becky clarified that her and Jono carpooled to the meeting in Brooksville but that they did not discuss any Council business or their respective testimonies beforehand. They did not violate any Sunshine rules.

Jono stated that he requested and received an extension to file for an administrative hearing regarding the sea wall at the Diocese of Venice.

Jono gave some background on the sea wall topic, noting that the Council was created by the Florida legislation in 1985. Bob Johnson wanted to include both Manatee and Charlotte counties and he was only able to get Sarasota County. In the eighties, the Department of Natural Resources, which preceded DEP, did a study and concluded there were 3,300.3 miles of river in Florida. Because this segment is 34 miles long, that means that only 1% of the rivers in the state of Florida are state designated Wild and Scenic Rivers. The Council was to provide inter-agency and inter-governmental coordination in the management of the river. The Council tries to take disparate entities that are involved in management of the river and have them be more coordinated. The Act led to the development of the Myakka Rule. The purpose of the Rule was to implement a regulatory program, which included a permit program to both protect and enhance the resource value. Ideally if things were working properly, the Myakka would continuously become more wild and scenic rather than less wild and scenic.

The Act created an entirely new legal term and it is used nowhere else in Florida law. There is no other river in the State of Florida that has a "river area" defined. In 1997, DEP and other entities, agreed on the approximate location of the river area by adopting a series of maps. The river area was defined as the corridor of land beneath and surrounding the Myakka River from river miles 7.5 to 41.5, together with a corridor that includes the maximum upland extent of wetlands, vegetation, et cetera. The Council was empowered to review recommendations on matters and shall render its non-binding advisory opinion to the SWFWMD, DEP, and affected local governments.

In 2019, the Council got involved in permitting for a needed seawall at Bob Johnson's former house on the river at 1400 North Jackson Road. The SDO in Fort Myers placed the river area, saying it started at the bottom of the bank. They used a term; a safe upland line is supposed to be roughly a half foot above the mean high water. That was very problematic and eventually DEP agreed they were wrong about that.

The area between the protection zone on either side was the river area that people agreed to was the approximate boundary in 1997. What DEP was arguing was that the river area consists of the open river itself and then the protection zone would start immediately. They eventually conceded that that was not the case.

The river had eroded back far enough that the concrete supporting the posts was visible at Bob Johnson's Landing. Sarasota County looked at avoidance and they tried to see if the house could be jacked up and moved further to the west. Unfortunately, it is even wetter to the west. The sea wall was really the only option there. It is permitted to have a sea wall and allowed by the rule. It is just not the most scenic way to do it.

There are a large number of places along the river with eroding banks. This makes some sense because it is a natural phenomenon of the river to meander. The physics of the meandering is that the outer side of the curve is the eroding side and the inner side of the curve is the depositing side. Wherever you have

high land, people are tempted, because they like the river, to build structures whether they are overlooks, benches or buildings. While the river is changing naturally it eventually impacts manmade structures that are elevated on banks or bluffs.

There were three cabbage palms planted at the crossing of the water pipeline originally. Now they are down to two. This will continue to erode. At Venice Myakka Park, you can now see the roof line of one of the picnic pavilions. They put up some post and rope to try and keep people from going on the bank, but that bank is eroding. There is a bench at Sleeping Turtles up on a high bank. There is a lot of different places where permit requests to stabilize the shore could be.

Jono projected a slide with some of the discussion on this issue from May MRMCC Meeting. He noted the Diocese was seeking to stabilize a few sections of the bank. Jono contacted them, reminded them that they have the right to do that, but there would have to be a finding it was in the public interest. During that meeting Steven helped find the public interest definition at that time. Then Ashley talked about the fact that they were going to have to demonstrate avoidance and minimization for the County's process. They are still attempting to provide the information needed to the county for their permitting.

In October 2021, Becky made a motion to ask that their standards for permitting be consistent for all the permit requests and consistent with the goals. Jono shared his email, written two days after the meeting. "The result it can be argued, has been a proven formula for applicant aggravation, uneven enforcement, and interminable and avoidable delays and projects that ultimately do not meet the public interest test as required by law. I hope your office will agree with the Council that due to special circumstances presently related to shoreline permitting along the Myakka that in order to as the Council is requested, ensure standards for permitting to be consistent for all permit requests and consistent with the goals of the Wild and Scenic designation, additional comprehensive, proactive guidance is warranted to inform property owners, consultants, and permitting staff what the staff expects regarding creating, repairing, or maintaining shore protection structures along the Myakka River in Sarasota County." He sent this to the SDO, and five weeks later, they still had not replied. They eventually got back to him and the head of that office said they were not going to do that.

There was a second motion to write to the Board of County Commissioners. The last two paragraphs were as follows: "To this end, the Council has asked the South District to help ensure standards for permitting to be consistent for all permit requests and consistent with the goals of the Wild and Scenic River designation by providing additional comprehensive, proactive guidance to inform property owners, consultants, permitting staff, what the state expects regarding creating, repairing, or maintaining shore protection structures on the Myakka River. To date, the South District has declined. The Sarasota County Commission might have better luck in persuading the South District to provide needed relief through clarification." He has not heard back from the county.

The response he received on December 6th from the director is as follows: "Mr. Miller, in a perfect world it would be wonderful to spend time to create guidance for future possibilities. However, we are currently completely inundated with applications that must be processed in accordance with time clocks established by rule. As a representative of fellow government entity, I am sure you understand our priorities as such. Ms. Mills' earlier response is and will be, for the foreseeable future, still applicable." Jono wrote back and asked to be made aware if their position changes. On December 10th, 2021, the SDO went ahead and issued a permit or, exemption, for 218 feet of sea wall at two different locations between I-75 and Snook Haven on the Diocese of Venice property.

If somebody wanted to challenge that, they had to file the challenge by December 31st. Jono, Chris Oliver and Chris Becker agreed it was not possible to hold a Council meeting between the 10th of December and the 31st. There were advertising requirements and it is hard to get people, especially at that time of the year. Jono personally asked for an extension so there would be more time to ask for a hearing and that was granted until February 4th. Jono subsequently realized that the Council could not be directly petitioning the Division of Administrative Hearings (DOAH) because the mandate is restricted to the district at DEP and local governments.

Citing the Council was established in 1985 to provide inter-agency and inter-governmental coordination and management of the river, specifically empowered to review and make recommendations on all proposals for amendments. The Council has a history of attempting to achieve the balanced desired by the legislature to provide for the permanent preservation of the designated segment of the river by way of development of a plan for permanent administration by agencies of state and local governments which will ensure the protection necessary, but retain a degree of flexibility, responsiveness, and expertise that will accommodate all the diverse interests involved in a manner thus calculated to be in the public interest. And whereas the Council recognizes the private property rights of upland property owners to protect and install shoreline protection structures in the river area, if they meet the public interest test and other requirements of the Myakka Rule. One lesson learned from the 1400 North Jackson permitting is that the process was unduly confusing, complicated and fraught with delays. Whereas the Diocese permit, if implemented, would allow 218 feet of seawall, if granted or exempted by the district as proposed in their notice in December. Whereas under its statutory enabling authority, the Council's non-binding advisory options should be given consideration and full weight because the Council is statutorily charged to further interagency and intergovernmental coordination. Whereas the Council is concerned about additional permit applications and the cumulative impact on river resources, including scenic resources on the Wild and Scenic River. And whereas it is clear there is been a lack of coordination. **Therefore, moving to resolve that the Council's non-binding opinion recommendation to FDEP on this permit, are as follows:**

1. FDEP has an obligation to delineate the River Area based on the maximum upland extent of wetlands as agreed upon by FDEP, not mean high water.
2. The Council requests clarification of the DEP proposed agency action, including compliance with the intent and procedures of the Myakka River Wild and Scenic Act, the implementing rule, the joint agreement with Sarasota County and the Myakka Wild and Scenic River Management Plan for the purpose of reducing uncertainty, confusion and delays experienced by the Council, landowners, consultants, and permitting entities related to shoreline stabilization permitting along the Wild and Scenic segment of the Myakka River.

Lee asked what are DEP proposed agency actions.

Jono replied that the DEP is proposing to permit these two sea walls. Since the Council cannot directly appeal to the DOAH, it seems like the best the Council can do is ask DEP to explain themselves.

Jono's understanding of the Council's interest in this is that all they are looking for is for the SDO to be administering the Act, the Rule, the Plan and the Joint Agreement consistently and they have not been doing that. It was a shock when the Council finally worked through everything at 1400 North Jackson Road, and they thought the SDO understood that they are supposed to start with the map that showed what they had agreed upon in 1997, and then to go out and look for wetlands, that did not happen. Instead the DEP accepted the mean high-water line as the edge of the river area and only Sarasota County would be involved in the permitting because then the protection zone would start.

There is a lot of inconsistency. The height at which they set the mean high-water line seems inconsistent with mean high-water line determinations further downstream on the river. By the 4th of February, Jono is going to personally request an administrative hearing to review this in an effort to both address this particular situation and could the SDO please create a document that everyone could have access to that explains how permitting for a shoreline protection structure along the Myakka River in Sarasota County differs from what is done on 99% of all the other river miles in the state.

Becky asked if Jono is seeking a yes or a no from the DOAH.

Jono is going to go on the advice of his attorney but he is seeking that they do not issue the permit.

Motion:

Becky Ayech motioned that the Council take Jono's position to send FDEP a letter (related to the projected slide with points one and two, on page 10). Steven Schaefer seconded.

Motion discussion continued.

Rob Wright asked if this is a standard seawall.

Jono replied that they are planning a standard vertical seawall and he does not know if it would look different than the seawall at North Jackson Road. They offered to paint the seawall a color called Go Away Green, which was developed at Disney World to try and minimize the visual impact of things that Disney does not want you to see. It would be a seawall and it would be in two different locations, totaling 218 feet.

Rob has had a lot of experience with erosion over the years. He said on a standard seawall design, it starts to erode in front of the seawall, which causes the land to drop behind the seawall, and causes erosion on both sides of the seawall. He asked if there is any way the Council could recommend that they use a more natural method to stabilize the shoreline.

Jono stated that the applicant checked a box on the form saying there was no potential for erosion. Part of Jono's claim in his challenge is that it is well known that when you terminate a seawall, however you terminate that seawall, there is a process called "end scour", which is very common where the seawall ends. The applicant should have checked the box saying that there was a potential for erosion. If the bank could be stabilized without sheet piling, it would continue to look natural.

Rob agreed that there are a lot of options out there that are tremendously better than what they are proposing, and possibly less expensive too.

Jono added that the county can look at avoidance and minimization. On the site further to the south, the whole structure could just be moved back. They could avoid the need to put a seawall in. It is possible that it would be cheaper and more efficacious to simply move the road over 20 feet.

Jono added that another problem would be if they put anything in the river that is filling in the river area which is prohibited according to 62D-15.

Chris confirmed Jono is correct about 62D-15 and noted that the WMD says there is fill in the river in their permit, which is an ERP, while the DEP permit says that there is not any fill.

Ashley added that when they receive these applications, they ask them to consider alternatives focusing on avoidance and minimization. There will be a public hearing if they continue to proceed with this. Ashley is available to take public comments. They do not have a final set of plans for review and comment yet, but she recommends reaching out to her to express concern and requesting to see a copy of the completed plans. That way a formal comment could be on record and that would be part of the public hearing process. It may be that the applicant could potentially see those comments and decide not to respond to it, but it could be something that at the day of the hearing, when the board has to make a determination, you could come as a public citizen and make comment on whether you are in favor or not and why, and that would weigh into their decision making.

Bob Clark asked if the visibility issue factored into the public versus private debate.

Jono replied that the applicant is claiming that all of their structures are going to be outside of the river area, and consequently, do not have to meet the public interest test. However, the mapping from 1997, suggests it is in the river area.

The section where they are proposing the seawall on the 1997 maps, suggests the county's jurisdiction would start right at the edge of the water and would be a decision up to Sarasota County. Regardless of whether the map says two different things, it is DEP's obligation to go and look at the place and make an official determination based on the soils, vegetation, and the 13 different hydrologic indicators they are supposed to consider. Jono does not think that work took place.

If they would concede that some of their impact was within the river area, they would have to meet the public interest test. He thinks that may have led the applicant to request that they come up with a design that, according to them, avoids the river area and they would only need permits from the county.

Motion:

Becky Ayech motioned that the Council take Jono's position to send FDEP a letter (related to the projected slide with points one and two, on page 10). Steven Schaefer seconded. Trisha Neasman, Greg Blanchard, Stephen Giguere and Jonathon Bennett abstained. Motion passed.

Additional discussion occurred about the noticing from Sarasota County on the project. Becky made a motion about this noticing but rescinded the motion after some discussion.

Lee asked for clarification on submitting comments.

Ashley responded that standard procedure when they have Myakka River variances is to notify the Council of the date of the hearing and send them a set of the plans. She recommends holding off on providing any public comments until the Council is sent the final plans, which she can send to Chris.

Jono asked how much time is between when the plans are finalized, and the variance hearing is held.

Ashley advised that once they have all the information, they can deem the application complete. Then they look ahead and see the Board's schedule; what dates are available. Then the plans go through an internal review process. A Board packet is prepared and then it goes through the directors and attorney before it becomes public. It could take up to a month and a half until the hearing takes place.

Jono replied that it is important that if members of the Council and other members of the public have comments related to this variance, that their comments be included in the board packet. Once it is deemed complete, can the public start submitting comments even though the meeting has not been scheduled.

Ashley replied that she could take comments as early as today, but members may not be making comments on the actual design.

Becky raised concerns about violating the Sunshine Laws.

Jono advised that his understanding is when people that serve on advisory boards appear at another duly advertised meeting, that is proceeding according to Sunshine Laws, that that is not a violation. Anyone can talk to the WMD the same day someone else can talk to the WMD. To clarify, if somebody has a comment about the Sarasota County permitting it should not be viewed that they are corresponding with Ashley Ellis. If a member called Ashley talking about Council business this would be a violation. But, if you are sending official comments about a permit, she's just like an address. It is her role in the county administration that is relevant. People need to be careful that they are not engaging in a conversation with Ashley per se, but they are providing public comment on an ongoing permit.

Flatford Swamp

Becky had Chris send around a document showing what she would like to be actions that the Council might want to take up concerning Flatford Swamp. She received information from SWFWMD that there will be a total of 27 million dollars that the WMD will spend of taxpayer's money to create all of these wells, to inject water into the ground that is illegally leaving the properties of the farms that have been identified by the WMD.

The WMD is not following conditions for issuance of permits. The death and destruction continues to go on as was identified by their dendrologist. No restoration plans are going to be able to occur until the hydrology is fixed. There is no saltwater intrusion in the surficial aquifer, that is not what is being talked about when talking about saltwater intrusion in Flatford Swamp and the District made that clear. There are two diversions that the District wants to do. One diversion is during the supposedly dry season, which is when the lateral seepage is occurring from the irrigation runoff, from the agricultural lands, and then a new one. Becky has advised the Council that the Myakka River has been identified as a potable water source for at least 10 or 15 years.

Becky asked Chris if it is true that the width of the river is determined by the water that is in the river and the vegetation along the edges of the river.

Chris advised that according to 62D-15, the river area is defined as the maximum wetland extent. The river area is maximum wetland extent, in Sarasota County under the jurisdiction of the Wild and Scenic Rule. It is possible for the river area to shrink over time, if the volume of water is greatly reduced.

Becky asked about using the flow during the wet season as a management tool for vegetation within the park.

Chris advised that the FPS considers water levels when attempting controls on invasive fish and invasive vegetation, like invasive grasses. They look at the hydroperiod as a natural stressor, just like fire would have been and fire was reintroduced in some areas of the marsh to help control invasives. Fire and herbicide applications are timed to flooding events and the magnitude and rate of which the flood occurs from. If it is a dry spring season, the quickness of the flood and the level and the length of time of that that first flooding happening is a very important management tool for invasive grasses, but it also could have implications on other things as well.

Becky continued. The WMD has only focused on the water volume that is associated with the headwaters, that being Flatford Swamp. If you were getting a water use permit from the WMD, they would have to look at that withdrawal along with other withdrawals. They have to look at a cumulative withdrawal to see if that one specific withdrawal combined with others, in the way that they determine those others, it will not meet Rule criteria.

Several years ago, Dr. Jelks observed that it was getting drier and we were not getting as much rain in Myakka River State Park. Being downstream of Flatford Swamp, that water diversion from Flatford Swamp is not going to have any effect at the park without looking at all along the river section segments between Flatford Swamp and the park to see how their rainfall events are occurring.

The point of Flatford Swamp was to return it back to the hydrology that it originally had before all the excess water was coming in during the dry season. There was never any discussion in all those meetings I went to about diverting water in the rainy season because there is excess water in the rainy season. Quite frankly, when they talked about diverting water from the Myakka River, I thought they were considering do that down closer to Charlotte Harbor where the river is really wide and there is a lot of water, not up at Flatford Swamp where it is narrow.

The only reason there is a lot of water is that there is a lateral seepage from agriculture. To make a statement that it is not going to have an effect without actually looking at it through the entire river system until it gets to the park and looking at those management tools that they use, she doesn't see how anybody can support that removal of water. That removal of water during the rainy season has been a moving target. At one point, they said it was, 1.4 to 4.7 and then in the documents that they filed in order to get their permit to do their injection it said 10 million gallons. Becky asked for clarification from Lisann and she said it is going to be 10 million gallons of water.

If this test well is successful, then they will have to have four more test wells. There used to be a 10% minimum flowing level that was put on the Peace River, that they could only divert 10% during high flow. Then it was increased to 15%. As growth continues, it does not seem that 10 million gallons will be a satisfactory amount of water. One of the recommendations from the consultants is about what a volume sensitive criteria and a volume sensitive basin would be, and it talks about who usually asks to have that done. It is the counties that generally ask, but as a recognized legislative sanctioned group, who is supposed to offer non-binding opinions, that could be one of the Council's recommendations.

Becky hopes that some of the recommendations she made other Council members will feel strongly about, and send them to the WMD. This has been going on since the 1980s and nothing is getting better. For 27 million dollars, those lands could be purchased or put under conservation easements.

Becky recommends that the District adopt the following two management goals for the Upper Myakka River watershed:

1. Prevent further tree die-off and reverse tree decline in the affected areas.
2. Reduce the volume of water in the Upper Myakka River system.

It is further recommended that the district address these goals through a four-tiered response including: implement reasonable regulatory controls.

A decrease in surface and/or ground water contributions to streamflow and/or basin flow could be achieved through numerous means including: decreasing the pumping and use of ground water for irrigation.

In addition to the resource management actions discussed above, regulatory measures should also be considered to meet the recommended basin management goals. Possible regulatory actions are: designation of the Upper Myakka River basin as a Volume Sensitive basin, followed by formal rule making and amendment of existing water use permits to require greater water conservation and irrigation efficiencies or increased surface water storage volumes.

These recommendations are from the WMD's study of the Upper Myakka River watershed. This is what their staff recommended when the study was done in 1998.

Becky added that Lisann from SWFWMD is willing to come and make a presentation.

Elizabeth recommended hearing from Lisann or Lisann's representative on this issue before the Council votes on anything at this time. These are big recommendations and Elizabeth believes that this coincides with what is already going in as part of their regulatory mandate.

Becky disagreed saying if they were already doing it, then there would not be excess water and tree die off in Flatford Swamp, it would have all been resolved. They have not prevented further tree die off; there is still 10 million gallons of water a day going in during the dry season when there should be none; they have not reduced the volume of water, that is what the whole idea behind the wells are; they have not implemented reasonable regulatory controls because they have not gone into the individual permittees and have changed anything about the way they do this. They have not decreased the pumping and use of groundwater for irrigation.

Elizabeth asked Chris to contact someone from SWFWMD and ask them to make a presentation about Flatford Swamp. She also recommended doing the presentation earlier, so they have time for questions at the end.

Lee stated that he watched the recent SWFWMD board meeting, where they voted on a budget amendment for this first test well, and they had some nice discussion about the project in as much as multiple board members expressed a commitment to pumping water in the dry season. There was a commitment from staff that they would work with the Council and other parties to ensure that the water's pumped at the appropriate times. It seemed that when the board voted, they were voting in good faith that that coordination would occur. He feels that coordination is intended. He asked what the best format of coordination would be. He asked if there was a permit for this on Flatford Swamp and if there is any opportunity for public comment.

Trisha replied that she is not sure but could find out.

Becky replied that there is a permit, but it is only looking at the construction of a test well and no other parameters. She asked Lisann if they had to get a water use permit when they were going to start diverting water from Flatford. Lisann said that they did have to get a water use permit, which comes from DEP.

Trisha mentioned that Lisann is going to be retiring in May and if the Council wants her to make the presentation, to get that lined up before she leaves.

Chris advised he will reach out to her before then to get her scheduled to make a presentation for the Council.

Officer Elections

Becky Ayech nominated Jono Miller to serve as Chair and Elizabeth Wong to serve as Vice Chair. Mike Choinard seconded. No additional nominations were made. Jono and Elizabeth accepted the positions.

Potential New Members

Chris reminded the Council that in previous meetings it was motioned to reach out to the Old Miakka Community Club and Triangle Ranch. He has spoken with Triangle Ranch but has not reached out to Old Miakka yet.

Triangle Ranch is the first ranch upstream on the Myakka as you leave Sarasota County into Manatee County. There is a conservation easement on the entire ranch which runs three and a half miles along the river. Jason McKendree is the ranch manager.

Barbara Lockhart works with the Environmental Conservancy of North Port. It is a small entity working on acquiring vacant lots around North Port, Harbour Heights and Port Charlotte to try to maintain some green space while all of our neighborhoods are being clear cut and developed and more and more populated. Keeping some nature around while people keep moving in. She is interested in pursuing their membership on the Council.

DEP approves new membership on the Council but the Council suggestion any new candidates for review. The Council must make a motion and vote with a majority and Chris will then approach a group for potential approval through an application process.

Motion:

Bob Clark motioned to have the Environmental Conservancy of North Port added to the Council. Becky Ayech seconded. Stephen Giguere, Greg Blanchard, Juliette Jones and Trisha Neasman abstained. Motion passed.

Items for Next Meeting

- Venice Diocese Shoreline Stabilization
- Flatford Swamp
- Wild and Scenic Management Plan

Lee suggested inviting the Manasota Fossil Club to talk about best practices in the fossiling community.

Elizabeth suggested having the Management Plan, the Flatford Swamp presentation and the Diocese of Venice before the organization updates at the next meeting.

Jono added that if there are entities that are reporting that are related to a presentation, they should be given priority over the other organizations for updates.

Juliette asked for a presentation from Elizabeth on the progress of the restoration of the 23 acres on WMS

Becky added that she prefers Friday meetings to Monday meetings.

Steven Schaefer motioned to adjourn the meeting. Elizabeth Wong seconded.

The Meeting was adjourned at 12:35 p.m.

DRAFT