

TIMELINE ESTABLISHING DESIGNATED USES FOR CLAM PASS/CLAM BAY

PRIMARY DESIGNATED USE related to the purpose and function of the Clam Pass/Clam Bay area for Conservation, Preservation, and Protection of natural resources therein was established by the following:

- 1) In the 1970s–Collier County enacted zoning ordinances for the Coastal Area Planning District. Ordinance 76–30 recognized environmentally sensitive lands (including wetlands, estuaries and water areas) and zoned them as Sensitive Treatment (ST) with a process to discourage development by allowing increased development of uplands IF ST areas were converted to Conservation/Preserve areas. The Pelican Bay Planned Unit Development/ Development of Regional Impact (PUD/DRI) proceeded pursuant to having obtained CONDITIONAL APPROVALS (1977) that allowed 98 acres of coastal mangroves wetlands to be filled for use in the development by a required conversion of the remaining 570 acres of ST lands into a Conservation Area. The requirement for the remaining 570 acres of undeveloped Clam Pass/Clam Bay coastal barrier segment to remain in its natural condition and prohibit it from further development resulted in the Pelican Bay Conservation Area being established by a Granted Deed with attached covenants and restrictions. It specified that 35 acres at the South end of the Conservation Area would become a public park (accessed through the preserve) that included a 3/4 acre public beach. Another five acres at the North end of the Conservation Area was also specified for a park to provides public beach access.
- 2) Between 1981 and 1982– Related to State and Federal approvals required for the Pelican Bay PUD/DRI, a Department of Army Permit (79K–0282) authorized fill of 98 acres of Clam Pass wetlands that was predicated on Special Conditions of the remaining undeveloped 570 acres being converted to conservation/preservation in perpetuity. It specified inclusion of Upper, Inner and Outer Clam Bays, their connecting creeks, Clam Pass and surrounding mangroves forests. It also prohibited dredging of Clam Pass except to keep it open to the waters of the Gulf of Mexico.
- 3) In 1988 – The undeveloped segment of the Clam Pass coastal barrier island (Conservation Area within Pelican Bay PUD's boundaries) was recommended to be added to the Federal Coastal Barrier Resources System (CBRS) as an Otherwise Protected Area. It was originally approved and recorded as FL–64P by the US Congress in 1988 and 1990. Additional related references in items 11–12 below.
- 4) In 1991–The Collier County Natural Resources Department (NRD) Coastal Zone Management Plan (CZMP–1991) condensed a series of NRD Technical Reports into a comprehensive coastal zone planning guide. Various chapters of it report the need to protect natural resources in the Clam Pass/Clam Bay Conservation Area. The CZMP–1991 was adopted by the BCC as a resolution and later by ordinance during 1992 and 1993. Draft ordinances were recommended to the BCC by NRD staff to be consistent with specific CZMP–1991 sections. Several included environmental protections in Clam Bay.
- 5) Ordinance 91–111 created the Pelican Bay Municipal Services Taxing and Benefit Unit (MSTBU) in conjunction with the Pelican Bay Services District (PBSD) and an Advisory Committee with dual role for the both entities. Among the Pelican Bay MSTBU/PBSD responsibilities and benefits is the maintenance (and funding for maintenance) of conservation and preserve areas within Pelican Bay boundaries. A boundary map was attached which included the Conservation Area of the Clam Bays, connecting creeks and surrounding mangroves forest. This ordinance was later repealed and replaced by successive ordinances that described the Pelican Bay MSTBU /PBSD having the same purpose as earlier ordinances, but that it was changed from an Independent District to a Dependent District.
- 6) In 1995– The BCC approved the NRD's recommendation to adopt Clam Bay as its first Natural Resources Protection Area (NRPA). The BCC action stipulated that the Clam Bay NRPA had the same boundaries as the existing Conservation Area within the Pelican Bay PUD.
- 7) Consistent with item # 6 above, Collier County's Future Land Use Maps adopted the additional NRPA overlay onto the Conservation Area overlay established by Collier County's acceptance (as Grantee) of the 1982 Conservation Easement Deed from the developer/owners of the Pelican Bay PUD/DRI.
- 8) The Collier County 1995 Manatee Protection Plan (MPP) stated Clam Bay had the richest seagrass beds in Collier County (critical for manatee survival). Accordingly, the MPP recommended an Idle Speed/No Wake Zone throughout the Clam Pass waterway system.
- 9) In 1998, Joint Coastal (JC) permits by FDEP and the USACE authorized the County's Pelican Bay Services Division (PBSD) to begin long–term restoration of Clam Bay. The Clam Bay Restoration and Management Plan was attached to the JC permits.. The permits, management plan and implementation of authorized projects were funded by voluntary Pelican Bay property assessments, an agreement by the WCI firm (successor to original Pelican Bay developer/owners) to contribute up to one million dollars for Clam Bay restoration, and included limited transfers of funds from the Collier County NRD Water Quality program and Exotic Vegetation Removal program (Fund 111).
- 10) In 1998, a Florida Administrative Court Case No. 98–0324GM ruling by Judge Meale interpreted certain Conservation and Coastal Management Elements in Collier County's Growth Management Plan that NRPA's required unequivocal protection of habitats which supported existing and potential uses within NRPA areas by wildlife.

11) In 2005 there was clarification of the boundaries of the Conservation Easement within the Pelican Bay PUD by the Collier County Natural Resources Department (NRD) Staff to US Fish and Wildlife Services (USFWS) for the Federal CBRIS Clam Pass Unit FL 64-P.

12) On October 15, 2008, Public Law 110-419 adopted Florida Congressman Connie Mack's recommended corrected map for Clam Pass unit of FL-64P. The corrected USFWS map identified the CBRIS Clam Pass unit FL 64-P to be located entirely within the existing boundaries of the Clam Bay NRPA and Conservation Area as the Otherwise Protected Area (by Conservation Easement Deed) within the Pelican Bay PUD boundaries.

SECONDARY DESIGNATED USE related to a purpose and function for Passive Recreation was established by the following:

1) The 1991 Coastal Zone Management Plan's (CZMP-1991) Inlet Management chapter had a substantial section describing Clam Pass and its bays, etc. It recommended no motorized boating as a protective measure for the natural resources within those waterways.

2) In 1995, the Collier County Manatee Protection Plan was adopted and sent to the State. It reported on Clam Bay's seagrass beds, canoe docks, very limited motorboat use, and conservation easement restrictions. The MPP recommended against any marina facilities ever being permitted in Clam Bay.

3) In 1995, "The Clam Pass Inlet Management Plan" was completed and Interim Report No. 1 was submitted to FDEP. It stated Clam Pass was essentially non-navigable and small boat boats had limited use of it.

4) Joint Coastal (JC) permits were approved in 1998 by FDEP and the USACE for the County's Pelican Bay Services Department (PBSD) to begin long-term restoration of the Clam Bay mangroves forest. The 1998 JC permits had an attached Clam Bay Restoration and Management Plan, by Collier County Commissioner Hancock's Mangrove Task Force.

4) In the year 2000, the Clam Pass Canoe Trail permit was approved by the Florida Fish and Wildlife Commission (FWC). PBSD records indicate that such markers were consistent with the Clam Bay Restoration and Management Plan to mark the dredged drainage channels in a manner that benefited recreational use of the Clam Pass/Clam Bay waterways consistent with preservation and protection of the Preserve to not increase motorboat usage in it.

5) In 2010 a Consolidated Denial from Florida Fish and Wildlife Commission and FDEP was issued that rescinded an earlier temporary approval of lateral aids to navigation because bathymetry data was recognized to show the waterways were too shallow for a motorboat navigation channel.

INCIDENTAL USE of Clam Pass/Clam Bay for motorized boating is apparent by afore-mentioned items referencing primary and secondary established uses and additionally evidenced by the following:

1) On February 2, 2000, Collier County NRD Staff responded to Seagate property owner David Buser's inquiry on dredging and installation of navigational markers in the Clam Bay system. The NRD letter informed him that Clam Bay ranked low on all channel siting criteria, was not the type of area, had a conservation easement that prohibited pilings and signage except some warning signs, and that dredging is prohibited in Clam Bay except at the pass to maintain a connection to the Gulf of Mexico.

2) Collier County Boat surveys conducted periodically for the Parks and Recreation Dept. consistently reported few motorboats in Clam Bay (docked in Seagate subdivision). Less than ten boats were identified at Seagate docks in each survey. Mainly kayak and canoe use was consistently reported in Clam Bay. The 2010 boat survey identified no changed boat use in Clam Bay from prior reports.