Memorandum

MIAMI-DADE COUNTY

Date: July 21, 2009

Agenda Item No. 14(A)(50)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution pertaining to text changes in the Miami-Dade County Purchase of Development Rights Program

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RECOMMENDATION

It is recommended that the Board adopt the attached changes to the document titled Miami-Dade County Purchase of Development Rights Program requiring that the terms of conservation easements purchased through the Program be in perpetuity. The changes to the Program will remove the options for exchange and release of easements originally included in the enabling legislation. This change will also make the Program consistent with the State of Florida's new Rural and Family Lands Protection Grant Programs as well as the Federal Farm and Ranch Protection Program administered by the USDA, which offer matching funds on a competitive basis for the conservation of viable farm land.

SCOPE

This applies countywide.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact to Miami-Dade County.

TRACK RECORD/MONITOR

The Agricultural Manager is responsible for administering the Miami-Dade County Purchase of Development Rights Program.

BACKGROUND

On September 20, 2007, the Board of County Commissioners approved the Miami-Dade County Purchase of Development Rights Program with the passage of Resolution No. R-1036-07. Since the passage of the Program, solicitations were mailed to more than 1500 property owners. To date, 60 applications for the Program have been received, constituting 2327 acres. The intent of the Program was to purchase perpetual conservation easements on viable agricultural property, removing the rights to residential development. The current Program language precludes the Board from entering into perpetual easements. The proposed changes are also needed to make the Program compliant with the easement regulations of the USDA's Farm and Ranch Protection Program and the State of Florida's new Rural and Family Lands Protection Grant Programs. It is a requirement of both Programs that easements be held in perpetuity in order to receive funding.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: July 21, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 14(A)(50)

Please note any items checked.

✓ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(50)
7-21-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING MODIFICATIONS TO THE MIAMI-DADE COUNTY PURCHASE OF DEVELOPMENT RIGHTS PROGRAM TO PROVIDE ADDITIONAL FUNDING OPTIONS THROUGH STATE AND FEDERAL GRANTS OPPORTUNITIES

WHEREAS, this Board desires to amend the Miami-Dade County Purchase of Development Rights Program, which will facilitate the preservation of agricultural land through the purchase of conservation easements; and

WHEREAS, the changes to the Purchase of Development Rights Program will provide the terms for conservation easements purchase through the Program be in perpetuity, which will make the Program consistent with the State and Federal Governments; and

WHEREAS, the changes to the Purchase of Development Rights Program are necessary to provide additional funding options through the State of Florida's new Rural and Family Lands Protection Grant Programs and the Federal Farm and Ranch Protection Program, which offer matching funds on a competitive basis for the conversation of viable farm land; and

WHEREAS, the changes to the Purchase of Development Rights Program are described in the accompanying memorandum, which is incorporated herein,

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the amended Miami-Dade County Purchase of Development Rights Program substantially as described in Exhibit A hereto and incorporate herein by reference, which supersedes the Program approved by the passage of Resolution No. R-1036-07.

The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of July, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jorge Martinez-Esteve

MIAMI-DADE COUNTY
PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

PURPOSE

It is the policy of Miami-Dade County to purchase conservation easements on viable private agricultural property, thereby limiting residential development rights for said property. In doing so, the County will protect its supply of valuable agricultural land from excessive or premature residential development and create the opportunity for continued agricultural usage. This will be accomplished through the establishment of the Purchase of Development Rights (PDR) Program.

The goals of the PDR Program are to:

- preserve farmland and support viable farm operations;
- protect open space; and
- maintain the agricultural areas rural character and quality of life.

The PDR Program involves only willing sellers and a willing buyer, and nothing in the PDR Program shall be construed to require the County to purchase development rights from any landowner.

BACKGROUND

Miami-Dade County's agricultural land is a unique and economically vital resource to the community. Our lands support a locally and nationally important agricultural industry. The County's climate makes it possible to produce fresh agricultural commodities in the dead of winter when other growing regions of the United States are too cold.

In addition to its economic benefits, the County's agricultural area contributes significantly to the open space and natural resource benefits, including rural character, scenic beauty, cultural heritage, hunting and other recreational opportunities. The agricultural area also provides environmental benefits, including watershed protection and wildlife habitat. By enhancing the scenic beauty and rural character of the County and providing other open space benefits, the County's agricultural area increases the overall quality of life and makes the County an attractive place to live and work for all of Miami-Dade's residents.

The population growth in Miami-Dade County has continued to increase dramatically. As the population has increased, agricultural land has been converted to residential and other developed uses. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use. When such land is

converted to residential or other more urbanized uses that do not require those special characteristics, a critical community resource is permanently lost to the citizens of the County. Residential development in agricultural areas also makes farming more difficult by increasing conflict over farming practices and increasing risk of trespass, liability exposure and property damage. Because agricultural land is an invaluable economic, natural and aesthetic resource, the County should make an effort to maintain sufficient agricultural land in a substantially undeveloped state to ensure the long-term viability of agriculture and to create a long-term business environment for agriculture in the county.

The purchase of development rights and the placement of an agricultural conservation easement on farmland through the PDR Program serves a public purpose. Acquisition of development rights requires that the County enter into agreements with property owners to obtain such development rights. Properties on which the County has purchased development rights and entered into an agricultural conservation easement shall remain substantially undeveloped in order to remain viable for agricultural use.

Miami-Dade County wishes to acquire conservation easements on viable agricultural property, voluntarily offered to the County by property owners. Each easement will limit future residential dwellings on the corresponding property. The easements will thus: provide an opportunity for agricultural practices, as well as the protection and efficient use of the County's agricultural resources; preserve agricultural and open land; establish and preserve the rural character of the County; conserve and protect soil, biodiversity, wildlife habitat, and aquatic habitat; and improve the quality of life for the inhabitants of the County. The PDR Program shall be available for all eligible lands in Miami-Dade County, excluding only those lands under the ownership or control of the United States of America, the State of Florida, a local municipality, or an agency or instrumentality of any of those entities.

PROPERTIES ELIGIBLE FOR PARTICIPATION IN THE PDR PROGRAM

A property's eligibility for participation in the PDR Program rests in the following criteria: (i) the property shall be located entirely in Miami-Dade County; (ii) the property shall be designated agriculture or open land on the land use plan map of the Comprehensive Development Master Plan of Miami-Dade County; (iii) the property shall have undeveloped residential density available; (iv) the property shall have at least 70% of its land area devoted to active agricultural use; (v) the property shall be suitable for agricultural production; and (vi) the property shall not be subject to any unresolved enforcement activity by any governmental entity.

PDR PROGRAM PROCEDURES

1. The PDR Program Administrator shall create such forms as necessary for the completion of the PDR Program and submit the property evaluation criteria to the County Manager for approval.

2. The PDR Program Administrator shall solicit the owners or easement holders of properties that Miami-Dade County finds desirable for participation in the PDR Program. If a solicited owner(s) is interested in selling or donating their development rights, the owner(s) must provide the Administrator with a completed, non-binding, request for consideration in the PDR Program.

    a. The Administrator will determine the eligibility of each property requesting consideration.

    b. Property owners' names will be kept on file by the Administrator, but removed from forms submitted for review and recommendation, as outlined below.

    c. Within 30 business days of receiving any request for consideration in the PDR Program, the Administrator, together with the Directors of the Miami-Dade County Cooperative Extension Service and Miami-Dade Department of Planning and Zoning, will evaluate, the property that is the subject of the request, based on the viability of the land for agricultural practices, property size, soil type, historical agricultural use; proximity to urban development, protected lands and other agricultural properties; and financial considerations.

    d. The Administrator will coordinate the completion appraisals on the properties selected. Appraisals will be conducted by independent certified (MAI, ASA) appraisers hired in accordance with established County hiring practices, from Miami-Dade County's approved appraiser vendor list.

    e. The Administrator will negotiate with property owner(s) the proposed sale price, as well as the terms and conditions of the proposed conservation easement.

    f. The owner(s) will complete and sign an offer sheet listing the sale price, any terms or restrictions, and standard requirements to be included in the conservation easement.

    g. Within 30 business days after the signature of an offer sheet, the Administrator will forward the offer sheet, together with the property evaluation forms, to the County Manager.

3. Recommendations shall then be forwarded to the Board of County Commissioners regarding which properties are most appropriate for participation in the PDR Program. Such recommendation should delineate the properties recommended for participation in the PDR Program, as well as any related particularized terms or conditions. The recommendation should include the offer sheet, appraisal, the property evaluation forms, and the conservation easement.

4. By majority vote, the Board of County Commissioners shall select properties that will participate in the PDR Program and approve by resolution the related conservation easements.

5. For each property that is selected for participation in the PDR Program, a conservation easement will be promptly executed by the property owner and recorded by the Clerk of Courts for Miami-Dade County.

6. Easements will be monitored annually according to the following monitoring process.

MONITORING PROCESS

Initial Property Evaluation Report

For each participating property, the monitoring process will commence with preparation of an initial property evaluation report by the PDR Program Administrator. In preparing the initial property evaluation report, the PDR Program Administrator and a staff member from Miami-Dade County Team Metro and the Miami-Dade County Cooperative Extension Office will conduct a physical inspection of the property.

The initial property evaluation report, which shall be recorded with the related easement at the closing of the development rights purchase, shall include pertinent information regarding the status and condition of the property including:

- an aerial photo of the property;
- a certified survey of the property;
- a list of existing conditions of the property, including soil and crop type, size and extent of natural areas, zoning and land use designations;
- a property map depicting existing conditions, including but not limited to structures or improvements, natural areas, cropland and signs; and
- a title search showing clear title of the property.

The initial property evaluation report shall be approved and signed by the property owner(s), or the owner's registered agent if applicable, and by the Administrator.

Annual Monitoring

The conservation easements that are executed and recorded in connection with the PDR Program shall be monitored on an annual basis.

The Administrator shall examine properties where development rights have been purchased by Miami-Dade County through the PDR Program. Particularly, the Administrator, together with a staff member from Miami-Dade County Team Metro and the Miami-Dade County Cooperative Extension Office, shall conduct an annual site visit. The Administrator shall thereafter complete an annual monitoring report form, in a form proscribed by the Administrator. The Administrator shall also submit the completed annual monitoring report to any other jurisdiction that has rights under the conservation easement. The property owner(s), or the owner's registered agent if applicable, must also execute the annual monitoring report.

A copy of the annual monitoring report will be retained by Miami-Dade County and placed in the property file held by the PDR Program Administrator, and a copy of the recorded report will also be mailed to the property owner.

Enforcement

If a participating property is found to be in violation of the applicable conservation easement, the Administrator must follow the notification of violation process outlined in the easement and contact the following:

- the County Manager's Office;
- the Board of County Commissioners;
- the County Attorney's Office; and
- any other jurisdiction that has rights under the easement agreement.

In the event a participating property is in violation of the applicable conservation easement, Miami-Dade County shall seek compliance or initiate legal action, if necessary.

CONSERVATION EASEMENT TERMS AND CONDITIONS

Each conservation easement shall conform to the requirements of the PDR Program and shall be in a form approved by the County Attorney. Each conservation easement shall contain, at a minimum, restrictions related to the following:

1. Permitted uses: Only those uses permitted in the AU (Agricultural) Zoning District, as amended from time to time, shall be permitted, subject to the restrictions of the conservation easement.

2. Restriction on new dwellings: The number of future residential dwellings on any participating property shall be limited.

3. Duration of the conservation easement: Each conservation easement shall specify the duration thereof. Easement duration ~~shall~~ may be perpetual in nature or restricted as follows:

   (a) Exchange of easements.

      (1) Upon the expiration of 10 years from the date on which a conservation easement was recorded, the owner or successor in interest to the property that is subject to the easement may petition the Board of County Commissioners for the extinguishment of such easement in exchange for the conveyance to the County of a conservation easement on a different property meeting all of the eligibility requirements as set forth in the PDR Program.

      (2) Requirements for exchange. No such exchange of easement shall be authorized, unless a super-majority of the Board of County Commissioners finds that:

         (A) the exchange is determined to be essential to the orderly development and growth of the County;

         (B) the exchange is consistent with the then-effective Comprehensive Development Master Plan for the County;

(C) the exchange does not adversely affect the County's interests in accomplishing the purposes of the PDR Program; and

(D) the property proposed for exchange is: (i) of at least equal fair market value and at least equal acreage; (ii) of greater value as permanent open-space land than the land upon which the original easement was recorded; and (iii) of at least equivalent location and usefulness for agricultural production as is the land upon which the original easement was recorded.

(E) The easement will be for a period of not less than 15 years from the date of which the conservation easement was recorded.

(b) Extinguishment of easements.

(1) Upon the expiration of 25 years from the date on which a conservation easement was recorded, the owner or successor in interest to the property which is subject to the easement may petition the Board of County Commissioners for the extinguishment of such easement.

(2) Requirements for extinguishment. No such extinguishment of easement shall be authorized unless a super-majority of the Board of County Commissioners finds that:

(A) the extinguishment is determined to be essential to the orderly development and growth of the County;

(B) the extinguishment is consistent with the then-effective Comprehensive Development Master Plan for the County; and

(C) there is provided to the County a reimbursement of the original purchase price compounded by the GOB bond rate paid by the taxpayers of Miami-Dade County on the funds received for the easement.

(c) Expenses. The petitioning property owner shall bear all expenses and fees related to an exchange or extinguishment, including but not limited to purchase of the substituted easement, site assessments, surveys, appraisals, closing costs, recording fees and taxes, title search, and title insurance if required.

4. Other restrictions: The property shall also be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the property. These standard restrictions shall be delineated in the recorded easement and shall include, but not be limited to restrictions pertaining to: (i) accumulation of trash and junk; (ii) display of billboards, signs and advertisements not related to the agricultural use of the property; (iii) grading, blasting or earth removal not related to the agricultural use of the property; (iv) conduct of industrial or commercial activities not related to the agricultural use on the property; and (v) monitoring of the easement.

5. Designation of easement holders: The County shall be the sole easement holder unless otherwise stated in the conservation easement.