Pursuant to Section 1 of Resolution No. R-561-11, the Wetlands Advisory Task Force (WATF) was established for the purpose of providing recommendations to the Board of County Commissioners (BCC). The initial meeting of the WATF took place on September 29, 2011, and deliberations were completed on XXXXXXXX XX, 2012. During the course of our deliberations, the reorganization of County departments resulted in the Department of Environmental Resources Management (DERM) becoming a part of a newly created Department of Permitting Environment and Regulatory Affairs (PERA). PERA staff was assigned to provide information on the administration of the County wetland program as well as to act as the staff support to the Task Force. This report reflects the recommendations of the Task Force and does not necessarily represent the opinion of PERA or the County Administration. Pursuant to a majority vote of the membership of the WATF, enclosed is a final report of its findings and recommendations.

INTRODUCTION

On July 7, 2011, the Miami-Dade County Board of County Commissioners (BCC) passed resolution R-561-11 which established the Wetlands Advisory Task Force (WATF). The WATF was established for a period of six (6) months with a mandate to hold at least five (5) meetings. On January 24, 2012, the BCC approved a two month extension to the original six month term, providing the Task Force with a revised final reporting date of March 17, 2012. The purpose of the WATF as defined in the resolution is as follows:

1. Review the process that is used in classifying and determining wetland designations.
2. Determine whether the appeals process is fair, adequate and allows for due-process
3. Investigate ways of providing enhanced outreach to property owners located in environmentally sensitive areas regarding environmental permitting requirements that may be applicable to their properties.
4. Provide advice and recommendations to the BCC regarding revisions to wetlands regulations in chapter 24 of the Miami-Dade county code and any DERM fees related thereto.

The primary responsibility of the WATF, as outlined in Section 4 of resolution R-561-11, is to make recommendations to the Board of County Commissioners as to the matters identified above, including any specific recommended revisions to the wetlands regulations in Chapter 24 of the Miami-Dade County Code and any fees related thereto. The resolution called for the WATF to be comprised of seven (7) voting members, six (6) appointed by the BCC and one (1) appointed by the County Mayor, and two (2) non-voting members representing the State of Florida Department of Environmental Protection (FDEP) and the State of Florida Department of Agriculture and Consumer Services (FDACS), respectively. A third non-voting member, representing the South Florida Water Management District (District) was
invited to participate based upon an operating agreement between FDEP and the District, in which the District handles a large share of wetlands permitting and enforcement on behalf of the State. The WATF held xxxx (x) meetings: September 29, 2011; October 19, 2011; November 8, 2011; November 30, 2011; December 19, 2011; January 11, 2012; February 14, 2012, February 23, 2012 and xxxxxxxxx xx, 2012. This report will serve to summarize the main topics reviewed and the findings and recommendations of the WATF.

MAJOR ISSUES OF REVIEW
During the eight (8) month review period, the WATF received detailed presentations on the following subjects related to wetland recommendations:

- Federal, State and County rules and methodologies relating to delineation of wetlands, permitting requirements and methods for determining mitigation for impacts
- County Code requirements and the County’s implementation of the State rules
- How the State determines and applies exemptions from permitting for agricultural uses
- Department policies and procedures for progressive enforcement, general review of wetland enforcement cases and review of County wetland regulations
- Wetland permitting timelines and proposed concepts for process improvements through revisions to Chapter 24
- Past and current outreach efforts by the County
- Chapter 24 processes for appeals and procedures of the County’s Environmental Quality Control Board
- USACE planning, designs and goals of the Modified Water Deliveries Project and Flood Mitigation for the 8.5 Square Mile Area
- Potential options for streamlining permitting for Agricultural uses in wetlands.
- Common agricultural practices for fallowing of farm fields

A considerable amount of time was devoted to the issue of agricultural operations in jurisdictional wetland areas. Over the past couple of years there have been significant changes in State law and County land use that have greatly benefited agriculture.

In the 2010 legislature, the “Right to Farm Act” was amended. The previous version of the law protected agriculture from encroaching land uses by prohibiting the County from “adopting” laws, ordinances, policies etc. that limit an activity of a bona fide farm operation on land classified as agricultural land if such activity is regulated through rules or measures adopted by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a Water Management District. The revised version expanded the prohibition to “adopt or enforce” thereby exempting agriculture from the requirement to comply with almost any local ordinance, even those previously in existence. The revised bill however, specifically maintained the requirement for agriculture to comply with existing local wetland and stormwater programs.

In 2011, the County modified the Comprehensive Development Master Plan in two Open Land sub-areas to allow agriculture to expand from solely seasonal crops to many other uses such as tree farms, nurseries and limited livestock production. The two sub-areas include the C-9 basin and the Las Palmas Area (also known as the 8.5 Square Mile Area).

Also in 2011, the State Legislature revised an existing exemption to the State’s Environmental Resource Permit Program. The exemption in its original form stated “nothing herein, or in any rule, regulation or
order adopted pursuant hereto shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture or horticulture to alter the topography of any tract of land for purposes consistent with the practice of such occupation. However, such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.” As a result of an order from an appeals court that this exemption did not apply to wetlands due to provisions within the Warren S. Henderson Wetlands Protection Act as codified in Chapter 403, F.S., the state legislature revised the law to change the wording and intent of the exemption to state “Notwithstanding s. 403.927, nothing herein, or in any rule, regulation or order adopted pursuant hereto shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the practice of such occupation. However, such alteration or activity may not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands [emphases added].” Additionally, whereas previously the Florida Department of Agriculture and Consumer Services (FDACS) was tasked under the law with assisting a water management district in determining if an activity qualifies for the exemption, the revised law gave FDACS exclusive authority to make binding determinations as to whether an activity qualifies for the exemption in those situations where such a determination is requested by a landowner or a water management district. Finally, the revision made the exemption retroactive to 1984. The passage of the revised and expanded agricultural exemption in the State law, and how it is applied by the water management district and FDACS was discussed at length in the Task Force meetings. Also in 2011, the State Legislature revised an existing exemption to the state Environmental Resource Permit Program that allowed for agricultural operations to alter the topography of any tract of land without the requirement to obtain a state permit, provided the activity is considered normal and customary and not for the sole or predominant purpose of impounding or obstructing surface water. The revised version expanded the exemption by stating that activities that impede or divert the flow of surface waters or adversely impact wetlands were exempt as well, provided that the sole or predominant purpose of the activity may not be for impeding or diverting the flow of surface waters or adversely impacting wetlands. This exemption within the state law was made retroactive back to 1984. The passage of the revised and expanded agricultural exemption in the State law was discussed at length in the Task Force meetings. The exemption allows for certain normal and customary agricultural operations to impact wetlands without a state permit, provided the activity is not for the sole and predominant purpose of doing so. The revised law provides for the Florida Department of Agriculture, upon request of an applicant or a water management district to make a binding determination of whether a proposed activity qualifies under the exemption. The Task Force views this exemption as having some potential benefit to the agricultural community, however, because of the Law’s recent passage, there is little to no information on the potential effects within the County. The Task Force recommends that the County monitor the implementation of the exemption statewide and specifically within Miami-Dade County for a period of six months to one year. Based on the assessment, the determination of whether it would be in the County’s overall best interest to adopt a similar type of exemption at the County level will be better informed.

DISCUSSION

A summary of the information reviewed and finding of the four topics of committee consideration are discussed below.
1) **Review the process that is used in classifying and determining wetland designations.**

The process for determining the presence of wetlands requires specific training and technical knowledge of botany, hydrology, and soils. It is not always simple for untrained people to recognize a jurisdictional wetland, especially in the dry season.

Presentations were made by the Army Corps of Engineers, Florida Department of Environmental Protection and County staff regarding the methodology used in the delineation of wetlands by each agency. Pursuant to State Law, all state and local programs must use the definition and methodology for determining the landward extent of wetlands pursuant to Chapters 373.019(25) and 373.421 F.S., and Rule 62-340 F.A.C. The County’s presentation confirmed that the County Code references the State methodology and that the County Staff that conduct wetland determinations are trained and certified by the State of Florida in the proper application of the unified statewide delineation methodology. The non-voting members on the task force from the Florida Department of Environmental (FDEP) Protection and the South Florida Water Management District confirmed that the County was using the correct methodology. One specific example was discussed in which the FDEP Wetland Evaluation and Delineation Section staff from Tallahassee was brought in to perform a second delineation in association with a wetland case that was in litigation. The FDEP staff confirmed the County’s wetland determination.

There was considerable discussion about wetland jurisdictional determinations on agricultural land. Both the State and the County explained in detail that agricultural production can, and often does, take place on land that maintains jurisdictional wetland status. While a legal agricultural operation may continue in wetlands, a **significant** change in land use or dredging and filling of that land will **generally** require wetland permits.

2) **Determine whether the appeals process is fair, adequate and allows for due-process.**

Information was presented and discussed regarding the appeals and due process rights available to the public related to wetland issues. Chapter 24-11 of the Code of Miami-Dade County provides an appeals process for any person aggrieved by an action or decision of the Director. This appeal must be made within fifteen (15) days of the date of the action or decision, after which a hearing will be scheduled before the Environmental Quality Control Board (EQCB). The EQCB is made up of five highly technical independent members appointed by the Board of County Commissioners. If an appellant is dissatisfied with a decision of the EQCB, they can further appeal through the circuit court process.

In addition, if a land owner is in disagreement with a wetland delineation performed by the County, they can request that a formal, binding wetland determination be performed by the FDEP or the Water Management District. The FDEP or the District will conduct a separate independent evaluation of the property to determine the presence of wetlands and the line of delineation between wetland and uplands.

The Task Force has found that **an adequate** process exists for appeals and due process, however, public testimony to the task force has indicated that some landowners were unaware of one or both of these options.
3) Investigate ways of providing enhanced outreach to property owners located in environmentally sensitive areas regarding environmental permitting requirements that may be applicable to their properties.

The Task Force was provided with several examples of tools developed by the Department to increase the awareness of wetland issues and outreach to the community. These included targeted mailings to real estate agents, title agents and other professionals involved in the potential sale or acquisition of properties that may contain wetlands and the creation of an informational brochure that has been made available to interested parties and is provided to the South Dade Agricultural Extension Center for greater distribution. Additionally, the Task Force was advised that the Department regularly attends all meetings of the County’s Agricultural Practices Advisory Board, and has regularly scheduled meetings with the Builders Association of South Florida. They also attend many other public or industry meetings when requested.

It should be noted that the Department recently developed an on-line GIS tool linked to the Property Appraiser’s website. Upon review of a property on the site, the user may select the Environmental Considerations link. This link will redirect the user to an application that will display known and potential environmental information, such as wetlands, that exist in the vicinity of the property. The user will also be provided with links to additional information and all necessary contact information for the Department.

During the public comment at the meetings, a number of people indicated that they were unaware that a property they purchased or even owned for many years, contained jurisdictional wetlands until after they did unpermitted work. The committee recommends that additional opportunities for outreach efforts by the Department be explored.

4) Provide advice and recommendations to the BCC regarding revisions to wetlands regulations in chapter 24 of the Miami-Dade County code and any PERA fees related thereto.

The Task Force requested presentations and held lengthy discussions on the development of recommendations, with the goal of, as the Mayor outlined in his State of the County Address, “…streamlining our permitting processes by simplifying our codes and doing away with well-intended, but cumbersome regulations that stifle job growth, while still protecting our environment and natural resources.” These proposals attempted to recommend changes that are consistent with the adopted County policies under the Land Use, Conservation, and Coastal Management Elements of the Comprehensive Development Master Plan related to ensuring that drinking water quality is protected and that the preservation of high quality wetlands, wetland values and habitats for threatened and endangered species is maintained.

With the participation of the County, State and Federal permitting representatives, areas of overlapping jurisdiction were presented. In general, the programs all delineate and evaluate the amount of mitigation necessary for impacts to wetlands, however, the focus of the review criteria are generally quite different. These other criteria range from the Federal review for Threatened and Endangered Species to the State evaluation of regional impact to the County’s local focus on well field protection and consistency with land use policy and law. The issue of streamlining has been discussed in great detail at all three levels for several years. State law instructs the State to seek delegations from the Federal government and also allows for and encourages the delegation of the State program to qualified local governments pursuant to
Chapter 373.103 F.S. and Rule 62-244 F.A.C. With the reductions to State and District funding and staffing and with the State and District permitting offices located in West Palm Beach, the urgency and need to streamline the permitting programs are paramount to ensuring the protection of local resources. Additionally, an analysis of the Environmental Resource Permitting program indicates that the fees generally do not even cover half of the cost of administering the program. If the County were to receive delegation, the State permit criteria could be evaluated concurrent with the County’s. This efficiency would bring services closer to the regulated public, avoid the need for future fee increases to cover the State and District portions of the permitting program and significantly simplify the process for applicants, allowing both permits to be processed concurrently in a streamlined manner with one point of contact.

Discussion was held, pursuant to specific public comment, that delegation for wetland permitting for rockmining not be sought.

The County’s fee schedule related to wetland regulations was provided to the Task Force along with the methodology used to set the fees. The fees are developed based on the staff time required to process an average permit application. The fees are then presented and approved by the Board of County Commissioners. The majority of the Task Force deliberations focused on the costs associated with providing compensatory mitigation for unavoidable impacts to wetlands, which is not a fee imposed by the County, but is often, by far, the highest cost associated with wetland permitting.

Wetland mitigation methodologies are established by the State through the Uniform Mitigation Assessment Methodology (UMAM) pursuant to Chapter 373.414(18) F.S and Rule 62-345 F.A.C. The cost of mitigation is somewhat variable depending on the type of mitigation performed; however, the majority of mitigation in the County is done through private mitigation banks where the cost is set by the bank itself.

A significant amount of time was devoted to the support concerns of the agricultural industry and the 8.5 Square Mile Area (aka the Las Palmas Community). The primary concern revolved around the cost of wetland mitigation necessary to offset any loss of wetland function due to the establishment of new agricultural operations in wetland areas. An effort was made to develop recommendations for mitigation alternatives that would reduce the cost of mitigation for agriculture without losing significant wetland function.

Throughout the process, public involvement was encouraged. Public comment was recorded verbatim in the meeting minutes. Additionally, the public was encouraged to provide comments and suggestions in writing to the task force. A number of suggestions were received and reviewed for consideration in the recommendations.

**RECOMMENDATIONS**

Currently, there is no consideration within Chapter 24 of the Code of Miami-Dade County for periods of inactivity of an agricultural operation, either as a result of common agricultural practice or other circumstances. For the County to consider implementing an exemption to allow farming to continue in wetlands after a fallowing period, without the requirement to obtain a permit, a definition of fallowing
is required. Recommendations one through three relate to allowing fallowing periods and the 
continuation of agriculture in wetlands.

Recommendation 1: Modify Chapter 24-5 of the Code of Miami-Dade County to add a definition for 
Agricultural Fallowing: Agricultural Fallowing shall mean a period of no more than five years in which 
a legal bona fide agricultural operation is inactive

Recommendation 2: Modify Chapter 24-48 of the Code of Miami-Dade County to establish an 
exemption from requirements to obtain a Class IV wetland permit for the resumption of a bona fide 
agricultural operation within the period of Agricultural Fallowing as defined in Chapter 24-5 of the 

Recommendation 3: Modify Chapter 24-48 of the Code of Miami-Dade County to include the option 
of an administrative review for extension of the fallowing period due to unique or extenuating 
circumstances including, but not limited to, natural disasters, contamination, acts of God or 
governmental authority. The administrative decision may be appealed to the EQCB.

Currently, there are a limited number of project types that qualify as exempt from permitting under 
Chapter 24-48. The Department has identified several project types that consist of time sensitive and/or 
environmentally beneficial work in wetlands that can be done without the need for a permit, provided 
that the Department determines that the specific proposed project will not have an adverse effect on 
the environment, flood protection or drinking water supplies. The committee supports these expanded 
exemptions.

Recommendation 3.4: Modify Chapter 24-48 of the Code of Miami-Dade County to add the 
following to the list of exemptions for Class IV permitting.

• Scientific, water quality, or geotechnical sampling or testing in wetlands, provided the 
  Department determines that the sampling and testing will result in no adverse 
environmental impact.

• Work in wetlands, not to exceed thirty (30) days, associated with motion picture, television, 
  photographic or other media production provided the Department determines that work 
  will result in no adverse environmental impact.

• Treatment or removal of vegetation which is listed as a prohibited species as set forth in 
  Section 24-49.9 of the Code of Miami-Dade County, Florida, for the purpose of 
  environmental restoration or environmental enhancement activities, provided the 
  Department determines that the work will result in no adverse environmental impact.

• Work in wetlands performed to restrict access to a property for the purpose of maintaining 
  the property in its natural state and protecting the property from trespass, illegal dumping, 
  or damage to wetlands, provided the Department determines the work to restrict access 
  will result in no adverse environmental impact.

As previously noted herein, there was considerable time and effort allocated to the discussion of 
agricultural uses in wetlands. The primary cost of obtaining a permit is the cost of mitigation to offset 
unavoidable impacts to wetlands. This cost has been described as a prohibitive factor in an industry
where profit margins are low. Recommendations 5 through 8 relate to opportunities for conducting agricultural activities with no mitigation requirement or with lower cost alternative mitigation options in an effort to balance the expansion of the agricultural industry with the protection of natural resources.

Recommendation 5: Modify Chapter 24-48 of the Code of Miami-Dade County to allow for a limited exemption from County wetlands permitting requirements for bona fide agricultural activities in jurisdictional wetlands subject to the following guidelines when such impacts are exempt from the State permitting criteria:

- Impacts under the exemption do not exceed 10 acres in size for any one property;
- No additional fill may be brought to the site except for that clean soil, free from chemical contaminants, needed to replace soil lost to removal of field grown trees;
- The wetlands to be impacted are either currently in active agriculture production or the site consists of greater than 90% non-native vegetation.

Recommendation 6: Modify Chapter 24-48 of the Code of Miami-Dade County to allow impacts to wetlands requiring a Class IV permit for bona fide agricultural production to qualify for a deferral of the mitigation requirement subject to the following guidelines when such impacts are exempt from the State permitting criteria:

- Through the permitting process the Department will perform a detailed biological assessment necessary to document the conditions of the property in sufficient detail as needed to impose mitigation at a future date;
- The property must contain predominantly non-native vegetation and have evidence that it was in legal agricultural use within the past 25 years;
- No additional fill may be brought to the site except for that clean soil, free from chemical contaminants, needed to replace soil lost to removal of field grown trees;
- The owner must proffer a covenant to be accepted by the Director of PERA on behalf of the Board of County Commissioners. The covenant shall specify the terms of the deferred mitigation and shall require that at the time of a change in land use, the impacts to wetlands and corresponding loss of wetland functions must be fully mitigated, either through permitting and mitigation for an alternate use or through the restoration of the property, including a period of monitoring and maintenance.

Recommendation 7: The County should develop a process whereby impacts to wetlands for bona fide agricultural uses may be offset through payment of funds for purchase and preservation of environmentally sensitive wetlands elsewhere in the County as identified by the Department, when such impacts are exempt from the State permitting criteria.

Recommendation 8: The County should identify areas where a County sponsored Regional Offsite Mitigation Area (ROMA) could be established and permitted/authorized to provide additional mitigation options for wetland permitting at a potentially lower cost and to pursue such if feasible.

In the aftermath of Hurricane Wilma, many landowners accepted what they believed to be clean mulch material from hurricane cleanup efforts. In most cases, this material was found to be shredded vegetation mixed with other debris material including solid waste. In many cases the County was able to identify the trucking companies who brought the material to these sites and had the companies remove it. However, a number of unresolved cases still exist and the extent of the cleanup is often beyond the
financial ability for the property owners to resolve. Now, more than six years later, several cases remain unresolved. Potential impacts include the loss of wetlands and the possibility of groundwater and soil contamination.

Recommendation 6: The County should investigate ways to provide a one-time resolution for property owners who accepted mulched hurricane debris associated with the 2005 storm season. If it is determined that the mulched hurricane debris has resulted in, or poses a risk of groundwater contamination, under its authority, the County shall assume responsibility to clean up the environmental hazard, otherwise grandfather such material.

One of the commonly cited concerns raised by the regulated community and members of the public is that prior to purchasing land, prospective buyers are sometimes unaware that a property contains wetlands. In response to this concern, the Department worked closely with the Property Appraiser’s Office to develop a new environmental screening tool. This application includes information on wetlands areas of concern, flood zones, wellfield protection areas, brownfields and contaminated sites, among others. This new tool can assist title agents, realtors, attorneys, and the general public conducting due diligence associated with real estate transactions, and direct them to contact the County for additional pertinent information.

Recommendation 7: As it is essential to maintain the public’s confidence in the County’s environmental programs and practices, it is important to have the public understanding of their responsibilities and requirements under the law. The Department should enhance its outreach efforts, making multiple and repeated efforts to inform the public on environmental issues, including and especially those most affected by environmental protection laws, and should increase efforts to publicize the newly created Environmental Considerations application that has been added to the County’s My Home web application. This tool assists land owners and prospective buyers in the identification of potential environmental considerations that may affect the desired use of a property, such as the presence of jurisdictional wetlands.

Recommendation 8: The County should identify areas where a County sponsored Regional Offsite Mitigation Area (ROMA) could be established and permitted/authorized to provide additional mitigation options for wetland permitting at a potentially lower cost and to pursue such if feasible.

Currently, the Department issues permits administratively for certain types of projects. Within the UDB, most large projects receive several different approvals that allow for review, including zoning changes and platting. Allowing more projects to be approved administratively without the need for review by the Board of County Commissioners will streamline the permitting process and reduce costs for applicants without having an adverse effect on the environment, flood protection or drinking water supplies.

Recommendation 9: Modify Chapter 24-48 of the Code of Miami-Dade County to change the thresholds for the issuance of short form Class IV permits applications to allow more projects to be issued administratively. Specifically:

• Remove the acreage threshold for Class IV permitting for projects within the Urban Development Boundary Line to allow all projects to be issued administratively.
• Change the threshold for administrative issuance of permits for administrative projects in Open Land and Agricultural areas from 10 acres to 40 acres.

Issues related to the environment are reviewed under the authority of Federal, State and local permitting programs. However, issues of local concern, including, but not limited to, wellfield protection, flood management and locally environmentally protected areas are reviewed solely at the local level. Furthermore, the nearest offices for the FDEP and SFWMD are located in West Palm Beach and neither of these agencies have local regulatory staff. The County has the resources and the ability to provide review of State permitting requirements to the locally regulated community. This will save applicants time and cost, provide local accountability and ensure that the unique resources of the County are adequately considered. This recommendation is supported within the County’s Comprehensive Development Master Plan (CDMP Objective CON-7/Policy CON-7I) and State law (Chapter 373.441).

Recommendation 10.12: In order to increase government efficiency and provide services at a local level, the County should immediately seek a delegation of the ERP program from the Florida Department of Environmental Protection. However, as the review and approval of bona fide rockmining operations is directly discussed in State law as being under the purview of the FDEP, delegation for wetland permitting for rockmining should not be sought.

Recommendation 11: The committee sees potential value in the State agricultural exemption passed in the 2011 legislature; however the committee does not have enough information to advise the County Commission on the impact and utility of the exemption in Miami-Dade County. Therefore, the Task Force recommends an evaluation period of six months to one year to evaluate the impact based on the actual state determinations made in Miami-Dade County and to determine if it would be in the County’s best interest to adopt a similar exemption.