

tion for a hearing is filed, the department shall issue the jurisdictional declaratory statement within 10 days.

(b) Such jurisdictional declaratory statement is binding for a period of 24 months, so long as physical conditions on the site do not change so as to alter jurisdiction during this time period.

(c) A petitioner who disputes the proposed agency action may withdraw the petition without prejudice at any point prior to final agency action.

(d) The department may revoke a jurisdictional declaratory statement if it finds that the petitioner has submitted inaccurate information in the petition.

(2) The department also may issue informal preapplication jurisdictional determinations or otherwise institute jurisdictional determinations on its own initiative as provided by law.

(3) A jurisdictional declaratory statement obtained pursuant to this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable pursuant to s. 120.565.

History.—s. 1, ch. 84-79.

403.916 Local participation in permitting process.

(1) Within 10 days after the receipt of an application for a permit pursuant to ss. 403.91-403.929, the department shall transmit a copy of the application by certified mail to the chief executive officer of each county and each municipality which has jurisdiction over the area for which the permit is requested.

(2) The county and municipality shall have the opportunity to file objections to a short-form dredge and fill permit application within 14 days after receipt of the application from the department, but shall have up to 60 days to file objections to any other dredge and fill permit application. The county and municipality shall have the opportunity to participate as a party to the proceeding and may request a hearing pursuant to s. 120.57 within 14 days after a notice of intent to issue a permit has been sent to the county and municipality by the department.

(3) Nothing in ss. 403.91-403.929 alters or modifies the powers of local government or precludes a local government from adopting a dredge and fill regulatory program, provided the local governmental program is first approved by the department pursuant to s. 403.182.

History.—s. 1, ch. 84-79.

403.918 Criteria for granting or denying permits.—

(1) A permit may not be issued under ss. 403.91-403.929 unless the applicant provides the department with reasonable assurance that water quality standards will not be violated. The department, by rule, shall establish water quality criteria for wetlands within its jurisdiction, which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

(2) A permit may not be issued under ss. 403.91-403.929 unless the applicant provides the department with reasonable assurance that the project is not contrary to the public interest. However, for a project which significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the project will be clearly in the public interest.

(a) In determining whether a project is not contrary to the public interest, or is clearly in the public interest, the department shall consider and balance the following criteria:

1. Whether the project will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the project will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the project will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the project will adversely affect the fishing or recreational values or marine productivity in the vicinity of the project;

5. Whether the project will be of a temporary or permanent nature;

6. Whether the project will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and

7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects which may be caused by the project. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. Reclamation and restoration programs conducted pursuant to s. 211.32 may be considered as mitigation to the extent that they restore or improve the water quality and the type, nature, and function of biological systems present at the site prior to the commencement of mining activities.

(3) It is the intent of the Legislature to provide for the use of certain waters as a natural means of stormwater management and to incorporate these waters into comprehensive stormwater management systems when such use is compatible with the ecological characteristics of such waters and with sound resource management. To accomplish this, within 6 months following October 1, 1984, the department shall, by rule, establish performance standards for the issuance of stormwater permits for the use of certain waters for stormwater management. The compliance with such standards creates a presumption in favor of the issuance of the stormwater management permit. Performance standards shall be adopted for waters which are dominated by those plant species listed pursuant to s. 403.817 and:

(a) Which are connected to other watercourses by artificial watercourse, or

(b) Which are connected to other waters solely by an intermittent watercourse.

(4) It is the intent of the Legislature to provide for the use of certain waters that are dominated by those plant species that are listed pursuant to s. 403.817 to receive and treat domestic wastewater that at a minimum has

been treated to secondary standards. No later than December 31, 1985, the department shall, by rule, establish criteria for this activity, which criteria protect the type, nature, and function of the wetlands receiving the wastewater.

(5)(a) It is the intent of the Legislature to protect estuaries and lagoons from the damage created by construction of vertical seawalls and to encourage construction of environmentally desirable shore protection systems, such as riprap and gently sloping shorelines which are planted with suitable aquatic and wetland vegetation.

(b) No permit for dredging or filling or other construction to create a vertical seawall may be issued by the department unless one of the following conditions exists:

1. The proposed construction is located within a port as defined in s. 315.02 or s. 403.021;

2. The proposed construction is necessary for the creation of a marina, the vertical seawalls are necessary to provide access to watercraft, or the proposed construction is necessary for public facilities;

3. The proposed construction is located within an existing manmade canal and the shoreline of such canal is currently occupied in whole or in part by vertical seawalls; or

4. The proposed construction is to be conducted by a public utility when such utility is acting in the performance of its obligation to provide service to the public.

(c) When considering an application for a permit to repair or replace an existing vertical seawall, the department shall generally require such seawall to be faced with riprap material, or to be replaced entirely with riprap material unless a condition specified in subparagraph 1., subparagraph 2., subparagraph 3., or subparagraph 4. of paragraph (b) exists.

(d) This subsection shall in no way hinder any activity previously exempt or permitted or those activities permitted pursuant to chapter 161.

History.—s. 1, ch. 84-78; ss. 70, 71, ch. 84-338; s. 8, ch. 85-288; s. 4, ch. 85-334.

403.919 Considerations in granting or denying permit for activity that will affect waters.—The department, in deciding whether to grant or deny a permit for an activity which will affect waters, shall consider:

(1) The impact of the project for which the permit is sought.

(2) The impact of projects which are existing or under construction or for which permits or jurisdictional determinations have been sought.

(3) The impact of projects which are under review, approved, or vested pursuant to s. 380.06, or other projects which may reasonably be expected to be located within the jurisdictional extent of waters, based upon land use restrictions and regulations.

History.—s. 1, ch. 84-79.

403.92 Notice of intent to deny a permit or notice of denial of a permit; contents.—In the event that the department issues a notice of intent to deny a permit or denies a permit required pursuant to ss. 403.91-403.929, such notice or denial shall contain an explanation by the department of the reasons for denial and an explanation, in general terms, of what changes, if any, in the permit

application are necessary in order for the department to approve the proposed project.

History.—s. 1, ch. 84-79.

403.921 Permits; duration; fees.—

(1)(a) A permit issued under ss. 403.91-403.929 shall be valid for a period not to exceed 10 years. However, the department may issue a permit for a period not to exceed 25 years if the applicant provides the department with reasonable assurances that:

1. The activity for which the permit is granted cannot reasonably be expected to be completed within 10 years after commencement of construction; or

2. The activity for which the permit is granted will cover an area of such size that it would not allow the department to accurately assess the total impact of the project and the potential for mitigation or restoration, if permitted by separate permits;

and the applicant supplies the department with sufficient information to allow the department to accurately assess the impact of the project for the permitted period.

(b) Notwithstanding the provisions of chapter 120, the department shall adopt by rule a timetable for processing permits which will be granted for periods of more than 10 years. In no event shall the timetable exceed 135 days after receipt of a complete application.

(c) Every permit issued for a period of time in excess of 5 years shall be reviewed at the expiration of the first 5-year period and every 5 years thereafter:

1. To ensure that the conditions of the permit are being met by the applicant, and

2. To automatically include as permit conditions all applicable rules adopted during the prior 5-year period. If the permit applicant has acted in reliance upon a permit which was issued for a period of 10 years or more, this subparagraph will not apply until the expiration of the initial 10-year period.

(d) This subsection does not apply to any permit issued pursuant to s. 403.813(1)(f) or s. 403.816.

(2) The department is authorized to establish a sliding scale of appropriate fees for projects which seek permits for a period of time which exceeds 5 years, based on the duration of the permit, with a minimum fee of \$1,250 and a maximum fee of \$25,000. Such funds shall be deposited in the Florida Permit Fee Trust Fund created by s. 403.0871.

History.—s. 1, ch. 84-79.

403.922 Applications for activities on state sovereignty lands or other state lands.—If sovereignty lands or other lands owned by the state are the subject of a proposed activity, the issuance of a permit by the department shall be conditioned upon the receipt by the applicant of all necessary approvals and authorizations from the Board of Trustees of the Internal Improvement Trust Fund prior to the undertaking of such activity. The department shall issue its permit conditioned upon the securing of the necessary consent or approvals from the Board of Trustees of the Internal Improvement Trust Fund by the applicant. If the approval or authorization of the board is required, the applicant may not commence any excavation, construction, or other activity until such

approval or authorization has been issued.

History.—s. 1, ch. 84-79.

403.923 Effect of issuance of permit on need to obtain other permits under this chapter.—The issuance of a permit under ss. 403.91-403.929 does not relieve the applicant from the requirement of obtaining any other permit which may be required under the other provisions of this chapter.

History.—s. 1, ch. 84-79.

403.924 Enforcement of ss. 403.91-403.929.—

(1) A violation of the requirements of ss. 403.91-403.929 or a rule, permit, or order issued hereunder by the department or of an approved local program is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

(2) The department or any approved local program may seek to enjoin the violation of or to enforce compliance with the provisions of ss. 403.91-403.929, or any rule, permit, or order issued hereunder, as provided in ss. 403.121, 403.131, 403.141, and 403.161.

(3) A permit issued under ss. 403.91-403.929 may be revoked upon the same grounds as are provided in s. 403.087.

(4) The department or the Board of Trustees of the Internal Improvement Trust Fund has the authority to direct an abutting upland owner to remove from submerged sovereignty lands or state-owned lands any fill created in violation of ss. 403.91-403.929, except that the department or the board may consider the time at which the submerged land was filled, the length of upland ownership by the current owner, and any other equitable consideration. In the event that the abutting upland owner does not remove such fill as directed, the department or board may remove it at its own expense, and the costs of removal will become a lien upon the property of such abutting upland owner. However, the department and board may, if they choose, allow such fill to remain as state-owned land and may employ a surveyor to determine the boundary between such state land and that of the abutting upland owner. The amount of the cost of such survey will become a lien on the property of the abutting upland owner. Nothing herein may be construed to grant the department or the board authority to direct an upland owner to adjust, alter, or remove silt, fill, or other solid material which has accumulated or has been deposited seaward of his property, through no fault of the owner.

History.—s. 1, ch. 84-79.

403.925 Review of departmental action.—Final actions of the department under ss. 403.91-403.929 shall be reviewed pursuant to chapter 120.

History.—s. 1, ch. 84-79.

403.927 Use of water in farming and forestry activities.—

(1) The Legislature recognizes the great value of farming and forestry to this state and that continued agricultural activity is compatible with wetlands protection. In order to avoid unnecessary expense and delay from duplicative programs, it is the intent of the Legislature to provide for the construction and operation of agricul-

tural water management systems under authority granted to water management districts and to control, by the department or by delegation of authority to water management districts, the ultimate discharge from agricultural water management systems.

(2) Agricultural activities and agricultural water management systems are authorized by this section and are not subject to the provisions of s. 403.087 or ss. 403.91-403.929, nor shall the department enforce water quality standards within an agricultural water management system. The department may require a stormwater permit or appropriate discharge permit at the ultimate point of discharge from an agricultural water management system or a group of connected agricultural water management systems. Impacts of agricultural activities and agricultural water management systems on groundwater quality shall be regulated by water management districts.

(3) If land served by a water management system is converted to a use other than an agricultural use, the water management system, or the portion of the system which serves that land, will be subject to the provisions of this chapter.

(4) As used in this section, the term:

(a) "Agricultural activities" includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, harvesting, construction of access roads, and placement of bridges and culverts, provided such operations do not impede or divert the flow of surface waters.

(b) "Agricultural water management systems" means farming and forestry water management or irrigation systems and farm ponds which are permitted pursuant to chapter 373 or which are exempt from the permitting provisions of that chapter.

History.—s. 1, ch. 84-79.

403.929 Wetlands monitoring system.—

(1) The department, in cooperation with the water management districts and other state agencies, shall establish a central wetlands monitoring system that will:

(a) Determine the general location and acreages of wetland areas in the state.

(b) Identify impacts to and losses of wetlands due to permits issued by either the department or the water management districts and identify known losses of wetlands from unregulated or exempted activities or from changes in natural conditions.

(c) Compile and maintain a statistical record of all action taken on permits, including the number granted, denied, or withdrawn; the area permitted to be disturbed; and, where applicable, the acreage preserved or restored as a result of mitigation or permit conditions.

(2) It is the intent of the Legislature that the department utilize existing, available information to the greatest extent practicable in developing this inventory of wetlands, including Landsat digital data, federal agency data, and data currently in the possession of the department, the water management districts, and other state, regional, or local agencies. The department shall annually prepare a report reflecting the information requested

in paragraphs (1)(b) and (c), to be delivered to the Legislature on or before February 1 of each year. The information contained in this report shall not be used for regulatory purposes.

History.—s. 1, ch. 84-79; s. 57, ch. 85-81.

403.93 Definitions of terms used in ss. 403.93-403.938.—For the purposes of ss. 403.93-403.938, the term:

(1) "Alter" means to cut, remove, defoliate, or otherwise destroy but does not mean selective trimming which does not eliminate the biological integrity of the individual plant.

(2) "Mangrove" means any specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).

History.—s. 50, ch. 84-338.

403.931 Alteration of mangroves; permit procedure.—

(1) No person may alter or cause to be altered any mangrove in waters where a permit is required for dredging or filling except pursuant to a permit issued by the department or as otherwise provided by ss. 403.93-403.938. Any violation of this section shall be presumed to have occurred with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property upon which such violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.

(2) No separate application is required for an alteration permit if the alteration is addressed in an application for a dredge or fill permit or certification or application for boat dock or walkway under this chapter; the procedures for dredge or fill permitting will control in such instances.

(3) The department shall adopt a general permit in accordance with s. 403.814, which permit authorizes the alteration of mangroves in accordance with procedures designed to protect the integrity of mangrove trees.

(4) The provisions of ss. 403.93-403.938 do not apply to any alteration that was addressed in a dredge and fill application which was complete prior to July 1, 1984, unless the applicant chooses to come under this act.

(5) Notwithstanding the provisions in subsection (3), a landowner has the right to selectively trim individual mangrove plants in order to better enjoy the coastal water vistas and other aesthetic qualities associated with the ownership of riparian lands.

History.—s. 51, ch. 84-338.

403.932 Exceptions and authorized alterations of mangroves.—The provisions of this act do not apply to:

(1) The alteration of mangrove trees by a duly constituted communication, water, sewerage, electrical, or other utility company or a federal, state, or county agency, or engineers or surveyors working under a contract with such utility company or agency, when such alteration is done as a governmental function of such agency.

(2) The alteration of mangrove trees by a duly constituted communication, water, sewerage, electrical, or other utility company in or adjacent to a public or private easement or right-of-way, provided such alteration is limited to those areas where it is necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its customers and provided such alteration is conducted so as to avoid any unnecessary alteration of mangrove trees.

(3) The alteration of mangrove trees by a duly constituted communication, water, sewer, or electrical utility company on the grounds of a water treatment plant, sewage treatment plant, or electric power plant or substation in furtherance of providing utility service to its customers, provided such alteration is conducted so as to avoid any unnecessary alteration of mangrove trees.

(4) The alteration of a mangrove tree by a state-licensed land surveyor in the performance of his duties provided such alteration is to individual trees. The alteration of mangrove trees by a surveyor, which alteration requires trimming a swath greater than 3 feet in width requires approval by the department prior to such alteration.

History.—s. 58, ch. 84-338.

403.933 Alteration of mangroves; criteria.—By June 1, 1985, the department shall adopt a rule which specifies criteria for altering mangroves and a procedure for issuing permits to do so. Such criteria shall be based solely upon the dredge and fill permit criteria set forth in this chapter.

History.—s. 54, ch. 84-338.

403.935 Restoration of unlawfully altered mangroves.—In the event that a violator does not restore altered mangroves to the standards of the Department of Environmental Regulation, the department may restore the altered mangroves at its own expense, and the cost of the restoration will become a lien upon the property of the violator.

History.—s. 52, ch. 84-338.

403.936 Enforcement of provisions relating to mangroves.—The responsibility of the department for the enforcement of the provisions of ss. 403.93-403.938 shall be pursuant to ss. 403.141 and 403.161.

History.—s. 53, ch. 84-338.

403.938 Variance relief.—Upon application, the department may grant a variance from the provisions of ss. 403.93-403.938 if compliance therewith would impose a unique and unnecessary hardship on the owner or any other person in control of the affected property. Relief may be granted only upon demonstration that such hardship is peculiar to the affected property and is not self-imposed and that the grant of the variance will be consistent with the general intent and purpose of ss. 403.93-403.938. The department may grant variances as it deems appropriate.

History.—s. 55, ch. 84-338.

(b) Under the approach taken in the formulation of the rules adopted in this proceeding:

1. These revisions to Chapters 17-3, 17-4 and adoption of Chapter 17-6, F.A.C., are based upon the best scientific knowledge related to the protection of the various designated uses of waters of the State; and

2. The mixing zone, zone of discharge, site specific alternative criteria, exemption, and equitable allocation provisions are designed to provide an opportunity for the future consideration of factors relating to localized situations which could not adequately be addressed in this proceeding, including economic and social consequences, attainability, irretrievable conditions, natural background, and detectability.

(c) This is an even-handed and balanced approach to attainment of water quality objectives. The Commission has specifically recognized that the social, economic and environmental costs may, under certain special circumstances, outweigh the social, economic and environmental benefits if the numerical criteria are enforced statewide. It is for that reason that the Commission has provided for mixing zones, zones of discharge, site specific alternative criteria, exemptions and other provisions in Chapters 17-3, 17-4, and 17-6, F.A.C. Furthermore, the continued availability of the moderating provisions is a vital factor providing a basis for the Commission's determination that water quality standards applicable to water classes in the rule are attainable taking into consideration environmental, technological, social, economic and institutional factors. The companion provisions of Chapters 17-4 and 17-6, F.A.C., approved simultaneously with these Water Quality Standards are incorporated herein by reference as a substantive part of the State's comprehensive program for the control, abatement and prevention of water pollution.

(d) Without the moderating provisions described in (b)(2), above, the Commission would not have adopted the revisions described in (b)(1), above nor determined that they are attainable as generally applicable water quality standards.

Specific Authority: 403.061, 403.062, 403.087, 403.504, 403.704, 403.804, 403.805, F.S.
Law Implemented: 403.021, 403.061, 403.085, 403.086, 403.087, 403.101, 403.141, 403.161, 403.182, 403.502, 403.702, 403.708, 403.802, F.S.
History: Formerly 28-5.01, 17-3.01, Amended and Renumbered 3-1-79, Amended 2-1-83.

17-3.020 Minimum Conditions of All Waters, Times and Places.

Specific Authority: 403.061, F.S.

Law Implemented: 403.021, 403.031, 403.061, 403.101(1), F.S.

History: Formerly 28-5.02, Amended 10-28-70, Amended and Renumbered as 17-3.051, 3-1-79.

PART II DEFINITIONS

17-3.021 Definitions.

(1) "Acute Toxicity" shall mean the presence of one or more substances or characteristics or components of substances in amounts which:

(a) Are greater than one-third (1/3) of the amount lethal to 50% of the test organisms in 96 hours (96 hr LC50) where the 96 hr LC50 is the lowest value which has been determined for a species significant to the indigenous aquatic community; or

(b) May reasonably be expected, based upon evaluation by generally accepted scientific methods, to produce effects equal to those of the concentration of the substance specified in (a) above.

(2) "Aquifer" shall mean a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells, springs or surface water.

(3) "Background" shall mean the condition of waters in the absence of the activity or discharge under consideration, based on the best scientific information available to the Department.

(4) "Chronic Toxicity" shall mean the presence of one or more substances or characteristics or components of substances in amounts which:

(a) Are greater than one-twentieth (1/20) of the amount lethal to 50% of the test organisms in 96 hrs (96 hr LC50) where the 96 hr LC50 is the lowest value which has been determined for a species significant to the indigenous aquatic community; or

(b) May reasonably be expected, based upon evaluation by generally accepted scientific methods, to produce effects equal to those of the concentration of the substance specified in (a) above.

(5) "Commission" shall mean the Environmental Regulation Commission.

(6) "Compensation Point for Photosynthetic Activity" shall mean the depth at which one percent of the light intensity at the surface remains unabsorbed. The light intensities at the surface and subsurface shall be measured simultaneously by irradiance meters such as the Kahlesco Underwater Irradiometer, Model No. 268 WA 310 or other devices having a comparable spectral response.

(7) "Confined Aquifer" shall mean an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself.

(8) "Department" shall mean the Department of Environmental Regulation.

(9) "Designated Use" shall mean the present and future most beneficial use of a body of water as designated by the Environmental Regulation Commission by means of the classification system contained in this Chapter.

(10) "Dominance" shall mean the presence of species or communities in greater numbers, biomass, or areal extent than competing species or communities, or a scientifically accepted tendency of species or communities to achieve such a status under existing or reasonably anticipated conditions.

(11) "Effluent Limitation" shall mean any restriction established by the Department on quantities, rates or concentrations of chemical, physical, biological or other constituents which are discharged from sources into waters of the State.

(12) "Exceptional Ecological Significance" shall mean that a water body is a part of an ecosystem of unusual value. The exceptional significance may be in unusual species, productivity, diversity, ecological relationships, ambient water quality, scientific or educational interest, or in other aspects of the ecosystem's setting or processes.

(13) "Exceptional Recreational Significance" shall mean unusual value as a resource for outdoor recreation activities. Outdoor recreation activities include, but are not limited to, fishing, boating, canoeing, water skiing, swimming, scuba diving, or nature observation. The exceptional significance may be in the intensity of present recreational usage, in an unusual quality of recreational experience, or in the potential for unusual future recreational use or experience.

(14) "Ground water" shall mean water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels.

(15) "Landward extent of waters of the state as defined prior to October 1, 1984" is, pursuant to Section 403.817, F.S., that portion of a surface water body indicated by the presence of one or a combination of the following as the dominant species:

Submerged Marine species:

Batis
Big cordgrass
Black mangrove
Black rush
Cuban shoalweed
Leather fern
Manatee grass
Red mangrove
Rubber vine
Smooth cordgrass
Turtle grass
Widgeon grass
White mangrove

Batis maritima
Spartina cynosuroides
Avicennia germinans
Juncus roemerianus
Diplanthera (Halodule) wrightii
Acrostichum aureum
Syringodium filiformis
Rhizophora mangle
Rhabdadenia biflora
Spartina alterniflora
Thalassia testudinum
Ruppia maritima
Laguncularia racemosa

Submerged Freshwater species:

Alligator weed
Arrowhead
Arrowroot lily
Bald cypress
Beak rush
Bladder wort
Blue green algal mats
Bullrush
Cattail
Coontail

Alternanthera philoxeroides
Sagittaria spp.
Thalia geniculata
Taxodium distichum
Rhynchospora tracyi
Utricularia vulgaris
Scirpus americanus
Scirpus validus
Typha latifolia
Typha angustifolia
Typha domingensis
Ceratophyllum demersum

17-3-021(12) -- 17-3.021(15)

Duck weed
Florida elodea
Golden club
Leather fern
Maiden cane
Naiad
Ogeche tupelo
Pickerelweed
Pond apple
Pond cypress
Pondweed
Royal fern
Saw grass
Spatter dock
Spike rush
Soft rush
Swamp lily
Swamp tupelo
Tape grass
Water ash
Water fern
Water hyssop
Water lily
Water shield
Water tupelo
Water willow

Lemna spp.
Hydrilla verticillata
Orontium aquaticum
Acrostichum danaeifolium
Panicum hermitomom
Najas spp.
Nyssa ogeche
Pontederia lanceolata
Annona glabra
Taxodium ascendens
Potamogeton ilinoensis
Osmunda regalis
Cladium jamaicensis
Nuphar spp.
Eleocharis cellulosa
Juncus effusus
Crinum americanum
Nyssa biflora
Vallisneria neotropicalis
Fraxinus caroliniana
Salvinia rotundifolia
Bacopa caroliniana
Nymphaea spp.
Brasenia schreberi
Nyssa aquatica
Justicia ovata

or that portion of a surface water body up to the waterward first fifty (50) feet or the waterward quarter (1/4) of the entire area, whichever is greater, where one or a combination of the following are the dominant species:

Transitional Marine species:

Aster
Beach carpet
Button wood
Glasswort Annual
Glasswort Perennial
Key grass
Salt grass
Sea blite
Sea daisy
Sea grape
Sea lavender
Sea purslane
Switch grass
Railroad vine
Button bush
Dahoon

Aster tenuifolius
Philoxerus vernicularis
Concarpus erecta
Salicornia bigelovii
Salicornia virginica
Monanthochloe littoralis
Distichlis spicata
Suaeda lindaris
Borrchia frutescens
Borrchia arborescens
Coccoloba uvifera
Limonium carolinianum
Sesuvium portulacastrum
Spartina patens
Ipomoea pes-caprae
Cephalanthus occidentalis
Ilex cassine

Transitional Freshwater species:

17-3.021(15)

Giant reed
Primrose willow
St. John's wort
Switch grass
Willow

Phragmites communis
Ludwigia peruviana
Hypericum fasciculatum
Panicum virgatum
Salix caroliniana

(16) "Landward extent of waters of the state" is, pursuant to Section 403.817, F.S., that portion of a surface water body indicated by the presence of one or a combination of the species listed in Section 17-3.022, F.A.C., as the dominant species as determined pursuant to Section 17-3.022, F.A.C.

(17) "Man-induced conditions which cannot be controlled or abated" shall mean conditions that have been influenced by human activities, and

(a) would remain after removal of all point sources,

(b) would remain after imposition of best management practices for non-point sources, and

(c) cannot be restored or abated by physical alteration of the water body, or there is no reasonable relationship between the economic, social and environmental costs and the benefits of restoration or physical alteration.

(18) "Natural Background" shall mean the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The establishment of natural background for an altered waterbody may be based upon a similar unaltered waterbody or on historical pre-alteration data.

(19) "Nuisance Species" shall mean species of flora or fauna whose noxious characteristics or presence in sufficient number, biomass, or areal extent may reasonably be expected to prevent, or unreasonably interfere with, a designated use of those waters.

(20) "Nursery Area of Indigenous Aquatic Life" shall mean any bed of the following aquatic plants, either in monoculture or mixed: Halodule spp., Halophila engelmannii, Potamogeton spp. (pondweed), Ruppia maritima (wideopen-grass), Sagittaria spp. (arrowhead), Syringodium filiforme (manatee-grass), Thalassia testudinum (turtle grass), or Vallisneria spp. (eel-grass), or any area used by the early-life stages, larvae and post-larvae, of aquatic life during the period of rapid growth and development into the juvenile states.

(21) "Pollution" shall mean the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of air or water in quantities or levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, including outdoor recreation.

(22) "Predominantly Fresh Waters" shall mean surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter.

17-3.021(15) -- 17-3.021(22)

(23) "Predominantly Marine Waters" shall mean surface waters in which the chloride concentration at the surface is greater than or equal to 1,500 milligrams per liter.

(24) "Propagation" shall mean reproduction sufficient to maintain the species' role in its respective ecological community.

(25) "Secretary" shall mean the Secretary of the Department of Environmental Regulation.

(26) "Shannon-Weaver Diversity Index" shall mean: negative summation (from 1-1 to s) of $(n_i/N) \log_2 (n_i/N)$ where s is the number of species in a sample, N is the total number of individuals in a sample, and n_i is the total number of individuals in species i.

(27) "Single source aquifer" shall mean an aquifer or a portion of an aquifer which, pursuant to Sections 17-3.403(5) & (6), F.A.C., is determined by the Commission to be the only reasonably available source of potable water to a significant segment of the population.

(28) "Site" shall mean the area within an installation's property boundary where effluents are released or applied to the ground water.

(29) "Special Waters" shall mean water bodies designated in accordance with Section 17-3.041, F.A.C., by the Environmental Regulation Commission for inclusion in the Special Waters Category of Outstanding Florida Waters, as contained in Section 17-3.041, F.A.C. A Special Water may include all or part of any water body.

(30) "Surface Water" means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

(31) "Unconfined Aquifer" shall mean an aquifer other than a confined aquifer.

(32) "Waters" shall be as defined in Section 403.031(3), Florida Statutes.

(33) "Zone of Discharge" shall mean a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded.

(34) "Zone of Mixing" or "Mixing Zone" shall mean a volume of surface water containing the point or area of discharge and within which an opportunity for the mixture of wastes with receiving surface waters has been afforded.

(35) "Zone of Saturation" shall mean a subsurface zone in which all of the Interstices are filled with water.

Specific Authority: 403.061, 403.062, 403.087, 403.504, 403.704, 403.804, 403.805, F.S.

Law Implemented: 403.021, 403.031, 403.061, 403.085, 403.086, 403.087, 403.088, 403.502, 403.802, F.S.

History: Formerly 28-5.12, 17-3.12, Amended and Renumbered 3-1-79, Amended 1-1-83, 2-1-83, 4-26-87, 8-30-88

17-3.021(23) -- 17-3.021(History)

17-3.022 Determination of the Landward Extent of Surface Waters of the State.

(1) The line demarcating the landward extent of surface waters, as defined in Section 403.031, F.S., shall be established for any water body, pursuant to Section 403.817, F.S., by dominant plant species. Dominance shall be determined in a plant stratum (canopy, subcanopy, or ground cover). The canopy is composed of all woody plants with a trunk 4 inches or greater in diameter at breast height (dbh). Dbh is measured at 4.5 feet above the ground. The subcanopy is composed of all woody plants with a trunk or stem dbh between 1 and 4 inches and a height greater than 3 feet. The ground cover includes all other plants. The top stratum shall be used in the determination of dominance unless the top stratum constitutes less than 10% areal extent or unless a preponderance of the evidence establishes that the top stratum is not indicative of normal hydrologic conditions, for example, as a result of artificial alteration. In these cases a more representative stratum shall be used. The burden of proof shall be with the party asserting that a stratum other than the top stratum should be used to determine dominance.

(a) The existence of a surface water, as defined in Section 403.031, F.S., shall first be identified. Vegetation shall then be inspected moving landward. In all cases the Department shall attempt to locate the line demarcating the landward extent of waters of the state by visual methods or by aerial photointerpretation. The line demarcating the landward extent of the waters shall be the boundary of the area where, using the submerged and transitional species listed in paragraphs (2) and (3) below:

1. the areal extent of submerged and transitional species or any combination thereof, in the selected stratum, is greater than 50% of all the plant species for that stratum, and
 2. the areal extent of the submerged species in the selected stratum is greater than 10% of the areal extent of all the plant species in that stratum, and
 3. the areal extent of the submerged species in the selected stratum is greater than the areal extent of upland species in that stratum.
- (b) The landward extent of a surface water shall include any other area where:
1. the areal extent of the transitional species in the selected stratum is greater than 80% of all the plant species in that stratum, and
 2. the areal extent of the submerged species in the selected stratum is less than 10% of all the plant species in that stratum, and
 3. the areal extent of the upland species in the selected stratum is less than 10% of all the plant species in that stratum, and
 4. the Department establishes by competent, substantial evidence by using such factors as hydrology, swollen buttresses, lichen lines, or other indicators that the area is subject to regular and periodic inundation.

17-3.022(1) -- 17-3.022(1Xb)4.

(c) If the line demarcating the landward extent of waters of the state cannot be determined visually or by aerial photointerpretation, the following methods shall be used in a manner that ensures sufficient representative data will be generated. The percentages generated shall be substituted for areal extent in paragraph (a) or (b) above.

1. In areas where a canopy is used, a series of belt transects shall be established and divided into intervals. Dominance will be determined by relative basal area. Relative basal area in the canopy shall be recorded as submerged, transitional or upland within each interval as follows:

$$\text{Relative Basal Area} = \frac{\text{Total basal area of submerged, transitional or upland species}}{\text{Total basal area of all species}} \times 100$$

2. In areas where a subcanopy is used, a series of belt transects shall be established and divided into intervals. Within each interval the percentages of submerged, transitional, or upland species shall be determined by relative density using the formula below:

$$\text{Relative Density} = \frac{\text{Number of individuals of submerged, transitional or upland species}}{\text{Total number of individuals}} \times 100$$

3. In areas where a ground cover is used, either of the following methods shall be used:

a. A series of line transects shall be established and ground cover shall be sampled in 0.25 square meter plots at interval points. There shall be a sufficient number of plots to determine accurately the line demarcating the landward extent of waters of the state. Within each plot the percentages of submerged, transitional or upland species shall be determined visually by cover, or the number of individuals categorized as submerged, transitional or upland shall be counted and results expressed as percentages of the total number of individuals within that plot; or

b. A series of line transects shall be established, divided into appropriate intervals, and ground cover shall be determined by measuring the linear portion of each interval (at the ground surface) occupied by plants categorized as submerged, transitional or upland. These measurements by category shall then be expressed as a percentage of the total measurements of vegetative cover within each interval.

17-3.022(1Xc) -- 17-3.022(1Xc)3.b.

(d) Methods other than those described above may be used as long as the Department and the applicant both agree, in writing, to the method used. If both parties agree to use more than one stratum, the following methods for a combination of strata shall be used in a manner to ensure that sufficient representative data will be generated. The methods described in subparagraphs (c)1., 2., and 3. shall be used for the appropriate strata. The percentages obtained shall be added and the sum divided by the number of strata examined. The number generated by this procedure shall be substituted for area extent in paragraph (a) or paragraph (b) above. When a combination of strata is used, the following shall be added to Rule 17-3.022(2), Florida Administrative Code:

Blechnum serrulatum swamp fern
Carex leptalea sedge
Carex stipitata sedge
Crataegus viridis green haw
Osmunda spp. osmunda ferns
Pluchea spp. marsh fleabanes
Woodwardia spp. chain ferns

Concurrently the following shall be added to Rule 17-4.022(3), Florida Administrative Code:

Axonopus furcatus big carpet grass
Flaveria spp. yellowtops
Metopium toxiferum poison tree
Myrica cerifera wax myrtle
Sabal minor dwarf palmetto
Symplocos tinctoria horse sugar

(7)

Submerged Species:
Alisma subcordatum
Alnus serrulata
Alternanthera philoxeroides
Amaranthus australis
Annona glabra
Aster carolinianus
Aster ellipticus
Aster subulatus
Aster tenuifolius
Avicennia germinans
Azolla caroliniana
Bacopa spp.
Batis maritima
Betula nigra
Bidens laevis
Bidens mitis
Borreria arborescens
Borreria frutescens

leather ferns
water plantain
hazel alder
alligator weed
pigweed
pond apple
climbing aster
aster
aster
saltmarsh aster
black mangrove
mosquito fern
water hyssops
saltwort
river birch
bur-marigold
bur-marigold
sea daisy
sea daisy

17-3.022(1)(d) -- 17-3.022(2)

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Brachelyma spp. water moss
Brasenia schreberi water shield
Cabomba caroliniana fanworts
Canna spp. cannas
Carex decomposita sedge
Carex howei sedge
Carex walteriana sedge
Cephalanthus occidentalis buttonbush
Ceratophyllum spp. hornworts
Ceratopteris spp. floating ferns
Chamaecyparis spp. white cedars
Chara spp. musk grasses
Cicuta mexicana water hemlock
Cladium Jamaicense saw-grass
Colocasia esculenta wild taro
Coreopsis nudata tickseed
Crataegus aestivalis apple haw
Crataegus marshallii parsley haw
Crinum americanum swamp lily
Cyperus alternifolius umbrellia flatsedge
Cyperus articulatus umbrellia sedge
Cyperus haspan flat sedge
Decodon verticillatus swamp loosestrife
Distichlis spicata saltgrass
Echinodorus spp. burheads
Egeria densa waterweed
Eichhornia crassipes water hyacinth
Eleocharis spp. spikerushes
Elodea spp. waterweeds
Eriocaulon spp. hat-pins
Fimbristylis, all species fringe-rushes
 except: F. annua
F. puberula
F. spathacea
Fontinalis spp. water mosses
Fraxinus, all species ashes
 except: F. americana
Fuirena scirpoides rush
Fuirena squarrosa lake rush
Gordonia lasianthus loblolly bay
Habenaria repens water-spider orchid
Hibiscus grandiflorus big rose-mallow
Hydrilla verticillata hydrilla
Hydrochloa carolinensis watergrass

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Hydrocotyle ranunculoides
Hydrotea spp.
Hydrophila lacustris
Hydrophila polysperma
Hymenocallis spp.
Hypericum chapmanii
Hypericum lissochloae
Hypericum nitidum
Ilex cassine
Ilex myrtifolia
Iris hexagona
Iris virginica
Itea virginica
Iva, all species
 except: I. imbricata
Juncus spp.
Justicia americana
Justicia ovata
Kosteletzkya spp.
Lachnocaulon, all species
 except: L. anceps
L. digynum
Laguncularia racemosa
Leersia spp.
Lemna spp.
Leptodictyonum spp.
Lilaeopsis spp.
Limnolobium spongia
Limnolobium carolinianum
Limnolobium dubia
Lindernia grandiflora
Litsea aestivalis
Lobelia cardinalis
Lobelia glandulosa
Ludwigia, all species
 except: L. hirtella
L. maritima
L. virginica
Magnolia virginiana
Mikania scandens
Monanthochloa littoralis
Muhlenbergia capillaris
Muhlenbergia schreberi
Myriophyllum spp.
Najas spp.
Nasturtium spp.

swamp loosestrife
 sky flower
 lake hygrophylla
 East Indian hygrophylla
 spider lilies
 St. John's wort
 St. John's wort
 St. John's wort
 dahoon
 myrtle-leaved holly
 anglepod blue flag
 southern blue flag
 Virginia willow
 marsh elders
 bog rushes
 water willow
 water willow
 marsh-mallow
 bog buttons
 white mangrove
 southern cutgrass
 duckweeds
 water moss
 lilaeopsis
 frog's bit
 sea lavender
 false pimpernel
 false pimpernel
 pond-spice
 cardinal-flower
 lobelia
 ludwigias
 sweet bay
 climbing hempvine
 key grass
 gulf muhly
 nimblewill
 water milfoils
 water naiads
 water cresses

Nelumbo spp.
Nitella spp.
Nuphar spp.
Nymphaea spp.
Nymphoides spp.
Nyssa aquatica
Nyssa ogeche
Nyssa sylvatica var. biflora
Oenothera aquatica
Osmunda regalis
Oxypolis filiformis
Panicum gymnocarpon
Panicum hemitomon
Panicum rigidulum
Paspalum distichum
Paspalum repens
Peltandra spp.
Persea palustris
Phragmites australis
Pinckneya bracteata
Pistia stratiotes
Planera aquatica
Polygonum spp.
Pontederia spp.
Populus heterophylla
Potamogeton spp.
Proserpinaca spp.
Quercus lyrata
Rhexia parviflora
Rhexia salicifolia
Rhizophora mangle
Rhynchospora corniculata
Rhynchospora divergens
Rhynchospora inundata
Rhynchospora microcarpa
Rhynchospora millicacea
Rhynchospora mixta
Rhynchospora tracyi
Rosa palustris
Ruppia maritima
Sabatia dodecandra
Sagittaria spp.
Salicornia spp.
Salix spp.
Salvinia rotundifolia
Samolus spp.
Saururus cernuus
Scirpus americanus

lotuses
 stoneworts
 spatterdocks
 water lilies
 floating hearts
 water tupelo
 Ogeechee tupelo
 swamp tupelo
 golden club
 royal fern
 water dropwort
 savannah panicum
 maidencane
 redtop panicum
 knot-grass
 water paspalum
 spoon flowers
 swamp bay
 giant reed
 fever tree
 water lettuce
 water elm
 smartweeds
 pickerelweeds
 swamp poplar
 pondweeds
 mermaid weeds
 overcup oak
 meadow beauty
 meadow beauty
 red mangrove
 horned beak rush
 beak rush
 inundated beak rush
 small-fruited beak rush
 beak rush
 beak rush
 Tracy's beak rush
 swamp rose
 widegon grass
 marsh pink
 arrowheads
 glassworts
 willows
 water spangles
 water pimpernels
 lizard's tail
 common three-square

Scirpus californicus
Scirpus cubensis
Scirpus cyperinus
Scirpus erismanae
Scirpus etuberculatus
Scirpus olneyi
Scirpus robustus
Scirpus validus
Slum suave
Smilax laurifolia
Smilax walteri
Spartanium americanum
Spartina, all species
 except: S. bakeri
Sphagnum spp.
Spirodela spp.
Sporobolus virginicus
Suaeda spp.
Taxodium spp.
Thalia geniculata
Triadenum virginicum
Typha spp.
Utricularia spp.
Vallisneria spp.
Wolffia spp.
Wolffella spp.
Xyris, all species
 except: X. caroliniana
X. lupical
Zizania aquatica
Zizaniopsis millacea

southern bulrush
 bulrush
 woolgrass bulrush
 bulrush
 bulrush
 Olney's three-square
 saltmarsh bulrush
 giant bulrush
 water parsnip
 bamboo-vine
 coral greenbrier
 bur-reed
 cordgrasses
 sphagnum mosses
 duckmeat
 seashore dropseed
 sea blights
 cyperuses
 arrowroot
 St. John's wort
 cattails
 bladderworts
 tape-grasses
 water meals
 bog-mats
 yellow-eyed grasses
 annual wild rice
 southern wild rice

(3) Transitional Species:
Acer negundo
Acer rubrum
Acer saccharinum
Aletris spp.
Ampelopsis arborea
Arundinaria gigantea
Baccharis angustifolia
Blechnum serrulatum
Boehmeria cylindrica
Carex, all species
 except: C. decomposita
C. howei
C. walteriana

box-elder
 red maple
 silver maple
 colic roots
 pepper vine
 cane
 false willow
 swamp fern
 bog hemp
 sedges

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Carpinus caroliniana
Carya aquatica
Celtis laevigata
Centella asiatica
Chrysobalanus icaco
Clethra alnifolia
Conocarpus erectus
Cornus foemina
Crataegus viridis
Cyperus odoratus
Dichromena spp.
Diodia virginiana
Dryopteris ludoviciana
Forestiera acuminata
Gleditsia aquatica
Gratiola ramosa
Hydrocotyle umbellata
Hypericum fasciculatum
Hypericum myrtifolium
Ilex coriacea
Ilex decidua
Ilex opaca var. opaca
Illicium floridanum
Lachnanthes caroliniana
Lachnocaulon anceps
Lachnocaulon digynum
Leucothoe spp.
Liquidambar styraciflua
Liriodendron tulipifera
Ludwigia hirtella
Ludwigia maritima
Ludwigia virginata
Lycopus rubellus
Lysodlum japonicum
Lyonia lucida
Myrica inodorata
Osmunda cinnamomea
Ostrya virginiana
Panicum repens
Panicum virginatum
Persea borbonia
Phloxeris vermicularis
Pinus glabra
Pinus serotina
Platanus occidentalis
Pluchea spp.
Polygala cymosa
Populus deltoides

Ironwood
 water hickory
 hackberry
 coinwort
 cocoplum
 sweet pepperbush
 buttonwood
 stiff cornel
 green haw
 umbrella sedge
 white-tops
 buttonweed
 southern shield fern
 swamp privet
 water locust
 hedge hyssop
 water pennywort
 St. John's wort
 St. John's wort
 sweet galberry
 possum haw
 American holly
 purple anise
 red-root
 bog-button
 bog-button
 fetterbush
 sweetgum
 yellow poplar
 ludwigia
 ludwigia
 ludwigia
 water hoarhound
 Japanese climbing fern
 fetterbush
 odorless wax myrtle
 cinnamon fern
 hop hornbeam
 torpedo grass
 switch grass
 redbay
 beach carpet
 spruce pine
 pond pine
 sycamore
 marsh fleabanes
 milkwort
 eastern cottonwood

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Quercus laurifolia
Quercus michauxii
Quercus nigra
Rhaphidophyllum hystrix
Rhexia, all species
 except: *R. parviflora*
 R. salicifolia
Sabatia bartramii
Sabatia calycina
Sambucus canadensis
Sarracenia spp.
Schizachyrium rhizomatium
Schoenus nigricans
Scleria spp.
Sesuvium maritimum
Sesuvium portulacastrum
Spartina bakeri
Syrax americana
Thelypteris spp.
Ulmus, all species
 except: *U. rubra*

swamp laurel oak
 swamp chestnut oak
 water oak
 needle palm
 meadow beauties

marsh pink
 marsh pink
 elderberry
 pitcher plants
 South Florida bluestem
 black sedge
 nut-rushes
 sea purslane
 sea purslane
 cordgrass
 storax
 shield ferns
 elms

black haws
 chain ferns
 (4) Upland species: All plant species not listed in (2) and (3) above, except for:
Cliftonia monophylla
Cyrilla racemiflora
Melaleuca quinquenervia
Sabal palmetto
Schinus terebinthifolius
 (5) *Cliftonia monophylla*, *Cyrilla racemiflora*, *Melaleuca quinquenervia*, *Sabal palmetto*, and *Schinus terebinthifolius* shall not be considered submerged, transitional, or upland species. In areas vegetated by any of these five species, the Department shall determine the landward extent of waters using the remaining plant species or other indicators of regular and periodic inundation as provided in Rule 17-4.022(1), Florida Administrative Code.

(6) In no case shall the landward extent of waters of the state extend above the elevation of the one in 10-year recurring flood event or the area of land with standing or flowing water for more than 30 consecutive days per year calculated on an average annual basis, whichever is more landward. The extent of the flood line shall be developed by appropriate engineering techniques, and a description of the surveyed line shall be prepared and certified by a professional land surveyor registered in this state. The burden for determining the surveyed flood line shall be with the party wishing to use this alternative. Notwithstanding the above, this subsection shall not apply to waters which are saline or brackish, or for rivers whose major source of flow is from springs. The provisions of this subsection shall not operate to reduce the landward extent of the jurisdiction of the Department as it existed prior to January 24, 1984.

17-3.022(3) -- 17-3.022(6)

(7) Common names are included in the above lists for information purposes only. Determination of the landward extent of waters of the state is to be based solely on plants as specified identified by the scientific names. Any uncertainty as to the plants included by a given scientific name, for nomenclatural or taxonomic reasons, shall be resolved on the basis of:

Godfrey, R.K. and J.W. Wooten. 1979. *Aquatic and Wetland Plants of Southeastern United States: Monocotyledons*. Univ. Ga. Press, Athens. 1981. *Aquatic and Wetland Plants of Southeastern United States: Dicotyledons*. Univ. Ga. Press, Athens. Lakela, O. and R. W. Long. 1976. *Ferns of Florida*. Banyan Books, Miami.

The manuals listed above by name are adopted and made a part of this rule by reference. Copies of these documents may be inspected at all Department of Environmental Regulation offices. Any plants not contained in those references shall be identified and named on the basis of the best available biological information. A named species in the above lists includes all varieties or subspecies within that species. The abbreviation "spp." in the above lists means all species, varieties, or subspecies within the named genus which are not otherwise named on the lists.

(8) The landward extent of waters of the state shall be determined using the vegetative index adopted June 10, 1975, as amended March 11, 1981, for all complete applications filed with the Department before October 1, 1984. For all other areas where the Department made a determination of the landward extent of the waters of the state using the vegetative index adopted June 10, 1975, as amended March 11, 1981, before October 1, 1984, the Department shall, within 90 days of a request therefore, validate the determination if:

(a) The determination is graphically displayed on a map, drawing, or aerial photograph, or written in the form of a narrative description sufficient to identify the areas in question; and

(b) The determination was based on a site verification made by the Department; and

(c) The document purporting to be the determination is signed by an employee of the Department in the course of his official duties; and

(d) The document purporting to be a site verified written determination shall be submitted by certified mail within six months of October 1, 1984 to the Department for validation.

Specific Authority: 403.061, 403.805, F.S. Law Implemented: 403.021, 403.031, 403.061, 403.087, 403.088, 403.802, 403.817, F.S. History: Previously 17-4.02(17), Amended 10-1-84, 10-16-84. Formerly 17-4.022.

17-3.022(7) -- 17-3.022(History)

17-12.030 Jurisdiction.

(1) Pursuant to Section 403.913, F.S., dredging and filling conducted in, on, or over those surface waters of the state listed in Section 17-12.030(2), F.A.C., require a permit from the department unless specifically exempted in Sections 403.813, 403.913, 403.927, F.S., or Section 17-12.050, F.A.C.

(2) For the purposes of dredging or filling, surface waters of the state to their landward extent are those waters listed below and excavated water bodies, except for waters exempted by Section 17-12.050, F.A.C., which connect directly or via an excavated water body or series of excavated water bodies to those waters listed below:

- (a) rivers and natural tributaries thereto;
- (b) streams and natural tributaries thereto;
- (c) bays, bayous, sounds, estuaries, lagoons and natural tributaries thereto;
- (d) natural lakes except those owned entirely by one person other than the state;
- (e) natural lakes except those that become dry each year and are without standing water;

(f) natural lakes except those that have no more than 10 acres of water area at a maximum average depth of 2 feet existing throughout the year;

(g) Atlantic Ocean out to the seaward limit of the state's territorial boundaries;

(h) Gulf of Mexico out to the seaward limit of the state's territorial boundaries;

(i) The waters as defined in Section 403.031(3)(a) and Section 403.031(3)(b), F.S.

(3) For the purposes of dredging or filling, surface waters of the state do not include those streams, tributaries, or portions thereof defined in Subsection 403.913(5), F.S.

(4) The landward extent of surface waters of the state, for the purpose of this chapter, shall be determined in accordance with Section 17-3.022, F.A.C. and Sections 403.817 and 403.913, F.S.

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.031, 403.061, 403.813, 403.817, 403.911, 403.912, 403.913, 403.914, F.S.

History: New 12-10-84.

17-12.040 Jurisdictional Declaratory Statements.

(1) Pursuant to Section 403.914(1), F.S., a property owner, an entity having power of eminent domain, or any other person with a legal or equitable interest in a property may petition the department for a formal jurisdictional determination. The petition shall contain:

- (a) A vicinity map showing the location and extent of the property in question.
- (b) Written authorization to enter the property signed by the property owner.

17-12.030(1) -- 17-12.040(1)(b)

(c) Three copies of blue line prints of aerial photographs which accurately reflect the current conditions on the site upon which the jurisdictional line will be drawn.

(d) A statement as to whether the petitioner desires that the line between the upland and the area of department jurisdiction be staked.

(2) The petition for a jurisdictional declaratory statement shall be processed by the department in accordance with Section 403.914, F.S. In certain instances, the department may request and the petitioner shall furnish:

(a) A topographic map of the site with the contours at intervals to be determined by the department. Specific areas may have to be surveyed by the petitioner.

(b) Hydrological data which may be required to determine connections between water bodies or to determine the presence of intermittent streams. If required, the hydrological data requested may include rainfall data, data on duration and volume of water flow, ground water level data, and similar information.

(c) Recent aerial photographs of sufficient detail to determine the dominant vegetation on a site using photointerpretation. Black and white or color glossy photographs, blue line prints of aerial photographs, or false color infrared photographs may be required, depending upon the site.

(d) If the line is to be staked, the petitioner shall provide the services of a registered surveyor who shall be available to accompany the department representative for the purpose of surveying the staked line. The department shall be provided a copy of the survey properly certified in accordance with Chapter 472, F.S.

(3) If the line is not to be staked and surveyed, it shall be drawn by the department on the blue line prints of aerial photographs. However, it shall be understood by the department and the petitioner that the line so drawn may represent only an approximation of the actual demarcation of jurisdiction because of inherent characteristics in drafting or cartography. The accuracy of the demarcation will be commensurate with the level of detail and accuracy of the information provided.

(4) Each person who receives a proposed jurisdictional declaratory statement may publish, or may be required to publish, and provide proof of publication to the Department, at his own expense, a notice of the proposed declaratory statement in a newspaper of general circulation in the area affected, using the format prescribed in Subsection 17-103.150(3), F.A.C. Publication of a Notice of Proposed Jurisdictional Declaratory Statement shall be required for those areas where the environmental sensitivity of the area is reasonably expected to result in heightened public concern or request for administrative proceedings. Failure of the petitioner to publish a required notice within 30 days of the Department's request shall constitute withdrawal of the petition. The Department shall also publish a notice of the proposed jurisdictional declaratory statement in the Florida Administrative Weekly.

17-12.040(1)(c) -- 17-12.040(4)

(5) Petitions for jurisdictional declaratory statements shall be accompanied by the following fees based upon the entire property for which the petition is filed:

- (a) For property 0 - 50 acres in size \$ 250
- (b) For property 50+ - 100 acres in size \$ 500
- (c) For property 100+ - 500 acres in size \$ 1,000
- (d) For property 500+ - 750 acres in size \$ 2,000
- (e) For property 750+ - 1000 acres in size \$ 2,500
- (f) For property greater than 1000 acres in size \$ 2,500
- (plus \$500 for each 500 acres over 1000 acres, up to a maximum of \$10,000)

(g) If, due to the environmental complexity of the area, extensive evaluation by department personnel is necessary, the department may charge additional fees based on the actual salary rate of the personnel providing the services plus actual expenses of the department. Provided, however, total fees charged may not exceed \$10,000.

(h) A subsequent petition for a jurisdictional declaratory statement on the same property that has previously received a jurisdictional declaratory statement when minimal field investigation is required on the department's part \$250

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.061, 403.817, 403.912, 403.913, 403.914, F.S.

History: New 10-16-84.

17-12.045 Jurisdictional Intent.

The department recognizes that the natural border of certain water bodies listed in Section 17-12.030, F.A.C., may be difficult to establish because of seasonal fluctuations in water levels and other characteristics unique to a given terrain. The intent of the vegetation indices in Sections 17-3.021(15) and 17-3.022, F.A.C., is to guide in the establishment of the border of the water bodies listed in Section 17-12.030, F.A.C. It is the intent of this rule to include in the boundaries of such water bodies areas which are customarily submerged and which are contiguous to a recognizable water body (i.e., areas within the landward extent of waters of the state as defined in Sections 17-3.021(15) and (16), F.A.C.). Isolated areas, because they infrequently flow into or otherwise exchange water with a described water body, are not intended to be included within the dredge and fill jurisdiction of the department. The vegetation indices in Sections 17-3.021(15) and 17-3.022, F.A.C., are presumed to accurately delineate the landward extent of such water bodies.

Specific Authority: 403.031, 403.061, 403.062, 403.087, F.S.

Law Implemented: 403.031, 403.061, 403.062, 403.087, F.S.; Section 9,

Chapter 84-79, Laws of Florida.

History: New 12-10-84.

17-12.040(6) -- 17-12.045(History)

17-12.050 Exemptions.

(1) No permit shall be required under this chapter for dredging or filling specified in Section 403.813(2), F.S., or Sections 17-4.040(1Xa) or (b), F.A.C., or for dredging or filling which has been approved pursuant to Chapters 17-17, 17-23, or 17-45, F.A.C., or for which there is an applicable general permit provided in Part III of Chapter 17-4, F.A.C., or for the following types of projects:

(a) The installation of overhead transmission lines where the support structures are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation of aids to navigation and buoys associated with such aids, provided that the devices are marked pursuant to Section 327.40, F.S.

(c) The installation and repair of mooring pilings and dolphins associated with private docking facilities and the installation of private docks of five hundred (500) square feet or less of over-water surface area, or one thousand (1000) square feet or less of over-water surface area for docks which are not located in Outstanding Florida Waters and which are used for recreational, non-commercial activities, constructed on pilings so as not to involve filling or dredging other than that necessary to install the pilings. The dock shall not substantially impede the flow of water or create a navigational hazard. A private dock is a single pier at a parcel of property. Provided, that for the purposes of this rule, multi-family living complexes and other types of complexes or facilities associated with the proposed private dock shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property. Construction of a private dock under this exemption does not require the Department to issue a subsequent permit to construct a channel to provide navigational access to the dock. Activities associated with a private dock shall include the construction of structures attached to the pier which are only suitable for the mooring or storage of boats (i.e., boatlifts).

(d) The performance of maintenance dredging of existing manmade canals, channels, and intake and discharge structures, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state; provided that no more dredging is to be performed than is necessary to restore the canal, channels, and intake and discharge structures to original design specifications and provided that control devices are utilized to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed prior to April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters of the state. Where no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water.

17-12.050(1) -- 17-12.050(1Xd)

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(f) The waters as defined in Section 403.031(12)(a) and Section 403.031(12)(b), F.S.

(3) The landward extent of surface waters of the state, for the purpose of this chapter, shall be determined in accordance with Section 17-3.022, F.A.C. and Sections 403.817, 403.8171 and 403.913, F.S.

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.031, 403.061, 403.813, 403.817, 403.911, 403.912, 403.913, 403.914, F.S.

History: New 12-10-84, Amended 3-26-89, Transferred from 17-12.030.

17-312.040 Jurisdictional Declaratory Statements.

(1) Pursuant to Section 403.914(1), F.S., a property owner, a person who has power of eminent domain, or any other person with a legal or equitable interest in a property may petition the department for a formal jurisdictional determination. The petition shall contain:

(a) A vicinity map showing the location including Section, Township and Range, and areal extent of the property in question;

(b) Written authorization to enter the property signed by the property owner;

(c) Four copies of blue line prints of recent aerial photographs which accurately reflect the current conditions on the site with the property boundaries to be inspected clearly delineated, along with identification of all major roads and the north bearing;

(d) A statement indicating whether the petitioner wants the line between the upland and the area of department jurisdiction to be staked.

(2) The petition for a jurisdictional declaratory statement shall be processed by the department in accordance with Section 403.914(1) and (3), F.S. If additional information is necessary to determine jurisdiction, the department shall request and the petitioner shall furnish any or all of these items:

(a) An original U.S.G.S. 7.5 minute series or a more detailed topographic map of the site with the contours at intervals specified by the department which are appropriate to the specific site. Specific areas may have to be surveyed by the petitioner.

(b) Hydrological data needed to determine connections between water bodies or to determine the presence of intermittent streams, including rainfall data, data on duration and volume of water flow, ground water level data, data on the location of natural or man-made watercourses on or abutting the site, including locations of culverts and sizes, and similar information.

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(18) "Vertical seawall" is a seawall the waterward face of which is at a slope greater than 75 degrees to the horizontal. A seawall with sloping riprap on the waterward face shall not be considered a vertical seawall.

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.031, 403.061, 403.803, 403.911, 403.912, F.S.

History: New 12 10-84, Amended 8-30-88, 3-26-89, Transferred from 17-12.020.

17-312.030 Jurisdiction.

(1) Pursuant to Sections 403.031(12) and 403.913, F.S., dredging and filling conducted in, on, or over those surface waters of the state as provided in this rule, require a permit from the department unless specifically exempted in Sections 403.813, 403.913, 403.927, F.S., or Section 17-312.050, F.A.C.

(2) For the purposes of this rule, surface waters of the state are those waters listed below and excavated water bodies, except for waters exempted by Rule 17-312.050(4), F.A.C., which connect directly or via an excavated water body or series of excavated water bodies to those waters listed below:

(a) Atlantic Ocean out to the seaward limit of the state's territorial boundaries;

(b) Gulf of Mexico out to the seaward limit of the state's territorial boundaries;

(c) bays, bayous, sounds, estuaries, lagoons and natural channels and natural tributaries thereto;

(d) rivers, streams and natural tributaries thereto, excluding those intermittent streams, tributaries or portions thereof defined in Subsection 403.913(5), F.S. Standard hydrological methods shall be used to determine which streams constitute intermittent streams and intermittent tributaries. An intermittent stream or intermittent tributary means a stream that flows only at certain times of the year, flows in direct response to rainfall, and is normally an influent stream except when the ground water table rises above the normal wet season level. Those portions of a stream or tributary which are intermittent and are located upstream of all nonintermittent portions of the stream or tributary are not subject to dredge and fill permitting unless there is a continuation of jurisdiction as determined pursuant to F.A.C. Rule 17-3.022.

(e) natural lakes, except:

1. those owned entirely by one person other than the state; or
2. those that become dry each year and are without standing water; or
3. those of no more than 10 acres in landward extent with a maximum average depth of 2 feet or less existing throughout the year;

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- (c) Recent aerial photographs of sufficient detail to determine the dominant vegetation on a site by photointerpretation. Black and white or color glossy photographs, blue line prints of aerial photographs, or false color infrared photographs may be required, depending upon the site.
- (d) If the line is to be staked, the services of a registered surveyor or representative thereof shall be available to accompany the department representative to survey the staked line. The department shall be provided a copy of the survey properly certified in accordance with Chapter 472, F.S.
- (3) If the line is not to be staked and surveyed, it shall be drawn by the department on the blue line prints of aerial photographs. However, the line so drawn may represent only an approximation of the actual jurisdiction because of inherent characteristics in drafting or cartography. The accuracy of the determination will be dependent upon the level of detail and accuracy of the information provided.
- (4) Each person who receives a proposed jurisdictional declaratory statement may publish, or may be required to publish, and provide proof of publication to the Department, at his own expense, a notice of the proposed declaratory statement in a newspaper of general circulation in the area affected, using the format prescribed in Subsection 17-103.150(3), F.A.C. Publication of a Notice of Proposed Jurisdictional Declaratory Statement shall be required for areas where the environmental sensitivity of the area is reasonably expected to result in heightened public concern or a request for administrative proceedings. Failure of the petitioner to publish a required notice within 30 days of the Department's request shall constitute withdrawal of the petition. The Department shall also publish a notice of the proposed jurisdictional declaratory statement in the Florida Administrative Weekly.
- (5) Petitions for jurisdictional declaratory statements shall be accompanied by the following fees which shall be based on the entire property for which the petition is filed:
- | | |
|--------------------------------------------------|---------|
| (a) For property 0 - 50 acres in size | \$ 250 |
| (b) For property 50+ - 100 acres in size | \$ 500 |
| (c) For property 100+ - 500 acres in size | \$1,000 |
| (d) For property 500+ - 750 acres in size | \$2,000 |
| (e) For property 750+ - 1000 acres in size | \$2,500 |
| (f) For property greater than 1000 acres in size | \$2,500 |
- (plus \$500 for each 500 acres over 1000 acres, up to a maximum of \$10,000).
- (g) If the environmental complexity of the area requires extensive evaluation the department may charge additional fees based on the actual salary

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rate of the staff who provide the services, plus the actual expenses of the department. However, the total fee may not exceed \$10,000.

(h) The fee for a later petition for a jurisdictional declaratory statement on property for which a jurisdictional declaratory statement exists and which requires minimal field investigation by the department is \$250.

(6) (a) Within 30 days of the receipt of a petition for a jurisdictional declaratory statement, the department shall notify the applicant of any additional information which may be necessary. The department shall complete the assessment and issue notice of the proposed agency action within 60 days of receipt of a complete petition. The notice shall be published by the Department in the Florida Administrative Weekly and by the petitioner in a newspaper of general circulation in the area affected. The provisions of ss. 120.57 and 120.59, F.S. are applicable to declaratory statements under this section. Any person whose substantial interests will be affected may petition for a hearing within 14 days after the publication of notice. If no petition for a hearing is filed, the department shall issue the jurisdictional declaratory statement within 10 days after termination of the 14-day waiting period.

(b) A jurisdictional declaratory statement is binding for 24 months, if physical conditions on the site do not change to alter jurisdiction.

(c) A petitioner who disputes the proposed agency action may withdraw the petition without prejudice at any point before final agency action.

(d) The department may revoke a jurisdictional declaratory statement if it finds that the petitioner has submitted inaccurate information in the petition.

(e) A jurisdictional declaratory statement obtained pursuant to this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable pursuant to s. 120.565, F.S.

(7) The department also may issue informal preapplication jurisdictional determinations or otherwise institute jurisdictional determinations on its own initiative as provided by law.

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.061, 403.817, 403.912, 403.913, 403.914, F.S.

History: New 10-16-84, Amended 3-26-89, Transferred from 17-12.040.

17-312.045 Jurisdictional Intent. The department recognizes that the natural border of certain water bodies listed in Section 17-312.030, F.A.C., may be difficult to establish because of seasonal fluctuations in water levels and other characteristics unique to a given terrain. The intent of the vegetation indices in Sections 17-3.021(15) and 17-3.022, F.A.C., is to guide in the establishment of the border of the water bodies listed in Section 17-312.030, F.A.C. It is the intent of this rule to include, in the boundaries of such water bodies, areas

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which are customarily submerged and which are contiguous to a recognizable water body (i.e., areas within the landward extent of waters of the state as defined in Sections 17-3.021(15) and (16), F.A.C.). Isolated areas that infrequently flow into or otherwise exchange water with a described water body are not intended to be included within the dredge and fill jurisdiction of the department. The vegetation indices in Sections 17-3.021(15) and 17-3.022, F.A.C., are presumed to accurately delineate the landward extent of such water bodies.

Specific Authority: 403.031, 403.061, 403.062, 403.087, F.S.

Law Implemented: 403.031, 403.061, 403.062, 403.087, 403.912, F.S.; Section 9, Chapter 84-79, Laws of Florida.

History: New 12-10-84, Amended 3-26-89, Transferred from 17-12.045.

17-312.050 Exemptions.

(1) No permit shall be required under this chapter for dredging or filling specified in Section 403.813(2), F.S., or Sections 17-4.040(1)(a) or (b), F.A.C., or for dredging or filling which has been approved pursuant to Chapters 17-17, 17-23, or 17-45, F.A.C., or for dredging and filling approved by one or more of the general permits in Part V of Chapter 17-312, F.A.C., or for the following types of projects:

(a) The installation of overhead transmission lines where the support structures are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation of aids to navigation, including bridge fender piles, "No Wake" and similar regulatory signs, and buoys associated with such aids, provided that the devices are marked pursuant to Section 327.40, F.S.

(c) The installation and repair of mooring pilings and dolphins associated with private docking facilities.

(d) The installation of private docks of 500 square feet or less of surface area over the landward extent of waters of the State or 1000 square feet or less of surface area over the landward extent of waters of the State for docks which are not located in Outstanding Florida Waters and any of which:

1. is used for recreational, non-commercial activities, associated with the mooring or storage of boats and boat paraphernalia; and
2. is constructed or held in place by pilings, including floating docks, so as not to involve filling or dredging other than that necessary to install the pilings; and
3. does not substantially impede the flow of water or create a navigational hazard; and
4. is the sole dock constructed pursuant to this exemption as measured along the shoreline for a minimum distance of 65 feet, unless the parcel

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of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot. For the purposes of this rule, multi-family living complexes and other types of complexes or facilities associated with the proposed private dock shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property. Construction of a private dock under this exemption does not require the Department to issue a subsequent permit to construct a channel to provide navigational access to the dock. Activities associated with a private dock shall include the construction of structures attached to the pier which are only suitable for the mooring or storage of boats (i.e., boatlifts).

(e) The performance of maintenance dredging of existing man-made canals, channels, and intake and discharge structures, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material and return water from the spoil site into surface waters of the state, provided no more dredging is performed than is necessary to restore the canal, channels, and intake and discharge structures to original design specifications, and provided that control devices are used at the dredge site to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed before April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or man-made barrier separating a canal or canal system from adjacent waters of the state. Where no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing man-made canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water.

(f) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists, or the installation and maintenance to design specifications of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state. All material removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material and return water from the spoil site into the waters of the state. For the purpose of this exemption, artificial bodies of water shall include, but not be limited to, residential canal systems, canals permitted by a water management district created under Section 373.069, F.S. and artificially created portions of the Florida Intracoastal Waterway.

(g) Construction of seawalls or riprap, including only that backfilling needed to level the land behind the seawalls or riprap, in artificially created waterways where such construction will not violate existing water

**APPENDIX F--LIST OF MYAKKA RIVER MANAGEMENT
COORDINATING COUNCIL MEMBERS AND ALTERNATES**

APPENDIX F

MYAKKA RIVER MANAGEMENT COORDINATING COUNCIL

Council Members

Mr. Lewis E. Blackburn
Rancher
Venice, FL

Ms. Jan Vorhees
Tampa Bay Regional Planning Council
St. Petersburg, FL

Ms. Karen M. Collins
Manatee Planning and Zoning Dept.
Bradenton, FL

Mr. Glenn Compton
Science Teacher
Sarasota, FL

Mr. Wayne Daltry
Southwest Florida RPC
North Fort Myers, FL

Mr. C.H. Downs, Jr.
Rancher
Sarasota, FL

Ms. Kim Dryden
Game and Fresh Water Fish Comm.
Office of Environmental Services
Punta Gorda, FL

Mr. Dan Gaffney
City of North Port
North Port, FL

Dr. Richard Garrity
Southwest District
Dept. of Environmental Regulation
Tampa, FL

Mr. Mark L. Gumula
Charlotte County
Port Charlotte, FL

Alternates

Ms. Jerri Bohard
Tampa Bay Regional Planning Council
St. Petersburg, FL

Ms. Margaret A. Adams
Manatee Planning and Zoning Dept.
Bradenton, FL

Ms. Doris Schember
Manasota-88
Bradenton, FL

Mr. Glenn Heath
Southwest Florida RPC
North Fort Myers, FL

Mr. Michael Downs
Rancher
Sarasota, FL

Mr. Richard Gooch
Game and Fresh Water Fish Comm.
Office of Environmental Services
Punta Gorda, FL

Mr. Stan Frank
City of North Port
North Port, FL

Dr. Christopher P. Person
Southwest District
Dept. of Environmental Regulation
Tampa, FL

Mr. Eugene Kelly
Charlotte County
Port Charlotte, FL

Mr. Orville L. Ives
Myakka River Preservation Society
Venice, FL

Mr. Bob Roembke
Save Our Bays Association
Sarasota, FL

Mr. Creighton L. Sherman
Environmental Confederation of
Southwest Florida
Boca Grande, FL

Mr. Richard E. Turner, Jr.
Rancher
Sarasota, FL

Mr. Douglas Voltolina
Dept. of Agriculture and
Consumer Services
Division of Forestry
Bradenton, FL

Mr. William T. Walker
Sarasota County Farm Bureau
Sarasota, FL

Dr. Mary Jelks
Manasota - 88
Sarasota, FL

Mrs. Lois Jones
Dona and Roberts Bay Environmental
Society, Inc.
Nokomis, FL

Honorable William Kline
City of Sarasota
Sarasota, FL

Dr. Selvakumaran Mahadevan
Mote Marine Laboratory
Sarasota, FL

Mr. Steven Makowski
Dept. of Community Affairs
Tallahassee, FL

Mr. N. Craig McAllister
Contractor
Sarasota, FL

Mr. Harry Brown
Myakka River Preservation Society
Venice, FL

Mr. Dale Shields
Save Our Bays Association
Sarasota, FL

Ms. Ruth Clinesmith
Environmental Confederation of
Southwest Florida
Port Charlotte, FL

Mr. Latimer H. Turner
Rancher
Sarasota, FL

Mr. Edward Flowers
Dept. of Agriculture and
Consumer Services
Division of Forestry
Bradenton, FL

Mr. Andy Neuhofer
Sarasota County Farm Bureau
Sarasota, FL

Ms. Elaine Kampmann
Manasota - 88
Sarasota, FL

Ms. Georgette Duke
Dona and Roberts Bay Environmental
Society, Inc.
Nokomis, FL

Mr. Doug Taylor
City of Sarasota
Sarasota, FL

Dr. Ernest D. Estevez
Mote Marine Laboratory
Sarasota, FL

Mr. Keith McCarron
Dept. of Community Affairs
Tallahassee, FL

Mr. Jack Merriam
Sarasota County
Sarasota, FL

Mr. James W. Miller
Rancher
Sarasota, FL

Mr. Jonathan Miller
Sierra Club
Sarasota, FL

Mr. Steven Minnis
Southwest Florida WMD
Venice, FL

Mr. B.S. (Pete) Myers
Dept. of Transportation
Bartow, FL

Ms. Jean Ost
League of Women Voters of
Sarasota County
Venice, FL

Mr. Louis Tesar
Department of State
Division of Historical Resources
Tallahassee, FL

Dr. Jeff Lincer
Sarasota County
Sarasota, FL

Mr. Bruce F. Roberts
Rancher
Sarasota, FL

Mr. John J. Whelan
Manasota Basin Board
Sarasota, FL

Mr. James (Jay) Curtis
Dept. of Transportation
Bartow, FL

Ms. Margaret Miller
League of Women Voters of
Sarasota County
Venice, FL

Mr. Robert C. Taylor
Department of State
Division of Historical Resources
Tallahassee, FL

APPENDIX C – Myakka River Wild and Scenic River Rule, 62D-15, F.A.C.

CHAPTER 62D-15 MYAKKA RIVER WILD AND SCENIC RIVER RULE

62D-15.001	Declaration of Intent. (Repealed)
62D-15.002	Definitions.
62D-15.003	Statement of Purpose and Applicability.
PART I	JURISDICTION AND REGULATION OF ACTIVITIES IN THE RIVER AREA
62D-15.004	Delineation of Regulatory Responsibilities and Jurisdiction.
62D-15.005	Prohibitions.
62D-15.006	Permits.
62D-15.007	Exemptions.
62D-15.008	Standards for Issuance or Denial of a Permit.
62D-15.009	Permit Application Form.
62D-15.010	Transfer of Permits.
62D-15.011	Permit Application Fees.
62D-15.012	Boating Regulations.
62D-15.013	Enforcement and Penalties. (Repealed)

62D-15.002 Definitions.

- (1) "Act" means the Myakka River Wild and Scenic Designation and Preservation Act.
- (2) "Activity" means the doing of any act or the failing to do any act by a person.
- (3) "Adverse impact" means the permanent, long-term or significant degradation, impairment, or loss of resource values in the river area caused by the conduct of activities, practices, or land uses.
- (4) "Coordinating Council" means the Myakka River Management Coordinating Council created by Section 258.501(7), Florida Statutes.
- (5) "Department" means the Department of Environmental Protection.
- (6) "Division" means the Division of Recreation and Parks of the Department of Environmental Protection.
- (7) "Dock" means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels, either temporarily or indefinitely, or used as structures for participating in recreational activities.
- (8) "Dredging" means the excavating of materials, by any method, in the river area.
- (9) "Executive Director" means the Executive Director of the Department of Environmental Protection.
- (10) "Filling" is the deposition, by any means, of materials in the river area.
- (11) "Government agency" means all federal and state agencies, the Southwest Florida Water Management District, and local governments.
- (12) "Idle speed/no-wake" means a watercraft speed not greater than that speed which is necessary to maintain steerageway.
- (13) "Impacted areas" means portions of the river area that have been disturbed prior to the effective date of this rule by the placement of manmade structures or conduct of activities.
- (14) "Marina" means a commercial docking facility that provides facilities for mooring or storage of watercraft, or making watercraft available for use, for revenue generating purposes.
- (15) "Maximum upland extent of wetlands vegetation" means for purposes of determining the extent of the department's permitting jurisdiction, those areas defined by the Department of Environmental Protection as "wetlands" pursuant to Section 373.019, Florida Statutes, and is determined as specified in Sections 373.421 and 373.4211, Florida Statutes, and Rule 62-340, Florida Administrative Code as of April, 1990, except that the term shall not include tributaries of the Myakka River, and shall not include isolated wetlands.
- (16) "Myakka Wild and Scenic River Management Plan" or "Plan" means the plan described in subsection 258.501(5), Florida Statutes, as developed by the department and the Coordinating Council and as accepted on May 22, 1990 by the Governor and Cabinet sitting as head of the Department of Natural Resources.
- (17) "Native vegetation" means a plant which is indigenous to the river area.
- (18) "Nuisance species" means any species of flora or fauna whose noxious characteristics or presence in sufficient number, biomass, or areal extent that prevents, or interferes with, uses or management of resources, and which are native or naturalized in the area where it occurs.
- (19) "Person" means an individual, corporation, governmental agency or institution thereof, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or other legal entity.
- (20) "Pollutant" means any substance, contaminant, noise, or artificial condition which is or may be potentially harmful or injurious to human health and welfare, animal or plant life, or property, or which interferes with the enjoyment of life, or property, or outdoor recreation.
- (21) "Preempted area" means the portion of the river area occupied by a dock or docks or other structures, the area between the docks or other structures and including any mooring pilings, and the area between the docks or other structures and the shoreline.

(22) "Private multi-family docking facility" means a docking facility located on or adjacent to upland property having riparian access that is or will be developed to accommodate multiple living units. The term is applied only in reference to residential subdivisions and yacht clubs whose owners or members have real property interest in the upland property having riparian access.

(23) "Public interest" means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic impacts of the proposed action.

(24) "Public utility" means the utilities defined in subsection 366.02(1), Florida Statutes.

(25) "Renovation" means activities undertaken to restore a structure when 50 percent or more of the materials or construction have been damaged or destroyed, or if use of the structure has been discontinued and 50 percent or more of the structure must be replaced in order to make it functional for its intended purpose or safely useable.

(26) "Repair" means activities undertaken to maintain structures in a safely useable and functional condition which result in the repaired structure being within the same footprint and of the same dimensions as the original structure.

(27) "Resource value" means any one or more of the specific economic, scenic, recreational, geologic, fish and wildlife, historic, cultural, or ecological features associated with the river area as determined by the Coordinating Council and as set forth in the Myakka Wild and Scenic River Management Plan.

(28) "River area" means that corridor of land beneath and surrounding the Myakka River from river mile 7.5 to river mile 41.5, together with a corridor including the maximum upland extent of wetlands vegetation which is or will be delineated by the Department of Environmental Protection pursuant to its authority under Chapter 403, Florida Statutes, and Chapter 62-340, Florida Administrative Code.

(29) "Shore protection structure" means a type of construction designed to minimize erosion. Such construction includes any work or activity which is likely to have an effect on existing conditions or natural shore or riverbank processes.

(30) "Slow/minimum wake" means a speed such that watercraft must not be on a plane, must be level in the water, and not be operating at a speed greater than that which is reasonable and prudent to avoid an excessive wake or condition under the existing circumstances as specified in Rule 62D-15.012, Florida Administrative Code.

(31) "Structure" means something built, erected, assembled or installed, or the arrangement of natural or artificial materials in an ordered scheme.

(32) "Tributary" means a stream or watercourse whether natural or artificial which flows into the Myakka River, directly or indirectly, continuously or intermittently.

(33) "Unimpacted areas" means portions of the river area largely in their natural state not disturbed prior to the effective date of this rule by land uses, activities, practices, or the placement of manmade structures except those structures that have been permitted or are exempt under these rules.

(34) "Vessel" means any type of boat or floating craft and includes watercraft.

(35) "Watercraft" means any type of boat or floating craft which is propelled or powered by an engine or motor.

(36) "Water-dependent activity" means an activity which can only be conducted on, in, over, or adjacent to, water areas because the activity requires primary and direct access to the water body for transportation, recreation, energy production or transmission, or that uses the river as a source of water and where the use of the water is an integral part of the activity.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History—New 7-22-91, Formerly 16D-15.002.

62D-15.003 Statement of Purpose and Applicability.

(1) The purpose of this chapter is to implement a regulatory program which includes a permit program to protect and enhance the resource values as identified in the Myakka Wild and Scenic River Management Plan as adopted by the Governor and Cabinet on May 22, 1990, which is hereby incorporated by reference. Copies of the Plan may be obtained by writing to the Bureau Chief, District 4 Administration, Division of Recreation and Parks, 1843 South Tamiami Trail, Osprey, Florida 34229, or contacting the Bureau Chief at (941) 483-5944.

(2) The rules governing prohibitions, permits, and exemptions, as set forth in this part apply to any activity as further delineated in Rules 62D-15.005, 62D-15.006, and 62D-15.007, Florida Administrative Code, within the river area, which will adversely impact resource values in the river area.

(3) Standards for the issuance or denial of permits for the conduct of activities and practices, and construction of structures are provided.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History—New 7-22-91, Formerly 16D-15.003.

PART I JURISDICTION AND REGULATION OF ACTIVITIES IN THE RIVER AREA

62D-15.004 Delineation of Regulatory Responsibilities and Jurisdiction.

(1) The conduct of any activity by a person within the river area which will have an adverse impact on any resource values in the river area shall be regulated by the department.

(2) The "maximum upland extent of wetlands vegetation" for purposes of determining the landward boundary of the river area, is defined by a corridor which shall be determined pursuant to the methodology set forth in Sections 373.421 and 373.4211, Florida Statutes, and Chapter 62-340, Florida Administrative Code, for determining the "landward extent of surface waters of the State," but shall not include tributaries of the Myakka River or isolated wetlands. Existing wetland jurisdictional determinations or validations on specific parcels by the Department of Environmental Protection established, under its authority to delineate wetlands, in accordance with Chapter 62-340, Florida Administrative Code, are effective and enforceable for the purposes of defining the maximum upland extent of wetlands vegetation. The boundary of the river area where it crosses a tributary shall be the shortest and most direct continuation of the line demarcating the maximum upland extent of vegetation of the river area on either side of the tributary.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History--New 7-22-91, Formerly 16D-15.004.

62D-15.005 Prohibitions.

The activities in this rule, conducted by a person, are presumed to have adverse impacts on resource values in the river area and will be prohibited unless otherwise provided by law. However, persons may submit permit applications in accordance with Rules 62D-15.006, 62D-15.009 and 62D-15.011, Florida Administrative Code, for the following prohibited activities, with required non-refundable fees, for review and consideration of applications by the department as specified under Rules 62D-15.006 and 62D-15.008, Florida Administrative Code:

- (1) Discharging, through a pipe, ditch or similar conveyance, pollutants, including but not limited to domestic and industrial wastes or effluents, or untreated stormwater;
- (2) Removing or cutting native vegetation except as a function of an activity permitted under Rule 62D-15.006 or that has received a Myakka River Permit prior to the effective date of this rule, and except for the minimum required to provide riparian ingress and egress necessary for docking, boating, bathing and fishing access;
- (3) Constructing, in unimpacted areas, new road or bridge crossings, or utility crossings except crossings by public utilities as that term is defined in subsection 366.02(1), Florida Statutes and those crossings that would not adversely impact resource values;
- (4) Excavating minerals or drilling for gas or oil;
- (5) Constructing, erecting, or installing any form of structure not related to a water-dependent activity;
- (6) Constructing roads or utilities, except for facilities of public utilities as that term is defined in subsection 366.02(1), Florida Statutes, to islands where such access did not previously exist;
- (7) Operating airboats north (upstream) of U.S. Highway 41, except for uses officially allowed by governmental agencies;
- (8) Constructing new marinas;
- (9) Engaging in any other activity or practice which adversely impacts resource values in the river area, and for which no permit has been obtained under Rule 62D-15.006;
- (10) Nothing in this rule shall be construed to prohibit or limit public utilities from improving, maintaining, modifying, or expanding existing facilities or constructing new facilities in the river area or the wild and scenic protection zone, provided the necessary federal, state, and local permits and licenses are obtained.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History--New 7-22-91, Formerly 16D-15.005.

62D-15.006 Permits.

(1) A Myakka River permit is required from the department before a person may engage in certain activities. An application form titled, State of Florida Joint Application for Permit, DEP FORM 62-312.900(1), November 30, 1982, which is incorporated by reference, may be obtained from and submitted to: Bureau Chief, District 4 Administration, Division of Recreation and Parks, 1843 South Tamiami Trail, Osprey, Florida 34229.

(2) Activities, structures or practices for which permit applications must be submitted for review include any of the following within the river area:

- (a) Dredging or filling;
- (b) Creating, repairing, or maintaining shore protection structures;
- (c) Maintaining existing navigational channels and aids to navigation or installing new aids to navigation;
- (d) Constructing, installing, expanding, or renovating marinas, landings, boat ramps, docks, mooring buoys, pilings, dolphins, decks, or piers;
- (e) Renovating, replacing, or expanding facilities required for utilities, bridges, or roads;
- (f) Removing or cutting native vegetation only for riparian ingress and egress necessary for docking, boating, bathing and fishing access;
- (g) Relocation or setting of bulkhead lines waterward of mean high water;
- (h) Engaging in agricultural and forestry practices and activities not conducted prior to the effective date of the rule within the river area on the subject site;
- (i) Engaging in water resource management practices not conducted prior to the effective date of this rule including constructing stormwater management systems as that term is defined in Section 373.403, Florida Statutes, or other drainage discharges, except that the water management district, under emergency conditions, may submit an application after-the-fact;

(j) Constructing or creating after the effective date of this rule utility, bridge or road crossings in impacted areas, or utility crossings in unimpacted areas;

(k) Constructing, erecting, installing any form of structure related to a water-dependent activity, or any other structures in the river area;

(l) Replacing or reconstructing any damaged or destroyed exempted structure, land use or activity;

(m) Establishing recreational facilities on publicly owned portions of the river area; and

(n) Any other activity not subject to Rule 62D-15.006, Florida Administrative Code, conducted or proposed to be conducted after the effective date of this rule within the river area which adversely impacts resource values in the river area.

(3) The existence of provisions for exemptions or permits under other rules of the department or of other government agencies does not eliminate the requirement for a Myakka River permit for an activity in the river area. Exemptions from, or the issuance of permits under, this rule may not relieve persons from complying with requirements for permits under other department or government agency rules.

(4) The department shall not deny a permit to a public utility if the public utility has provided a letter with supporting documentation that demonstrates that it is not feasible or practicable to meet all applicable criteria of Rule 62D-15, Florida Administrative Code.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History--New 7-22-91, Formerly 16D-15.006.

62D-15.007 Exemptions.

(1) Activities that have not been prohibited, or subject to permit review may be conducted within the river area without a Myakka River permit unless the activities will have adverse impacts on resource values in the river area. If there is evidence produced or observed by department staff based on standards and factors specified in Rule 62D-15.008, Florida Administrative Code, that an activity, subject to this paragraph adversely impacts resource values, the department will notify the appropriate persons conducting the activity, that they must submit a permit application within 14 days to the department. For exempted activities submitted for permit review that were conducted prior to the effective date of this rule, the department shall approve these activities with or without conditions based on standards and factors specified in Rule 62D-15.008, Florida Administrative Code. Activities subject to this paragraph conducted after the effective date of this rule, must be submitted for permit review as specified in Rules 62D-15.008 and 62D-15.009 Florida Administrative Code. The department will approve with or without conditions, or deny the activity pursuant to Rules 62D-15.008 and 62D-15.009, Florida Administrative Code and procedures set forth in Section 120.60, Florida Statutes, governing licensure. Applications to conduct exempted activities or to replace damaged structures, under this section, in existence prior to the effective date of this rule will not be subject to permit application fees under Rule 62D-15.011, Florida Administrative Code.

(2) In the event that an exempted structure in existence prior to the effective date of this rule is damaged or destroyed by 50 percent or more of materials or construction, and is no longer suitable to safely serve its intended purpose, the person owning or operating such structure, in order to re-establish the structure, must submit a permit application for review and approval as specified under Rules 62D-15.008, and 62D-15.009, Florida Administrative Code. The department shall review, and approve the application with or without conditions, as specified in Rules 62D-15.008, and 62D-15.009, Florida Administrative Code for reestablishment of the damaged structure.

(3) The following activities may be conducted by persons without having submitted a permit application unless the activity will adversely impact resource values as evidenced or observed by department staff under this section, subsection (1):

(a) Commercial fishing;

(b) Maintenance or repair, but not including expanding, remodeling or renovation, of existing structures;

(c) Continuation of yard maintenance activities such as mowing, trimming or pruning of vegetation only to prevent or minimize potential damage to existing structures or for the continuation of activities which had been conducted prior to the effective date of this rule;

(d) Structures, land uses and water-dependent activities on public and private lands in existence at the effective date of this rule within the river area, including but not limited to docks and associated mooring pilings, boat ramps, shore protection structures, fences, other structures;

(e) Continuation of existing agricultural and forestry practices or activities similar in nature to those existing on the site, within the river area, at the effective date of this rule;

(f) Continuation of existing drainage and water management practices, including but not limited to, repair or maintenance of impoundments, dams, diversions, pumping operations, swales, ditches, pipes, or canals;

(g) Resource management practices of government agencies including but not limited to, prescribed burning or exotic and nuisance species control, for the protection, conservation, rehabilitation, or restoration of resource values;

(h) Installation of devices for measuring water quality, water quantity, hydrologic conditions, or other ecological conditions by governmental agencies, private not-for-profit research organizations, and persons who are required to install such devices as a requirement of obtaining a permit from a governmental agency;

(i) Continuation of existing facilities and easements for utilities and roads, including repair and maintenance, but not including increasing the size of easements or structures of such facilities which shall be subject to Rules 62D-15.006 and 62D-15.008, Florida Administrative Code;

(j) Renovating or replacing facilities or structures by a public utility so long as the footprint of the facility or structure is not materially enlarged or the facility or structure is not relocated; and,

(k) Mowing, trimming, pruning, removing or cutting native vegetation to the extent required to maintain or construct public utility facilities or structures.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History—New 7-22-91, Formerly 16D-15.007.

62D-15.008 Standards for Issuance or Denial of a Permit.

(1) In accordance with Section 258.501(10), Florida Statutes, no permit shall be issued unless the department finds that the proposed activity will not adversely impact resource values in the river area. The department will review completed applications for permits submitted as specified under Rules 62D-15.005, 62D-15.006 and 62D-15.009, Florida Administrative Code, and will evaluate applications using the standards and factors contained in this section. Additional information on the standards and factors used in evaluating applications may be obtained from the department at the address location provided in Rule 62D-15.006, Florida Administrative Code. Applications will be processed in accordance with procedures specified in Section 120.60, Florida Statutes.

(2) Factors to be considered by the department in determining whether the activity will adversely impact the resource values include:

(a) Whether the activity is consistent with the Act, this rule, and management principles, objectives and actions of the Myakka Wild and Scenic River Management Plan.

(b) Whether the activity will affect resource values by:

1. Increasing the amount of fertilizers, nutrients, pesticides and herbicides, soil or soil conditioners, or biological and artificial substances discharged into the river area;
2. Increasing impervious surface area or stormwater runoff;
3. Causing discharge of pollutants or increasing pollution impacts from land development, septic tanks, underground storage tanks, sanitary landfills, and wastewater treatment or disposal;
4. Causing or contributing odors or noise;
5. Increasing water use;
6. Increasing water resource impacts;
7. Encouraging erosion or shoaling;
8. Creating an impediment to navigation;
9. Causing upstream penetration of saline water into the river;
10. Causing a drawdown of surface or aquifer water levels;
11. Inhibiting the natural storage and detention functions of floodplains;
12. Reducing wetland buffers or wetland filtrative functions;
13. Altering natural hydrologic characteristics of the river area;
14. Altering the flow rate, timing, volume, or water quality of freshwater flowing into downstream reaches of the river area so as to affect the growth and productivity of brackish-saltwater marine life and vegetation;
15. Causing or contributing to overfishing;
16. Increasing access to the Myakka River through construction of roads, utility corridors, except facilities of public utilities as public utility is defined in Section 366.02, Florida Statutes, or recreation sites;
17. Decreasing recreational opportunities, including but not limited to fishing, boating, canoeing, picnicking, nature study, or photography;
18. Causing or contributing to overuse of the river's recreational resources;
19. Blocking, obstructing, lessening or otherwise interfering with the scenic and natural views as seen within the river area, including but not limited to open water, broad marshes, forested horizons, mangrove swamps, bluffs, riverbanks and bars;
20. Increasing litter;
21. Increasing visibility of storage, dilapidated or unmaintained structures;
22. Increasing the visual intrusion of tall structures;
23. Increasing intrusion caused by artificial light;
24. Impacting the conservation and preservation of fish and wildlife including endangered or threatened species or their habitats, feeding or breeding grounds;
25. Impacting listed threatened or endangered species of flora or plant communities or groupings considered to be of special ecological significance by the Florida Department of Agriculture and Consumer Services and the Florida Natural Areas Inventory;
26. Encouraging infestation or propagation of exotic or nuisance aquatic or terrestrial species such as Brazilian pepper, melaleuca, Australian pine, hydrilla, paragrass, parrotfeather, alligator weed, water hyacinth or cattail;
27. Affecting wildlife corridors or waterfowl flyways;
28. Reducing aquatic habitat, other than nuisance species, including, but not limited to, grassbeds, marshes or mangroves;

29. Increasing the density or intensity of development permitted on the subject property at the time the permit application is submitted;

30. Causing or contributing to unsafe conditions for boats or boaters;

31. Encouraging unauthorized use of public and private lands; and

32. Damaging or destroying archaeological, cultural or historic sites or their artifacts.

(3) Certain structures or activities must also comply with the following restrictions:

(a) Docks shall be located and designed to avoid adverse impacts to resource values. At a minimum, to the extent that new docks or expansions to docks or marinas are approved, they shall meet the following standards and criteria:

1. No dock or marina and its associated pilings, shall extend waterward of the mean or ordinary high water line more than 20 feet or 10 percent of the width of the waterbody at that particular location, whichever is less. Special consideration will be given to extension of these limits in instances where riparian access would be precluded due to insufficient water depths. A water depth of minus three feet mean low water shall be deemed sufficient water depth for purpose of special consideration.

2. The dock will extend out from the shoreline no further than a length that reaches a water depth not exceeding minus three feet (mean low water).

3. Docks and expanded marinas shall only be approved in locations having adequate water depths in the vessel mooring, turning basin, access channels, and other such areas in order to insure that a minimum of one foot clearance is provided between the deepest draft of a vessel and the bottom at mean low water.

4. Dredging to obtain navigable water depths for docks or for expanded marinas is prohibited.

5. Terminal platform size shall be no more than 120 square feet and the length of the platform shall be no more than 12 feet and the width shall be no more than 10 feet.

6. Any main access dock shall be limited to a maximum width of four feet.

7. No more than one dock shall be permitted for a lot or parcel of land, except no dock shall be permitted where riparian lot owners have acquired access to, or conveyed or transferred their riparian dock rights for, the use of a common, private multi-family docking facility. No dock for a single family lot may be designed, constructed or used to moor more than two vessels.

8. The dock decking design and construction shall provide maximum light penetration, with full consideration of safety and practicality.

9. New docks, renovations, remodeling or expansions to existing docks or facilities may be subject to requirements for identifying ways to improve or mitigate adverse environmental impacts caused by previous activities on the subject property. If deemed necessary to improve an existing condition which is creating an adverse impact on the river area, permit conditions may be imposed requiring that the permittee conduct certain activities that will minimize impacts to resource values in the river area.

10. Where local governments have more stringent standards and criteria for docks and marinas, the more stringent standards for the protection and enhancement of the river area shall prevail.

11. The submerged lands area preempted by expanded marinas or private multi-family docks shall not exceed the square footage amounting to 10 times the applicant's contiguous riparian waterfront footage. A conservation easement or other such use restriction acceptable to the department must be placed on the riparian shoreline, used for the calculation of the 10:1 threshold, to conserve and protect shoreline resources and subordinate/waive any further riparian rights.

(b) Dredging or filling. Dredging or filling shall be permitted only upon a determination by the department that the proposed activity will not adversely impact resource values and is clearly in the public interest.

(c) Water management practices. Water management practices must not adversely affect, diminish, or degrade existing water quality or resource values in the river area.

(4) A permit shall contain specific conditions for approval, as necessary, to assure that the activity will not adversely impact resource values in the river area.

(5) In denying a permit application, the department shall specifically identify which resource values will be adversely impacted by the activity sought to be undertaken by the applicant.

(6) Permit applications shall be processed, and notification of the granting or denial of permits will be provided to applicants by the department, in accordance with Section 120.60, Florida Statutes, governing licensure.

(7) The approval of the permit application shall be based upon a finding by the department that the activity will not adversely impact resource values in the river area. Within thirty (30) days of its approval, the department shall issue the permit.

(8) A Myakka River permit is not an operating permit but is issued for purposes of repairing, reconstructing, renovating, replacing, maintaining, expanding, constructing, dredging or filling, engaging in new activities or practices, or removing or cutting of vegetation and shall be valid for two years from date of issuance except where another permit period is determined by the department as a condition for approval, or upon completion of construction. Once construction is completed, or activities and practices have begun, a structure, practice or activity is not subject to a termination or revocation of its permit unless a violation of the permit conditions occurs.

(9) A request for an extension of a permit will be considered and shall be approved if the extension of the permit will not result in adverse impacts to resource values. An extension of up to two years from the date of issuance may be granted by the department, if, based on standards included in Rule 62D-15.008, Florida Administrative Code, resource values will not be adversely impacted. Extensions will be renewed no more than two times. An application for an extension must be submitted by form to the department at least sixty days prior to expiration of the permit. An application form titled, Myakka Wild and Scenic River Application for

Permit Extension, DEP 46-051, May 28, 1991, which is incorporated by reference, may be obtained from and submitted to the District Manager at the address location included in Rule 62D-15.006, Florida Administrative Code. The application must be submitted and made complete before the expiration date of the permit in order for the permit to be considered for an extension. Applications for permit extensions will be processed and approved or denied in accordance with Section 120.60, Florida Statutes.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History--New 7-22-91, Formerly 16D-15.008.

62D-15.009 Permit Application Form.

An applicant shall make application for a Myakka River permit on the Joint Dredge and Fill Application Form as specified in Rule 62D-15.006, Florida Administrative Code. The application form must be completed with all pertinent information required in instructions attached with the application form. The applicant shall also include, as part of the application, a detailed explanation of how the proposed project is consistent with the Act, the Plan, and this rule. The application must also be accompanied by a letter from any other appropriate government agency indicating the status of such other government agency approvals necessary for the proposed activity. In its review of the application, the department may request other technical information in support of the application. The application and all supportive information must be filed in duplicate with the Division of Recreation and Parks at the address specified in Rule 62D-15.006.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History--New 7-22-91, Formerly 16D-15.009.

62D-15.010 Transfer of Permits.

Within 30 days following the sale or legal transfer of a permitted facility or activity, the new owner of the permitted facility or activity must register by form with the department. A registration form titled, Myakka Wild and Scenic River Registration for Transfer of Permit, DEP 46-052, May 28, 1991, which is incorporated by reference, may be obtained from and submitted to the Bureau Chief at the address location included in Rule 62D-15.006, Florida Administrative Code. The registration form for the new owner will certify that the new owner will conform to all conditions under which the permit was approved.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History--New 7-22-91, Formerly 16D-15.010.

62D-15.011 Permit Application Fees.

Each application for a permit to be considered by the department pursuant to Section 258.501, Florida Statutes, and Rules 62D-15.005, 62D-15.006 and 62D-15.007, Florida Administrative Code, unless where otherwise provided in this chapter, shall be accompanied by a non-refundable processing fee to help defray the cost of processing the application. The fee structure is as follows:

(1) For the removal or cutting of native vegetation for riparian ingress and egress, conducting activities, or for constructing structures for which the fair market value of either the materials or labor to be used for the activity or structure does not exceed Four Hundred Dollars (\$400.00), the fee is \$50.00.

(2) For all other activities the fee is \$200.00.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History--New 7-22-91, Formerly 16D-15.011.

62D-15.012 Boating Regulations.

(1) Watercraft shall not exceed a slow/minimum wake speed in any part of the river area upstream of U.S. Highway 41 except for the official government agency use of watercraft. A watercraft in an area designated as a slow/minimum wake zone is traveling at a slow/minimum wake if:

(a) It is not operating on a plane;

(b) It is not in the process of coming off plane and settling into the water, which action creates more than no or minimum wake;

(c) It produces no wake or minimum wake; and

(d) It is completely off plane, has settled into the water with neither the bow elevated nor the stern depressed, and is proceeding without wake or with minimum wake.

(2) Watercraft shall not exceed an idle/no-wake speed within 500 feet of marinas, boat ramps, docks, and other structures near navigable channels, and in other locations where the river is designated and posted as being too narrow to safely accommodate two-way traffic. A watercraft in an area designated as a idle/no-wake zone is traveling at a speed no faster than necessary to be steered.

Specific Authority 258.501 FS. Law Implemented 258.501 FS. History--New 7-22-91, Formerly 16D-15.012.

**APPENDIX D – State-Local Agreement for Administering the Myakka River
Wild and Scenic River Protection Zone between Florida DEP,
Florida DCA, and Sarasota County**

STATE - LOCAL AGREEMENT FOR ADMINISTERING THE
MYAKKA RIVER WILD AND SCENIC RIVER PROTECTION ZONE

Between
Florida Department of Environmental Protection
And
Florida Department of Community Affairs
And
Sarasota County

AGREEMENT

This Agreement, entered into this 11th day of December, 1997, between the Florida Department of Environmental Protection (DEP), the Florida Department of Community Affairs (DCA) and Sarasota County (County), a political subdivision of the State of Florida, provides a basis for the management of the Myakka River Wild and Scenic Protection Zone (Protection Zone) in the unincorporated area of Sarasota County. This Agreement is required by the Myakka River Wild and Scenic Designation and Preservation Act, section 258.501, Florida Statutes (F.S.), as amended, hereinafter referred to as the "Act", and included herewith as Exhibit A.

Part I - Purpose and Intent

The purpose of this Agreement is to establish formal, interagency coordination mechanisms and procedures for the County's administration of the Protection Zone in accordance with paragraphs 258.501 (4)(b) and (9)(c), F.S. The Protection Zone consists of an area 220-feet wide along the designated River Area whose approximate boundary has been delineated and approved by staff of the County, DCA, Southwest Florida Water Management District and DEP on maps included herewith as Exhibit B. It is acknowledged by all parties to this Agreement that the maps will be used as a means of identifying the approximate location of the Protection Zone. It is further understood that the approximate wetland area and protection zone is subservient to any wetland lines established on parcels or tracts pursuant to Chapter 373, F.S., and Chapter 62-340, Florida Administrative Code. The agreement includes responsibilities for participating agencies, and guidelines and standards to be used by DEP and DCA for monitoring the regulation of activities by the County, included in paragraph 3.12, herein.

The review and regulation of activities by the County in the Protection Zone will be conducted, under existing County authority, to ensure conformance with the Act, the Myakka River Wild and Scenic River Management Plan (Plan), and this Agreement. Activities will be regulated in the Protection Zone so as to minimize potential adverse environmental and visual impacts on the resource values in the River Area, and to minimize adverse impacts to landowners' use of land for residential purposes. The Plan, approved by the Governor and Cabinet on May 22, 1990, lists the resource values and their priority management concerns, guiding principles, objectives and actions. The County has incorporated the Plan by reference in its State-mandated comprehensive plan, *Apoxsee*, through adoption of Policy 5.2.³~~A~~ in the Environment Chapter which is available from Sarasota County Long Range Planning Division. *ghe*

Part II - General Provisions

- 2.01. This Agreement will be in effect in perpetuity, unless provided otherwise by law, amended or revoked.
- 2.02. This is the entire Agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.
- 2.03. This Agreement includes no provisions for compensation, reimbursement for any expenses or remuneration for management of the Protection Zone by the County.
- 2.04. Nothing in this Agreement shall be construed to relieve any party from adhering to State law, and in the event of a change in any statute inconsistent with this Agreement, the statute shall take precedence.
- 2.05. This Agreement may be amended with approval by all parties pursuant to management considerations, or amendments to the Act or management plan. Any alterations, variations, changes, modifications or waivers of provisions in this Agreement shall only be valid when they have been mutually agreed upon in writing, executed by each of the parties hereto, and included in this Agreement.

2.06. No delay or omission to exercise any right, power or remedy accruing to any party upon breach or default by any party under this Agreement, shall impair any such right, power or remedy of any party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

2.07. This Agreement is neither intended nor shall it be construed to grant any rights, privileges or interest to any third party without the mutual written agreement of the parties hereto.

2.08. No person, on the grounds of race, creed, color, national origin, age, sex, or handicap, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.

2.09. Each party shall bear its own costs and attorneys fees for all expenses incurred in this matter including execution of this agreement and its implementation.

2.10. If any part of this Agreement is judicially determined to be invalid or unenforceable, the other provisions of this Agreement will remain in full force and effect.

2.11. This agreement, including Exhibits, shall become effective upon execution by the last party to execute this Agreement.

2.12. Nothing in this Agreement shall operate to divest the County of any authority or jurisdiction to enact appropriate ordinances, so long as they are in conformance with the Act, the Plan, and this Agreement and all other applicable state laws.

Part III - Agencies' Responsibilities

Responsibilities of the County

The County Shall:

3.01. Adopt an ordinance that sets forth the County's legal responsibilities, activities that will be regulated, and procedures for regulating activities in the Protection Zone. If necessary, the

County shall amend the County's land development regulations and other appropriate ordinances within one year after the adoption date of this Agreement so that regulations that affect the Protection Zone conform to, or are more stringent than, the Act, the Plan and this Agreement.

3.02. Amend the County's land development regulations and other appropriate ordinances concerning activities in the Protection Zone by way of a County ordinance adopted pursuant to paragraph 3.01. The ordinance will prohibit certain activities, and require others to undergo review and either be denied or permitted with or without conditions, to minimize potential adverse physical and visual impacts on resource values in the River Area but minimize impacts on private landowners' use of land for residential purposes. The resource values of concern are those that are identified in the Plan. Activities that should be considered for prohibition include, but are not limited to, landfills, clear cuttings, major new infrastructure facilities, major activities that would alter historic water or flood flows, multifamily residential construction, commercial and industrial development, and mining and major excavations. However, appurtenant structures for these activities may be permitted by the County if such structures do not have adverse visual or measurable adverse environmental impacts to resource values in the River Area.

3.03. Upon the effective date of amendments to the Act, the Plan, or this Agreement, the County will amend *Apoxsee*, within one year, to be consistent with, or more stringent than, the amended Act, Plan, and this Agreement.

3.04. Upon the effective date of amendments to the Act, the Plan, or this Agreement, the County will amend, within one year, its land development regulations and other appropriate ordinances, to be consistent with, or more stringent than, the Act, the Plan, and this Agreement. If amendments to the Act set a specific time frame for adoption of amendments to the land development regulations or other appropriate ordinances, that time frame will prevail over the time frame set in this paragraph.

3.05. Coordinate with the Myakka River Management Coordinating Council, DCA and DEP when proposed County policies relating to administration of the Protection Zone and or affecting the River Area are being considered for enactment or amendment.

3.06. Provide to DCA and DEP notices and copies of all proposed amendments to *Apoxsee*, pursuant to Section 163.3184, F.S.; and provide for review and comment all proposed amendments to County land development regulations, and other appropriate ordinances related to administration of the Protection Zone, pursuant to Section 258.501, F.S.

3.07. In accordance with Section 258.501, F.S., the County will notify DEP and DCA of permit applications required by the ordinance established under paragraph 3.02, herein, and that are identified in the ordinance as requiring review by DEP and DCA.

3.08. Provide to DEP and DCA an annual report on the County's actions in the Protection Zone pursuant to paragraphs 3.01, 3.02, 3.06 and 3.07, herein, within 90 days of the end of the calendar year.

Responsibilities of DEP

The DEP Shall:

3.09. Maintain a full-time position or designate an employee within the Division of Recreation and Parks, District 4, subject to legislative appropriations, or other lawfully available funding, in order to provide liaison with the County and the Myakka River Management Coordinating Council and to review and respond to the annual report.

3.10. Provide technical assistance, from staff of the Division of Recreation and Parks, as requested, to the County in its preparation of amendments to *Apoxsee*, the land development regulations, and other ordinances relevant to regulation of activities in the Protection Zone.

3.11. Assist DCA in the compliance review of *Apoxsee*. Provide for review and comment on County land development regulations and other ordinances relevant to administration of the Protection Zone.

3.12. Monitor, using the performance standards and guidelines for DEP and DCA established in this paragraph, local government decisions on activities proposed to be conducted in the Protection Zone and identified in the annual report (required under paragraph 3.08, herein) for consistency with the Act, the Plan, this Agreement, **Apoxsee**, land development regulations and other ordinances that have been revised subject to this Agreement.

**Performance Standards and Guidelines for Monitoring the Regulation of
Activities by Sarasota County in the
Myakka River Wild and Scenic Protection Zone**

The DEP and DCA are charged under Section 258.501(6)(a) and (9)(c), F.S., with using performance standards and guidelines to review and monitor the regulation of activities by the County in the Protection Zone. The performance standards and guidelines enumerated below are adopted for use by DEP and DCA in monitoring the County's administration of the Protection Zone.

Performance Standards

1. **Apoxsee** will be amended, as necessary, within one year after the effective date of the Agreement to incorporate policies concerning the County's responsibility for regulating activities in the Protection Zone. Thereafter, **Apoxsee** will be updated as necessary, within one year after adoption of amendments to the Act, Plan or the Agreement.
2. When the County adopts amendments to chapters or sections of **Apoxsee** not specifically concerning the Protection Zone, such amendments should not be inconsistent with the regulatory program for the Protection Zone or the intent of protecting the sensitive resources within the Protection Zone .
3. The County will ensure that proposed amendments to the land development regulations as well as other ordinances that affect the Protection Zone are consistent with the Act, Plan and Agreement.

4. The specific elements of the Act, Plan and Agreement to be used by the County, DEP, and DCA in monitoring conformance of the County's regulatory program for the Protection Zone include:

Guidelines

Myakka River Wild and Scenic Designation and Preservation Act

Paragraph 258.501(5)(c)(12), F.S.

Paragraphs 258.501(6)(b) and (c), F.S.

Paragraph 258.501(8)(b), F.S.

Paragraph 258.501(9)(c), F.S.

Paragraph 258.501(11), F.S.

Paragraph 258.501(12), F.S.

Paragraph 258.501(13), F.S.

Myakka Wild and Scenic River Management Plan

Chapter 4. Resource Values, Issues, and Problems (all sections)

Chapter 5. River Management Program (all sections)

Chapter 6. Plan Implementation (all sections)

Agreement

Part III - Agencies' Responsibilities. Responsibilities of the County, Paragraphs 3.01 - 3.08.

3.13. Advise the County Administrator's Office of any legislative or administrative action pending or taken by the County that is evaluated by staff of DEP to be inconsistent with the provisions of the Agreement, Act, the Plan, **Apoxsee** or land development regulations as amended pursuant to the Agreement.

Responsibilities of DCA

The DCA Shall:

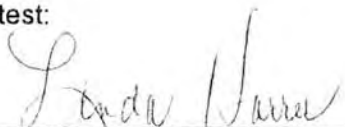
3.14. Provide technical assistance, as requested, to the County in its preparation of amendments to the local government comprehensive plan, **Apoxsee**, land development regulations, and other ordinances relevant to administration of the Protection Zone.

3.15. Conduct a review of proposed amendments to **Apoxsee**, the land development regulations and other ordinances relevant to administration of the Protection Zone pursuant to paragraphs 3.01, 3.02, 3.03 and 3.04, herein, for consistency with the Act, the Plan and this Agreement.

3.16. Monitor, using the guidelines and performance standards for DEP and DCA established in paragraph 3.12, herein, of this Agreement, local government decisions on activities proposed to be conducted in the Protection Zone and identified in the annual report (see paragraph 3.08., herein) for consistency with the Act, the Plan, this Agreement, **Apoxsee**, land development regulations and other ordinances that have been revised subject to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, the day and year first above written.

Attest:




Deputy Clerk, County Clerk

Approved as to form and legality:

, General Counsel

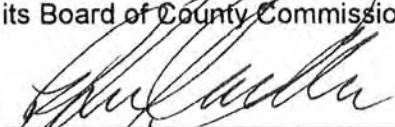
APPROVED AS TO FORM AND CORRECTNESS



COUNTY ATTORNEY

SARASOTA COUNTY, FLORIDA
by its Board of County Commissioners

By



Chairman of the Board of
County Commissioners

Date

12/16/97

Attest:

Paula P. Ada
Department Clerk

Approved as to form and legality:

[Signature]
Assistant General Counsel

Attest:

Cheryl M. Garcia
Deputy Department Clerk

Approved as to form and legality:

[Signature]
Suzanne B. Brantley Assistant General Counsel

STATE OF FLORIDA, DEPARTMENT OF
COMMUNITY AFFAIRS

By [Signature]
Charles G. Pattison, Director
Division of Resources Planning
and Management

Date 1/22/98

STATE OF FLORIDA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION

By [Signature]
Fran P. Mainella, CLP
Director
Division of Recreation and Parks

Date 2/10/98

Exhibit A

Myakka River Wild and Scenic Designation and Preservation Act

Section 258.501, Florida Statutes, as amended

enforce the standards and criteria established in a resource inventory and management plan adopted by the board, if the board determines that such a delegation is in the public interest.

(a) Such delegation shall be made only if the board determines that the local government's program for administering and enforcing the adopted standards and criteria:

1. Adopts, by ordinance, standards and criteria no less restrictive than those in the management plan approved by the board pursuant to the provisions of rule 18-20.013(2), Florida Administrative Code; provided, however nothing contained in this subsection shall expand the powers, jurisdiction, or authority granted pursuant to this chapter. When a local government's program proposes to include standards and criteria that are more restrictive than those in the management plan approved by the board, such standards and criteria shall not be effective until they have been approved by the board as being consistent with the provisions of this chapter.

2. Provides for the enforcement of such requirements by appropriate administrative and judicial processes.

3. Provides for administrative organization, staff, and financial and other resources necessary to effectively and efficiently enforce such requirements.

4. Provides for improved management and enforcement of the standards and criteria in the resource inventory and management plans and of the rules adopted by the board pertaining to state-owned lands.

(b) Such delegation may not include the authority to grant approval for the sale, lease, easement, or other uses of state-owned sovereignty lands that require approval by the board as provided by the board's rules on October 1, 1989. This provision shall not preclude agreements between the board and local governments that may provide that the local government shall process applications and present recommendations for final action to the board.

(c) The board shall give prior notice of its intention to enter into an agreement as described in this subsection, as provided by s. 253.115. The Division of State Lands of the Department of Environmental Protection shall update its rules annually to include a list of the management agreements adopted pursuant to this subsection. The list shall identify the parties to, and the date and location of, each agreement, and shall specify the nature of the authority delegated by the agreement.

(d) The board may designate the local government as its enforcement arm for purposes of s. 258.46, and the local government shall have the authority to directly enforce the provisions of that section or to rely on the enforcement provisions of the local ordinance implementing the management plan. The governing body of the local government shall seek approval from the Division of State Lands before seeking the elevated penalties associated with direct enforcement of s. 258.46 in lieu of penalties associated with violation of its ordinance. Nothing in this subsection shall affect the authority of the division to enforce the provisions of this act.

(e) Each year on the anniversary of any delegation pursuant to this subsection, the staff of the department

shall present to the board an evaluation of decisions made by the local governments during the previous year. The board shall, upon reviewing this evaluation, either act to renew the delegation, act to retract the delegation, or act to renew the delegation with specific directives to the local government to take corrective action concerning any deficiencies in its processing or application of the standards and criteria in the rules approved by the board or a management plan adopted for the preserves.

(f) Nothing contained in this subsection shall affect the powers, duties, or procedures set forth in chapter 403.

History.—s. 1, ch. 75-172, s. 6, ch. 89-25, ss. 100, 497 ch. 94-356, s. 85, ch. 95-143.

258.44 Effect of preserves.—Neither the establishment nor the management of the aquatic preserves under the provisions of this act shall operate to infringe upon the traditional riparian rights of upland property owners adjacent to or within the preserves. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, surface water drainage, installation and maintenance of oil and gas transportation facilities, and similar purposes may be permitted by the trustees subject to the provisions of any other applicable laws under the jurisdiction of other agencies.

History.—s. 1, ch. 75-172.

258.45 Provisions not superseded.—The provisions of this act shall not supersede, but shall be subject to, the provisions of ss. 403.501-403.518.

History.—ss. 3, 6, ch. 75-172, s. 48, ch. 90-331.

258.46 Enforcement; violations; penalty.—The provisions of this act may be enforced by the Board of Trustees of the Internal Improvement Trust Fund or in accordance with the provisions of s. 403.412. However, any violation by any person, natural or corporate, of the provisions of this act or any rule or regulation issued hereunder shall be further punishable by a civil penalty of not less than \$500 per day or more than \$5,000 per day of such violation.

History.—s. 5, ch. 75-172.

PART III

WILD AND SCENIC RIVERS

258.501 Myakka River; wild and scenic segment.

258.501 Myakka River; wild and scenic segment.—

(1) **SHORT TITLE.**—This section may be cited as the "Myakka River Wild and Scenic Designation and Preservation Act."

(2) **LEGISLATIVE DECLARATION.**—The Legislature finds and declares that a certain segment of the Myakka River in Manatee, Sarasota, and Charlotte Counties possesses outstandingly remarkable ecological, fish and wildlife, and recreational values which are unique in the State of Florida. These values give significance to the river as one which should be permanently preserved and enhanced for the citizens of the State of Florida, both present and future. The permanent management

and administration of the river involves a complex interaction of state, regional, and local interests which require balancing and coordination of purpose. It is the intention of the Legislature to provide for the permanent preservation of the designated segment of the Myakka River by way of development of a plan for permanent administration by agencies of state and local government which will ensure the protection necessary but retain that degree of flexibility, responsiveness, and expertise which will accommodate all of the diverse interests involved in a manner best calculated to be in the public interest.

(3) **DEFINITIONS.**—As used in this section, the term:

(a) "Activity" means the doing of any act or the failing to do any act, whether by a natural person or a corporation.

(b) "Agreement" means the interagency operating agreement between the department, the Department of Community Affairs, and Sarasota County or the City of North Port.

(c) "Coordinating council" means the council created by subsection (7).

(d) "Department" means the Department of Environmental Protection.

(e) "Division" means the Division of Recreation and Parks of the Department of Environmental Protection.

(f) "Major infrastructure facility" means a manmade structure which serves the common needs of the population, such as a central sewage disposal system, potable water system, potable water well serving a system, solid waste disposal site or retention area, stormwater system, utility, causeway, marina, bridge, or roadway.

(g) "Person" means an individual, corporation, governmental agency or institution thereof, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or other legal entity.

(h) "Resource value" means any one or more of the specific economic, scenic, recreational, geologic, fish and wildlife, historic, cultural, or ecological features associated with the river area as determined by the coordinating council.

(i) "River area" means that corridor of land beneath and surrounding the Myakka River from river mile 7.5 to river mile 41.5, together with a corridor including the maximum upland extent of wetlands vegetation as determined by the former Department of Environmental Regulation pursuant to chapter 403 and chapters 17-3 and 17-312, Florida Administrative Code.

(j) "Wild and scenic protection zone" means an area which extends 220 feet landward from the river area.

(4) **DESIGNATION OF WILD AND SCENIC RIVER.**—

(a) The corridor of land surrounding and beneath the Myakka River between river mile 7.5 and river mile 41.5 is hereby designated as a Florida wild and scenic river for the purposes of this section and is subject to all of the provisions of this section. Such designated portion is more particularly described as that portion of the Myakka River located between State Road 780 in Sarasota County and the Sarasota-Charlotte County line.

(b) The governments of Sarasota County and the City of North Port shall manage the Myakka River wild and scenic protection zone under their existing authori-

ties for comprehensive planning, the regulation of land development activities, and other necessary or appropriate ordinances and in conformance with this section, the management plan required under subsection (5), and the agreements adopted by the department and the Department of Community Affairs with the city and county pursuant to this section.

(5) **DEVELOPMENT OF MANAGEMENT PLAN.**—

(a) The department and the coordinating council shall jointly develop a proposed management plan for the designated segment of the Myakka River, subject to and consistent with the provisions of this section.

(b) The development of the proposed management plan shall be by public hearing and shall include participation by all appropriate state agencies and by all appropriate or interested local governments and private organizations.

(c) The proposed management plan shall include provision for:

1. Permanent protection and enhancement of the ecological, fish and wildlife, and recreational values within the river area, primary emphasis being given to protecting agricultural, aesthetic, scenic, historic, archaeological, and scientific features.

2. Continuation of land uses and developments on private lands within the river area which are in existence on January 1, 1986.

3. Periodic studies to determine the quantity and mixture of recreation and other public uses which can be permitted without adverse impact on the resource values of the river area.

4. Regulation, control, and distribution of public access where necessary to protect and enhance the resource values of the river area.

5. Consideration of need for basic facilities to absorb user impact on the river area, including necessary toilet or refuse containers, but, if found to be necessary, located in order to minimize their intrusive impact.

6. Restriction of motorized travel by land vehicle or boat where necessary to protect the resource values in the river area.

7. Agricultural and forestry practices similar in nature to those in the river area on January 1, 1986.

8. Resource management practices for the protection, conservation, rehabilitation, or enhancement of river area resource values.

9. Monitoring of existing water quality.

10. Continuance of existing drainage and water management practices, unless such existing practices will adversely affect, degrade, or diminish existing water quality or existing resource values in the river area, and allowance of new water resource management practices which will not have an adverse impact on resource values in the river area.

11. Review and regulation of all activities conducted or proposed to be conducted within the river area which will or may have an adverse impact on any of the resource values in the river area as provided in this section.

12. Review and regulation, by Sarasota County and the City of North Port under their respective authorities, of activities within the wild and scenic protection zone; and subsequent prohibition, or approval with or without

conditions, of such activities in order to minimize potential adverse physical and visual impacts on resource values in the river area and to minimize adverse impacts on private landowners' use of land for residential purposes.

(d) To the extent not inconsistent with this section, the proposed management plan may also include any other provisions deemed by the department to be necessary or advisable for the permanent protection of the river as a component of the Florida Wild and Scenic Rivers System.

(6) AMENDMENT OF REGULATIONS AND COMPREHENSIVE PLANS.—

(a) Sarasota County and the City of North Port shall amend their comprehensive plans so that the parts of such plans that affect the wild and scenic protection zone conform to, or are more stringent than, this section, the river management plan, and management guidelines and performance standards to be developed and contained within agreements to be adopted by the department, the Department of Community Affairs, and the city and county. The guidelines and performance standards must be used by the department and the Department of Community Affairs to review and monitor the regulation of activities by the city and county in the wild and scenic protection zone. Amendments to those comprehensive plans must include specific policies and guidelines for minimizing adverse impacts on resources in the river area and for managing the wild and scenic protection zone in conformance with this section, the river management plan, and the agreement. Such comprehensive plans must be amended within 1 year after the adoption date of the agreement, and thereafter, within 6 months following an amendment to this section, the river management plan, or the agreement, as may be necessary. For the purposes established in this subsection, such amendments need not conform to statutory or local ordinance limitations on the frequency of consideration of amendments to local comprehensive plans.

(b) Sarasota County and the City of North Port shall adopt or amend, within 1 year after the department and the Department of Community Affairs adopt with the city and with the county agreements for regulating activities in the wild and scenic protection zone, any necessary ordinances and land development regulations so that those ordinances and regulations conform to the purposes of this section, the river management plan, and the agreement. Thereafter, following any amendment to this section, the river management plan, or the agreement, the city and county must amend or adopt, within 1 year, appropriate ordinances and land development regulations to maintain such local ordinances and regulations in conformance with this section, the river management plan, and the agreement. Those ordinances and regulations must provide that activities must be prohibited, or must undergo review and either be denied or permitted with or without conditions, so as to minimize potential adverse physical and visual impacts on resource values in the river area and to minimize adverse impacts on private landowners' use of land for residential purposes. The resource values of concern are those identified in this section and by the coordinating council in the river management plan. Activities

which may be prohibited, subject to the agreement, include, but are not limited to, landfills, clear cuttings, major new infrastructure facilities, major activities that would alter historic water or flood flows, multifamily residential construction, commercial and industrial development, and mining and major excavations. However, appurtenant structures for these activities may be permitted if such structures do not have adverse visual or measurable adverse environmental impacts to resource values in the river area.

(c) If the Department of Community Affairs determines that the local comprehensive plan or land development regulations, as amended or supplemented by the local government, are not in conformance with the purposes of this section, the river management plan, and the agreement, the Department of Community Affairs shall issue a notice of intent to find the plan not in compliance and such plan shall be subject to the administrative proceedings in accordance with s. 163.3184.

(7) MANAGEMENT COORDINATING COUNCIL.—

(a) Upon designation, the department shall create a permanent council to provide interagency and intergovernmental coordination in the management of the river. The coordinating council shall be composed of one representative appointed from each of the following: the department, the Department of Transportation, the Game and Fresh Water Fish Commission, the Department of Community Affairs, the Division of Forestry of the Department of Agriculture and Consumer Services, the Division of Historical Resources of the Department of State, the Tampa Bay Regional Planning Council, the Southwest Florida Water Management District, the Southwest Florida Regional Planning Council, Manatee County, Sarasota County, Charlotte County, the City of Sarasota, the City of North Port, agricultural interests, environmental organizations, and any others deemed advisable by the department.

(b) The coordinating council shall review and make recommendations on all proposals for amendments or modifications to this section and to the permanent management plan, as well as on other matters which may be brought before the council by the department, any local government, or any member of the council, and shall render its nonbinding advisory opinion to the Southwest Florida Water Management District, the department, and affected local governments.

(c) The council may adopt bylaws to provide for election of such officers as it deems necessary, removal of officers for just cause, meetings, quorum, procedures, and other such matters as its members may deem advisable in the conduct of its business. Such bylaws shall be approved by the department.

(d) Such professional staff as the coordinating council may require shall be provided by the department.

(8) PRESERVATION OF EXISTING GOVERNMENTAL AUTHORITY.—

(a) Nothing contained in this section shall operate to divest any agency, water management district, municipality, county, or special district of any authority or jurisdiction in existence on January 1, 1986.

(b) Notwithstanding paragraph (a), Sarasota County and the City of North Port must, in exercising their

authority and jurisdiction over any part of the wild and scenic protection zone, act in conformance with this section, the management plan, and the agreements entered into pursuant to this section.

(9) RULEMAKING AUTHORITY.—

(a) The department is authorized to adopt rules to regulate activities within the river area which have adverse impact on resource values as adopted by the coordinating council within the river area.

(b) The department shall coordinate all activities related to rule adoption and enforcement with the regulatory and management programs of other agencies in order to avoid to the maximum extent possible any conflicts or duplication arising therefrom.

(c) The department and the Department of Community Affairs must enter into agreements with the City of North Port and Sarasota County that provide for guiding and monitoring the regulation of activities by the city and county, in accordance with subsection (6). Such agreements shall include guidelines and performance standards for regulating proposed activities so as to minimize adverse environmental and visual impacts of such activities on the resource values in the river area, and to minimize adverse impacts to landowners' use of land for residential purposes.

(10) PERMITTING AUTHORITY.—

(a) No person or entity shall conduct any activity within the river area which will or may have an adverse impact on any resource value in the river area without first having received a permit from the department.

(b) A permit may be granted only after a finding by the department that the activity for which a permit has been requested will not have an adverse impact on resource values in the river area.

(c) The department may adopt an application fee schedule providing for payment of reasonable fees to defray the cost of processing applications.

(11) NOTIFICATION BY REGULATORY AGENCIES.—All state, regional, and local regulatory agencies shall provide to the department notification of applications received by the agency for approval to conduct activities in the river area and protection zone.

(12) LEGAL STATUS OF COMPREHENSIVE PLAN AMENDMENTS.—It is the intent of this section that the city and county amend their comprehensive plans, land development regulations, and other appropriate ordi-

nances and regulations to be in conformance with this section, the river management plan, and guidelines and performance standards to be developed and adopted by agreement pursuant to this section. Such amendments shall have legal status as provided under s. 163.3194 and must be implemented through appropriate local regulations in accordance with s. 163.3201.

(13) STANDING TO ENFORCE AMENDED COMPREHENSIVE PLANS.—It is the intent of this section that any aggrieved or adversely affected person may maintain an action for injunction or other relief against the city or county to prevent any such local government from taking action in regulating activities not consistent with the comprehensive plan, land development regulations, and other appropriate ordinances and regulations, as amended, pursuant to this section and s. 163.3215.

(14) PERMITTED ACTIVITIES.—

(a) Nothing in this section shall be construed to prohibit or regulate any activity taking place outside the river area and the wild and scenic protection zone for which necessary permits and licenses are obtained as required by other provisions of federal, state, or local law.

(b) Nothing in this section shall be construed to prohibit or limit public utilities from improving, maintaining, modifying, or expanding existing facilities or constructing new facilities in the river area or the wild and scenic protection zone, provided the necessary federal, state, and local permits and licenses are obtained.

(15) PROHIBITED ACTIVITY.—Airboats are prohibited from operating in the river area north of U.S. Highway 41 (State Road 45), except for uses officially allowed by government agencies.

(16) ENFORCEMENT.—Officers of the department shall have full authority to enforce any rule adopted by the department under this section with the same police powers given them by law to enforce the rules of state parks and the rules pertaining to saltwater areas under the jurisdiction of the Florida Marine Patrol.

(17) PENALTIES.—Violation of this section or of any rule adopted under this section constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Continuing violation after notice constitutes a separate violation for each day so continued.

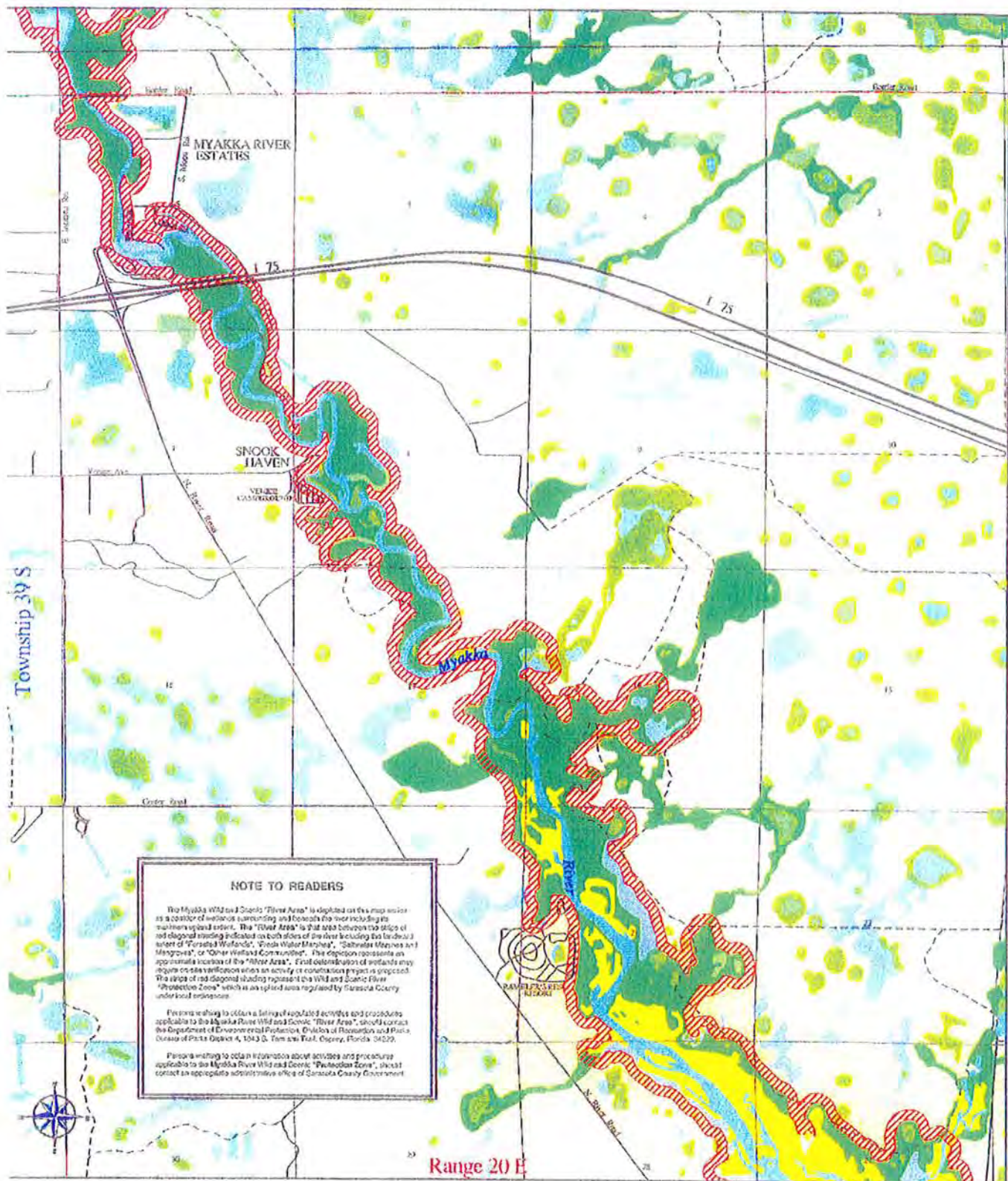
History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, ch. 85-363, § 30; ch. 86-163, § 1, ch. 90-173, § 101; ch. 94-356.

Exhibit B.

**Map of Wild and Scenic River
River and Protection Zone Areas**

The following map series identifies the administrative area for the State-designated Myakka Wild and Scenic River. Also identified is the approximate area of the Myakka Wild and Scenic River Protection Zone which is depicted as strips of red diagonal shading. The Protection Zone is administered by Sarasota County. The exact boundaries of these areas may be confirmed or adjusted on an individual property basis through on-site verification when an activity or construction project is proposed.

MYAKKA WILD AND SCENIC RIVER RIVER AND PROTECTION ZONE ADMINISTRATIVE AREAS



- Open Water Areas
- Upland Communities
- Freshwater Marshes
- Forested Wetlands
- Emergent Aquatic Vegetation
- Saltwater Marshes and Mangroves
- Other Wetland Communities
- 220 Foot Protection Zone

Lower Myakka River South of Interstate 75

- Major Roads
- Improved Roads
- Unimproved Roads
- Public Owned Land Boundary
- Section-Township-Range Grid
- 7.5 Minute Quadrangle Boundary

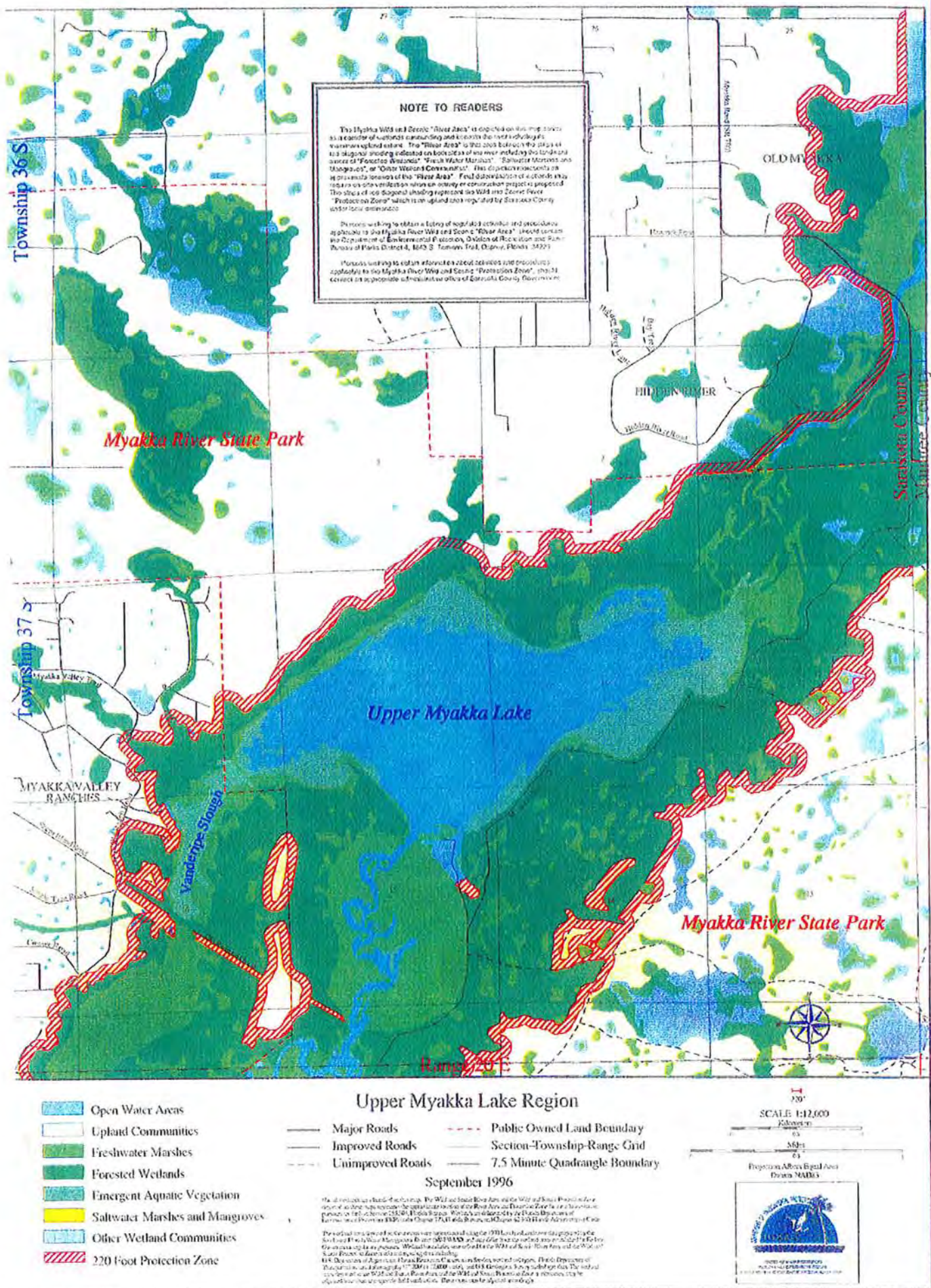
September 1996

This map was prepared by the Florida Department of Environmental Protection, Division of Recreation and Parks, Bureau of Parks District 4, 1043 D. Tom and Paul, Osprey, Florida 34209.

The material on this map was prepared using the 1996 National Wetlands Inventory data prepared by the Florida Department of Environmental Protection, Division of Recreation and Parks, Bureau of Parks District 4, 1043 D. Tom and Paul, Osprey, Florida 34209. The National Wetlands Inventory is a nationwide inventory of wetlands and riparian areas. The National Wetlands Inventory is a nationwide inventory of wetlands and riparian areas. The National Wetlands Inventory is a nationwide inventory of wetlands and riparian areas.



MYAKKA WILD AND SCENIC RIVER
RIVER AND PROTECTION ZONE ADMINISTRATIVE AREAS



NOTE TO READERS

The Myakka Wild and Scenic "River Area" is depicted on this map as not a corridor of wetlands surrounding and beneath the river including its tributaries upland areas. The "River Area" is that area between the edges of red diagonal shading indicating a both sides of the river including the floodplain adjacent "Flooded Wetlands", "Wash Water Wetlands", "Saline Water Wetlands", or "Other Wetland Communities". This depiction represents an approximate location of the "River Area". Final determination of wetlands may require on-site verification using an aerial photograph or other data. The edges of red diagonal shading represent the Wild and Scenic River "Protection Zone" which is an upland area regulated by Sarasota County under local ordinances.

Persons wishing to obtain a listing of regulated activities and procedures applicable to the Myakka River Wild and Scenic "River Area", should contact the Department of Environmental Protection, Division of Regulation and Permit, Bureau of Parks Districts 4, 904 S. Tenthon, Fort, Pierce, Florida 34920.

Persons wishing to obtain information about activities and procedures applicable to the Myakka River Wild and Scenic "Protection Zone", should contact an appropriate administrative office of Sarasota County Government.

NOTE TO READERS

The Mykka River and the "River Area" is depicted on the map as a corridor of wetlands extending east and west of the town of Mykka. It is a corridor of wetlands that the "River Area" is that area between the dip of the topographic shading indicates in both parts of the river including the landward oriented "Flooded Wetlands," "Flood Wetlands," "Saline Marshes and Mangroves," or "Other Wetlands and Communities." This description is an approximation of the "River Area." Final delineation of wetlands may require on-site verification using an activity of consultation project is proposed. The types of wetlands that are depicted on the map and the "River Area" are "Flooded Wetlands" which is a wetland also mapped by Santa Cruz County under local ordinance.

Persons wishing to obtain a listing of registered dentists and producers applicable to the *Myakka River Wild and Scenic "River Area"*, should contact: the Department of Environmental Protection, Division of Recreation and Parks, Bureau of Parks Projects & M&G, Tamiami Trail, Ocoee, Florida 34222.

Persons wishing to obtain information about activities and procedures applicable to the Myakka River Wild and Scenic "Protection Zone", should contact an authorized administrative office of Sarasota County Government.

Lower Myakka Lake

Myakka River State Park

Lower Myakka Lake Region

-

September 1996

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Klausuren

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Researcher Abby Ford

Dariusz PAJDAK

EXERCISES

QUESTION

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Pinelands Reserve

Carlton Reserve

NOTE TO READERS

The Myakka Watershed (River Area) is depicted on this map as a corridor of wetlands, surrounding and beneath the river including its numerous tributaries. The "River Area" is that area between the steps of the dike, a siding indicated on both sides of the river including the farbank and point of "Forested Wetlands", "Fresh Water Marshes", "Barataria Marshes and Mangroves", or "River Wetland Communities". This depiction may not be representative of the "River Area". Aerial photography of wetlands may require a visit to the wetlands which an aerial or ground-based photograph is not. The steps of the dike are indicated on the map and the River Area is depicted as a corridor of wetlands, surrounding and beneath the river including its numerous tributaries.

Persons wishing to obtain a copy of the map should contact the Department of Environmental Protection, Division of Recreation and Parks, Bureau of Parks District 4, 1615 S. Tamiami Trail, Osprey, Florida 34201.

Persons wishing to obtain information about wetlands and protection should contact the Myakka River Watershed "Protection Zone", or the contact information in the brochure office of Sarasota County Government.

Myakka River Palms

Range 19 E

Range 20 E

Township 38 S

Florida Wildlife and Game, "Three Lines" is depicted on a map as a boundary between counties and is based on the following data: a surveying station in the "Three Lines" is that station being the first station in a survey indicated on each side of the river including the town of Fort Pierce, "Forted Waters," "Fech Waters," "Bachors Waters and Mangrove," in "One Water Course." The department is presently attempting to determine the "Three Lines." Final determination is subject to future verification and the County is presently in a state of respect to the "Three Lines" in the proposed planning for the Wild and Scenic River "Fetched in Zone" which is subject to the regulatory District County and local and state.

Persons wishing to obtain a listing of regulated activities and addresses applicable to the Myakka River Wild and Scenic "River Area", should contact the Department of Environmental Protection, Division of Recreation and Forests, Bureau of Parks District 4, 1665 S. Tamiami Trail, Ocoee, Florida 34220.

Persons wishing to obtain information about residents and properties applicable to this Mysika River W-2 and Seismic "Protection Zone", should contact the appropriate administrative office of St. Lucie County Government.

Carlton Reserve

Township 38 S

Range 19 E

Range 20 E

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Department of Health and Human Services
Washington, D.C. 20492



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FOR THE RECORD

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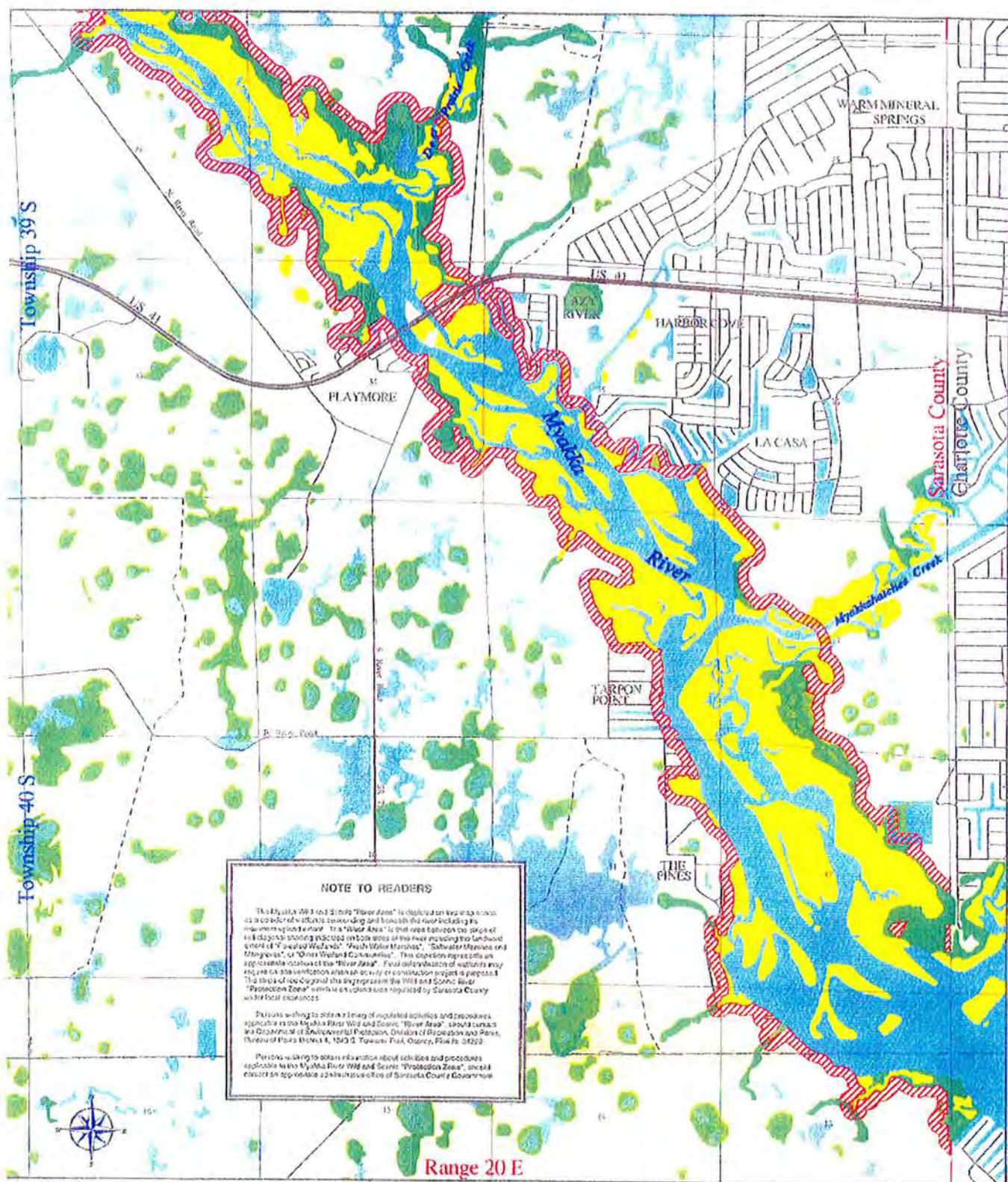
	Major Roads		Public Owned Land Boundary
	Improved Roads		Section-Township-Range Grid
	Unimproved Roads		7.5 Minute Quadrangle Boundary

September 1996

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 Open Water Areas
 Upland Communities
 Freshwater Marshes
 Forested Wetlands
 Emergent Aquatic Vegetation
 Saltwater Marshes and Mangroves
 Other Wetland Communities
 220 Foot Protection Zone

MYAKKA WILD AND SCENIC RIVER RIVER AND PROTECTION ZONE ADMINISTRATIVE AREAS



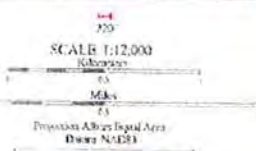
- Open Water Areas
- Upland Communities
- Freshwater Marshes
- Forested Wetlands
- Emergent Aquatic Vegetation
- Saltwater Marshes and Mangroves
- Other Wetland Communities
- 220 Foot Protection Zone

Lower Myakka River at Warm Mineral Springs

- Major Roads
- Improved Roads
- Unimproved Roads
- Public Owned Land Boundary
- Section-Township-Range Grid
- 7.5 Minute Quadrangle Boundary

September 1996

This map was developed as part of the Myakka River Wild and Scenic River Study. The study was conducted by the Florida Department of Environmental Protection, Division of Environmental Protection, Bureau of Water Quality, in cooperation with the Florida Department of Transportation, Division of Transportation Planning, Bureau of Planning and Policy, and the Florida Department of Natural Resources, Bureau of Water Management. The study was funded by the Florida Department of Environmental Protection, Bureau of Water Quality, and the Florida Department of Transportation, Division of Transportation Planning, Bureau of Planning and Policy.



**APPENDIX E – Sarasota County Ordinance No. 98-025 Relating to Protection
Measures for the Myakka River and the “Myakka River Protection
Plan”**

