

**Butler Chain of Lakes Advisory Board
Windermere Water and Navigation Control District
Regular Meeting – Chain of Lakes Middle School
Monday, June, 17, 2019**

Board Members Present: Ijaz Ahmed, Lorraine Burch, Albert Gallof, Lloyd Woosley

Board Members Absent: Lee Chira

Staff & Support: David Hansen, Orange County Environmental Protection Division (EPD)
Lt. Jeff Hudson, Florida Fish and Wildlife Conservation Commission (FWC)

Guests: Jay Williams, Stan Robson, David Rice, Linda Rice, J and Angela Kaatz, Gary Hartmann, Rosemary Hartmann, Mike LeMoine, Elizabeth Williams, Paula Suncic, Richard Radkewich, Alex Paredes, Peter Liggett, Bill Brown, Vincent and Katherine Scuro, Mark Waltrip, Jason Vermilya, Patrick Mullen, Joseph Mooradian

I. Call to Order:

With a quorum present, Chairman Ijaz Ahmed called the meeting of the Butler Chain of Lakes Advisory Board (Advisory Board) to order at 5:36 p.m.

II. Approval of the June 17, 2019 Agenda:

Upon a motion by Lorraine Burch seconded by Albert Gallof, and carried with all present members voting AYE by voice vote, with Lee Chira being absent; the Advisory Board approved the June 17, 2019 Meeting Agenda as presented.

III. Approval of the May 20, 2019 Meeting Minutes:

Upon a motion by Lorraine Burch seconded by Ijaz Ahmed, and carried with all present members voting AYE by voice vote, with Lee Chira being absent; the Advisory Board approved the May 20, 2019 Meeting Minutes as presented.

IV. Public Comment on Propositions before the Advisory Board:

Mr. Mark Waltrip was recognized and gave a Power Point presentation regarding the bridge construction at the end of Pocket Lane and over the Fish-Pocket Canal. The presentation is incorporated as an attachment to these minutes.

After the presentation, a brief discussion ensued. Chair Ijaz Ahmed stated that he had been concerned about this bridge since learning of its existence. David Hansen suggested a motion to write a letter from the Advisory Board to the County Commissioner might be in order.

Upon a motion by Ijaz Ahmed seconded by Lorraine Burch, and carried with all present members voting AYE by voice vote, with Lee Chira being absent, the Advisory Board approved the drafting of a letter to the District 1 Commissioner to voice their concerns about the bridge.

V. Butler Marine Patrol Report:

Lt. Jeff Hudson reported that the Butler Patrol provided 216 hours of patrol time in May. They inspected 145 vessels and made contact with 591 users. They assisted 14 vessels, issued 70 Warnings and 6 Boating Citations. They had 200 educational contacts including a new members boating safety brief at the Sportsman Club.

They assisted EPD with surveying five locations for compliance, towed in a vessel that sunk on Tibet Butler due to high winds (no injuries), arrested a subject for Boating under the Influence (BUI) on Memorial Day – the subject was about three times over the legal limit.

VI. EPD Report:

1. Current Projects

David Hansen reported that the Butler Patrol officers would be performing and recording dock or ramp checks as part of their patrol duties. Jeff Hudson explained that these checks were currently being done, but that they would now be recorded on the activity report submitted to the Environmental Protection Division.

Mr. Hansen reported that the quarterly vegetation survey on the Butler Chain was almost complete. He further went on to mention that hydrilla had been found in all lakes in the Chain, except for Fish Lake. He reported that no treatment had yet occurred on Lake Down and that a decision on that treatment was still being discussed by FWC and EPD staff.

Mr. Hansen reported that Crescent Lake had recently received a fairly extensive perimeter herbicide treatment for hydrilla. He mentioned that a full lake herbicide treatment had been performed in this lake two years ago, but that hydrilla was again expanding. He suggested that the Advisory Board consider evaluating a proposal to stock Crescent lake with grass carp. He went on to explain that there was a permitting process through FWC and that barriers would need to be constructed to prevent the stocked fish from escaping the lake. After a brief discussion, the following motion was made:

Upon a motion by Lloyd Woosley seconded by Lorraine Burch, and carried with all present members voting AYE by voice vote, with Lee Chira being absent; the Advisory Board approved the recommendation to evaluate the proposal to stock Lake Crescent with grass carp for vegetation control.

David Hansen reported that the purchase order had been issued for the north half of the Butler Chain sediment impact analysis to Dr. Harvey Harper, Environmental Research and

Design (ERD). He also mentioned that Dr. Harper would be giving a presentation on sediment impact analysis and internal nutrient recycling in oligotrophic lakes at the Florida Lake Management Society symposium in August. This presentation would be based, at least in part, on the results of the Wauseon Bay bathymetric survey performed by ERD. Mr. Hansen reported that he was waiting for ERD to submit a change order for the additional sampling for the Bay Hill update.

Mr. Hansen reported that he had met with Mark Ellard of Geosyntec on site of the Lake Butler sub-basin 10 feasibility analysis. The meeting was to introduce Mark to the property manager and ensure access to the gated community.

Mr. Hansen reported that the repaired submersible pump had been returned to the Lake Down alum facility. He also mentioned that EPD staff had given tours of the Lake Down and Lake Anderson alum treatment facilities to staff from Geosyntec and the City of Casselberry. He reported that EPD staff had removed one of the weir blocks from the diversion weir. He mentioned that with recent rains, water was over-topping this area of the weir, but there was no indication of flow short-circuiting around the weir. He went on to suggest that the facility would run in this fashion for the near future.

2. Future Projects

Due to time constraints, there was no discussion of potential future projects.

3. Meeting Schedule

Mr. Hansen reported that the next meeting of the Advisory Board would be on July 15, 2019 at 5:30 PM.

VII. Member Reports:


- 1. Ijaz Ahmed:** no report
- 2. Lee Chira:** not present
- 3. Lorraine Burch:** Lorraine Burch reported that she had been in contact with the Florida Department of Environmental Protection (DEP) to document a blue green algae bloom in Lake Cypress (Estes).
- 4. Lloyd Woosley:** no report
- 5. Albert Gallof:** no report

VIII. Non-Agenda Items:

There were no non-agenda items.

IX. Meeting Adjournment:


The meeting was adjourned at 7:28 P.M.



Ijaz Ahmed, Chair

7/15/19

Date



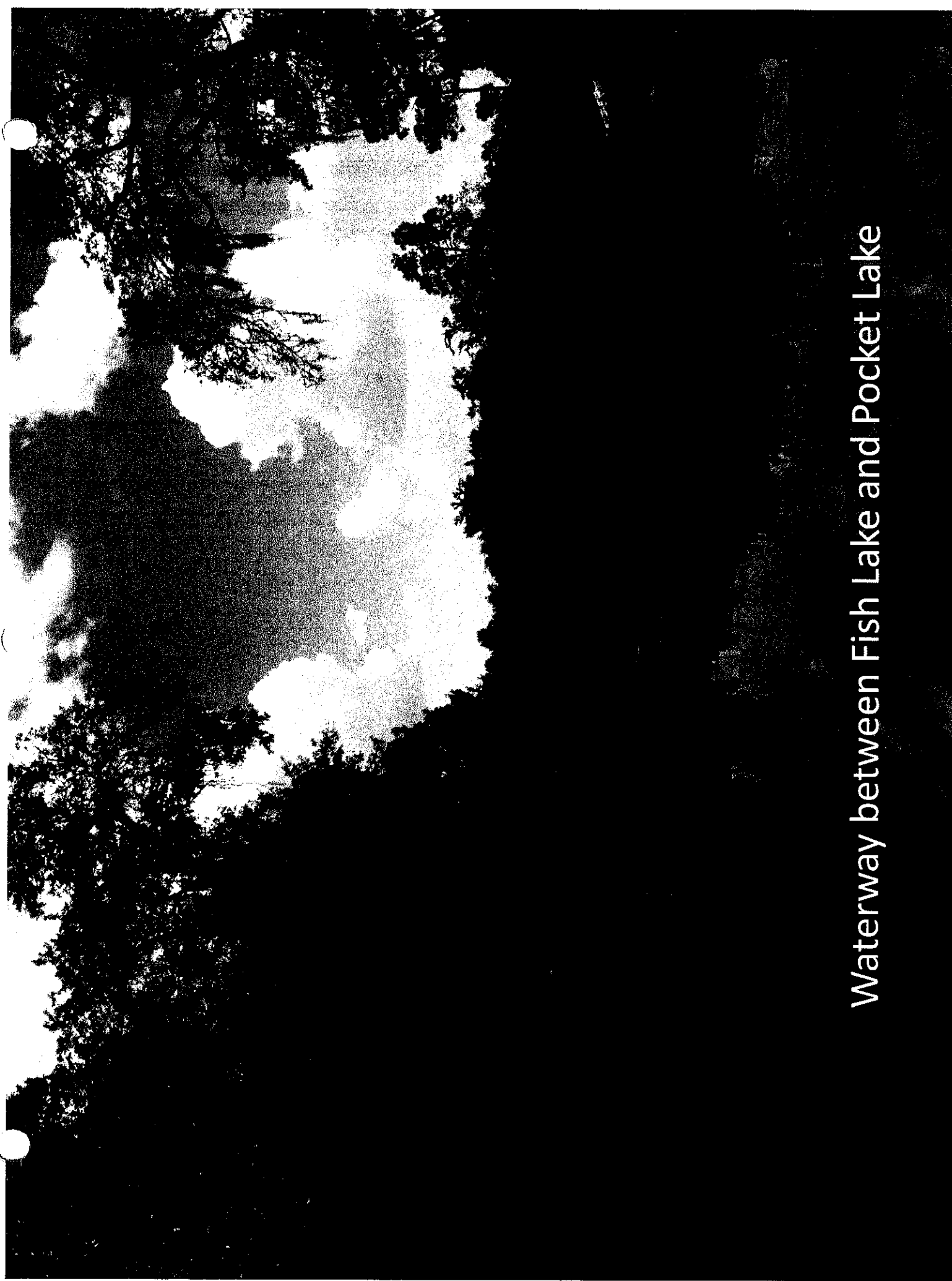
David Hansen, Minute Preparer

7/15/2019

Date

Attachment 1. Power Point presentation given at the June 17, 2019 Butler Chain of Lakes Advisory Board meeting by Mr. Mark Waltrip.

Waterway between Fish Lake and Pocket Lake





Waterway between Fish Lake and Pocket Lake

Bridge over Butler Chain Waters

- In early November, 2018, our neighbors discovered that a bridge was being built over the waterway between Fish and Pocket lakes.
- No one in our community was given any advance notice of this project.
- We immediately contacted Orange County Environmental Protection Division (EDP) to find out more.
- What we have since discovered is extremely disturbing and appears to be a violation of numerous Federal, State and Local laws

Windermere Navigation Control District

- The Butler Chain of Lakes has been designated an Outstanding Florida Waterway (OFW) and afforded specific protections by the Governor of the State of Florida as enacted by legislation.
- Orange County has been charged with the responsibility for protecting this OFW through the Windermere Water Navigation Control District (WWNCD, aka the Butler Chain Advisory Board).
- As noted in the WWNCD regulations and on Orange County's website, the WWNCD is responsible for:
 - Protection of public riparian property rights.
 - Preservation of the natural beauty and attractiveness of the lakes, canals, streams, waterways, inlets and bays.

WWNCD Excerpts

- *Applies to: Water or waters* shall include rivers, lakes, canals, streams, waterways, bays, springs, impoundments, inlets, and all other waters or bodies of water, whether natural or artificial, located within the district.
- **Sec. 33-129. - Dredging, pumping, filling, construction of obstructions; permits, regulations....**it shall be unlawful for any person, firm, partnership or corporation to do any dredging, pumping of sand, extension of lands, construction or extension of islands, creating canals, basins, inlets or bays, filling or creating obstructions *in, on or under any of the waters* of the district, except as hereinafter provided:

WWNCD Excerpts (Continued)

- Any person, firm, partnership or corporation desiring to perform or cause to be performed any of the activities listed in this section shall apply to the district for a permit in order to lawfully perform the desired activity.
- Said application shall be accompanied by a plan or drawing showing specifically what is proposed to be done, and the location of property owners who may be affected thereby. Said plan or drawing shall be to scale and shall show the depths of the waters and the elevation of the development above the waterline, and shall have been drawn by an accredited civil engineer or land surveyor;
- Said application shall include the names and mailing addresses of all the owners of property within five hundred (500) feet of the nearest point of said development; said application shall further include proof of ownership of the property which is proposed to be developed; the district may require such other information as may be necessary in the processing and determination of the application.
- The board shall set a public hearing and publish notice of such public hearing.
- The board after public hearing, from said data and testimony, shall make findings of fact and determine whether or not the proposed plan or development will materially affect any of the rights and interests of the public heretofore set out in this section.

WWNCD Excerpts (Continued)

“The district, in order to prevent undesirable situations which might result from the performance of any of the activities listed in this section, shall obtain such engineering or other data and hear such testimony under oath as may be necessary to determine:”

- (1) The effect of the proposed plan or development on the use of said waters in said district for **transportation and recreational or other public purposes** and public conveniences.
- (2) The effect of the proposed plan or development on the free use of waters and waterways within the district.
- (3) The effect of the proposed plan or development upon erosion control in the said district.
- (4) The effect of the proposed plan or development upon the flow [of] waters in said district.
- (5) The effect of the proposed plan or development upon formation of stagnant pockets likely to collect debris.
- (6) The effect of the proposed plan or development upon the natural beauty and recreational advantage within said district.
- (7) The effect of the proposed plan or development upon the conservation of wild life, marine life, and other natural resources.
- (8) The effect of the proposed plan or development upon the upland surrounding or necessarily affected by said plan or development.

Is there a definition of “Obstruction”?

- The short answer is no.
- Orange County Staff will now tell you that they have come up with their own definition
 - At the direction of the County attorney
 - “Anything less than 10 ft above the high water line”
- As expressly defined in “ARTICLE IV: The Windermere Water and Navigation Control District is responsible for making this determination.”
 - Not Orange County Staff
 - Not the Orange County Attorney
- **Sec. 33-118. - Governing authority of district designated.**
 - The Windermere Water and Navigation Control District shall be composed of the duly elected members of the Board of County Commissioners of Orange County, Florida, and said board shall be the governing authority of the Windermere Water and Navigation Control District.

What we initially discovered

- The bridge project was approved by Orange County without the required public notices.
- Orange County issued a license agreement for the developer to build this bridge over this OFW and on a public Right of Way
- On August 24, 2018, OC issued a ROW Utilization Permit and underground Utility Permit for the project
- Work started in October of 2018 on this project without the required permits.
 - Evidence of this was provided to Orange County EDP the first week of November 2018.
 - Orange County refused to stop work on the project.

Permit Notation

~~APPROVED provided, however, that all other applicable~~
D) ~~state or federal permits~~ be obtained before commencement
of the development. ~~This approval does not in any way create~~
~~any rights on the part of the applicant to obtain a permit from~~
~~a state or federal agency and it is not create any liability of~~
~~negligence of the state of the proposed project if the applicant~~
~~of the proposed project is approved without a permit from the~~
~~action by the state of federal legal or administrative action in~~
violation of state or federal law."

Chronology of Events

- In January of 2007 a developer sought to build a bridge over this waterway
 - Huge public outcry, petitions signed, project never went forward
 - OC EDP directed staff to keep this in the file
- December of 2014, applicant starts series of discussions & emails with OC staff to build bridge over public ROW
 - OC told them they need 120" clearance
- March 2015, site improvement plans submitted to OCPW
 - June 2015, OCPW issues approval letter

Chronology of Events

December 2015: series of emails between Joel Prinsell, OC staff and Alex Cvercko (land owners attorney):

- They coordinated an official position that this will be a private bridge over private property, and "if a vacation request is processed and approved, the private bridge will extend over private property, thereby negating the need for the county to be involved".

We couldn't find any evidence in the OC emails, meeting notes or documentation obtained in our FOIA request that this project was being constructed over an OFW, or that the WWNCD was or should be involved

Chronology of Events

- February 2017, applicant emails Betsy VanderLey complaining of concerns raised by staff about steel construction of the bridge and the lengthy process it has taken to get approved.
 - Reference of potential legal action.
 - Also pointed out that the county had reversed itself on earlier agreement that the county would simply vacate the ROW over "private property".
- May 2018, License Agreement to use public ROW for bridge signed by County
- October 2018, OC Permit issued. Specifically requires "all other applicable state or federal permits be obtained before commencement of the development".

Chronology of Events

- November 2018, Betsy VanderLey emails the Murphy's and tells them:
 - The land owners have a legal right to build this bridge to access their property
 - A license agreement was executed because it's being built on a county ROW
 - No public hearing was required.
 - "this type of structure by a private property owner does not require notification of surrounding neighbors"
- November 2018, DEP confirms that no height study was performed, no notices and no public hearing
- November 2018, Email from Tim Hull OCEPD stating there is no ERP, and they have not required the contractor to stop construction.

Chronology of Events

Series of emails on November 14, 2018 with Sirena Davila, Compliance Assurance Program at State of Florida DEP:

- “the Department does not have the authority to issue stop work orders like the county may be able to do. We will definitely suggest all work be stopped until proper permits are obtained.
- “a project located over a canal (not state owned submerged lands) would not trigger public noticing”
- “DEP would have jurisdiction over the matter; the Water Management District would not have a role in this case.”
- “because the canal is a manmade surface water, state lands requirements do not apply hence, state lands authorization is not required.”
- “if a project is of heightened public concern, or already has objectors, the Department will require publication of the “Intent to Issue a Permit”



Waterway between Fish Lake and Pocket Lake

Chronology of Events

November 15-30, series of emails and phone calls with Jill Creech, Division Director, South Florida Water Management District

- “the Water Management District has the authority in this case.”
- “a Request for Additional Information (RAI) for permit application” was sent to Pedro Medina, OCPW on October 9, 2018. (recognizes that no ERP has been approved).
- Notice of violation was sent on November 15
- Applicant had not completed and submitted the Section C” of the ERP application
- **Nov 28, work still continuing**
- “The District is moving forward with additional enforcement proceedings”
- Nov 30, “We will be filing for injunctive relief”

Chronology of Events

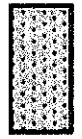
November 26 email from Joel Prinsell, County Attorney to Betsy VanderLey:

- “Orange County Code, requires a public hearing and a permit from the WWNCD whenever an “obstruction” is created “in, on or under” waters of the WWNCD.”
 - “the proposed bridge will be “above” or “over,” but not “in, on or under” waters of the WWNCD.”
 - By his definition, a bridge 2 ft above the water would not require a public hearing
 - Chapter 21 of the county ordinance for the WWNCD: “Chapter 21 – Highways, Bridges, and Misc. Public Spaces, Article VI. – Right-of-Way Utilization Regulations, Division 1. – Generally, Sec. 21-175. As clearly demonstrated, the County Ordinances pertaining to the WWNCD specifically addresses Bridges and ROW utilizations.
 - “The License Agreement also requires the lowest part of the bridge to be at least 10 feet above the normal high water elevation (NHWE)”
 - According to the approved plans by OCPW, it’s 8 ft at it’s lowest point
- County Attorney gave direction to the County Staff and the District One Commissioner that the county cannot stop work because the Environmental Resource Permits is not a condition of this land owner’s permit

Meeting with Neighbors and OCPW

- Staff told us that easement for the bridge allowed public access...”
 - “Public can go over bridge and turn around”, but OC Attorney disagreed
- OC said that the retention pond was designed to avoid flooding from runoff from the bridge.
 - According to our consultants, the "Freeboard" is far less than the required standard
- Staff stated that based on the heights of other bridges they don't consider this an “obstruction”.
 - We pointed out that we cannot find any definition of “obstruction” in any local or state regulations
- We asked if any Corp of Engineer permits are required
 - Staff stated that the Coast Guard needed to sign off on the design, but there are no Corp of Engineer permits required.
 - We told them that our engineering firm and attorney disagree
- The County Attorney stated this bridge project has no effect on the Riparian Rights of the community that uses this waterway

SPECIAL FLOOD HAZARD AREAS (SFHAS) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD EVENT



The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

ZONE AE Base Flood Elevations determined.



Summary

- Orange County issued licenses and permits to use the County ROW to construct a bridge over an OFW without any involvement of the WWNCD
- Prior to starting construction, the developer failed to complete the application for the ERP and continued work on the project after multiple violation notices from SFWM
 - SFWM ultimately had to file litigation
- Orange County refused to enforce this requirement and stop work
 - The County Attorney's instructed Staff and the District One Commissioner that the county cannot stop work
- County is required to have the developer submit a full and detailed engineering study of the impacts this bridge may have on the riparian rights of community - this never occurred.
- This bridge doesn't even meet the County Attorney's arbitrary requirement that it must be at least 10 ft above the water at its lowest point.
- The County should have notified all home owners within 500 ft of this project, and required this project to be presented at a public hearing in front of the County Commission before approval.

What do we want?

- The WVNCD should review and recommend whether or not this project should be approved and built
- As required, the developer should submit a full and detailed engineering study of the impacts this bridge may have on the environmental impacts to this OFW and the riparian rights of the community
- All home owners within 500 ft of this project should be notified of this process
- The project should be presented at a public hearing in front of the Orange County Commission for final review and recommendations
- All we are asking is that the County and its elected officials do the right thing

***”This is the most egregious violation I
have seen in my 20-plus years of
enforcement”***

Senior Executive
South Florida Water Management District