

# MEMORANDUM

Agenda Item No. 1F1

November 8, 2012

**Date:** April 10, 2012

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

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

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

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Pursuant to Resolution No. R-561-11, please find attached the final report of the Wetlands Advisory Task Force addressing specific issues and recommended revisions to the wetlands regulations of Chapter 24 of the Code of Miami-Dade County. This report encompasses the first phase of the work assigned to the Task Force by the Board of County Commissioners in the resolution as originally approved on July 7, 2011 and amended on January 24, 2012. Pursuant to a motion passed during item 1E1 of the Miami-Dade County Board of County Commissioners meeting of February 21, 2012, the Task Force will now proceed to review and provide recommendations on possible revisions to Chapter 33B of the Miami-Dade County Code.

We appreciate the assistance provided to the Task Force by participating citizens, interested professionals, the staff of Permitting, Environment and Regulatory Affairs (PERA) 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.

c: Honorable Carlos A. Gimenez, Mayor

# 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 March 14, 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 nine (9) meetings: September 29, 2011; October 19, 2011; November 8, 2011; November 30, 2011; December 19, 2011; January 11, 2012; February 14, 2012, February 23, 2012, and March 14, 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. A straw poll was taken and the Task Force voted unfavorably toward wholesale adoption of the State exemption for agriculture at this time.

## **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 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 effect cleanup of the environmental hazard. If it is determined that the mulched hurricane debris has not resulted in contamination or poses a risk of groundwater contamination, allow the material to remain.

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

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."

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 16:** Compile, workshop and post PERA permitting policies. These policies shall include but not be limited to response timeframes, completeness review processes, mitigation and criteria for determining halophytic wetlands.

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 17:** 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 indentified 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.

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 18:** 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.

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 19:** 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.

Off-road vehicles cause significant degradation of wetland habitat in certain areas of the County and often impact mitigation areas, making it difficult for the applicants to meet the required restoration success criteria.

**Recommendation 20:** Recommend that the County work with FWC and other agencies to enforce trespassing laws on posted properties and consider additional steps to prevent continued damage to wetlands by off-road vehicle use.

**Recommendation 21:** Investigate ways to reduce the tax rates on wetland areas to incentivize the preservation of wetlands in their natural state.

The public would benefit from an annual report produced by the Department that would clearly detail the effect of the County's wetland policies and permitting program. The annual report should provide information the number of wetland permits, acreage, illegal activity, restoration and the preservation of the net wetland function county wide.

**Recommendation 22:** 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, restored, enhanced or created, and wetlands purchased through the EEL Program.

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

**Recommendation 23:** Modify the fee schedule to remove the reference to the Bird Drive and North Trail Basin specific mitigation fees.

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 24:** 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, except for permits for rock mining activities which are valid for ten (10) years. 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.

**Date:** July 12, 2012

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

**From:** James F. Murley, Chair   
Miami-Dade County ~~PERM~~ 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

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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 29<sup>th</sup>, 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 3<sup>rd</sup> 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 10<sup>th</sup>, 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**

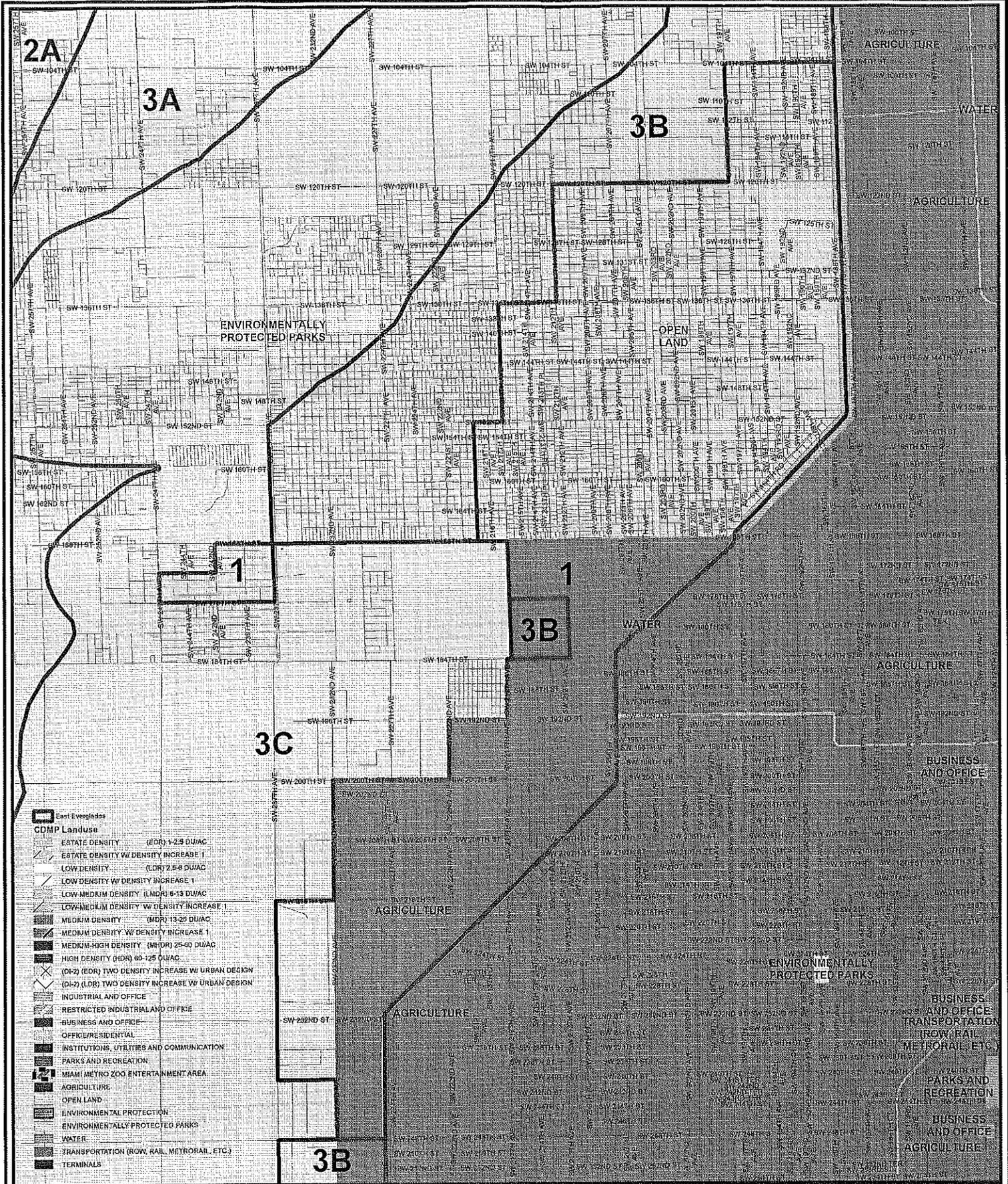
The committee heard presentations on the historical, present and projected future of the East Everglades, specifically the 8.5 SMA. While the future hydrologic conditions remain somewhat uncertain, there has been considerable infrastructure built around that area of the 8.5 SMA that remains in private 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.



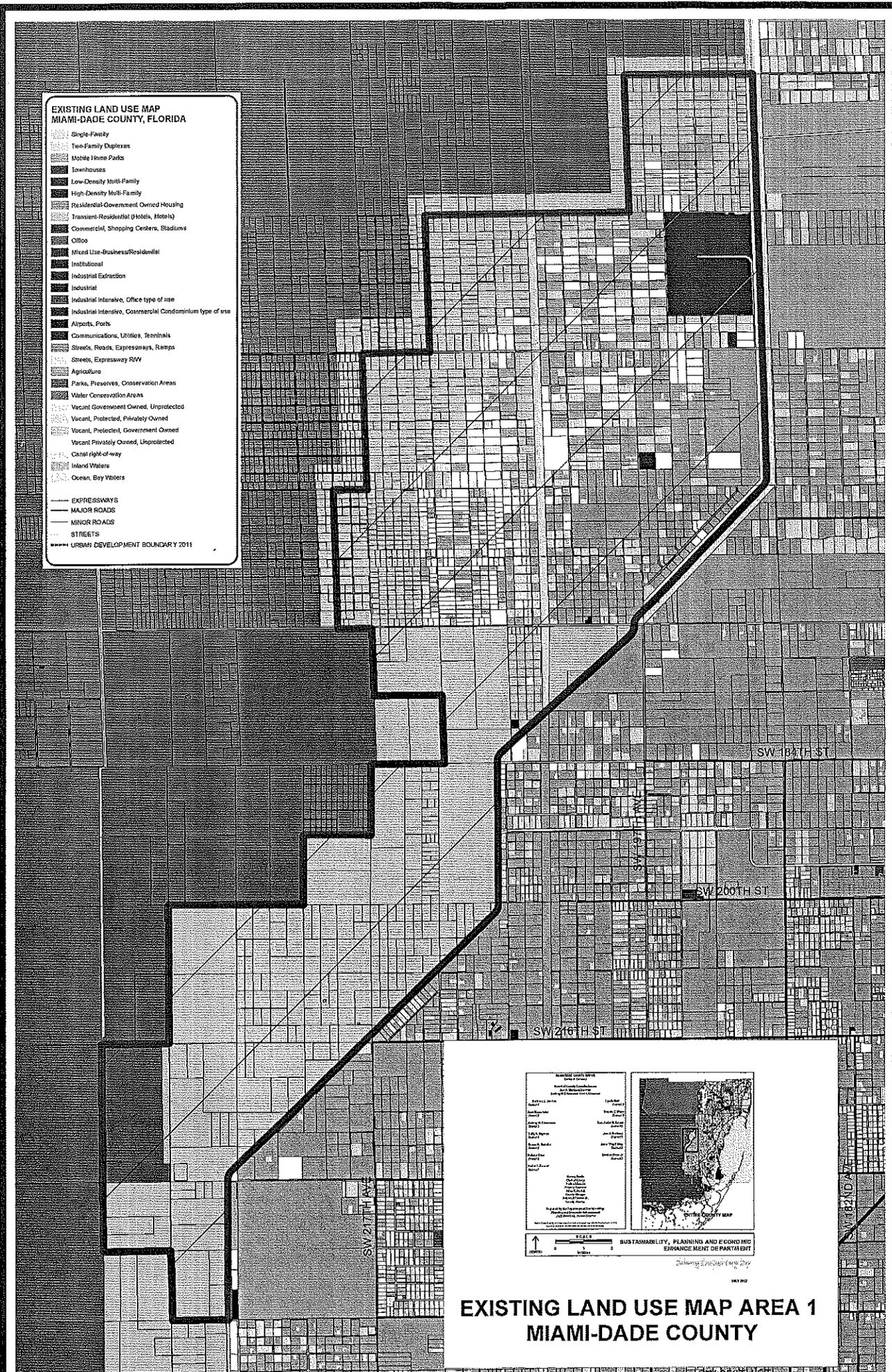
# East Everglades Management Areas and CDMP LandUse

## Chapter 33B

Sustainability, Planning and Economic Enhancement  
GIS Services Section



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



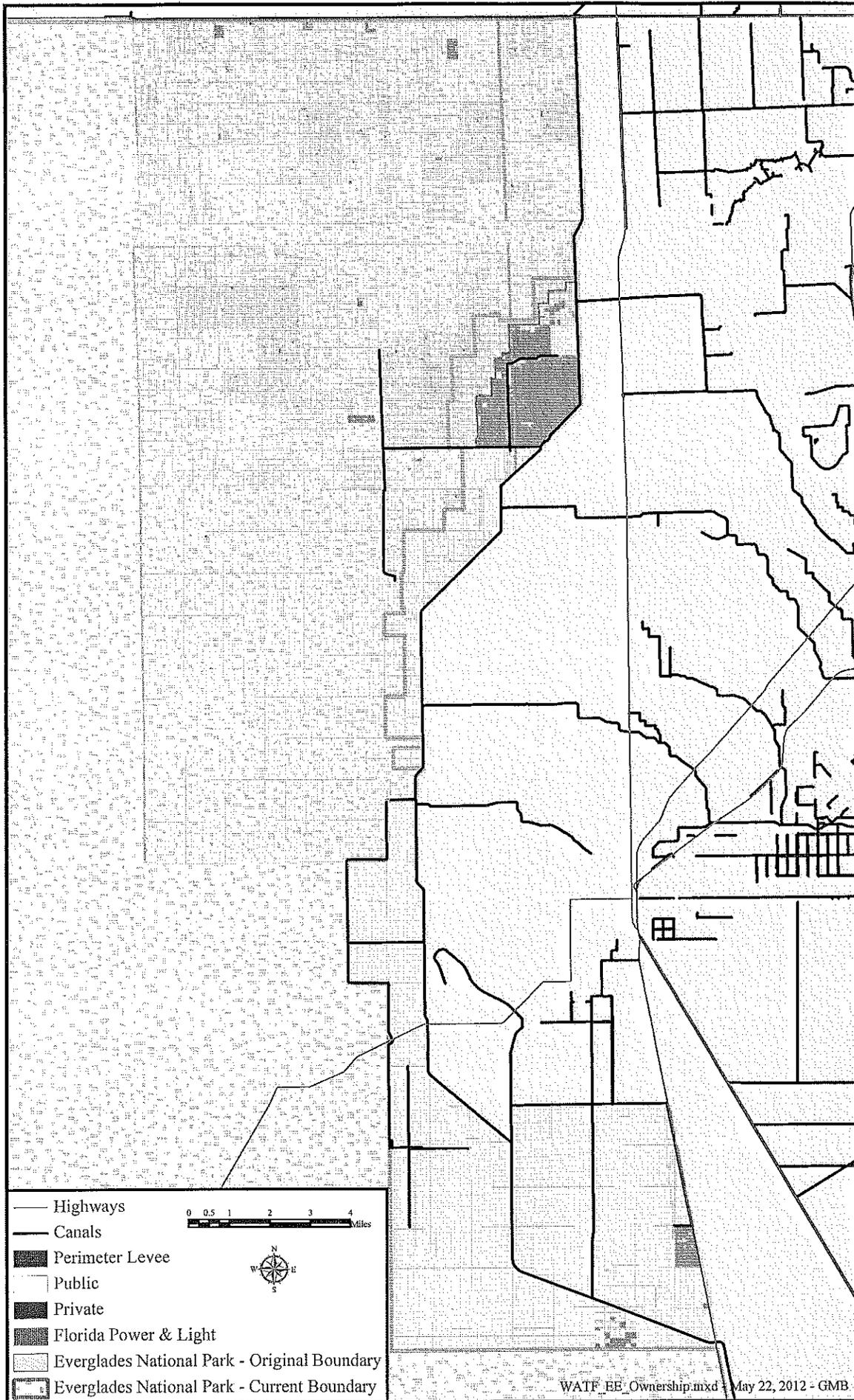
<p>Map of Miami-Dade County, Florida          Prepared by the Planning and Economic Development Department          1997</p>	
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SCALE  
0 1 2 Miles

SUSTAINABILITY, PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

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

# East Everglades Property Ownership



# East Everglades Management Areas WATF Proposal

