MEMORANDUM

DATE: June 3, 2019

TO: Board of County Commissioners

THROUGH: Mitchell O. Palmer, County Attorney

FROM: Katharine M. Zamboni, Assistant County Attorney

RE: Wild and Scenic River Designation for the Little Manatee River Request for Legal Services; CAO Matter No. 2019-0215

Issue Presented:

You asked this Office to research what effect, if any, designation of the Little Manatee River as part of the Wild and Scenic Rivers System would have on adjacent property owners.

Brief Answer:

The main effect that a designation of the Little Manatee River as part of the Wild and Scenic Rivers System would have is that the Federal Energy Regulatory Commission (FERC) will be prohibited from licensing the construction of a dam, impoundment or other project that would negatively affect the free-flowing nature of the river.

Because none of the property adjacent to the Little Manatee River located in Manatee County is owned by the federal government, there is no direct effect on the adjacent property resulting from the designation itself. Depending on the values for which the river is designated, a Comprehensive River Management Plan could recommend zoning rules, such as setback restrictions, to protect those values. However, Manatee County would not be required to adopt any of those recommendations. Furthermore, because the Little Manatee River is currently designated as an Outstanding Florida Water, it is currently subject to more stringent restrictions to prevent the degradation of the water quality.

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law
Factual Background:

During the April 23, 2019 regular meeting of the Board of County Commissioners, Commissioner Trace informed the Board that she had been approached by Hillsborough County Commissioner White regarding the potential designation of the Little Manatee River as part of the Wild and Scenic Rivers System. According to Commissioner Trace, U.S. Congressman Buchanan, who represents the 16th Congressional District of Florida, is willing to sponsor a bill to designate the Little Manatee River pursuant to the Wild and Scenic Rivers Act. Because a portion of the Little Manatee River is located in Manatee County, Congressman Buchanan has asked that Manatee County support the designation along with Hillsborough County. Hillsborough County has drafted a resolution for the Manatee County Board of County Commissioners’ consideration expressing support for the designation.

Commissioner Benac expressed concern about the proposed designation if such a designation will impact adjoining property owners through set-back requirements and other regulations. The Board formally requested further information on the implications of a designation under the Wild and Scenic Rivers Act by a motion that was approved unanimously.

The Little Manatee River begins near Fort Lonesome, Florida and travels south and west mostly through Hillsborough County, with a small portion of the mainstem traveling through northern Manatee County before draining into Tampa Bay near Ruskin, Florida. It is approximately 50 miles long with a contributing drainage basin of about 221 square miles. In addition to the mainstem of the Little Manatee River, a named tributary, the Little Manatee River – South Fork, traverses mostly through Manatee County. The Little Manatee River – South Fork is approximately 19 miles long starting in Hillsborough County south of County Road 579/Saffold Road and north of Packing House Road, and travels south and east and then north before ending east of County Road 39. Based on the description of the Little Manatee River in the draft resolution provided by Hillsborough County, the proposed designation would include the mainstem of the Little Manatee River, but would not necessarily include the Little Manatee River – South Fork tributary.

According to information maintained by the Manatee County Property Appraiser’s Office, the mainstem of the Little Manatee River traverses three property parcels within Manatee County. Two of the parcels are owned by Florida Power & Light and the third parcel is owned by the Southwest Florida Water Management District. There are three additional parcels owned by Wilmer Saffold, Hiram Saffold and William Saffold that lie very close to and may abut the Little Manatee River.

The Little Manatee River is designated as a Special Outstanding Florida Water from its mouth to the western crossing of the river by S.R. 674, including Hayes, Mill and Bolster Bayous, but excluding South Fork, Ruskin Inlet and all other tributaries. Rule 62-302.700(9)(i)20, Florida Administrative Code (F.A.C.). Outstanding Florida Waters are waters designated by the Florida Department of Environmental Protection as worthy of special protection because of their natural attributes. Some Outstanding Florida Waters may also be designated as a “Special Water,” if the
waters are of exceptional recreational or ecological significance. Rule 62-302.700, F.A.C.

**Legal Framework:**

The Wild and Scenic Rivers Act (WSRA) of 1968 declares a national policy to protect and preserve certain rivers “which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife . . . or other similar values” in a free-flowing condition, and to protect the immediate environments of such rivers for the benefit and enjoyment for present and future generations. 16 U.S.C. § 1271.

Rivers are included in the National Wild and Scenic Rivers System (hereinafter referred to as the “National System”) through one of two methods. First, Congress can designate a river or river segment for inclusion in the National System, after determining that the river possesses outstandingly remarkable values (“ORVs”) that warrant protection. 16 U.S.C. § 1273(a)(i). The second method is by application of a state governor to the U.S. Secretary of the Interior. Rivers included in the National System by application and designation by the Secretary must not only possess ORVs, but must also be designated as wild, scenic or recreational by the state legislature and be administered permanently as such by the state. 16 U.S.C. § 1273(a)(ii).¹

To be eligible for inclusion in the National System, the river area must be “free-flowing” and must possess one or more ORVs. 16 U.S.C. § 1273(b). The WSRA defines “free-flowing” to mean:

existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion . . . .


Rivers included in the National System are classified as either (1) wild, (2) scenic, or (3) recreational as follows:

(1) **Wild river areas** – Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds and shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

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¹ As of 2019, Congress has designated a total of 192 rivers in the National System, and the Secretary of the Interior has designated 17 rivers at the request of state governors. Not all designations include an entire river, but many designations include tributary streams. An additional 144 rivers have been authorized for study for potential inclusion in the National System. See, *An Introduction to the Wild & Scenic Rivers*, a Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council (November 1998; revised February 2019), available at https://www.rivers.gov/documents/WSR-primer.pdf.
(2) Scenic river areas — Those rivers or sections of rivers that are free of impoundments with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas — Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shoreline, and that may have undergone some impoundment or diversion in the past.


Rivers included in the National System are often referred to as “wild and scenic rivers” regardless of the actual classification. For example, recreational rivers are called “wild and scenic” because they are part of the National System even though they do not satisfy the statutory requirements of “wild” or “scenic.” Nonetheless, the actual classification is important to the management goals of the designated river and how it is administered. All rivers in the National System are administered with the goal of preserving the values for which it was originally designated.

Once included in the National System, the Federal Energy Regulatory Commission (FERC) is prohibited from licensing the construction of dams, water conduits, reservoirs, powerhouses and transmission lines or other project works on or directly affecting a designated river. 16 U.S.C. § 1278(a). This is the main protection afforded by the WSRA to preserve the free-flowing condition of rivers in the National System.

Before designating a river or river segment for inclusion in the National System, Congress may authorize a river for study for potential inclusion in the National System. 16 U.S.C. § 1276. If a river is identified for potential inclusion, the study must identify each outstandingly remarkable value possessed by the river area, even though only one ORV is necessary for the river to be eligible for inclusion in the National System. Similar protections apply on a temporary basis to rivers that have been designated for study for potential inclusion (i.e., “study rivers”) in the National System as designated rivers. 16 U.S.C. § 1278(b).

Under the WSRA, the U.S. Department of the Interior and the U.S. Department of Agriculture are responsible for administering, managing, and protecting rivers included in the National System. Within one (1) year of the date of designation, the administering agency must establish a detailed river corridor boundary and within three (3) full fiscal years after the date of designation, prepare a comprehensive river management plan (“CRMP”). 16 U.S.C. § 1274(d). The CRMP includes a description of the baseline conditions and identifies the ORVs for which the river was designated for inclusion in the National System.

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2 If a river is authorized for study for potential inclusion, a study report is prepared by the U.S. Department of the Interior or the U.S. Department of Agriculture, and transmitted to the President of the United States, who then forwards the study to Congress with a recommendation for action. 47 Fed. Reg. 39454 (Sep. 7, 1982).
Any management restrictions imposed by a CRMP to land within the boundaries of a designated river area apply to federal property only. The federal government does not have authority to regulate or zone private property. A CRMP often includes a voluntary framework for future development and activities on nonfederal lands to help preserve and enhance the values of the designated river area. Furthermore, the WSRA preempts federal condemnation power in urban areas that are subject to valid zoning ordinances that are consistent with the purposes of the WSRA. 16 U.S.C. § 1277(c).

Discussion:

Designation of the Little Manatee River for inclusion in the National System has no immediate effect on adjoining private property owners. The immediate effect of a designation is the prohibition on FERC from licensing the construction of dams and other project works on or directly affecting the free-flowing nature of the river.

However, a CRMP should be expected if the Little Manatee River is included in the National System through an act of Congress. The nature of the recommendations contained in a CRMP specific to the Little Manatee River will depend on the ORVs for which the river is designated. By way of example, the National Park Service in partnership with a consortium of local stakeholder groups prepared a Comprehensive Management Plan for the Wekiva River, which was designed by an act of Congress as a National and Wild Scenic River in 2000. Five ORVs were identified for the Wekiva River system: (1) scenic, (2) recreation, (3) wildlife and habitat, (4) historic and cultural, and (5) water quality and quantity. The Wekiva River system is located in central Florida, just north of Orlando in Lake, Orange and Seminole Counties. Accordingly, the Wekiva Comprehensive Management Plan contains a number of recommendations that form the basis for protecting the Wekiva River’s ORVs. While the Wekiva River Management Plan does not and cannot mandate that a local government adopt measures to protect the ORVs, a model ordinance to regulate residential fertilizer, for example, is recommended to help protect the river’s water quality.

The recommendations contained in a CRMP for the Little Manatee River, if it is included the National System, will depend on the ORVs identified. The ORVs could be identified in the bill designating the river for inclusion in the National System, or the ORVs could be identified in a study if the Little Manatee River is initially designated as a study river. As a Special Outstanding Florida Water, the Little Manatee River is already subject to additional restrictions on new activities that would degrade the quality of the water. Finally, it is worth noting that there are relatively few parcels of property traversed by or abutting the Little Manatee River within Manatee County.
Conclusion:

I trust this response has adequately addressed your question. This concludes my response to this Request for Legal Services. Should you have any further questions or if I can be of further assistance, please do not hesitate to contact this Office.

KMZ

Copies to:  
Cheri Coryea, County Administrator  
John Osborne, Deputy County Administrator  
Karen Stewart, Acting Deputy County Administrator  
Charlie Hunsicker, Director, Parks and Natural Resources Department  
Rob Brown, Environmental Protection Division Manager, Parks and Natural Resources Department