

Memorandum



Date: *****

To: Honorable Joe A. Martinez, Chairman
and Members, Board of County Commissioners

From: James F. Murley, Chair
Miami-Dade County DERM Wetlands Advisory Task Force

Subject: Final Report of the Miami-Dade County Wetlands Advisory Task Force related to Chapter 24 of the Code of Miami-Dade County.

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. **On February 21, 2012, the BCC approved a revision to the scope of the WATF and extended the Task Force term to July 16, 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.
- 5) **Review and provide advice regarding revisions to Chapter 33B of the Code of Miami-Dade County.**

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, [March 15, 2012](#) and xxxxxxxx xx, 2012. This report will serve to summarize the main topics reviewed and the findings and recommendations of the WATF.

MAJOR ISSUES OF REVIEW

The Task Force recognizes that balance to allow appropriate human uses is necessary and acceptable as long as the unavoidable impacts to wetland functions (including water storage, aquifer recharge, flood protection, water quality improvements, fish and wildlife values, etc.) are offset by mitigation, where necessary.

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.

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 change in land use or dredging and filling of that land may 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 a 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 discussed additional opportunities for outreach efforts by the Department.

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. 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 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 codifying 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 Code

Recommendation 3: Modify Chapter 24-48 of the Code of Miami-Dade County to allow an interested party to extend the fallowing period due to unique or extenuating circumstances including, but not

limited to, natural disasters, contamination, acts of God or governmental authority by administrative review, which 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 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, 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 viability 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 or mulch used as part of normal and customary agricultural practice;
- 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 or mulch used as part of normal and customary agricultural practice;
- 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, some landowners in the 8.5 Square Mile Area and the C-9 Basin 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 9: 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. If it is determined that the mulched hurricane debris has not resulted in contamination or poses a risk of groundwater contamination, ~~otherwise grandfather~~ such material.

The County should investigate ways to compensate property owners that have resolved this issue at their cost.

Comment [s1]: Needs rework pending informational provided by PERA

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 on the Property Appraiser's website. 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 10: 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 ongoing multiple and repeated efforts to inform the public on environmental issues, including and especially those most affected by environmental protection laws, including, but not limited to, increased efforts to publicize the newly created Environmental Considerations application that has been added to the County's My Home web application

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 reviewed and 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 11: Modify Chapter 24-48 of the Code of Miami-Dade County to change the thresholds for the issuance of Class IV permits 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 projects in Open Land and Agricultural areas from 10 acres to 40 acres.

Recommendation 12: Modify Chapter 24 to allow only an interested party be allowed to elevate a permit from administrative to review and public hearing before the BCC.

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 13: 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.

Input from engineers associated with wetland permitting has indicated the code language regarding plans and the engineer's certification need to be clarified and amended.

Recommendation 14: Modify Chapter 24 of the Code of Miami-Dade County relating to certification by an engineer so that certification language does not conflict with Florida Statutes.

Recommendation 15: Revise Chapter 24-48 (1)(c) & (d) to eliminate the need to submit plans for PERA to "determine if it meets accepted standards for professional engineering design"

Proposed amendments to the Code or Department policies should be consistent with the adopted policies of the County as described in the Comprehensive Development Master Plan.

Recommendation 16: For the purposes of this taskforce and the benefit of the members and Commission, a detailed CDMP analysis of any proposals considered by this body should be made to better inform the decision process and the final recommendation.

(THE FOLLOWING WERE RECOMMENDED FOR ADDITIONAL DISCUSSION AND FOR LANGUAGE TO BE PROVIDED)

Compile, workshop and post PERA permitting policies.
Codify time frames for reviewing applications and issuing a completeness summary.
Adopt FAC chapter 120 time frames for review and processing of all applications.
Adopt FAC chapter 120 criteria for completeness summary items

Through input from the Public, there was a request for the Department to develop and share wetland permitting policies with the public. This is intended to provide clarity for applicants and Department staff when reviewing applications. It is recognized that this process is time intensive and may require a number of years to complete.

Recommendation 17: Compile, workshop and post PERA permitting policies. These policies shall include but not be limited to response timeframes, completeness review processes and mitigation.

Consolidate Class I and Class IV permitting, by eliminating the Class IV permit. Class I permits would be required for work in tidal water and other wetland area of Miami Dade County.
Delete Halophytic Vegetation definition in 24-5
Revise 24-48.3 to eliminate reference to Class I permit applications to read ...proposed in tidal waters.

Currently, the code classifies halophytic wetland as those supporting halophytic species as defined in Section 24-5 of the Code. This definition alone can create uncertainty about which process may be required in some circumstances. A clarification of when a property will be reviewed under the Class I criteria is recommended.

Recommendation 18: Modify Chapter 24 of the Code of Miami-Dade County to provide clarification related to work in wetlands supporting halophytic vegetation requiring a Class I permit.

- Remove the following species from the halophytic list: *Salsola kali* (saltwort or prickly Russian thistle), *Acrostichum danaeifolium* (leather fern), *Baccharis halimifolia* (groundsel tree), *Spartina alterniflora* (smooth cord grass)
- Clarify criteria for determining if a project requires a Class I permit to be one of the following:
 - Require that the wetland area must support mangroves, or
 - Require that the wetland area support no less than two distinct (non mangrove) species identified as halophytic vegetation as defined in Section 24-5, and that the area in consideration fall within the Coastal High Hazard Area or Hurricane Vulnerability Zone as depicted in Figure 13 of the 2008 CDMP Land Use Element.

Adopt a “5 year statute of limitations” on past violations.

Inputs from the public indicated that there was a concern that a new property owner may purchase a property that has a very old wetland violation caused by a previous owner.

Recommendation 19: Provide outreach and education to property owners on the importance of environmental due diligence in property transactions and review the State policies related to a “statute of limitation” and consider incorporation into County policy.

Clarify that all provisions of Chapter 24-48.3 are considered collectively and that no one provision shall prevent the application from moving forward to the County Commission for the final permit decision.

Input was offered by the public that there was confusion at times about when an application could go before the Board of County Commissioners for a permit decision.

Recommendation 20: Amend Chapter 24 to include a provision to clarify that an applicant who believes their permit application is complete can request and be given a final permit decision.

The County should create tougher laws prohibiting the unauthorized use of off-road vehicles in wetlands.

497 Off-road vehicles cause significant degradation of wetland habitat in certain areas of the County and
498 often impact mitigation areas, making it difficult for the applicants to meet the required restoration
499 success criteria.
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501 Recommendation 21: Recommend that the County work with FWC and other agencies to
502 enforce trespassing laws on posted properties and consider additional steps to prevent
503 continued damage to wetlands by off-road vehicle use.
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506 The County should tax wetland properties at the same rate as the lowest agricultural tax rate to remove
507 incentives to impact wetlands for tax avoidance.
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509 The State of Florida allows for properties with bona fide agricultural activity to qualify for a range of tax
510 exemptions. Other properties are generally taxed at the “highest and best use”. This significant tax
511 difference may incentivize some land owners to convert wetlands to agriculture solely as a strategy to
512 reduce taxes on land holdings.
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514 Recommendation 22: Investigate ways to reduce the tax rates on wetland areas to incentivize
515 the preservation of wetlands in their natural state.
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519 Impacts to high quality wetlands should require that the County formally request comments from the
520 Fish and Wildlife Commission to assess potential impacts to wildlife and wildlife habitat.
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522 For significant impact to wetlands outside of the UDB, the County should develop a policy to coordinate
523 with the Fish and Wildlife Commission, providing a set period of time to comment on potential impacts
524 to wildlife and wildlife habitat. This shall not be required if there has been an Environmental Impact
525 Statement conducted or if a State permitting process is already providing such coordination.
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527 Recommendation 23: The County should adopt a policy on the coordination with other resource
528 agencies to ensure that rare, threatened and endangered wildlife and wildlife habitat are
529 adequately considered when reviewing permit applications. This coordination should not result
530 in an increased review time by the County.
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534 The County should publish a report annually that quantifies the net loss of wetland acreage and the
535 success of any mitigation required as a result of the permitting process.
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537 The public would benefit from annual report produced by the Department that would clearly detail the
538 effect of the County’s wetland policies and permitting program. The annual report should provide
539 information the number of wetland permits, acreage, illegal activity, restoration and the preservation of
540 the net wetland function county wide.
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Recommendation 24: The County should publish an annual report that quantifies the overall net loss of wetland acreage as well as the acres mitigated, impacted through unpermitted activity and restored.

It is understood that the sun has set on SAMP and the provisions and conditions outlined in that document no longer apply. If so, either re-institute SAMP (or similar document) or eliminate all references to it in Chapter 24 including the Bird Drive Everglades Wetland Basin and North Trail Wetland Basin. Specifically Section 24-48.20 North Trail Basin Plan and Section 24-48.21 Bird Drive Everglades Wetland Basin Plan. To leave these in place will cause confusion to the appropriateness of wetland impacts and mitigation. These include but are not limited to: Section 24-48.2(I)(A)(21), 24-48.2(I)(B)(1)(a), 24-48.2(I)(B)(2)(e), 24-48.2(II)(A)(9), 24-48.2(II)(A)(12), 24-48.3(5), 24-48.3(7), and elsewhere referred to in the County Code.

The PERA fee schedule contains references to mitigation costs associated with Bird Drive and North Trail Basin Special Area Management Plan that are no long recognized by the participating agencies. The mitigation is now calculated in the same manner as wetlands in other parts of the County.

Recommendation 25: Modify the fee schedule to remove the reference to the Bird Drive and North Trail Basin specific mitigation fees.

Permit Time Limits: Section 24-48.9 – revise the permit duration of Class I and Class IV Permits to a period of 5 years so that they are in alignment with the State and Corps time frames.

There was public input that aligning the Chapter 24 permit duration for Class IV permits with the State ERP permits would simplify the process of coordinating permit renewals for permittees.

Recommendation 26: Modify Chapter 24 of the Code of Miami-Dade County to allow for Class IV permits to remain valid for up to a five (5) year period. If the change would result in an increased cost due to additional time associated with compliance inspections, consider adding a graduated fee schedule to allow permittees that choose the current standard permit term of two (2) years to only pay the current fees.