

## MEMORANDUM

Agenda Item No. 14(A)(9)

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


**DATE:** January 5, 2012

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

**SUBJECT:** Resolution urging the Army Corp. of Engineers and the State of Florida to expeditiously resolve pending objections to permits proposed to be issued to the Corp. in connection with the project to dredge channels used by the Port of Miami to a controlling depth of minus 50 feet below mean lower low water and authorizing the County Mayor to apply for any permits needed for the dredging project

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The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Rebeca Sosa and Chairman Joe A. Martinez.

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/jls



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(Revised)

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Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous\_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 14(A)(9)  
1-5-12

RESOLUTION NO. \_\_\_\_\_

RESOLUTION URGING THE ARMY CORP. OF ENGINEERS AND THE STATE OF FLORIDA TO EXPEDITIOUSLY RESOLVE PENDING OBJECTIONS TO PERMITS PROPOSED TO BE ISSUED TO THE CORP. IN CONNECTION WITH THE PROJECT TO DREDGE CHANNELS USED BY THE PORT OF MIAMI TO A CONTROLLING DEPTH OF MINUS 50 FEET BELOW MEAN LOWER LOW WATER AND AUTHORIZING THE COUNTY MAYOR TO APPLY FOR ANY PERMITS NEEDED FOR THE DREDGING PROJECT

**WHEREAS**, in 2014 the renovations to the Panama Canal (“Canal Expansion”) will be completed to allow the Canal to accommodate vessels up to 1,200 feet in length, with a beam of up to 160 feet, a draft of up to 48 feet and a container capacity of up to 12,000 TEUs (“Post-Panamax ships”); and

**WHEREAS**, the TEU capacity of Post-Panamax ships is more than double the TEU capacity of ships currently able to transit the Panama Canal (“Panamax ships”); and

**WHEREAS**, on March 3, 2009, by way of Resolution R-203-09, this Board approved a design agreement (“Design Agreement”) between the County and the United States Army Corp. of Engineers (“COE”) under which the County agreed to fund 31.36% of the design and engineering costs to design and engineer plans to deepen to a controlling depth of minus 50 feet below mean lower low water (MLLW) of certain navigable channels and waterways used by cargo and cruise vessels entering, berthing at, and leaving the Port of Miami (the “Dredging Project”); and

**WHEREAS**, the Dredging Project will allow the Port of Miami to accommodate the larger length, beam, draft and tonnage of Post-Panamax ships by 2014 when the Canal Expansion will be completed; and

**WHEREAS**, the Dredging Project will improve navigation and enhance navigational safety to and from the Port of Miami for all ships using the Port of Miami by widening portions of the channels leading to and from the Port of Miami, including the federal channel's entrance, to accommodate Post-Panamax ships; and

**WHEREAS**, the Dredging Project will allow the Port to compete for a large share of the anticipated increased cargo vessel traffic that will be generated by the Canal Expansion, particularly since the Port will be the closest port in the United States capable of berthing Post-Panamax vessels; and

**WHEREAS**, the Port of Miami is the second largest economic engine contributing to the local economy of the County; and

**WHEREAS**, the County ultimately spent approximately \$2 million in connection with the Design Agreement; and

**WHEREAS**, on September 21, 2011, this Board, through Resolution No. R-684-11, approved a contract between the County and Odebrecht Construction, Inc. in the amount of \$57,120,500 to strengthen cargo wharves ("Wharves Strengthening Project") at the Port of Miami to accommodate berths to be dredged to a depth of minus 50 feet below mean lower low water (MLLW); and

**WHEREAS**, State of Florida Department of Transportation, with the financial assistance of the County, is expecting to spend in excess of \$600 million to construct a tunnel to the Port of Miami ("Tunnel Project") to allow direct freeway access to the Port to accommodate increased

truck and vehicle traffic to the Port in anticipation of increased cargo volume created the by the Dredging Project; and

**WHEREAS**, the Dredging Project will allow the Port to compete for a large share of the increased cargo vessel traffic expected to be generated by the Canal Expansion, particularly since the Port will be the closest port in the United States capable of berthing Post-Panamax ships; and

**WHEREAS**, the COE sought certain approvals from the Florida Department of Environmental Protection (“FDEP”) needed to construct the Dredging Project (“Dredging Permit”); and

**WHEREAS**, on or about September 1, 2011, FDEP issued a proposed agency action to grant a proposed permit and related variances to the COE; and

**WHEREAS**, on or about November 11, 2011, a second notice of proposed FDEP agency action was advertised advising of revisions to the previously noticed proposed permit; and

**WHEREAS**, as of the date of this Resolution, three (3) entities have challenged the proposed COE permit by filing administrative petitions objecting to the proposed COE permit (“Administrative Actions”) against the Corp.; and

**WHEREAS**, a denial of the Dredging Permit will have a severe negative financial consequence to the County and the State of Florida due to the business, economic and job opportunities which will be lost if the Dredging Project is not completed, as well as the effective loss of the millions of dollars invested already in the Design Agreement, the Wharves Strengthening Project, the Tunnel Project, and other projects related to the Dredging Project; and

**WHEREAS**, any substantial delay in the granting of the Dredging Permit may potentially delay the completion of the Dredging Project in time to coincide with the completion of the Canal Expansion, will delay the Port’s ability to accommodate the Post-Panamax ships,

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and could adversely affect the Port's ability to compete effectively with other ports for Post-Panamax ships and their increased cargo; and

**WHEREAS**, in seeking the Dredging Permit, the COE has committed to construct various environmental mitigation elements, including the creation and/or restoration of acres of seagrass and coral reef habitat that will improve water quality, create beneficial fish habitats, and otherwise enhance local natural resources; and

**WHEREAS**, in seeking the Dredging Permit, the COE has committed to a plan to minimize environmental impacts during construction of the Dredging Project; and

**WHEREAS**, the Dredging Project's construction related environmental impacts are temporary while the Dredging Project's environmental, navigational and economic benefits are largely permanent or long-term in nature; and

**WHEREAS**, as a result of the foregoing, the Dredging Project is clearly in the public interest of the residents of Miami-Dade County and the State of Florida,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:**

Section 1. The foregoing recitals are incorporated in this Resolution and are approved.

Section 2. This Board urges the COE, FDEP, and other governmental departments and agencies of the State of Florida to use their best efforts to resolve the Administrative Action as expeditiously as possible to enable the Dredging Project to proceed forward in a timely manner.

Section 3. This Board authorizes the County Mayor, if determined by the County Mayor to be in the best interest of the County after consultation with the County Attorney, to

become a co-applicant or applicant for any pending, proposed, or future permits or other governmental approvals needed in connection with the Dredging Project.

Section 4. This Board directs the Clerk of the Board to transmit certified copies of this Resolution to the Governor, Senate President, House Speaker, and the Chair and remaining members of the Miami-Dade State Legislative Delegation.

Section 5. This Board directs the County's state lobbyists to support the legislation set forth in Section 2 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2012 state legislative package passed by this Board to include this item.

The Co-Prime Sponsors of the foregoing resolution are Commissioner Rebeca Sosa and Chairman Joe A. Martinez. It 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:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 5<sup>th</sup> day of January, 2012. 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.



Richard C. Seavey