

MEMORANDUM

Amended
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

Resolution No. R-1051-21

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

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Gen Bonzon-Keenan
County Attorney

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- 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 Amended
Veto _____ Agenda Item No. 11(A)(1)
Override _____ 11-2-21

RESOLUTION NO. **R-1051-21**

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 as well as non-EEL County-owned 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. The County Mayor or County Mayor's designee may use a consultant, subject to all applicable rules related to procurement.

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.

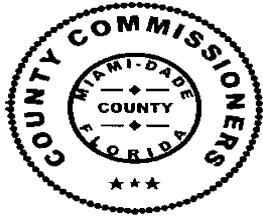
Section 4. The County Mayor or County Mayor’s designee shall prepare a final written report for this Board with the final responses and findings provided by the permitting agency in response to the County’s Mitigation Bank Conceptual Approval Permit application, including, but not limited to, financial 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 **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Oliver G. Gilbert, III** and upon being put to a vote, the vote was as follows:

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

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

Melissa Adames

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to read "ASR", is written over a horizontal line.

Abbie Schwaderer-Raurell