

Wetlands Advisory Task Force

MINUTES

NOVEMBER 30, 2011 1:00PM

701 NW 1 COURT
2ND FLOOR TRAINING ROOM

MEETING CALLED TO ORDER	By Chair at 1:09pm		
MEMBER ATTENDEES	Present: Patricia Baloyra Manuel Echezarreta Jose K Fuentes Jose M. Gonzalez James F. Murley Alice Pena Stephen A Sauls	Absent: Jennifer Smith, FDEP SE District	Present Non Voting: Ray Scott, FDAC – Office of Agricultural Water Policy Ron Peekstok, SFWMD

Agenda topics

WELCOME AND ANNOUNCEMENTS

LEE HEFTY, ASSISTANT DIRECTOR, PERA

DISCUSSION	<p>Chair opened the meeting with addressing the public and advising them with regards to a later opportunity for public comment and then proceeded with introductions in the round.</p> <p>Ms. Alice Pena disclosed to the task force that she has been elected as President of the Miami Dade County Farm Bureau and recognized her associate in the public sitting area Charles Shin from the federal level.</p> <p>The Chair recognized Mr. Hefty for opening announcements.</p> <p>Mr. Hefty advised the members that the presentation and minutes from the previous meeting have been posted to the website. Mr. Hefty recognized Mr. Evan Skornick, Section Manager of the Wetland Resources Section of PERA to brief the task force members on an inquiry from the previous meeting with regards to the process of new agricultural uses in C-9/8.5 SMA.</p> <p>Mr. Hefty advised that task force members that Mr. Charles LaPradd will not be able to present on the issue of fallowing of agricultural lands and requested that item to be deferred to the next meeting due to the fact that he has a conflict with his attendance at the CDMP hearings.</p>
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AGENDA REVIEW

JAMES F. MURLEY – CHAIR – WATF

DISCUSSION	Chair James Murley opened discussion for changes or additions to the current agenda provided. Motion to set the agenda as made by Jose Gonzalez and seconded by Jose Fuentes. Motion passed with unanimous vote.
ACTION ITEM	<ul style="list-style-type: none"> Chair requested that staff inquire on the status of the extension of time for the Task Force

APPROVAL OF MINUTES FROM NOVEMBER 8, 2011 MEETING

JAMES F. MURLEY – CHAIR – WATF

DISCUSSION	<p>The Chair advised members that draft minutes were presented to them and are now open for corrections/approval. Ms. Pena requested that the minutes be corrected to reflect the information she presented at the previous meeting as follows: the presentation was given with regards to the farming history and current situation in the 8.5 SMA (Las Palmas) and the continued encroachment into private lands using the mitigation designation. Ms. Pena also provided a map to be added to the records.</p> <p>Hearing the amendments, motion was made to accept minutes with corrections by Jose Gonzalez and was seconded by Manuel Echezarreta. The motion passed by unanimous vote.</p>
CONCLUSIONS	Minutes of November 8, 2011 meeting approved with amendments.

PRESENTATION: MODIFIED WATER DELIVERIES PROGRAM/8.5 SMA PUMPING

MICHAEL COLLIS, PMP
US ARMY CORPS OF ENGINEERS

DISCUSSION	<p>The Chair recognized Mr. Michael Collis, Project Manager from the USACE to present.</p> <p>Mr. Collis provided a presentation on the Modified Water Deliveries to Everglades National Park and the 8.5 SMA. The purpose is to improve water deliveries to Shark River Slough to create more natural conditions. This project is comprised of four components:</p> <ul style="list-style-type: none"> 8.5 SMA flood mitigation plan Conveyance and seepage control features Tamiami Trail modifications Project implementation support
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Discussion with members

The Chair recognized Mr. James Humble from the public to address the Task Force Members

James Humble, Chairman of the Agricultural Advisory Committee – PO Box 1569 Homestead FL 33090

"Mod waters came about as everyone should know as a result of flooding in South Dade County in 1981. Two heavy floods, Tropical Storm Dennis and shortly thereafter in September, showed that there was a serious problem when it came to the design of the system based on the amount of water coming south. As Mr. Murley will remember, the former head of DER made a decision at some point not to back pump into Lake Okeechobee. All that began to be pushed forward into Dade County. You add that with the storm and the system just literally could not handle those additional waters. Which lead to mod waters, even though it had been the wish for many years that the east everglades area of Dade County be part of the National Park, 100,000 acres. Which on the 1989 Dante Fascell bill, did become, the federal government decided to purchase that land, we owned, myself and other people about roughly 7,000 acres south of there. All Farm land, there was one area called the frog pond in the rocky glades to the north. That was to be purchased, not to be flood protected, just straight out purchased, which it was. The homeowner area, the language was different. What it said was, you either had to flood protect or purchase. The government decided that they would take about half that area, which they did and the rest, were now call flood mitigation. In Fascell's mind, that ambiguity was not in the law itself, the ambiguity came in the interpretation of that law later. The key thing as the Colonel pointed out was in 1983 they used the criteria of the surface water as the basis for what determines flood mitigation. I point out as Mr. McViar has pointed out on many occasions, Tom McVicar, 1983 was one of the highest water years in history, but yet that became the criteria for the water level to determine everything after that. So certainly we disagree with that because we felt that number was just too high. As part of this plan, mod waters, there was a committee formed called CSOP, Combined Structural Operation Committee, which was to give advice to the task force. I was on that committee. That committee had a rule that it took an 80% vote to move anything forward. When it came to the pump station 357, there was a lot of discussion about that pump station because the capacity is enormous at that pump station. Very little of that capacity is being used. I know McVicar feels more should be used, but the point is there, that the committee itself made up of state, county, federal people, including Col. Rock Salt who's now head of the Corps and he used to stand in front of this map and put a big green arrow coming south and say this is our problem, we have to deal with this water coming south because that is what we are going to mitigate against and he was correct. Since then of course, we've inserted a bridge instead of culverts along the trail and I understand that we had to build monuments as we go along here, but and that's fine, but I think that it's important to remember that when it comes to the 8.5 SMA and I don't own land there, but those folks, certainly in the eyes of the people that wrote the original legislation, it was felt whatever the government did not want to purchase, they certainly should not cause damage to the remaining people. What came out of that was not further damage then they were already receiving and that became the way it became interpreted and there's a large constituency behind that and I understand that because every law has a constituency and there was certainly one there. Many people, even today believe that land should have been purchased and put in the park but its not going to happen, as clear as that, we have to accept that now. These are tax payers, they pay water management taxes, Dade county taxes and certainly we should not run over the interest of people. I appreciate what the Colonel said, but we will continue to disagree on that particular item. The one thing I will say about the CSOP committee is, all of its recommendations that went forward, none of those had been implemented, even though they were to be the advisory to the task force, because the outcome of the vote which was 80% + on every recommendation, including using 357 as a flood protection pump have never been accepted up the line. I find that sort of discouraging, but here I am continuing, apparently my life's career, dealing with this, an unpaid career I might add, but in any event, appreciate your time Jim, I appreciate you letting me to speak now while we are on this topic."

PRESENTATION: OPTIONS FOR IMPROVEMENTS TO PERMITTING AGRICULTURAL USES IN WETLANDS

MATTHEW DAVIS, DIVISION CHIEF
PERMITTING, ENVIRONMENT AND REGULATORY AFFAIRS

The Chair recognized Mr. Davis to present.

Mr. Davis provided a continued presentation on options to consider for permitting of agricultural uses in wetlands which included:

- Recording of wetland value option
- Limited exemption option
- Reduced mitigation for agriculture in previously impacted lower quality areas

Discussion with members

The Chair recognized Mr. James Humbe from the public to address the Task Force members.

James Humble, Chairman Miami Dade County Agricultural Advisory Committee

"I'm very glad that this committee has been formed, I really am, but as Chairman of Dade County's Ag Committee, we ask that you review this law two years ago, sent to the commission and it's being done and I appreciate it. I might add that Lee, the fellows, Evan so on and so forth come to our committee more than they wish I'm sure. But anyway the reason why we were concerned about this law is that, our feeling was, in agriculture, is that the law throughout the state should be consistent. Because if it's inconsistent, what you are doing is giving incentives for people to go to places where, it's not as onerous as it is in Dade County, which I might add 85% of the land in Dade County is owned by the federal government already. I mean you've only 15% of the land base left. So, people from homestead begin moving to Immokalee on the east coast of Florida other places to farm where the state law was being followed where there isn't a local ordinance as there is in Dade County, which we felt created a competitive disadvantage, which we felt was against county policy working with agriculture. Remembering that agriculture, this is the end of my long sentence Jim, the 30,000 acres of agriculture land has been lost in the last 15 to 20 years only about 400 was due to development, for those people who panic about development boundaries. The rest was the boundary of the park moving into farm land and purchasing it. That is where the loss has been. So what's left, which is 57,000 acres under ag exemption this year, versus 87,000 when I came into the area 40 years ago, we just would like to have a law that's consistent throughout the state where farmers don't leave one area where you say you want agriculture to go to an area where they abide by the state law and not the

DISCUSSION

local ordinance. Under federal law, of course people farm in wetlands, that's why there's an exemption, its called cranberry farming. They farm underwater, ok, they farm in wetlands, that's why the federal exemption exists. Much farming in the Midwest is in wetlands, but you don't have those problems in Iowa, believe me, this is not an issue, you wouldn't have this committee meeting there. You have a large constituency here that wants to regulate more heavily. Jim thanks you very much and I'm sorry I have to leave."

EVAN SKORNICK, SECTION CHIEF

PERMITTING, ENVIRONMENT AND REGUALTORY AFFAIRS

PRESENTATION: OUTREACH EFFORTS AND OPPORTUNITIES

DISCUSSION	<p>The Chair recognized Mr. Evan Skornick to present.</p> <p>Mr. Skornick provided a presentation on wetlands outreach efforts and opportunities past and present performed by PERA.</p> <p>Discussion with members</p>
ACTION ITEMS	<ul style="list-style-type: none"> • For recommendation follow-up: J. Fuentes provide an outreach component in the 8.5 SMA to meet with the residents to provide guidance or ask questions on a regular basis. • S. Sauls - request for legal answer on the current law that has been codified • Option to consider for outreach – send correspondence to the individual property owners in various areas with information regarding the possibilities of wetlands and identifying PERA as a point of contact for information or any questions.

PUBLIC COMMENT

OPEN TO THE PUBLIC

DISCUSSION	<p><u>Ed Chapman 12375 SW 202 Avenue</u></p> <p>"I do live in the Las Palmas its now less than 4 square miles and there's a number of other things that we want to get into as well and one of them is I went to the tax department and said that since they've declared that I'm a wetlands, you should be billing me taxes on 2 acres of wetlands, not residential property. They said oh no, to us its residential property. I said that means I can do whatever with it, he says that's correct as far as we're concerned and of course that is not correct. So I'm paying on \$70,000 worth of taxable land there at the rate that they bill you instead of \$500 an acre which I believe is the tax rate for wetlands, if I have to leave it a wetlands. Now, its 5 acres, 2 ½ acres is taken up with a stable, a barn, an animal building and a house. When I bought that originally, almost 30 years ago, prior to 84, prior to 83. When I bought that all those years ago, my idea was as I approached my later years in life, was to go ahead and do all I can do to gather up money take care of myself in my older age and at the end put up a couple of acres either with the stables on it and the horses or some type of agriculture such as bananas. I've been denied that and nobody, no matter what anybody says, nobody ever told me until we did it that you couldn't do it. So its one of those things, all these are very nice to talk about, what's going on now and what will go on tomorrow. It doesn't attack what happened 20, 30 and 10 and 15 years ago to people who have invested their life savings in something and try to make a go of it and make their later years productive rather than being a drain on the economy."</p> <p>"There are a lot of new laws passed this year up at the State house. One of them that has been really hit hard by Code Enforcement in the area out there is animal barns, sheds for storage and so on and so forth in the animal areas. This one says, this exempts non residential farm buildings and fences from any type of permit or fee and yet they came to everybody I know and said all these structures are illegal take them down and they are all fighting them now. But I mean these are things and there's a lot more in this law, there was a lot of other things that says they can change some rules retro back to 1984 so this is something we need to look at too."</p> <p><u>Pamela Evans 2750 NE 193 Street # 2310 Aventura</u></p> <p>"A couple of things, one things is, you have to treat it like it's your business or your money and I think a lot of this is just policy. You're not thinking because what you're saying is after someone buys the property then you are going to go there and tell them you might have wetlands. As someone who might invest in a business, I would never buy in Dade County to put a farm because knowing all this that it might be a wetlands and I find out after the fact is ridiculous. I think the realtors would hate this but maybe you have to have a law that saying a realtor has to tell a prospected property owner that you better look ahead of time, get it tested ahead a time to see if it's a wetlands. Because I for one would not want to deal with this and pay all this money extra money after I invest \$100,000 or more into a property to turn it into farm land and then be told now you have to go through all this and pay credit mitigation and all these other things you're talking about. There's no way I would do that. So you might want to think about that, make a realtor disclose before they buy. After they buy it's a little late to say now you are going to owe more money, its ridiculous.</p> <p>"Also, I wanted to ask you, Mr. Scott, on HB 421, the Ag exemption, once you are exempt at the state level, you don't have to pay mitigation fees or do they? If they are going to do customary and natural practices as a farmer, they don't have to pay mitigation fees correct? (Mr. Scott advised that if you are exempt under state law then you are not subject to any of the permitting requirements.) That's what I thought. That's why I find it very curious that Dade County, if you are trying to help the farmers and if you're trying to help the small farmer, why are you still going to charge them if they are a farmer, they are still going to pay taxes, they are still going to hire people, but you still want to charge them nevertheless, even if the state won't do it, you're still going to do that to us small farmers, so I think a recommendation to the commissioners is that you know, we shouldn't even have any of that. If you are going to buy their property and you are going to give the state exemptions, I don't know why Dade County has to do that. The other thing I'm kind of curious is when you say that, I can see a scale and if it's pristine property more than likely this isn't the property being bought. More than likely its properties that have had residences or farm land on them and they have already been disturbed so when you keep saying well if its highly pristine, more than likely its not the land that's being bought I don't think, that's like the everglades type land. No one is going to go on that type of land, it's highly pristine and is obviously a wetland and go buy that. It's more of the land that has been around and been disturbed that they're trying to buy. So if they are going to be farm land, I don't see the purpose of continuing to charge them like that."</p>
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"One last thing, I've done a lot of reading on going back to the mulch problem with Monroe County and from the things I've read, Miami Dade County knew about it, all of DERM knew about it, everybody knew about it. They knew that Monroe County had made a mistake, they knew that a lot of it was the truckers lied and I think that they did try with some of the land owners to get that voluntarily taken off. There were a lot of interdepartmental emails about that. I don't know if you are going to get into that or not, but I think that the fact that some peoples mulch was taken off, some wasn't because when those companies were contacted they thought some people had too much mulch and they didn't want to deal with it. But it's definitely, it was Monroe County's fault and Miami Dade County knew about it and let them in and the property owners are still paying for it even now. Any way I think that should be looked into a little bit more too." (Lee Hefty requested evidence or documentation to support the claim that DERM employees knew of illegal dumping of hurricane debris as it was happening.)

Steve Carney, President of Carney Environmental Consulting – 6435 SW 85 Street Miami

"Due to time and budget, mostly time, I've got 4 copies. My first topic is of all places the 8.5 SMA. I created this graphic from the latest farm maps, the flood zone maps for Miami Dade County and the color that looks like a cabernet color, it represents the 500 year flood plan. If you note way out to the west, I circled the area 8.5 SMA and the eastern most portion of the 8.5 SMA lies in the 500 year flood plan. So, there's a close up of the same area. So, Alice is right, there is land out there that is not wetland, however, there is land out there that is wetland. The further west you go, the wetter it gets. This is kind of an overlay of the same thing where you can see the properties. I was able to get a shape file from the Water Management District from some lidar topo data that shows elevations out there and again, this graphic confirms what was shown in the FIRM data that there's higher ground upland to the eastern part of the 8.5 SMA. And again the further west you go, the closer you get to Shark Valley Slough, the wetter it gets. The next image shows the elevations relative to the seepage canal that was discussed early and the levee. As you can see most of the wetter stuff is west of the levee and the drier stuff is east of the levee. However, despite what Alice says, there are still wetlands within the levee. The Corps of Engineers, several years ago did an EIS out there as they developed their plan to create the seepage canal and levee. This graphic here show the area of upland. It's quite a bit bigger than what's shown on the FIRM map, but they confirm these data. The next graphic shows soil types. Chekika very gravelly loam is consistent with farm land and you will see that the majority of the land out there in the 8.5 SMA is Chekika very gravelly loam which is an indication that the area had been farmed at some point in the past. The next 3 images kind of reconfirm what Alice says, the first one is from 1968 and the next 73 and the next 75. You will see a progression of agriculture out in the 8.5 SMA. The reason I am pointing this out is, Chapter 24 is linked to Chapter 33B by Code and Chapter 33B talks about limiting fill on any individual property out there to a half acre a fill. Based on these data, it appears that a good bit of the 8.5 SMA to the east is upland. Those property owners are still compelled to follow that code, that law. My suggestion is, I'm sure the enforcement officer isn't entirely going out there to enforce some of these sorts of non compliance issues, that the panel look at Chapter 33B and reconsider rewriting or eliminating some of these fill criteria for the 8.5 SMA. The 2nd point has to do with Class I verses Class IV wetlands and one of the graphics was provided by Megan Clouser at a presentation she did a couple of weeks ago. I for one am comfortable with considering a Class I Wetland anything that is tidally inundated that saves the reach of a title inundation. The photograph, the redline indicates the position of canal 31E or levee 31E which might be a good geographic stop for saying everything east of that is Class I permit and everything west of that is Class IV permit. The yellow line is 117 Avenue, one of the discussions from last week I think was about Halophytic vegetation whether you find leather fern or buttonwood, is it a Class I permit. Well it's always a question which one do I go after. One conversation I had with someone from DERM said well we look at the line around 117 Avenue. So again all I'm suggesting is to investigate a way of trying to confirm with something similar to the Corps of Engineers and have Class I permits tied with tidally inundated water bodies."

Discussion by members

SET AGENDA/POLL MEMBERS FOR NEXT MEETING

TASK FORCE MEMBERS

DISCUSSION	<p>Chair set, after unanimous vote from members present, the next meeting for Monday, December 19, 2011 @ 1pm at the present location.</p> <p>Chair opened discussion for the next agenda and produced the following:</p> <ul style="list-style-type: none"> • Address the direction received from the county commission • Agricultural issue be address or set of issues in any particular area • Draft language for next meeting for the Code rewrite in general wetland regulations in Miami Dade County and how it can be streamlined • Draft language to include state exemption in the code and delegation • Streamline the Class IV so more types of projects can be issued administratively • Recommendations to the county in terms of people with mulch on their property from Wilma and how it can be removed – one time resolution to the outstanding cases
ACTION ITEMS	<ul style="list-style-type: none"> • Mr. Ed Swakon to provide supporting documentation from his previous public comments • Staff review minutes and action items from previous meetings to make sure nothing is being missed for recommendations

MEETING ADJOURNED	3:43pm
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