

Memorandum



Date: January 28, 2022

To: Honorable Chairman Jose, “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava *Daniella Levine Cava*
Mayor

Agenda Item No. 2(B)(4)
March 1, 2022

Subject: Report Related to the Establishment of a Mitigation Bank by Miami-Dade County,
Directive No. 212315

On November 2, 2021, the Board of County Commissioners (Board) approved Resolution No. R-1051-21, directing the County Mayor or County Mayor’s designee to take action related to the establishment of a wetlands mitigation bank by Miami-Dade County, requiring the County Mayor or County Mayor’s designee to apply for a Mitigation Bank Conceptual Permit and explore other options to make mitigation credits available within Miami-Dade County, and requiring reports to the Board.

The attached report, Attachment A, was prepared by staff of the Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM). Resolution No. R-1051-21 is attached to this transmittal memorandum as Attachment B. As a brief overview of the findings of the report, some key points that are brought up include the following:

- The preparation of a wetlands mitigation bank permit application is a complex and lengthy endeavor that requires specialized technical expertise in order to work productively with the multiple state and federal agencies that oversee the creation of such a program. Recognizing this fact, DERM is working to secure consulting services to aid in the mitigation bank permitting process in order to prepare a suitable application for a timely completion of this task. As part of this process, staff will engage the state for further information on the feasibility of using County conservation lands for establishing a wetlands mitigation bank.
- Without consultation from experts in the field of developing a mitigation bank, staff have not yet been able to prepare a cost estimate for this project. However, based on staff’s existing knowledge regarding wetland restoration projects and mitigation bank permitting requirements, it is anticipated that significant funding will be required for the establishment of a wetlands mitigation bank. Not only will initial funding be required to secure services and prepare the application, but additional funding will be needed in the future to conduct the actual work proposed in the mitigation bank application to secure mitigation credits.
- It is estimated that developing a mitigation bank project plan and preparing an acceptable mitigation bank permit application, at a minimum, will take not less than 24 months to complete. While this directive requires monthly updates, updates at this frequency will most likely not provide significant new information throughout this process. As noted in the report, while the establishment of an additional mitigation bank within Miami-Dade County will make wetlands mitigation credits available to property owners and developers who may wish to do work in wetlands on their private property, the outcome of this effort will likely not be realized for approximately five to ten years. This time estimate includes the timeline to obtain

regulatory permits, obtain a contractor for the work, conduct the proposed restoration activities, and achieve mitigation milestones that will be necessary prior to the release of credits as portions of the restoration work will need to be completed upfront. As such, the Board may consider the practicality of modifying the frequency for update reports to a quarterly basis. It is expected that the next report will provide further information on the progress of procurement of consulting services and information on coordination with the State and Federal agencies on the permitting requirements.

The intent of the directive is clear. Attachment A prepared by DERM describes the path forward to achieve this objective. As such, I have already instructed staff to begin work to prepare and submit a mitigation bank permit application to initiate the approval process. In addition, it should be noted that my office has already created policy for all County-controlled projects that cause impacts to wetland resources to maximize opportunities for preservation of on-site wetlands as much as possible. When impacts to wetlands for County projects cannot be avoided, the County will consider conducting wetlands mitigation projects in the vicinity of the wetlands being impacted. This approach would help preserve the important ecosystem functions that are lost by conversion of those wetlands, and it can help better address some of the water quality concerns we are currently observing with the health of Biscayne Bay. In addition, I recommend reviewing State law to identify updated language that will broaden the ability of local government to propose alternative mitigation opportunities, including but not limited to the ability for the EEL program to be used as an “in lieu fee program” which will provide funding for the EEL program and provide for mitigation opportunities for wetland impacts pursuant to state, federal and County requirements.

Despite existing regulations and required mitigation for wetlands impacts, most of which is done by purchasing credits from mitigation banks, recent declines in the health of Biscayne Bay indicate that we need to do more to preserve important wetlands functions. This should include preserving more wetlands in various drainage basins throughout the County to support the important ecosystem functions they provide, such as water storage, water quality improvement, aquifer recharge, and protecting our community from flooding. Preserving wetlands throughout Miami-Dade County is important for providing suitable areas for water to go on its journey to the Bay.

In accordance with Ordinance No. 14-65, this report will be placed on the next available Board meeting agenda. If additional information is needed, please contact Lee N. Hefty, Assistant Director, Division of Environmental Resources Management in the Department of Regulatory and Economic Resources, at Lee.Hefty@miamidade.gov.

Attachments

Attachment A – Report on Establishment of a Miami-Dade County Wetlands Mitigation Bank

Attachment B – Miami-Dade County Resolution No. R-1051-21 (Directive No. 212315)

- c: Geri Bonzon-Keenan, County Attorney
- Gerald Sanchez, First Assistant County Attorney
- Jess McCarty, Executive Assistant County Attorney
- Office of the Mayor Senior Staff
- Lourdes M. Gomez, Director, Department of Regulatory and Economic Resources
- Josenrique Cueto, Deputy Director, Department of Regulatory and Economic Resources

Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners
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Lee N. Hefty, Assistant Director, Department of Regulatory and Economic Resources
Jennifer Moon, Chief, Office of Policy and Budgetary Affairs
Yinka Majekodunmi, Commission Auditor
Melissa Adames, Director, Clerk of the Board
Eugene Love, Agenda Coordinator

ESTABLISHMENT OF A MIAMI-DADE COUNTY WETLANDS MITIGATION BANK

Background on Existing Mitigation Bank Regulations

Florida wetlands are defined as those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial or possess characteristics that are associated with reducing soil conditions.

The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

However, just as the general term wetland has been subject to varying opinions so have some of the concepts of the definition. To further clarify and standardize the intent of the definition, a methodology for identifying and delineating wetlands is provided in Rule 62-340 F.A.C.

The legal authority for mitigation banking is derived from the Environmental Reorganization Act of 1993 (Section 373.4135, F.S.), which directed the Florida Department of Environmental Protection (FDEP) and the water management districts (WMDs) to adopt rules governing mitigation banking throughout the state. FDEP's mitigation banking rule went into effect on February 2, 1994.

The FDEP describes mitigation banking as a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity ("banker") to provide mitigation for unavoidable wetland impacts within a defined region (mitigation service area). The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, which represents the wetland ecological value equivalent to the complete restoration of one acre. The number of potential credits permitted for the bank and the credit debits required for impact permits are determined by the permitting agencies. The Unified Mitigation Assessment Method (UMAM) is the method of assessment for banks established after February 2, 2004. UMAM was established to determine the amount of mitigation needed to offset adverse environmental impacts to wetlands and to award and deduct mitigation bank credits. UMAM provides a standardized procedure for assessing the ecological functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss. This standardized methodology is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities. The UMAM evaluates

functions through consideration of an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, time lag and mitigation risk.

Chapter 373.4135, Florida Statutes, states: "Mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present."

The Mitigation Bank Statute, Chapter 373.4136 F.S., and Mitigation Bank Rule, Section 62-342 F.A.C., provide the framework for permitting banks. Mitigation banks are authorized by a state permit, issued by either FDEP or a WMD, and by the U.S. Army Corps of Engineers as a Mitigation Bank Instrument (MBI) signed by several agencies, with the U.S. Army Corps of Engineers as lead. Mitigation banks permitted by the state have adopted rules based on the location of the bank and activity-based considerations. FDEP strongly encourages the mitigation bank applicant to have at least one pre-application meeting with an Interagency Review Team (IRT), consisting of all state and federal agencies that will be involved in processing the permit. FDEP believes that the applicant benefits from participation in the joint state/federal process by getting feedback and consensus from all agencies involved in permitting.

FDEP Application Requirements and Evaluation for a Mitigation Banking Permit

For a pre-application review, Miami-Dade County should provide, at minimum, the information on the federal prospectus checklist. This is the information that the IRT requires for initial review in order to provide technical and policy-level guidance regarding the feasibility of the proposed bank.

In the evaluation of a mitigation banking permit application, Section 373.4136(1) F.S. has established the following requirements for a mitigation bank:

- improve ecological conditions of the regional watershed;
- provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- be effectively managed in the long term;
- not destroy areas with high ecological value;
- achieve mitigation success; and,
- be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions

Furthermore, Chapter 62-342.450, F.A.C., specifies the information that must be included in a mitigation bank permit application to demonstrate that the above criteria are met. The following information is required:

1. A description of the location of the proposed mitigation bank, including:

- a map at regional scale showing the project area in relation to the regional watershed and proposed mitigation service area;
 - a vicinity map showing the project area in relation to adjacent lands and offsite areas of ecological or hydrologic significance that could affect the long-term viability or ecological value of the bank;
 - an aerial photograph identifying boundaries of the project area;
 - a highway map showing points of access to the mitigation bank for site inspection; and,
 - a legal description of the proposed mitigation bank.
2. A description of the ecological significance of the proposed mitigation bank in relation to the regional watershed in which it is located.
3. A description and assessment of current site conditions, which shall include:
- soils map of the project area;
 - a topographic map of the project area and adjacent hydrologic contributing and receiving areas;
 - a hydrologic features map of the project area and adjacent hydrologic contributing and receiving areas;
 - current hydrologic conditions in the project area; a vegetation map of the project area including acreage of each vegetation type;
 - ecological benefits currently provided to the regional watershed by the project area;
 - adjacent lands, including existing land uses and conditions, projected land uses according to comprehensive plans adopted pursuant to Chapter 163, F.S., by local governments having jurisdiction, and any special designations or classifications associated with adjacent lands or waters; and,
 - a disclosure by the applicant of any material fact which would affect the use of the property.
4. A mitigation plan describing the actions proposed to establish, construct, operate, manage, and maintain the mitigation bank, which shall include:
- construction-level drawings detailing proposed topographic alterations and all structural components associated with proposed activities;
 - proposed construction activities, including a detailed schedule for implementation;
 - the proposed vegetation planting scheme and detailed schedule for implementation;
 - a proposed monitoring plan to demonstrate mitigation success;
 - measures to be implemented during and after construction to avoid adverse impacts related to proposed activities; and,

- a detailed long-term management plan including all aspects of operation and maintenance, including water management practices, vegetation establishment, invasive and nuisance species control, fire management, and control of access.
5. An assessment of anticipated changes in ecological value as a result of proposed mitigation actions which shall include:
 - a description of anticipated site conditions in the mitigation bank after the mitigation plan is successfully implemented, including permit drawings of proposed vegetation and hydrologic conditions;
 - a comparison of current fish and wildlife habitat to expected habitat after the mitigation plan is successfully implemented, including permit drawings of proposed habitat types; and,
 - a description of the expected ecological benefits to the regional watershed.
 6. Evidence of sufficient legal or equitable interest in the property which is to become the mitigation bank. The applicant needs to show that they can preserve the property in perpetuity, either through a perpetual conservation easement, or by deeding the property fee simple to the DEP. This would include the following information:
 - A survey of the property. The survey must be certified, by a land surveyor registered in the State of Florida, to meet the requirements of FDEP, and the minimum technical standards set forth by the Florida Board of Professional Land Surveyors in Chapter 21 HH-6, F.A.C., pursuant to Section 472.027, F.S.
 - A map of the project site that depicts all encumbrances. All easements and encumbrances are explained in an accompanying title opinion. Any encumbrances that could have a negative effect on the mitigation bank project must be extinguished or subordinated to the easement.
 - A certified appraisal of the market value of the property to determine the appropriate amount of title insurance.
 - A title commitment and owner's policy in an amount at least equal to the fair market value of the real property.
 - A legal description and environmental audit.
 7. Draft documentation of financial responsibility documentation and financial assurance mechanism for 1) the construction and implementation of the bank, and 2) the perpetual management and maintenance of the bank. See 62-342.700, F.A.C., for complete details.
 8. Any additional information that may be necessary to evaluate whether the proposed mitigation bank meets the criteria listed in Chapter 62-342.450, F.A.C.

During the permitting of a mitigation bank, the permitting agency and IRT will determine the Mitigation Service Area (MSA), which is the geographic region within which the bank could reasonably be expected to offset impacts. The MSA boundary determination generally starts

with the regional watershed in which the bank lies but may be larger or smaller depending upon the ecological and hydrological location and value.

Also, during the permitting of a mitigation bank, the permitting agency and IRT will determine the potential number and type(s) of credits the bank may achieve upon success. A credit is defined as the ecological equivalent of one acre of successful creation/restoration, i.e., restoring one acre with no wetland function to optimal wetland function. This assessment is conducted using UMAM.

Administrative Tasks after Mitigation Banking Permit is Issued

Every mitigation bank permit requires a ledger that specifies three things:

- The total number and type of potential credits awarded to the bank;
- An up-to-date accounting of the credits that are available for sale or use; and,
- An accounting of the number and type of credits used for each impact permit.

The agency that issued the mitigation bank permit is responsible for maintaining the ledger. A ledger reflects both incremental releases of credit (type and number) and use of those credits.

Mitigation credits are made available to the mitigation banker for sale or use through a "release" modification by the agency that issued the mitigation bank permit. Mitigation credits can be released only after the site is preserved and financial assurances are in effect. The initial release of credits generally occurs when the property is conveyed, or a conservation easement is recorded.

Credits are then released incrementally, as specified by the credit release schedule in the permit, based on implementation and performance criteria. However, no credits for freshwater wetland creation areas can be released until they have met the final success criteria in the permit (62-342.470(3), F.A.C.). (Emphasis added)

To get credits released, the permittee submits a written minor modification request for credit release to FDEP, along with supporting documentation and a minor modification fee. FDEP reviews the documentation and conducts a site visit with the IRT to confirm that performance criteria have been met and will issue the release as a modification to the permit or deny the release if the criteria are not met. Mitigation credits that have been released to the banker are then available to be withdrawn from the mitigation credit ledger and used, as specified within an impact permit or consent order, as mitigation to offset impacts. Because the withdrawals must be accomplished through a permit modification, only the mitigation banker can authorize the use of credits from their bank.

Recommended Modifications to the Miami-Dade County Code

None are anticipated at this time.

Mitigation Bank Conceptual Permit Application

When siting the location of a mitigation bank, it is important to consider ecological suitability of a site for achieving the goal and objectives of a bank and that the locations will continue to support the desired wetland functions into the future. Size and location of the site relative to other ecological features, hydrologic sources and compatibility with adjacent land uses and watershed management plans are also factors to consider. Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM)'s approach in identifying locations where a mitigation bank could be operated was based on the above and included Miami-Dade County lands that were purchased as part of DERM's Environmentally Endangered Lands (EEL) Program and set aside for conservation. **Attachment 1** to this report is a map of south Miami-Dade County showing the locations of wetlands that are publicly owned by Miami-Dade County, managed by EEL, and the South Florida Water Management District (SFWMD). These wetlands comprise approximately 1,333 acres of land between the existing agricultural and residential uses and high-quality wetlands owned by the state and Miami-Dade County. These wetlands provide a large acreage of wetlands in public ownership in the same geographic location and that are in need of restoration. While there are areas of wetlands located east of US-1 managed by EEL, these wetlands are actively being restored by EEL and will provide additional value when considering the suitability of the bank location. It is the position of DERM that these properties meet all the requirements for a mitigation bank as outlined in Section 373.4136(1) F.S. However, Miami-Dade County would need to reach an agreement with the SFWMD that these wetlands could be included as a part of a mitigation bank and restored for the benefit of Miami-Dade County and the regional watershed.

As described above, the application process is very extensive and complicated. In order to have a complete application with all of the items described above, including research, extensive evaluations, by Miami-Dade County and the SFWMD, to ensure that the use of these properties in a mitigation bank will not conflict with how they were acquired, biological assessments, field verifications, a mitigation plan, and meetings with the permitting agency and IRT, DERM estimates would likely take 1 to 2 years. Please note that if the wetlands selected for the mitigation bank were acquired using other wetland mitigation funds or grants that specifically prohibit the acquired lands from being used for mitigation, the map would need to be modified and re-submitted to the permitting agency. The way in which the properties were acquired may not prohibit these wetlands from being used as a mitigation bank, but the time needed to research the acquisition of each property will be extensive. After the complete application is submitted, it could take another 1 to 2 years to receive the state and federal banking instruments.

While the permitting agencies are evaluating the mitigation bank application or once the banking permits are issued, Miami-Dade County will issue a Request for Proposals (RFP) and select a contractor capable of completing the restoration work as designed in the mitigation plan that includes earthwork, planting and maintenance. Selection of a contractor could take 1 to 2 years.

Once a contractor is selected, the County will need to work with the contractor on implementing the permitted restoration activities pursuant to the approved work plan in the regulatory permits. The timing of the work would likely be tied to seasonal limitations, with the majority of the work having to occur during the dry times of the year. Based on examples from other mitigation banks within Miami-Dade County, the contractor may only be able to work in the dry season (approximately December to June) and could complete approximately 100 acres per year. The completed portion of the restored wetland would then move into the monitoring and maintenance phase of the mitigation bank requirements in order to meet the appropriate success criteria. Depending on the work completed, it is estimated that the first phase of the bank would take 3 to 5 years to meet the success criteria.

While County technical staff can assist with conducting certain field investigations including evaluating the suitability of wetlands habitat and assisting with developing restoration goals for the proposed mitigation bank, due to the complex nature of preparing a mitigation banking permit application, staff believe it is necessary to hire consultants that specialize in obtaining mitigation banking permits. The experienced consultant will assist with preparation of a mitigation bank permit application in a form that is acceptable to the state, and they would be able to anticipate and respond to any questions or requests for additional information from FDEP or the IRT during the permitting process. Furthermore, regardless of the assistance from outside specialized consulting services, it should be noted some of the items referenced above that are necessary for the permit application are not reasonably expected to be completed by December 31, 2021.

Other Mitigation Options within Miami-Dade County

As described above, a credit is defined as the ecological equivalent of one acre of successful creation/restoration, i.e., restoring one acre with no wetland function to optimal wetland function. The concept of a credit in terms of mitigation banking is unique and specific only to a mitigation banking permit. As outlined in Section 373.4135(6) F.S, in addition to a formal mitigation bank, mitigation in the form of an environmental creation, preservation, enhancement, or restoration project, including regional offsite mitigation areas, for which money is donated or paid as mitigation, that is sponsored by a local government and provides mitigation for five or more applicants for permits under this part, or for 35 or more acres of adverse impacts, shall be established and operated under a memorandum of agreement between the governmental entity proposing the mitigation project and FDEP or WMD, as appropriate. There is no formal calculation of mitigation credits. Instead, the UMAM for the wetland impact site is compared to the UMAM for the wetland mitigation site to determine how many acres of the wetland mitigation site are needed to be restored or enhanced to offset the proposed wetland impact. The restoration work to be performed on the wetland mitigation site is either completed by the permit applicant or the governmental entity proposing the mitigation project. However, the governmental entity must be willing to accept full responsibility for the applicant's mitigation obligation, complete the mitigation as determined by FDEP or the WMD and then implement long-term management.

In addition to the purchase of mitigation credits or entering into a memorandum of agreement, other mitigation alternatives include (1) on-site mitigation by preserving and restoring wetlands within the developed site, (2) off-site mitigation by acquiring and restoring privately-owned wetlands in an area that Miami-Dade County agrees would offset the proposed impact and provide a long-term wetland benefit to the County, or (3) off-site mitigation by preserving and restoring wetlands on public lands that were not acquired for conservation.

Mitigation Discussions between DERM and the Builders Association of South Florida

On July 1, 2019, a modification to Section 373.4135, F.S. went into effect establishing a fourth mitigation alternative that allows an applicant to propose off-site mitigation on publicly owned wetlands acquired for conservation for a single project. Based on the modification to Section 373.4135, F.S. and when no State or Federal credits are available in a mitigation bank that include Miami-Dade County in their service area, the mitigation alternatives referenced above may be utilized. DERM and the Builders Association of South Florida (BASF) have been discussing mitigation options on wetlands acquired by Miami-Dade County and managed through DERM's EEL program, including the wetlands shown on **Attachment 1**. Although this coordination is in its initial stages, collectively we have agreed to discuss the following issues: (1) sites and project types, (2) guidance documents and (3) policy issues. Using this approach could provide mitigation opportunities in the near term, until such time that a new mitigation bank is approved, and credits become available after the restoration is completed and all success criteria are met.

Conclusions

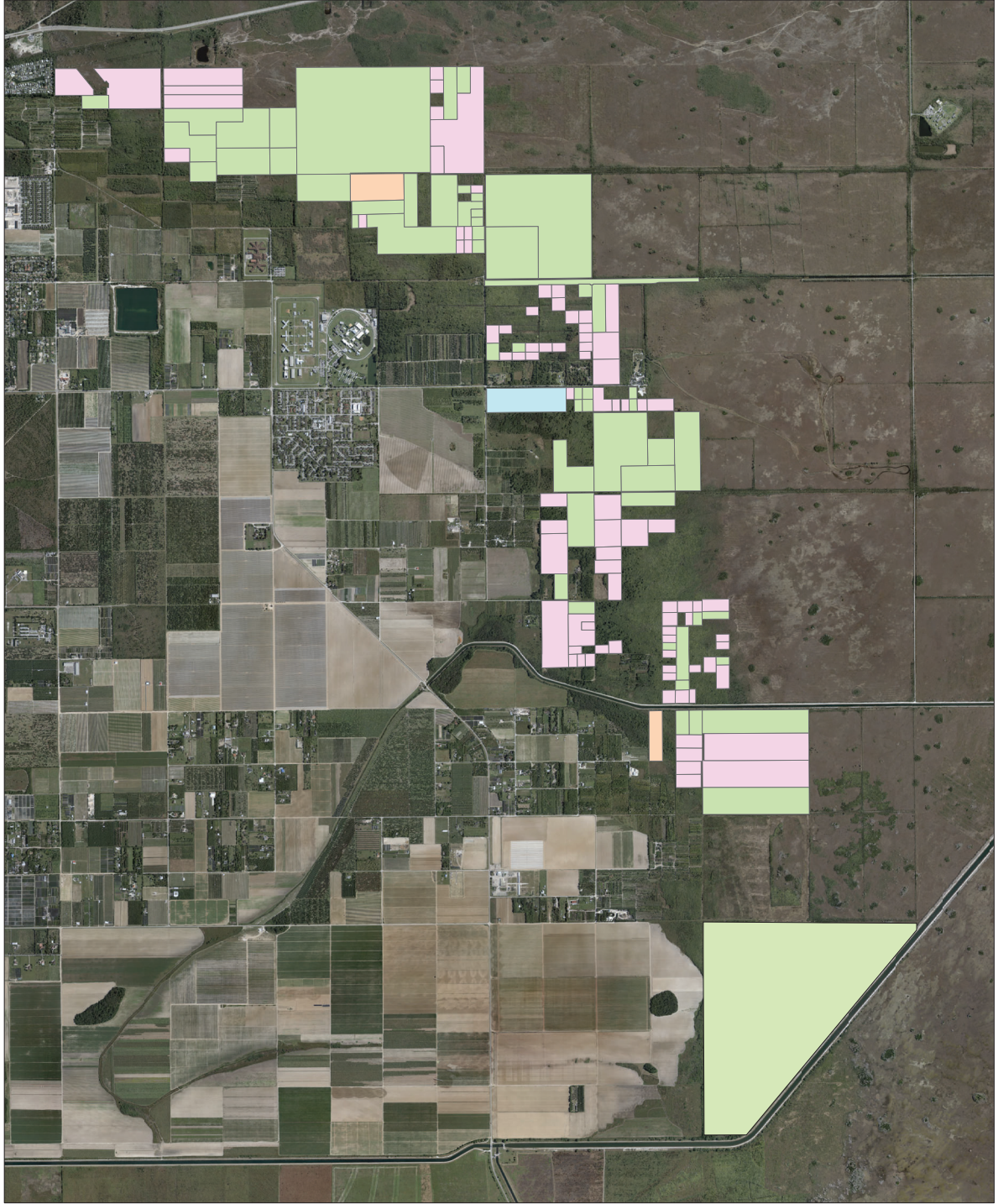
As outlined above, the establishment of a mitigation bank can take a considerable amount of time and effort to complete. Miami-Dade County has been involved in a regulatory role that assisted the State and federal resource agencies in the permitting of one of the two mitigation banks that currently exist within Miami-Dade County. It took several years to issue an updated banking permit and have credits available for release. While the establishment of an additional mitigation bank within Miami-Dade County will make wetlands mitigation credits available to property owners and developers who may wish to do work in wetlands on their private property, this benefit will likely not be realized for approximately 5-10 years. This time estimate includes the timeline to obtain regulatory permits, obtain a contractor for the work, conduct restoration activities, as well as meeting any milestones that will result in the release of credits.

Miami-Dade County has received guidance from the FDEP on the submittal of a conceptual mitigation bank permit. This guidance suggests that although the conceptual permit can be a good start to obtaining feedback from the State, as much of the required information for a full permit should be provided and be as complete as possible in the initial submittal. Therefore, the more detailed and complete the information provided, the more the substantive the feedback will be from the state and federal agencies.

Based on the foregoing, County staff will initiate the RFP process to find and hire a consulting firm that specializes in the development and permitting of mitigation banks. As noted above, the permit application will require multiple land and natural resource surveys including but not limited to wetlands vegetation maps, soils map, hydrology and topographic surveys, property surveys and appraisals, as well as development of a mitigation restoration plan and long-term management plan, with some of the onsite work limited to the dry season to allow access to these wetlands areas for survey work purposes. It is estimated that securing outside consulting services and preparation of a complete mitigation banking permit application will likely require funding in excess of \$500,000 and will take more than 36 months to complete. Concurrently with this effort, the County staff will continue to work with industry representatives to identify immediate mitigation opportunities that will allow for planned development within the County's wetlands to continue moving through the permitting process that is consistent with County, state, and federal regulations. In addition, County staff will coordinate internally to include a funding source on the next budget cycle to provide adequate funding for the upfront costs associated with the proposed mitigation bank.

Attachment

Miami-Dade County & State Owned Wetland Properties to be Considered for a Mitigation Bank



MEMORANDUM

Agenda Item No. 11(A)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 2, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution directing the County Mayor to take action related to the establishment of a wetlands mitigation bank by Miami-Dade County; requiring the County Mayor to apply for a Mitigation Bank Conceptual Permit and explore other options to make mitigation credits available within Miami-Dade County; requiring reports to this Board; and directing the County Mayor to include funding for implementation in the County Mayor's proposed Fiscal Year 2022-23 County budget

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Jose "Pepe" Diaz.


Geri Bonzon-Keenan
County Attorney


GBK/uw



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 2, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(1)

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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. 11(A)(1)
11-2-21

RESOLUTION NO. _____

RESOLUTION DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO TAKE ACTION RELATED TO THE ESTABLISHMENT OF A WETLANDS MITIGATION BANK BY MIAMI-DADE COUNTY; REQUIRING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO APPLY FOR A MITIGATION BANK CONCEPTUAL PERMIT AND EXPLORE OTHER OPTIONS TO MAKE MITIGATION CREDITS AVAILABLE WITHIN MIAMI-DADE COUNTY; REQUIRING REPORTS TO THIS BOARD; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO INCLUDE FUNDING FOR IMPLEMENTATION IN THE COUNTY MAYOR’S PROPOSED FISCAL YEAR 2022-23 COUNTY BUDGET

WHEREAS, section 373.403 of the Florida Statutes defines a wetlands mitigation bank as “a project permitted under [state law] undertaken to provide for the withdrawal of mitigation credits to offset adverse impacts authorized by a permit under [state law]”; and

WHEREAS, wetlands mitigation banks are highly regulated by the State of Florida, through the Department of Environmental Protection and the water management districts, and such wetlands mitigation banks require financial assurances to obtain state approval; and

WHEREAS, the State regulates how wetlands mitigation credits are awarded to a wetlands mitigation bank, and section 373.4136(4) of the Florida Statutes provides that “[t]he number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using a functional assessment methodology”; and

WHEREAS, a wetlands mitigation bank may sell wetlands mitigation credits to property owners or developers who seek to satisfy certain regulatory requirements applicable to federal, state, or county permits for work in wetlands; and

WHEREAS, insufficient wetlands mitigation credits are currently available in Miami-Dade County, and no state wetlands credits are currently available; and

WHEREAS, projects that would greatly benefit the local community and local economy might not be able to move forward without the ability that mitigation banks provide to mitigate those projects' wetland impacts; and

WHEREAS, section 373.4135(1)(b) of the Florida Statutes, which relates to wetland mitigation banks, provides that, "if state and federal mitigation credits are not available to offset the adverse impacts of a project, a local government may allow permittee-responsible mitigation consisting of the restoration or enhancement of lands purchased and owned by a local government for conservation purposes"; and

WHEREAS, no state wetlands mitigation credits are currently available in Miami-Dade County, and the State of Florida can determine that the above-referenced criteria have been met, particularly because projects that require mitigation credits would need state mitigation credits; and

WHEREAS, Miami-Dade County owns thousands of acres of conservation land, many of which were acquired as part of the County's Environmental Endangered Lands (EEL) program, and some of these County-owned conservation lands are wetlands that could benefit from additional environmental maintenance and restoration; and

WHEREAS, Miami-Dade County does not operate a wetlands mitigation bank; and

WHEREAS, if the County were to establish its own wetlands mitigation bank, such a project could both (1) create a much-needed funding source to restore County-owned conservation lands, such as EEL lands that are wetlands, and (2) make wetlands mitigation credits available to property owners and developers who may wish to do work in wetlands on their private property; and

WHEREAS, the State's process to permit a new wetlands mitigation bank can be extensive, but rule 62-342.450 of the Florida Administrative Code provides that "[a] person or entity who wishes to obtain an estimation of the legal and financial requirements necessary for a Mitigation Bank, information necessary for evaluation of a Mitigation Bank Permit application, and potential Mitigation Credits to be awarded under a Mitigation Bank Permit, may apply for a Mitigation Bank Conceptual Approval Permit"; and

WHEREAS, this Board wishes to direct the County Mayor or County Mayor's designee: to apply for such a Mitigation Bank Conceptual Approval Permit, as a first step, and also explore any other options that may be available to Miami-Dade County, including but not limited to a memorandum of agreement pursuant to section 373.4135(6), Florida. Statutes, to make available additional wetlands mitigation credits; to report to this Board as to progress and findings, including financial requirements and obligations that the State would require to establish a County wetlands mitigation bank; and to identify legally available funding that could be used to establish a County-owned wetlands mitigation bank, or if insufficient funding is available, to include proposed funding in the County Mayor's proposed Fiscal Year 2022-2023 County budget for this purpose,

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

Section 1. The foregoing recitals are incorporated herein and are approved.

Section 2. The County Mayor or County Mayor's designee is hereby directed to: apply for a Mitigation Bank Conceptual Approval Permit on or before December 31, 2021, as a first step to pursue the County's establishment of a County-owned wetlands mitigation bank; and explore any other options that may be available to Miami-Dade County, including but not limited to a memorandum of agreement pursuant to section 373.4135(6), Florida Statutes, to make more wetlands mitigation credits available locally.

Section 3. The County Mayor or County Mayor's designee shall prepare a written report to this Board as to the County's submission of a Mitigation Bank Conceptual Approval Permit application on or before December 31, 2021, whether this deadline will be met, and if not, a detailed explanation to this Board as to why the deadline will not be met by the County Mayor or County Mayor's designee. This report shall be placed on the December 1, 2021, agenda of the Board of County Commissioners pursuant to Ordinance No. 14-65. Subsequently, the County Mayor or County Mayor's designee shall prepare regular written status reports to this Board as to progress and findings pursuant to section 2 above, including, but not limited to, the date that the Mitigation Bank Conceptual Approval Permit application was submitted and any application deficiencies or substantive questions provided by the permitting agency in response to the County's submitted Mitigation Bank Conceptual Approval Permit application. Such status reports shall be provided at least every 30 days until the final report has been placed on an agenda of this Board in accordance with section 4 of this resolution. The first status report shall be placed on an agenda of this Board pursuant to Ordinance No. 14-65 within 60 days of the effective date of this resolution, and thereafter, subsequent status reports shall be placed on an agenda of this Board pursuant to Ordinance No. 14-65 within 30 days of the prior status report.

Section 4. The County Mayor or County Mayor’s designee shall prepare a final written report for this Board with the final responses and findings provided by the permitting agency in response to the County’s Mitigation Bank Conceptual Approval Permit application, including, but not limited to, financial requirements and other obligations, information necessary for a mitigation bank permit application, and potential mitigation credits to be awarded, together with any other relevant information. This report shall also include information about any other options that may be available to Miami-Dade County, including but not limited to a memorandum of agreement pursuant to section 373.4135(6), Florida Statutes, to make more wetlands mitigation credits available locally. This report shall also include recommendations by the County Mayor or County Mayor’s designee as to the establishment of a County-owned wetlands mitigation bank, which property could be included, and which restoration or maintenance projects the County could undertake, if applicable. This report shall also identify sufficient, legally available funds that could be used to establish a County-owned wetlands mitigation bank. The completed report shall be placed on an agenda of this Board pursuant to Ordinance No. 14-65 within 180 days of the effective date of this resolution.

Section 5. To the extent that the Fiscal Year 2021-2022 budget contains insufficient legally available funds, the County Mayor or County Mayor’s designee shall include funding in an amount sufficient to establish a County-owned wetlands mitigation bank in the County Mayor’s proposed Fiscal Year 2022-2023 County budget.

The Prime Sponsor of the foregoing resolution is Chairman Jose “Pepe” Diaz. 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:

Jose "Pepe" Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of November, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the 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.



Abbie Schwaderer-Raurell