


Date: July 12, 2012

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

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

Subject: Final Phase 2 Report of the Miami-Dade County Wetlands Advisory Task Force related to Chapter 33B of the Code of Miami-Dade County

Pursuant to Resolution No. R-561-11, please find attached the final phase 2 report of the Wetlands Advisory Task Force addressing specific issues and recommended revisions to the zoning regulations of Chapter 33B of the Code of Miami-Dade County. On April 10, 2012, the Task Force completed its recommendation related to the initial scope, the review of the County's wetland regulations and processes (phase 1 report). The purpose of the WATF during the second extension to July 16, 2012 was to review and provide advice regarding revisions to Chapter 33B of the Code of Miami-Dade County. The combined phase 1 and phase 2 reports, both of which were unanimously approved by the Task Force after considerable evaluation and discussion, represent the completion of the assigned tasks.

We appreciate the assistance provided to the Task Force by participating citizens, interested professionals, the staff of Department of Regulatory and Economic Resources (RER) and the three non-voting member agencies; the Florida Department of Environmental Protection, the Florida Department of Agriculture and Consumer Services and the South Florida Water Management District.

Task Force Members:

Voting:

James F. Murley, Executive Director, South Florida Regional Planning Council
Patricia Baloyra, Partner, Broad and Cassel
Manuel Echezarretta, President, Ford Engineers, Inc.
Jose K. Fuentes, Founder, The Fuentes Rodriguez Consulting Group, LLC
Jose M. Gonzalez, Vice President, Flagler Development
Alice Pena, President, Las Palmas Community Association
Stephen A. Sauls, Vice President for Governmental Relations, Florida International University

Non-Voting:

Jennifer Smith, Florida Department of Environmental Protection, Southeast District
Rebecca Elliott, State of Florida Department of Agriculture and Consumer Services (FDACS)
Ronald Peekstok, Lead Environmental Specialist, South Florida Water Management District
Ray Scott, Environmental Administrator, Florida Department of Agricultural and Consumer Services, Office of Agricultural Water Policy

c: Honorable Carlos A. Gimenez, Mayor

Final Report of the Miami-Dade County Wetlands Advisory Task Force Related to Chapter 33B 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 meetings of the WATF took place between September 29th, 2011 and July 2, 2012. During the course of our deliberations, the reorganization of County departments resulted in the Department of Environmental Resources Management becoming a part of a newly created Department of Regulatory and Economic Resources (RER). RER staff was assigned to provide information on the administration of the County zoning laws and ordinances 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 RER 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. On April 10, 2012, the Task Force completed and transmitted its recommendation report related to the initial scope, the review of the County's wetland regulations and processes. The purpose of the WATF during the second extension to July 16, 2012 was to review and provide advice regarding revisions to Chapter 33B of the Code of Miami-Dade County. The resolution called for the WATF to be comprised of nine (9) members in total. The seven (7) voting members included James F. Murley, Patricia Baloyra, Manuel Echezarretta, Jose K. Fuentes, Jose M. Gonzalez, Alice Pena, and Stephen A. Sauls, of which six (6) were appointed by the BCC and one (1) appointed by the County Mayor. The two (2) non-voting members who actively participated on the phase 2 report included Jennifer Smith and Rebecca Elliott, 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 nine (9) meetings specifically for the review of the wetlands regulations in Chapter 24 of the Miami-Dade County Code: 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 March 14, 2012.

The meetings held on April 18, 2012; May 23, 2012; June 18, 2012; and July 2, 2012 served to review and provide advice regarding revisions to Chapter 33B of the Code of Miami-Dade County. This report will serve to summarize the main topics reviewed and the findings and recommendations of the WATF during the meetings between April – July, 2012.

MAJOR ISSUES OF REVIEW

During the last four (4) month review period, the WATF received detailed presentations on the following subjects related to Chapter 33B:

- Review of Chapter 33B – the reasons for its development and background information
- Review of the CDMP Policies, especially those that include the 8.5 Square Mile Area
- USACE planning, designs and goals of the Modified Water Deliveries Project and Flood Mitigation for the 8.5 Square Mile Area
- The specific difference and regulations that are included with Ch. 33B and how they differ from those areas outside of Ch. 33B.

The focus of the WATF meetings since April was the analysis of the zoning and hydrology of an area of Miami-Dade County designated and labeled as the East Everglades according to Chapter 33B of the Zoning Code (Code); specifically, the 8.5 Square Mile Area and its relation to the Code. On January 10, 1981, the BCC declared the East Everglades, a 242-square mile area located to the west of the urbanized part of Miami-Dade County (County) contiguous to the Everglades National Park, as an area of “significant environmental and natural resource value” to the County that is related to the health, safety, and welfare of its present and future residents. Subsequently, the area was designated as an “area of critical environmental concern”, requiring a zoning overlay ordinance that divided the East Everglades into 3 management areas (Please see map labeled CDMP Land Use). Management Area 1 includes land along the eastern boundary which was previously altered by human activity primarily through agricultural operations, including grazing and rock plowing. The 8.5 Square Mile Area is located within Management Area 1 (Please see map Existing Land Use Map Area 1). Management Area 2 is defined as all lands within the East Everglades that are flooded for nine (9) months of the year. Management Area 3 is defined as the area lying between Management Areas 1 and 2 which is flooded for less than nine (9) months of the year.

In 1988, the County published the “2000 and 2010 Land Use Plan map” that was proposed to satisfy the 1985 “Growth Management Act” requirements as part of the Comprehensive Development Master Plan (CDMP). This Land Use Plan Map established the boundaries of the current Open Land Subarea 4 (East Everglades Residential Area) as described in the Land Use Element text. This subarea is bounded on the north, west and southwest by Everglades National Park, on the east by Levee 31N, and on the south by SW 168 Street. Uses which may be considered for approval in this area are agriculture production and raising of livestock and rural residences at a density of 1 dwelling unit per 40 acres, or 1 dwelling unit per 20 acres if ancillary to an established agricultural operation, or 1 dwelling unit per 5 acres, if it can be demonstrated that drainage to protect this area from a one-in-ten-year flood event exists, in keeping with the adopted East Everglades zoning overlay regulation (Section 33B, Code of Miami-Dade County) and compatible and necessary utility facilities. Uses that could compromise groundwater quality shall not occur in this area. In 2011, the Open Land Subarea 4 text was amended through the April 2010-2011 application cycle to allow year round agriculture production and the raising of livestock. Zoning Code Sec. 33-279.1 was added to address the type of agriculture production and livestock that may be allowed in Open Land Subarea 4, taking into consideration water quality and the lack of flood protection in the Subarea.

The hydrology of the East Everglades was an important factor used in determining the boundaries and the allowable uses of the Management Areas. Because of the East Everglades proximity to Everglades National Park, it is also directly affected by hydrologic changes within the Park. The Modified Waters Deliveries (MWD) to Everglades National Park, a project lead by the U.S. Army Corps of Engineers (Corps) and funded through US Department of Interior, seeks to improve water deliveries and historic natural hydrologic conditions within the Shark River Slough, which lies to the west of the 8.5 Square Mile Area. The MWD Project is predicted to increase water stages and durations west of the 8.5 SMA and, consequently, a flood mitigation plan for the 8.5 Square Mile Area was put in place to mitigate for the additional water.

In 2000, a General Reevaluation Report conducted by the Corps determined the appropriate level of mitigation, and the report was approved by Congress. The proposed mitigation is intended to keep the area consistent with 1983 water conditions. The mitigation features constructed thus far include the Seepage Canal (C-357), Pump Station (S-357), Detention Area (L-359), and Perimeter levee (L-357W). It's important to note that there has been a long standing difference of opinion between landowners within the 8.5 SMA and the State and Federal Government related to the level of flood protection authorized pursuant to the enabling legislation.

Because most of the properties within Management Areas 2 and 3 are publicly owned, vacant, and undisturbed, the WATF Committee agreed that no recommended changes to Chapter 33B for these areas were necessary. It was decided that Management Area 1; specifically the area within the 8.5 Square Mile Area known as the Las Palmas Community, would become the focus of any proposed changes to Chapter 33B. This area lies east of the Perimeter levee (L-357W) and west of the L-31 Canal in the areas that are primarily privately owned with many properties containing residences (Please see map labeled East Everglades Property Ownership).

The following is a chronology of the regulatory action in the East Everglades:

- In the 1950's, parts of the East Everglades were zoned for industrial uses due to low land costs and remoteness from residential areas.
- In 1974 a building moratorium was imposed on the area by the Dade County Commission as it was recognized by the Federal, State and County governments that, due to flooding risks and environmental sensitivity, this area was unsuitable for development.
- Following a year long study, in 1975 zoning throughout the area was rolled back to one unit per five acres, with some smaller lots (some as small as one unit per one and a quarter acre) grandfathered as platted. This rollback was upheld by the 3rd District Court of Appeals in 1977 (Moviematic Industries Corp. vs. Metropolitan Dade County).
- Also in 1975, the County Commission adopted the Comprehensive Development Master Plan (CDMP), which provided special environmental protections for the East Everglades area.
- In 1978 Federal funds were given to Dade County to undertake the East Everglades Resources Planning Project, which included creation of a steering committee of the major agencies with management responsibilities in the area. This Project resulted in publication of the

Management Plan for the East Everglades, dated October 1, 1980, which divided the East Everglades in three major management areas based upon existing land uses and hydroperiod data, and established management practices for each.

- Based upon the data collected and recommendations forwarded from the study and plan, on January 10th, 1981, the Dade County Commission designated the East Everglades as an “Area of Critical Environmental Concern”, and instructed County staff to develop ordinances that would create a zoning overlay, a Severable Use Rights (SUR) program and wetlands disclosure requirements for the area.
- On October 27, 1981, the County Commission approved the zoning overlay (Ord. 81-121) and SUR (Ord. 82-122) ordinances for the area. The Zoning overlay put into place the zoning densities and allowable uses that are still in effect today. It also included the provision that zoning in the area would revert to one unit per five acres in the event that flood protection from a 1-in-10 year storm was provided.
- The three ordinances from 1981-82 were codified into the zoning code of Dade County as Chapter 33B (titled “Areas of Critical Environmental Concern”). The area covered by CH 33B includes a disclosure requirement that it is in an area of critical environmental concern; however, the 8.5 SMA was not included.
- In 1988, the standards of the 1981 zoning overlay and SUR ordinances were adopted by reference in the County’s CDMP. The CDMP designated the 8.5 SMA as Open Land Subarea 4, which set minimum acreages for residential development and limited allowable uses throughout the area.
- In 1989, the United States Congress passed the Everglades National Park Protection and Expansion Act (Act). This Act provided for restoration of historic flows into Shark River Slough in ENP and expansion of the boundaries of ENP to encompass the East Everglades up to the western boundary of the 8.5 SMA. This Act also instructed the Secretary of the US Army Corps of Engineers (USACE) to determine if the proposed restoration of flows would adversely impact the 8.5 SMA and, if so, to construct a flood protection system for the developed portion of 8.5 SMA.
- In 1991, the USACE put forward a design for the flood mitigation for the 8.5 SMA, but concerns over its impact on the overall restoration effort and its failure to account for water quality impacts led then-Governor Lawton Chiles, in 1994, to create the East Everglades 8.5 Square Mile Area Study Committee (Committee).
- Also in 1994, Federal and State agencies, in conjunction with the County, were authorized to begin acquisition of large tracts of the East Everglades, such as the Frog Pond, Rocky Glades and portions of the 8.5 SMA.

- In 1995, the Committee released its study and made several recommendations related to the USACE proposed flood mitigation project, existing land densities in the 1981 zoning overlay and land acquisition activities for the area.
- After review of this report, and a consultant study that considered 6 possible alternatives, in 1998 the South Florida Water Management District (SFWMD) Governing Board voted to acquire all parcels in the 8.5 SMA.
- In the early 2000's, a Federal court ruled that the USACE did not have the authority to purchase the lands in the 8.5 SMA and they went back to Congress to request such authority. Congress authorized a limited purchase of lands in the area necessary for implementation of the Modified Water Deliveries as part of the Comprehensive Everglades Restoration Plan (CERP) in 2003.
- In April 2011, the Board of County Commissioners adopted an amendment to the CDMP which increased the allowable agricultural land uses throughout the 8.5 SMA. Zoning ordinances that further defined these uses were passed by the BCC in August 2011.

DISCUSSION

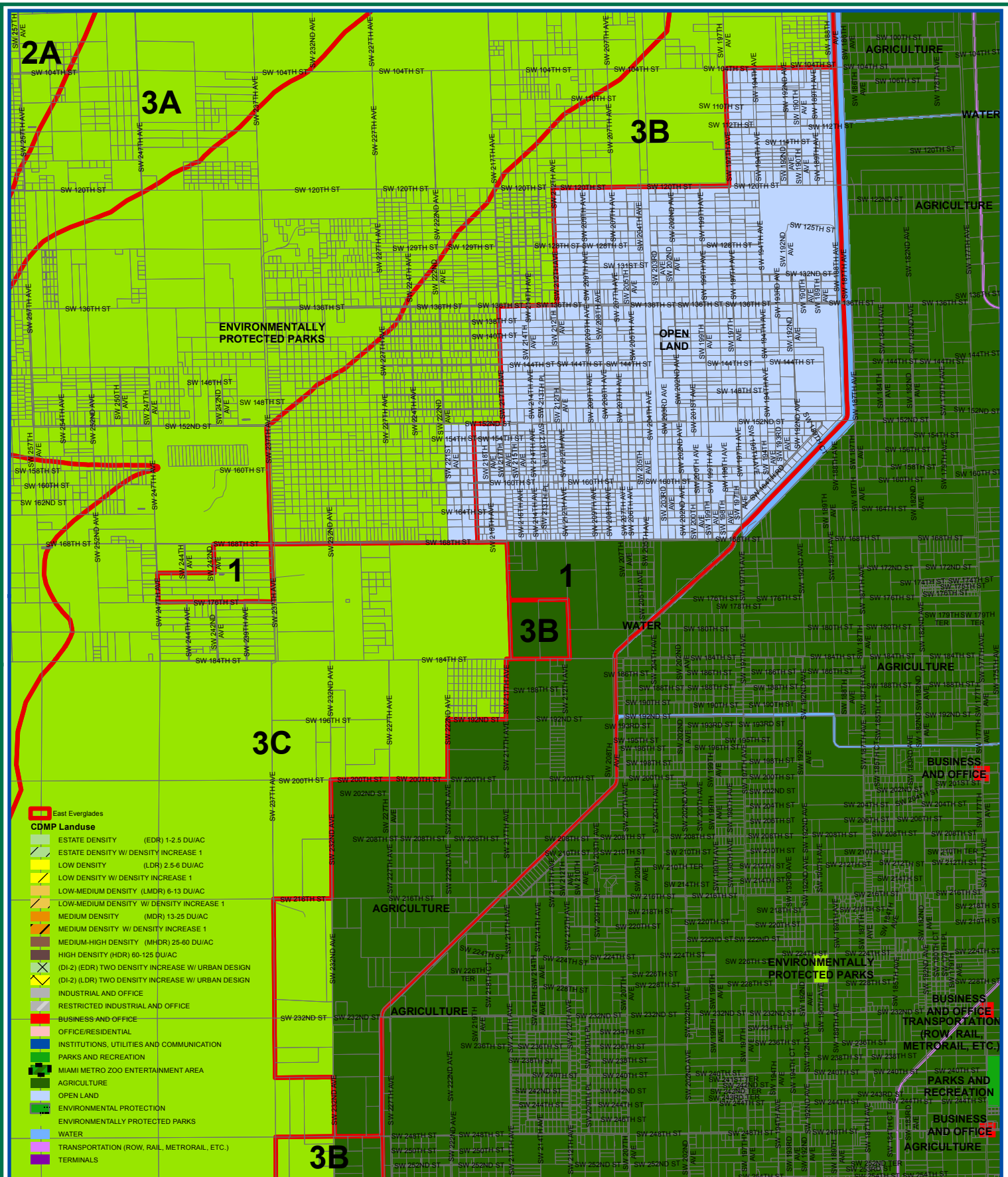
The committee heard presentations on the historical, present and projected future of the East Everglades, specifically the 8.5 SMA. While the future hydrologic conditions remain somewhat uncertain, there has been considerable infrastructure built around that area of the 8.5 SMA that remains in private ownership. This infrastructure includes a levee that isolates the area from direct surface water interaction with Everglades National Park (ENP). Additionally, a seepage collection canal was constructed to the east of the perimeter levee to allow for the movement of ground water necessary to prevent any additionally flooding that could be caused by higher water levels in ENP. This system is designed to keep the area whole when compared to the 1983 base condition.

With the construction of this infrastructure, the situation within the remaining 5.4 square miles is clearly different than when Chapter 33B was put in place. The recommendations of the committee reflect an acknowledgement of these changes, and reflect a measured approach to allow for a reevaluation of the zoning regulations over time as more information about the operations of the regional canal system and hydrologic conditions become more certain.

RECOMMENDATIONS

- 1) Amend Chapter 33B to Subdivide Area 1 into two areas, Area 1a and Area 1b, based on the new flood mitigation levee and those areas containing primarily private property (See attached map entitled East Everglades Management Areas 1a and 1b WATF Proposal). Area 1b is comprised of primarily private properties.
- 2) Amend Chapter 33B to remove the ½ acre fill restriction within Area 1b, allowing filling consistent with other areas of the County within Open Land designation, including the need to retain on-site stormwater from a 100 year 3-day storm.

- 3) Retain the provision to allow 1 unit in 5 acres housing density for those areas within Management Area 1b that are determined to have 1 in 10 year flood event protection level of service. Make the conditional use in Sec. 33B-25(A)(2)(a) in Management Area 1 a permitted use in the new Management Area 1b, provided the requirement to have the positive drainage flood control facilities that protect the area from a one-in-ten-year flood event is met.
- 4) Retain the recently expanded zoning allowance for increased farming options including tree farms and limited raising of livestock within Open Land Subarea 4.
- 5) Apply all rules of Chapter 24, including wetlands protection regulations, consistent with all other Open Land areas of the County.
- 6) Special attention should be paid to the lands purchased for the Modified Water Deliveries Project and CERP that are to remain outside of Everglades National Park to ensure they are managed consistent with the goals of the restoration.
- 7) These recommendations contained herein should be reviewed in three years to determine if revisions are necessary based on the status of the Everglades restoration projects and resulting hydrologic conditions.
- 8) Within the three year review, a cost benefit analysis should be done to determine the amount of public money being spent per parcel and per resident in Area 1b, estimated out 20 years.
- 9) Recommend that the Task Force sunset based on the successful completion of the tasks assigned.



East Everglades Management Areas and CDMP Land Use

Chapter 33B

Sustainability, Planning and Economic Enhancement
GIS Services Section

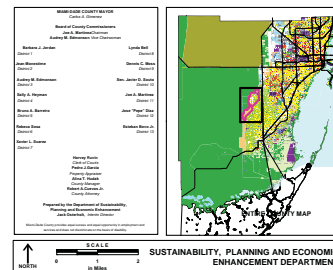
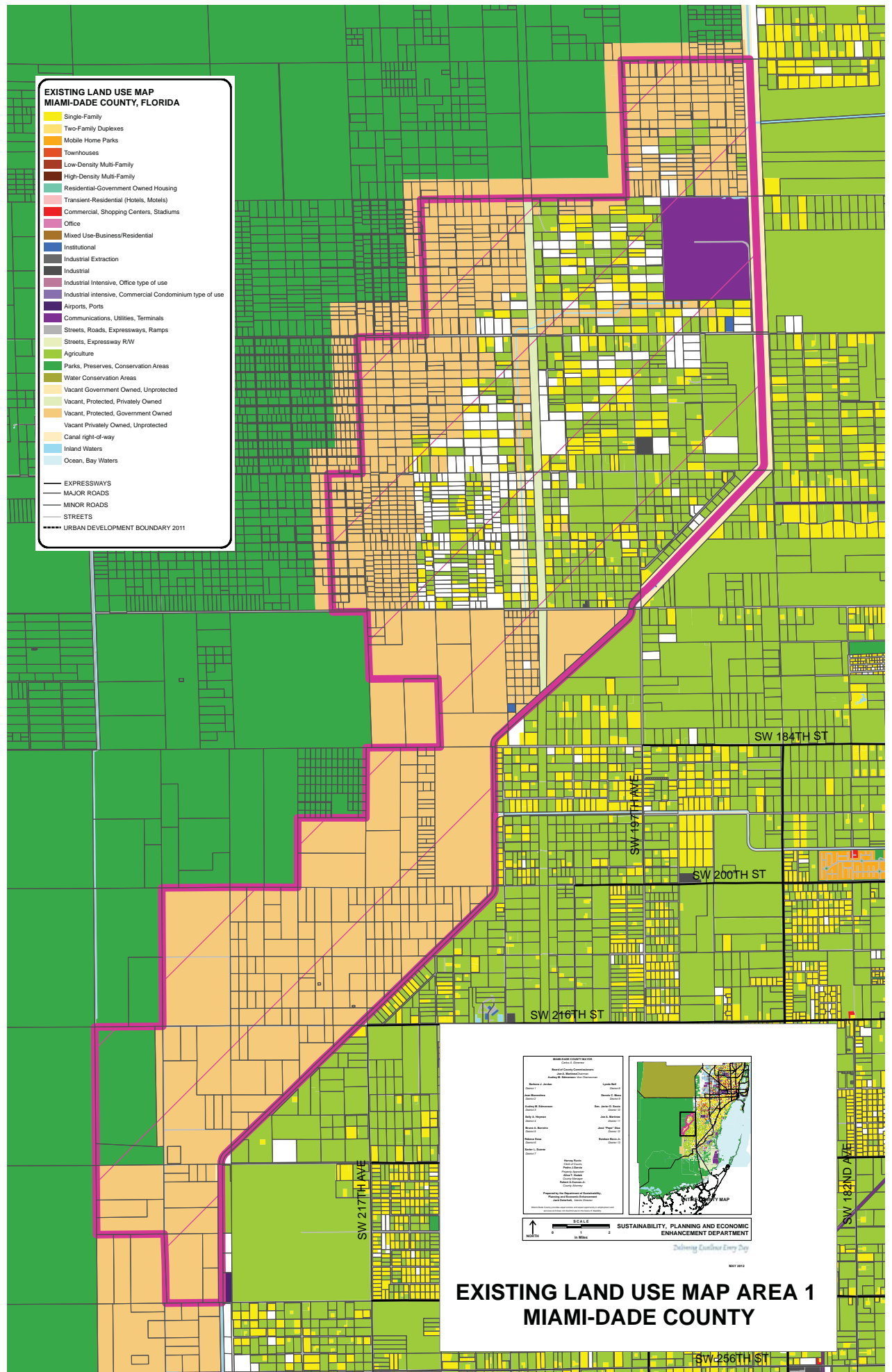


0 0.3 0.6 1.2 1.8
Miles

**EXISTING LAND USE MAP
MIAMI-DADE COUNTY, FLORIDA**

- Single-Family
- Two-Family Duplexes
- Mobile Home Parks
- Townhouses
- Low-Density Multi-Family
- High-Density Multi-Family
- Residential-Government Owned Housing
- Transient-Residential (Hotels, Motels)
- Commercial, Shopping Centers, Stadiums
- Office
- Mixed Use-Business/Residential
- Institutional
- Industrial Extraction
- Industrial
- Industrial Intensive, Office type of use
- Industrial Intensive, Commercial Condominium type of use
- Airports, Ports
- Communications, Utilities, Terminals
- Streets, Roads, Expressways, Ramps
- Streets, Expressway R/W
- Agriculture
- Parks, Preserves, Conservation Areas
- Water Conservation Areas
- Vacant Government Owned, Unprotected
- Vacant, Protected, Privately Owned
- Vacant, Protected, Government Owned
- Vacant Privately Owned, Unprotected
- Canal right-of-way
- Inland Waters
- Ocean, Bay Waters

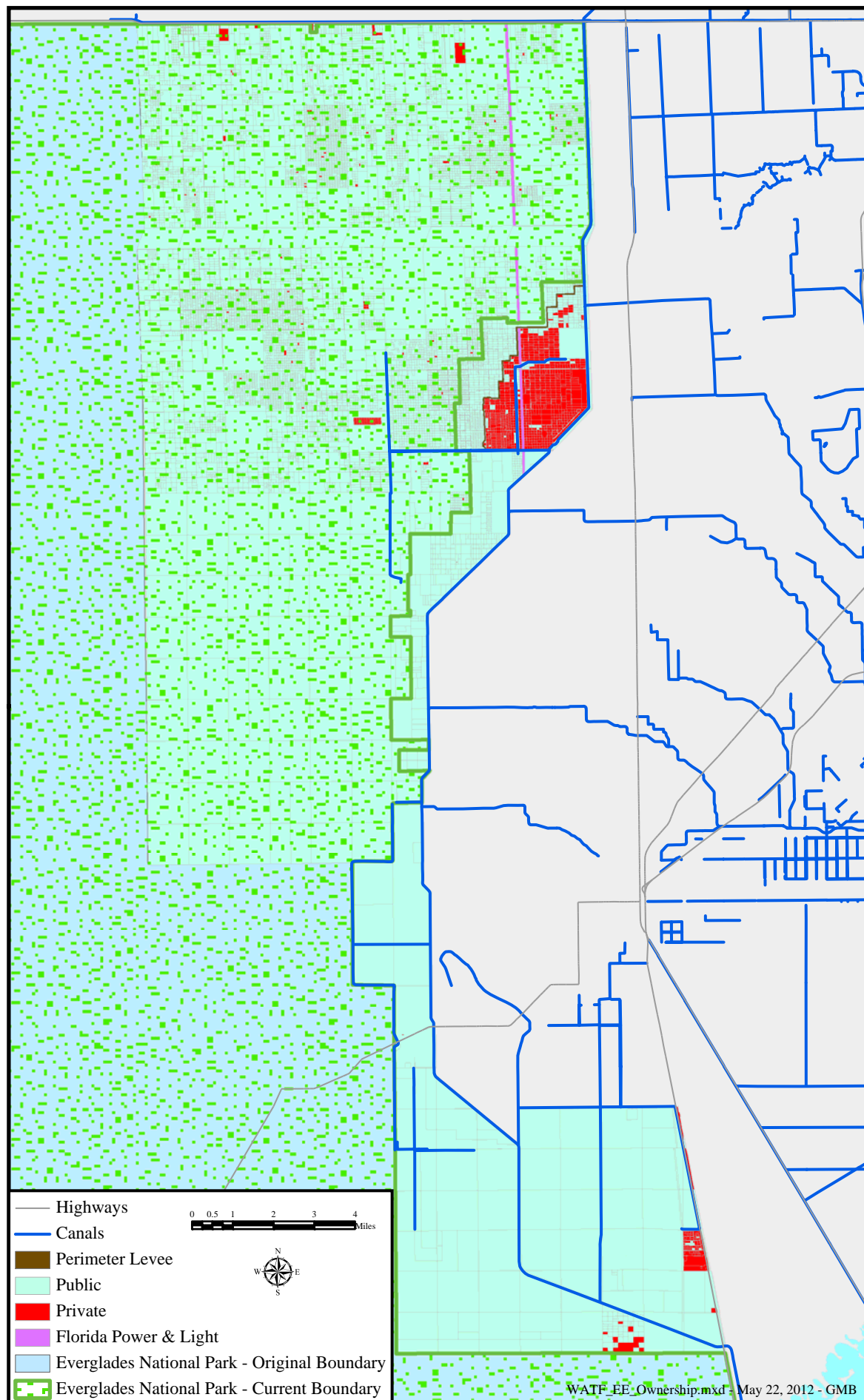
- EXPRESSWAYS
- MAJOR ROADS
- MINOR ROADS
- STREETS
- URBAN DEVELOPMENT BOUNDARY 2011



**EXISTING LAND USE MAP AREA 1
MIAMI-DADE COUNTY**

SW 256TH ST

East Everglades Property Ownership



East Everglades Management Areas WATF Proposal

