FINAL

MINUTES OF THE MEETING
of the
HARRIS CHAIN OF LAKES RESTORATION COUNCIL

March 4, 2005

The regular meeting of the Harris Chain of Lakes Restoration Council (Council) was held at 9:00 AM on March 4, 2005 at the Lake County Board of County Commissioners' Chambers, 315 West Main Street, Tavares, Florida.

Members Present	**Members Absent**
Hugh (Dave) Davis II, Chairman	W. Thomas Brooks
Skip Goerner, Vice Chairman	
Thomas A. Cook, MD, Secretary	
Charles C. Clark	
Keith Farner	
Robert Kaiser, P.E.	
Don Nicholson	
Rick Powers, P.G.	

1. CALL TO ORDER

Vice (V.) Chairman Skip Goerner called the meeting to order at 9:05 AM.

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The Invocation was given by Councilman Robert Kaiser, followed by the Pledge of Allegiance.

3. ROLL CALL

Chairman Dave Davis called roll. Councilman W. Thomas Brooks was absent.

4. APPROVAL OF MINUTES

A call for discussion of the minutes from the January 7, 2005 meeting was made. No edits or comments were offered. A vote to approve the minutes passed unanimously. Gene Caputo of the St. Johns River Water Management District (SJRWMD) reminded the Council that a draft summary of the February site visit to the Lake Apopka North Shore Restoration Area was included in the agenda package and suggested the summary be reviewed prior to the April meeting.

5. DISCUSSION ITEMS

Quarterly Budget Report – 1st Quarter FY04-05, Tom Brooks
Councilman Brooks was absent from the meeting, therefore the quarterly budget review was postponed until the April meeting.

Technical Advisory Group / Sunshine Law, Charles Clark
Councilman Charles Clark said that he had received a response form the State Attorney General's office to the Council's inquiry on the responsibilities to the Technical Advisory Group (TAG) in connection with the Sunshine Laws. He explained that in their response they addressed the duties and responsibilities of the Council, not the TAG. In a subsequent conversation with the Attorney General's office he was referred to the previous response issued by their office. In that response the Council was informed that a majority of the TAG members would be required to request an opinion from the Attorney General on their responsibilities under the Sunshine Laws. Councilman Clark expressed his opinion that the Council should not request opinions or recommendations from the TAG until this matter is resolved. Chairman Davis concurred with Councilman Clark saying that the Council may request facts or information from the TAG but if they request an opinion or recommendation from the TAG then that would fall under the guidelines of the Sunshine Laws.

Dan Canfield, Ph.D., a TAG member representing the University of Florida (UF) provided his understanding of the matter saying after speaking with State Senate and House of Representatives lawyers he understood that the Council is a voting body and therefore subject to the Sunshine Laws. He said that the TAG would not be subject to the laws because they discuss matters freely and openly in front of the Council who can then vote based on these open discussions.

Councilman Clark suggested that it may be prudent for the TAG to request an opinion form the Attorney General's office on this matter.

Chairman Davis suggested that in the future if the Council tasks the TAG with something a council member believes would fall under the Sunshine Laws; that the council member expresses his concern at that time.

Councilman Clark suggested as a matter of bookkeeping that the letter received from the Attorney General's office be made part of the meeting minutes. The Council agreed and the letter is provided as an attachment to these minutes.

Purchase of Computers, Gene Caputo
Mr. Caputo updated the Council on the information they had requested regarding the purchase of laptop computers for council members use to maintain Council business. He explained that the laptops could be purchased for approximately $2,500 each and that maintenance and service would either be provided by the SJRWMD in Palatka or the Lake County Water Authority (LCWA), but that issue had not yet been decided. Mr. Caputo

said that the money is available in the Council budget and the computers could be purchased through the SJRWMD.

Vice (V.) Chairman Skip Goerner said that his research into the matter indicated that adequate computers could be purchased for less than $1,800. Councilman Rick Powers said that $2,500 might be a bit excessive and that adequate laptop computers can be purchased for around $1,000 to $1,300.

Councilman Clark offered his objections to spending LCWA funds for the personal convenience of Council members. He pointed out that the water authority pulled funding out of several programs to pay for the Lake Griffin Access Canal Dredging project and presented a list of projects to demonstrate where the costs of the computers could be better utilized.

Mike Perry, Executive Director of the LCWA explained that the Council's funding provided by the water authority does not affect the funding to their projects. He said that although funding of the projects was adjusted to move forward with the access canal dredging, the other projects were simply moved back to be completed at a later date.

Councilman Powers expressed his reservations of utilizing council funds to purchase a computer for the Recording Secretary. Chairman Davis agreed with Councilman Powers.

Councilman Kaiser made a motion that the Council approve the purchase of laptop computers for the members who desired them. The motion was further refined to include a maximum cost of $1,500 each and they may be purchased either by the individual or through the State contract with Dell.

A vote to approve the purchase of laptop computers for the Council members who currently desired one passed with Councilman Clark casting a Nay vote and Councilman Brooks absent.

Council Website Update, Gene Caputo

Mr. Caputo said that the Council's website had been updated with the current information. He also explained that Marilyn Bachmann recently submitted an invoice for her services which covered two fiscal years. The SJRWMD had requested that she resubmit two separate invoices, one covering each fiscal year. Those invoices had not yet been received.

6. PRESENTATIONS

Hydrilla Management in Florida and Gizzard Shad in Lake Dora, Dr. Mike Allen

Dr. Mike Allen of the Fisheries and Aquatic Sciences Department at the UF gave a presentation on Gizzard shad in area lakes. Highlights of his presentation included:

Gizzard Shad

- Important prey species for predator fish such as black bass and crappie.

- Often dominate fish biomass in hypereutrophic lakes
- Often dominate predator diets
- Found in large, eutrophic and hypereutrophic Florida lakes
- The number of fish increases with increased chlorophyll concentrations

Shad hatchlings outgrow bass hatchlings due to;

- Increased phosphorus accelerates their growth
- They can out compete predator fish for zooplankton
- They can feed either from the water column or bottom detritus

Impacts of Gizzard Shad

- Shad that are 30 to 40 millimeters (mm) in length can begin to eat detritus and bottom sediments
- May increase nutrients in the water column by resuspension of sediments
- Shad excrete nitrogen (N) and phosphorus (P) that are highly available to the water column
- Reducing shad abundance could influence water chemistry and clarity

Shad management efforts;

- Summary of gill netting activities in Lake Apopka
  - There is anecdotal evidence of reductions in phosphorus reductions in lakes Griffin, Apopka and Denham
- The use of a 4" gill net leaves shad of breeding size behind (approximately 8")

Gizzard shad harvest on Lake Dora

- Harvesting activities began on March 1st
- Evaluation of sport fish populations will be conducted over the next year on lakes Dora, Beauclair, Eustis and Harris
- Discussion of shad size vs. bycatches

After harvest at Lake Dora

- Evaluate gizzard shad population response
- Evaluate changes in sport fish abundance
- Compare to lakes with no harvest
- Results will show how commercial harvest impacts shad populations and lake trophic processes
- Bycatch impacts will be identified

V. Chairman Goerner asked if gill nets with mesh smaller than 4" could be used to catch gizzard shad in the middle of the lake. Dr. Allen explained that although sport fish are typically found near shore, there are large populations of crappie and speckled perch in the center of the lake that may be impacted by the smaller mesh nets.

Councilman Farner asked if bass could help control the shad populations. Dr. Allen explained that in order to have a successful bass restocking program there must be habitat restoration. As the water quality in a lake improves, macrophytes (aquatic plants) will begin to flourish and lakes which have a good amount of vegetative cover have very productive sport fish populations. Dr. Allen went on to say that increased bass populations in a lake will help control shad populations by the bass eating a percentage of the smaller shad. He said that studies of hybrid striped bass appear to have an impact on shad populations.

V. Chairman Goerner said that he is encouraged by the improved water quality and clarity in Lake Griffin after the shad harvest that has allowed aquatic plants to flourish and an increase in bass populations.

Dr. Allen said there appears to be benefits to the shad harvests that include accelerated growth of habitat and sport fish populations.

Councilman Don Nicholson asked if there were other species of predator fish that could be beneficial to area lakes, in addition to the striped bass. Dr. Allen said he did not believe so and reiterated that the hybrid striped bass appear to have the best result in manipulating shad populations.

Mr. Perry added that the LCWA assisted with the funding for the gizzard shad harvesting project.

Dr. Allen also gave a presentation of hydrilla management efforts and provided information obtained during a recent meeting of several state and federal agencies including the Army Corps of Engineers (ACoE), Florida Department of Environmental Protection (FDEP), Florida Fish and Wildlife Conservation Commission (FWCC), county governments, State water management districts, U.S. Fish and Wildlife Service (FWS), and the Bass Anglers Sportsmen Society (BASS).

Hydrilla

- An exotic, non-native species
- Provides quality fish and wildlife habitat
- Can dominate the shallow, Florida lakes

Methods of control

Chemical treatment with Sonar (Fluridone) which attacks a specific enzyme in hydrilla

- This product has been used for 15 years
- Large acreages of control
- Low costs / economical
- Selective – only effective on hydrilla and minimizes damage to native plants

- More resistant strains are evolving which require higher doses of Fluridone that can be harmful to native plants like bulrush, knot grass and eel grass

Grass Carp

- Drawback – the grass carp will feed on native species of vegetation when the hydrilla is gone

Other herbicides

- Greater expense and not economical on large lakes

Mechanical methods

- Effective in small areas like boat ramps, fish camps, canals, etc.
- Not feasible for large lakes
- Non-selective, will remove all plants not just one species

Results

- Eradication of large populations is not possible
- The existing hydrilla is building a resistance to Fluridone
- Continued treatment with Fluridone will harm native plants and increase tolerance of the hydrilla

Recommendations

- Develop lake management plans
- Stop consecutive years of Fluridone application
- Discontinue the hydrilla eradication policy on large lakes
- Conduct more research on grass carp and their removal after the hydrilla is reduced
- New herbicides need to be developed

Councilman Kaiser asked if the grass carp could be fitted with transmitters so they could be located and captured when the hydrilla is reduced to a desired level. Dr. Canfield explained that there have been several methods of monitoring and removing grass carp have been explored but a successful solution had not been discovered. Dr. Allen added that they have considered attaching a dose of a chemical to the fish such as chlorine in a package that will degrade over time and kill the fish. He suggested that two years may be an optimum time to allow the grass carp to graze on the hydrilla before removing or destroying them. Dr. Canfield also reminded the Council that the triploid grass carp are sterile and cannot breed however; they can live up to 12 years which is much longer than they are needed.

An extended discussion of hydrilla management issues followed.

Phosphorus Levels in Lake Beauclair, Charles Clark

Councilman Clark gave a presentation of the phosphorus data he has collected from the SJRWMD on Lake Beauclair. He prepared a collection of graphs that compared total phosphorus (TP) in the various lakes to flow rates, rainfall and other factors in several of the lakes in the Harris Chain of Lakes. The series of graphs included:

TP for lakes Beauclair and Dora
TP for lakes Beauclair, Eustis and Harris
TP for lakes Beauclair and Griffin
TP in Lake Beauclair vs. Flow Rate in the Apopka-Beauclair (A-B) Canal
TP in Lake Apopka vs. the A-B Canal Above the Dam
TP in Lake Apopka vs. the A-B Canal the Dam
TP for Lake Beauclair vs. Kg. of TP Exported from the A-B Canal to Lake Beauclair
TP in Lake Beauclair vs. Rainfall
TP Above the A-B Canal Dam vs. TP Below the Dam
TP in the A-B Canal vs. Rainfall
TP Below the A-B Canal Dam vs. TP in Lake Beauclair

The focus of his presentation was the cause of episodic increases or "spikes" of phosphorus concentrations observed in Lake Beauclair. Councilman Clark presented the following conclusions:

1. "Spikes" in the TP levels observed in Lake Beauclair do not originate in Lake Apopka.
2. Significant sources of phosphorus exist south (upstream) of the dam. Much of this will be removed by the Nutrient Reduction Facility (NuRF).
3. Additional sources of phosphorus may exist north (downstream) of the dam. This phosphorus will not be removed by the NuRF project.
4. "Spikes" in TP in Lake Beauclair are not caused by "spikes" of TP existing in the A-B Canal.
5. "Spikes" of TP in Lake Beauclair appear to be weather related.
6. Surface runoff during heavy rains cannot be eliminated as a possible cause of the "spikes" observed in Lake Beauclair but the "spikes" are more probably due to re-suspension of unconsolidated material.
7. The most likely area of re-suspension contributing to the "spikes' is near the exit point of the A-B Canal, just north of the lock and dam. Some but not all of this material will be removed in the Lake Beauclair Initiative.
8. Achievement of the Total Maximum Daily Load (TMDL) Concentration of 32 parts per billion (ppb) for Lake Beauclair will be difficult unless the "spikes" can be eliminated.

Overall Councilman Clark believes that the Hurley Sod Farm is a significant contributor of TP in the A-B Canal. He supports the NuRF project as a beneficial method to reduce

phosphorus in the A-B Canal. He also supports the Lake Beauclair Initiative to dredge resuspendable soft sediments in an effort to improve water quality.

Lance Lombard (LCWA) provided hypothetical phosphorus removal data with the operation of the Lake Beauclair Nutrient Reduction Facility (NuRF). The facility will be able to treat all but the maximum flows exceeding 300 cubic feet per second (cfs) and remove in excess of 80% of the phosphorus and suspended solids. He also mentioned that the dredging proposed in the Lake Beauclair Initiative will remove the accumulation of phosphorus-rich sediments at the point where the Apopka-Beauclair (A-B) Canal discharges into the lake that Councilman Clark discussed. V. Chairman Goerner expressed his concerns that the maximum discharge flows are the primary cause of increasing phosphorus in Lake Beauclair and that the NuRF is not going to be able to treat those flows. Dave Walker (SJRWMD) agreed that better lake management efforts should be implemented to improve their control of lake water levels in order to minimize the maximum flow discharges from Lake Apopka. He also said that the discharge structures for the North Shore Restoration Area (NSRA) into Lake Apopka will be fitted with alum injection systems to further reduce phosphorus in the discharged water.

Dave Walker (SJRWMD) said ultimately, the ability to control lake levels will aid in phosphorus reduction in downstream lakes. The Lake Apopka NSRA projects will allow for better control and treatment of stormwater runoff and storage. He also said the SJRWMD reviewed the information that Councilman Clark presented and they concurred with his assessment that spikes of phosphorus in Lake Beauclair did not correlate to spikes discharging from Lake Apopka. They also believe that nutrient-rich sediments at the discharge point of the A-B Canal into Lake Beauclair are the most likely source. He said that when they graphed the Total Suspended Solids (TSS) data vs. the phosphorus data for the lake they didn't find a correlation between peak TSS concentrations and peak phosphorus concentrations.

<u>Emeralda Marsh /Lake Griffin Flow-way, Dave Walker</u>

Mr. Walker gave a presentation on the Emeralda Marsh project. He began by saying that the ACoE has approved permits to degrade the levee along the Yale-Griffin Canal. The permits also include the planting of cypress trees in the marsh. He discussed the Eustis muck farm which will receive the dredge material from the Lake Griffin access canal dredging project and pointed out the containment area on an aerial photo. Mr. Walker explained that this area has been treated with alum in preparation to receive the dredge material and an alum treatment facility will be constructed to treat water released from both the Eustis and Long farms. After treatment the water will be released into the Serpentine Swamp and East Pond for additional treatment prior to discharge into Lake Griffin.

Mr. Walker briefly mentioned that the SJRWMD is currently lowering the water levels at the Laurie Brown site and pumping it into Lake Griffin while they continue t evaluate other water treatment projects that may be built on the site. He said they will initially plant wetland vegetation on the site to enhance water quality treatment and improve wildlife habitat. He also discussed the goals of the SJRWMD for phosphorus discharges from the

various areas of the Emeralda Marsh. Mr. Walker explained that the maximum limit of phosphorus permitted to be discharged annually established by the Environmental Protection Agency (EPA) is 5,000 pounds. Their goal is to discharge a maximum of 1,500 pounds of phosphorus per year.

Councilman Clark asked about alum usage in connection with the Emeralda Marsh projects and whether the amount of alum used will vary from the 10 milligrams per liter (mg/l) he understood some of the other projects used. Mr. Walker explained that the amounts of alum used will be adjusted based on the phosphorus concentrations and volume of water pumped. He reminded the Council that the intent of these projects is to store more water on the sites and to discharge less. This will not only provide better control of lake levels but also help minimize the amount of alum used and reduce operations costs.

Agency Updates

Bill Johnson FWCC gave a brief update saying they were continuing to monitor the shad harvests and they were conducting electrofishing on all the lakes in the Chain to monitor fish populations.

Dr. Canfield provided a brief update on the bass restocking efforts saying that they were contracted to move 4,000 bass by May 1st and to date they had relocated 3,900. He explained the bass were being taken from lakes at the Orlando International Airport (OIA) and approximately 2,000 of them have been in the 10'-12" range and over 300 of them were 18" or larger. Dr. Canfield said the largest fish relocated to date was 14 pounds. He was appreciative of OIA for allowing the fish relocation from their lakes and was told the airport personnel believed the efforts were helping to reduce the number of bird strikes on aircraft. Dr. Canfield said he would update the Council on the success of the program after they conduct electrofishing counts in May. He also thanked Mr. Perry and the LCWA for the use of their boat to release the fish.

Dr. Canfield also discussed the low dissolved oxygen (D.O.) issue in water discharged from the Lake Apopka Marsh Flow-way (LAMF). He explained that although the D.O. levels are generally above 5 mg/l, the saturation is below 80-70% with some below 50% which will lead to much lower levels in the warmer months. He reminded the Council that discharging water with low D.O. is in violation of State and Federal regulations. Dr. Canfield said that currently representatives of Indian tribes are pursuing legal action against other violations of this nature. He cautioned that if there were complaints and some group wanted to take action in the future, the flow-way could be shut down.

Mr. Walker continued with updates on water quality in lakes Griffin and Apopka saying that since the hurricanes of last Fall, Total Phosphorus (TP) in Lake Griffin has come down to 69 micrograms per liter (µg/l) from a high of 120 µg/l, the Secchi Depth is currently 40 centimeters (cm), and the chlorophyll concentration is 93µg/l. In Lake Apopka he explained that TP has come down to 90 µg/l, the Secchi Depth is 45-50 cm, and the Chlorophyll concentration is only 30 µg/l. With respect to the LAMF operation he explained that the last cumulative totals indicate a total of 2.6 metric tons of phosphorus

has been removed by the flow-way, 160 metric tons of nitrogen and a total of 4,700 metric tons of TSS have also been removed. Mr. Walker said if compared to the removal efforts of the Lake Griffin access canal dredging, the LAMF TSS reductions are four times the amount of material to be removed by the canal dredging. So far as the efficiencies for the flow-way, it is removing approximately 40% of the phosphorus, 40% of the nitrogen and greater than 90% of the TSS. Mr. Walker said the water currently being discharged from the flow-way has a phosphorus concentration of 55 µg/l, which is the Total Maximum Daily Load (TMDL) concentration for Lake Apopka and the phosphorus concentration of the water entering the flow-way is 80 µg/l. He went on to explain that they are doing some modifications to Cell C of the flow-way which includes the installation of an alum injection system so water being stored in an area just north of there can receive treatment in the cell prior being released into the A-B Canal. Mr. Walker said these efforts will reduce the total capacity of the LAMF by 25% for a period of time.

No further agency updates were provided.

7. COUNCIL MEMBER COMMENTS

General Discussion / Comments

Councilman Kaiser gave a brief progress update on the City of Leesburg Wastewater Projects and provided with a summary from Raymond Sharp-Director, Environmental Services for the City. He explained that the Canal Street Wastewater Treatment Plant rehabilitation was completed in September. The City of Leesburg has also authorized the installation of panes in all of their remaining sanitary lift stations which will transmit monitoring data to their central office. Councilman Kaiser said that the panels will provide better control of the stations.

There were no additional comments made by the Council.

Discussion of April 1, 2005 Meeting
Mr. Caputo provided a summary of scheduled agenda items for the April 1st meeting including:

- Approval of the Draft Site Visit Summary from the tour provided by the SJRWMD to the Lake Apopka North Shore Restoration Area projects
- Approval of the March 4th Meeting Minutes
- Quarterly Budget Report by councilman Brooks
- Business card design and information by Mr. Caputo
- Councilman Clark requested an update on the NuRF project by Lance Lombard
- Councilman Clark also requested an update on the TMDL Program

Councilman Clark expressed his support of the NuRF project and asked that the Council also support it and to request Legislative funding for the project. With respect to the

TMDL Program councilman Clark also asked that the Council support the efforts of the SJRWMD in meeting the goals of the program.

Councilman Kaiser expressed his interest in the SJRWMD hiring a consultant to conduct a one year study on the use of wind generated electricity at the LAMF. Dr. Canfield suggested the Council write a letter to the UF President requesting a presentation by university personnel. Mr. Caputo said that he could ask Pearce Jones, Ph. D., Director of the Energy Extension at the UF, who is currently working on a sustainable energy community project with the SJRWMD, to give a presentation to the Council on the subject. The Council agreed.

Additionally, Councilman Clark requested a discussion on transferring funds to private entities (e.g. UF Bass Restocking Program) and it was determined that funding received from the Legislative Request can be transferred from the SJRWMD to private entities, such as the UF. Councilman Clark withdrew his request for a discussion on the matter.

8. PUBLIC COMMENTS

No public comments were made.

9. ADJOURNMENT

The meeting was adjourned at 12:40 PM.

Respectfully submitted by:

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Chairman Dave Davis

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Secretary Thomas Cook, M.D.

Response from the

Florida Attorney General's Office

on Clarification of the Sunshine Law Application

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to the Technical Advisory Group

February 8, 2005

STATE OF FLORIDA

CHARLIE CRIST
ATTORNEY GENERAL

February 8, 2005

Mr. Charles C. Clark
Harris Chain of Lakes Restoration Council
35320 West Griffin Drive
Fruitland Park, Florida 34731-6088

05-07

Dear Mr. Clark:

On behalf of the Harris Chain of Lakes Restoration Council, you ask the following question:

> Is the Harris Chain of Lakes Restoration Council, created within the St. Johns River Water Management District, by Chapter 01-246, Laws of Florida, subject to the Government in the Sunshine Law?

The Harris Chain of Lakes Restoration Council (council) was created by Chapter 01-246, Laws of Florida, within the St. Johns River Water Management District. The nine members of the council serve as advisors to the governing board of the water management district.[1] Section (1)4 of Chapter 01-246 provides:

> The council shall have the powers and duties to:
> (a) Review audits and all data specifically related to lake restoration techniques and sport fish population recovery strategies, including data and strategies for shoreline restoration, sediment control and removal, exotic species management, floating tussock management or removal, navigation, water quality, and fish and wildlife habitat improvement, particularly as they may apply to the Harris Chain of Lakes.
> (b) Evaluate whether additional studies are needed.
> (c) Explore all possible sources of funding to conduct the restoration activities.
> (d) Report to the President of the Senate and the Speaker of the House of Representatives before November 25 of each year on the progress of the Harris Chain of Lakes restoration program and any recommendations for the next fiscal year.

In addition, the act provides that the Fish and Wildlife Conservation Commission and the St. Johns River Water Management District, in conjunction with the council among others, is responsible for reviewing existing restoration proposals to determine the most environmentally sound and economically feasible methods of improving the fish and wildlife and natural systems of the Harris Chain of Lakes.[2]

Section 286.011(1), Florida Statutes, Florida's Government in the Sunshine Law, in pertinent part, provides:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

As a statute enacted in the public interest, the Sunshine Law is to be broadly construed to effect its remedial and protective purpose.[3] The courts of this state have repeatedly stated that it is the entire decision-making process to which the Sunshine Law applies, not merely the meeting at which the final vote is taken.[4] Moreover, the law has been held applicable to advisory boards created by law or by public agencies even though their recommendations are not binding on the entities that created them. As the Third District Court of Appeal stated in *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*:[5]

> The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law.

A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for committees established for fact-finding only, *i.e.*, strictly information gathering and reporting.[6] When a committee, however, possesses the authority not only to conduct fact-finding but also to make recommendations, the committee is participating in the decision-making process and is, therefore, subject to section 286.011, Florida Statutes.[7]

A review of Chapter 01-246, Laws of Florida, indicates that the council is responsible for more than mere fact-finding. The council serves as an advisory board to the St. Johns River Water Management District and is responsible for working with

the district and The Fish and Wildlife Conservation Commission to review restoration projects in order to determine which are the most feasible. In addition, the council makes progress reports to the President of the Senate and the Speaker of the House of Representatives including recommendations for the next fiscal year.

Section 1(1)(a) of Chapter 01-246, Laws of Florida, provides that the council is subject to the provisions of Chapters 119 and 120, Florida Statutes. The failure of the Legislature to specifically provide that the council is subject to section 286.011, Florida Statutes, does not necessarily remove the council from the scope of that statute. The case law interpreting the application of section 286.011, Florida Statutes, to advisory boards created by law clearly indicates that such a board is subject to the Sunshine Law.[8] Moreover, pursuant to Article I, section 24(b) and (c), Florida Constitution,

> (b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.
> (c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for . . . the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. . . .

Accordingly, in light of the above and in the absence of a specific exemption, I am of the opinion that the Harris Chain of Lakes Restoration Council, created within the St. Johns River Water Management District, by Chapter 01-246, Laws of Florida, to advise the governing board of the district, is subject to the Government in the Sunshine Law.

Sincerely,

Charlie Crist
Attorney General

CC/tjw

[1] Section 1(1)(a), Ch. 01-246, Laws of Fla.

[2] Section 2(1), Ch. 01-246, Laws of Fla.

[3] *See Wood v. Marston,* 442 So. 2d 934, 938 (Fla. 1983); *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).

[4] *See Board of Public Instruction of Broward County v. Doran, supra* at 699, in which the court recognized the right of the public to be present and heard during all phases of enactments by public boards and commissions; *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3rd DCA 1979).

[5] 535 So. 2d 694, 695 (Fla. 3rd DCA 1988). In reaching this conclusion, the court relied on the decision of the Florida Supreme Court in *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974), in which the Court held that a citizens' planning commission established by the town council to act as an advisory group to the council regarding the formulation of the zoning plan was subject to the Sunshine Law.

[6] *See e.g., Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985); *Bennett v. Warden*. 333 So. 2d 97 (Fla. 2nd DCA 1976) (fact-finding committee appointed by community college president to report to him on employee working conditions not subject to Sunshine Law); Op. Att'y Gen. Fla. 95-06 (1995) (when group, on behalf of a public entity, functions solely as a fact-finder or information gatherer with no decision making authority, no board or commission subject to the Sunshine Law is created).

[7] *See* Op. Att'y Gen. Fla. 94-21 (1994).

[8] *Cf. Turner v. Wainwright*, 379 So. 2d 148, 155 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980), in which the court rejected a board's argument that a legislative requirement that certain board meetings be open to the public implied that the board could meet secretly to discuss other matters. *And see Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969) (as a statute enacted for the public benefit, the Sunshine Law should be liberally construed); *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (when in doubt, the members of any board, agency, authority or commission should follow the open-meetings policy of the State).