

MINUTES OF THE MEETING OF THE CLAM BAY
NAVIGATIONAL MARKER SUBCOMMITTEE

Naples, Florida, February 6, 2009

LET IT BE REMEMBERED, that the Collier County Clam Bay
Navigational Marker Subcommittee in and for the County of Collier, having
conducted business herein, met on this date at 1:30 P.M., at the Office of
Coastal Zone Management, 3300 Santa Barbara Blvd., Naples, Florida with
the following members present:

Tahmann Krumm, Jr.
Robert Rogers

ALSO PRESENT: Gary McAlpin, Director, Coastal Zone Management
Gail Hambright, Accountant, Coastal Zone Management
Pamela Keyes, Environmental Specialist

Gary McAlpin, Director, Coastal Zone Management called the meeting to order at 1:34 PM

Pledge of Allegiance was recited.

A quorum was present. It was noted James Carroll and Kathy Worley; Clam Bay Advisory Committee Members were also present.

Mr. Rogers moved to nominate Tahlmann Krumm and Robert Rogers as co-chair of the Clam Bay Navigational Marker Subcommittee. Second by Mr. Krumm. Carried unanimously 2-0.

Gary McAlpin provided an overview of two handouts provided by Staff: E-mail String from Staff and Cynthia Ovdenk, US Army Corps of Engineers from June 11, 2008 Subject: "Clam Bay" which states,

- *"The Permittee agrees to comply with the components and timeframes as specified within the Clam Bay Restoration Management Plan (CBRMP), which is attached to this permit as Attachment "A." All attachments to a Corps permit are included as part of the permit and therefore enforceable. A section of the management plan located on Page 38 and 39 states: the main channel will be marked in accordance with the requirements of the United States Coast Guard (USCG) to ensure that those who use the system clearly know where the channel is and the prohibitions of operating their water craft outside the same. Therefore, in order for this permit to be in compliance the channel must be marked per the USCG's requirements. Please submit a letter to the Corps indicating the channel markers are in place, along with the dates and pictures."*

Letter from Lainie Edwards, Environmental Permitting Section, Florida Department of Environmental Protection dated June 9, 2008 – Subject: Interpretation of Joint Coastal Permit: Clam Bay Restoration and Long Term Management Project (0128463-001-JC) which states,

- *"Furthermore, the Joint Coastal Permit does specifically address signage/environmental protection markers that the Bureau of Beaches and Coastal Systems requires in the Pass area through Specific Condition 5, which discusses 10 signs required to be installed in specific locations, in order to protect the natural communities as well as the boating public. The Bureau of Beaches and Coastal Systems requires that these signs be installed as protective environmental measures (although the wording on the signs will have to be amended to meet legal requirements of FWC)."*

He noted the following:

- There would be 10 signs in total, in 5 locations visible for (boat/canoe/kayak traffic) coming and going (in relation to FDEP requirements).

- The waters are Federal waters with US Coast Guard jurisdictions who specify the size and specifications of the signs, with locations determined by local knowledge.
- The US Coast Guard declares the waters navigable.
- The channel is dynamic, but the County proposes the channel be marked and whether boaters can utilize the channel will be at the discretion of the boater.

Speakers

Ted Raia, Pelican Bay Resident stated the Services Division has never received a letter from Agencies, which declare the permit is “not in compliance.” He submitted the documents “*National Oceanic and Atmospheric Administration, (NOAA) On-line Chart Viewer*” which identifies the Pass as “non navigable” and “*NOAA Coast Pilot 5, Atlantic Coast: Gulf of Mexico, Puerto Rico and Virgin Islands*” which indicates “*Clam Pass, is a shoal drainage canal to Outer Clam Bay. The pass is used only by outboards in good weather.*” He also submitted a document “*US Coast Guard Private Aids to Navigation Application Instructions*” for consideration.

Michael Seef, North Naples Resident, also representing his son, a Seagate property owner noted he kayaks in Clam Bay and the signs existing are adequate and requests clarification where the direction is coming from to place navigational markers. He expressed concern over the additional cost associated with placing the markers.

***It was noted the marking is at the initiative of the US Army Corps of Engineers.

Linda Roth, Pelican Bay Resident, submitted a copy of a portion of the “*Clam Bay Management Plan Draft*”, prepared by Turrell, Hall and Assoc., dated August 29, 2007 which provided a history of the Pass and indicated the Pass has been continually opened and closed for navigation due to a variety of reasons. She noted dredging for navigational purposes is not allowed in Natural Resource Protection Areas. She expressed concern placing the markers will actually increase the frequency of boats grounding in the Pass due to sediment building up around the markers.

Doug Finley, Naples Resident notes he kayaks in Clam Pass and the Pass is dynamic, however has distinct channels. The existing canoe marker signs are in disrepair and the area is not properly marked for canoeing/kayaking. Navigational markers are located throughout the Preserves in the County and the rest of the Country. These markers assist in protecting the environment.

Marcia Cravens, Mangrove Action Committee submitted the following documents:

- Appendix M of the Natural Resource Protection Areas and related information on Clam Bay Management Plan,
- Letter from Pamela Keyes of Coastal Zone Management to Florida Department of Environmental Protection dated April 21, 2008 Re: Exemption Application for Rule #40E-4.501 (7)

- Letter from Pamela Keyes of Coastal Zone Management to Joe Embress of the United States Coast Guard dated April 21, 2008 – Re: Private Aids to Navigations, Clam Bay, and Collier County.

She noted the statement that the Permit and Management Plan requires the installation of navigation aids is incorrect; these issues are “Management Options,” as opposed to requirements.

She reviewed a letter from the Department of the Army July 21, 1997, which detailed the following benefits of the Clam Pass Management Plan:

1. *Installing a tidal flap.*
2. *Deeping (deepening) and widening of Clam Pass to provide enhanced tidal exchange.*
3. *Open a deteriorating network of interior channels to improve tidal exchange.*
4. *Selective cutting of 50 -75 percent of the dead mangrove trees to improve the aesthetic quality of the Clam Bay System.*
5. *Development and implementation of revised freshwater/stormwater management system for the developed upland lying east of Clam Bay to facilitate re-examination of the role of freshwater in the Clam Bay system.*

The letter does not mention navigation or the installation of channel markers.

She reviewed historic letters written by Martha Dykman, (Seagate homeowner) which recognized the Bay has limited (boat) access to the Seagate community.

Kathy Worley suggested the main Committee should be provided documentation from the various Agencies identifying which portions of the Permit are out of compliance. She referenced the County Zone Management Plan Section 7.6.1.2 which recognizes the Pass as “non-navigable.” She expressed concern over liability to the County if the Pass is marked with navigational markers as the shifting Pass causes boaters to run aground.

Mr. Krumm requested clarification on any correspondence on the issue of non-compliance from the various Agencies.

Gary McAlpin noted the non-compliance is referenced in the email string provided above. He noted any solutions will need to address the “shifting Pass.” The US Army Corps of Engineers (USACE) is requiring the County to provide navigational markers so the channel provides “historic access” for boaters.

Linda Roth noted documentation indicates “historical access” to the Pass is “limited.”

Kathy Worley suggested Staff obtain a “letter” from the USACE as opposed to emails.

Jim Carroll questioned if the “statement” of non-compliance has been “challenged” by the County.

Gary McAlpin noted the City of Naples and Seagate Homeowners have requested the County comply with the permit and mark the channel for historical navigational rights. Staff has no opinion on the issue but has been directed to come into compliance with the permit.

Michael Seef, North Naples Resident questioned if the Army Corps has reviewed the area for the definition of “historical access.” He also sought clarification if the Seagate Homeowners are actually in favor of marking the channel.

Jim Hays expressed concern that boats in environmental areas cause environmental damages due to wake, etc. He expressed concern if the channel is marked, in the future it will require dredging to maintain the channel as navigable.

Gary McAlpin noted the Permit permits dredging for tidal flushing only. It will not be dredged for navigation in the future, only for tidal flushing. He has requested the County Attorney’s Office review the restrictive covenants (in the deed from Pelican Bay to Collier County) on “dredging” and provide an opinion to Staff on dredging activities allowed.

Jim Burke, noted over the past weekend, two boats with outboard motors grounded in the channel.

Marcia Cravens, Mangrove Action Committee objected to Gary McAlpin running the meeting.

Mr. Krumm noted Gary McAlpin is the Staff liaison and the facilitator of the meeting. He has no voting power as Mr. Krumm and Mr. Rogers co-chair the Subcommittee.

Mary Bolen, Pelican Bay Resident noted the US Army Corps of Engineers Permit (USACE) 79K0282 issued in 1995 states no dredging is allowed in the area “*except for maintaining waters to the Gulf of Mexico.*”

It was noted this was the original permit issued by the USACE.

Mr. Rogers noted the following:

- He is on the Seagate Homeowners Association Board and the Board supports marking the channel.
- He is the representative of the Community; there are no other Seagate residents present at the Subcommittee meeting as the Community has decided to speak with one voice.
- He boated out through the Channel/Pass this past weekend and provided pictures as documentation of the trip, as well as photos of the drawbridge.
- The drawbridge was constructed as part of the original Permit, which indicates clear intent boats were to navigate the Channel/Pass.
- Seagate Homeowners request the minimum amount of markers required for safety.
- Seagate Homeowners recognize the Pass is dynamic; however the Pass should provide some type of marking for safety of all involved (boaters, swimmers).
- He suggested the outcome of the meeting provide a proposed plan for marking, to the main Committee.

Gary McAlpin provided an overview of two plans for marking the area. One prepared by Tim Hall of Turrell, Hall and Assoc. and one provided by Marcia Cravens, Mangrove Action Committee.

He recommended the Subcommittee attempt to reach closure on some aspects of the location of channel markers.

Pamela Keyes, Environmental Specialist provided an overview of the types of navigational markers allowed by the US Coast Guard. Informational signs may be placed before entering the Pass/Channel (from either direction), which state, "local knowledge required" and state a controlling depth (i.e. "controlling depth 3 feet"). This would deter boaters not familiar with the Pass from entering the system, and assist in reducing County liability.

***It was noted the area (including the entrance from the Gulf of Mexico) could be marked with 10 or less aids to navigation.

Marcia Cravens, Mangrove Action Committee noted her plan indicates navigational aid markers and her intent was for "shoal markers" as opposed to "channel markers." It would be consistent with the area being a Natural Resource Protection Area and provide the historic access to the Seagate Homeowners. When Tim Hall mapped her proposal it indicated "channel markers" inadvertently. She expressed regulatory "channel markers" increase the liability of the County (as opposed to shoal markers).

Ted Raia, Pelican Bay Resident noted the Pelican Bay Service Division is willing to post standard canoeing/kayaking signs, as many as necessary, to provide the Seagate Homeowners with the benefit of navigating the area.

Mr. Krumm sought clarification if the County has pursued an appeal of the non-compliance decision.

Gary McAlpin noted this conversation has not occurred, rather has been notified through conversations (emails), the Permit is out of compliance. The discussions included actions required for bringing the Permit into compliance.

Marcia Cravens, Mangrove Action Committee noted she has personally challenged Cynthia Ovdenk's statement that the permit is out of compliance.

Discussion ensued regarding clauses in the Pelican Bay Covenant's in the deed to Collier County, which may restrict navigational dredging.

Ted Raia, Pelican Bay Resident read a portion of the Covenant's into the record, which dealt with the restrictions in the Conservation Area.

It was noted it did not address dredging, and the County Attorney is providing an opinion on dredging within the area.

Mr. Rogers moved for Staff to obtain a letter from the US Army Corps of Engineers indicating the Permit is out of compliance for the “following reasons:” (letter to identify the specific reasons)

Second by Mr. Krumm. Carried unanimously 2-0.

Ted Raia, Pelican Bay Resident requested a similar letter be issued to Pelican Bay Services Division (PBSD). If this letter had been received in the past, it would have resulted in a different direction for the PBSD.

Marcia Cravens, Mangrove Action Committee stated the email string provided between Gary McAlpin and Cynthia Ovdenk is only a “partial string” and Gary McAlpin requested an interpretation of the Management Plan sections and “wanted her to say it required channel markers.”

Gary McAlpin objected to the statement and noted Ms. Cravens (or anyone) cannot speak of any conversations between himself and the USACE. The statement “Collier County wants channel markers installed’ is an inaccurate statement.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 3:15 PM.

**COLLIER COUNTY CLAM BAY ADVISORY
SUBCOMMITTEE**

**Co-Chairman, Robert Rogers and Tahlmann
Krumm**

These minutes approved by the Board/Committee on _____
as presented _____ or as amended _____.